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HOWARD, ROBERTA DOBBS, BRENT A. RODERICK,
14 SHARON D. ROZIER, JOSEPH SUTRYNOWICZ, and all
others similarly situated

15 Additional counsel listed on signature page

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION
19

20 ROSA MARTINEZ, JIMMY HOWARD,
21 ROBERTA DOBBS, BRENT A.
RODERICK, SHARON D. ROZIER, and
22 JOSEPH SUTRYNOWICZ, on behalf of
themselves and all others similarly situated,

23 Plaintiffs,

24 vs.

25 MICHAEL J. ASTRUE, Commissioner of
26 Social Security, in his official capacity,

27 Defendant.
28

CASE NO. 08-CV-4735 CW

**FIRST AMENDED
CLASS ACTION COMPLAINT**

1 Plaintiffs, through their attorneys, bring this action on behalf of themselves and all
2 others similarly situated. On personal knowledge as to themselves and their activities, and on
3 information and belief as to all other matters, Plaintiffs hereby allege as follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiffs bring this class action to challenge Defendant Commissioner Michael J.
6 Astrue's (the "Commissioner") unlawful policy of suspending or denying Old Age, Survivors,
7 and Disability Insurance ("OASDI"), Supplemental Security Income ("SSI") and Special
8 Veterans Benefits ("SVB") benefits, and of refusing to certify payments to an individual as a
9 representative payee in these three benefit programs, on the basis of nothing more than the
10 existence of an outstanding felony arrest warrant for that person or for a person sharing the same
11 first and last name and Social Security Number ("SSN") or date of birth. The Commissioner
12 lacks any statutory authority for this policy. The provisions under which he purports to act, by
13 their express language, apply only when an individual is "fleeing to avoid prosecution, or custody
14 or confinement after conviction" for a felony. This language requires a finding of an *intent* to flee
15 for the specific purpose of avoiding prosecution. The Commissioner's misapplication of a
16 narrowly targeted statute has resulted in needless destitution for countless thousands of the most
17 vulnerable people in America — the elderly and the disabled — a majority of whom frequently
18 rely on these benefits for most, if not all, of their income. Some have also lost Medicaid coverage
19 associated with their SSI eligibility and others have lost their Medicare Part B coverage because
20 they were no longer able to pay the premium which had previously been taken out of their
21 monthly OASDI benefit.

22 2. With this class action, Plaintiffs Rosa Martinez, Jimmy Howard, Roberta Dobbs,
23 Brent A. Roderick, Sharon D. Rozier, and Joseph Sutrynowicz seek declaratory and injunctive
24 relief — or, in the alternative, a writ of mandamus — on behalf of themselves and all others
25 similarly situated, against the SSA's unlawful policy of suspending benefits based solely on the
26 existence of an outstanding warrant.

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1 nationwide, including OASDI, SSI and SVB. The Commissioner is sued in his capacity as the
2 official charged with performing the statutory and regulatory duties of the SSA and with
3 supervisory responsibility over the SSA and its divisions, agents, employees and representatives.

4 LEGAL FRAMEWORK

5 13. Effective August 22, 1996, the Personal Responsibility and Work Opportunity
6 Reconciliation Act ("PRWORA"), Pub. L. No. 104-193, 42 U.S.C. § 1382(e)(4), amended the
7 Social Security Act ("the Act") to authorize the SSA to suspend or deny SSI benefits to
8 individuals fleeing to avoid prosecution or custody or confinement after conviction for a felony.

9 14. The PRWORA provides, in relevant part:

10 (4)(A) No person shall be considered an eligible individual or
11 eligible spouse for purposes of this subchapter with respect to any
month if during such month the person is —

12 (i) fleeing to avoid prosecution, or custody or confinement after
13 conviction, under the laws of the place from which the person flees,
for a crime, or an attempt to commit a crime, which is a felony
14 under the laws of the place from which the person flees, or, in
jurisdictions that do not define crimes as felonies, is punishable by
15 death or imprisonment for a term exceeding 1 year regardless of the
actual sentence imposed...

16 42 U.S.C. § 1382(e).

17 15. In 1999, Congress authorized the Special Veterans Benefits ("SVB") Program to
18 provide an SSI-like benefit for certain World War II veterans residing outside the United States.
19 Congress also extended the provisions of 42 U.S.C. § 1382(e)(4)(A)(i) to the SVB program,
20 except that the SVB provision applies only to felony charges within the United States while the
21 SSI provision applies to felony charges anywhere in the world. 42 U.S.C. § 1004(a)(2).

22 16. Effective in 2005, the Social Security Protection Act of 2004, Pub. L. No. 108-203,
23 ("SSPA") extended to the SSA's largest program, OASDI, the same provision prohibiting
24 payment of benefits to individuals who are "fleeing to avoid prosecution, or custody or
25 confinement after conviction" for a felony.¹ 42 U.S.C. § 402(x)(1)(A)(iv).

26 17. The same legislation prohibited the certification of payment of benefits to a person
27

28 ¹ The OASDI provision, like the SSI provision, applies to prosecutions anywhere in the world.

1 as representative payee for OASDI, SSI or SVB benefits if that person is “fleeing to avoid
2 prosecution, or custody or confinement after conviction” for a felony. 42 U.S.C. §§
3 405(j)(2)(C)(i)(V), 1007(d)(1)(E), 1383(a)(2)(B)(iii)(V).

4 18. In 2000, the SSA promulgated final regulations to implement the statutory
5 provision in the SSI program. 20 C.F.R. § 416.1339(b). Those regulations provide that the
6 suspension of benefits:

7 is effective with the first day of whichever of the following months
8 is earlier — (i) The month in which a warrant or order ... is issued
9 by a court or other duly authorized tribunal on the basis of an
10 appropriate *finding* that the individual — (A) Is fleeing, or has fled,
11 to avoid prosecution . . . ; (B) Is fleeing, or has fled, to avoid
custody or confinement after conviction . . . ; or (ii) The first month
during which the individual fled to avoid such prosecution, fled to
avoid such custody or confinement . . . if indicated in such warrant
or order, or in a decision by a court or other appropriate tribunal.

12 20 C.F.R. § 416.1339(b) (emphasis added).

13 19. In 2003, the SSA promulgated final regulations to implement the statutory
14 provision in the SVB program. 20 C.F.R. § 408.810(b). These regulations are essentially the
15 same as the SSI regulations.

16 20. There are no implementing regulations for §§ 42 U.S.C. §§ 402(x)(1)(A)(iv),
17 405(j)(2)(C)(i)(V), 1007(d)(1)(E), and 1383(a)(2)(B)(iii)(V).

18 SSA POLICY AND PRACTICE

19 21. Despite the plain language of the statute, and despite repeated and consistent
20 rulings to the contrary, the SSA continues to interpret the Act to mean that a person is “fleeing to
21 avoid prosecution, custody, or confinement” when there is an outstanding arrest warrant issued in
22 his or her name, even if there is no finding of “flight” undertaken with the specific intent to avoid
23 prosecution and, indeed, even if that person is unaware of the outstanding arrest warrant or the
24 pending charges.

25 22. This interpretation has been challenged by individual SSI recipients in at least eight
26 cases brought in federal district courts in California, Maine, Michigan, Minnesota, New York,
27 Oregon and Tennessee. In each of these cases — save one — the courts ruled that the SSA’s
28 interpretation of the PRWORA was unlawful and either restored benefits to the beneficiaries or

1 otherwise instructed the SSA to comply with the courts' rulings.² In order to avoid adverse
2 precedent, however, the SSA chose in each case not to appeal the district court's decision.

3 23. The one case in which the SSA prevailed on this issue at the district-court level
4 involved a case filed *pro se* in New York. *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005). In
5 that case, the district court ruled against the plaintiff and the plaintiff appealed, creating the first
6 — and, to date, the only — opportunity for an appellate court to address the issue. The United
7 States Court of Appeals for the Second Circuit found that “the plain language of the statute and its
8 implementing regulation” preclude the SSA from determining that a person is “fleeing to avoid
9 prosecution” based solely on the fact that there is an outstanding warrant for a person’s arrest. *Id.*
10 at 96. Rather, there must be a “conscious evasion of arrest or prosecution.” *Id.* “[B]enefits may
11 be suspended only as of the date of a warrant or order issued by a court or other authorized
12 tribunal *on the basis of a finding that an individual has fled or was fleeing from justice*” and a
13 person’s flight must be “undertaken with a specific intent, i.e., to avoid prosecution.” *Id.* at 96-97
14 (emphasis added).

15 24. In an SSA Acquiescence Ruling following the *Fowlkes* decision, the SSA
16 acknowledged that the Second Circuit had “determined that for ‘flight’ to result in a suspension of
17 benefits, it must be undertaken with the specific intent to avoid prosecution.” SSA Acquiescence
18 Ruling 06-1(2), Apr. 6, 2006, *available at* [http://www.ssa.gov/OP_Home/rulings/ar/02/AR2006-](http://www.ssa.gov/OP_Home/rulings/ar/02/AR2006-01-ar-02.html)
19 [01-ar-02.html](http://www.ssa.gov/OP_Home/rulings/ar/02/AR2006-01-ar-02.html). The SSA nevertheless has flouted that finding and the Second Circuit’s further
20 recognition that the determination of “flight” must be made by the court issuing the warrant,
21 requiring only that “the Agency . . . have some evidence that the individual knew his
22 apprehension was sought.” Moreover, the SSA applies even this insufficient requirement only in
23

24 ² While there may be cases that are unreported, a Westlaw search has identified only one instance
25 in which a court has upheld a denial of benefits based on the SSA’s policy, and that decision was
26 overturned on appeal in the only appellate decision on the issue to date. *Fowlkes v. Adamec*, 432
27 F.3d 90, 96-97 (2d Cir. 2005). Numerous decisions have found the SSA’s policy to be contrary
28 to the statute and the regulations. *See, e.g., id.*; *Reff v. Astrue*, 2008 WL 4277713 (D. Minn. Sept.
15, 2008); *Caldwell v. Astrue*, 2008 WL 2713714 (E.D. Tenn. July 10, 2008); *Blakely v.*
Comm’n’r Soc. Sec., 330 F.Supp.2d 910 (W.D. Mich. 2004); *Hull v. Barnhart*, 336 F.Supp.2d
1113 (D. Or. 2004); *Thomas v. Barnhart*, 2004 WL 1529280 (D. Me. June 24, 2004); *Garnes v.*
Barnhart, 352 F.Supp.2d 1059 (N.D. Cal. 2004).

1 the three states comprising the Second Circuit.

2 25. Despite the Second Circuit's ruling, and the agency's acknowledgement of it, the
3 SSA continues to apply an unlawful interpretation of these statutory provisions, resulting in the
4 suspension or denial of benefits — and the threatened suspension and denial of benefits — to
5 thousands of eligible recipients of and applicants for SSI, SVB and OASDI benefits and results in
6 the denial or removal of certification as representative payees of countless numbers of individuals
7 seeking to serve as representative payee for a friend or family member.

8 **SSA'S APPLICATION OF ITS POLICY**

9 26. The SSA implements this policy through a computer matching program which
10 compares SSA's databases with various federal, state, and local warrant databases.

11 27. The SSA treats a warrant as having been issued to a particular benefits recipient if
12 the databases match the person's first and last names and either (i) his or her social security
13 number or (ii) his or her date of birth.

14 **CLASS ACTION ALLEGATIONS**

15 28. Plaintiffs bring this action as a class action pursuant to Rule 23(b)(2) of the Federal
16 Rules of Civil Procedure.

17 29. The class consists of:

18 All persons whose SSI, SVB or OASDI benefits have been
19 suspended or denied, or who are threatened with the suspension or
20 denial of such benefits, for allegedly "fleeing to avoid prosecution,
21 or custody or confinement after conviction" for a felony or who are
22 not permitted to serve as representative payees for SSI, SVB or
23 OASDI benefits for allegedly "fleeing to avoid prosecution, or
24 custody or confinement after conviction" for a felony.

25 30. The class is so numerous that joinder of all members is impracticable. While the
26 exact number of class members can only be obtained through appropriate discovery, on
27 information and belief, there are over one hundred thousand class members.

28 31. There are questions of law and fact common to all class members that predominate
over questions only affecting individual class members. Such questions include, among others:
(a) whether the SSA can determine that an individual is "fleeing to avoid prosecution, or custody
or confinement after conviction" for a felony under 42 U.S.C. §§ 402(x)(1)(A)(iv),

1 405(j)(2)(C)(i)(V), 1004(a)(2), 1007(d)(1)(E), 1382(e)(4)(A) or 1383(a)(2)(B)(iii)(V), absent a
2 finding that the individual had the intent to flee for the specific purpose of either avoiding
3 prosecution for a felony or avoiding custody or confinement after conviction of a felony and that
4 the individual had the capacity to form such an intent; and (b) whether the Commissioner has
5 engaged in a pattern of suspending or denying class members' benefits and denying or revoking
6 certification as a representative payee for allegedly "fleeing to avoid prosecution, or custody or
7 confinement after conviction" for a felony without first making a finding as to the individual's
8 intent and capacity to form such intent.

9 32. Plaintiffs' claims are typical of the claims of all class members, and arise from the
10 same course of conduct by the Commissioner. The declaratory and injunctive relief sought is
11 common to all class members. In addition, the Commissioner has acted and continues to act on
12 grounds generally applicable to all class members, thereby making injunctive and declaratory
13 relief appropriate to the class as a whole.

14 33. A class action is superior to other available methods for a fair and efficient
15 adjudication of this matter in that the prosecution of separate actions by individual class members
16 would unduly burden the Court and create the possibility of conflicting decisions.

17 34. Plaintiffs will fairly and adequately protect the interests of the class members.

18 35. The named plaintiffs and the proposed class are represented by Munger, Tolles &
19 Olson LLP, National Senior Citizens Law Center, Urban Justice Center, and Disability Rights
20 California, whose attorneys are experienced in class action litigation and will adequately
21 represent the class.

22 **INDIVIDUAL PLAINTIFF ALLEGATIONS**

23 **Plaintiff Rosa Martinez**

24 36. After working for a number of years as a nursing assistant and in retail sales,
25 Plaintiff Rosa Martinez began receiving SSI disability benefits in November 2005. She suffers
26 from Sharp's syndrome (a form of mixed connective tissue disease), fibromyalgia, hepatitis,
27 depression, diabetes and sleep apnea and is no longer able to work. Her SSI benefit of \$870 per
28 month is Ms. Martinez's only source of income. Without it she would be unable to pay for her

1 basic living expenses.

2 37. On December 10, 2007, an SSA employee handed Ms. Martinez a letter (attached
3 hereto as Exhibit A) stating that the agency would be suspending her SSI benefits effective
4 January 2008 because "the law prohibits us from paying Supplemental Security Income to
5 persons who have an outstanding arrest warrant for a crime which is a felony." The notice went
6 on to state that there was an outstanding arrest warrant for a felony drug crime issued in her name
7 by the Miami Dade Police Department in Florida on July 14, 1980. Ms. Martinez explained that
8 she had never been to Miami and had never been arrested or charged with a crime and that this
9 had to be a mistake. The SSA claims representative told Ms. Martinez that this could not be
10 appealed and refused to give her an appeal form and told her she would simply have to get proof
11 that there was no warrant.

12 38. Ms. Martinez obtained an SSA appeal form at the Legal Aid Society of San Mateo
13 County ("Legal Aid") and on December 11, 2007, the day after she received notice of the
14 proposed suspension, Ms. Martinez filed a Request for Reconsideration at the local SSA office to
15 appeal the proposed suspension (attached hereto as Exhibit B). In the reconsideration request she
16 stated, "I have never been in Miami Dade," and requested that the reconsideration be by means of
17 a formal conference. SSA regulations require that she be afforded the opportunity for a formal
18 conference where she would have the right to confront adverse witnesses and request that
19 subpoenas be issued for relevant evidence and witnesses. 20 C.F.R. § 416.1413(c).

20 39. On the very same day, SSA issued a Notice of Reconsideration affirming the initial
21 determination (attached hereto as Exhibit C). The notice stated, "In order for Social Security to
22 reinstate your benefits you must provide the original document which lists The Warrant Number,
23 The issuing agency/county, and the date the warrant was rescinded or satisfied. If you believe the
24 warrant was issued in error, Social Security must have an original document that states the
25 warrant was issued in error and does not pertain to you at all. It must state the date the warrant
26 was rescinded. This is the only way this case can be resolved."

27 40. On December 19, 2007, Ms. Martinez filed a request for an administrative law
28 judge hearing.

1 41. Ms. Martinez did not receive her scheduled SSI benefits at the beginning of January
2 and February 2008. As a result she was left without any income and managed to get by only with
3 loans from her brother and friends. It was only through the intervention of U.S. Representative
4 Anna Eshoo that her benefits were restored later in February.

5 42. On April 15, 2008, the SSA sent Ms. Martinez another notice similar to the
6 December notice stating that they planned to stop her SSI payments beginning in May 2008.
7 Attorney Christopher Douglas of the Legal Aid Society of San Mateo County requested
8 reconsideration of this determination within the ten-day period for receiving continued benefits
9 and requested that the appeal be by means of a formal conference.

10 43. Nonetheless, the SSA suspended Ms. Martinez's benefits on May 1, 2008. On May
11 5, 2008, Ms. Martinez and her attorney went to the Redwood City SSA office to demand that she
12 receive her SSI benefits for May and that she be given a formal conference prior to suspension of
13 her benefits. After considerable dispute as to whether she had a right to a formal conference or
14 whether witnesses could be subpoenaed, the claims representative spoke with her supervisor and
15 agreed that Ms. Martinez had not received due process and agreed to issue the SSI payment for
16 May. The SSA representative reiterated that Ms. Martinez needed to provide a statement on the
17 letterhead of Miami Dade County to the effect that plaintiff was not the person they were seeking.

18 44. No formal conference was ever scheduled or held and no Administrative Law Judge
19 hearing was ever scheduled or held.

20 45. The SSA sent a Notice of Reconsideration dated August 25, 2008 in response to the
21 December 11, 2007 appeal denying her request for reconsideration and suspending her benefits
22 effective November 1, 2005. The notice stated that Ms. Martinez had failed to provide evidence
23 that she was not the Rosa Martinez who was wanted in Miami. This was followed by a Notice of
24 overpayment dated September 2, 2008 stating that she had been overpaid in the amount of
25 \$27,365.50 and demanding that she repay that amount.

26 46. Ms. Martinez did not receive her SSI benefits as scheduled in October 2008 and
27 was left without any income and no savings to meet her basic needs.

28 47. After the original complaint in this action was filed, Ms. Martinez received a letter

1 from the SSA District office dated October 20, 2008, stating that her SSI benefits were being
2 resumed based on her allegation that she is not the person named in the warrant, but also stating
3 that SSA would continue to investigate the matter.

4 48. The October 20 letter also told her that if she was in dire need she could come into
5 the office and request an immediate payment. She went into the office and received an immediate
6 payment in the amount of the full monthly benefit of \$870.

7 49. Ms. Martinez received a "Notice of Change in Payment" indicating that she was
8 entitled to payment from November 2005 on because "you either no longer have an outstanding
9 arrest warrant ... or you have established a good reason for not satisfying the warrant." This was
10 in spite of the fact that the 1980 arrest warrant that served as the basis for suspending benefits in
11 the first place was still outstanding and Ms. Martinez was unable to provide any reason why the
12 warrant was not satisfied since she was not the person named in the warrant.

13 50. In a further complication, SSA sent Ms. Martinez a letter dated November 13,
14 2008, stating "SSA has spoken with you in person and via written correspondence regarding the
15 need to determine whether you are properly eligible for continued SSI payments given the
16 outstanding warrant for a drug felony charge issued in your name." The letter went on to request
17 that she go to the Redwood City District Office to be fingerprinted so her fingerprints could be
18 checked with the Dade County authorities.

19 51. Ms. Martinez received her November and December 2008 benefits, but continues
20 to suffer significant stress and anxiety as the result of the repeated threats to suspend, and the
21 actual suspensions of, her SSI benefits. Since first receiving notice of the suspension of her
22 benefits, she has suffered a deepening depression. She has also had trouble sleeping and her
23 appetite has decreased, causing her to lose weight.

24 52. Ms. Martinez has never been to Miami Dade County and was living with her father
25 in Chicago, Illinois, at the time the warrant was issued, while her husband, Gregg Sharp, was in
26 basic training for the United States Army. She used her husband's name at the time and was
27 known as Rosa M. Sharp. She continued to use that name — even after her divorce — until she
28 became a United States citizen in 2000.

1 **Plaintiff Jimmy Howard**

2 53. Plaintiff Jimmy Howard is 19 years old and resides in Santa Maria, California,
3 where he lives in a group home for individuals with developmental disabilities. Mr. Howard has
4 been diagnosed with mental retardation and other mental impairments.

5 54. Mr. Howard received SSI benefits as a child based on his disabilities. He is a client
6 of the Tri-Counties Regional Center ("TCRC"), which contracts with the State of California to
7 provide services to children and adults with developmental disabilities. Because he was a minor
8 at the time and could not manage his own funds, TCRC served as his representative payee and
9 received all payments and communications on his behalf.

10 55. In a notice dated October 17, 2006, the SSA notified TCRC that Mr. Howard's
11 benefits would be suspended because of a 2001 arrest warrant from Butler County, Ohio,
12 stemming from an assault charge. The notice went on to say, "The law prohibits us from paying
13 Social Security benefits to individuals who have an outstanding arrest warrant for a crime which
14 is a felony." The notice also stated that he needed to pay back an overpayment of \$26,826 within
15 30 days. The notice made no mention of the right to continuation of benefits pending appeal and
16 made no mention of the right to a formal conference or an informal conference if the payee chose
17 to appeal on his behalf. Mr. Howard did not receive a copy of the notice. TCRC did not appeal
18 and his benefits ceased as of November 2006.

19 56. After Mr. Howard turned 18, he was referred to Katherine Mottarella, an attorney
20 with the Office of Clients Rights Advocacy in Santa Barbara. Ms. Mottarella proceeded to gather
21 information with respect to the charges and related events in Ohio. On October 22, 2007, Ms.
22 Mottarella filed a request for reconsideration of the suspension together with a request that the
23 SSA find good cause for missing the 60 day deadline for appeal pursuant to 20 C.F.R. § 416.1411
24 based on Mr. Howard's mental limitations and the misstatement of the law in the October 2006
25 notice.

26 57. On March 7, 2008, Mr. Neil Ohlenkamp, the District Manager of the SSA office in
27 Santa Barbara sent Ms. Mottarella a letter stating that the request for reconsideration was not
28

1 timely and that good cause for late filing had not been established. The letter contained no notice
2 of appeal rights.

3 58. On May 1, 2008, attorney Mottarella filed a request for an administrative law judge
4 hearing to review the March 2008 determination. No hearing has yet been scheduled

5 59. On March 31, 2008, Mr. Howard, with the assistance of Ms. Mottarella, filed a new
6 SSI application which was denied in a notice dated June 18, 2008, stating "We cannot pay you
7 SSI payments for March 2008 on because the law prohibits us from paying Supplemental
8 Security Income to individuals who have an outstanding arrest warrant for a felony."

9 60. A request for reconsideration of the denial was filed on July 20, 2008, stating as the
10 reason for appeal: "I was not fleeing from Ohio. My mother took me to California." So far there
11 has been no response to this request for reconsideration.

12 61. At the time of the charges in this case, Mr. Howard was twelve years old and living
13 with his family in a trailer park in Butler County, Ohio, having been brought there recently by his
14 mother and stepfather to be with the stepfather's family. He did not get along with the stepfather.
15 According to the records of the Butler County Juvenile Court, Mr. Howard was reported as a
16 possible runaway and was found at a food market on September 23, 2001. He was charged as a
17 delinquent under Ohio law for acts that would constitute criminal damaging, theft and breaking
18 and entering. According to a complaint filed in Juvenile Court, on September 25, 2001, while he
19 was being held at the detention center, "Howard kicked staff member Joyana Randolph while he
20 was being mechanically restrained." The court records state that at the time of this event he was
21 four feet seven inches tall and weighed 85 pounds. He was once again charged as a delinquent
22 child, this time for an assault. It would be a felony under Ohio law if it were committed by an
23 adult, but not when the alleged wrongdoer is a twelve-year-old.

24 62. On October 1, 2001, Mr. Howard appeared in Juvenile Court and was ordered
25 released from detention and a competency evaluation was ordered to determine his ability to
26 assist with his defense. Sometime between that appearance and November 16, 2001, Mr.
27 Howard's mother broke up with his stepfather and moved to California, taking her twelve-year-
28 old son with her. Mr. Howard did not appear in court on November 16, 2001, and a bench

1 warrant was issued.

2 63. TCRC has been paying the cost of Mr. Howard's group home with funds from the
3 California Medi-Cal program. However, Mr. Howard has been showing considerable progress
4 lately and has been successfully working in a supported employment program. He appears to be
5 ready to move to a more independent living environment, but is financially unable to do so
6 without his SSI benefits.

7 64. After the original complaint in this action was filed, SSA sent Mr. Howard and his
8 attorney a notice dated November 18, 2008, which stated "We have reviewed the information in
9 Social Security records about your outstanding arrest warrant along with any additional
10 information you submitted. We have decided we can you Supplemental Security Income (SSI)
11 [sic]. We are paying you for the following reason: The charges related to the criminal offense
12 were dismissed." The notice continued to the effect that his case would be reviewed to determine
13 the amount of his next SSI payment and when he would receive it.

14 65. After receiving the November 18 notice, Mr. Howard's attorney then contacted the
15 court in Ohio and confirmed that the charges had in fact been dismissed on October 27, 2008.

16 66. Neither Mr. Howard, nor his attorney, were aware of any effort being made on his
17 behalf to secure dismissal of the charges in Ohio.

18 67. Although the November 18 notice indicates that SSA will pay SSI benefits to Mr.
19 Howard, it is still not clear for what period benefits will be paid.

20 **Plaintiff Roberta Dobbs**

21 68. Plaintiff Roberta Dobbs is a 74-year-old woman with a terminal diagnosis. She has
22 end-stage lung disease / chronic obstructive pulmonary disease (COPD), is on oxygen 24 hours a
23 day, and has diabetes, depression, and a history of heart attack and stroke. She requires a walker
24 to get around and can only do so with assistance. Her doctors say she cannot travel any distance.

25 69. After working for a number of years as a nurse and helping to run a screen and door
26 repair shop with her husband, Ms. Dobbs began receiving Social Security Disability benefits in
27 1996. After her husband died in 1999, Ms. Dobbs began receiving widow's benefits. After
28 suffering a heart attack and stroke, she decided to move to Oklahoma to live with her stepfather.

1 On September 28, 2001, Ms. Dobbs finished moving her belongings out of her home in Joshua
2 Tree, California, placed everything in a van and a U-Haul, checked into a motel, and was
3 prepared to leave for Oklahoma the following morning. That evening Ms. Dobbs, her stepfather,
4 and a friend of the family went to dinner. Ms. Dobbs made an improper left turn and collided
5 with another vehicle moving at an excessive rate of speed. She was given a field sobriety test and
6 questioned by the police who took her license. She was transported to a hospital where another
7 blood sample was taken and where she remained overnight.

8 70. In light of the accident, Ms. Dobbs deferred the move to Oklahoma and remained in
9 the motel for a few weeks while she waited for her stepfather's injuries to heal. During this time
10 she also retained an attorney to represent her to get her license back.

11 71. On January 29, 2002, more than three months after Ms. Dobbs had moved to
12 Oklahoma, the California Department of Motor Vehicles issued an order finding that her blood
13 alcohol level at the time of the accident was not at or above 0.08% and setting aside the
14 suspension of her license. They subsequently returned her license to her. Ms. Dobbs thought she
15 was vindicated and that this disposed of the matter since she had not been advised of any criminal
16 prosecution.

17 72. Ms. Dobbs has resided continuously in Durant, Oklahoma, since October 2001,
18 although she did go back to California for a month or a month and a half when her great
19 granddaughter was born in 2002. In the meantime, her health continued to deteriorate, and she
20 underwent numerous hospitalizations.

21 73. During one of those periods of hospitalization, when she was being treated for
22 pneumonia, renal failure and blood infections, SSA sent a notice dated December 14, 2005, to her
23 home informing her that SSA planned to stop paying her benefits because "the law prohibits us
24 from paying Social Security benefits to individuals who have an outstanding arrest warrant for a
25 crime which is a felony...or who have violated a condition of probation or parole under Federal
26 or State law." The notice went on to state that there was an outstanding arrest warrant for a
27 felony crime or a probation or parole violation issued in her name by the San Bernardino County
28 Sheriff's Office on November 28, 2001. The notice also outlined the bases for a "good cause"

1 exception to the proposed benefit suspension and stated that if they did not hear from her in 30
2 days they would assume the information was correct and send her a notice of suspension. Ms.
3 Dobbs did not see the notice until a week or so after her discharge from the hospital the following
4 month. This was the first indication she had of any criminal charges resulting from the
5 September 2001 accident. In the last half of January 2006, Ms. Dobbs took the notice to her local
6 SSA office in Durant, Oklahoma, to ask for an explanation. She was told that her benefits were
7 being suspended because there were charges pending against her. When Ms. Dobbs inquired
8 about the charges, the representative she was speaking with told her, "If you don't know what you
9 did, I can't tell you." Ms. Dobbs asked how she could contest the suspension. She was told the
10 time for doing so had already passed so she would need to write down on a piece of paper the
11 reason she had missed the timeframe. Ms. Dobbs indicated on the paper she was given that she
12 had not responded earlier because she had been in the hospital when the notice was sent.

13 74. SSA sent Ms. Dobbs another notice dated January 25, 2006, which stated that her
14 benefits were suspended effective immediately "because you have an outstanding arrest warrant
15 for a felony crime" and that she had an overpayment in the amount of \$11,802.70 for benefits
16 paid in 2005. The notice stated she had 60 days to appeal and told her to contact the San
17 Bernardino County Sheriff's office, which it described as being located in Springfield,
18 Massachusetts, for further information about the warrant.

19 75. On February 10, 2006, Ms. Dobbs went to the SSA office again to file a request for
20 reconsideration. She was told she was too late and could not appeal. Instead of giving her the
21 reconsideration form, she was given a form entitled "Statement of Claimant or Other Person" on
22 which she indicated why she could not file earlier. She handed it in to a woman named Phyllis at
23 the Durant SSA office. In spite of these timely efforts, no appeal of the suspension was ever
24 processed.

25 76. On August 18, 2008, Ms. Dobbs returned to the SSA office in Durant with a
26 volunteer from her church to apply for reinstatement of her benefits. She was told that she could
27 not reapply, and they refused to process her request. On August 25, 2008, Ms. Dobbs and a
28 lawyer from Legal Aid Services of Oklahoma went to the Hugo, Oklahoma SSA office to attempt

1 to reapply for benefits. They were told that because her benefits had been suspended, not
2 terminated, applying for benefits again would do no good and that any new application would be
3 considered a duplicate application and would be rejected.

4 77. On August 25, 2008, Angelia McDonald-Chambless, an elderlaw paralegal with
5 Legal Aid Services of Oklahoma, wrote to the San Bernardino County District Attorney outlining
6 the circumstances surrounding the accident and DMV proceedings and describing Ms. Dobbs'
7 fragile health status. On September 17, 2008, on motion of the District Attorney, the charges
8 were dismissed and the warrant was withdrawn.

9 78. Ms. Dobbs' representatives at Legal Aid Services of Oklahoma presented the court
10 order to the SSA office expecting benefits to be restored. However, they were initially told that a
11 court order of dismissal is not good enough and that they needed a letter from the prosecutor.
12 Finally, SSA sent Ms. Dobbs a notice dated October 9, 2008, stating that her benefits would be
13 restored but that she would not receive any payments until after they had recovered all the
14 benefits paid her for 2005. The notice told her she could expect her first check in the amount of
15 \$66.30 on September 3, 2009, and that thereafter she would receive monthly payments of
16 \$1,079.00. The notice stated she had 60 days to appeal.

17 79. On October 31, 2008, Ms. Dobbs' attorney at Legal Aid Services, Dan Sanders,
18 filed a Request for Reconsideration to appeal the October 9 determination. In his appeal he
19 asserted that Ms. Dobbs was not fleeing to avoid prosecution. The SSA Service Center in Kansas
20 City, Missouri, sent a notice dated November 11, 2008, dismissing the appeal as not timely
21 because it was not sent within 60 days of the January 25, 2006 suspension notice.

22 80. Ms. Dobbs has not received any Social Security benefits for all of 2006, 2007, and
23 2008. Since losing benefits she has been in the hospital several times and has spent time in a
24 rehabilitation hospital and a nursing home. She has depleted the modest savings that she and her
25 husband had accumulated in nearly 50 years of work and has been forced to live on Oklahoma
26 Old Age Assistance in the amount of \$46 per month, assistance from her daughter in Nevada,
27 sporadic payments from an asbestos settlement, help from friends and neighbors and meals
28 delivered by Meals on Wheels.

1 81. The loss of benefits has caused Ms. Dobbs, whose health was already
2 compromised, significant stress and anxiety. She is constantly worried about how she will
3 support herself without her benefits and is saddened by having to depend on others and on the
4 prospect of another Christmas without any reliable source of income.

5 **Plaintiff Brent A. Roderick**

6 82. Plaintiff Brent A. Roderick is a 45-year-old man residing in Bellingham,
7 Washington, whose application for SSI Disability benefits was denied on May 2, 2006, because
8 of an outstanding arrest warrant from San Luis Obispo, California, dating back to 1987. He
9 suffers from bipolar disorder, Hepatitis C and several other impairments.

10 83. In 1987, at the age of 23, Mr. Roderick decided to move from San Luis Obispo,
11 where he then resided, to Bellingham to start a new life. He borrowed a Honda Civic without
12 advising the owner that his intention was to relocate to another state and drove the car to
13 Washington. When the car was not returned, the owner notified the police and charges were filed
14 against Mr. Roderick in San Luis Obispo County, for unlawful taking of a vehicle.

15 84. Police in Whatcom County, Washington later ran a check on the vehicle and
16 discovered that it had been reported stolen in California. They then charged Mr. Roderick with
17 possession of stolen property.

18 85. Mr. Roderick pleaded guilty to the charges in Whatcom County and was sentenced
19 on November 19, 1987. The public defender told him that the California prosecutor agreed that
20 the charges in California would be dismissed if he pleaded guilty in Washington since it would be
21 double jeopardy to prosecute him there after the conviction in Washington. He never heard
22 anything more about the charges in California until his SSI application was denied in 2006.

23 86. After a staff person from the Whatcom County Public Defenders' office in
24 Bellingham, Washington, contacted the San Luis Obispo County District Attorney regarding the
25 failure to dismiss the California charges, the District Attorney moved to dismiss the charges on
26 grounds of double jeopardy and the Superior Court dismissed the charges on January 10, 2007.

27 87. Mr. Roderick filed timely appeals of the SSI denial through the administrative
28 appeals process. He received a decision of the Social Security Appeals Council dated October 29,

1 2008, affirming the initial determination to deny his claim and has thus exhausted all
2 administrative remedies.

3 88. The Appeals Council decision (attached hereto as Exhibit D) rejected an argument
4 based on the decision in *Fowlkes v. Adamec*, 432 F.3d 90 (2nd Cir. 2005), noting that the Social
5 Security Acquiescence Ruling (AR 06-1(2)) applies only in the Second Circuit and stating that
6 the same ruling explicitly states that in all other jurisdictions the "Social Security Act will be
7 interpreted to mean that a person is 'fleeing to avoid prosecution ...' when a person has an
8 outstanding warrant for his arrest, even if that person is unaware of that warrant."

9 89. After receiving the dismissal of the California charges, Mr. Roderick filed another
10 SSI application. This time the application was denied on disability grounds. That denial has been
11 appealed and is now awaiting an administrative law judge hearing.

12 **Plaintiff Sharon D. Rozier**

13 90. Plaintiff Sharon D. Rozier lived in Orange County, California until 2001 when she
14 decided to end an abusive relationship and moved to Arizona with her three children. She lived
15 in Arizona continuously from 2001 to 2006.

16 91. In March 2006, Ms. Rozier was in a disastrous motor vehicle accident in which her
17 car went over a cliff and she was ejected from the vehicle. As a result of the accident she suffered
18 a traumatic brain injury and broken bones and was left as a paraplegic who is unable to care for
19 herself and who has great difficulty speaking and who also has severe memory loss.

20 92. After she was discharged from the hospital, Ms. Rozier was sent to a nursing home
21 where she remained until August 2006 when she was taken in by her sister, Veronica Rozier
22 Malone, who resides in Gary, Indiana. In addition to taking on the care of her sister, Ms. Malone
23 was holding down two jobs in order to make ends meet. Ms. Rozier began to receive SSDI
24 benefits, beginning around September 2006. The benefits were her only income. Ms. Malone
25 served as Ms. Rozier's representative payee.

26 93. In February 2007, SSA sent an advance notice to Ms. Malone stating that the
27 agency would be suspending Ms. Rozier's benefits because "the law prohibits us from paying
28 Social Security benefits to individuals who have an outstanding arrest warrant for a crime that is a

1 felony [...].” The notice indicated that an arrest warrant had been issued in Orange County,
2 California on January 20, 2004. Until that time, Ms. Rozier did not know of any criminal charges
3 outstanding against her in California.

4 94. Ms. Rozier does not have a suspension notice containing appeal rights and does not
5 know whether or not such a notice was sent. However, she did not receive any benefits in April
6 2007 and has not received any benefits since that time.

7 95. According to the court docket in Orange County, the criminal complaint in the case
8 was filed on January 20, 2004, more than two years after Ms. Rozier had left California. The
9 complaint lists her address as Cypress, California, making it unlikely that she could have been
10 notified of the charges. The offense was listed as a violation of California Welfare & Institutions
11 Code 10980(c)(2) which concerns misrepresentations resulting in the receipt of public benefits in
12 an amount in excess of \$400.

13 96. After Ms. Malone received the SSA notice, efforts were made to get the warrant
14 vacated and some medical records were sent to the court in California. However, in June 2007,
15 the court declined to withdraw the warrant.

16 97. Because of her medical condition, Ms. Rozier has been unable to do anything on
17 her own to appeal or otherwise contest the suspension of her benefits. She had to rely entirely on
18 the efforts of her sister, who was simultaneously working two full-time jobs, and on her mother.

19 98. Ms. Rozier’s mother, Yvonne Rozier, contacted SSA in August 2008 in an attempt
20 to appeal the denial of benefits. An agency representative informed Yvonne Rozier that the only
21 way to restore her daughter’s benefits was to get the warrant dismissed in California. The
22 representative did not give her any additional information about appeal rights or ask whether Ms.
23 Rozier had good cause for failing to appeal the denial of benefits.

24 99. Ms. Rozier’s SSDI benefits were her only source of income, and she now has no
25 income and no savings to meet her basic needs. She also has no means of supporting her two
26 minor children, who are in the care of her oldest daughter who remains in Arizona. In order to
27 obtain needed medical care, Ms. Rozier moved in 2008 to the home of a different sister, Tannitte
28 Shufford, in Minneapolis, Minnesota. Ms. Shufford was already caring for two sons with mental

1 disabilities and now has the added burden of caring for her sister.

2 **Plaintiff Joseph Sutrynowicz**

3 100. Plaintiff Joseph Sutrynowicz is a 42-year-old man who began receiving SSDI
4 benefits around 2004. He has bipolar disorder and is recovering from alcoholism. He has a
5 learning disability and received only a seventh-grade education. Mr. Sutrynowicz worked off and
6 on as a painter of commuter airplanes and automobiles from the time he was 17 until he began
7 receiving disability benefits. He lives alone in a small efficiency apartment in the Little Havana
8 section of Miami, Florida.

9 101. SSA sent a notice dated September 21, 2008, to Mr. Sutrynowicz's representative
10 payee and landlord, Jorge Chacon, indicating that the SSA planned to suspend Mr. Sutrynowicz's
11 benefits because "the law prohibits us from paying Social Security benefits to individuals who
12 have an outstanding arrest warrant for a crime which is a felony...or who have violated a
13 condition of probation or parole under Federal or State law." The notice went on to state that
14 there was an outstanding arrest warrant for a felony crime or a probation or parole violation
15 issued in his name in Abilene, Texas, on November 20, 1996. The notice stated that if they did
16 not hear from him within 30 days, his benefits would be suspended. The notice also listed
17 circumstances under which his benefits could be continued including if the charges were
18 dismissed or the warrant was withdrawn. He went to the SSA office upon receiving the
19 September 21 notice and indicated he would be contacting the authorities in Abilene.
20 Nevertheless, SSA sent him a notice dated October 30, 2008, indicating his benefits would be
21 suspended immediately and that he needed to pay back an overpayment in the amount of
22 \$42,876.70 within 30 days for benefits paid from January 2005 through September 2008.

23 102. Upon receiving the notice, Mr. Sutrynowicz was unaware of any charges pending
24 against him in Abilene, Texas. Mr. Sutrynowicz had spent time in Abilene, working as a painter
25 of commuter airplanes for STS Holding Group. As an employee of STS Holding Group, he was
26 sent across the country working on jobs for a few months at a time. He worked in Abilene for
27 approximately six months. One day he was told the job was finished, so he packed his things and
28 moved back to Miami, Florida, (his home base) the next day.

1 108. By failing to make such a finding, the Commissioner has acted and continues to act
2 in violation of the Social Security Act and the regulations promulgated thereunder.

3 **SECOND CAUSE OF ACTION**

4 **MANDAMUS**

5 109. Paragraphs 1-109 are each re-alleged and incorporated as if fully set forth herein.

6 110. The Commissioner has a non-discretionary statutory obligation to make benefit
7 determinations in accordance with the Social Security Act, as amended, and its implementing
8 regulations. Among other things, the Commissioner is required to award benefits to applicants
9 who are qualified under the governing statutory provisions and regulations. In the event that
10 Plaintiffs do not otherwise have an adequate legal remedy, mandamus should issue compelling
11 the Commissioner immediately to: (1) cease denying or suspending benefits or denying
12 certifications as representative payees under 42 U.S.C. §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V),
13 1004(a)(2), 1007(d)(1)(E), 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V), without first determining that
14 the individual was fleeing with the specific intent to avoid prosecution or custody or confinement
15 after conviction for a felony; and (2) vacate all prior such suspensions and denials of benefits or
16 denials of certification as representative payee, in which there was no prior determination that the
17 individual was fleeing with the specific intent of avoiding prosecution or custody or confine for a
18 felony.

19 **PRAYER FOR RELIEF**

20 111. WHEREFORE Plaintiffs respectfully request that the Court:

- 21 a. Assume jurisdiction over this matter;
- 22 b. Certify this action as a class action;
- 23 c. Declare that Defendant's interpretation and implementation of 42 U.S.C.
24 §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2),
25 1007(d)(1)(E), 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V) are unlawful;
- 26 d. Preliminarily and permanently enjoin the Commissioner from continuing to
27 implement 42 U.S.C. §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2),
28 1007(d)(1)(E), 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V) in a manner

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inconsistent with the law;

- e. Preliminarily and permanently enjoin the Commissioner from making determinations to suspend or deny SSI, SVB and OASDI benefits or to deny certification as a representative payee for such benefits pursuant to 42 U.S.C. §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2), 1007(d)(1)(E), 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V), based solely upon the existence of an arrest warrant and absent a finding that an individual is fleeing with the specific intent to avoid prosecution or custody or confinement after conviction for a felony;
- f. Preliminarily and permanently enjoin the Commissioner immediately to redetermine and re-adjudicate all determinations to suspend or deny SSI, SVB, and OASDI benefits and all determinations to deny certification as representative payee for such benefits made pursuant to 42 U.S.C. §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2), 1007(d)(1)(E), 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V), and to reverse all such determinations unless made on the basis of a finding by a court that the individual was fleeing with the specific intent to avoid prosecution or custody or confinement after conviction for a felony;
- g. Issue a writ of mandamus compelling the Commissioner immediately to: (1) cease denying or suspending benefits or denying certifications as representative payees under 42 U.S.C. §§ 402(x)(1)(A)(iv), 405(j)(2)(C)(i)(V), 1004(a)(2), 1007(d)(1)(E), 1382(e)(4)(A) and 1383(a)(2)(B)(iii)(V), without first determining that the individual was fleeing with the specific intent to avoid prosecution or custody or confinement after conviction for a felony, and (2) vacate all prior such suspensions and denials of benefits and denials of certification as representative payee, in which there was no prior determination that the individual was fleeing with the specific intent of avoiding prosecution or

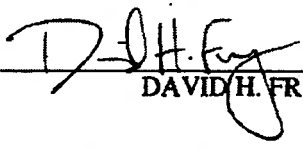
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custody or confine for a felony;

- h. Award Plaintiffs costs, disbursements, and reasonable attorneys' fees, including, without limitation, the costs and fees authorized by 28 U.S.C. § 2412;
- i. Grant Plaintiffs such other and further relief as the Court may find just proper, and equitable.

DATED: December 12, 2008

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