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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

HUGH HELD and
KELLY RICHARDSON-WRIGHT,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

CAROLYN W. COLVIN,
Acting Commissioner of Social
Security,

Defendant.

Case No.: 2:15-cv-1732

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

Hearing on Motion

Date: July 20, 2015
Time: 1:30 p.m.
Place: 312 North Spring Street, Los Angeles, CA 90012, Courtroom 15

Honorable Percy Anderson

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Date: June 17, 2015

Respectfully submitted,

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INTRODUCTION

Basic among the rules that govern the jurisdiction of federal courts under Article III of the United States Constitution is that once a controversy has been resolved, the plaintiff in a case brought to resolve that controversy may not maintain the civil action; such a case is moot. There is no ongoing controversy underlying the present action, which is essentially a claim for benefits under the Supplemental Security Income ("SSI") program administered by the Social Security Administration ("SSA"), as the two named Plaintiffs (who seek to represent a putative class) have received the very benefits they brought this suit to obtain through SSA's administrative review process instead. Thus, this case has become moot and should be dismissed. But in any event, the case would not have been able to proceed because Plaintiffs had not exhausted administrative remedies which would have to have been exhausted before this Court could have exercised jurisdiction over the subject matter of the now-moot claims in this action.

Plaintiffs' lawsuit, filed on March 10, 2015, concerns the SSI program, which provides monthly benefits to individuals with limited income and resources who are disabled, blind, or age 65 or over. SSI is a needs-based benefit program. Consequently, and because SSA deems the income and resources of an SSI beneficiary's spouse to belong to the beneficiary when the agency calculates the amount due to a given beneficiary, the benefits payable to a married person are lower than those payable to a single person. Plaintiffs, both of whom are married to spouses

of the same sex, receive monthly SSI benefits. Notwithstanding their marital status, until recently their benefits were set at the higher single level by SSA in light of Section 3 of the Defense of Marriage Act, 1 U.S.C. § 7 ("DOMA"), which precluded federal recognition of marriages between persons of the same sex. After Section 3 of DOMA was struck down by the Supreme Court in United States v. Windsor, 133 S. Ct. 2675 (2013), Plaintiffs' marital status, as recognized by the federal government, changed, and they became subject to the lower SSI benefit level for married persons. For both, there was a delay between the date their marital-recognition status changed and the date on which SSA became aware of that change, meaning that for the period of that delay, each was overpaid. SSA informed both Plaintiffs of the fact and amount of their respective overpayments, and initiated the process of recouping those overpayments.

Against those facts, Plaintiffs' complaint had one objective: to obtain equitable relief prohibiting SSA from recouping the amount of their overpayments. But Plaintiffs are not entitled to have this Court order the relief that they sought because the Court lacks subject matter jurisdiction for two separate reasons. For one thing, Plaintiffs failed to exhaust requisite administrative remedies. Pursuant to 42 U.S.C. § 405(g), an individual may obtain judicial review of an adverse benefit determination only after the Commissioner of SSA has made a "final decision" as to that determination. But Plaintiffs received no final decision from SSA, as they never proceeded beyond the first stage of the administrative-review process.

Second – and perhaps even more fundamentally – without even having to wait until the conclusion of the administrative process, Plaintiffs have received the very relief that they want this Court to order. SSA waived both Plaintiffs' overpayments in late April 2015. By the beginning of May 2015, Plaintiffs had been informed that their overpayments had been waived and that they owe no debts to SSA. SSA's decision to waive both Plaintiffs' overpayments ended any case or controversy between Plaintiffs and SSA that might have existed when they filed suit.

Because Plaintiffs have obtained the relief for which they sued, this case is over, and thus outside the Court's subject-matter jurisdiction on mootness grounds. The Given that fact, there is no relief that Plaintiffs could obtain from a federal court that would alter their legal status vis-à-vis SSA. The ability to grant that kind of relief – relief that is "meaningful," in jurisdictional parlance – constitutes the bedrock requirement for subject-matter jurisdiction; without it, jurisdiction does not exist. That is precisely the case here. Thus, Plaintiff's complaint should be dismissed not only because of their failure to exhaust their administrative remedies, but also for mootness.

STATUTORY AND REGULATORY BACKGROUND

Pursuant to Title XVI of the Social Security Act, SSA administers the Supplemental Security Insurance ("SSI") program, which provides monthly benefits to individuals with limited income and resources who are disabled, blind, or age 65 or older. 42 U.S.C. § 1381 et seq. SSI is a needs-based program; for that reason, the

1 benefits payable to a married person are lower than those payable to a single person,
2 as the income and resources of an SSI beneficiary's spouse are deemed to belong to
3 the beneficiary. See 42 U.S.C. § 1382(a)(2); 20 CFR §§ 416.1160(a)(1), 416.1202(a).
4
5 If an SSI beneficiary's marital status changes from single to married, his or her
6 monthly may decrease. See 42 U.S.C. § 1382(b)(1)-(2); 20 CFR §§ 416.410, 416.412.
7 If there is a delay between the beneficiary's change in marital status and the date on
8 which SSA learns of and processes the change, the amount paid to the individual or
9 couple could be more than that owed the individual or couple, and the excess will
10 constitute an overpayment. See 20 CFR § 416.537.
11
12 A determination that an overpayment of benefits must be repaid to SSA
13 represents an "initial determination" subject to a detailed administrative review
14 process. 20 CFR § 416.1402(c). If a beneficiary wishes to contest SSA's initial
15 determination that he or she must repay an overpayment of benefits to SSA, he or she
16 may seek reconsideration or request a waiver of the overpayment. Id. §§ 416.550,
17 416.1407. If the beneficiary is dissatisfied after the decision, he or she may, within
18 sixty days, seek further administrative review by requesting a hearing before an
19 Administrative Law Judge ("ALJ") employed by SSA. Id. § 416.1433. If the
20 beneficiary does not request a hearing (or an extension of time), the determination
21 becomes binding. Id. § 416.1429. If the beneficiary requests a hearing, an ALJ is
22 assigned and reviews the case de novo. Id. § 416.1429. The ALJ conducts an
23 administrative hearing, followed by the issuance of a written decision. Id. §§
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416.1444, 416.1453. If the ALJ renders a decision unfavorable to the beneficiary, the beneficiary may ask SSA's Appeals Council ("AC") to review the ALJ's decision within sixty days of receiving it. Id. §§ 416.1467-416.1468.

Review by the AC represents the final step in SSA's administrative review process. When a beneficiary requests AC review of an ALJ's decision, he or she may submit evidence, arguments, or other documents in support of the request for review. Id. §§ 416.1468(a). The AC will grant review if there has been an abuse of discretion or error of law, or if the ALJ's actions, findings, or conclusions are not supported by substantial evidence in the record. Id. § 416.1470(a). The AC will also grant review if there is a broad policy or procedural issue that may affect the general public interest. Id.

If AC review is not requested, and the AC does not choose to review the decision on its own motion, then the ALJ's decision becomes binding. Id. §§ 416.1455, 416.1469. The AC may deny or dismiss the request for review, or it may grant the request and either issue a decision or remand the case to an ALJ. Id. §§ 416.1467, 416.1477, 416.1479. If the AC issues a decision or declines to review the case, the beneficiary has exhausted the administrative review process and obtained a final decision of the Commissioner. Id. §§ 416.1400, 416.1481. The beneficiary may request judicial review by filing a complaint in federal district court within sixty days after receipt of the notice of the AC's action.

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FACTUAL AND PROCEDURAL HISTORY

In 1996, Congress enacted the Defense of Marriage Act ("DOMA"), Section 3 of which defined a marriage, for purposes of federal law, as being between people of the opposite sex. 1 U.S.C. § 7. As long as that provision was in effect, SSA was, thus, statutorily precluded from recognizing a marriage between two persons of the same sex. For that reason, SSI beneficiaries who were married to persons of the same sex (even if their marriages were legal under state law)were treated as single for purposes of determining SSI eligibility and payment amount.

On June 26, 2013, the Supreme Court declared Section 3 of DOMA to be unconstitutional in United States v. Windsor, 133 S. Ct. 2675, 2696 (2013). As a result of that decision, Section 3 of DOMA no longer precludes the federal government, including SSA, from recognizing marriages between persons of the same sex under the laws of states that afford legal recognition to such marriages. Therefore, SSI beneficiaries who were married to persons of the same sex but who nonetheless received benefits at the higher individual rate prior to the Supreme Court's decision in Windsor now have their benefits calculated at the lower married level as their marriages became recognized by SSA. In some instances, where there was a delay between an SSI beneficiary's change in marital status (or the date on which the beneficiary's prior marriage was recognized as a matter of law) and the date on which SSA learned of and processed such change, the amount paid to the individual or couple for the period of such delay was more than that owed to the individual or

couple, and that excess constituted an overpayment. Declaration of Erik Jones, June 17, 2015 ("Jones Decl.") ¶¶ 9, 16 (Ex. 1). That was the case for the two named Plaintiffs, Hugh Held and Kelly Richardson-Wright. Id.

In late April 2015, however, SSA made the determination that waiver of the overpayments for both Plaintiffs was warranted, and so informed both Plaintiffs by letters dated April 30, 2015 (Held) and May 1, 2015 (Richardson-Wright). Id. ¶¶ 11-13, 18-19. As a result of SSA's determinations to waive both Plaintiffs' overpayments, neither Plaintiff has any outstanding overpayment balance, and neither owes SSA any money. Id. ¶¶ 14-15, 20-21.

Plaintiffs' lawsuit seeks to have this Court order SSA to set aside the overpayment assessments that the agency has, on its own, set aside. See Compl., Request for Relief ¶¶ (E) to (G) (ECF No. 1).

ARGUMENT

Plaintiffs' claims should be dismissed on jurisdictional grounds for two independent reasons. First, because the overpayments have been waived for both Plaintiffs, their claims are moot. Second, neither Plaintiff exhausted his or her administrative remedies prior to filing suit, and thus neither could establish subject-matter jurisdiction even if there remained a live case-or-controversy to be decided by this Court. That Plaintiffs also seek to represent a proposed class does not alter either conclusion.

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I. BECAUSE THIS CASE IS MOOT, IT MUST BE DISMISSED.

Article III, section 2 of the United States Constitution limits the jurisdiction of federal courts "to the decision of 'Cases' or 'Controversies.'" Arizonans for Official English v. Arizona, 520 U.S. 43, 64 (1997) (internal quotation omitted). For a case to be justiciable in federal court, "'an actual controversy must be extant at all stages of the review, not merely at the time the complaint is filed.'" Steffel v. Thompson, 415 U.S. 452, 460 n.10 (1974); Foster v. Carson, 347 F.3d 742, 745 (9th Cir. 2003) (quoting Cook Inlet Treaty Tribes v. Shalala, 166 F.3d 986, 989 (9th Cir. 1999) ("'The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'").

The mootness doctrine is one of several limitations on federal court jurisdiction: it enforces the mandate that the controversy at the root of the litigation remains extant at all stages of the case. Steffel, 415 U.S. at 460 n.10. What renders a case moot can be stated simply: "'a case is moot 'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'" Alvarez v. Hill, 667 F.3d 1061, 1064 (9th Cir. 2012) (quoting U.S. Parole Comm'n v. Geraghty, 445 U.S. 388, 396 (1980)). Stated differently, "'[i]f there is no longer a possibility that a [litigant] can obtain relief for his claim, that claim is moot and must be dismissed for lack of jurisdiction.'" Foster, 347 F.3d at 745 (quoting Ruvalcaba v. City of L.A., 167 F.3d 514, 521 (9th Cir. 1999)). Thus, "[i]f events have transpired to render a court opinion merely advisory, Article III considerations require dismissal of the case."

1 American Civil Liberties Union of Mass. v. U.S. Conf. of Catholic Bishops, 705 F.3d
2 44, 52 (1st Cir. 2013) (internal quotations and citations omitted).
3 One practical reason for the mootness doctrine is that the court "cannot
4 provide meaningful relief to the allegedly aggrieved party." Conference of Catholic
5 Bishops, 705 F.3d at 53; Foster, 347 F.3d at 745. This is most evident in cases in
6 which injunctive relief is requested. Foster, 347 at 746. As multiple circuits have
7 concluded, it is also the case where the plaintiff seeks declaratory relief: "[w]ith limited
8 exceptions . . . issuance of a declaratory judgment deeming past conduct illegal is also
9 not permissible as it would be merely advisory." Conference of Catholic Bishops, 705
10 F.3d at 53 (citing Maine v. U.S. Dep't of Labor, 770 F.2d 236, 239 (1st Cir. 1985);
11 O'Connor v. Washburn Univ., 416 F.3d 1216, 1221 (10th Cir. 2005); James Luterbach
12 Constr. Co. v. Adamkus, 781 F.2d 599, 602 (7th Cir. 1986)). As emphasized by the
13 First Circuit in Conference of Catholic Bishops, "[t]he Supreme Court has
14 admonished that federal courts 'are not in the business of pronouncing that past
15 actions which have no demonstrable continuing effect were right or wrong." Id.
16 (quoting Spencer v. Denna, 523 U.S. 1, 18 (1998), and citing United States v. Reid,
17 369 F.3d 619, 624 (1st Cir. 2004)).
18 Against that backdrop of controlling authority and persuasive precedent from
19 other circuit courts, Plaintiffs' case is plainly moot, as they have obtained the very
20 benefits for which they brought this case. As the "Nature of Action" section of their
21 Complaint states explicitly, Plaintiffs seek equitable relief that would "prohibit[] SSA

from recouping overpayments caused by its [allegedly] unconstitutional and discriminatory practices." Compl. ¶ 12. All of these issues are inextricably bound up – and more importantly, resolved by – SSA's determination that waiver of the overpayment determination for each Plaintiff was warranted, meaning that there is no live dispute between Plaintiffs and SSA, and no meaningful relief that any court could provide to them.

Indeed, as the United States Court of Appeals for the Second Circuit has held, the actual payment of Social Security benefits sought generally moots a judicial claim for such benefits. See Maloney v. Soc. Sec. Admin., 517 F.3d 70, 73, 74 (2d Cir. 2008) (affirming district court decision holding claims for benefits moot on basis of award of retroactive benefits provided after plaintiffs had filed suit on the basis of the district court's reasoning); see also Maloney v. Soc. Sec. Admin., No. 02-CV-1725, 2006 WL 1720399, at *6 (E.D.N.Y. June 19, 2006) ("In a social security action seeking payment of benefits, the actual payment of those benefits generally moots the action."). Citing the district court decision in Maloney, a district court in the District of Minnesota reached the same determination in a case involving a challenge to an SSA benefits overpayment determination:

> Because [plaintiff] received the full amount of benefits that she requested, her claim for payment of Social Security benefits is moot. See Burton v. Bowen, 815 F.2d 1239, 1241 (8th Cir.1987); Maloney, 2006 WL 1720399, at *6 (finding benefits claim moot before analyzing plaintiff's other claims).

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Baragar v. Soc. Sec. Admin., 2013 WL 588220, at *2 (D. Minn. Feb. 13, 2013). Lacking any live dispute between the parties and any possibility of meaningful relief to Plaintiff, this case provides a textbook example of mootness.

In opposition, Plaintiff might urge the Court to find that the voluntary-cessation exception to mootness applies, and conclude on that basis that SSA's waiver of their overpayment determinations has not in fact mooted their claims. But Plaintiffs cannot make the showing necessary to establish this exception to mootness. Under Ninth Circuit law, a defendant's "voluntary cessation" of allegedly illegal conduct does not moot a case "'"unless there is no reasonable expectation that the wrong will be repeated."'" Sze v. I.N.S., 153 F.3d 1005, 1008-09 (9th Cir. 1998) (quoting Public Utilities Comm'n of State of Cal. v. F.E.R.C., 100 F.3d 1451, 1460 (9th Cir. 1996)). There is no such reasonable expectation that the alleged wrong challenged by the Plaintiffs here – determinations of SSI overpayments attributable to a delay in recognizing their marital status post-Windsor – will be repeated.

Plaintiffs might also argue that their just-filed motion for class certification, ECF No. 26, should permit them to avoid dismissal on mootness grounds in and of itself. Such an argument would be incorrect. While both the Supreme Court and the Ninth Circuit have held under certain circumstances that named plaintiffs whose individual claims have expired can nonetheless continue litigating to represent the interests of a putative class, see, e.g., Geraghty, 445 U.S. at 402; Wade v. Kirkland, 118 F.3d 667 (9th Cir. 1997); see also Gomez v. Campbell-Ewald, 768 F.3d 871 (9th Cir.

1 2014), cert. granted, 83 U.S.L.W. 3637, 83 U.S.L.W. 3851, 83 U.S.L.W. 3855 (U.S.
2 May 18, 2015) (No. 14-857),[1] that is only the case where the individual substantive
3 claims asserted are "inherently transitory," and thus at risk of expiring by their very
4
5 nature before the trial court has had "even enough time to rule on a motion for class
6 certification[.]" Sze, 153 F.3d at 1009-10 (quoting Wade, 118 F.3d at 670); see also
7
8 Pitts v. Terrible Herbst, 653 F.3d 1081, 1090 (9th Cir. 2011) (examining question of
9 "inherently transitory" claims in context of unaccepted Rule 68 offer of judgment).
10
11 Plaintiffs' claims here are not the type of inherently transitory claims that would of
12 necessity expire while they are pending, thus frustrating the ability of the courts to
13 ever reach their merits.
14
15 As the Ninth Circuit explained in Tse, the hallmark of "inherently transitory"
16 claims in the context of putative class actions is "constant change" in the makeup of a
17
18 class by virtue of the nature of the claims asserted. In other words, "[a]n inherently
19 transitory claim is one where 'there is a constantly changing putative class' . . . and
20 where 'the trial court will not even have enough time to rule on a motion for class
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22 certification before the proposed representative's individual interest expires.'" 153
23 F.3d at 1010 (internal citations omitted).
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[1] The Supreme Court granted the petition for writ of certiorari in Campbell-Ewald to resolve three questions, two of which are of potential relevance here: "(1) Whether a case becomes moot, and thus beyond the judicial power of Article II, when the plaintiff receives an offer of complete relief on his claim. (2) Whether the answer to the first question is any different when the plaintiff has asserted a class claim under Federal Rule of Civil Procedure 23, but receives an offer of complete relief before any class is certified." See 14-857 Campbell-Ewald Company v. Gomez, Question Presented, available at http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/14-857.htm.

That is not the case as to the putative class Plaintiffs seek to represent here. Instead of a constantly churning putative class comprised of members whose individual claims are inherently short-lived or expire on their own, each replaced by a new member with a similarly short-lived claim, this is a putative class whose "membership" is essentially dictated by a single historic development – the Supreme Court's 2013 decision in Windsor that permitted SSA, like other federal agencies, to recognize for the first time marriages between persons of the same sex for the purpose of calculating their eligibility for federal benefits. Like the putative class in Tse, the putative class here will not "constantly change," 153 F.3d at 1010, but rather will crest in numbers at some point (if it has not already) and then "constantly shrink" as the situations of the members of the putative class are resolved in the ordinary course of their ongoing beneficiary relationships with SSA.[2]

****

In short, there is nothing left to litigate in this case: Plaintiffs have obtained the relief they seek, and there is nothing more within the Court's power to award that would alter the parties' legal relationship vis-à-vis one another. The Court should thus dismiss the complaint for mootness.

[2] The anticipated decision by the Supreme Court in Obergefell, et al. v. Hodges, et al., --- S. Ct. ---, 2015 WL 213646 (U.S. Jan. 16, 2005), might increase the number of persons in the putative class depending on the Court's ruling, but that that would be a singular event as well, and would not change the nature of the class.

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II. PLAINTIFFS HAVE FAILED TO EXHAUST THEIR CLAIMS.

Alternatively, the Court should dismiss Plaintiffs' complaint for failure to exhaust the required administrative remedies under 42 U.S.C. § 405(g). In a sense, Plaintiff's unquestioned failure to exhaust – they do not even allege that they have completed the administrative review process, see Compl., passim – is intertwined with the mootness of their claims: there is no adverse determination on which to seek a "final decision" from the Commissioner, because SSA waived both Plaintiffs' overpayments. But in any event, the fact that the administrative review process yielded a positive outcome for both named Plaintiffs illustrates perfectly why exhaustion is required as a statutory matter, why there is no basis for waiver of the requirement, and why adjudicating these particular claims – already resolved in a manner favorable to both Plaintiffs – would be a waste of valuable judicial resources.[3]

A. 42 U.S.C. § 405(g) IS THE EXCLUSIVE JURISDICTIONAL BASIS FOR ANY CLAIM "ARISING UNDER" THE SOCIAL SECURITY ACT.

Section 405(g) is the sole jurisdictional basis for a Court to review a final decision of the Commissioner concerning SSI benefits. That provision provides for judicial review of a "final decision" of the Commissioner made after a hearing to which the plaintiff was a party. See Califano v. Sanders, 430 U.S. 99, 102, 108 (1977). A reviewable final decision, in turn, is one in which a claimant has exhausted his or her claim for benefits by obtaining a final decision from the agency. See Weinberger

[3] The factual predicate for Plaintiffs' failure to exhaust as a basis for dismissal is chronologically prior to the predicate for the mootness point discussed in the text supra, although the question of exhaustion point arguably follows the question of mootness as a basic matter of logic.

1 v. Salfi, 422 U.S. 749, 757-58 (1975); Hironymous v. Bowen, 800 F.2d 888, 893-94
2 (9th Cir. 1986). A neighboring provision, § 405(h), expressly provides that § 405(g) is
3 the exclusive jurisdictional basis for a claimant seeking "to recover on any claim
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5 arising under" the Act.
6 Under § 405(h), "[n]o findings of fact or decision of the Commissioner of
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8 Social Security shall be reviewed by any person, tribunal, or governmental agency
9 except as herein provided." The Supreme Court has characterized § 405(h)'s bar to
10 avenues of review other than § 405(g) as "sweeping and direct," Salfi, 422 U.S. at 757,
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12 and explained that this bar applies to "all 'claim[s] arising under' the [ ] Act." Heckler
13 v. Ringer, 466 U.S. 602, 615 (1984) (citing Salfi, 422 U.S. at 760-61). A claim arises
14 under the Act when that statute provides "both the standing and the substantive basis
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16 for" the claim, regardless of whether the claims can be characterized as also arising
17 under other statutes or constitutional guarantees. Ringer, 466 U.S. at 615 (citing Salfi,
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19 422 U.S. at 760-61). Thus, so long as the claim arises under the Act, the nature of the
20 claim has no bearing on whether it must be channeled through the exclusive judicial
21 review provisions of § 405(g):
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23 > [Salfi and Ringer] themselves foreclose distinctions based upon . . . the
24 > "collateral" versus "noncollateral" nature of the issues, or the "declaratory"
25 > versus "injunctive" nature of the relief sought. Nor can we accept a distinction
26 > that limits the scope of § 405(h) to claims for monetary benefits. Claims for
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28 > money, claims for other benefits, claims of program eligibility, and claims that

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> contest a sanction or remedy may all similarly rest upon individual fact-related circumstances, may all similarly dispute agency policy determinations, or may all similarly involve the application, interpretation, or constitutionality of interrelated regulations or statutory provisions. There is no reason to distinguish among them in terms of the language or in terms of the purposes of § 405(h).

Shalala v. Ill. Council on Long Term Care, 529 U.S. 1, 13-14 (2000).

Here, the Act decidedly provides the "standing and substantive basis" for Plaintiffs' claims. Indeed, the basis for SSA's alleged liability is the alleged legal error Plaintiffs assert as the crux of their claim that overpayments should not have been assessed against them in the first instance, or should have been waived (all of these allegations asserted prior to SSA's determination to grant Plaintiffs the waivers that they sought). See Compl. ¶¶ 33-35. When claims for judicial review are "inextricably intertwined" in this manner with a claim for benefits, § 405(h) channels those claims into § 405(g)'s final decision requirement. Ringer, 466 U.S. at 624 (plaintiffs' claims barred by § 405(h) when they "are inextricably intertwined with what we hold is in essence a claim for benefits").

Although Plaintiffs attempt to frame their claims in terms challenging alleged SSA policies or practices, see Compl. ¶¶ 51-52, all such claims are equally intertwined with Plaintiffs' individual overpayment determinations, and therefore must be channeled through § 405(g)'s judicial review provision. Under that provision,

Congress has expressly limited judicial review of agency determinations to cases where the plaintiff has obtained a final decision, has timely exhausted the administrative review process delineated by SSA's regulations (issued pursuant to the Act), and has timely sought judicial review. Nowhere in Plaintiffs' Complaint do they allege that they have met any of these exhaustion requirements, let alone all of them. For this reason, the Complaint must be dismissed for lack of jurisdiction.

B. PLAINTIFFS HAVE NOT OBTAINED A FINAL DECISION SUBJECT TO REVIEW UNDER § 405(g) BECAUSE THEY HAVE NOT EXHAUSTED THEIR ADMINISTRATIVE REMEDIES.

A judicially reviewable "final decision has two elements: (1) presentment of the claim to the Commissioner, and (2) complete exhaustion of administrative remedies." Kildare v. Saenz, 325 F.3d 1078, 1082 (9th Cir. 2003) (citing Johnson v. Shalala, 2 F.3d 918, 921 (9th Cir. 1993)). Plaintiffs have not alleged that they have satisfied the second element. Nor could they do so now, as SSA has determined at the first stage of the review process that waiver of each Plaintiff's overpayment is warranted; thus, to the extent there is anything left to resolve – and there is not – Plaintiff's claims at the administrative level never progressed to the "final decision" stage, and, by definition, remain unexhausted.[4]

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[4] Alternatively, it is at least theoretically conceivable that a fully favorable decision by SSA at any stage of the administrative review process constitutes a "final decision," at least from a successful beneficiary's standpoint. But such a beneficiary would still not have an actionable claim for at least one fundamental reason: he or she would not have been injured by any such decision, and thus would not possess Article III standing to challenge it in federal court. Indeed, that point helps to harmonize the relationship between mootness, see Part I, supra, and administrative exhaustion in this case; had Plaintiffs sought to exhaust their administrative remedies before decamping to federal

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As explained supra, SSA's regulations establish a multi-step administrative review process leading to a final decision, which is required before filing suit in federal court. See 20 C.F.R. § 416.1400; Heckler v. Day, 467 U.S. 104, 106 (1984) ("To facilitate the orderly and sympathetic administration" of SSA's programs, SSA and Congress "have established an unusually protective [multi]-step process for the review and adjudication of disputed claims.").

"Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency." Korb v. Colvin, No. 4:12-cv-08847, 2014 WL 2514616, at *5 (N.D. Cal. June 4, 2014) (quoting McCarthy v. Madigan, 503 U.S. 140, 145 (1992)) (internal quotation marks omitted). An assertion of jurisdiction by this Court would undermine agency authority by placing this Court in a role overseeing complex SSA disability determinations that Congress never intended it to assume—and indeed expressly guarded against. See McCarthy, 503 U.S. at 145 ("Exhaustion concerns apply with particular force when the action under review involves exercise of the agency's discretionary power or when the agency proceedings in question allow the agency to apply its special expertise."). It is quintessentially within the "special expertise" of SSA to decide whether waiver of Plaintiffs' overpayments is warranted – which, of course, SSA has already done for

court, it is likely they would have obtained the same favorable outcome they have in fact obtained, and had they (for some reason) nonetheless sought to file suit afterward, their claim would have failed for lack of standing. Here, Plaintiffs jumped the gun by heading to federal court before even attempting to exhaust their administrative remedies, meaning that the Court must now address their fully resolved claims under the rubric of mootness rather than that of standing.

them. In accord with Congress's directive, that determination is one that should be made by SSA in the first instance, and not by this Court confronted with a partial record from unfinished – and never-to-be-finished, because relief has already been provided – administrative proceedings.

Moreover, the principle that exhaustion will provide SSA "the opportunity to reconsider its policies, interpretations, and regulations in light of [Plaintiffs'] challenges," Ill. Council, 529 U.S. at 24, is well-illustrated here. Although neither Plaintiff went beyond the first step in the administrative-review process, the submission of a request for reconsideration, they never had to: SSA reviewed each Plaintiff's request for reconsideration and determined that waiver was appropriate. Jones Decl. ¶¶ 10-11, 17-18.

There is no reason for this Court to essentially revisit SSA's now-completed administrative processing of Plaintiffs' claims by engaging in "premature interference" through imposition of the declaratory and injunctive relief that Plaintiffs seek. Ill. Council, 529 U.S. at 13 (Section 405(h) "demands the 'channeling' of virtually all legal attacks through the agency" and "it assures the agency greater opportunity to apply, interpret, or revise policies, regulations, or statutes without possibly premature interference by different individual courts applying 'ripeness' and 'exhaustion' exceptions case by case"). Allowing Plaintiffs' suit to go forward without exhaustion at the administrative level would ignore the jurisdictional prerequisite of a "final decision" that Congress established in § 405(g) and would contravene the Supreme

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Court's directive "to afford the parties and the courts the benefit of [SSA's] experience and expertise, and to compile a record which is adequate for judicial review." Salfi, 422 U.S. at 765. Application of the first part of that Supreme Court directive here, of course, has yielded an outcome substantially positive for both Plaintiffs, which only underscores the statutory purpose of the exhaustion requirement.

C. THERE IS NO BASIS FOR WAIVER OF THE EXHAUSTION REQUIREMENT OF § 405(g).

Plaintiffs might attempt to argue that the exhaustion requirement should be waived by this Court. If so, they would be incorrect.

In certain limited circumstances, the exhaustion requirement may be judicially waived upon a proper showing by the plaintiff. Johnson, 2 F.3d 918, 921 (9th Cir. 1993); Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102-04 (1998) (plaintiff's burden to demonstrate subject matter jurisdiction). To be eligible for waiver, three independent showings must be made: "The claim must be (1) collateral to a substantive claim of entitlement (collaterality), (2) colorable in its showing that denial of relief will cause irreparable harm (irreparability), and (3) one whose resolution would not serve the purposes of exhaustion (futility)." Johnson, 2 F.3d at

921.[5] Plaintiffs cannot satisfy at least the first and third of these three necessary conditions.

Plaintiffs' Claims are Not Collateral Because They are Essentially Claims for Benefits. First, Plaintiffs cannot satisfy the collaterality requirement. "A plaintiff's claim is collateral if it is not essentially a claim for benefits." Id. (citing Bowen v. City of New York, 476 U.S. 467, 483 (1986)). Here, however, Plaintiffs' claims are just that: essentially claims for benefits.

The essence of Plaintiffs' Complaint is that they were wrongfully denied benefits due to SSA's decision to assess overpayments against them and initiate recoupment. Compl. ¶¶ 5-11, 12. Thus, Plaintiffs are complaining about alleged legal errors in their two individual (unexhausted but nonetheless resolved) cases. Id. ¶¶ 33-35 (alleging that SSA misapplies the Social Security Act in initiating recoupment of overpayments assessed against beneficiaries through no fault of their own). Far from establishing a supposed "policy" or "practice," this collection of individualized alleged errors is a showing the Ninth Circuit has squarely rejected as inadequate to satisfy collaterality. Kildare, 325 F.3d at 1083 ("An aggregation of individual errors without more does not meet the collaterality requirement."); see also Korb v. Comm'r of Soc. Sec., No. 12–cv–03847, 2013 WL 5288961, at *7 (N.D. Cal. Sep. 19, 2013) ("Waiver is

[5] Under Illinois Council, 529 U.S. at 13-14, the "collateral" versus "noncollateral" nature of issues a plaintiff seeks to litigate has absolutely no bearing on whether the administrative exhaustion requirement of § 405(g) applies to those issues; that requirement applies in either case. 529 U.S. at 13-14. The only relevance of "collaterality" to the question of exhaustion is whether a plaintiff can satisfy the collaterality requirement, as well as the other two requirements, to be eligible for judicial waiver of the exhaustion requirement as to his or her specific claims. Johnson, 2 F.3d at 921.

not applicable where 'a claimant sues in district court, alleging mere deviation from the applicable regulations in his particular administrative proceeding' because the claimant's claim is not collateral to the benefits determination." (quoting City of New York, 476 U.S. at 484) (emphasis added)).

As the Ninth Circuit cautioned in Kildare, "we do not think it appropriate to 'take a leap of faith' to find a specific policy to disregard the regulations from these individual errors." 325 F.3d at 1083. Like in Kildare, there is no basis to infer from alleged errors of law in two individual cases that SSA has a "policy" that universally violates applicable law. What Plaintiffs have alleged are purportedly erroneous determinations that they should be required to pay back overpayments attributable to a delay on SSA's end in recognizing the change in their marital status post-Windsor, and that alleged reliance is "inextricably intertwined" with their benefits claims. Id. (finding putative policy challenge "inextricably intertwined with [plaintiffs'] claims for benefits" where plaintiff identified no "specific policy" and advanced instead "only allegations of idiosyncratic individual errors"). Plaintiffs' claims are not collateral to their individual (already resolved) claims for benefits. On this basis alone, the Court should decline to waive the exhaustion requirement.

Exhaustion of Administrative Remedies Would Not be Futile. Second, even if Plaintiffs could demonstrate that their litigation claims are "collateral" to their claims for benefits (and they cannot), exhaustion should not be waived in this case because resort to the administrative process is by no means futile. Johnson, 2 F.3d at

921. Indeed, the opposite is true. The Ninth Circuit has explained that exhaustion "conserves judicial resources" and allows the agency to "correct its own errors through administrative review." Id. at 922. Indeed, the fact that SSA waived the overpayments for both Plaintiffs at the first stage of the review process underscores the utility of requiring exhaustion here – rather than the Court being faced with potentially difficult questions of constitutional and/or statutory law to adjudicate, the agency applied its statutory discretion and determined that waiver of the overpayment was appropriate in each instance. Thus, for the Court to decide Plaintiffs' (already resolved) claims without requiring exhaustion would needlessly consume the Court's resources.

Even crediting Plaintiffs' allegations of a "common course of conduct" by SSA affecting numerous unidentified persons in addition to those named in the complaint, see, e.g., Compl. ¶¶ 23, 51 (alleging widespread provision of inaccurate information "on information and belief"), these are the circumstances in which the Ninth Circuit acknowledged the need for the agency, not the courts, to address alleged errors in the first instance. Kildare, 325 F.3d at 1084 (declining to find exhaustion futile because SSA could apply "agency expertise in determining whether and what regulations were disregarded in each case, and whether there is a more widespread problem they need to address"). To the extent that any such "common course of conduct" might exist in unspecified SSA field offices, see id. ¶ 51, the agency, and not this Court, possesses the relevant expertise to best resolve the issue. Thus, proceeding with this lawsuit

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would be a "considerable waste" not only of this Court's limited resources, but also of those of SSA insofar as it must evaluate how to most appropriately process claims like those asserted by Plaintiffs here.

The strict exhaustion requirements of § 405(g) were intended for just the circumstances presented by Plaintiffs' complaint. It would disrupt the manner by which Congress intended judicial review of Social Security decisions to function for this Court to assume jurisdiction where there has been no final decision by SSA and where Plaintiffs' claims have in fact already been resolved at an early stage of the administrative process; indeed, that is particularly so where SSA has provided Plaintiffs precisely the relief they seek in this action. See Compl., Request for Relief, ¶¶ (E) to (G). Plaintiffs' failure to exhaust their administrative remedies should not be waived.

CONCLUSION

For the reasons set forth supra, the Court should dismiss this action in its entirety for lack of subject-matter jurisdiction.