

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

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)  
**MARY GRICE, For Herself, and** )  
**THEODORE VERBICH, JOHN JONES,** )  
**JOSEPH McCALLION,** )  
**SHIRLEY JONES, and DENISE HART,** )  
**For Themselves and All Others** )  
**Similarly Situated,** )

Plaintiffs, )

v. )

)  
**CAROLYN W. COLVIN, ACTING** )  
**COMMISSIONER OF SOCIAL** )  
**SECURITY ADMINISTRATION** )

Defendant. )

Civil Action No. 8:14-cv-01082-GJH

**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY RELIEF  
(CLASS ACTION LAWSUIT)**

Plaintiffs Mary Grice, for herself, and Plaintiffs Theodore Verbich, John Jones, Joseph McCallion, Shirley Jones, and Denise Hart, on behalf of themselves and all other persons who are similarly situated, allege as follows:

**INTRODUCTION**

1. Since at least 2012, the Social Security Administration (“SSA”) has engaged in a practice of recouping what it contends were “overpayments” by authorizing the Internal Revenue Service (“IRS”) and State tax authorities, under a program known as the Treasury Offset Program, to “intercept” tax refunds that were due to be paid to thousands of individual taxpayers. At the same time, the SSA reports to three credit bureaus that these taxpayers have unpaid “debts.” Plaintiffs are filing this lawsuit on behalf of themselves and thousands of similarly

situated individuals whose tax refunds have been intercepted at the instruction of the SSA and whose credit ratings have been adversely affected by the SSA.

2. One of the classes, the “Pre-1996 Debt Class,” consists of persons from whom the SSA has used the Treasury Offset Program to recoup alleged overpayments that were made on or prior to August 26, 1996. The governing statute, the Debt Collection Improvement Act of 1996, permits SSA to recover overpayments through tax offset only if such payments were made after August 26, 1996.

3. Another of the classes, the “Statute of Limitations Class,” consists of persons from whom the SSA has recouped alleged overpayments that were made prior to November 20, 2001. Prior to changes to a statutory provision in 2008 and a corresponding SSA regulation in 2011, the SSA’s collection of these alleged overpayments through the Treasury Offset Program had been barred by a 10-year statute of limitations.

4. Another of the classes, the “Notice Class,” consists of persons to whom, prior to the interception of their tax refunds and the reporting of their “debts” to the credit bureaus, the SSA failed to send the kind of notices that the Constitution requires. The SSA may have mailed letters to somewhere that SSA claims was these persons’ “last known address,” stating (a) the SSA’s initial determination that the person was liable for repaying an overpayment made by the SSA, and/or (b) that the SSA was referring a “debt” for collection through the Treasury Offset Program, but the SSA never received confirmation that these persons actually received such letters.

5. Another of the classes, the “Imputed Liability Class,” consists of persons whom the SSA determined were liable for repaying overpayments, and whose tax refunds were confiscated on the instruction of the SSA and whose credit rating may have been adversely

affected, even though the SSA has been unable or unwilling to produce any evidence that they are the persons who actually received an alleged overpayment. The SSA merely contends, without any proof, that it made an overpayment to someone who received benefits in connection with a social security account, and that these persons, or their parents who were supposedly acting on their behalf, once received benefits from the same social security account.

6. The “Child Subclass” consists of persons whom the SSA determined were liable for repaying overpayments, and whose tax refunds were confiscated on the instruction of the SSA and whose credit ratings may have been adversely affected, even though these persons were children at the time the SSA last paid benefits under the account for which SSA contends that an overpayment was made. The Child Subclass is a subclass of the Imputed Liability Class, *i.e.*, any person who is a member of the Child Subclass must also be a member of the Imputed Liability Class because no child could have received a direct payment from the SSA.

7. On February 7, 2014, Plaintiff Mary Grice learned for the first time that the SSA contended she was liable for repaying an overpayment, and that her federal and state tax refunds had been “intercepted” at the instruction of the SSA to pay off a “debt” that she had never known about. Ms. Grice originally filed this lawsuit on April 7, 2014. Beginning with the publication of a front-page article by The Washington Post on April 11, 2014, the allegations in this lawsuit were widely publicized through the news media. On April 14, 2014, the SSA announced that it was suspending further referrals to the Treasury Offset Program of debts that were more than 10 years old, pending a review of the SSA’s procedures. On April 17, 2014, the U.S. Treasury, presumably acting at the direction of the SSA, paid Ms. Grice the balance of the tax refund that had originally been intercepted from her. Although Ms. Grice received the funds that she was due, the SSA has not informed Ms. Grice that it does not intend to take any further action to

recover the so-called “overpayment” that it alleged she was responsible for repaying. Moreover, the SSA apparently has not identified or paid back monies owed to persons (other than Ms. Grice herself) who have already had their tax refunds improperly intercepted as the result of the SSA’s misconduct, or to report to the credit bureaus that such persons did not owe “debts” to the SSA. Consequently, to obtain relief both for themselves and for these other similarly situated people, Plaintiffs are now filing this Amended Complaint and making this case a class action lawsuit.

### **JURISDICTION AND VENUE**

8. This is a civil action by all Plaintiffs acting as individuals, and also by Plaintiffs Theodore Verbich, John Jones, Joseph McCallion, Shirley Jones, and Denise Hart as representatives of classes of similarly situated persons, against Defendant Carolyn W. Colvin, in her capacity as the Acting Commissioner of the Social Security Administration. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this case presents colorable issues of constitutional law that are inappropriate for determination by an administrative body. Although Plaintiffs are only seeking injunctive and declaratory relief, in the event the Court construes this case as alleging claims for damages against the United States, not to exceed \$10,000 per claimant, this Court would also have jurisdiction under 28 U.S.C. § 1346(a)(2). This Court also has jurisdiction under 28 U.S.C. § 1361 because this is an action in the nature of mandamus to compel an officer of the SSA to perform a duty owed to plaintiffs. Alternatively, this Court has jurisdiction under 42 U.S.C. § 405(g) because, although the SSA has taken the Plaintiffs’ money to satisfy alleged “debts” to the SSA, these Plaintiffs, through no fault of their own, were not first made “parties” to any hearing before the Social Security Administration. Moreover, this lawsuit does not seek an ultimate determination of the merits of the SSA’s claims that Plaintiffs actually received overpayments and are responsible for repaying them, but, instead, raises the collateral

issues of: (i) whether, in recouping the alleged overpayments from Plaintiffs the SSA has provided the notice and followed the other processes mandated by the Constitution, as well as the governing statutes and regulations; (ii) whether the SSA has the constitutional and statutory authority to recoup overpayments from persons other than those to whom the SSA contends it actually made the payments; and (iii) whether the SSA has the constitutional and statutory authority to use the Treasury Offset Program to recoup any overpayments made on or prior to August 26, 1996, or to recoup any overpayments when, at one time, recoupment through the Treasury Offset Program was time-barred. Under the circumstances alleged herein, it would be futile for Plaintiffs to seek administrative remedies, as such remedies would unfairly shift the burden of proof onto the Plaintiffs, would deprive them of other procedural protections that they were entitled to receive, and would not alleviate the harm they have suffered and will continue to suffer while they attempt to avail themselves of such futile procedures. The factual basis for this Court's jurisdiction is set forth more fully below.

9. Defendant is an officer of the United States acting in her official capacity, with her agency headquarters located in this judicial district. Three of the five individually named Plaintiffs, including the original Plaintiff, reside in this judicial district. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1) or, alternatively, 42 U.S.C. § 405(g).

### **PARTIES**

10. Plaintiff Mary Grice ("Grice") is a resident of Takoma Park, Montgomery County, Maryland. Plaintiff Grice is an employee of the U.S. Food & Drug Administration.

11. Plaintiff Theodore Verbich ("Verbich") is a resident of Glenn Dale, Prince George's County, Maryland. Plaintiff Verbich is a Certified Public Accountant who works for the U.S. Department of Health and Human Services. He brings this lawsuit on behalf of

himself and as the representative plaintiff on behalf of all other similarly situated persons whose tax refunds were intercepted in violation of their Due Process rights under the Fifth Amendment to the Constitution.

12. Plaintiff John Jones (“J. Jones”) is a resident of Flintstone, Maryland. Plaintiff J. Jones is currently enrolled as a student at Allegany College of Maryland. He brings this lawsuit on behalf of himself and as the representative plaintiff on behalf of all other similarly situated persons whose tax refunds were intercepted in violation of their Due Process rights under the Fifth Amendment to the Constitution.

13. Plaintiff Joseph McCallion (“McCallion”) is a resident of Gaithersburg, Montgomery County, Maryland. Plaintiff McCallion is a federal retiree who used to work as a compliance officer at the U.S. Food & Drug Administration. He brings this lawsuit on behalf of himself and as the representative plaintiff on behalf of all other similarly situated persons whose tax refunds were intercepted in violation of their Due Process rights under the Fifth Amendment to the Constitution.

14. Plaintiff Shirley Jones (“S. Jones”) is a resident of Willowbrook, Illinois. She is employed as an office manager for an Illinois company. She brings this lawsuit on behalf of herself and as the representative plaintiff on behalf of all other similarly situated persons whose tax refunds were intercepted in violation of their Due Process rights under the Fifth Amendment to the Constitution.

15. Plaintiff Denise Hart (“Hart”) is a resident of Allentown, Pennsylvania. She is employed as a senior legal bill auditor for an insurance company. She brings this lawsuit on behalf of herself and as the representative plaintiff on behalf of all other similarly situated

persons whose tax refunds were intercepted in violation of their Due Process rights under the Fifth Amendment to the Constitution.

16. Defendant Carolyn W. Colvin is the Acting Commissioner of the Social Security Administration. The Social Security Administration is an agency of the United States with its headquarters located at 6401 Security Blvd., Baltimore, Maryland 21235.

### **RELEVANT STAUTORY PROVISIONS**

17. The statutory basis for SSA's authority to recover overpayments is set forth in 42 U.S.C. § 404(a), which provides, in relevant part:

*[42 U.S.C.] § 404. Overpayments and underpayments.*

a) Procedure for adjustment or recovery.

(1) Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this title, proper adjustment or recovery shall be made, under regulations prescribed by the Commissioner of Social Security, as follows:

(A) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this title to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this title payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under *section 3720A of title 31, United States Code*, or shall apply any combination of the foregoing. ...

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment--

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person. If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall

establish an overpayment control record under the social security account number of the representative payee.

(b) No recovery from persons without fault. In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this title or would be against equity and good conscience. ...

18. The statutory basis for the SSA's authority to collect overpayments through "administrative offset," including the interception of a person's tax refunds, is set forth in 31 U.S.C. § 3716, which provides, in relevant part:

*[31 U.S.C.] § 3716. Administrative offset.*

(a) After trying to collect a claim from a person under 3711(a) of this title, the head of an executive, judicial, or legislative agency may collect the claim by administrative offset. The head of the agency may collect by administrative offset only after giving the debtor--

(1) written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor under this section;

(2) an opportunity to inspect and copy the records of the agency related to the claim;

(3) an opportunity for a review within the agency of the decision of the agency related to the claim; and

(4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

\* \* \*

(c)(3)(A) \i) Notwithstanding any other provisions of law (including sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. §§ 407 and 1383(d)(1)), section 413(b) of Public Law 91-173 (30 U.S.C. § 923(b)), and section 14 of the Act of August 29, 1935 (45 U.S.C. § 231m)), except as provided in clause (ii), all payments due to an individual under –

- (I) the Social Security Act,
- (II) part B of the Black Lung Benefits Act, or
- (III) any law administered by the Railroad Retirement Board (other than payments that such Board determines to be tier 2 benefits),

shall be subject to offset under this section.

\* \* \*

(c)(7)(A) The disbursing official conducting an administrative offset with respect to a payment to a payee shall notify the payee in writing of—

- (i) the occurrence of the administrative offset to satisfy a past due legally enforceable debt, including a description of the type and amount of the payment otherwise payable to the payee against which the offset was executed;
- (ii) the identity of the creditor agency requesting the offset; and
- (iii) a contact point within the creditor agency that will handle concerns regarding the offset.

\* \* \*

(e)(1) Notwithstanding any other provision of law, regulation, or administrative limitation, no limitation on the period within which an offset may be initiated or taken pursuant to this section shall be effective.

19. The SSA was first authorized to collect debts through tax offset under the Debt Collection Improvement Act of 1996. Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996). That statute expressly provided, however, that the provision authorizing the SSA to use tax offsets to collect debts -- *i.e.*, 31 U.S.C. § 3716(c)(3)(A) -- “shall apply only to payments made after the date which is 4 months after the date of the enactment of this Act [Apr. 26, 1996].” Pub. L. 104-134, § 31001(a)(2)(B) (emphasis added).

20. Prior to June 18, 2008, 31 U.S.C. § 3716(e) provided for a 10-year statute of limitations on the use of administrative offset for debt recovery. On June 18, 2008, Congress enacted a statute that removed the 10-year statute of limitations and replaced it with the current language of § 3716(e). Pub. L. 110-246, §4(a), title XIV, §14219(a), 122 Stat. 1664, 2244 (June 18, 2008). That same statute provided that “the amendment [removing the statute of limitations] shall apply to any debt outstanding on or after the date of the enactment of this Act [June 18, 2008].” Pub. L. 110-246, §4(a), title XIV, §14219(b), 122 Stat. 1664, 2245 (June 18, 2008).

21. In order to collect debts through the use of tax offset, federal agencies, including the SSA, are required to take certain steps to ensure that they are providing due process to persons whose

tax refunds are to be intercepted. Under 31 U.S.C. § 3720A(b), a federal agency cannot use tax offset to collect any debt until such agency:

- (1) notifies the person incurring such debt that such agency proposes to [use tax offset] with respect to such debt;
- (2) gives such person at least 60 days to present evidence that all or part of such debt is not past-due or not legally enforceable;
- (3) considers any evidence presented by such person and determines that an amount of such debt is past due and legally enforceable;
- (4) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under paragraph (3) with respect to such debt is valid and that the agency has made reasonable efforts (determined on a government-wide basis) to obtain payment of such debt; and
- (5) certifies that reasonable efforts have been made by the agency (pursuant to regulations) to obtain payment of such debt.

### **RELEVANT ADMINISTRATIVE PROCEDURES**

#### A. The Initial Determination of an Overpayment.

22. Under the regulations governing the Social Security program, an “overpayment” occurs when a beneficiary receives a payment in excess of the amount that should have been paid under the Social Security Act, including situations where benefits should have been terminated or no amount should have been paid. 20 C.F.R. § 404.501(a). When an individual has been overpaid on a Social Security account, the regulations authorize the SSA to withhold payments to any other beneficiary who otherwise would be entitled to benefits under that account. *Id.* at § 404.502(a)(2).

23. When the SSA learns that a beneficiary potentially has received an overpayment, it is required to make an initial determination regarding the overpayment. The SSA must determine (a) whether there has been an overpayment, (b) whether the beneficiary is legally responsible for repaying the overpayment, and (c) the amount of the overpayment. The SSA must base this determination on the preponderance of the evidence. *Id.* at §§ 404.902(j),(k).

24. After the SSA has made the initial determination that the beneficiary is responsible for repaying an overpayment of a specific amount, the SSA must immediately send a notice to the beneficiary which includes, *inter alia*: the overpayment amount, and how and when it occurred; a request for full, immediate refund; an explanation of the right to request reconsideration of the fact and/or amount of the overpayment determination; instructions about the availability of forms for requesting reconsideration; an explanation that if the individual does not request reconsideration within 30 days of the overpayment notice, recovery of the overpayment will begin; a statement that an SSA office will help the individual complete and submit forms for appeal; and a statement that the individual should notify SSA promptly if she wants reconsideration of the determination. *Id.* at § 404.502a. All notices of initial determinations must be mailed to beneficiaries at their last known address. *Id.* at § 404.904.

A. Reconsideration and Subsequent Appeals.

25. When a beneficiary is informed of an initial determination that he or she is responsible for repaying an overpayment, he or she has various appeal rights, including the right to ask the SSA to reconsider its decision, the right to a hearing before an Administrative Law Judge (“ALJ”), and the right to appeal the ALJ’s decision to the Social Security Appeals Council and, ultimately, the federal courts.

26. After the date on which the notice of initial determination is mailed, the beneficiary must be given 65 days to submit a written request asking the SSA to reconsider its initial determination. *Id.* at § 404.909. The beneficiary may submit additional evidence for the SSA to consider. *Id.* at § 404.913. In reconsidering its initial determinations, the SSA must make its determination based on the preponderance of the evidence. *Id.* at § 404.920.

27. Upon consideration of a request for reconsideration, if the SSA decides that its initial determination was correct, it is required to notify the beneficiary of the reconsidered determination by mailing to her last known address a written notice that includes the specific reasons for the determination and information about the right to a hearing. *Id.* at § 404.920.

28. After the date on which the notice denying reconsideration is mailed, the beneficiary is given 65 days to make a written request for a hearing before an Administrative Law Judge (“ALJ”). *Id.* at §§ 404.930, 404.933. After the hearing, at which the beneficiary may present evidence, the ALJ must render a decision based on the preponderance of the evidence. *Id.* at § 404.953(a). Accordingly, unless the preponderance of the evidence demonstrates the fact of the overpayment, the beneficiary’s responsibility for it, and its amount, the ALJ must decide in favor of the beneficiary.

29. After rendering a decision, the ALJ is required to notify the beneficiary of the decision. If the ALJ’s ruling is not fully favorable for the beneficiary, the beneficiary is given 65 days after the notice is mailed to submit a written request for review by the Social Security Appeals Council. *Id.* at § 404.968. The Appeals Council may deny or dismiss the request for review, or it may grant the request and either issue a decision or remand the case to the ALJ. The Appeals Council notifies the parties at their last known address of the action it takes. *Id.* at § 404.967. To the extent it reviews factual findings of the ALJ, the Appeals Council must affirm those findings if they are supported by substantial evidence. *Id.* at § 404.970.

30. After the Appeals Council has made its decision, it must notify the beneficiary of the decision. If the Board of Appeals has ruled against the beneficiary, the beneficiary is given 65 days after the notice is mailed to file an action in a United States District Court seeking review of the determination by the SSA. *Id.* at § 404.981. At that point, the district court must

conduct a *de novo* review of all questions of law, and it must review any fact findings by the SSA to determine whether they are supported by substantial evidence in the record.

B. Suspension of Collection Efforts During the Review Process.

31. When a beneficiary exercises his or her right to seek reconsideration of the determination that she is responsible for an overpayment, the SSA is required to suspend efforts to collect the alleged overpayment. According to the SSA's Program Operations Manual System ("POMS"), "suspension will last as long as the due process request is unresolved." POMS GN 02215.235(C)(1)(c); *see also* POMS GN 02201.225(B)(2) (SSA stops recovery efforts when person requests reconsideration of overpayment decision, and even if reconsideration is denied, SSA may not seek recovery if the beneficiary also asks for waiver of collection while further appeals of overpayment decision are pending).

C. SSA's Collection of Debt Through Offset of Income Tax Refunds.

32. When a beneficiary has exhausted all avenues of appeal and the SSA has made a final determination that a beneficiary is liable to repay an overpayment that is "certain in amount, past due and legally enforceable," the SSA may refer the overpayment to the Internal Revenue Service, as well as State tax authorities, for assistance with collection through offset of income tax refunds that are due to the beneficiary. 20 C.F.R. § 404.520(b). Prior to referring the overpayment to the IRS or state tax authorities for collection, however, the SSA must take additional procedural steps to give the beneficiary an opportunity to contest the overpayment. *Id.* at § 404.520(a).

33. Before requesting the collection of an overpayment by reduction of federal and State income tax refunds, the SSA is required to send a "written notice of intent" to the overpaid person. *Id.* at § 404.521. In that written notice, the SSA is required to state, *inter alia*, the

amount of the overpayment; that the SSA will request a reduction in the person's federal and State income tax refunds unless, within 60 days of the date of the notice, the person, provides evidence that the overpayment is not past due or legally enforceable, or asks the SSA to waive collection; that the SSA will review any evidence presented that the overpayment is not past due or not legally enforceable; and that the overpaid person has the right to inspect and copy the SSA's records related to the "overpayment as determined by us." *Id.* The overpaid person then has these rights, *i.e.*, the right to present evidence concerning the overpayment and its enforceability, and the right to inspect and copy the SSA's records related to the overpayment. *Id.* at §§ 404.522-404.524.

34. If, in response to the required notice, the individual submits evidence disputing that the overpayment occurred or that it was legally enforceable, the SSA must issue written findings which include supporting rationale for the findings. Only after the SSA issues such findings may the SSA refer the overpayment to the Department of Treasury for collection through offset of tax refunds. *Id.* at § 404.525.

35. At about the same time the SSA refers the overpayment to the Department of Treasury, the SSA also reports to three credit bureaus that the taxpayer has an unpaid "debt" to the SSA.

D. Waiver of Enforcement of Debt.

36. Once the SSA has made a final determination that a beneficiary is responsible for repaying an overpayment of a certain amount, or concurrently with the appeals process for that decision, the beneficiary may ask the SSA to waive enforcement of the debt on the grounds that the beneficiary was without fault for the overpayment and that repayment would deprive him or her of income required for ordinary and necessary living expenses, or that collection of the

overpayment would be against equity and good conscience. 20 C.F.R. §§ 404.506(a), 404.507, 404.508, 404.509. The SSA's determination of whether it should grant a waiver to a beneficiary is separate from the determination of whether there was in fact an overpayment, whether the beneficiary was legally responsible for repaying it, and its amount.

37. If the SSA denies the initial request for a waiver, the SSA may start enforcement efforts to collect the overpayment, even if the beneficiary appeals the initial determination. *Id.* at § 404.506(b).

38. When a beneficiary asks the SSA for a waiver, the beneficiary – not the SSA – has the burden of proving her entitlement to the waiver. Because of this, the right to seek a waiver of enforcement does not put the beneficiary in the same position as someone who can contest the SSA's initial determination of the fact of the overpayment, a stage at which the SSA, rather than the beneficiary, has the burden of proof. This is especially important when the issue is whether the beneficiary is responsible for repaying an alleged debt that is more than 10 years old, since it is unlikely that either the SSA or the beneficiary will be able to produce evidence relevant to the existence of the debt, or the beneficiary's legal responsibility for it.

E. Statute of Limitations on SSA's Recovery of Overpayments.

39. Until November 21, 2011, SSA's own regulations prohibited it from making referrals to the Treasury Offset Program for the recovery of overpayments that had been made more than 10 years before. *See* 20 C.F.R. §404.520(b) (April 1, 2011 edition). However, effective November 21, 2011, the SSA promulgated the current version of 20 C.F.R. §404.520(b), which no longer has any statute of limitations governing the SSA's collection of overpayments through offset. 76 FR 65107 (Oct. 20, 2011). Consequently, the SSA now asserts the right to recover overpayments through offset no matter how long ago they were made, even

though the SSA has never had the authority to use tax offsets to recoup those overpayments because the payments were made on or prior to August 26, 1996, and regardless of whether the SSA was once time-barred from recovering such overpayments through offset. Pursuant to this change, the SSA has begun to pursue the collection of alleged overpayments that were made decades ago, including overpayments made to the parents of persons who, like Plaintiffs, were minors or students at the time these payments were made. Such persons may not have had any knowledge, or even any reason to suspect, that either they or some other related person had received an alleged overpayment which, someday, they might be asked to repay. Such persons therefore never had any reason to collect or preserve records or other evidence pertaining to the payments made to them, to someone else with a duty to act on their behalf, or to someone else who happened to be a beneficiary under a common account.

### **FACTUAL ALLEGATIONS**

#### A. Plaintiff Mary Grice.

40. Plaintiff Mary Grice (“Grice”), a resident of Takoma Park, Maryland, is the individual who originally filed this lawsuit. Grice files this lawsuit on her own behalf and not as a class representative, seeking declaratory relief.

41. Grice grew up in North Carolina. Her father passed away in 1960, leaving five minor children, including Grice, eligible for benefits under the Social Security Survivors Benefits program. At that time (and until the law changed in October 1982), dependent children were allowed to receive survivor’s benefits until the age of 18, or, if they continued their education in a post-secondary school, until the age of 22. Grice was eligible for and continued to receive benefits until 1975, at which time she was still attending school but also began to work. One or more of Grice’s other siblings continued receiving benefits until approximately 1980.

42. From 1975 through January 1982, Grice was employed by the State of North Carolina. From approximately 1976 through 1979, while she was living and working in North Carolina, Grice rented a post office box from the United States Postal Service in Roxboro, North Carolina.

43. In May 1982, Grice moved to the State of Maryland, where she has continuously resided for the past 31 years.

44. Beginning in October 1982 and continuing through the present time, Grice has been employed by the United States Food & Drug Administration (“FDA”) in the State of Maryland.

45. For many of the years that Grice has worked -- excluding some of her years as an employee of FDA -- Grice has been required to contribute to the Social Security system. Because she has paid into the Social Security system for a sufficient number of years, upon reaching the age of 62, she will be eligible to receive Social Security retirement benefits when she retires.

46. Because Grice has contributed for enough years to qualify for Social Security benefits, Grice receives an annual Social Security Statement from the SSA. Each year, the SSA sends this annual Social Security Statement to Grice at her current address in Takoma Park, Maryland. The SSA has been sending such statements to Grice at her current address for at least the past 15 years.

47. On February 7, 2014, Grice received two notices from the Maryland Office of the Comptroller, both of which were dated February 5, 2014. One notice informed Grice that her State tax refund of \$1465.80 had been intercepted and had been applied to an outstanding debt that she owed to another agency. The other notice informed her that the intercepting agency was

the Social Security Administration, and it provided a telephone number for her to call with any questions concerning the debt. Grice called the telephone number, which was for the office of Debt Management Services. She heard a recording saying that the Social Security Administration was the government agency to whom she owed a debt.

48. On February 10, 2014, Grice received a notice from the office of Debt Management Services saying that she owed the sum of \$2996 to the SSA. The notice also listed a telephone number for the SSA. Prior to this time, Grice had no knowledge, and no reason to know, that the SSA contended she owed this amount.

49. Later on February 10, 2014, Grice called the SSA telephone number that had been provided to her. She spoke with a woman who identified herself as “Tonya.” Tonya told Grice that the SSA had made an overpayment under the social security number of Grice’s father. Tonya said that the SSA first attempted to collect this debt in 2012 by sending a notice to Grice’s former address, the post office box that she had used in Roxboro, North Carolina. As they spoke, Tonya said she was trying to effect a waiver of Grice’s alleged debt electronically, but that she was not successful. Tonya advised Grice to go to the nearest SSA field office to request a waiver.

50. On February 12, 2014, Grice visited the SSA field office on New Hampshire Avenue in Silver Spring, Maryland. She met for approximately one hour with a man who identified himself as “Juan” and who worked for the SSA. Throughout their meeting, Juan was able to, and did, access information about Grice’s records from his SSA computer screen, and he orally or visually provided some of that information to Grice. Juan told Grice that there had been an overpayment under her father’s social security account number.

51. Juan said that in August 2012, the SSA sent a first notice of overpayment to Grice's former post office box in Roxboro, North Carolina. Grice asked Juan whether he could access a copy of the notice on his computer, but he said he could not. He also said that there was no indication in the computer system as to whether the first notice had been received, or whether it had been returned to the SSA.

52. Juan said that a second overpayment notice was sent to Grice on October 25, 2013. Juan could not tell Grice what address that second notice had been sent to, or whether it had been received or returned to the SSA.

53. Juan said that on January 13, 2014, Grice's alleged debt had been referred to the Department of Treasury's Financial Management System, reported to the Internal Revenue Service, and reported to the three credit bureaus.

54. Juan said that on February 10, 2014, the SSA received an offset payment from the Financial Management System on account of Grice's State tax refund having been intercepted.

55. Juan told Grice that at various times, six people had received benefits under the social security account number of her father: Grice, her four siblings, and the ex-wife of her father, who received widow's benefits from 1978 until her death in 2007.

56. Grice asked Juan whether the computer system indicated that she had been the specific recipient of the overpayment. Juan responded that all of the beneficiaries under the relevant social security account number (in this case, Grice's father) were viewed and treated by the SSA as a single unit, so it did not matter to the SSA who actually received an overpayment. Juan said that once the SSA determines that there was an overpayment to any beneficiary of the account, the SSA goes down the list of all beneficiaries of that account until it locates the first person who has a record of working and paying taxes – in this case, Grice – and seeks to recoup

the overpayment from that beneficiary. He said that a new law allowed the SSA to collect overpayments from any beneficiary or recipient from whom the overpayment could be collected.

57. Grice asked Juan to provide her with a copy of the records relevant to her claims. Juan responded that he could only share information with Grice to the extent that it pertained specifically to her.

58. Juan showed Grice his computer screen, and it appeared to Grice that much information was missing. When Grice questioned Juan about this, he responded that the account was old and that some of the information had been archived. Juan advised her that she could request the information by filing a Freedom of Information Act request at the SSA's Baltimore office.

59. Juan did not tell Grice that she could file a request for reconsideration of the initial determination that there had been an overpayment that she was responsible for repaying.

60. Juan told Grice that she could file a request for a "waiver" of the overpayment, but he said that the initial review of the waiver request would be conducted by his office, and the request "would be denied" because Grice was working and owned a home and a vehicle. Juan then described for Grice the various ways in which she could appeal a denial of the waiver, including requesting a reconsideration hearing in connection with the waiver, and a hearing before an Administrative Law Judge.

61. On February 12, 2014, Grice received a notice dated February 10, 2014, from the Department of Treasury, Financial Management Service saying that part of her federal tax refund had been intercepted and applied to satisfy the \$2996 debt that she owed to the SSA.

62. In fact, the IRS withheld the entire \$2996 that Grice allegedly owed to the SSA, even though the State of Maryland had previously withheld her state tax refund of \$1465.80.

63. On April 3, 2014, the SSA informed Grice that she would soon be receiving the \$1465.80 that the State of Maryland had withheld; Grice received those funds from the State of Maryland shortly thereafter. However, the SSA continued to retain the \$2996 from the offset of Grice's federal tax refund to satisfy her alleged debt.

64. On April 7, 2014, Grice filed the original Complaint in this action. Grice's allegations were publicized in a newspaper article that was published on the front page of the April 11, 2014 edition of the Washington Post. Within the next two days, news about this lawsuit received extensive national press coverage which included stories about Ms. Grice on the national nightly news broadcasts aired by the CBS and ABC networks.

65. In the wake of the publicity surrounding Grice's lawsuit, on April 14, 2014, the SSA announced that it was suspending future referrals to the Treasury Offset Program of debts that were more than ten years old, pending a review of the SSA's procedures. However, the SSA has not taken any steps to identify or pay back monies owed to persons who have already had their tax refunds improperly intercepted as the result of the SSA's misconduct, or to report to the credit bureaus that such persons did not and do not owe "debts" to the SSA.

66. Also, after the SSA learned of Grice's lawsuit, on April 17, 2014, presumably at the instruction of the SSA, the Department of Treasury issued Grice a check in the amount of \$2996, which was the full amount of the tax refund she was owed. In a notice that Ms. Grice received on April 21, 2014 (curiously, the notice was dated "April 22, 2014"), the SSA stated to Ms. Grice: "We are writing to give you new information about the child's benefits which you receive on this Social Security record [referring to the Social Security number associated with Ms. Grice's deceased father]." We are paying you \$2996.60 which was previously withheld from your income tax refund. This is in addition to the \$1465.80 we paid you on April 7, 2014."

The SSA has not made any representation to Grice that it will not continue to seek repayment of any alleged “overpayment” in the future.”

B. Plaintiff Theodore Verbich.

67. Plaintiff Theodore Verbich, a Certified Public Accountant who works for the U.S. Department of Health and Human Services, lost his father in 1960. At some point after Verbich turned 18, he received some direct payments of social security survivor benefits, which he was eligible to receive because he was still a full-time student.

68. In July 1979, the SSA informed Verbich that he had received overpayments totaling \$723.00, consisting of one alleged overpayment in the amount of \$171.40 in January 1977, and another in the amount of \$551.60 in March 1977, and demanded that he pay the money back. Verbich disputed the January overpayment, claiming that he did not owe that back; he agreed with the March 1977 determination, however, and reached a resolution with the SSA whereby he would repay the \$551.60 in monthly installments of \$50. The matter appeared to be closed, and Verbich repaid the agreed-upon amount of \$551.60 in full.

69. Verbich kept his records concerning the incident for approximately 25 years. Sometime in or about 2004, while cleaning out his old files, Verbich decided that there was no reason to continue retaining his old records concerning his dealings with the SSA in the late 1970s. Accordingly, he shredded his documents concerning his communications with the SSA, along with his old tax returns and W-2 tax forms, old bank statements and cancelled checks, payroll stubs, and other relevant records.

70. On March 23, 2014, Verbich received a notice from the Maryland Comptroller’s Office informing him that \$171.40 had been “intercepted” from his State tax refund to satisfy a

“debt” to a federal agency. Verbich had no idea what this was about, so he called the phone number listed on the notice. He was then told the “debt” was allegedly owed to the SSA.

71. Verbich then called the SSA, and he was told that his tax refund was intercepted to repay an “overpayment” made to him in January 1977. Verbich asked the SSA for records that would explain how the SSA had determined what Verbich owed, but the SSA could not provide him with any additional information or documentation.

72. Verbich asked the SSA why he hadn’t been notified of anything prior to the interception of his tax refund, and the SSA employee responded that they had sent a notice to his “last known address.” Verbich never received such a notice. Verbich has lived at his current address in Glenn Dale, Maryland, since July 1984. The SSA has known that Verbich lives there: for many years, up through February 15, 2011, the SSA sent annual Social Security Earnings Statements to Verbich at his current address in Glenn Dale, Maryland.

C. Plaintiff John Jones.

73. Plaintiff John Jones lost his father in 1967, when J. Jones was seven years old. While J. Jones was a child, his mother received survivor benefits from the SSA. J. Jones never received any money from the SSA. The SSA stopped paying survivor benefits to the mother of J. Jones before he turned 18.

74. In March 2014, J. Jones received a notice dated February 12, 2014, from the U.S. Department of the Treasury, Financial Management Service. The notice informed J. Jones that \$3066.60 had been intercepted from his 2014 federal tax refund and applied to a “debt” he allegedly owed to the Social Security Administration.

75. This was the first time J. Jones learned that the SSA was holding him responsible for repaying an alleged “overpayment.” He had not received any prior notice from the SSA

concerning any alleged overpayment or any referral to the Treasury Offset Program for collection of any debt. J. Jones has lived at the same address since February 2007, and he has received annual Social Security Earnings Statements at that address.

76. Shortly after receiving the notice from the Financial Management Service, J. Jones went to his local SSA office in Cumberland, Maryland, where he was told that he should fill out and submit a Request for Waiver of Overpayment form. On March 24, J. Jones returned to his local SSA office and submitted the completed form. J. Jones was told that his form would be given to a case worker, and that he would be notified of an appointment.

77. On March 27, 2014, J. Jones received the same completed waiver form that he had earlier submitted to the SSA; the SSA had sent it back to him in the mail. Attached to the form was a sticky note which, in handwritten script, says: “Unfortunately, we can do nothing about this overpayment. The overpayment has been paid in full. No issues outstanding.”

78. On April 8, 2014, J. Jones went back to his local SSA office, where he spoke with an employee of the SSA. The SSA employee told J. Jones that because his “debt” was “paid in full,” the SSA could not “re-open” his case.

79. J. Jones asked when the last benefits payment had been made to his mother; he was told it was in August 1978. J. Jones did not turn 18 until after that date.

80. J. Jones noticed that the SSA employee had some computer print-outs that apparently pertained to the alleged overpayment. J. Jones asked to see a copy of the file, but he was told that he needed a lawyer to fill out a Freedom of Information Act request to receive this information – if it was available. J. Jones was told that the SSA had sent notices concerning the overpayment to J. Jones’s mother at her address in Baltimore, Maryland -- an address at which J. Jones had last lived in 1980. J. Jones’s mother died in 1982.

81. On Thursday April 10, 2014, J. Jones received a message on his voicemail from the same SSA employee with whom he had met two days earlier. In the message, the SSA employee stated that there “is no paper folder still existing” for J. Jones’s case because “it is usually after seven years that they are destroyed.” He said that there was “no record of the notices that were sent because this was prior to the computer days.” He said that they had sent J. Jones’ Request for Reconsideration to the payment center in Baltimore, and that they will review “whatever records they have – although they’re not going to have anything going back that far,” and they will have to base their decision “on the case records as they have them today.” He also said that he had mailed J. Jones a letter that stated the SSA’s “policy on who is liable for overpayments on the record. It’s not just the person who was the number holder; it’s also any auxiliaries on that record, such as wives and children.”

82. As the SSA employee said in the voicemail message dated April 10, 2014, he had mailed to J. Jones the SSA’s “policy” on who could be held liable for overpayments, as set forth in Section 1906.2 of the Social Security Handbook. Section 1906.2(b) states: “If an RSDI overpayment cannot be recovered from the overpaid beneficiary, the payee, or the estate, benefits may be withheld from other persons entitled to benefits on the same earnings record.” Next to that sentence, the SSA employee hand-wrote the following note: “You are other person entitled to benefits on earnings record of James Jacob Jones Sr.”

83. On April 11, 2014, J. Jones sent a letter to the SSA Payment center, via certified mail, requesting a reopening of his claim and appealing the SSA’s decision to take his tax refund “without notification.” In the letter, he wrote: “I believe that I, John W. Jones am not responsible for the overpayment taken from my Federal Income Tax Return .... I had no prior knowledge of said debt. A beneficiary (a minor child) cannot be responsible for a payee’s debt.

... The office in Cumberland has some information on computer, [the SSA employee] had print-outs but said I could not have them.”

84. On May 17, 2014, J. Jones received a letter dated May 15, 2014, from Barbara Warnick, District Manager of the SSA’s Cumberland, Maryland field office. The letter stated:

Dear Mr. Jones:

This is in response to your inquiry concerning the collection of your overpayment. Our records show that we sent proper notification to you and the Post office did not return this notice as undeliverable. If the evidence shows that you did not receive the notice, we can refund the money and discuss other repayment options since refunding the money will not eliminate your overpayment.

If you think you should not have to pay us back for another reason, you may request a waiver. For us to waive collection of your overpayment two things must be true:

It was not your fault you got too much Social Security or Supplemental Security Income money

AND

Paying us back would mean you cannot pay your bills for food, clothing, housing, or medical care, or it would be unfair for some other reason.

Your Reconsideration request was dismissed by the Payment Center since the correct action should have been a waiver request. To file a Reconsideration, you must feel the overpayment was not a true overpayment and have proof to the contrary. A Waiver request is not an admission of guilt or innocence. It is the correct document needed in this case, since you do not feel you should be held responsible for the overpayment.

If you would like our office to waive the overpayment and provide a full refund to you, please fill out the enclosed Waiver request. If we do not receive this form, we cannot waive the overpayment.

85. In its May 15 letter, the SSA fails to inform Mr. Jones of his right to appeal the SSA’s denial of Reconsideration. Instead, the SSA simply tells Mr. Jones that his request was “dismissed by the Payment Center since the correct action should have been a waiver request.”

86. Moreover, in its May 15 letter to J. Jones, the SSA fails to provide any of the evidence that he demanded to see in connection with the alleged “overpayment.” The SSA also fails to acknowledge that the SSA needs to have evidence of the overpayment, or that J. Jones is entitled to see any such evidence.

87. In its May 15 letter to J. Jones, the SSA attempts to shift the burden of proving the nonexistence of the alleged overpayment – an event that may or may not have occurred more than 30 years ago – to Mr. Jones. Thus, the SSA states: “To file a Reconsideration, you must feel the overpayment was not a true overpayment and have proof to the contrary.”

88. Including his several visits to the SSA office where he had to wait to meet with SSA employees, his waiting on the telephone to speak with SSA employees, and his filling out the forms that the SSA told him to submit – and all to no avail – J. Jones has spent the better part of several days trying to resolve this matter.

89. J. Jones and his wife file a joint tax return. To satisfy the so-called “debt” owed by J. Jones, the Internal Revenue Service, acting on the instruction of the SSA, intercepted tax revenues of \$3,066.60 that J. Jones and his wife had overpaid to the federal government during 2013. J. Jones is working part-time at Dollar General in Cumberland, Maryland, and this tax refund is money that he has been depending on to pay current bills and other ordinary living expenses. Without the money that he and his wife are owed in their tax refunds, J. Jones has already fallen behind on paying utility and other bills, and it may soon affect his ability to pay rent. The actions of the Social Security Administration are causing Mr. Jones serious, ongoing, and irreparable injury.

D. Plaintiff Joseph McCallion.

90. Plaintiff Joseph McCallion, a retired federal employee, lost his mother in 1969 and his father in 1970. At that time, McCallion was a student. He does not recall ever receiving a payment of benefits from the SSA. He does not have the social security numbers for his deceased parents and has no idea whether one of them ever received benefits that were supposed to be paid on his behalf.

91. On September 30, 2013, McCallion received a letter from the SSA demanding that he repay an alleged overpayment of \$106. The SSA sent the letter to an address that McCallion had not used since approximately 1977, but somehow it was forwarded to him at his current address.

92. On October 2, 2013, McCallion sent a letter to the SSA via certified mail, return receipt requested, asking for additional details about the alleged overpayment and enclosing a completed Request for Reconsideration and Request for Waiver, a request for a personal meeting, and a request to inspect and copy SSA's records pertaining to the "overpayment."

93. On March 25, 2014, not having received any response from the SSA to his October 2, 2013 letter, McCallion called the SSA. After experiencing significant phone holds and delays, McCallion spoke to an employee of the SSA. McCallion was told that his October 2 letter had been received and "logged" in the SSA computer, but there was no "resolution" logged in. The SSA employer said that she would enter his request for a "status update" in the system.

94. By April 9, 2014, McCallion still had heard nothing back from the SSA. On that date, McCallion received a notice from the Maryland Comptroller's Office informing him that \$106 had been taken out of his tax refund and directing him to call the SSA for an explanation.

95. On April 10, 2014, McCallion called the SSA and spoke to someone named “Ashley.” When he tried to explain the facts leading up to his call, Ashley argued with him and placed him on hold several times, for approximately 10 minutes each time. McCallion asked to set up a personal appointment to discuss the matter, but Ashley tried to discourage him from doing so. When he persisted, he was again placed on hold, but eventually he was told that he could have an appointment to meet with a SSA representative on June 5, 2014.

96. In April 2014, McCallion received a notice from the SSA, dated April 23, 2014, stating that the SSA “recently received \$106.00 of a Federal or State payment you were due and used it toward the overpayment of Social Security benefits paid to you. Based on this, your current overpayment balance is \$0.00.”

97. In May 2014, McCallion received a notice from SSA, dated May 18, 2014, stating that “we are waiving the collection of Joseph McCallion Social Security overpayment of \$106. This means you will not have to pay this money back.” Of course, the SSA had already taken the money from McCallion to satisfy his alleged “debt.” To date, McCallion has not received the \$106 that was intercepted from his tax return.

98. On June 5, 2014, McCallion went to the SSA field office in Rockville, Maryland for his scheduled appointment, at which time he discussed his case with an SSA official, Ms. Zimmerman. After giving Ms. Zimmerman the claim number on which he had been charged, McCallion learned that he was being charged for an overpayment in connection with survivor benefits on the account of his father, Daniel McCallion. However, Daniel McCallion died after Joseph McCallion had reached the age of 22, which meant that Joseph McCallion cannot have received any survivor benefits from the account of his father.

99. McCallion asked Ms. Zimmerman for the basis of the \$106 overpayment, *i.e.*, what it was, to whom it was made, and when it was made. Ms. Zimmerman told him that the SSA system did not have any information about it.

100. McCallion showed her the document he recently received from the SSA indicating that the overpayment had been waived after it had already been collected, and she appeared stunned. At first, Ms. Zimmerman simply stared at the paperwork; then, she took it back somewhere in the office. Ms. Zimmerman returned approximately 15 minutes later and told McCallion that there was nothing she could do. She had McCallion fill out a “statement of Claimant or Other Person (SSA form 795) requesting a refund, and she told McCallion that she would send it to the Program Center. McCallion asked her when he could expect a reply, and her only response was a smile and a shrug.

E. Plaintiff Shirley Jones.

101. Plaintiff Shirley Jones lost her father in 1970, while she and her brother were children. Her mother, Emily Granger, received social security survivor benefits for the family. During the entire time her mother was receiving benefits, S. Jones had no knowledge of what benefits were received or how they were handled.

102. On February 25, 2014, S. Jones received a letter from the Financial Management Service informing her that the Internal Revenue Service had taken \$129.30 from her federal tax refund to apply to a “debt” that she allegedly owed to the SSA. The letter erroneously stated that she had been notified and had not responded to letters from the SSA.

103. S. Jones has lived at her current address in Willowbrook, Illinois, for the past 15 years. During that time, she has received numerous annual Social Security Statements from the

SSA at that address. She received no notice, at that address or from any other source, prior to learning that the IRS had intercepted part of her federal tax refund.

104. Immediately after receiving the February 25 letter, S. Jones called the SSA and spoke to a person named "Greg." S. Jones explained to Greg that she had never received any correspondence from the SSA and was denied due process. She told Greg that her mother was the only one who might have had any involvement in or knowledge of the situation, and that the SSA should have addressed it with her sometime before she died in 2006.

105. On February 28, 2014, S. Jones sent a letter to the SSA via certified mail. In her letter, she pointed out that she never had any knowledge of any overpayment because her mother handled everything related to the survivor benefits, and that the SSA had not given her any notice prior to the garnishment of her tax refund, despite the fact that the SSA knew her correct address. She even attached copies of the 2000 and 2011 Social Security Statements that the SSA had sent to her at her current address. She stated that she had not received due process, and she demanded that her \$129.30 be refunded to her. She further stated: "If you refuse to refund my \$129.30, I am requesting copies of all correspondence letters that were previously sent through the last 40 years regarding this issue."

106. S. Jones received a letter from the SSA dated April 7, 2014, acknowledging the receipt of her certified letter. In the April 7 letter, the SSA advised S. Jones that she could submit a Request for Waiver, while ignoring her request to be provided copies of all correspondence related to the alleged overpayment.

F. Plaintiff Denise Hart.

107. Plaintiff Denise Hart is a senior legal bill auditor for an insurance company in Pennsylvania. In 1976, when she was 14 years old, her mother died. She believes that her father received social security survivor benefits. She is not sure about this, however, because she never saw -- much less received -- any payment from the SSA.

108. On February 28, 2014, Hart discovered that she received a federal tax refund that was less than what she expected; the difference between what she expected and what she received was \$755. Hart subsequently learned that the \$755 was being applied to pay a so-called “debt” that was owed to the SSA.

109. Hart had not received any prior notice from the SSA informing her either that she had received an overpayment or that her “debt” would be referred to the Treasury Offset Program. Hart received annual Social Security Earnings Statements at an address that she lived at until approximately two years ago – a place that she still owns and rents out – but she received no notice at either that address or her current address.

110. After discovering that her tax refund had been intercepted, Hart called the SSA. She was advised by an employee of the SSA that she should fill out and submit a Request for Waiver.

111. On March 13, 2014, Hart went to the SSA office in Allentown, Pennsylvania, where she submitted her Request for Waiver and spoke with an employee of the SSA. When Hart told the SSA employee that she had not received any notice prior to learning that her tax refund had been intercepted, he laughed and told her that the notice would have been sent to the same address where the benefits had been sent – *i.e.*, to an address where Hart had not lived since 1981. Hart has not heard anything in response to the Request for Waiver.

**CLASS ALLEGATIONS**

112. There have been numerous reports of cases in which the SSA has authorized the interception of tax refunds to repay “overpayments” under circumstances similar to those described herein. According to a report in the Washington Post, the SSA stated that it has been pursuing the recovery of such “overpayments” from approximately 400,000 people. (*See* [http://www.washingtonpost.com/local/seized-funds-returned-to-taxpayer-others-still-lose-refunds/2014/04/21/d4dd702c-c97a-11e3-a75e-463587891b57\\_story.html](http://www.washingtonpost.com/local/seized-funds-returned-to-taxpayer-others-still-lose-refunds/2014/04/21/d4dd702c-c97a-11e3-a75e-463587891b57_story.html).)

113. To the extent that this lawsuit might be construed as setting forth claims for damages against the United States, none of the classes set forth herein shall include any person from whom the SSA has recouped an alleged “overpayment” exceeding \$10,000.00.

114. Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart, as class representatives, bring this lawsuit on behalf of the first proposed class – the “Pre-1996 Debt Class” -- of all similarly situated individuals, pursuant to Fed.R.Civ.P. 23(b)(2). The Pre-1996 Debt Class consists of persons against whom the SSA has used tax offset to recoup alleged overpayments that were made prior to August 26, 1996. Under the statute authorizing the SSA to use tax offsets to recover overpayments, the Debt Collection Improvement Act of 1996, the SSA is only permitted to use tax offsets to recoup payments that were made after August 26, 1996. *See* Pub. L. 104–134, § 31001(a)(2)(B) (the SSA’s authority to use tax offsets to recoup debts “shall apply only to payments made after the date which is 4 months after the date of the enactment of this Act [Apr. 26, 1996].”).

115. Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart, as class representatives, bring this lawsuit on behalf of the second proposed class – the “Statute of Limitations Class” -- of all similarly situated individuals, pursuant to Fed.R.Civ.P. 23(b)(2). The Statute of Limitations Class includes all individuals as to whom the SSA has made referrals to

the Treasury Offset Program since November 21, 2011, resulting in the interception of such individuals' tax refunds, as well as adverse reports to credit bureaus, based on alleged debts arising from overpayments that occurred prior to November 21, 2001, *i.e.*, debts for which the use of the Treasury Offset was formerly time-barred.

116. Plaintiffs Verbich, J. Jones, S. Jones, and Hart, as class representatives, also bring this action on behalf of the third proposed class – the “Notice Class” -- of all similarly situated individuals, pursuant to Fed.R.Civ.P. 23(b)(2). The Notice Class includes all individuals as to whom the SSA has made referrals to the Treasury Offset Program since November 21, 2011, resulting in the interception of such individuals' tax refunds to satisfy debts arising from alleged overpayments, as well as adverse reports to credit bureaus, where the SSA did not send postal notices of the SSA's determination of alleged overpayments, and the impending referrals to the Treasury Offset Program, to such individuals at the addresses listed on their tax returns, and the SSA has no record of confirming that both such notices were actually received by such individuals prior to the referral of such debts for collection through the Treasury Offset Program.

117. Plaintiffs J. Jones, McCallion, S. Jones, and Hart, as class representatives, also bring this action on behalf of a fourth proposed class – the “Imputed Liability Class” -- of all similarly situated individuals, pursuant to Fed.R.Civ.P. 23(b)(2). The Imputed Liability Class” includes all individuals for whom the SSA has made referrals to the Treasury Offset Program since November 21, 2011, resulting in the interception of such individuals' tax refunds to satisfy debts arising from alleged overpayments, as well as adverse reports to credit bureaus, where the SSA has been unable or unwilling to produce any evidence that these individuals, rather than someone else, actually received an alleged overpayment. In effect, the SSA has maintained that

such individuals have imputed liability for repaying overpayments, whether or not such overpayments were actually made to them.

118. Plaintiffs J. Jones and Hart, as class representatives, also bring this action on behalf of a fifth proposed class – the “Child Class” -- of all similarly situated individuals, pursuant to Fed.R.Civ.P. 23(b)(2). The Child Class includes all individuals for whom the SSA has made referrals to the Treasury Offset Program since November 21, 2011, resulting in the interception of such individuals’ tax refunds to satisfy debts arising from alleged overpayments, as well as reports to credit bureaus, where the individuals had not reached the age of 18 at the time the SSA made an overpayment which, the SSA now contends, the individual is legally responsible for repaying. The Child Class is a subclass of the Imputed Liability Class, *i.e.*, any person who is a member of the Child Class must also be a member of the Imputed Liability Class because no child could have received a direct payment from the SSA.

119. The identities of all members of the classes described herein are readily ascertainable from the records of the Social Security Administration. The size of the classes makes a class action both necessary and efficient. If the public statements of the SSA are correct, and the SSA has sent perhaps hundreds of thousands of notices to people who allegedly had debts based on alleged overpayments made more than 10 years prior to the lifting of the statute of limitations in November 2011, that class may consist of as many as 400,000 people to whom such notices were sent. Members of the classes are ascertainable but so numerous that joinder is impracticable. The classes also include future class members who will benefit from the injunctive relief sought herein and whose joinder is inherently impossible.

120. This case poses common questions of law and fact affecting the rights of all members of the various classes, including:

- (a) The legality of the SSA's use of tax offsets to recover overpayments that occurred prior to August 26, 1996, despite the SSA only having the statutory authority to use tax offsets to recoup payments that were made after August 26, 1996.
- (b) The legality of the SSA's attempts to recover overpayments that occurred prior to November 21, 2001, where the SSA did not begin its efforts to recover such overpayments until more than 10 years later.
- (c) The adequacy of postal notices, both of the SSA's initial determination of an overpayment and the SSA's referral of a debt for collection through the Treasury Offset Program, to the individuals allegedly responsible for repaying the alleged overpayments, where the SSA did not send such notices to the addresses listed on such individuals' tax returns, and the SSA did not receive confirmation that the individuals actually received the notices before the SSA referred the alleged debts for collection through the Treasury Offset Program.
- (d) The legality of the SSA's attempts to recover overpayments from individuals where the SSA has no evidence that it actually paid any overpayments to such individuals, as opposed to someone else.
- (e) The legality of the SSA's attempts to recover overpayments from individuals who had not reached the age of 18 at the time the SSA made overpayments which, the SSA now contends, these individuals are legally responsible for repaying.

121. The claims of Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart are typical of the claims of the classes as a whole:

- (a) The claims of these individual Plaintiffs are typical of the claims of members of the Pre-1996 Debt Class, *i.e.*, any person who would challenge the legality of the SSA's

- use of tax offsets to recoup payments made prior to August 26, 1996. The SSA is authorized to use tax offsets to recover overpayments only if the overpayments were made after August 26, 1996. The alleged overpayments made to each of these Plaintiffs, or from which they allegedly benefited, preceded August 26, 1996.
- (b) The claims of these individual Plaintiffs are typical of the claims of members of the Statute of Limitations Class, *i.e.*, any person who would challenge the legality of the SSA's attempts to recover overpayments that occurred prior to November 21, 2001, where the SSA did not begin its efforts to recover such overpayments until more than 10 years later. The SSA did not begin its efforts to recover overpayments from each of these Plaintiffs that allegedly occurred prior to November 21, 2001, until more than 10 years after the overpayments allegedly occurred.
- (c) The claims of individual Plaintiffs Verbich, J. Jones, S. Jones, and Hart are typical of the claims of members of the Notice Class, *i.e.*, any person who would challenge the adequacy of postal notices to the individuals allegedly responsible for repaying the alleged overpayments, where the SSA did not send the required notices to the addresses listed on the individuals' tax returns, and the SSA did not have confirmation that the individuals actually received notices before the SSA referred the alleged debts for collection through the Treasury Offset Program. In this case, prior to authorizing the interception of Plaintiffs' tax returns, the SSA did not send the required notices to Plaintiffs at the addresses listed on their tax returns, and the SSA did not have confirmation that the Plaintiffs received such notices.
- (d) The claims of individual Plaintiffs J. Jones, McCallion, S. Jones, and Hart are typical of the claims of the members of the Imputed Liability Class, *i.e.*, any person who

would challenge the legality of the SSA's attempts to recover overpayments from individuals where the SSA has no evidence that it actually paid any overpayments to such individuals, as opposed to someone else. The SSA has not contended, nor does it have any evidence, that it actually paid any overpayments to Plaintiffs J. Jones, McCallion, S. Jones, or Hart, as opposed to someone else who was another beneficiary under the same earnings record as Plaintiffs.

- (e) The claims of individual Plaintiffs J. Jones and Hart are typical of the claims of the members of the Child Subclass (a subclass of the Imputed Liability Class), *i.e.*, any person who would challenge the legality of the SSA's attempts to recover overpayments from individuals who had not reached the age of 18 at the time the SSA made overpayments which, the SSA now contends, these individuals are legally responsible for repaying. The alleged overpayments to Plaintiffs J. Jones and Hart occurred before they reached the age of 18.

122. Individual Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart can adequately and fairly represent the classes identified above, because their individual interests are consistent with, and not antagonistic to, the interests of the classes.

123. Counsel for Plaintiffs have the requisite resources and ability to prosecute this case as a class action.

124. This suit is properly maintainable as a class action under Fed.R.Civ.P. 23(b)(2) because the Defendant has implemented policies that are generally applicable to the classes described herein, making it appropriate to issue final injunctive relief and corresponding declaratory relief with respect to the classes as a whole.

125. For all these and other reasons, a class action is superior to other available methods of the fair and efficient adjudication of the controversy set forth in this Complaint.

**COUNT I: STATUTORY VIOLATION**  
**(Injunctive Relief, Applies to the Pre-1996 Debt Class)**

126. Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart, on behalf of themselves and as representatives of the class of all similarly situated individuals described herein and referred to as the Pre-1996 Debt Class, re-allege and incorporate the allegations contained in paragraphs 1 through 125 as if fully set forth herein. This Count is a civil action seeking injunctive relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration.

127. With respect to Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart, as well as all similarly situated persons (*i.e.*, the Pre-1996 Debt Class), the SSA has acted in contravention of the effective date provision of 31 U.S.C. § 3716(c)(3)(A), which grants the SSA the authority to use tax offsets to recover payments due to an individual under the Social Security Act, by taking their property to repay alleged overpayments that were made prior to August 26, 1996, and by reporting these so-called unpaid “debts” to credit bureaus. The Debt Collection Improvement Act of 1996 – the statute authorizing the SSA to use tax offsets to recoup overpayments – specifically states that the provision authorizing the SSA to use tax offsets to recoup overpayments “shall apply only to payments made after the date which is 4 months after the date of the enactment of this Act,” *i.e.*, only to payments made after August 26, 1996. Notwithstanding that provision restricting the applicability of tax offsets, the SSA has been using the tax offset to recoup payments that were made prior to August 26, 1996, to Plaintiffs and other similarly situated persons.

128. Plaintiffs have suffered serious, ongoing, and irreparable injury as a result of Defendant's policies and practices as alleged herein.

129. Plaintiffs have no adequate remedy at law for the statutory violations alleged herein, and cannot be made whole through restitution, damages, or other monetary payments alone.

130. Plaintiffs are entitled to a temporary, preliminary, and permanent injunction requiring Defendant: (a) to cease and desist from engaging in the unlawful conduct described herein; (b) to notify the Internal Revenue Service, State tax authorities, all credit bureaus with which the Social Security Administration communicates concerning debts, and any other persons or entities with whom the Social Security Administration communicates concerning debts, that Plaintiffs do not and did not have any lawful debt to the Social Security Administration on account of any overpayments; (c) to issue whatever instructions are necessary to cause such entities to release any and all tax refunds that should have been paid to Plaintiffs, or to directly refund to Plaintiffs whatever amounts were withheld and credited to the SSA; (d) to take all steps necessary to ensure that any negative comments, remarks, or status regarding Plaintiffs' credit ratings and reports are corrected to reflect that Plaintiffs do not owe the amounts that Defendant has claimed they owed; and (e) to review all policies, practices, and directives of the SSA and other agencies acting in combination and concert with the SSA that were a cause, in whole or in part, of the statutory violations alleged herein, and to take all steps reasonably practicable to promptly modify and/or supplement those policies, practices, and directives to ensure that no similar statutory violations will occur in the future.

**COUNT II: STATUTORY VIOLATION**  
**(Declaratory Relief, Applies to the Pre-1996 Debt Class)**

131. Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart, on behalf of themselves and as representatives of the class of all similarly situated individuals described herein and referred to as the Pre-1996 Debt Class, re-allege and incorporate the allegations contained in paragraphs 1 through 125 and 127. This Count is a civil action seeking declaratory relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration. Plaintiffs are entitled to a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. An actual controversy exists between the parties as alleged in this Complaint and will continue to exist unless and until it is resolved by this Court. Plaintiffs, on behalf of themselves and the class of all similarly situated individuals, are entitled to a declaratory judgment that the SSA may not recover, through referrals to the Treasury Offset Program, overpayments that occurred prior to August 26, 1996, and may not report these alleged overpayments as unpaid “debts” to credit bureaus.

**COUNT III: DUE PROCESS, STATUTORY, AND REGULATORY VIOLATIONS**  
**(Injunctive Relief, Applies to the Statute of Limitations Class)**

132. Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart, on behalf of themselves and as representatives of the class of all similarly situated individuals described herein and referred to as the Statute of Limitations Class, re-allege and incorporate the allegations contained in paragraphs 1 through 125 as if fully set forth herein. This Count is a civil action seeking injunctive relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration.

133. With respect to Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart, as well as all similarly situated persons (*i.e.*, the Statute of Limitations Class), the SSA has violated their

due process rights under the Constitution's Fifth Amendment and the Constitution's *Ex Post Facto* Clause, and has also acted in contravention of the effective date provision of 31 U.S.C. § 3716(e)(1), by taking their property to repay alleged overpayments that were made prior to November 20, 2001 – recoupments which, prior to a November 20, 2011 change in the SSA's regulations, had been barred by a 10-year statute of limitations – and by reporting these so-called unpaid “debts” to credit bureaus. Because of the statute of limitations that was in effect prior to November 20, 2011, Plaintiffs never had any reason to try to preserve income records, bank records, or any other relevant testimony or information from the time period prior to November 20, 2001. Under these circumstances, so many years after these “debts” were allegedly incurred, it would be virtually impossible for anyone to effectively defend against the SSA's claims for liability.

134. Plaintiffs have suffered serious, ongoing, and irreparable injury as a result of Defendant's policies and practices as alleged herein.

135. Plaintiffs have no adequate remedy at law for the due process and other violations alleged herein, and cannot be made whole through restitution, damages, or other monetary payments alone.

136. Plaintiffs are entitled to a temporary, preliminary, and permanent injunction requiring Defendant: (a) to cease and desist from engaging in the unlawful conduct described herein; (b) to notify the Internal Revenue Service, State tax authorities, all credit bureaus with which the Social Security Administration communicates concerning debts, and any other persons or entities with whom the Social Security Administration communicates concerning debts, that Plaintiffs do not and did not have any lawful debt to the Social Security Administration on account of any overpayments; (c) to issue whatever instructions are necessary to cause such

entities to release any and all tax refunds that should have been paid to Plaintiffs, or to directly refund to Plaintiffs whatever amounts were withheld and credited to the SSA; (d) to take all steps necessary to ensure that any negative comments, remarks, or status regarding Plaintiffs' credit ratings and reports are corrected to reflect that Plaintiffs do not owe the amounts that Defendant has claimed they owed; and (e) to review all policies, practices, and directives of the SSA and other agencies acting in combination and concert with the SSA that were a cause, in whole or in part, of the due process and statutory violations alleged herein, and to take all steps reasonably practicable to promptly modify and/or supplement those policies, practices, and directives to ensure that no similar due process and statutory violations will occur in the future.

**COUNT IV: DUE PROCESS, STATUTORY, AND REGULATORY VIOLATIONS**  
**(Declaratory Relief, Applies to the Statute of Limitations Class)**

137. Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart, on behalf of themselves and as representatives of the class of all similarly situated individuals described herein and referred to as the Statute of Limitations Class, re-allege and incorporate the allegations contained in paragraphs 1 through 125 and 133. This Count is a civil action seeking declaratory relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration. Plaintiffs are entitled to a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. An actual controversy exists between the parties as alleged in this Complaint and will continue to exist unless and until it is resolved by this Court. Plaintiffs, on behalf of themselves and the classes of all similarly situated individuals, are entitled to a declaratory judgment that the SSA may not recover, through referrals to the Treasury Offset Program, overpayments that occurred prior to November 21, 2001, and may not report these alleged overpayments as unpaid "debts" to credit

bureaus, where the SSA did not begin its efforts to recover such overpayments until more than 10 years later.

**COUNT V: DUE PROCESS AND STATUTORY VIOLATIONS**  
**(Injunctive Relief, Applies to the Notice Class)**

138. Plaintiffs Verbich, J. Jones, S. Jones, and Hart, on behalf of themselves and as representatives of the class of all similarly situated individuals described herein and referred to as the Notice Class, re-allege and incorporate the allegations contained in paragraphs 1 through 125 as if fully set forth herein. This Count is a civil action seeking injunctive relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration.

139. With respect to Plaintiffs Verbich, J. Jones, S. Jones, and Hart, as well as all similarly situated persons (*i.e.*, the Notice Class), the SSA has violated Plaintiffs' due process rights under the Constitution's Fifth Amendment, as well as their statutory rights under 31 U.S.C. § 3716(a), by sending notices of their alleged overpayments, and notices that the SSA will be referring their alleged debts for collection through the Treasury Offset Program, to outdated addresses, and then, without any indication that these Plaintiffs actually received these notices, authorizing tax authorities to intercept the Plaintiffs' tax refunds to satisfy these alleged debts, and adversely reporting these so-called unpaid "debts" to credit bureaus. The SSA has failed to satisfy the Constitutional requirement that, when notice is a person's due, the means employed must be such as one desirous of actually informing the person might reasonably adopt to accomplish it. (*Jones v. Flowers*, 547 U.S. 220, 229 (2006); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).)

140. Plaintiffs have suffered serious, ongoing, and irreparable injury as a result of Defendant's policies and practices as alleged herein.

141. Plaintiffs have no adequate remedy at law for the due process and other violations alleged herein, and cannot be made whole through restitution, damages, or other monetary payments alone.

142. Plaintiffs are entitled to a temporary, preliminary, and permanent injunction requiring Defendant: (a) to cease and desist from engaging in the unlawful conduct described herein; (b) to notify the Internal Revenue Service, State tax authorities, all credit bureaus with which the Social Security Administration communicates concerning debts, and any other persons or entities with whom the Social Security Administration communicates concerning debts, that Plaintiffs do not and did not have any lawful debt to the Social Security Administration on account of any overpayments; (c) to issue whatever instructions are necessary to cause such entities to release any and all tax refunds that should have been paid to Plaintiffs, or to directly refund to Plaintiffs whatever amounts were withheld and credited to the SSA; (d) to take all steps necessary to ensure that any negative comments, remarks, or status regarding Plaintiffs' credit ratings and reports are corrected to reflect that Plaintiffs do not owe the amounts that Defendant has claimed they owed; and (e) to review all policies, practices, and directives of the SSA and other agencies acting in combination and concert with the SSA that were a cause, in whole or in part, of the due process and statutory violations alleged herein, and to take all steps reasonably practicable to promptly modify and/or supplement those policies, practices, and directives to ensure that no similar due process and statutory violations will occur in the future.

**COUNT VI: DUE PROCESS AND STATUTORY VIOLATIONS**  
**(Declaratory Relief, Applies to the Notice Class)**

143. Plaintiffs Verbich, J. Jones, S. Jones, and Hart, on behalf of themselves and as representatives of the classes of all similarly situated individuals described herein and referred to as the Notice Class, re-allege and incorporate the allegations contained in paragraphs 1 through

125 and 139. This Count is a civil action seeking declaratory relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration. Plaintiffs are entitled to a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. An actual controversy exists between the parties as alleged in this Complaint and will continue to exist unless and until it is resolved by this Court. Plaintiffs are entitled to a declaratory judgment that the Defendant's practice of sending notices by mail prior to instituting enforcement proceedings to collect overpayments, and prior to referring debts for collection to the Department of Treasury and adversely reporting them to credit bureaus, violates the Due Process Clause of the Fifth Amendment to the Constitution, as well as 31 U.S.C. § 3716(a), unless Defendant also receives proof that such notices have actually been delivered to the intended recipients.

**COUNT VII: DUE PROCESS AND STATUTORY VIOLATIONS**  
**(Injunctive Relief, Applies to the Imputed Liability Class)**

144. Plaintiffs J. Jones, McCallion, S. Jones, and Hart, on behalf of themselves and as representatives of the classes of all similarly situated individuals described herein and referred to as the Imputed Liability Class, re-allege and incorporate the allegations contained in paragraphs 1 through 125 as if fully set forth herein. This Count is a civil action seeking injunctive relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration.

145. With respect to Plaintiffs J. Jones, McCallion, S. Jones, and Hart, as well as all similarly situated persons (*i.e.*, the Imputed Liability Class), the SSA has violated Plaintiffs' due process rights under the Constitution's Fifth Amendment, and also has acted in contravention of the limited statutory authority granted by 42 U.S.C. § 404(a), by recouping alleged overpayments from Plaintiffs, and by reporting these so-called unpaid "debts" to credit bureaus, without

proving, providing any evidence, or even contending that they actually received any overpayment, or that they had any legal responsibility over any other person who received such an overpayment. The SSA apparently contends only that each of these Plaintiffs was one of several common beneficiaries of the same social security account (*e.g.*, the account of a deceased parent), and that an overpayment was made to one of those beneficiaries of that account.

146. Plaintiffs have suffered serious, ongoing, and irreparable injury as a result of Defendant's policies and practices as alleged herein.

147. Plaintiffs have no adequate remedy at law for the due process and statutory violations alleged herein, and cannot be made whole through restitution, damages, or other monetary payments alone.

148. Plaintiffs are entitled to a temporary, preliminary, and permanent injunction requiring Defendant: (a) to cease and desist from engaging in the unlawful conduct described herein; (b) to notify the Internal Revenue Service, State tax authorities, all credit bureaus with which the Social Security Administration communicates concerning debts, and any other persons or entities with whom the Social Security Administration communicates concerning debts, that Plaintiffs do not and did not have any lawful debt to the Social Security Administration on account of any overpayments; (c) to issue whatever instructions are necessary to cause such entities to release any and all tax refunds that should have been paid to Plaintiffs, or to directly refund to Plaintiffs whatever amounts were withheld and credited to the SSA; (d) to take all steps necessary to ensure that any negative comments, remarks, or status regarding Plaintiffs' credit ratings and reports are corrected to reflect that Plaintiffs did not incur, and did not owe, the amounts that Defendant has claimed they owed; and (e) to review all policies, practices, and directives of the SSA and other agencies acting in combination and concert with the SSA that

were a cause, in whole or in part, of the due process and statutory violations alleged herein, and to take all steps reasonably practicable to promptly modify and/or supplement those policies, practices, and directives to ensure that no similar due process and statutory violations will occur in the future.

**COUNT VIII: DUE PROCESS AND STATUTORY VIOLATIONS**  
**(Declaratory Relief, Applies to the Imputed Liability Class)**

149. Plaintiffs J. Jones, McCallion, S. Jones, and Hart, on behalf of themselves and the class of all similarly situated individuals described herein and referred to as the Imputed Liability Class, re-allege and incorporate the allegations contained in paragraphs 1 through 125 and 145. This Count is a civil action seeking declaratory relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration. Plaintiffs are entitled to a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. An actual controversy exists between the parties as alleged in this Complaint and will continue to exist unless and until it is resolved by this Court. Plaintiffs are entitled to a declaratory judgment that the Defendant's practice of recouping alleged overpayments from Plaintiffs and reporting these "debts" to credit bureaus without even contending, much less proving, that they actually received any overpayment, or that they had any legal responsibility over any other person who received such an overpayment, violates the Due Process Clause of the Fifth Amendment to the Constitution and 42 U.S.C. § 404(a).

**COUNT IX: DUE PROCESS AND STATUTORY VIOLATIONS**  
**(Injunctive Relief, Applies to the Child Subclass)**

150. Plaintiffs J. Jones and Hart, on behalf of themselves and as representatives of the class of all similarly situated individuals described herein and referred to as the Child Subclass, re-allege and incorporate the allegations contained in paragraphs 1 through 125 as if fully set

forth herein. This Count is a civil action seeking injunctive relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration.

151. With respect to Plaintiffs J. Jones and Hart, as well as all similarly situated persons (*i.e.*, the Child Subclass), the SSA has violated Plaintiffs' due process rights under the Constitution's Fifth Amendment, and also has acted in contravention of the limited statutory authority granted by 42 U.S.C. § 404(a), by recouping alleged overpayments from Plaintiffs, and reporting these so-called unpaid "debts" to credit bureaus, despite the fact that they had not reached the age of 18 at the time the SSA made the overpayments which, the SSA now contends, Plaintiffs are legally responsible for repaying.

152. Plaintiffs have suffered serious, ongoing, and irreparable injury as a result of Defendant's policies and practices as alleged herein.

153. Plaintiffs have no adequate remedy at law for the due process and other violations alleged herein, and cannot be made whole through restitution, damages, or other monetary payments alone.

154. Plaintiffs are entitled to a temporary, preliminary, and permanent injunction requiring Defendant: (a) to cease and desist from engaging in the unlawful conduct described herein; (b) to notify the Internal Revenue Service, State tax authorities, all credit bureaus with which the Social Security Administration communicates concerning debts, and any other persons or entities with whom the Social Security Administration communicates concerning debts, that Plaintiffs do not and did not have any lawful debt to the Social Security Administration on account of any overpayments; (c) to issue whatever instructions are necessary to cause such entities to release any and all tax refunds that should have been paid to Plaintiffs, or to directly refund to Plaintiffs whatever amounts were withheld and credited to the SSA; (d) to take all steps

necessary to ensure that any negative comments, remarks, or status regarding Plaintiffs' credit ratings and reports are corrected to reflect that Plaintiffs did not incur, and did not owe, the amounts that Defendant has claimed they owed; and (e) to review all policies, practices, and directives of the SSA and other agencies acting in combination and concert with the SSA that were a cause, in whole or in part, of the due process and statutory violations alleged herein, and to take all steps reasonably practicable to promptly modify and/or supplement those policies, practices, and directives to ensure that no similar due process and statutory violations will occur in the future.

**COUNT X: DUE PROCESS AND STATUTORY VIOLATIONS**  
**(Declaratory Relief, Applies to the Child Subclass)**

155. Plaintiffs J. Jones and Hart, on behalf of themselves and the class of all similarly situated individuals described herein and referred to as the Child Class, re-allege and incorporate the allegations contained in paragraphs 1 through 125 and 151. This Count is a civil action seeking declaratory relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration. Plaintiffs are entitled to a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. An actual controversy exists between the parties as alleged in this Complaint and will continue to exist unless and until it is resolved by this Court. Plaintiffs are entitled to a declaratory judgment that the Defendant's practice of recouping alleged overpayments from Plaintiffs and adversely reporting these "debts" to credit bureaus, despite the fact that Plaintiffs had not reached the age of 18 at the time the SSA made the overpayments which, the SSA now contends, Plaintiffs are legally responsible for repaying, violates the Due Process Clause of the Fifth Amendment to the Constitution and 42 U.S.C. § 404(a).

**COUNT XI: REQUEST FOR DECLARATORY RELIEF (Applies to Mary Grice)**

156. Plaintiff Mary Grice, re-alleges and incorporates the allegations contained in paragraphs 1 through 125 as if fully set forth herein. This Count is a civil action seeking a declaratory judgment against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration.

157. Plaintiff Grice is entitled to a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. An actual controversy exists between the parties as alleged in this Complaint and will continue to exist unless and until it is resolved by this Court. Plaintiff is entitled to a declaratory judgment that: (a) the SSA may not recover, through referrals to the Treasury Offset Program, overpayments that occurred prior to August 26, 1996, and may not report these alleged overpayments as unpaid “debts” to credit bureaus; (b) the SSA may not recover, through referrals to the Treasury Offset Program, overpayments that occurred prior to November 21, 2001, and may not report these alleged overpayments as unpaid “debts” to credit bureaus, where the SSA did not begin its efforts to recover such overpayments until more than 10 years later; (c) the Defendant’s practice of sending notice by mail prior to instituting enforcement proceedings to collect overpayments, and prior to referring debts for collection to the Department of Treasury or reporting them to credit bureaus, violates the Due Process Clause of the Fifth Amendment to the Constitution, as well as 31 U.S.C. § 3716(a), unless Defendant also receives proof that such notice has actually been delivered to the intended recipient; (d) the Defendant’s practice of recouping alleged overpayments from a person and reporting that person’s “debt” to credit bureaus without even contending, much less proving, that the person was the actual recipient of the overpayment, or that the person had any legal responsibility over any other person who received such an overpayment, violates the Due Process Clause of the

Fifth Amendment to the Constitution and 42 U.S.C. § 404(a); and (e) the Defendant's practice of making a determination of liability for an overpayment, without providing any evidence of any such "overpayment" to the person from whom the Defendant is trying to recoup the alleged overpayment, violates the Due Process Clause of the Fifth Amendment to the Constitution and 42 U.S.C. § 404(a).

**PRAYER FOR RELIEF**

Plaintiffs demand that the Court enter judgment against Defendant and grant the following relief:

1. Certify this action as a Rule 23 class action on behalf of the proposed classes.
2. Designate Plaintiffs Verbich, J. Jones, McCallion, S. Jones, and Hart as representatives of the classes described herein, and to appoint Plaintiffs' counsel as class counsel, first on an interim basis, and then on a permanent basis.
3. Enter an injunction ordering Defendant to cease and desist from engaging in the unlawful practices described herein, and to notify the Internal Revenue Service, the State tax authorities, any credit bureaus with which the Social Security Administration communicates concerning debts, and any other persons or entities with whom the Social Security Administration communicates concerning debts, that Plaintiffs do not and did not have any lawful debt to the Social Security Administration on account of any overpayment, and issue whatever instructions are necessary to cause such entities to release tax refunds that should have been paid to Plaintiffs, or directly refund to Plaintiffs whatever amounts were withheld and credited to the SSA;
4. Issue a Declaratory Judgment stating that: (a) the SSA may not recover, through referrals to the Treasury Offset Program, overpayments that occurred prior to August 26, 1996,

and may not report these alleged overpayments as unpaid “debts” to credit bureaus; (b) the SSA may not recover overpayments that occurred prior to November 21, 2001, or report these overpayments to credit bureaus as unpaid “debts,” where the Social Security Administration did not begin its efforts to recover such overpayments until more than 10 years later; (c) notice by mail issued to a person at any address other than that listed on the person’s tax return by the Social Security Administration prior to enforcement proceedings to collect overpayments, or prior to referring debts for collection to the Department of Treasury or to credit bureaus, violates the Due Process Clause of the Fifth Amendment and 31 U.S.C. § 3716(a), unless the SSA also receives proof that such notice has actually been delivered to the intended recipient; (d) the SSA’s practice of recouping alleged overpayments from individuals, and reporting them to credit bureaus as unpaid “debts,” without even contending, much less proving, that the individuals actually received any overpayment, or that they had any legal responsibility over any other person who received such an overpayment, violates the Due Process Clause of the Fifth Amendment and 31 U.S.C. § 404(a); (e) the SSA’s practice of recouping alleged overpayments from individuals, or reporting these overpayments to credit bureaus as unpaid “debts,” despite the fact that these individuals had not reached the age of 18 at the time the SSA made the alleged overpayments, violates the Due Process Clause of the Fifth Amendment and 31 U.S.C. § 404(a); and (f) the SSA’s practice of making a determination of liability for an overpayment, without providing any evidence of any such “overpayment” to the person from whom the SSA is trying to recoup the alleged overpayment, violates the Due Process Clause of the Fifth Amendment to the Constitution and 31 U.S.C. § 404(a).

5. Order that equitable tolling applies to any deadlines or statutes of limitations that may apply to any claims that could be asserted by Plaintiffs or members of the classes described herein.

6. Award Plaintiffs all costs of this action.

7. Award Plaintiffs their reasonable attorneys' fees pursuant to the Equal Access for Justice Act or other applicable provisions of law. And,

8. Grant Plaintiffs such other relief as the Court deems just and proper.

/S/ Robert L. Vogel

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of June 2014, this First Amended Complaint was filed through the ECF system of the Court and thereby served on counsel for the United States, who have previously entered an appearance in this lawsuit.

/S/ Robert L. Vogel

Robert L. Vogel