

U.S. DISTRICT JUDGE JAMES L. ROBERT
U.S. MAGISTRATE JUDGE J. RICHARD CREATURA

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION**

HELEN THORNTON, on behalf of herself and
all others similarly situated, and NATIONAL
COMMITTEE TO PRESERVE SOCIAL
SECURITY AND MEDICARE,

Plaintiffs,

vs.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Civil No. 2:18-cv-01409-JLR-JRC

**NOTICE OF JOINT STIPULATION
REGARDING NUMEROSITY, AND
JOINT MOTION TO VACATE
DISCOVERY SCHEDULE**

Note on Motion Calendar: June 29, 2020

NOTICE OF JOINT STIPULATION REGARDING
NUMEROSITY, AND JOINT MOTION TO VACATE
DISCOVERY SCHEDULE

2:18-cv-01409-JLR-JRC

U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Telephone: (202) 305-8576

1 The parties, having conferred, (1) jointly notify the Court that the parties have entered into a
2 stipulation (attached to this filing as Exhibit 1) that will resolve the question of numerosity in this
3 litigation, and (2) jointly request that any remaining discovery-related deadlines and the briefing
4 schedule set forth in the Court’s May 18, 2020 Order be vacated, because they are unnecessary in light
5 of the parties’ stipulation. As good cause for this request, the parties jointly offer the following:

6 1. On May 18, 2020, the Court authorized discovery regarding the number of individuals
7 that met the following proposed class definition, from the Report and Recommendation issued in this
8 matter: “All persons nationwide who presented claims for social security survivor’s benefits based on
9 the work history of their same-sex partner and who were barred from satisfying the marriage
10 requirements for such benefits because of applicable laws that prohibited same-sex marriage. This
11 class is intended to exclude any putative class members in *Ely v. Saul*, No. 4:18-cv-00557-BPV (D.
12 Ariz.).” ECF No. 82.

13 2. On May 29, Plaintiffs served discovery requests: eleven interrogatories, six requests
14 for admission, and fifteen requests for the production of documents.

15 3. As reflected in the attached stipulation, although Defendant represents that identifying
16 the precise number of putative class members is difficult (among other reasons, due to limitations on
17 access to some of Defendant’s records and files because of the ongoing pandemic), after a reasonably
18 diligent inquiry, Defendant now believes that that number likely exceeds 150, based on the records
19 that have been reviewed. Accordingly, Defendant no longer disputes that the putative class (as defined
20 above and in the Report & Recommendation) is sufficiently numerous to satisfy Rule 23(a)(1). *See,*
21 *e.g., Sullivan v. City of Berkeley*, 328 F.R.D. 352, 355-56 (N.D. Cal. 2018) (“The numerosity requirement
22 is not tied to any fixed numerical threshold, but courts generally find the numerosity requirement
23 satisfied when a class includes at least forty members.”).

24 4. Defendant continues to argue that certification of any class in this matter is
25 inappropriate, for the reasons stated in Defendant’s prior filings, with which Plaintiffs disagree.

1 5. As a result of the parties' stipulation and Defendant's concession, the parties
2 respectfully request that the Court vacate any remaining discovery deadlines and the briefing schedule
3 set forth in the Court's May 18, 2020 Order.

4 Dated: June 29, 2020

Respectfully submitted,

5 JOSEPH H. HUNT
6 Assistant Attorney General

7 BRAD P. ROSENBERG
8 Assistant Branch Director

9 /s/ Stephen M. Pezzi
10 STEPHEN M. PEZZI
11 Trial Attorney
12 United States Department of Justice
13 Civil Division, Federal Programs Branch
14 1100 L Street NW
15 Washington, DC 20005
16 Phone: (202) 305-8576
17 Fax: (202) 616-8470
18 Email: stephen.pezzi@usdoj.gov

Attorneys for Defendant

19 /s/ Linda R. Larson
20 Linda R. Larson (WSBA No. 9171)
21 NOSSAMAN LLP
22 601 Union Street, Suite 5305
23 Seattle, WA 98101
24 Email: llarson@nossaman.com
25 Telephone: 206-395-7630

26 Robert D. Thornton (admitted *pro hac vice*)
27 NOSSAMAN LLP
18101 Von Karman Avenue, Ste. 1800
Irvine, CA 92612
Email: rthornton@nossaman.com
Telephone: 949-833-7800

Peter C. Renn (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

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NUMEROSITY, AND JOINT MOTION TO VACATE
DISCOVERY SCHEDULE

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1100 L Street NW
Washington, DC 20005
Telephone: (202) 305-8576

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4221 Wilshire Blvd., Suite 280
Los Angeles, CA 90010
Email: prenn@lambdalegal.org
Telephone: 213-382-7600

Karen L. Loewy (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
Email: kloewy@lambdalegal.org
Telephone: 212-809-8585

Tara L. Borelli (WSBA No. 36759)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
730 Peachtree Street NE, Ste. 640
Atlanta, GA 30308
Email: tborelli@lambdalegal.org
Telephone: 404-897-1880

*Counsel for Plaintiffs Helen Josephine Thornton and
National Committee to Preserve Social Security and
Medicare*

U.S. DISTRICT JUDGE JAMES L. ROBERT
U.S. MAGISTRATE JUDGE J. RICHARD CREATURA

**UNITED STATES DISTRICT COURT
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**JOINT STIPULATION
REGARDING NUMEROSITY**

JOINT STIPULATION REGARDING NUMEROSITY

2:18-cv-01409-JLR-JRC

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1 The parties **HEREBY STIPULATE** as follows:

2 1. On May 18, 2020, the Court authorized discovery regarding the number of individuals
3 that met the following proposed class definition, from the Report and Recommendation issued in this
4 matter: “All persons nationwide who presented claims for social security survivor’s benefits based on
5 the work history of their same-sex partner and who were barred from satisfying the marriage
6 requirements for such benefits because of applicable laws that prohibited same-sex marriage. This
7 class is intended to exclude any putative class members in *Ely v. Saul*, No. 4:18-cv-00557-BPV (D.
8 Ariz.)” ECF No. 82.

9 2. Defendant has represented that, although identifying the precise number of putative
10 class members is difficult (among other reasons, due to limitations on access to some of Defendant’s
11 records and files because of the ongoing pandemic), after a reasonably diligent inquiry, that number
12 likely exceeds 150, based on the records that have been reviewed. Plaintiffs do not dispute that the
13 number of putative class members exceeds 150 individuals.

14 3. The parties therefore agree, for purposes of this litigation, that the putative class (as
15 defined above and in the Report & Recommendation) is sufficiently numerous to satisfy Rule 23(a)(1).

16 4. Defendant continues to argue that certification of any class in this matter is
17 inappropriate, for the reasons stated in Defendant’s prior filings, with which Plaintiffs disagree.

18 5. Defendant’s deadline to respond to Plaintiffs’ discovery requests is tolled pending the
19 Court’s consideration of the parties’ joint motion to vacate the discovery schedule in this matter, to
20 be filed concurrently with this stipulation.

1 Dated: June 29, 2020

Respectfully submitted,

2 JOSEPH H. HUNT
3 Assistant Attorney General

4 BRAD P. ROSENBERG
5 Assistant Branch Director

6 /s/ Stephen M. Pezzi
7 STEPHEN M. PEZZI
8 Trial Attorney
9 United States Department of Justice
10 Civil Division, Federal Programs Branch
11 1100 L Street NW
12 Washington, DC 20005
13 Phone: (202) 305-8576
14 Fax: (202) 616-8470
15 Email: stephen.pezzi@usdoj.gov

Attorneys for Defendant

16 /s/ Linda R. Larson
17 Linda R. Larson (WSBA No. 9171)
18 NOSSAMAN LLP
19 601 Union Street, Suite 5305
20 Seattle, WA 98101
21 Email: llarson@nossaman.com
22 Telephone: 206-395-7630

23 Robert D. Thornton (admitted *pro hac vice*)
24 NOSSAMAN LLP
25 18101 Von Karman Avenue, Ste. 1800
26 Irvine, CA 92612
27 Email: rthornton@nossaman.com
Telephone: 949-833-7800

Peter C. Renn (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
4221 Wilshire Blvd., Suite 280
Los Angeles, CA 90010
Email: prenn@lambdalegal.org
Telephone: 213-382-7600

Karen L. Loewy (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

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JOINT STIPULATION REGARDING NUMEROSITY

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120 Wall Street, 19th Floor
New York, NY 10005
Email: kloewy@lambdalegal.org
Telephone: 212-809-8585

Tara L. Borelli (WSBA No. 36759)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
730 Peachtree Street NE, Ste. 640
Atlanta, GA 30308
Email: tborelli@lambdalegal.org
Telephone: 404-897-1880

*Counsel for Plaintiffs Helen Josephine Thornton and
National Committee to Preserve Social Security and
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U.S. MAGISTRATE JUDGE J. RICHARD CREATURA

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ORDER

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ORDER

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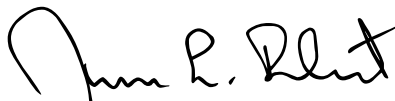
1 Upon consideration of the parties' stipulation regarding numerosity, the parties' joint motion
2 to vacate the discovery schedule, and the entire record herein, it is hereby

3 **ORDERED** that the parties' joint motion is **GRANTED**; and it is further

4 **ORDERED** that any remaining discovery deadlines and the briefing schedule set forth in
5 the Court's May 18, 2020 Order are hereby **VACATED**.

6 **SO ORDERED.**

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8 DATED this 9th day of July, 2020.

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11 _____
12 JAMES L. ROBART
13 United States District Judge
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ORDER

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