

1 Julie Wilensky – Cal. Bar No. 271765
2 CIVIL RIGHTS EDUCATION AND
3 ENFORCEMENT CENTER
4 2120 University Ave.
5 Berkeley, CA 97404
6 (510) 431-8484
7 jwilensky@creeclaw.org

Shannon Minter – Cal. Bar No. 168907
Amy Whelan – Cal. Bar No. 215675
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
(415) 392-6257
sminter@nclrights.org
awhelan@nclrights.org

6 Timothy P. Fox – Cal. Bar No. 157750
7 CIVIL RIGHTS EDUCATION AND
8 ENFORCEMENT CENTER
9 104 Broadway, Suite 400
10 Denver, CO 80203
11 (303) 757-7901
12 tfox@creeclaw.org

Nina Wasow – Cal Bar. No. 242047
FEINBERG, JACKSON
WORTHMAN & WASOW, LLP
383 4th Street, Suite 201
Oakland, CA 94607
(510) 269-7998
nina@feinbergjackson.com

Attorneys for Plaintiff

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO/OAKLAND DIVISION

15 ROBERT PRITCHARD,
16 Plaintiff,

17 v.

18 IUOE STATIONARY ENGINEERS
19 LOCAL 39 PENSION PLAN and BOARD
20 OF TRUSTEES OF THE IUOE
21 STATIONARY ENGINEERS LOCAL 39
22 PENSION PLAN,

Defendants,

Case No. 3:16-cv-355

COMPLAINT (ERISA)

INTRODUCTION

25 1. The IUOE Stationary Engineers Local 39 Pension Plan and its Board of Trustees
26 have refused to pay Plaintiff Robert Pritchard a mandatory spousal pension benefit solely
27 because Mr. Pritchard was married to a man. Mr. Pritchard was married to Thomas Conwell, a
28 hotel telecommunications engineer who earned pension benefits as a participant in the IUOE

1 Stationary Engineers Local 39 Pension Plan (“the Plan”). Mr. Conwell passed away on February
2 24, 2012. The Plan found Mr. Conwell eligible for a disability pension retroactive to August 1,
3 2011. The Plan requires that a disability pension be paid to a married participant in the form of a
4 joint and survivor pension – a monthly annuity for the combined lifetimes of both spouses. At all
5 relevant times, the Plan has defined “Spouse” as “a person to whom a Participant is legally
6 married.” The Plan refused to provide a joint and survivor pension, however, solely because both
7 spouses were male.

8 2. In Mr. Pritchard’s administrative appeal process, which continued until November
9 2015, Defendants ignored the Plan’s clear definition of “Spouse” and improperly continued to
10 deny Mr. Pritchard a spousal survivor benefit. This spousal benefit is required not only by the
11 Plan’s terms, but by the mandatory benefits provisions of the Employee Retirement Income
12 Security Act of 1974 (“ERISA”), which apply equally to different- and same-sex spouses. In
13 denying Mr. Pritchard the survivor benefit to which he is entitled as Mr. Conwell’s spouse,
14 Defendants have failed to follow the language of their own Plan and have violated ERISA.

15 JURISDICTION

16 3. Plaintiff brings this action for declaratory, injunctive, and monetary relief under
17 ERISA § 502(a)(1)(B) and § 502(a)(3), 29 U.S.C. §§ 1132(a)(1)(B) and 1132(a)(3). This Court
18 has subject-matter jurisdiction over Plaintiff’s claims under ERISA §§ 502(e) and (f), 29 U.S.C.
19 §§ 1132(e) and (f), and 28 U.S.C. § 1331.

20 VENUE

21 4. Venue is proper in the Northern District of California pursuant to ERISA §
22 502(e)(2), 29 U.S.C. § 1132(e)(2), because the ERISA-governed plan at issue was administered
23 in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(b) because the events or
24 omissions giving rise to Mr. Pritchard’s claims occurred in this District, and Mr. Pritchard lives
25 in this District.

26 //

27 //

28 //

INTRADISTRICT ASSIGNMENT

1
2 5. Under Local Civil Rule 3-2(d), this action should be assigned to the San
3 Francisco/Oakland Division. Alameda County and Contra Costa County are where the Plan is
4 administered and where some of the events or omissions giving rise to Mr. Pritchard's claim
5 occurred. Mr. Pritchard lives in the City and County of San Francisco. Actions arising in these
6 counties are assigned to the San Francisco or Oakland Divisions.

7 6. At all relevant times, Mr. Pritchard has been a beneficiary, as defined by ERISA §
8 3(8), 29 U.S.C. § 1002(8), of the Plan. At all relevant times, Mr. Conwell, Mr. Pritchard's late
9 spouse, was a participant, as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), in the Plan. Mr.
10 Pritchard lives in San Francisco, California.

11 7. At all relevant times, Defendant IUOE Stationary Engineers Local 39 Pension
12 Plan ("the Plan") has been an employee pension benefit plan within the meaning of ERISA §
13 3(2)(A), 29 U.S.C. § 1002(2)(A).

14 8. At all relevant times, the Plan offered pension benefits to participants, including
15 Mr. Conwell, employed under the terms of a collective bargaining agreement between certain
16 employers and the International Union of Operating Engineers, Stationary Local 39. Mr.
17 Conwell's employer, the San Francisco Hilton, contributed to the Plan on behalf of its
18 collectively bargained employees, including Mr. Conwell.

19 9. At all relevant times, Defendant Board of the Trustees has been a fiduciary of the
20 Plan under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). The Board of Trustees decides claims
21 for benefits under the Plan and reviews appeals of claim denials. Plan §§ 9.01, 9.04. The Plan
22 provides that the Board of Trustees has "discretionary authority to determine eligibility for
23 benefits and to construe the terms of this Plan." *Id.* § 9.04(d). The Board of Trustees denied Mr.
24 Pritchard's appeal of his claim for spousal benefits under the Plan.

FACTS

25
26 10. Mr. Conwell worked as a Telecommunications Engineer at the San Francisco
27 Hilton for many years. For more than thirty years, he was a member of the IUOE Stationary
28 Engineers Local 39 Union. At all relevant times, was a fully vested participant in the Plan.

1 11. Mr. Conwell and Mr. Pritchard married in San Francisco, California on August
2 28, 2008.

3 12. The Plan is a defined benefit plan established and qualified under Section 401 of
4 the Internal Revenue Code, 26 U.S.C. § 401. As a defined benefit plan, the Plan is subject to
5 certain requirements under ERISA and the Internal Revenue Code.

6 13. Mr. Conwell was disabled from working. In July of 2011, he applied for disability
7 benefits from the Social Security Administration.

8 14. Mr. Conwell applied in person, accompanied by Mr. Pritchard, for a Disability
9 Pension under the Plan on or about July 11, 2011.

10 15. The Plan defines “Spouse” as follows: “‘Spouse’ means a person to whom a
11 Participant is legally married.”¹ Plan § 1.21.

12 16. In his pension application, Mr. Conwell made clear that he was married and that
13 Mr. Pritchard was his spouse. He checked “Married” for his marital status and listed Mr.
14 Pritchard’s name, date of birth, and the date of the couple’s marriage. The file includes copies of
15 both spouses’ photo identification and birth certificates.

16 17. The Plan requires that a participant who elects to receive a Disability Pension
17 “shall be offered all payment options available under the Plan subject to the provisions of
18 Section 7.02.” Plan § 3.10.

19 18. Section 7.02 of the Plan requires that “[a]ll pensions shall be paid in the form of a
20 Joint and Survivor Pension, unless the Participant has filed with the Board, in writing, a timely
21 rejection of that form of pension, subject to all of the conditions of this Section.” *Id.* § 7.02. It
22 further provides:

23 No rejection shall be effective unless the Spouse of the Participant has consented
24 in writing to such rejection and acknowledged the effect thereof, and the consent
25 states the specific beneficiary or beneficiaries and that the optional method of
26 payment may not be changed without consent of the spouse, and such rejection is

27 ¹ The version of the Plan in effect on the date of Mr. Conwell’s application for benefits
28 (and subsequent death) was revised and restated effective January 1, 2011. The Plan was
amended effective January 1, 2015. It does not matter whether the 2011 or 2015 Plan applies, as
the provisions that govern Mr. Pritchard’s claims – including the definition of “Spouse” – are the
same in both versions.

1 witnessed by an authorized Fund Representative or Notary Public.

2 *Id.*

3 19. A Joint and Survivor Pension under the Plan is “a lifetime pension for a married
4 Pensioner who meets the eligibility requirements for any type of Pension . . . plus a lifetime
5 pension for his surviving Spouse at retirement, starting after the death of the Pensioner.” *Id.* §
6 7.01. That section further provides that “[t]he monthly amount to be paid to the surviving Spouse
7 is one-half the monthly amount which was payable or would have been payable to the deceased
8 Pensioner or Participant.” *Id.*

9 20. Mr. Conwell did not elect a single life annuity or other non-spousal form of
10 benefit in his Pension Plan application, nor did Mr. Pritchard sign a spousal consent form for Mr.
11 Conwell to elect a non-spousal form of benefit under the Pension Plan.

12 21. According to a handwritten notation on the application, Mr. Conwell’s application
13 for a Disability Pension under the Plan was held pending the disposition of Mr. Conwell’s
14 application for Social Security disability benefits.

15 22. Mr. Conwell’s condition declined rapidly in late 2011 and early 2012.

16 23. On February 23, 2012, the medical director of the hospice agency where Mr.
17 Conwell was receiving care faxed a letter to the Pension Plan stating that Mr. Conwell had a
18 terminal illness, was in a declining state, and that his prognosis was fewer than six months.

19 24. The Plan provides that a participant who has filed an application for a Social
20 Security Disability benefit but who has not yet received a determination “shall be deemed totally
21 disabled if he submits adequate and reasonable evidence that he is terminally ill.” Plan § 3.08.

22 25. On February 23, 2012, Linda Gubinski, the Plan’s Pension Coordinator, requested
23 that Mr. Conwell’s application for a Disability Pension be approved under section 3.08 of the
24 Plan, because Mr. Conwell had a terminal illness. The request was approved on February 24,
25 2012, with a notation to “process with the issuing of his pension.”

26 26. Mr. Conwell passed away on February 24, 2012.

27 27. The Plan’s “New Pension Set Up – Informational Sheet,” listed as prepared and
28 reviewed on February 24, 2012, the date of Mr. Conwell’s death, identifies Mr. Conwell as the
participant and Mr. Pritchard as the beneficiary, and lists both spouses’ Social Security Numbers

1 and dates of birth. Next to an asterisk at the bottom of the page is a handwritten notation: “Same
2 Sex Marriage; member died 2/24/12, per legal eligible benefits to be paid to named beneficiary.”

3 28. The Pension Plan’s “Pension DB Employee History Report,” dated February 24,
4 2012, lists Mr. Conwell’s marital status as “M” – married. Under the documentation checklist on
5 the New Pension Set-Up Form, however, no boxes are checked for “J & S Election Form,”
6 “Spousal Consent Form,” and “Certification Marital/Single Status.” As the “Option Elected,”
7 “Single Life” is written by hand, although Mr. Conwell did not elect that option in his pension
8 application.

9 29. The Plan subsequently paid \$14,641.62 as the “benefits that were due and payable
10 to Mr. Conwell before his death” – approximately seven months of a single life annuity to Mr.
11 Conwell from August 1, 2011 until the date of his Mr. Conwell’s death. Defendants set up the
12 single life annuity for Mr. Conwell on the date Mr. Conwell died, notwithstanding that the Plan
13 knew Mr. Conwell was married, and that Mr. Conwell provided the marriage certificate and
14 other documentation about Mr. Pritchard when he applied for the benefit in July 2011.

15 30. The \$14,641.62 was paid to Mr. Pritchard as the benefit that would have been
16 payable to Mr. Conwell if he had been single at the time of his effective retirement in August
17 2011. The benefit paid was *not* the Joint and Survivor Pension required by the Plan, which is a
18 monthly annuity for Mr. Conwell from his retirement date of August 1, 2011 until his death in
19 February 2012, and then a monthly annuity (for half the amount paid to Mr. Conwell) for Mr.
20 Pritchard each month for the duration of Mr. Pritchard’s life.

21 31. By letter dated August 14, 2012, the Pension Plan denied Mr. Pritchard’s request
22 for survivor benefits under the Plan, incorrectly asserting that Mr. Conwell “was considered
23 single, as a matter of law” under the “rules of the Plan,” and that the Plan was “prohibit[ed]”
24 from “recognizing same-sex marriage at this time.” This letter did not comply with ERISA’s
25 claims regulations or the language in the Plan regarding claims and appeal procedures. 29 C.F.R.
26 § 2560.503-1(g); Plan § 9.04.

27 //

28 //

1 32. On September 23, 2015, through counsel, Mr. Pritchard appealed the earlier
 2 erroneous decision denying the Joint and Survivor Pension. The appeal explained that the Board
 3 of Trustees is required to follow the terms of the Plan, which require payment of a Joint and
 4 Survivor Pension, since Mr. Conwell was married at the time of his retirement and Mr. Pritchard
 5 was his “Spouse” as defined by the Plan. The appeal also noted that Mr. Pritchard is entitled to
 6 this spousal form of benefit – a qualified joint and survivor annuity – under federal law. Under
 7 *United States v. Windsor*, 133 S. Ct. 2675 (2013), ERISA and federal law require defined benefit
 8 plans like the Plan to provide a qualified joint and survivor annuity to *all* married participants,
 9 including participants in same-sex marriages. 29 U.S.C. § 1055(a)(1); DOL Technical Release
 10 2013-04. Mr. Pritchard’s appeal also explained that, while the Board is required to evaluate his
 11 claim under current federal law, Section 3 of DOMA did not preclude a private employee benefit
 12 plan from paying a spousal benefit to Mr. Pritchard even before *Windsor*.

13 33. By letter dated November 9, 2015, the Board of Trustees denied Mr. Pritchard’s
 14 appeal. It erroneously asserted that “under the terms of the Pension Plan, the Participant was
 15 single at the time of his retirement and death.” This is not what the terms of the Plan say.²

FIRST CLAIM FOR RELIEF

[Claim for Benefits Under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), against All Defendants]

18 34. Plaintiff incorporates Paragraphs 1 through 33 as though fully set forth here.

19 35. Plaintiff has exhausted his administrative remedies.

20 36. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan participant to
 21 bring a civil action to recover benefits due to him under the terms of a plan, to enforce his rights
 22 under the terms of a plan, and/or to clarify his rights to future benefits under the terms of a plan.
 23

24
 25 ² Some pension plans defined “spouse” in a way that excluded same-sex spouses, but this
 26 Plan did not. According to the trust agreements establishing the IUEO Stationary Engineers
 27 Local 39 pension plans, the same individuals who are the Board of Trustees for the Pension Plan
 28 also serve as the Board of Trustees of the IUOE Stationary Engineers Local 39 Annuity Trust
 Plan. The Annuity Trust Plan defined “Spouse” as “the person of the opposite sex to whom the
 Participant is married in a legal union between one man and one woman as husband and wife.”
 Mr. Conwell was a participant in both plans. Benefits under the Annuity Trust Plan are not at
 issue in this lawsuit.

1 37. Mr. Pritchard's request for a survivor benefit under the Plan was a claim for a
2 plan benefit or benefits under 29 C.F.R. § 2560.503-1(e).

3 38. At all relevant times, Mr. Pritchard has been Mr. Conwell's Spouse as defined by
4 Section 1.21 of the Plan.

5 39. Because Mr. Conwell was eligible for a Disability Pension with an effective
6 retirement date of August 1, 2011, Defendants were required by the terms of the Plan to provide
7 a Joint and Survivor Pension, which is a monthly annuity for Mr. Conwell from August 1, 2011
8 to February 24, 2012 and a monthly annuity for Mr. Pritchard beginning after Mr. Conwell
9 passed away.

10 40. To the extent Defendants have discretion to interpret the Plan, it is an abuse of
11 discretion to interpret "Spouse" contrary to its unambiguous definition in the Plan, which is "a
12 person to whom a Participant is legally married." It is also an abuse of discretion not to provide a
13 married participant with a Joint and Survivor Pension as required by the terms of the Plan.

14 41. By the acts and omissions described above, Defendants violated, and continued to
15 violate, the terms of the Plan and Plaintiff's rights under it.

16 **SECOND CLAIM FOR RELIEF**

17 **[Claim for Breach of Fiduciary Duty Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3),**
18 **against Defendant Board of Trustees]**

19 42. Plaintiff incorporates Paragraphs 1 through 41 as though fully set forth here.

20 43. ERISA § 404(a), 29 U.S.C. § 1004(a), requires that a fiduciary discharge its duties
21 with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive
22 purpose of providing benefits to participants and fiduciaries and defraying reasonable expenses
23 of administering the plan, and in accordance with the documents and instruments governing the
24 plan insofar as such documents and instruments are consistent with other provisions of ERISA.

25 44. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a beneficiary of a plan to
26 file suit to "enjoin any act or practice" that violates Title I of ERISA or the terms of a plan,
27 and/or to obtain "other appropriate relief" to redress such violations.

28 //

1 45. ERISA § 205(a)(1), 29 U.S.C. § 1055(a)(1), is part of Title I of ERISA. ERISA §
 2 205(a)(1) requires payment of a qualified joint and survivor annuity to a vested participant in a
 3 defined benefit plan – such as this Plan – who is married and who dies after the annuity starting
 4 date. Here, the effective retirement date and annuity starting date was August 1, 2011, so Mr.
 5 Conwell’s death in February 2012 was after the annuity starting date.

6 46. Following *United States v. Windsor*, consistent with guidance from the Internal
 7 Revenue Service, the Department of Labor issued Technical Release No. 2013-04, which
 8 provides that where the Secretary of Labor has authority to issue regulations, rulings, opinions
 9 and exemptions in Title I of ERISA, the term “spouse” will be “read to refer to any individuals
 10 who are lawfully married under any state law,” including same-sex couples. This guidance
 11 confirms that in light of *Windsor*, same-sex spouses are entitled to the protection of ERISA’s
 12 mandatory benefits provisions.

13 47. In evaluating Mr. Pritchard’s administrative appeal in 2015, the Board was
 14 obligated to interpret the Plan consistent with ERISA and current federal law in determining Mr.
 15 Pritchard’s eligibility for a spousal survivor benefit. Pritchard is Mr. Conwell’s spouse under
 16 both the terms of the Plan and ERISA’s mandatory spousal benefits provisions.

17 48. By engaging in the acts and omissions described above, including but not limited
 18 to: interpreting the Plan contrary to its terms, interpreting the Plan contrary to federal law,
 19 refusing to apply the law in effect at the time of Mr. Pritchard’s administrative appeal, and
 20 refusing to provide Mr. Pritchard a benefit mandated by ERISA, Defendant Board of Trustees
 21 has breached its fiduciary duty to Mr. Pritchard and has violated Title I of ERISA.

22 49. As a result of Defendant Board of Trustees’ breaches of fiduciary duty and
 23 violations of Title I of ERISA, Plaintiff has been harmed.

PRAYER FOR RELIEF

25 WHEREFORE, Plaintiff requests that the Court grant the following relief:

26 As to the First Claim for Relief:

27 A. Declare that Defendants have violated the terms of the Plan;

1 B. Order Defendants to pay a Joint and Survivor Pension to Plaintiff beginning on
2 February 24, 2012 with prejudgment interest;

3 C. Declare that Plaintiff has the right to receive a monthly Joint and Survivor
4 Pension under Section 1.21 of the Plan;

5 D. Award Plaintiff reasonable attorneys' fees and costs of suit under ERISA §
6 502(g), 29 U.S.C. § 1132(g); and

7 E. Provide such other relief as the Court deems equitable and just.

8 As to the Second Claim for Relief:

9 A. Declare that Defendant Board of Trustees breached its fiduciary duty to Plaintiff;

10 B. Declare that by refusing to follow the Plan terms, Defendant Board of Trustees
11 has violated ERISA;

12 C. Declare that by refusing to provide a mandated spousal benefit to Plaintiff,
13 Defendant Board of Trustees has violated ERISA;

14 D. Declare that Plaintiff has a right to receive a monthly survivor annuity under
15 ERISA;

16 E. Enjoin Defendant Board of Trustees from interpreting Section 1.21 of the Plan to
17 exclude same-sex spouses of participants who passed away or retired before *Windsor*;

18 F. Order that Defendant Board of Trustees pay to Plaintiff amounts to make
19 Plaintiff whole for the harm he has suffered due to the Board's breaches by providing other
20 appropriate equitable relief, including but not limited to surcharge, restitution, prejudgment
21 interest, and imposing a constructive trust and/or equitable lien on any funds wrongfully held by
22 Defendant;

23 G. Award Plaintiff reasonable attorneys' fees and costs of suit under ERISA §
24 502(g), 29 U.S.C. § 1132(g); and

25 H. Provide such other relief as the Court deems equitable and just.

26 //

27 //

28 //

1 Dated: January 22, 2016

Respectfully submitted,

2 /s/ Julie Wilensky
3 Julie Wilensky – Cal. Bar No. 271765
4 CIVIL RIGHTS EDUCATION AND
5 ENFORCEMENT CENTER
6 2120 University Ave.
7 Berkeley, CA 97404
8 (510) 431-8484
9 jwilensky@creeclaw.org

10 Timothy P. Fox – Cal. Bar No. 157750
11 CIVIL RIGHTS EDUCATION AND
12 ENFORCEMENT CENTER
13 104 Broadway, Suite 400
14 Denver, CO 80203
15 (303) 757-7901
16 tfox@creeclaw.org

17 Shannon Minter – Cal. Bar No. 168907
18 Amy Whelan – Cal. Bar No. 215675
19 NATIONAL CENTER FOR LESBIAN
20 RIGHTS
21 870 Market Street, Suite 370
22 San Francisco, CA 94102
23 (415) 392-6257
24 sminter@nclrights.org
25 awhelan@nclrights.org

26 Nina Wasow – Cal Bar. No. 242047
27 FEINBERG, JACKSON WORTHMAN &
28 WASOW, LLP
383 4th Street, Suite 201
Oakland, CA 94607
(510) 269-7998
nina@feinbergjackson.com

Attorneys for Plaintiff