

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

L.N.P.)
on his own behalf and on behalf of his)
dependent children P.D.P. and L.D.P.)
and on behalf of all others similarly situated)

Plaintiffs,)

- versus -)

FRANK BISIGNANO,)
Commissioner of Social Security Administration,)
et al.,)

Defendants.)

Case No. 1:24-cv-01196 (MSN/IDD)

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES

KELLEY DRYE & WARREN LLP

Joseph J. Green (VSB # 40336)
jgreen@kelleydrye.com
Ira T. Kasdan (admitted *pro hac vice*)
ikasdan@kelleydrye.com
670 Maine Avenue, SW
Suite 600
Washington, DC, 20024
Tel: (202) 342-8400
Facsimile: (202) 342-8451

Damon W. Suden (admitted *pro hac vice*)
dsuden@kelleydrye.com
Steven W Schlesinger (admitted *pro hac vice*)
sschlesinger@kelleydrye.com
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Tel: (212) 808-7800
Facsimile: (212) 808-7897

Counsel for Plaintiffs

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
ARGUMENT	2
I. THE FEE MOTION IS NOT PREMATURE.....	2
A. The Court Ordered Class Counsel To File This Application Within 14 Days Of Entry Of Judgment	2
B. Class Counsel Obtained A Favorable Judgment For The Class And This Court Already Ruled That Class Counsel Is Eligible For Fees Under Section 406(b).....	4
C. The Court Can And Should Determine The Fee Percentage Now	6
II. DEFENDANTS MISCHARACTERIZE THE PROPER STANDARD FOR DETERMINING A REASONABLE FEE PERCENTAGE	8
A. The Court May Consider All Hours In The Reasonableness Analysis.....	8
B. The Fees Sought By Class Counsel Are Not A Windfall	9
C. Defendants’ Objection To “Other Auxiliaries” Is Misplaced.....	13
III. THE <i>GISBRECHT</i> AND OTHER RELEVANT FACTORS OVERWHELMINGLY FAVOR KDW’S FEE REQUEST	14
CONCLUSION.....	16

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Brinker v. Guiffrida</i> , 798 F.2d 661 (3d Cir. 1986).....	12
<i>Connie S. v. Comm’r of Soc. Sec. Admin.</i> , 2025 WL 1150722 (W.D. Va. Apr. 17, 2025)	13
<i>In re Cendant Corp. PRIDES Litig.</i> , 243 F.3d 722 (3d Cir. 2001).....	16
<i>Fields v. Kijakazi</i> , 24 F.4th 845 (2d Cir. 2022)	9, 10, 15
<i>Gisbrecht v. Barnhart</i> , 535 U.S. 789 (2002).....	<i>passim</i>
<i>Greenberg v. Colvin</i> , 2015 WL 4078042 (D.D.C. July 1, 2015).....	6, 11, 13
<i>Henshaw v. Barnhart</i> , 317 F. Supp. 2d 657 (W.D. Va. 2004)	8
<i>Hopkins v. Cohen</i> , 390 U.S. 530 (1968).....	14
<i>Jones v. Dominion Res. Servs.</i> , 601 F. Supp. 2d 756 (S.D. W. Va. 2009).....	10
<i>L.N.P. v. Kijakazi</i> , 2021 WL 7185231 (E.D. Va. Nov. 24, 2021), <i>aff’d</i> , 64 F.4th 577 (4th Cir. 2023)	9
<i>Lane v. Comm’r of Soc. Sec.</i> , 646 F. App’x 392 (6th Cir. 2016)	8
<i>Mudd v. Barnhart</i> , 418 F.3d 424 (4th Cir. 2005)	<i>passim</i>
<i>Paul N. v. Bisignano</i> , 2025 WL 2627423 (S.D. W. Va. Sept. 11, 2025).....	13
<i>In re Rite Aid Corp. Sec. Litig.</i> , 362 F. Supp. 2d 587 (E.D. Pa. 2005)	10, 11

Skochin v. Genworth Financial, Inc.,
2020 WL 6536140 (E.D. Va. Nov. 5, 2020).....6, 10, 11

Steigerwald v. Saul,
2020 WL 6485107 (N.D. Ohio Nov. 4, 2020).....13

Walker v. Astrue,
593 F.3d 274 (3d Cir. 2010).....5

Statutes

42 U.S.C. § 406(b) *passim*

42 U.S.C. § 406(b)(1)(A)1, 5

Other Authorities

20 C.F.R. § 404.170314

Class Counsel Kelley Drye & Warren LLP (“Class Counsel” or “KDW”) respectfully submits this Reply in further support of their Motion for Attorneys’ Fees pursuant to 42 U.S.C. § 406(b).

INTRODUCTION

Defendants’ Response (“Resp.”) (Doc. 194) raises no valid basis for denying or delaying adjudication of Class Counsel’s fee motion. To the contrary, the Court has all the necessary information at hand to set a percentage fee award at the upcoming fairness hearing on July 10. While Defendants advance several arguments for the Court to wait, none withstands scrutiny and each misconstrues the Court’s Orders and Judgment, the governing statute, and well-established caselaw.

Defendants argue that the fee motion is premature because the matter is stayed pending any potential appeal. Resp. at 2–5. Not so. The Court stayed enforcement of the Judgment on the grounds that it would be prejudicial to the agency to have to pay benefits while an appeal was pending. But the Court explicitly ordered Class Counsel to file its fee motion within 14 days of entry of the Judgment. Neither party requested that such deadline be stayed, nor would it make sense to do so.

Defendants also argue that Plaintiffs are not “prevailing parties” and have not obtained a “favorable judgment” as required by 42 U.S.C. § 406(b)(1)(A) because the Court’s Judgment may be subject to appeal. Resp. at 4–5, 10–11. But the existence of an appeal (much less the mere possibility of an appeal) does not negate the Judgment that was entered in favor of the class.

Defendants also suggest that Class Counsel have not provided sufficient documentation to support their fee request and seek to recover for work unrelated to this case. Resp. at 10–11. The Supreme Court in *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002), and the Fourth Circuit in *Mudd v.*

Barnhart, 418 F.3d 424 (4th Cir. 2005), however, have dispensed with the lodestar method of calculating fees in the context of Section 406(b) fees. Therefore, the Court need not—and should not—scour through billing records in “satellite” litigation to review hours, all of which are related to this case in any event, to determine a reasonable percentage of past-due benefits to award to Class Counsel as a fee. Moreover, Defendants neither challenge, much less rebut, the accuracy of the Joubert or Kasdan Declarations submitted in support of Class Counsel’s fee request. *See* Docs. 185-1, 185-2. Both contain the unchallenged requisite facts that allow the Court to grant at this stage a reasonable fee percentage by applying the operative criteria found in *Gisbrecht*, *Mudd*, and the other authorities cited in KDW’s opening memorandum.

In light of the Court’s resolution of Plaintiffs’ motion for clarification, Doc. 191, Class Counsel seek a fee of 20% of the past-due benefits owed to members of the class as narrowed by the Court’s Amended Final Judgment Order and Amended Judgment. Actual disbursement of attorneys’ fees would await, as the Court’s Judgment dictates, simultaneous payment to class members.

ARGUMENT

I. The Fee Motion Is Not Premature

A. The Court Ordered Class Counsel To File This Application Within 14 Days Of Entry Of Judgment

Defendants’ threshold argument that the fee motion is premature because “this matter” is stayed, *Resp.* at 2–3, ignores the plain text of the Court’s Orders. Paragraph 4 of the Final Judgment Order expressly directs that Plaintiffs’ fee application “shall be submitted within fourteen (14) days of entry of this Judgment.” *Resp.* at 2 (quoting Doc. 176 ¶ 4). The Court’s Amended Final Judgment Order of May 22, 2026 (Doc. 192), retained Paragraphs 4 and 7 without modification—confirming the Court’s intent that the fee application proceeds on the timeline set,

notwithstanding the stay of the agency’s obligation to pay benefits. Resp. at 2 (acknowledging that Paragraphs 4 and 7 “remained the same”). KDW timely filed its fee motion in compliance with that directive. Memorandum in Support of Motion for Attorneys’ Fees (Doc. 185) (hereafter “Mem.”) at 14. Defendants cannot seriously contend that the Court’s Order simultaneously required KDW to file its fee motion within 14 days and also stayed the very motion it required to be filed. That would be an absurd interpretation of the Judgment. Were it otherwise, the Court would not have included a 14-day filing requirement in the Final Judgment Order.

Moreover, the point of the stay entered by the Court was to prevent SSA from disbursing money before the Fourth Circuit weighed in on any appeal. As the Court stated at the March 13, 2026, hearing: “it would be irreparable harm and tremendously difficult *if the government were to start to disburse this money* before the Fourth Circuit had weighed in.” Resp. at 3 (quoting Doc. 162 at 4:5–10) (emphasis added). The Court’s concern was about premature *disbursement of benefits to the class*—not about briefing or deciding the fee petition. Setting a percentage entails no expenditure and implicates none of the Court’s stated concerns about premature disbursement.

Defendants argue that proceeding with this motion “would lead to two odd results”: that Class Counsel would “receive” fees while the underlying benefit payments to the class are “stayed pending conclusion of the parties’ appeals,” and that “should the agency prevail on appeal, the agency would have to claw those fees back from Plaintiff’s counsel.” Resp. at 3. These concerns are unfounded because they mischaracterize the relief being sought. Class Counsel are not asking for the immediate disbursement of fees that would necessitate clawbacks in the event of reversal. Nowhere does KDW’s motion seek immediate fee payments; obviously, no money would come to Class Counsel until benefits are actually disbursed to class members. Indeed, the Judgment makes clear that “[t]he percentage fee awarded shall be withheld from the past-due amounts paid

to class members under Paragraph 2 and paid directly to Plaintiffs’ counsel.” Doc. 192 ¶ 4. Thus, no fees will be paid to Class Counsel unless or until benefits are paid to the class—and the payment of benefits is currently stayed.

The concerns Defendants raise about premature disbursement and potential clawbacks are therefore illusory. KDW asks only that the Court now grant a reasonable fee percentage—20%—for commonsensical purposes of efficiency and conservation of the Court’s and the parties’ time and resources: The percentage should be set now for ready application whenever past-due benefits are ultimately calculated and paid. Setting the percentage now would also allow the issue to be taken up on appeal, if necessary, together with the merits. Otherwise, if the Court waits to set the fee until the appeals are over and the agency recalculates all of the past-due benefits, there could be further appeals over the fee award that would delay not only payment of the attorneys’ fees themselves but, by necessity, also delay payment of the past-due benefits to class members from which the fees must be withheld. All of this can be avoided by deciding the percentage fee award now. Mem. at 28–29.

B. Class Counsel Obtained A Favorable Judgment For The Class And This Court Already Ruled That Class Counsel Is Eligible For Fees Under Section 406(b)

Defendants’ argument that Plaintiffs are not “prevailing parties” and have not obtained a “favorable judgment” because the Judgment may be appealed has already been rejected by the Court and is otherwise unfounded. Resp. at 4–5.

This Court already resolved the question of whether Class Counsel are eligible to receive fees under Section 406(b), ruling that “Plaintiffs’ counsel *are eligible* for an attorneys’ fee award under 42 U.S.C. § 406(b) based on a percentage of past-due benefits paid to the class.” Doc. 192 ¶ 4 (emphasis added). The Judgment further provides that a fee application may be submitted within 14 days and “Defendants reserve the right to object to the specific percentage requested.”

Id. Thus, the only issue to be resolved now is the proper percentage fee to award to Class Counsel—not their eligibility to receive fees in the first place.

In any event, Defendants’ argument that an appeal renders counsel ineligible for fees is without merit. Section 406(b) permits fees “[w]hen a court renders a judgment favorable to a claimant.” 42 U.S.C. § 406(b)(1)(A); *see also* Resp. at 6 (quoting same). There is no dispute that this Court has rendered such a judgment. The pendency of an appeal (much less, as here, the mere *possibility* of an appeal) does not erase that Judgment or strip the class of their status as having obtained a favorable result. Indeed, this Court’s Judgment and Rule 54(d) require any application for fees to be filed within 14 days of entry of the Judgment—which will obviously occur before the 60-day deadline to appeal in this case and many months before any appeal is fully resolved. Section 406(b) indicates that the Court include the fee award “as part of its judgment,” further confirming that fees should be awarded along with the Judgment and not wait months or years later upon resolution of any appeals. Rule 54(d)’s 14-day deadline also would make little sense if Class Counsel were not eligible for fees until the time to appeal had expired and/or all appeals had been resolved. Of course, in the event of an appeal and a reversal on the merits, Class Counsel would not receive any fees.

Defendants’ reliance on *Walker v. Astrue*, 593 F.3d 274, 278 (3d Cir. 2010), is misplaced. *See* Resp. at 5. *Walker* concerned the typical scenario of a remand to the agency for further administrative proceedings to determine whether benefits are even appropriate and any “right to a fee award [even] exists”—a situation fundamentally different from the present class action case where the Court entered judgment, explicitly ruled in favor of the class and ordered the agency to pay past-due benefits without a remand, and found Class Counsel eligible for Section 406(b) fees. The Court further retained jurisdiction for one year to ensure compliance. *See* Doc. 192. This is

not a case where there is any doubt about whether a favorable judgment has been rendered, or whether Class Counsel is eligible to obtain fees; the only question is the percentage amount.

C. The Court Can And Should Determine The Fee Percentage Now

Defendants argue that because the precise dollar amount of past-due benefits is not yet determined, the Court cannot evaluate the fee request. Resp. at 5–6. The percentage determination can and should be made now based on the factors set forth in *Gisbrecht*, *Mudd*, and the other authorities cited in KDW’s opening memorandum. Mem. at 14–21.

Both the *Greenberg* and *Steigerwald* courts—the only two other courts to have awarded Section 406(b) fees in class actions—set fee percentages even in the absence of final agency computation. *Greenberg*, in particular, granted the 20% fee award in that case based on an estimate of anticipated benefits to the class. See *Greenberg v. Colvin*, 2015 WL 4078042, at *8 & n.8 (D.D.C. July 1, 2015). Indeed, it is not uncommon, much as *Greenberg* did, for a court in a common fund case to set a fee award on the basis of estimates. See, e.g., *Skochin v. Genworth Fin., Inc.*, 2020 WL 6536140, at *7 (E.D. Va. Nov. 5, 2020) (noting the estimated range of dollar amounts of recovery for the class).

Here, KDW has submitted the projected award for the class narrowed by the Court’s recent clarification, Docs. 182; 191–93, and nowhere in its Response does SSA question the accuracy of that dollar amount. SSA did not move to strike the fee motion due to the alleged “stay” but instead responded to it on the merits and without contesting the Joubert Declaration (Doc. 185-1) or its calculation of estimated past-due benefits for the class. The Joubert Declaration’s conclusions are based on data received in discovery from SSA itself and are easily verifiable per the computer-based steps that Mr. Joubert took to calculate them as set out in his declaration. Doc. 185-1 (hereafter “Joubert Decl.”) ¶¶ 3–4; Mem. at 1–2 n.2. SSA has not offered any competing estimate and has not challenged the methodology or results of KDW’s calculations. See generally Resp.

(nowhere even mentioning the Joubert Declaration or calculations). The Court can and should rely on these uncontested estimates in setting the fee percentage.

Indeed, it is implausible that Defendants could not have easily challenged the Joubert Declaration had they believed it to be inaccurate. The agency testified under oath (through its Rule 30(b)(6) deponent, Mr. Gallagher) that it would only take 20-40 hours to not just write the code necessary to calculate past-due benefits but also to “execute it, produce a sample, [and] look at aberrant findings.” Gallagher Dep. 84:18–85:10 (cited in Doc. 138 at 14 n.12 and Doc. 154 at 15). With the agency having failed to rebut Mr. Joubert, there is no reason for the Court not to accept his findings.

Defendants also acknowledge that past-due benefit awards will change—indeed, will increase—once an appeal has concluded “based simply on the passage of time.” Resp. at 5. Plaintiffs agree that past-due benefits will continue to rise during an appeal. But this is no reason to delay issuing a fee award. Nothing in *Gisbrecht* nor Section 406(b) itself requires a court to know the absolute final award amount before being able to set a percentage fee amount.

More particularly, any such requirement in a class action such as this one is impracticable and will only perpetuate additional delay in affording the class the relief they deserve. Under Defendants’ approach, the fee percentage would not be determined until years from now, as SSA has at least twelve months after the stay is lifted to complete its recalculations. *See* Doc. 192 ¶ 5. Any appeal could itself take a year or more. Thus, the practical effect of Defendants’ position is that the fee motion would not be decided until two or more years from now, possibly followed by its own appeal. And during that time, past-due benefits could not be paid because the attorneys’ fees must be taken out of those benefits before they are paid—thus prejudicing the class who have already waited long enough to receive the benefits to which they are entitled. Again, nothing in

Section 406(b), *Gisbrecht*, or any other authority requires or supports such an extraordinary wasteful delay in what, at this stage *in the context of this class action*, should be a straightforward determination, based on the applicable caselaw criteria, of a reasonable fee percentage.

II. Defendants Mischaracterize The Proper Standard For Determining A Reasonable Fee Percentage

A. The Court May Consider All Hours In The Reasonableness Analysis

Defendants argue that Section 406(b) does not permit fees for time spent on the prior dismissed case or at the administrative level. Resp. at 6–8. KDW agrees that fees under Section 406(b) compensate only court-related work. However, Defendants disregard the distinction between the basis for the fee, *i.e.*, a percentage of past-due benefits awarded by reason of a favorable court judgment, and the factors relevant to whether that fee is reasonable.

The Fourth Circuit in *Mudd* expressly held that it “was appropriate” for the district court to consider “the time spent and work performed by counsel on the case when it was pending at the agency level” because “it gave the district court a better understanding of factors relevant to its reasonableness inquiry, such as the overall complexity of the case, the lawyering skills necessary to handle it effectively, the risks involved, and the significance of the result achieved in district court.” 418 F.3d at 428. *See also Henshaw v. Barnhart*, 317 F. Supp. 2d 657, 662 (W.D. Va. 2004) (same). Thus, it is appropriate for this Court to do the same.

Moreover, Defendants’ reliance (Resp. at 7) on *Lane v. Comm’r of Soc. Sec.*, 646 F. App’x 392 (6th Cir. 2016), is inapposite. *Lane* concerned a prior case that was voluntarily dismissed and “unrelated to the merits or ultimate outcome of the claims.” *Id.* at 394. The complaint there “consisted of two pages with no legal arguments.” *Id.* Here, the prior complaint (31 pages, 113 paragraphs) was filed by Plaintiff in an effort to expeditiously obtain past-due benefits for the class which was being underpaid on a monthly basis due to the agency’s violation of the law. That

action was dismissed, without prejudice, solely to afford the agency a chance to consider the issue and explain its position—a process that was unsuccessful. The agency did not change its previously stated position and offered no additional explanation during the administrative process. Hence, Plaintiff came back to this Court three years later seeking the same relief with a substantially similar complaint (28 pages, 107 paragraphs). Class Counsel’s representation of Plaintiff (on behalf of the putative class) during this entire time was integral to the favorable Judgment ultimately achieved here. Mem. at 6–7. Indeed, this Court acknowledged at the time of dismissal that the administrative proceedings would “assist the Court in reaching its own decision on the merits.” *L.N.P. v. Kijakazi*, 2021 WL 7185231, *4 (E.D. Va. Nov. 24, 2021), *aff’d*, 64 F.4th 577 (4th Cir. 2023).¹

B. The Fees Sought By Class Counsel Are Not A Windfall

Defendants argue that KDW has not provided itemized billing records and that the effective hourly rate may constitute a windfall. Resp. at 9–11. This argument fundamentally misunderstands the governing legal standard.

The Supreme Court in *Gisbrecht* expressly rejected the lodestar approach for Section 406(b) fee determinations. 535 U.S. at 802, 806. As the Fourth Circuit explained in *Mudd*: “*Gisbrecht* . . . rejected case law from the majority of circuits (including ours) that prescribed the lodestar method for awarding fees under § 406(b) in the routine situation involving a contingent-fee agreement.” 418 F.3d at 428. The Second Circuit in *Fields v. Kijakazi* made this point with particular force: “We today wish to make clear that the windfall factor does *not* constitute a way

¹ And yet, as KDW pointed out in its opening brief, at the administrative level the agency offered no new explanation beyond what it offered the Court when L.N.P. first sued. Mem. at 6–7. In short, the administrative proceedings were nothing but a waste of time and a delay tactic. For the Court to accept Defendants’ position now will only further distance a reckoning by SSA of its obligation to rectify the statutory violations that the Court found. See pp. 7–8, *supra*.

of reintroducing the lodestar method...” 24 F.4th 845, 854 (2d Cir. 2022) (emphasis in original). Thus, “even a relatively high hourly rate may be perfectly reasonable, and not a windfall, in the context of any given case.” *Id.*

Defendants’ calculation that KDW’s effective hourly rate would be approximately \$2,612.50 under the 20% scenario, Resp. at 11, is beside the point—an effective hourly rate is but one factor, and, as *Fields* noted, a high rate does not automatically establish a windfall. Yet, even accepting Defendants’ own framing that the fee request would yield approximately three times counsel’s standard hourly rate, *id.*, a lodestar multiplier of 3.0 is well within the range courts have found reasonable in contingency cases—particularly complex class actions litigated over many years with substantial risk of non-recovery. Courts routinely approve multipliers in the range of 2 to 4.5 in common fund cases, *see Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 766 (S.D. W. Va. 2009) (noting that courts treat multipliers between 2 and 4.5 as a reasonable range for attorneys’ fees); and have approved even higher multipliers where the case involved exceptional risk and/or complexity. *See, e.g., Skochin*, 2020 WL 6536140, at *10 (potential lodestar multiplier of 9.05 is not unreasonable under the circumstances); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589–90 (E.D. Pa. 2005) (awarding 25% of \$126,641,315.00 Settlement Fund, equaling \$31,660,328.75 and a lodestar multiplier of 6.96, where case was unique and complex, and counsel exhibited considerable skill).

As *Skochin* pointed out: “[T]he lodestar is only used as a cross-check rather than the primary method of assessing the reasonableness of the attorneys’ fees Because the Court has found the 15% fee reasonable in light of the significant value that Class Counsel has secured for the class, the lodestar should not preclude recovery.” 2020 WL 6536140, at *10 (also citing *Jones*, 601 F. Supp. 2d at 766: “[T]he cross-check results do not supplant the court’s detailed inquiry into

the attorneys’ skill and efficiency in recovering the settlement.” (cleaned up)). Indeed, regardless of any lodestar analysis, *Greenberg* looked at the bottom-line percentage to be awarded, consistent with a common fund percentage of the fund determination. 2015 WL 4078042, at *10 (“And, in any event, a 20% award is in line with other attorney fee awards in common fund class action lawsuits.”) (citations omitted).

Here, KDW litigated a novel class action against the federal government for over five years on a pure contingency basis, with no guarantee of any recovery whatsoever. A multiplier of approximately 3.0—which, again, is not even the proper analytical framework under *Gisbrecht*—would be entirely reasonable under any standard given the substantial risk, complexity, duration, and exceptional result achieved in this case. The fact that KDW’s fee request produces an effective rate of only three times its standard billing rate—in a case where it bore the full risk of non-payment for half a decade and does not even account for the anticipated substantial additional hours of work in the event of an appeal—confirms that the requested fee is manifestly reasonable, not a windfall.²

Moreover, the primary concern of Congress was to protect beneficiaries from having to pay large sums to their counsel, which the statute achieves through multiple protective mechanisms: mandatory percentage caps, criminal penalties for excessive fees, prohibition on attorneys seeking reimbursement of assessments from clients, and the direct payment structure that ensures fees come from withheld benefits rather than additional client obligations. This has

² Indeed, even if the past-due benefits payable to the class went up during an appeal (as Defendants admit they will, Resp. 3–5, 12), a 20% fee award would still be reasonable. For example, assuming the past-due benefits doubled, then the fee award would also double and account for about six times KDW’s “lodestar” based on Defendants’ calculations. A six-times multiplier is still within the realm of reason. See *Skochin*, 2020 WL 6536140, at *10 (multiplier of 9.05 not unreasonable); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589–90 (E.D. Pa. 2005) (multiplier of 6.96 not unreasonable).

particular force in cases where counsel obtains a very large award for one plaintiff with minimal effort. But here, Class Counsel are representing a class of over 20,000 people who are obtaining small but meaningful awards of past-due benefits (and forward going benefits). The attorneys' fees awarded to counsel will therefore not come at the expense of any single plaintiff, but rather from small amounts paid by each class member. Had each class member pursued 20,000+ separate actions, counsel for all of those people will undoubtedly have spent many hours working on each case, totaling well over 100,000 hours to achieve the same results that Class Counsel achieved in slightly over 4,800 hours. A 20% fee award in these circumstances is not in any sense a windfall.

As for documentation, KDW has provided the Court with the total hours expended (over 4,800), the billable value of those hours (\$4,184,597), and the total out-of-pocket expenses (\$131,587.35). Doc. 185-2 (hereafter "Kasdan Decl.") ¶ 8. KDW has also detailed the nature and scope of its work through the Kasdan Declaration and its motion, describing nearly 100 filings, at least 8 court appearances, two sets of discovery requests, a deposition, and extensive communications with more than 1,300 class members. Kasdan Decl. ¶¶ 10, 12; Mem. at 3. The accuracy of the declaration is unquestioned by Defendants and should be accepted by the Court. *See, e.g., Brinker v. Guiffrida*, 798 F.2d 661, 668 (3d Cir. 1986) ("in statutory fee cases where an opposing party has been afforded the opportunity to raise a material fact issue as to the accuracy of representations as to the hours spent or the necessity for their expenditure and declines to do so, there is ordinarily no reason for a court to disregard uncontested affidavits of a fee applicant. Therefore, the current submissions provide the necessary record basis for the district court's fee determination.").³ For the Court to accede to Defendants' demand for itemized, contemporaneous

³ Defendants' suggestion (Resp. at 6) that KDW may have included in its estimates "time and expenses from [] May 2019" is incorrect. L.N.P. filed his own request for reconsideration with SSA in October 2019 without counsel. Mem. at 5. KDW was not engaged by L.N.P.

billing records would transform this fee petition into precisely the kind of “satellite litigation” that *Gisbrecht* cautioned against.

The Supreme Court rejected the lodestar approach for Section 406(b) precisely because it breeds costly “satellite litigation” over the appropriate number of hours and reasonable rate. *Gisbrecht*, 535 U.S. at 808. Requiring line-by-line time records in a case where the Court is asked to set a percentage—not calculate a lodestar—would reintroduce through the back door the very methodology *Gisbrecht* rejected. The cases Defendants cite (Resp. at 11) for itemized billing records—*Paul N. v. Bisignano*, 2025 WL 2627423 (S.D. W. Va. Sept. 11, 2025) and *Connie S. v. Comm’r of Soc. Sec. Admin.*, 2025 WL 1150722 (W.D. Va. Apr. 17, 2025)—are routine individual Social Security cases respectively dealing with only 31.8 and 23 itemized hours of work, not class actions involving thousands of hours of work, hundreds of millions of dollars in controversy, and a percentage-of-fund approach. Neither the judges in *Greenberg* nor *Steigerwald* relied upon line-item time records to award a fee percentage in their respective class actions against SSA: The *Greenberg* opinion that awarded 20% accepted class counsel’s representations of hours spent on their face, 2015 WL 4078042, at *8 & n.10, and in *Steigerwald* the court expressly stated that it “will not endeavor to determine how many hours Class Counsel appropriately spent working on this case.” *Steigerwald v. Saul*, 2020 WL 6485107, at *4 n.74 (N.D. Ohio Nov. 4, 2020).

C. Defendants’ Objection to “Other Auxiliaries” Is Misplaced

Defendants object that Class Counsel’s fee request extends to “other auxiliary beneficiaries” beyond the class. Resp. at 1 n.1, 7–8. This objection is contradicted by the plain text of the governing regulations and Supreme Court authority.

until he contacted the firm to file a class action complaint, and KDW filed the first class action complaint in 2021. *Id.* at 5–6. Defendants themselves acknowledge that “Plaintiff’s counsel did not begin representing L.N.P. and his children until May 2021.” Resp. at 7 n.2. Thus, there is no basis to suggest that KDW’s hours include pre-engagement time from 2019.

The SSA’s own regulations define “past-due benefits” as “the total amount of benefits under title II of the Act that has accumulated *to all beneficiaries* because of a favorable administrative or judicial determination or decision” 20 C.F.R. § 404.1703 (emphasis added). The regulatory definition thus encompasses amounts accumulated “to all beneficiaries” who receive benefits as a result of a favorable decision—not merely to named class members. Where a favorable judicial determination results in recalculations that increase benefits for other auxiliary beneficiaries within the same family units as class members, those amounts are “past-due benefits” within the meaning of the regulation and Section 406(b). Indeed, the Supreme Court directly addressed and confirmed this principle in *Hopkins v. Cohen*, holding that attorneys’ fees under Section 406(b) were not limited to past-due benefits received by the claimant alone, but were to be computed based on past-due benefits received by the other dependent members of the claimant’s family, as well. 390 U.S. 530, 534–35 (1968).

Moreover, this result is logical: When SSA recalculates class members’ benefits as required by the Final Judgment Order, those recalculations will necessarily affect the benefit amounts of other auxiliaries on the same earnings records (who likely were also reduced because of the improper use of the PIA instead of the RIB in figuring the family maximum). In other words, the additional auxiliary benefits are being computed and awarded solely because of KDW’s successful prosecution of this case. But for this case, the auxiliaries (such as spouses) would not receive any additional money. These derivative benefits flow directly from the Court’s Judgment, and the fee should be calculated and awarded accordingly.

III. The *Gisbrecht* And Other Relevant Factors Overwhelmingly Favor KDW’s Fee Request

Defendants do not seriously contest the *Gisbrecht* factors that KDW addressed at length in its opening memorandum. The Commissioner acknowledges his “trustee” role, Resp. at 6, but

identifies no affirmative basis for finding the fee unreasonable. *Id.* at 11. Thus, as explained in Class Counsel’s opening brief, the Court should award a fee of 20% of the past-due benefits awarded based on the *Gisbrecht* criteria:

1. **The character of the representation and results achieved**: KDW obtained a final Judgment awarding a minimum \$62.7 million in past-due benefits for tens of thousands of minor children—an extraordinary result on a novel issue of first impression. Mem. at 1–3, 22–23; Joubert Decl. ¶¶ 12–13. This Court itself recognized at the March 13, 2026 hearing that “there are a lot of challenging issues in this case.” *See* Doc. 185-3 at 6.
2. **No delay**: The Court issued a final Judgment less than two years after the refiling of L.N.P.’s class action complaint. Mem. at 23. Class Counsel expedited the case at every turn, filing the motion for class certification within days of the complaint, completing discovery by the court-ordered deadline without any extensions of time, and repeatedly catching SSA’s own errors. *Id.* at 7–12, 23–24.
3. **No windfall**: KDW devoted over 4,800 hours and more than \$131,000 in out-of-pocket costs over five years on a pure contingency basis, with the very real risk of receiving nothing. Kasdan Decl. ¶ 8; Mem. at 24–25. KDW still faces risk of reversal on appeal. Mem. at 26. This case was intensely litigated on issues of first impression—the polar opposite of a windfall scenario where “the lawyer takes on a contingency-fee representation that succeeds immediately and with minimal effort.” *Fields*, 24 F.4th at 856. But for KDW’s hard work, no child would be eligible to receive any past-due benefits stemming from SSA’s violation of the Social Security Act as determined by this Court.

As KDW has estimated—and SSA does not dispute—each child will receive, on average, about \$2,500 in past-due benefits, and would “pay” only \$500 for this benefit, much less than what they likely would have been charged had the child’s case been brought individually and counsel would have been awarded the full 25% allowable under Section 406(b). Mem. at 2. Thus, the class is protected from paying excessive fees.

The same result under the *Gisbrecht* criteria obtains when the Court applies the *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 733 (3d Cir. 2001) factors applicable in percentage of the fund common fund cases: 1) the results obtained for the class; 2) the quality, skill, and efficiency of the attorneys involved; 3) the complexity and the duration of the case; 4) the risk of nonpayment; 5) awards in similar cases; 6) objections; and 7) public policy. All these factors also support Class Counsel’s entitlement to a 20% fee award. *See generally* Mem. at 25–28. And the same is true for the largely overlapping *Johnson/Barber* factors. *See* Mem. at 21, n.14.

CONCLUSION

For all the foregoing reasons, KDW respectfully requests that the Court grant Class Counsel’s motion for fees and set the fee award at 20% of all past-due benefits awarded resulting from the Judgment in this case. Such fees would be paid simultaneously when the recalculation and payment of benefits also ordered by the Court ultimately are made by the agency.

Dated: June 15, 2026

Respectfully submitted,

KELLEY DRYE & WARREN LLP

/s/ Joseph J. Green

Joseph J. Green (VSB # 40336)
jgreen@kelleydrye.com

Ira T. Kasdan (admitted *pro hac vice*)
ikasdan@kelleydrye.com
670 Maine Avenue, SW
Suite 600
Washington, DC, 20024
Tel: (202) 342-8400
Facsimile: (202) 342-8451

Damon W. Suden (admitted *pro hac vice*)
dsuden@kelleydrye.com
Steven W Schlesinger (admitted *pro hac vice*)
sschlesinger@kelleydrye.com
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Tel: (212) 808-7800
Facsimile: (212) 808-7897

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June 2026, the foregoing was uploaded to this Court's CM/ECF system, which will electronically serve a copy of the same on all counsel of record.

Respectfully submitted,

/s/ Joseph J. Green

KELLEY DRYE & WARREN LLP

Joseph J. Green (VSB # 40336)
jgreen@kelleydrye.com
670 Maine Ave, SW
Suite 600
Washington, DC, 20024
Tel: (202) 342-8400
Facsimile: (202) 342-8451

Counsel for Plaintiffs