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 -	**Case No. 1:24-cv-01196 (MSN/IDD)**
FRANK BISIGNANO, Commissioner of Social Security Administration, ***et al.,***	
Defendants.	

PLAINTIFFS' MOTION TO ENTER FINAL JUDGMENT

Plaintiff 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 the certified class (Plaintiff L.N.P. and the class are referenced herein collectively as the "Plaintiffs") hereby respectfully moves this Court to Enter Final Judgment.

Enclosed is Plaintiffs' Memorandum of Law in Support of this Motion and the Exhibits thereto.

Dated: January 14, 2026

Respectfully submitted,

/s/ Joseph J. Green

KELLEY DRYE & WARREN LLP
Joseph J. Green (VSB # 40336)
jgreen@kelleydrye.com
Ira T. Kasdan (admitted *pro hac vice*)
ikasdan@kelleydrye.com
670 Maine Ave 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

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)**

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO ENTER FINAL JUDGMENT

KELLEY DRYE & WARREN LLP

Joseph J. Green (VSB # 40336)
jgreen@kelleydrye.com
Ira T. Kasdan (admitted *pro hac vice*)
ikasdan@kelleydrye.com
670 Maine Ave 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

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Plaintiff 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 the certified class (Plaintiff L.N.P. and the class are referenced herein collectively as the "Plaintiffs") hereby respectfully moves this Court to Enter Final Judgment.

PRELIMNINARY STATEMENT

Defendants Social Security Administration and Commissioner Frank Bisignano ("Defendants" or "SSA") have been systematically miscalculating benefits by improperly and unnecessarily reducing child benefit payments under Section 203(a) of the Social Security Act (the "Act"), 42 U.S.C. § 403(a), as the Court held in denying Defendants' Motion to Dismiss. Dkt. 49 ("MTD Order"). In light of that ruling, "the parties agree that a trial will not be necessary in this case because there are no factual disputes remaining." Dkt. 109 at ¶ 6. The parties also agreed to "meet and confer and endeavor to propose a joint stipulated judgment to the Court." *Id.* at ¶ 7(c). As detailed below, the parties were not able to agree on a stipulated judgment, so Plaintiffs hereby request entry of their proposed form of judgment, attached hereto as **Exhibit A**.[1]

BACKGROUND

A. The Complaint

Plaintiffs have alleged that SSA unlawfully and unnecessarily reduced the amount of child's insurance benefits payable to the children of Plaintiff L.N.P. and all members of the class by systemically applying the wrong formula when determining whether the "family maximum" under Section 403 was reached. More specifically, according to the Complaint, the agency should have used the actual benefit payable to the early retiree (*i.e.*, the "RIB") when determining whether the family maximum was reached, but instead used the higher theoretical benefit amount (*i.e.*, the

[1] To give all class members notice and an opportunity to participate, the hearing on this motion and entry of judgment must await the end of the supplemental opt-out period recently ordered by the Court, which is March 9, 2026. Dkt. 133. Plaintiffs have therefore set this motion for hearing on March 13, 2026.

"PIA") that the early retiree would have received had s/he chosen to wait to receive benefits at full retirement age. By using the higher, unpaid amount, the Complaint alleged that the agency improperly reduced the benefits payable to the children on the early retiree's account. *See generally* Complaint, Dkt. 1. In denying the Motion to Dismiss filed by SSA, the Court agreed that "SSA has been interpreting Section 403 incorrectly." MTD Order at 10. *See also* pages 3–4, *infra*.

To remedy SSA's violations, the Complaint sought relief for L.N.P. and his children and all the class members, including an award for attorney's fees, as follows:

PRAYER FOR RELIEF

> WHEREFORE, Plaintiff and class members request that the Court:
>
> (a) Assume jurisdiction over this matter;
>
> (b) Declare that the Commissioner's final decisions in this case are legally wrong and that must be overturned and modified such that Defendants must recalculate the proper award of benefits to L.N.P.'s children by applying L.N.P.'s reduced RIB (not his PIA) to determine whether the family maximum was reached;
>
> (c) Enter an order certifying the proposed plaintiff class, designating L.N.P. as the named representative of the class, and designating Kelley, Drye & Warren LLP as class counsel;
>
> (d) Declare that Defendants have been systemically misinterpreting, misapplying and violating Section 403 and 20 C.F.R. § 404.403 by improperly reducing the amount of child's insurance benefit payments due to the children of parents who parents who have applied for and receive or have received such Social Security benefits before their full retirement age;
>
> (e) Declare that Defendants' misinterpretation, misapplication and violation of Section 403 and 20 C.F.R. § 404.403 is unlawful as applicable to Plaintiff and the class;
>
> (f) Preliminarily and permanently enjoin Defendants from applying Section 403 and 20 C.F.R. § 404.403 in a manner inconsistent with the law, as applicable to Plaintiff and the class;

> (g) Preliminarily and permanently enjoin Defendants and enter judgment that modifies Defendants' past erroneous decisions in which Defendants miscalculated benefits, by ordering Defendants to recalculate, determine and then pay the proper amount of past-due benefits to which the putative class members may be entitled, based on the proper application of Section 403 and 20 C.F.R. § 404.403;
>
> (h) Award Plaintiff and the class costs, disbursements, and reasonable attorney's fees;
>
> (i) Grant undersigned counsel reasonable attorney's fees under 42 U.S.C. § 406(b) of up to 25% of the total of any past-due benefits to which Plaintiff and his dependent children and the putative class members are entitled by reason of this Court's judgment, and/or grant undersigned counsel such reasonable attorney's fees on any other appropriate bases.
>
> (j) Grant Plaintiff and the class costs and such other and further relief as the Court may find just and appropriate.

Dkt. 1, pages 27–28.

B. The Court's Decision Interpreting The Statute

As noted above, the Court already has found that Defendants have been misinterpreting Section 403, and thus have been incorrectly calculating the benefits owed to the eligible children of early retirees. *See generally* MTD Order at 8–10.

In making this determination, the Court first started "where we always do: with the text of the statute," and agreed that the First Circuit in *Parisi by Cooney v. Chater*, 69 F.3d 614 (1st Cir. 1995) "correctly engaged in a textual analysis of Section 403(a) in holding that the Social Security Act provides that the SSA use only 'actually payable benefits'—not those theoretically available—when determining if the family maximum has been reached." MTD Order at 8. The Court then stated that the correct calculation should add the actual benefits L.N.P. (as an early retiree) receives, *i.e.*, his RIB, to the amount his children receive under Section 402(d) of the Act, and then check if the total is above the family maximum and needs reduction. *Id.* at 9.

The Court rejected SSA's contention that the proper calculation involved the use of L.N.P.'s theoretical PIA benefit amount, as opposed to his actual RIB one. *Id.* at 10. The Court explained: "SSA relies primarily on the argument that because the PIA is referenced throughout the statute and the regulations, it must be part of the calculation under Section 403," but "under the best reading of Section 403," the RIB, not the PIA, must be used in the calculation. *Id.* As a result, the Court held that "SSA has been interpreting Section 403 incorrectly" and denied Defendants' Motion to Dismiss. *Id.*

C. The Court's Decision Certifying The Class

Subsequently, the Court granted Plaintiffs' Motion for Class Certification, finding that the class—as defined by the Court's order—met all the criteria for certification under Rule 23(a) and (b)(3) of the Civil Rules of Civil Procedure. *See* Memorandum and Order dated May 30, 2025, Dkt. 72 (the "Certification Order") at 7–8. Consequently, the Court certified the following class of beneficiaries, subject to certain exclusions set forth in the order[2]:

> All Eligible Children of Early Retirees, where such children, between and including May 10, 2024 and May 30, 2025, received a child's insurance benefit under Section 402(d) of the Social Security Act (the "Act") that was reduced under Section 403(a)(1) of the Act because the Social Security Administration (the "SSA") used the PIA of the Early Retiree instead of the RIB in determining whether the Family Maximum was exceeded, and therefore such children may be entitled to past due benefits.

Dkt. 72 at 7.[3]

---

[2] Excluded from the class were otherwise eligible children who were deceased; not United States citizens; and children of an early retiree who ever had excess earnings under Section 403(b) of the Act. *See* Certification Order at 8.

[3] Capitalized terms are defined in the Certification Order.

D. Plaintiffs' Discovery, The Class Lists, And Class Notice

After the Court issued the Certification Order, Plaintiffs, by Class Counsel, engaged in discovery to ascertain the proper class list to whom notice and the opportunity to opt out would be sent. Originally, SSA produced a list containing the names of 21,469 individuals. Class Counsel analyzed the list and found that it was incomplete, forcing SSA to admit error and issue a new list of over 102,000 members. *See generally* Dkt. 121 at 1–2. After Notices were mailed to the class, based on communications with class members who contacted Class Counsel, counsel again raised questions about the completeness of the revised list, leading SSA to issue yet a third (supplemental) list containing the names of an additional 47,747 members. Dkt. 131 at 1, 3. Although there is some remaining uncertainty about the completeness of this third list, Plaintiffs in a Consent Motion sought to set a schedule for the mailing of new notices to the newly identified 47,747 members later this month by January 23, with an opt-out deadline for them by March 9. Dkt. 131. Plaintiffs promised to add any missing members that SSA might identify before the new mailing date. *See id.* at 3 n. 2. On the very same day that the Consent Motion was filed, the Court issued an Order granting the new notice plan. Dkt. 133 ("New Notice Order"). Efforts by Plaintiffs to comply with the New Notice Order are underway.

E. The Parties Have Agreed That Judgment Should Be Entered, But Cannot Agree On Language

The parties have agreed that there are no facts in dispute. *See* Dkt. 105, Joint Motion For Relief From Pretrial Requirements And Status Report dated September 16, 2025 ("Joint Motion") at 2, par. 6. And, based on the MTD Order, the law has been settled by this Court: Defendants are in violation of Section 403 and its implementing regulation. *See* pages 3–4, *supra.* As a consequence, in the September 16, 2025 Joint Motion the parties agreed that they would "meet and confer and endeavor to propose a joint stipulated judgment to the Court on or before the end

of the [original] optout period for Rule 23(c)(2) notice has passed," *i.e.*, December 1, 2025. The parties also agreed that: "In the event that the parties cannot arrive at a joint stipulated judgment by the end of the [December 1] opt-out period, the parties will promptly thereafter suggest a schedule for briefing and for oral argument, to present their competing forms of judgment for the Court's resolution." Joint Motion at 2–3 (¶ 7(d) and (c)).

As previously detailed by Plaintiffs in prior filings, Plaintiffs timely (on September 10, 2025) presented SSA with language for a proposed stipulated judgment. *See*, *e.g.*, Dkt. 112 at 3–4. Despite repeated urging by Class Counsel, SSA failed to comment on Plaintiffs' proposal or present its own version until mid-December. *See* Dkt. 123 at 2–3.[4] Notwithstanding Class Counsel's prompt response by letter dated December 16, 2025, setting forth the many deficiencies with SSA's proposed judgment and a subsequent meet and confer between counsel, SSA has not yet provided any further response as to any of the issues raised by Class Counsel in their letter.[5] Due to the lack of progress between the parties on the language of a stipulated judgment, Class Counsel is hereby submitting its proposed language for a final judgment, with the reasons therefor, with the request that the Court enter judgment after the new opt-out deadline (March 9, 2026) passes. As Class Counsel explained:

> Although notice may need to be given to the new class members (as discussed above), there is no reason the parties cannot brief the issues regarding the proper form of judgment in parallel with any new notice period so that the Court can hold a hearing and enter judgment shortly after all class members have had the right to opt out.
>
> Towards that end, absent timely and substantive progress with the SSA regarding the judgment, Class Counsel intends to file an appropriate motion in January for the Court to enter Plaintiffs'

[4] Defendants' Proposed Stipulated Judgment as transmitted to Plaintiffs on December 16, 2025, is attached as **Exhibit B.**

[5] Class counsel's December 16, 2025, letter to SSA's counsel is attached as **Exhibit C.**

> version of the judgment and the agency can respond thereto in the normal course.

Dkt. 123 at 2–3.

****

This case has been unduly delayed by Defendants' apparent inability or unwillingness to meet promised or even, in some instances, Court-ordered deadlines. *See*, *e.g.*, Dkt. 120. As a result, class members who have been deprived of their past-due benefits for years continue to be prejudiced.[6] The ability of the Court to enter a final judgment shortly after the new opt-out period ends will, at least in some small measure, help ameliorate this harm by speeding up the timeframe for the class members to be made whole. Accordingly, as next explained, the Court should enter Plaintiffs' version of the final judgment.

ARGUMENT

Plaintiffs proposed final judgment grants full relief to the Class, as sought in the Amended Complaint, and is justified and supported by the Social Security Act and relevant case law. The agency's proposed judgment, on the other hand, does not provide full relief to the Class and does not provide sufficient direction to the agency or court supervision to ensure that the class is afforded proper relief. On a paragraph-by-paragraph basis, Plaintiffs explain below why the Court should their Proposed Judgment and reject Defendants' proposed version to date.

1. Prospective Injunctive Relief

Paragraph 1 of Plaintiff's Proposed Judgment provides for prospective injunctive relief to

[6] As the Court is aware from the approved Notice, "SSA has indicated that it intends to seek authority to appeal the District Court's ruling." Dkt. 108-1 (as approved by the Court, Dkt. 109). *See also* www.lnpclassaction.com ("Class Notice" page). In that instance, per representations by SSA's counsel, the agency likely will also seek to obtain a stay of the judgment. If actually sought and granted, a stay will only delay class relief even more. Should SSA in fact seek a stay, Class Counsel will vigorously object at the appropriate later time.

ensure that Class Members receive the proper benefit payments to which they are entitled going forward after entry of judgment:

> 1. Beginning with the month after the month in which Judgment is entered, and each month thereafter, Defendants shall properly apply 42 U.S.C. § 403(a) to the class in accordance with the Court's Order, Dkt. 49, as follows: in determining whether the family maximum has been exceeded and it is necessary to reduce the child's insurance benefit payable to each class member under 42 U.S.C. § 403(a), Defendants shall use the benefit amount actually payable to the Number Holder (i.e. the RIB) instead of the PIA.

The Court has authority under 42 U.S.C. § 405(g) to issue such relief. *Califano v. Yamasaki*, 442 US 682, 705–06 (1979) (injunctive relief to a class is available under Section 405(g)). Indeed, courts have ordered SSA to fix formulas or calculation methodologies going forward so that correct benefit amounts are paid to plaintiffs. *See, e.g.*, *Livermore v. Heckler*, 743 F.2d 1396, 1405 (9th Cir. 1984) (affirming district court order directing "recalculation of benefits erroneously calculated as well as prospective implementation of the correct formula").[7]

This specific relief set forth in Paragraph 1, is also consistent with the injunctive relief sought in the Complaint. Dkt. 1 at p. 27, ¶ (f) (seeking relief to "permanently enjoin Defendants from applying 42 U.S.C. § 403 and 20 C.F.R. § 404.403 in a manner inconsistent with the law, as applicable to Plaintiff and the class"). And the proposed injunctive relief is consistent with the Court's ruling on the agency's Motion to Dismiss, where the Court held that the agency should have been using the RIB instead of the PIA when determining whether the family maximum has

[7] Indeed, in *Livermore*, SSA argued that prospective relief was the *only* form of relief authorized by Section 405(g)—a position rejected by the Ninth Circuit. *Id.* ("The Secretary contends on appeal that the sovereign immunity of the United States precludes any relief other than prospective relief. This is incorrect. 42 U.S.C. § 405(g), the section of the Social Security Act authorizing judicial review, is a broad waiver of sovereign immunity which authorizes injunctive and other relief.").

been exceeded under Section 403(a). MTD Order at 10.[8]

The agency's proposed judgment, by contrast, lacks any specific requirement that the agency fix its erroneous formula for determining when the family maximum is reached under Section 403(a). Without forward-going injunctive relief of that nature, class members will continue to be harmed despite prevailing in this lawsuit. This Court has the power to prevent that harm and grant full relief to the Class—and it should do so.

2. Payment Of Past-Due Benefits

Paragraph 2 of Plaintiffs' Proposed Judgment directs SSA to recalculate and pay past-due benefits to the Class:

> 2. For each month in which a class member received a child's insurance benefit payment, from the first such month through and including the month before the month in which Defendants comply with Paragraph 1, Defendants shall recalculate the benefit that should have been paid in such month using the RIB instead of the PIA, and immediately begin to pay any resulting past-due amount to such class member, subject to SSA setting aside and paying any attorney's fees the Court may grant, on a rolling basis to be completed not later than 12 months after entry of this Judgment.

This is consistent with the relief sought in the Complaint, which requested that benefits for Plaintiffs and the Class be recalculated and paid. Dkt. 1 at p. 27 par. (b) (as to lead "Plaintiff L.N.P. and his children … Defendants must recalculate the proper award of benefits to L.N.P.'s children by applying L.N.P.'s reduced RIB (not his PIA) to determine whether the family maximum was reached"); *Id.* at 28, par. (g) (as to "Defendants' past erroneous decisions as to the class members in which Defendants miscalculated benefits, that … Defendants recalculate,

[8] The injunctive relief sought by the Proposed Judgment is also properly limited "to the class" and does not improperly extend universally to other beneficiaries outside the class. *See, e.g.*, *Trump v. CASA, Inc.*, 606 U.S. 831, 852 (2025) (rejecting universal injunctions that apply beyond the parties) (citing *Califano*, *supra*, with approval).

determine and then pay the proper amount of past-due benefits to which the class members may be entitled, based on the proper application of 42 U.S.C. § 403 and 20 C.F.R. § 404.403."). Such payment of past-due benefits would be reduced by the payment of attorney's fees the Court may grant. *See* pages 16–20, *infra.*

The Court has authority to order recalculation and payment of past-due benefits. Section 405(g) provides that "[t]he court shall have power to enter … a judgment affirming, *modifying*, or reversing the decision of the Commissioner of Social Security, *with or without remanding the cause for a rehearing*." 42 U.S.C. § 405(g) (emphasis added). Section 405(g) "operates as a waiver of sovereign immunity by giving the federal courts the right to review and modify or reverse the Secretary's decisions." *Huie v. Bowen*, 788 F.2d 698, 705 (11th Cir. 1986). "Once jurisdiction is established, courts maintain the authority to provide equitable relief commensurate to the harm." *Id.* at 704 (citing *Califano, supra).*

Thus, courts regularly order the agency to recalculate and pay past-due benefits. *See, e.g.*, *Steigerwald v. Berryhill*, 48 F.3d 632, 640 (6th Cir. 2022) ("Judicial review need not involve correcting the SSA's errors through reversal—as § 405(g) recognizes, the district court may also 'modify' the SSA's benefits decision. The district court's order of the Subtraction Recalculation merely implemented the district court's modification of the SSA's decision.") (citing *Califano, supra*); *Livermore v. Heckler*, 743 F.2d 1396, 1405 (9th Cir. 1984) (affirming district court-ordered recalculation of benefits erroneously calculated as well as prospective implementation of the correct formula).

Past-Due Benefits Should Be Paid To The Class From The First Month In Which They Were Reduced. Paragraph 2 of the Proposed Judgment provides for payment of past-due benefits to the class from "the first such month" that the child received a benefit payment. In

discussions with Class Counsel, SSA appeared to disagree with payment of past-due benefits prior to May 10, 2024, arguing that relief be limited to the start date of the class period in the Court's certification decision. But that position misconstrues the Court's decision and is inconsistent with the Social Security Act itself. It would also improperly and arbitrarily cut off the named Plaintiffs benefits.

The Court's certification decision established the temporal boundaries of which Eligible Children would be part of the class—*i.e.*, only those who were receiving reduced benefits between May 10, 2024 and May 30, 2025. Dkt. 72 at 7 (defining the class as "All Eligible Children of Early Retirees, where such children, between and including May 10, 2024 and May 30, 2025, received a child's insurance benefit under Section 402(d) of the Social Security Act (the "Act") that was reduced under Section 403(a)(1)…"). The Court's decision did not address, much less decide, what the proper remedy should be for children who are in the class. The remedy for class members is mandated by the Social Security Act and its implementing regulations.

The Act provides that "*[w]henever* the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, *proper adjustment or recovery shall be made*…." 42 U.S.C. § 404(a)(1) (emphasis added). With respect to underpayments in particular, "the Commissioner of Social Security *shall make payment of the balance of the amount due such underpaid person*." 42 U.S.C. 404(a)(1)(B)(i) (emphasis added). Thus, "[t]he SSA has a duty to pay *any balance* due a person receiving an OASDI benefit payment who was paid less than the correct amount." § 33:121. Introduction, 2A Soc. Sec. Law & Prac. § 33:121 (emphasis added).[9] *See also Sullivan v. Everhart*, 494 US 83, 90 (1990) ("The Act

[9] In fact, SSA policy recognizes that, because of the mandatory obligation of the agency to pay any underpayment whenever it is identified, "a living beneficiary need not request payment

authorizes a determination of whether 'the correct amount of payment has been made,' 42 U. S. C. § 404(a)(1) (1982 ed., Supp. V), and mandates adjustments . . . '[w]ith respect to payment to a person of less than the correct amount,' § 404(a)(1)(B).").

This straightforward reading of the statute is confirmed by the agency's own regulations, which define an underpayment as the "difference between the amount paid to a recipient and the amount of payment actually due such recipient for a given period" and then defines the "underpayment period" as beginning with "the *first month* for which there is a difference between the amount paid and the amount actually due for that month." 20 CFR § 416.538 (emphasis added).[10] Thus, the statute and implementing regulations are clear that the amount of an underpayment is calculated from "the first month" for which there was an underpayment—exactly as Plaintiff's Proposed Judgment in Paragraph 2 provides: "For each month in which a class member received a child's insurance benefit payment, *from the first such month* through and including the month before the month in which Defendants comply with Paragraph 1…" [Emphasis added.]

This Court has already found that the agency miscalculated benefits resulting in class members receiving less than the correct amount. MTD Order at 9. Like any court order or final judgment, absent a stay Defendants will be duty-bound to obey that decision. *See generally* Fed. R. Civ. P. 62. Thus, once judgment is entered, Section 404(a)(1) is triggered and by its own terms mandates "payment of the balance of the amount due such underpaid person[s]." It makes no

---

of an underpayment they are due" in order for the agency to issue payment. § 33:122. Payment, 2A Soc. Sec. Law & Prac. § 33:122 (citing POMS § GN 02301.020(B)).

[10] Although this regulation governs SSI payments, the corresponding regulation governing retirement benefits, 30 C.F.R. § 404.504, although less precise, has been interpreted "as embodying the methodology set forth in the SSI regulation." *Everhart*, 494 US at 87 (citing Dept. of Health and Human Services, Social Security Ruling 81-19a (cum. ed. 1981)).

difference whether the "balance of the amount due" stretches back one month, one year, or ten years—the statute requires that the agency "shall make payment."[11]

Indeed, ordering payment of retroactive benefits is "not unusual"—"it follows from any administrative or judicial determination that benefits have been wrongly withheld." *Doe v. Heckler*, 580 F. Supp. 1224, 1229 (D. Md. 1984) ("[I]f the Secretary determines that a claimant's benefits were terminated without a finding of medical improvement, the claimant is entitled to reinstatement from the date he/she was wrongfully terminated from the disability rolls."). *See also Huie*, 788 F.2d at 704 ("We hold that these claimants are entitled to [retroactive] benefits from date of [their wrongful] termination.").

Cutting off past-due benefits at May 10, 2024 would also unfairly deprive class Representative L.N.P. of his children's proper benefits. L.N.P., on behalf of his children, objected to the benefit amounts in 2019 in response to the agency's benefit determination and has pursued all of his administrative and judicial remedies consistently since that time. Dkt. 1, pars. 70–80. Surely, Plaintiff LNP's two children are entitled to receive all of their past-due benefits—there is no logical justification to cut off their benefit awards at May 10, 2024 merely because that is the start date for class membership. The class members deserve, and are entitled to, no less of the

[11] Indeed, based on Section 404, it is standard agency practice to recover *overpayments* going back years whenever they are discovered. Beneficiaries who were short-changed of past-due benefits during the class definition period are entitled to parallel treatment to be paid *underpayments* whenever they occurred. *See Grice v. Colvin*, 97 F. Supp. 3d 684, 709 (D. Md. 2015) (stating SSA's position that "SSA's regulation [prior to 2011] only limited the SSA's time for collecting overpayments through tax offsets; the SSA was at all times free to collect the overpayments through other means."); 20 C.F.R. § 404.520(b) (amended in 2011 to authorize SSA to "refer overpayments to the Department of the Treasury for offset against Federal tax refunds *regardless of the length of time the debts have been outstanding*") (emphasis added). Of course, the ability of SSA to recoup is circumscribed in various instances, such as when a person "is without fault if adjustment or recovery would either defeat the purpose of title II of the Act, or be against equity and good conscience." 20 C.F.R. § 404.506 (a).

same retroactive relief from the date their benefits were miscalculated.

Past-Due Benefits Should Also Be Paid After May 30, 2025, Until The Formula Is Fixed. During negotiations, SSA appeared to at least preliminarily agree that class members should receive past-due benefits from May 30, 2025, up until the month when the agency finally corrected its formula and began paying the correct benefit amounts to the class. Regardless of whatever position SSA may posit in their response brief, awarding past-due benefits through the date when the agency fixes the formula is permissible and is the only way to make the class whole. The fact that class membership ends on May 30, 2025, does not mean that the relief to which they are entitled end on that date. *See, e.g.*, *Livermore*, 743 F.2d at 1405 (affirming district court-ordered prospective implementation of the correct formula). Indeed, improperly reduced benefit payments to the class have been continuing every month since then because the agency has not corrected its payment formula in accordance with the Court's decision. Thus, class members continue to be shortchanged—and will continue to be shortchanged each month into the future until the formula is corrected.

The Court Should Impose A Deadline On Payment Of Past-Due Benefits. Paragraph 2 also provides that payment of the past-due benefits will be made starting immediately on a rolling basis to be completed within 12 months of entry of the final judgment. This period gives the agency plenty of time to recalculate and pay benefits to the class. Indeed, the agency testified, through its 30(b)(6) representative that it would not take very long to program, test, quality control, and run the computer code necessary to do the recalculations for the class.[12] [13]

---

[12] Specifically, the witness testified that it would maybe take 20 to 40 hours for "validation, review, sample"—i.e. to "write [the code], execute it, produce a sample, look at aberrant findings, things that don't appear to add up, if you will." (Gallagher Dep. 84:18-85:10.)

[13] After Congress passed the Social Security Fairness Act last year which eliminated the Windfall Elimination Provision and Government pension Offset for more than 3 million

In *Heckler v. Day*, 467 U.S. 104, 118 (1984), the Supreme Court held "that it is inappropriate to subject disputed disability claims to mandatory deadlines" because of Congressional intent inherent in the statutory scheme regarding payment of disability benefits. But that ruling is inapposite because the class members here are not receiving disability benefits and none of their claims are disputed—the class consists of people who indisputably and without further hearings are entitled to benefits. Ordering the agency to pay the past-due benefits and complete such payment within 12 months ensures that the class will receive timely relief and does not interfere with the deliberative process of the agency because this case does not require fact-intensive determinations of disability status as in the *Day* decision. Indeed, courts have recognized that imposition of deadlines is appropriate outside the context of disability hearings and determinations: "[W]e see no reason to hold that the court is barred from granting equitable relief by establishing deadlines for payment on a class-wide basis. Indeed, our result is consistent with decisions recognizing the availability of class-wide relief in social security cases." *Holman v. Califano*, 835 F.2d 1056, 1058 (3d Cir. 1987) (permitting imposition of deadlines for a class of individuals who were already deemed eligible for benefits) (citing *Bowen v. City of New York*, 476 U.S. 467 (1986); *Califano*, 442 U.S. at 698–701). This Court should do the same.

---

affected beneficiaries and required SSA to reimburse them retroactively, SSA initially claimed the process would take "one thousand work years" because "much of the work will need to be done manually on a case-by-case basis." *See* https://waysandmeans.house.gov/2025/03/12/chairman-smith-president-trump-and-house-republicans-are-committed-to-preserving-social-security-benefits/.

After complaints arose, SSA suddenly was able to reimburse at least 71% of the millions of beneficiaries within two months through the "embrace of automation and technology." *Id.* Giving SSA a year to complete the task at hand for a much smaller affected group is more than reasonable, especially in light of SSA's own witness's testimony regarding the agency's ability to employ technology here.

3. Entitlement To Section 406(b) Fees

Paragraph 3 of the Proposed Judgment provides that Class Counsel are entitled to an award of fees under Section 406(b), subject to the submission of a post-judgment fee application and the Court's decision as to the proper amount of fees to award:

> 3. Plaintiffs' counsel are entitled to an attorneys' fee award under 42 U.S.C. § 406(b) based on a percentage of past-due benefits paid to the class. Such fee application, together with any application for an incentive award, shall be submitted within 14 days of entry of this Judgment. Defendants reserve the right to object to the specific percentage requested. The percentage fee awarded shall be withheld from the past-due amounts paid to class members under Paragraph 2 and paid directly to Plaintiffs' counsel.[14]

This relief is authorized by 42 U.S.C. § 406(b)(1)(A), which states, in pertinent part:

> Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may, . . . certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits.

Inclusion of this relief in the final judgment is consistent with the relief sought in the Complaint, namely, that the Court:

> Grant class counsel reasonable attorney's fees under 42 U.S.C. § 406(b) of up to 25% of the total of any past-due benefits to which Plaintiff and his dependent children and the class members are entitled by reason of this Court's judgment, and/or grant undersigned counsel such reasonable attorney's fees on any other appropriate bases;
>
> Grant Plaintiff and the class costs and such other and further relief as the Court may find just and appropriate; and

[14] Plaintiff L.N.P. reserves the right to seek an incentive award as part of the post-judgment application.

> Award Plaintiff and the class costs, disbursements, and reasonable attorney's fees.

Dkt. 1 at page 28, ¶¶ (h)–(j).

Defendants' proposed judgment makes no mention of Section 406(b). In discussions with SSA's counsel it remains unclear whether Defendants actually oppose an award of Section 406(b) fees entirely or simply reserve the right to oppose the particular amount that will be requested in the ultimate fee application.[15] To dispel any doubt on this issue, Class Counsel seeks inclusion of the above paragraph in the final judgment.

In prior cases handled by Class Counsel, SSA in fact has argued that a Section 406(b) fee award does not apply to attorneys representing a class. Its arguments, however, were rejected in the only two cases in which this issue ever was raised. More than a decade ago, the district court in *Greenberg v. Colvin*, issued its first-of-a-kind, precedent-setting holding that an award of Section 406(b) fees is available in class actions against SSA. 63 F.Supp.3d 37, 49 (D.D.C. 2014) ("The Court also determines that counsel is entitled to attorney fees no greater than twenty-five percent of each beneficiary payment under 42 U.S.C. § 406(b)"). The court carefully examined the plain language of Section 406(b), the legislative purpose of the provision, and numerous arguments offered by the agency in its attempt to preclude class counsel from obtaining 406(b) fees. In support of its holding that such fees are indeed available, the court concluded:

- "Nothing in the language of this provision remotely suggests that Congress intended to deprive courts of the ability to set reasonable attorney fees in class action lawsuits."
- "[A] broader reading of § 406(b)(1), to include fee recovery in class action cases, is the more appropriate reading to promote representation in Social Security cases while

[15] DOJ counsel was to check with SSA but has not yet got back to Class Counsel.

ensuring that attorney fees remain reasonable." (Cleaned up.);

- "The statute . . . does not demand [that class counsel have] a contingent agreement [with each class member]; it merely states that the court may award reasonable attorney fees, not in excess of twenty-five percent of total past-due benefits, to a lawyer who has represented a successful claimant in court. *See* 42 U.S.C. § 406(b)."
- Section 406(b) does not "require[] an attorney to represent a claimant in his individual capacity and that absent class members have not authorized class counsel to do so."
- "[O]nce a class has been certified, the rules governing communications [with class members] apply as though each class member is a client of the class counsel. . . . There is no reason why counsel's representation in a class action under § 406(b) should be any different." (Cleaned up.);
- "[P]rior to any final approval of the settlement or award of attorney fees, the Court will hold a hearing to determine the reasonableness of the agreement and the fee award. Any concerns about the reasonableness of the fee arrangement between counsel and class members can be raised as objections and considered prior to determining a fee award."
- "The statute does not require a court to choose between [awarding fees under] EAJA and [under] § 406(b);"
- "[I]n determining what percentage of past benefits will constitute a reasonable attorney fee, the Court may consider the relative amount of risk faced by Plaintiff's counsel . . . . If the Court is ultimately persuaded that the risk of loss to Plaintiff's counsel was not substantial, it may reduce the fee award accordingly." (Cleaned up.).

See generally 63 F.Supp.3d 37 at 48–52.

The *Greenberg* fee entitlement holding under Section 406(b) came in the context of the court's approval of a class-wide settlement agreement. *See Greenberg v. Colvin*, 2015 WL 4078042 at *1 (D.D.C. 2015). By contrast, in *Steigerwald v. Berryhill*, the district court there ruled in favor of class counsel's entitlement to Section 406(b) fees as part of its summary judgment decision and the entry of final judgment. 357 F. Supp. 3d 653, 657–58 (N.D. Ohio 2019). Thus, *Steigerwald* represents perfect precedent for this Court to so rule in the context of entering final judgment here. As in *Greenberg,* SSA in *Steigerwald* raised issues concerning the applicability of Section 406(b) in a class action. The district court and then the Sixth Circuit ruled against SSA.

Steigerwald "joined" *Greenberg* in finding that § 406(b) fees are available in a class action and held: "Plaintiffs' counsel are eligible § 406(b) fees, in an amount to be decided at a later date." *Id.* at 658. The Sixth Circuit affirmed. *Steigerwald v. Commissioner of Social Security*, 48 F.4th 632 (6th Cir. 2022). Like the district court, the appeals court rejected several arguments by SSA based on the plain and unambiguous language of Section 406(b). 48 F.4th at 642–43. It further reasoned:

> The attorney-fees provision at issue here incentivizes attorneys to vindicate the rights of claimants who, in many cases, cannot afford counsel. The SSA failed to award claimants additional past-due benefits to which they were entitled. Counsel successfully sought judicial assistance to obtain those benefits, and § 406(b) envisions a reward for that effort. Congress did not create a statute that allows attorneys to recover fees when the SSA initially fails to award benefits, only to foreclose fee recovery when the SSA later unlawfully withholds additional benefits.

Id. In the end, the *Greenberg* court awarded class counsel 20%, 2015 WL 4078042 at *1, and the *Steigerwald* court awarded 15% of the past-due benefits to class members. 48 F.4th at 642, 643. In those cases, class counsel had sought respective awards of 25% (*Steigerwald v. Saul*, 2020 WL 6485107 at *2 (N.D. Ohio 2020)) and 20% (*Greenberg*, 2015 WL 4078042 at *2).

What percentage to award in the present case is not before the Court now and is not

included in the Plaintiffs' proposed final judgment. At this juncture, Class Counsel merely seeks a finding in the final judgment that it can *eventually* obtain an award under Section 406(b) for the court to determine only after the timely submission of a fee application, the opportunity for class members to weigh in, and ultimately a hearing. The statute and case law firmly support the inclusion of Plaintiffs' proposed language.

4. Retention of Jurisdiction and Monitoring of Compliance

Paragraph 4 of the Proposed Judgment provides that the Court will retain jurisdiction to monitor compliance with the Court's judgment:

> 4. The Court shall retain jurisdiction to ensure compliance with this Judgment until such time as all past-due amounts owed to the class (and all associated attorneys' fees) are paid in full. Defendants shall file a status report bi-monthly setting forth their progress in complying with this Judgment.

SSA, by contrast, apparently wants the Court to simply remand the claims of all 150,000 class members to the agency to individually, and on the agency's own timeline, recalculate and pay past-due benefits. If there are any systemic mistakes in those calculations, SSA's position is that each of the 150,000 class members must proceed through the labyrinthine four-step administrative process and then file their own individual lawsuits. This nightmare scenario should not be adopted by the Court. Given the myriad mistakes made by the SSA in this case to date, starting with the misinterpretation of the statute and underpayment of benefits and continuing with the errors in compiling the class list, it is even more important that Class Counsel and this Court monitor the agency's compliance.

The relief sought by Plaintiffs is supported by the law. Courts, including this Court, "routinely retain jurisdiction to enforce their own judgments." *Aisenberg v. Reliance Standard Life Ins. Co.*, 734 F. Supp. 3d 489, 496 (E.D. Va. 2024), citing *Peacock v. Thomas*, 516 U.S. 349, 356 (1996) ("Without jurisdiction to enforce a judgment entered by a federal court, the judicial

power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution.") (quotations omitted). In *Aisenberg*, this Court entered judgment in favor of plaintiff on an ERISA claim directing defendant to make payment of back benefits, but after judgment was entered a dispute arose between the parties as to the amount of benefits that should be paid. Plaintiff brought the dispute to the Court, which ordered briefing. Defendant argued that the court lacked jurisdiction because ERISA requires beneficiaries to exhaust their administrative remedies and the issue of benefit amounts had not gone through that process. SSA in the present case makes a similar argument—that all 150,000 class members should be forced into the administrative process if they encounter any issues with the agency's calculation of benefits. This Court easily dispensed with that argument for "two independent reasons." *Id.*

First, "despite exhaustion requirements" the Court "maintains jurisdiction to adjudicate disputes integrally related to that judgment," such as adjudicating the proper amount to pay. *Id.* Second, exhaustion would be futile because the defendant's position was already known and "the parties' dispute centers on statutory interpretation, which constitutes a legal question, whereas exhaustion serves the purpose of ensuring that federal courts are not bogged down by, for instance, the deep factual issues that must be developed before a disability benefits determination can be made." *Id.* Both rationales apply equally here. This Court retains jurisdiction to enforce its judgment and ensure that class members finally receive the benefits to which they are entitled. It would be absurd to require 150,000 class members to independently pursue administrative relief if the agency continues to make systemic errors, as it has for decades. *J.S. ex rel. N.S. v. Attica Cent. Schools*, 386 F.3d 107, 113 (2nd Cir. 2004) (citing cases in which exhaustion of administrative remedies was excused on futility grounds "in cases that included allegations of systemic violations.").

The Cour should order submission of bi-monthly status reports from the agency to ensure timely compliance with the judgment. Status reports were made by SSA to the district court in the *Steigerwald* class action case and were publicly available to the class members for them to follow SSA's progress in fulfilling the court-ordered recalculation of their past-due benefits. *See* https://www.steigerwaldclassaction.com/ (Home page with links to each bi-monthly status report of SSA beginning April 4, 2020 through January 28, 2021).

The court in *Doe v. Heckler, supra*, also ordered submission of progress reports—over SSA's objection—because "[p]roviding progress reports to plaintiffs' counsel of the evaluations conducted over a specific period of time does not appear to this court to be overly burdensome." 580 F. Supp. at 1229. The court further explained that progress reports were necessary for plaintiff and class counsel to carry out their fiduciary responsibilities:

> In fact, as the plaintiffs point out, their request is reasonable given the fiduciary responsibility undertaken by the class representatives and their counsel to assure that the rights of unnamed class members are adequately represented. Fed.R.Civ.P. 23(a) (4). ***That responsibility does not end on the day a judgment is handed down.*** As in any case, the person who obtains a judgment must enforce that judgment. In the instant case, the class representatives and their counsel are seeking to enforce the judgment they obtained in *Doe v. Heckler*. ***Their responsibility to unnamed class members can be met, in part, by monitoring the Secretary's progress in reviewing and reevaluating class members' claims.***

Id. (emphasis added). As the court explained, "[s]uch monitoring is not unusual in these types of cases." *Id.* (citing cases).

5. <u>Rule 23(c)(3)</u>

Finally, Paragraph 5 of the Proposed Judgment is included to comply with Federal Rule of Civil Procedure 23(c)(3), which provides:

> (3) *Judgment.* Whether or not favorable to the class, the judgment in a class action must: … (B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule

> 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

Thus, the Proposed Judgment includes a description of the class members who received notice and reference to the lists of class members filed on the docket who timely requested exclusion—the remaining individuals thus being class members. *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 184 F.R.D. 506, 511 (S.D.N.Y. 1999) ("Rule 23(c)(3) does not require a list of every single class member."); *In re Motor Fuel Temperature Sales Pracs. Litig.*, 271 F.R.D. 263, 280 (D. Kan. 2010) ("This provision requires only that the final judgment describe the class; it need not identify individual class members.") (citing 1 *Newburg On Class Actions* § 2:4 (4th ed. 2002)).

CONCLUSION

For the reasons stated above, Plaintiffs request that the Court enter final judgment in this case.

Dated: January 14, 2026

Respectfully submitted,

/s/ Joseph J. Green

KELLEY DRYE & WARREN LLP
Joseph J. Green (VSB # 40336)
jgreen@kelleydrye.com
Ira T. Kasdan (admitted *pro hac vice*)
ikasdan@kelleydrye.com
670 Maine Ave 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 14th day of January 2026, Plaintiffs' Motion to Enter Final Judgment 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

EXHIBIT A

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)**

[PROPOSED] FINAL JUDGMENT

Upon consideration of the Court's Memorandum Opinion and Order denying Defendants' motion to dismiss the complaint, Dkt. 49 ("Order"); and

Upon consideration of Plaintiffs' Motion to Enter Final Judgment, it is hereby ORDERED that the motion is GRANTED.

It is further ORDERED that:

1. Beginning with the month after the month in which Judgment is entered, and each month thereafter, Defendants shall properly apply 42 U.S.C. § 403(a) to the class in accordance with the Court's Order, Dkt. 49, as follows: in determining whether the family maximum has been exceeded and it is necessary to reduce the child's insurance benefit payable to each class member under 42 U.S.C. § 403(a), Defendants shall use the benefit amount actually payable to the Number Holder (i.e. the RIB) instead of the PIA.

2. For each month in which a class member received a child's insurance benefit payment, from the first such month through and including the month before the month in which

Defendants comply with Paragraph 1, Defendants shall recalculate the benefit that should have been paid in such month using the RIB instead of the PIA, and immediately begin to pay any resulting past-due amount to such class member, subject to SSA setting aside and paying any attorney's fees the Court may grant, on a rolling basis to be completed not later than 12 months after entry of this Judgment.

3. Plaintiffs' counsel are entitled to an attorneys' fee award under 42 U.S.C. § 406(b) based on a percentage of past-due benefits paid to the class. Such fee application, together with any application for an incentive award, shall be submitted within 14 days of entry of this Judgment. Defendants reserve the right to object to the specific percentage requested. The percentage fee awarded shall be withheld from the past-due amounts paid to class members under Paragraph 2 and paid directly to Plaintiffs' counsel.

4. The Court shall retain jurisdiction to ensure compliance with this Judgment until such time as all past-due amounts owed to the class (and all associated attorneys' fees) are paid in full. Defendants shall file a status report bi-monthly setting forth their progress in complying with this Judgment.

5. This Final Judgment applies to all members of the class, as defined in the Court's class certification order, to whom notice was sent, excluding those who timely requested exclusion from the class as set forth in the exclusion reports filed by Class Counsel.

ENTERED this ____ day of _____ 2026 in Alexandria, Virginia.

_____
United States District Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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,*	)	
Plaintiff,	)	Case No. 1:24cv1196 (MSN/IDD)
v.	)	
FRANK BISIGNANO Commissioner of Social Security Administration, *et al.*,	)	
Defendants.	)	

[PROPOSED] STIPULATED JUDGMENT

Pursuant to Federal Rule of Civil Procedure 58, the parties hereby stipulate and agree as follows, and it is ORDERED that:

1. Plaintiff brought this case on behalf of himself and a class of similarly situated individuals challenging the Social Security Administration's ("SSA") calculation of benefits payable to the children of parents who have retired before reaching full retirement age. Compl. (Dkt. 1) ¶ 1.

2. On February 14, 2025, the Court denied Defendants' motion to dismiss. (Dkt. 49). The Court held that SSA had erred in interpreting 42 U.S.C. § 403 by using the primary insurance amount ("PIA") rather than the reduced insurance benefit ("RIB") to determine the appropriate reduced benefit that would not exceed the family maximum benefit. Mem. Op. & Order (Dkt. 49) at 1, 10.

3. SSA does not concede or acquiesce to the substance of the Court's February 14, 2025, finding, described above, and reserves the right to appeal it. Rather, SSA agrees to entry of the instant stipulated judgment for the express purpose of moving forward in an efficient and

expeditious manner.

4. After supplemental briefing, the Court certified a class of child auxiliary beneficiaries on May 30, 2025. Order (Dkt. 72). The class is defined as follows:

> All Eligible Children of Early Retirees, where such children, between and including May 10, 2024 and May 30, 2025, received a child's insurance benefit under Section 402(d) of the Social Security Act (the "Act") that was reduced under Section 403(a)(1) of the Act because the Social Security Administration (the "SSA") used the PIA of the Early Retiree instead of the RIB in determining whether the Family Maximum was exceeded, and therefore such children may be entitled to past due benefits.
>
> "Eligible Children" means, as set forth in Section 402(d)(1) of the Act, any child of an Early Retiree (i) who filed, or for whom was filed, an application for child's insurance benefits, (ii) who at the time such application was filed was unmarried and either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 19, and (iii) who was dependent on such Early Retiree at the time of the application. As necessary, Eligible Children shall also include the child's legal representative and/or representative payee.
>
> "Early Retiree" means any individual entitled to receive old-age insurance benefits (but not disability benefits) under Section 402(a) of the Act who applied for and received such benefits prior to reaching full retirement age and therefore received a reduced old-age benefit lower than that of his/her PIA.
>
> "PIA" is the primary insurance amount as defined by the Act.
>
> "RIB" is the retirement insurance benefit that is actually paid to the Early Retiree.
>
> "Family Maximum," as defined in Section 403(a)(1) of the Act, is the maximum amount of total monthly benefits to which beneficiaries may be entitled under Section 402 of the Act on the basis of the wages and self-employment income of the Early Retiree.
>
> Excluded from the class are: (i) Eligible Children who are deceased, (ii) Eligible Children who are not United States citizens, and (iii) Eligible Children of an Early Retiree who ever had excess earnings under Section 403(b).

Order (Dkt. 72) at 7.

5. SSA is directed to recalculate benefits for the class members, as those are defined in the Court's May 30, 2025, Order (Dkt. 72), consistent with the Court's February 14, 2025, Memorandum Opinion & Order. However, should any party appeal any finding, decision, or order in this matter, SSA's obligations under this Paragraph are stayed pending final resolution of any

and all appeal(s). SSA will not be required to take any action to recalculate benefits of any class member as a result of any adverse judgment until any and all such appeal(s) are resolved. All appeal(s) shall be considered "resolved" when no further appeal is available to either party, either because the Supreme Court of the United States has issued a decision or has denied a petition for a writ of certiorari in the case, or the time for either party to seek appellate review has expired.

6. If Plaintiff seeks attorney's fees and such application is approved, payment of any attorney's fees sought by Plaintiff shall be stayed pending resolution of any and all appeal(s) as defined above.

7. Nothing in this Stipulated Judgment shall prevent either party from appealing any issue in the case.

8. The Clerk of Court is directed to enter judgment under Federal Rule of Civil Procedure 58 in favor of Plaintiff and the class and against Defendants.

IT IS SO ORDERED.

Date: _____
Alexandria, Virginia

_____
HON. MICHAEL S. NACHMANOFF
UNITED STATES DISTRICT JUDGE

WE ASK FOR THIS:

KELLEY DRYE & WARREN LLP

Ira T. Kasdan (admitted pro hac vice)
ikasdan@kelleydrye.com
Joseph J. Green (VSB # 40336)
jgreen@kelleydrye.com
3050 K Street, N.W.
Washington D.C. 20007
Tel: (202) 342-8400
Facsimile: (202) 342-8451

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

Counsel for Plaintiff and the class

Date:

LINDSEY HALLIGAN
United States Attorney and Special Attorney

TODD W. BLANCHE
Deputy Attorney General

ROBERT K. MCBRIDE
First Assistant United States Attorney

MEGHAN LOFTUS
KIRSTIN K. O'CONNOR
Assistant United States Attorneys
Office of the United States Attorney
Justin W. Williams U.S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3757/3799
Fax: (703) 299-3983
Email: meghan.loftus@usdoj.gov
kirstin.o'connor@usdoj.gov

Counsel for Defendant

Date:

EXHIBIT C

Ira Kasdan

Kelley Drye & Warren LLP
670 Maine Avenue, SW
Suite 600
Washington, DC 20024

Tel: (202) 342-8864
IKasdan@KelleyDrye.com

December 16, 2025

Via E-Mail

Kirstin O'Connor
Assistant United States Attorney
Eastern District of Virginia
2100 Jamieson Avenue
Alexandria, VA 22314

Re: *L.N.P., v. Bisignano, et al.*, 1:24cv1196 (MSN-IDD) (E.D. Va.)

Dear Kirstin:

Thank you for sending the agency's proposed judgment. In our view there are several deficiencies in the agency's proposed judgment, which we discuss below along with some other thoughts. Please let us know if the agency agrees to make any of these changes or if you want to meet and confer regarding these issues.

1. We do not think paragraph 3 (SSA's reservation of rights) is necessary, but if we come to agreement on the rest of the substance we are ok leaving it in.

2. Paragraph 5 is not sufficient for several reasons, as follows:

   a. First, it does not require the agency to fix the calculation of benefits for the class going forward. We sought injunctive relief in our complaint and the court has the authority to grant injunctive relief to ensure that the *class members* receive the proper benefits going forward. See Complaint at pps. 27-28. Thus, paragraph 1of our proposed judgment (which grants this relief) is necessary and appropriate.

   b. Second, the agency's paragraph 5 merely directs the agency to recalculate benefits "consistent with" the Court's order. We think the judgment should be explicit as to the proper method of recalculation which is why we included in both paragraphs 1 and 2 of our proposed judgment the specific instruction that the RIB should be used instead of the PIA.

   c. Third, our judgment also explicitly provides for recalculation and payment of all past-due benefits owed to the class members—i.e. from inception through the date when the agency fixes the problem—as required by Section 42 U.S.C. § 404(a)(1)(B)(i) of the Social Security Act in the event of an underpayment. See paragraph 2 of our

judgment ("For each month in which a class member received a child's insurance benefit payment, from the first such month through and including the month before the month in which Defendants comply with paragraph 1, Defendants shall recalculate the benefit that should have been paid …."). This specific instruction will avoid confusion and mistakes by the agency as it recalculates benefits. If you disagree, please explain why.

d. Fourth, the agency's judgment essentially builds in an automatic stay pending appeal. We do not agree to include a stay in the judgment itself. Rather, after judgment is entered, the agency can move for a stay as in any other case. Along these lines, our proposed judgment includes a deadline for the agency to fix the calculations going forward (see paragraph 1). Plaintiffs reserve their rights regarding any request for a stay.

e. Further, we intend to amend our initial draft to propose a set deadline(s) for the agency to recalculate and pay past-due benefits. While we are open to discuss the precise deadlines(s), we also have ideas how to structure this aspect of the relief to minimize any impact on the government in the (unlikely) event the judgment is reversed on appeal. That being said, SSA should be mindful that the Court's denial of its motion to dismiss was on statutory grounds that greatly reduces or eliminates the likelihood of success on the merits, and that the longer it takes to resolve the case the more harm the class will suffer.

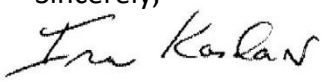
3. Paragraph 6 is insufficient as it does not provide for our entitlement to fees under Section 406(b). As we did in *Steigerwald*, we intend to seek judgment on the question of our entitlement to 406(b) fees—hence why we included paragraph 3 of our proposed judgment. (We explicitly included language stating that the agency could object to the amount of fees sought in the ultimate fee application.) Putting aside the question of the amount of fees, does the agency agree that we are entitled to fees under Section 406(b) or is that a disputed issue? If it is disputed, we intend to brief it.

4. Finally, the agency's proposed order does not provide for the retention of jurisdiction by the Court to ensure compliance. We intend to seek this relief—see paragraph 4 of our proposed judgment—to ensure that the agency complies with the Court's Judgment and class members obtain timely relief.

Please let us know the agency's position on these issues and whether you are available to meet and confer (if it would be helpful). We can be available any time tomorrow, Thursday, or Friday (until 3 pm) to meet and confer. If the parties are not able to make progress or agree on a stipulated judgment in the coming days, the parties should submit competing judgments with supporting briefs as we previously agreed (Dkt. 105, ¶ 7(d). Please let us know if the agency will agree to file simultaneous briefs on January 8, 2026, with simultaneous responses by January 29.

Kirstin O'Connor
December 16, 2025

Sincerely,



Ira T. Kasdan

cc: Damon Suden (via email)
Steve Schlesinger (via email)
Meghan Loftus, Meghan (via email)