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)

<u>PLAINTIFFS' MOTION FOR ATTORNEYS' FEES</u>

Pursuant to 42 U.S.C. § 406(b), Federal Rules of Civil Procedure 23 and 54, this Court's Final Judgment Order and Amended Judgment, Docs. 176, 180–81 Class Counsel Kelley Drye & Warren LLP ("Class Counsel" or "KDW") respectfully files this Motion for Attorneys' Fees. As set out further in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Attorneys' Fees, KDW seeks a reasonable fee award of 10% or 20% of the past-due benefits to be awarded to class members and other auxiliary beneficiaries by the Social Security Administration ("SSA") stemming from KDW's successful prosecution of this case. As explained more fully in the accompanying Memorandum, incorporated herein by reference, the higher or lower percentage will turn on the size of the class which will depend on the Court's decision on Plaintiffs' pending Motion for Clarification as to the scope of the class members entitled to relief. Doc. 182.

Furthermore, and as explained more fully in the accompanying Memorandum, incorporated herein by reference, Class Counsel's diligent, time-consuming, and ultimately

successful efforts to secure relief for the Class are deserving of the requested attorneys' fee award under 42 U.S.C. § 406(b). Moreover, pursuant to Supreme Court and Fourth Circuit case law, the requested fee is reasonable. Therefore, Class Counsel respectfully requests that the Motion be granted.

Pursuant to Federal Rule of Civil Procedure 23(h)(1)(3), "[i]n a certified class action," the Court "may hold a hearing" on fees. Class Counsel respectfully requests that the Court schedule a hearing on this Motion on July 10, 2026. Class Counsel intends to post notice of any hearing scheduled by this Court on this Motion on the website dedicated to this class action, https://www.kelleydrye.com/lnpclassaction (or https://lnpclassaction.com). The Class Notice in this case provided, in pertinent part, that Class Members must "have an opportunity to submit written comments or an objection to the Court" as to Class Counsel's fee request. To provide the Class with the opportunity to provide comments or objections to this Motion for Fees, Class Counsel plans to post the following statement along with this Motion, on the class website:

> Class Counsel has filed a Motion requesting an award of attorneys' fees in the amount of up to twenty percent (20%) of each individual Class Member's past-due benefits paid or due to be paid to each Class Member as a result of this case (including but not limited to all others receiving benefits as a result of this case). If you have any comment or objection to Class Counsel's Motion for Fees, please send it, by letter, to:

United States District Court
For the Eastern District of Virginia
Clerk of the Court
Re: *L.N.P. v. Bisignano*, Case No. 1:24-cv-01196
Albert V. Bryan United States Courthouse
401 Courthouse Square
Alexandria, VA 22314

With a copy to:

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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 MOTION FOR ATTORNEYS' FEES

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Pursuant to 42 U.S.C. § 406(b), Federal Rules of Civil Procedure 23 and 54, this Court's Final Judgment Order and Amended Judgment, Docs. 176, 181, Class Counsel Kelley Drye & Warren LLP ("Class Counsel" or "KDW") respectfully files this Memorandum of Law in Support of its Motion for Attorneys' Fees. As set out below, KDW seeks a fee award of 10% or 20% of the past-due benefits to be awarded to class members and other auxiliary beneficiaries by the Social Security Administration ("SSA") stemming from KDW's successful prosecution of this case. The higher or lower percentage will turn on the size of the class which will depend on the Court's decision on Plaintiffs' pending Motion for Clarification as to the scope of the class members entitled to relief. Doc. 182.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

On April 29, 2026, judgment was entered on behalf of Plaintiff L.N.P. and his children and the class and against the Social Security Administration. Docs. 180–81. *See also* Doc. 176 (Final Judgment Order). As a result of the judgment, *at least* 25,000 minor children of early retirees will receive (as of today) up to approximately $62,716,807.02 in past-due benefits and tens of millions more in increased benefit payments going forward.[1] Joubert Declaration attached hereto ("Joubert Decl.") at p. 6, Table 1, Category 1.[2] In this instance, each child will be entitled, on average, to

[1] Indeed, not only does the Final Judgment Order require the agency to fix the calculations going forward but the past-due benefits owed to each class member will continue to accrue until those changes to the benefit amounts are made. Doc. 176. At the agency's request, the Court stayed its judgment. Therefore, the past-due benefits to which the class is entitled will continue to rise during any appeal. Of course, the agency could choose to stop the accrual of past-due benefits at any time by fixing its miscalculations and immediately begin paying the class the correct amounts going forward.

[2] The conclusions in the Joubert Declaration are reasonable estimates of past-due benefits for class members based on data received in discovery from SSA and are easily verifiable per the computer-based steps that Mr. Joubert took to calculate them as set out in his declaration. Mr. Joubert estimated past-due benefits for those class members who began receiving benefits during the class period (Category 1) as well as those who received a Cost of Living Adjustment letter during the class period (Category 2). Mr. Joubert further provided estimates on the assumption that benefits for each class member continued until they reached age 19 (Table 1) or alternatively age 18 (Table 2). (Children who turn 18 may continue to receive benefits if

approximately $2,500 in past due benefits (if paid today) and thousands more in future benefits. If, however, the Court grants the pending motion for clarification (Doc. 182) in favor of Plaintiffs, the final judgment will result in the substantial payment of up to approximately $420,000,000 of past-due benefits (and likely hundreds of millions more in future benefits) to some 171,000 minor children. Joubert Decl. at p. 6, Table 1, Categories 1 and 2. In that case, each child will again receive, on average, about $2,500 in past-due benefits. In either case, the award of past-due benefits and increased future benefits will be a substantial victory for the class and welcome relief to needy children and their families.

None of this would have been possible but for the dedicated efforts of Class Counsel over the last five years in pursuing this matter on behalf of their client L.N.P., and his children, and the class. In exchange for securing tens, if not hundreds, of millions of dollars in past-due benefits (and many millions more in future benefits) for the minor children comprising the class, Class Counsel now seek a fee award equal to 20% (if the class is 25,000 children) or just 10% (if the class is 171,000 children) of the past-due benefits. In other words, class members will pay, on average, just $500 or as little as $250 per person to Class Counsel for obtaining this result on their behalf—less than they likely would have paid at the almost uniformly sought standard rate of 25% allowable under 42 U.S.C. § 406(b)[3] had they retained separate counsel to pursue their own individual claims.[4]

The exceptional result here is a tribute to the years of initiative, investigation, research, and

they are in school. SSA did not produce data regarding which 18-year-old children remained in school.) If SSA disputes the results found in the Joubert Declaration, the Court should compel the agency to provide its own estimation of the past-due benefits.

3 *See Gisbrecht v. Barnhart*, 535 U.S. 789, 812 (2002) (Scalia, J., dissenting) ("It is uncontested that the specialized Social-Security bar charges uniform contingent fees (the statutory maximum of 25%), which are presumably presented to the typically unsophisticated client on a take-it-or-leave-it basis.").

4 20% of $2,500 is $500 and 10% is $250; while 25%, is $625.

highly professional and effective litigation by KDW. The firm's dedication to this matter cannot be denied. Over five years (and counting, assuming an SSA appeal), KDW attorneys have devoted more than 4,800 hours and expended over $131,000 in out-of-pocket expenses to achieve an outstanding victory. *See* the attached declaration of co-lead counsel Ira Kasdan, (the "Kasdan Decl."), at ¶ 8. KDW has made almost 100 court filings and at least 8 court appearances; conducted discovery and reviewed the resulting data that compelled SSA to increase the size of the class four times based on the agency's errors that KDW caught; expedited the prosecution of the case; and expended enormous time and resources in effectively responding to the numerous inquiries of some 1,300 individual class members. *Id.* at ¶¶ 10, 12. These salient facts readily support KDW's requested fee award under *Gisbrecht*, 535 U.S. at 808 (emphasizing important factors under Section 406(b) to include "the results the representative achieved" and lack of delay in the attorney's prosecution of the case).

In determining a reasonable fee, *Gisbrecht* also guides the Court to consider the peculiar nature and "character of the representation." *Id.* at 808. Here, the matter was brought as a *class action*. Courts in this Circuit and around the country have decided attorneys' fees in large/mega-class actions, like this one, on a percentage of the fund approach as opposed to a lodestar basis—which, in any case, the Supreme Court in *Gisbrecht* has rejected, *see id.* at 806—and have awarded fees in even higher percentages than KDW seeks here. Additionally, the analysis and actual fee awards in the two prior class actions against SSA that yielded large past-due benefits for class members—*Greenberg* (20%) and *Steigerwald* (15%)—support KDW's request here.

Another crucial factor for the Court to consider is the fundamentally risky and expensive nature of class actions. With their inevitable need for tremendous human resources and large out-of-pocket costs and expenditures, class actions inherently are very risky for law firms like KDW

which, after years of hard-fought litigation might not get paid anything if it is unsuccessful. By the same token, when successful, class actions against SSA are immensely beneficial and cost-effective for class members, who might otherwise not have been able to secure representation for their individual, small claims in the first place, or (as noted above), likely would end up paying the full 25% rate set out in almost every engagement letter, as allowed under 42 U.S.C. § 406(b).

Finally, there is a highly relevant public policy consideration. Non-profit legal aid societies that take government subsidies are barred under the Legal Services Corporation Act from bringing class actions against SSA. *See* Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104–134, 504(a)(7), 110 Stat. 1321, 50 (1996), 42 U.S.C. § 2996f note (no funds appropriated to the Legal Services Corporation may be used to provide financial assistance to any person or entity "that initiates or participates in a class action suit"); 45 CFR § 1617.3 ("Prohibition"). Without private law firms like KDW bringing such actions on behalf of hundreds or thousands of social security beneficiaries, individual claimants would be unlikely to obtain the benefits that they are owed in cases like the present one that depend on complex legal issues that this Court has recognized are challenging and of "first impression."[5] Thus, when these cases succeed, as this one has, class counsel should be amply rewarded for their efforts and for the risks they took in pursuing the claims. Without a substantial, albeit reasonable, premium upside, firms like KDW will not be incentivized and will be far less likely to pursue novel, risky, time-consuming claims on behalf of a class. And the systemic mistakes by SSA would never be challenged, let alone remedied on a large scale, as they were here.

[5] This Court has recognized the case entails challenging issues and those of first impression. *See LNP v. Kijakazi*, 2021 WL 7185231 at *3–4 (E.D. Va. Nov. 24, 2021) ("the issue raised by plaintiff appears to be one of first impression"); Kasdan Decl., Ex. A, (3/13/26 Transcript Excerpt) at 4 (same); *id.*, at 12 ("there are a lot of challenging issues in this case").

II. FACTUAL AND PROCEDURAL BACKGROUND

Kelley Drye has spent more than five years prosecuting L.N.P.'s own, and the class's, claims to successful conclusion. This section details the procedural and factual background spanning the time L.N.P. first applied for his and his minor children's benefits in October 2019, to Class Counsel's initial work leading to the filing of the class action in May 2021, through today.

A. October 2019 - May 2021: SSA miscalculates L.N.P.'s children's benefits; L.N.P. immediately seeks reconsideration to no avail. L.N.P. engages KDW to file a class action. KDW does so after conducting extensive preliminary research and due diligence.

In October 2019, SSA issued Notices of Award to L.N.P.'s minor children that incorrectly calculated their benefits. Instead of using L.N.P's actual benefit amounts as an early retiree, *i.e.*, the Retirement Insurance Benefit ("RIB"), to determine whether the family maximum was exceeded, SSA used L.N.P.'s theoretical Primary Insurance Amount ("PIA"). L.N.P. immediately filed for reconsideration, in reliance (among other things) on the First Circuit's decision in *Parisi v. Chater*, 69 F.3d 614, 623 (1st Cir. 1995), which held that Section 403 of the Social Security Act required the use of actual as opposed to theoretical benefit amounts for that calculation. For more than a year, SSA ignored L.N.P's numerous efforts to obtain relief. Frustrated by SSA's inattentiveness and delays, L.N.P. contacted Kelley Drye to file a complaint not only on behalf of himself and his children, but also for putative class members. To properly address the complexities in the lawsuit, KDW engaged in extensive communications with L.N.P.; embarked on its own independent research and verification of the facts, potential claims and legal theories based on the *Parisi* case and the First Circuit's statutory construction of Section 403; began initial drafting of a possible complaint; and conducted overall due diligence, including by consulting with and paying an outside expert in social security law. After additional painstaking strategizing, drafting and re-drafting,

KDW filed L.N.P.'s first class action complaint and motion for class certification.[6] Given L.N.P.'s inability to obtain relief from the agency and SSA's stated intent to continue applying the wrong calculations even when presented with legal authority to the contrary, L.N.P. decided to file his lawsuit without exhausting his administrative remedies on the ground that doing so would be futile. In this way, Class Counsel hoped to expedite the case and obtain a judgment requiring SSA to fix its decades-long mistaken calculations without the need for pointless administrative proceedings.

B. November 2021 – May 2024: The class action is dismissed by this Court without prejudice, the Fourth Circuit affirms and KDW continues to represent L.N.P. and his children in the ensuing administrative proceedings. Given the opportunity by the courts, SSA has the chance to more fully explain its position within the administrative process but fails to do so.

Nonetheless, this Court dismissed the complaint without prejudice for L.N.P.'s failure to exhaust his administrative remedies, reasoning that SSA should be "permitted to expound on its position at the administrative level rather than through litigation filings." *L.N.P.*, 2021 WL 7185231 at *3. *See also id.* at *4 ("the additional information and exposition provided by the SSA through an adjudicatory decision would assist the Court in reaching its own decision on the merits") (footnote omitted). On appeal, the Fourth Circuit agreed, accepting SSA's argument that full exhaustion of remedies is "a significant and valuable procedural step to retain because it allows SSA 'to get its explanation on the record as to why it has interpreted certain provisions in a particular way.'" *L.N.P. v. Kijakazi*, 64 F.4th 577, 589 (4th Cir. 2023).

During the ensuing administrative proceedings, KDW continued to represent L.N.P., first before the agency's Administrative Law Judge and then on appeal to SSA's Appeals Council. In

[6] *See* Kasdan Decl. Exhibit B (copy of the Engagement Letter Agreement executed by L.N.P. in 2021 and reaffirmed in 2024). Under that Agreement, L.N.P. agreed that KDW would seek a fee of 25% of past-due benefits awarded to L.N.P. and/or his children and the class in the event of a favorable determination—subject to court approval—with no fee obligation should the litigation result in no recovery of past-due benefits.

that capacity, KDW not only drafted L.N.P.'s filings but also appeared in person at the ALJ hearing. *See* Kasdan Decl. at ¶ 10. KDW's crafting and presentation of the merits, which paralleled the federal complaint, gave the agency every opportunity to elaborate on its reasoning as to why L.N.P.'s theory of the case was wrong. All to no avail: the ALJ's written opinion added no new arguments to those made by SSA in its motion to dismiss and indeed did not include several offered by agency counsel in their briefs. In a final decision issued in May 2024, the Appeal Council's affirmed with no further explanation simply finding "no reason under our rules to review the Administrative Law Judge's decision." *See* Doc. 1 at 22, ¶ 84.

C. July 2024 – May 2025: L.N.P. and KDW refile the class action, but SSA moves to dismiss and opposes class certification. After oral argument and extensive briefing, the Court denies the motion to dismiss, grants class certification and appoints KDW as class counsel.

Having exhausted his remedies, L.N.P. was determined to continue pursuing relief in court and, through KDW, he redrafted and then refiled his class action complaint on July 9, 2024. Doc. 1. To expedite the case, Class Counsel filed a motion for class certification only three days later. Doc. 11. Predictably, SSA once again moved to dismiss the case and opposed class certification. Docs. 27–28. By way of a consent motion and after briefing, *see* Docs. 27–29, 31, 32, 36, oral argument was held by the Court on November 15, 2024, on both the motion to dismiss and motion for class certification.

On February 13, 2025, the Court issued a Memorandum Opinion and Order denying SSA's motion to dismiss. Doc. 49.[7] Additionally, the Court sought further briefing on class certification. *Id.* Via a consent motion, SSA originally was required to file its brief by March 31, 2025. Doc. 51. However, SSA twice sought additional time, to which Class Counsel, out of courtesy and to ensure

[7] As SSA subsequently admitted in advising the Court in a joint motion that the parties would potentially enter into a stipulated judgment, the Court's February Order essentially meant that L.N.P. and KDW had won the case on the merits. *See* Doc. 74.

judicial efficiency and avoid unnecessary briefing, agreed.[8] The Court both times extended the agency's time to file its brief until April 23, 2025. *See generally* Docs. 54–55, 61–62. The Court thereafter issued its final Memorandum Opinion and Order on May 30, 2025, granting class certification and appointing KDW as Class Counsel. Doc. 72.

D. June 2025 – September 2025: KDW propounds and by Court-order obtains important MBR class discovery, and the need for SSA to explain its methodology in compiling a class list. KDW catches SSA's first mistake in providing a deficient class list, increasing the number of members five-fold. KDW obtains further Court-ordered discovery regarding COLA letters, takes a deposition and meets the discovery cut-off date without the need for an extension.

With the issuance of class certification, class discovery followed. *See* Doc. 73 (Court lifts stay on discovery and orders that "the parties shall proceed with discovery" and "shall submit a revised discovery plan by June 6, 2025"). The parties agreed and informed the Court that no trial was necessary in light of the Court's February 13, 2025, denial of SSA's motion to dismiss. Doc. 74. The parties further agreed to negotiate a joint discovery plan, as well as a possible stipulated judgment that would obviate the need even for summary judgment briefs. *Id.* KDW timely provided the agency with a proposed discovery plan, but the agency delayed in reacting to it despite having twice been granted extensions of time. *See generally* Docs. 75, 76. Indeed, SSA ultimately insisted that no real discovery was necessary and that it only needed to produce a list of class members based on the Court's class definition in its May 30 certification opinion; allow for class notice; and then have the Court remand the case to the agency for further proceedings. *See* Doc. 78 at 6–7. SSA also sought bifurcation between liability and damages. *Id.* KDW opposed such a "plan" which, among other problems, would have precluded Plaintiffs from testing the accuracy of SSA's list and otherwise prejudiced class members. *See generally id.* at 1–5. As things turned

[8] Class Counsel had also pointed out SSA's failure to have filed an answer to the complaint. Doc. 52 at 13. To ensure that the case proceed efficiently, KDW consented to SSA's filing its pleading out of time. Doc. 56. The Court granted the agency's consent motion. Doc. 57.

out, KDW's objections were well taken and resolved in its and the class's favor.

KDW served SSA a first set of interrogatories and a document request on June 26, 2025. See Docs. 85-5, 85-6. The essential point of the discovery was to enable KDW to test the adequacy and accuracy of any class list that SSA would produce. Crucial elements of the discovery requests, therefore, were to obtain SSA's methodology in creating the class list, and class members' specific benefits information as found in SSA's Master Beneficiary Records ("MBR") data base, and in Notices of Award and Cost of Living Adjustment letters. SSA resisted the discovery but after an initial pretrial conference held on July 16, 2025, Magistrate Judge Davis issued a Rule 16(b) Scheduling Order that not only set a tight discovery deadline of September 15, 2026, but also affirmed Plaintiffs' right to obtain much of the discovery KDW was seeking. Specifically, Judge Davis ordered that SSA produce the "Master Beneficiary Record ("MBR") methodology,[[9]] and redacted MBR, as agreed upon by the parties at the Initial Pretrial Conference" and the class list and any methodology used to compile the MBR [sic] no later than July 21, 2025." Doc. 81.

After the parties negotiated and the Court entered a protective order, *see* Doc. 83, SSA produced a purported class list of approximately 21,000 members on July 21. That list, however, did not include the agreed-upon MBR information as ordered by Judge Davis. Of equal importance, KDW further discovered the list was patently deficient as it did not even include the names of L.N.P. and his children. *See*, *e.g.*, Doc. 85 at 1; Doc. 131 at 1–2. As a consequence, KDW engaged in numerous discussions and emails with SSA to ascertain the source of the problem. Consequently, KDW was forced to file a motion to compel, after numerous attempts to resolve disputes over SSA's lack of full compliance with Judge Davis's July 16 Order proved

[9] The parties agreed that this was a typo: the agency understood that it was to produce the methodology for creating the class list, not the methodology for creating the MBR.

unsuccessful. *See* Docs. 84–85. KDW also had to file a second set of interrogatories and production of documents request, *see* Kasdan Decl. at ¶ 10, until, finally, in opposition to the motion to compel, SSA was forced to acknowledge that "the July 21, 2025, list does not include all class members and [therefore] has produced a new list to remedy that error." Doc. 93. Its new list contained nearly five times as many class members as the original list—102,741 children in total. *See* Doc. 95, at page 2 of 9.

On August 29, 2025, after hearing KDW's oral argument, Judge Davis granted the motion to compel in part by ordering SSA to produce samples of Notice of Award and Cost of Living Adjustment ("COLA") letters. At the same time, he ruled that the parties could resolve the matter by a court-ordered stipulation, which the parties did. *See* Doc. 100; *see also* Doc. 103-1 (stipulation of parties resolving discovery dispute). That KDW obtained the COLA letters in discovery is important in terms of the scope of the class. *See* Doc. 154 at 5–10 (explaining that persons receiving COLA letters in 2024, are part of the class). *See also* Doc. 182 at 3–4. After taking a single, half-day deposition and then cancelling a second to conserve the parties' resources, *see* Kasdan Decl. at ¶ 10, KDW completed discovery by the September 17 deadline set by Judge Davis without the need to seek an extension. On September 16, 2025, the parties filed a joint motion and status report seeking relief from trial requirements. Doc. 105. The parties informed the Court that they would "endeavor to propose a joint stipulated judgment" by the end of the opt-out period. *Id.* at 3. The Court promptly relieved the parties from trial requirements the following day. Doc. 106.

E <u>October 2025 – to date</u>: After catching additional repeated errors by SSA in the class lists it produced, KDW mails Court-approved notices to more than 180,000 recipients over three separate times. The Court enters final judgment on behalf of the class, vindicating KDW's efforts as Class Counsel and rules that the firm is eligible to obtain Section 406(b) attorneys' fees.

Less than two weeks later, by September 29, 2025, KDW successfully negotiated with SSA and filed a plan with proposed notice language. Doc. 108. The Court quickly approved the plan

on October 1. Doc. 109. Under the approved plan, KDW was required to complete mailing of the notice by October 17; allow for a 45-day opt-out period ending December 1; set up a website for class members to follow the case; create a toll-free number and email address for class members to communicate with Class Counsel; and certify compliance with the Court by not later than December 22, together with the submission of the names of class members who had opted out. *See generally* Docs. 108, 109.

KDW timely met each of these requirements. Doc. 112. In a status report filed on December 8, two weeks earlier than required, KDW certified to the Court the plan's successful implementation, including informing the Court of the high volume of communications by class members with Class Counsel and interactions with the website dedicated to the case. KDW also reported that only 91 of the more than 102,000 recipients of the notice had chosen to opt out. *See* Doc. 112-1 (filed under seal).[10]

In its December 8 filing, KDW also reported concerns of a handful of persons who claimed that not all of their minor children had received the notice. *See* Doc. 112 at 2. KDW had informed SSA's counsel of the issue as early as November 18, and made numerous attempts to obtain an explanation and, as necessary, a new class list. *See generally* Doc. 121. SSA made repeated, albeit failed, promises to issue a new list, which compelled KDW on December 17 to file with the Court a motion to enforce. *Id.* KDW filed a third status report on December 22, Doc. 123; the very next day, SSA finally issued a list with 47,747 new members. *See* Doc. 131 at 5.[11]

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[10] This was the first of a total of four filings that KDW had to file under seal. *See* Docs. 113, 124, 164, 171.

[11] Still, even that new list raised questions. *See* Doc. 131 at 3. KDW allowed SSA more time to respond to the questions and pushed the hearing date on the motion to enforce to late January. *See* Doc. 136. SSA finally provided all the needed information leading to the withdrawal of the motion to enforce. Doc. 141.

With the new list in hand, KDW quickly filed a consent motion for the mailing of a supplemental class notice—patterned after the original, prior notice—to be mailed by not later than January 23 for 47,747 new children. *See generally* Doc. 131. The Court immediately gave its approval, Doc. 133, and KDW timely mailed out the notices. *See* Doc. 144.

Yet again, however, KDW discovered that SSA mistakenly left more class members off the new list. Doc. 144. Once again, KDW informed SSA and SSA had to issue a new list of class members, adding another 34,000 plus individuals. *Id.* And, once again, KDW had to file and receive approval to send a *second* supplemental notice which KDW timely mailed on February 20, 2026. Doc. 151.[12] On April 27, 2026, KDW filed with the Court the final names of opt-outs. Doc. 170. After three mailings of more than 180,000 notices, KDW reported only a total of only 276 opt-outs *i.e.*, 0.15% of the class. *Id.*

All the while that KDW was fulfilling its notice obligations, its attorneys simultaneously were serving the needs of class members, by fielding their calls and email communications. In toto, approximately 1,300 class members (some numerous times) contacted KDW; KDW painstakingly responded to their questions and updated them on the status of the case. Kasdan Decl. at ¶ 12. In addition, KDW consistently posted on the dedicated website it had established, located at https://www.kelleydrye.com/lnpclassaction, the parties' filings and the Court orders as they were issued. The website was, and continues to be, well trafficked. Kasdan Decl. at ¶ 12.

In the September 16, 2025 stipulation that the parties had provided the Court, Doc. 105, the parties had agreed: "In the event that the parties cannot arrive at a joint stipulated judgment by the end of the opt-out period, the parties will promptly thereafter suggest a schedule for briefing

[12] The total out-of-pocket cost for all three mailings and other hard costs (such as for travel and hotel stay in Virginia near the courthouse) was $131,587.35. Kasdan Decl. at ¶ 8.

and for oral argument, to present their competing forms of judgment for the Court's resolution." KDW early on submitted to SSA its proposed stipulated judgment language, but due to the government shutdown and other delays, SSA did not reciprocate with its own proposed version until December 23, 2025. *See generally* Docs. 112, 119, 123. Subsequent efforts by the parties to resolve their differences were unsuccessful. That led KDW to file a motion to enter final judgment with supporting papers on January 14, 2026. Docs. 137–39. After further briefing by the parties, including the filing by SSA of a motion for summary judgment that KDW opposed, *see* Docs. 146, 154, the Court heard oral argument on March 13, 2026, and issued a Minute Order granting in part Plaintiffs' motion as modified in open court, and denying SSA's motion. Doc. 161. The Court refrained from issuing a final judgment at that time until the last opt-out date would pass. Kasdan Decl. Ex. A, at p. 16.

After KDW filed its fifth status report on April 27, the Court issued its Final Judgment Order and final Judgment in favor of the class. Docs. 176–77.[13] Among other relief that the Court granted, it ruled, as KDW had sought, that in accordance with 42 U.S.C. § 405(g), SSA was to recalculate and award benefits without the matter would being remanded to the agency; that the Court would retain jurisdiction for a one (1) year period to ensure compliance; that SSA would be required to report bi-monthly setting forth their progress in complying with the Judgment; and that KDW was eligible for attorneys' fees under 42 U.S.C. § 406(b), with its fee request to be filed within 14 days. Doc. 170.

Thereafter, Plaintiffs filed a motion for clarification regarding the scope of class members entitled to relief. *See* Doc. 182. If the Court rules that only people who received a new award of

[13] A clerical error in the original final Judgment was corrected by the Court after Plaintiffs filed a consent motion under Rule 60(a). *See* Docs. 178 (motion), 180–81 (corrected Amended Judgment).

benefits during the class period are included then the class will be approximately 25,000 people, with past-due benefits (as of the end of April) of about $62,700,000. If, on the other hand, the Court rules that people who received COLA letters during the class period are also included then the class will be approximately 171,000 people, with past-due benefits of about $419,370,352.50. Joubert Decl. at p. 6.

KDW has now filed this instant motion for attorneys' fees in timely compliance with the federal rules and the Court's Final Judgment Order. *See* Fed. R. Civ. P. 54(d)(2)(B); Doc. 176.

III. <u>LEGAL STANDARDS</u>

A. Section 406(b) Applies in Class Actions

Section 406(b) of the Social Security Act (the "Act") authorizes "a reasonable fee" for court 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 [favorable] judgment." 42 U.S.C. § 406(b). *See also Gisbrecht*, 535 U.S. at 795. Because this Court already has ruled that Class Counsel is eligible to obtain fees under Section 406(b), and the availability of such fees in a class action has twice been upheld in recent years by the only other courts addressing the question, that issue should no longer be subject to dispute by SSA. Dkt. 176; *Steigerwald v. Saul*, 2020 WL 6485107, at *6 (N.D. Ohio Nov. 4, 2020), *aff'd sub nom. Steigerwald v. Comm'r of Soc. Sec.*, 48 F.4th 632 (6th Cir. 2022); *Greenberg v. Colvin*, 63 F. Supp. 3d 37, 53 (D.D.C. 2014).

B. Courts Apply Many Factors in Considering the Reasonableness of a Fee Award

(i) The *Gisbrecht* factors as explained by the Fourth Circuit in *Mudd*

Gisbrecht is the leading Supreme Court case on Section 406(b) fees, while *Mudd v. Barnhart* is the main Fourth Circuit case that has interpreted and applied *Gisbrecht*. 418 F.3d 424 (4th Cir. 2005). *Mudd* recognized that *Gisbrecht* "did not provide a definitive list of factors to be

considered" in making a reasonableness determination, but rather that "district courts are accustomed to making reasonableness determinations in a wide variety of contexts." *Id.* at 428. Nonetheless, the Supreme Court identified several factors of importance: (i) "the character of the representation and the results . . . achieved," (ii) whether counsel delayed the case during the pendency of the case in court to cause past-due benefits to accumulate; and (iii) whether the past-due benefits "are large in comparison to the amount of time counsel spent on the case" *i.e.*, whether there would be a "wind-fall." *Id.* at 427.

(ii) *Gisbrecht* and *Mudd's* Rejection of the Lodestar Approach

Mudd also explained that *Gisbrecht* rejected the lodestar approach to calculating attorneys' fees under Section 406(b). *Id.* ("*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."). As the Supreme Court noted, "the lodestar method was designed to govern imposition of fees *on the losing party*," whereas "Section 406(b) is of another genre: It authorizes fees payable from the successful party's recovery." *Gisbrecht*, 535 U.S. at 802, 806. Moreover, Section 406(b) was enacted in 1965, before the lodestar method was developed in the mid-1970s, and it is "unlikely that Congress, legislating in 1965, and providing for a contingent fee tied to a 25 percent of past-due benefits boundary, intended to install a lodestar method courts did not develop until some years later." *Id.* at 806. (citation omitted).

(iii) Windfall Factors

Although courts consider whether a fee award would be a "windfall," the windfall analysis must not become a proxy for reintroducing the lodestar method. *See*, *e.g.*, *Fields v. Kijakazi*, 24 F.4th 845, 854 (2d Cir. 2022) ("We today wish to make clear that the windfall factor does *not* constitute a way of reintroducing the lodestar method.") (emphasis in original). Thus, "[i]n

determining whether there is a windfall that renders a § 406(b) fee in a particular case unreasonable, courts must consider more than the de facto hourly rate." *Id.* (citing *Jeter v. Astrue*, 622 F.3d 371, 381 (5th Cir. 2010)). "In other words, even a relatively high hourly rate may be perfectly reasonable, and not a windfall, in the context of any given case." *Id. See also Phillip S. S. v. O'Malley*, 2024 WL 6955224, at *3 (D.S.C. Nov. 18, 2024) ("Because counsel accepted representation along with the risk of no payment, a resulting fee that exceeds his hourly non-contingent rate is not unreasonable and does not result in a windfall.").

In assessing whether a fee is reasonable or if a windfall exists, courts may consider *all* hours spent by counsel. *Henshaw v. Barnhart*, 317 F. Supp. 2d 657, 662 (W.D. Va. 2004) (holding that "a federal court may award a fee that is reasonable under the circumstances of the particular case before it and may, in so doing, take into account the efforts undertaken by the claimant's attorney *at all stages of the representation*," and thus can take into account hours spent on "court related activities" and "at the agency level") (emphasis added). *See also Mudd v. Barnhart*, 2003 WL 23654009 at *2, *3 (E.D. Va. Nov. 17, 2003), *aff'd* 418 F.3d 424 (4th Cir. 2005) (noting that "in order to assess the reasonableness of the fee sought for a particular case, it is necessary to consider all the time and effort expended by the attorney during the course of the adjudication" including at the agency level and in court). Consideration of all hours, including at the administrative level will give "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 the district court. *Mudd*, 418 F.3d at 428. *See also Fields*, 24 F.4th at 855.

Fields also delineated additional factors for courts to review in assessing whether a fee award is excessive. These include: (i) "the ability and expertise of the lawyers and whether they

were particularly efficient, accomplishing in a relatively short amount of time what less specialized or less well-trained lawyers might take far longer to do"; (ii) the client's satisfaction with the representation; (iii) "how uncertain it was that the case would result in an award of benefits and the effort it took to achieve that result." *Id.* at 854–55. As the court explained: "In the absence of a fixed-fee agreement, payment for an attorney in a social security case is inevitably uncertain, and any reasonable fee award must take account of that risk." *Id.* at 855–56 (citation omitted). Thus, a contingency representation that succeeds "with minimal effort . . . suggest[s] very little risk of nonrecovery [and is the] kind of unearned advantage [that] the windfall concern really is about." *Id.* at 856.

(iv) The *Greenberg* and *Steigerwal*d Analyses

The *Greenberg* and *Steigerwald* class action cases against SSA are the only other cases awarding fees in class actions under Section 406(b) and therefore provide guidance.

In *Greenberg*, the court rejected the notion that individual contingent fee agreements are required, noting that "courts consistently award attorneys' fees in class actions where the absent class members are not apprised of the proposed fee arrangement until after either a preliminary settlement has been reached or the court has decided in favor of the plaintiffs." 63 F. Supp. 3d at 51. Instead, "class counsel may seek fees under § 406(b) so long as notice is provided to absent class members and they are given an opportunity to opt out or object." *Id.* at 52. "[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." *Id.*

Like the Fourth Circuit in *Mudd*, the *Greenberg* court recognized that the Supreme Court

"left open which factors should guide a district court's analysis." *Greenberg v. Colvin*, 2015 WL 4078042, at *7 (D.D.C. July 1, 2015). It therefore considered "the character of the representation and the results the representative achieved," *id.* (citing *Gisbrecht*), alongside factors used in common fund cases: "(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by class members to the settlement terms or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of litigation; (5) the risk of non-payment; (6) the time devoted to the case by plaintiffs' counsel; and (7) awards in similar cases." *Id.* at *7 (citing cases) (footnote omitted). Applying these factors, the court awarded a 20% fee, reduced from the 25% requested, where SSA had estimated an anticipated total fund award of about $20,000,000 for 1,100 people, *id.*, at *8, *8 n.8—a result the court held was "significant"—but where the case was not "a hard-fought legal battle" because it settled shortly after filing. *Id.* at *8–9.

In *Steigerwald*, the district court rejected SSA's argument that fees should be based solely on the lodestar, for the same reasons as *Gisbrecht*. 2020 WL 6485107, at *4 ("there is ample reason not to rely on the lodestar alone" including that "the lodestar method was designed to govern imposition of fees on the losing party"). Counsel requested 20%, and the court, balancing several considerations, reduced the award to 15% and found no windfall. *Id.* at *6. The district court recognized the "twin aims of § 406(b), [namely to] protect the social security claimant from the burden of paying excessive attorney's fees while also assur[ing] adequate compensation to the claimant's attorney and as a consequence to encourage attorney representation." *Id.* (cleaned up; footnote citation omitted). As the Sixth Circuit explained in affirming: "the district court considered the relevant factors that the Supreme Court outlined in *Gisbrecht*: the difficulty of the case, the character of the representation, the lack of delay on counsel's part, and the results that

counsel achieved." *Steigerwald*, 48 F.4th at 643 (citing *Steigerwald*, 2020 WL 6485107, at *5–6). Although the district court noted the disparity between Class Counsel's requested award and the time spent on the case (and indeed, awarded Class Counsel less than they requested), the court thoroughly explained why its fee award nonetheless furthered § 406(b)'s aims." *Id.*

(v) The Percentage Of The Fund Method In Common Fund Cases Provides Additional Important Guidance

As in *Greenberg*, this Court should consider well-established standards for assessing attorneys' fees in common fund cases. "The analogy between common fund cases and § 406(b)(1) cases is clear: neither involves fee-shifting and both concern payment of a reasonable fee by the client (or client class) to his, her or its own attorney." *Allen v. Shalala*, 48 F.3d 456, 460 (9th Cir. 1995); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Blum v. Stenson*, 465 U.S. 886, 900, n.16 (1984) (expressing preference for determining reasonable fees as a percentage of the fund).

Within the Fourth Circuit, "the percentage of the fund approach not only is permitted, but is the preferred approach to determining attorneys' fees." *In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 2024 WL 4868615, at *2 (D.S.C. Nov. 22, 2024); *see also Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 438 (D. Md. 1998); *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 786–87 (E.D. Va. 2001); *Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 503 (E.D. Va. 1995) ("The percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases."); *Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 760 (S.D. W.Va. 2009). This consensus "derives from the recognition that the percentage of fund approach is the better-reasoned and more equitable method," in part because it "ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys." *Muhammad v. Nat'l City Mortg. Inc.*,

2008 WL 5377783, at *8 (S.D. W. Va. Dec. 19, 2008); *In re Wachovia Corp. ERISA Litig.*, 2011 WL 5037183, at *2 (W.D.N.C. Oct. 24, 2011).

In *Barber v. Kimbrell's, Inc.*, the Fourth Circuit applied a 12-factor test adopted from the Fifth Circuit to determine the reasonableness of attorneys' fees. 577 F.2d 216, 226 (4th Cir. 1978) (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). The *Barber* factors, however, "were used to evaluate attorneys' fees under the lodestar method"—not the percentage of fund approach—and "are not ideal when separated from the lodestar calculation." *Loudermilk Servs., Inc. v. Marathon Petroleum Co. LLC*, 623 F. Supp. 2d 713, 717 (S.D. W. Va. 2009). While the "result achieved should . . . be the most prominent factor considered in the analysis . . . the importance of the result obtained may be diminished under [the 12-part *Barber* lodestar] test." *Id.* at 718; *see also generally Hensley v. Eckerhart*, 461 US 424, 435–36 (1983) ("The result is what matters . . .. Again, the most critical factor [in determining a reasonable fee] is the degree of success obtained.").

As a result, "[r]ecognizing the limitations of applying the *Barber* factors to a percentage calculation, several courts within this circuit instead have applied the seven-factor test adopted by the Third Circuit in *In re Cendant Corp. PRIDES Litigation*, 243 F.3d 722, 733 (3d Cir.2001), to determine the amount of a reasonable percentage award." *In re Wachovia Corp. ERISA Litig.*, 2011 WL 5037183, at *3 (nothing that the Fourth Circuit "has never explicitly approved the application of the *Barber* factors to a percentage calculation of a fee award."); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 682 (D. Md. 2013). Those factors are: 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. *See*, *e.g.*, *In re Altria Grp., Inc.*, 2023 WL 2116803, at *3 (E.D. Va. Feb. 20, 2023)

(applying these factors). Ultimately, "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Id.* (citing *Doe v. Chao*, 435 F.3d 492, 506 (4th Cir. 2006)).

Given the Supreme Court's rejection of the lodestar method in *Gisbrecht*, the *Barber* factors are of little import in Section 406(b) cases.[14] This is because "[o]ne of the main advantages of using a percentage of fund method is that it 'ties the attorneys' award to the overall result achieved rather than the hours expended by the attorney'" whereas the *Barber* test does not properly elevate the result achieved as the "most prominent factor." *Loudermilk Servs.*, 623 F. Supp. 2d at 718. As explained below, Class Counsel's request for a 10% or 20% fee is reasonable when applying the standards and caselaw set forth above.

IV. <u>ARGUMENT</u>

A. KDW's Fee Request is Reasonable Under the *Gisbrecht* Standards

KDW's fee request is reasonable under the test set out in *Gisbrecht*, as followed and applied by *Mudd*, *Steigerwald*, and *Greenberg*. The character of KDW's representation and the final result achieved fully support the request for 10% or 20% of the past-due benefits. Moreover, there is no basis for any further reduction as the facts demonstrate that Class Counsel at all times acted with alacrity in pursuing the litigation with little to no delay. Finally, there is no windfall present here.

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[14] In any event, the 12 *Barber*/*Johnson* factors overlap substantially with the *In re Cendant* factors: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) fee awards in similar cases. 577 F.2d at 226.

(i) The Character of the Case and the Result Achieved

The complexities and difficulties inherent in any large class action, especially as Class Counsel's here against government litigating issues of first impression, and the large amount of past-due benefit awards due under the final Judgment to tens of thousands of class members, now totaling at least $62.7 million and as much as possibly $420 million (and counting), support and justify KDW's fee request. This remarkable result was achieved over years of hard-fought litigation, and fee percentages in large class actions such as this one routinely range between 20-30%. *See*, *e.g.*, *Gooch v. Life Invs. Ins. Co. of Am.*, 672 F.3d 402, 426 (6th Cir. 2012) ("The majority of common fund fee awards fall between 20% and 30% of the fund.") (cleaned up); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir. 1993) (majority of common fund class action fee awards fall between twenty and thirty percent). *See also Pelzer v. Vassalle*, 655 F. App'x 352, 369 (6th Cir. 2016) (affirming common fund award of 28.8% as "within the bounds of reasonableness"); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *3 (E.D. Tenn. June 30, 2014) (33% of $73 million); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at 3* (E.D. Tenn. May 17, 2013) (finding that 33% was "within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *Bessey v. Packerland Plainwell, Inc.*, 2007 WL 3173972, at *4 (W.D. Mich. Oct. 26, 2007) (awarding 33% and noting "fee awards in class actions average around one-third of the recovery"). Indeed, courts have awarded fees in common fund cases in excess of thirty percent, based solely on the percentage of the fund award without a lodestar cross check. *See*, *e.g.*, *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1242 (D.N.M. 2016) (citing *Fankhouser v. XTO Energy, Inc.*, 2012 WL 4867715, at *3 (W.D. Okla. Oct. 12, 2012) (awarding 36% without lodestar cross check); *Droegemueller v. Petroleum Dev. Corp.*, 2009 WL 961539, at *4 (D. Colo. Apr. 7, 2009) (awarding 33 1/3% without a lodestar

cross check); *Lewis v. Wal-Mart Stores, Inc.*, 2006 WL 3505851, at *2 (N.D. Okla. Dec. 4, 2006) (awarding 33 1/3% without calculating lodestar)).

Here, Class Counsel is not even seeking the maximum 25% available under Section 406(b) if the past-due benefits are on the low side of $62,700,000, *i.e.*, less than a mega-size class action of over $100,000,000. Moreover, even if the past-due benefits here are in the mega-fund range of $420,000,000, an award of 10% remains reasonable. *See Jewell*, 167 F. Supp. 3d at 1242–43 ("In mega fund cases, courts in other districts have awarded between 10% and 15% of a mega fund."); *see*, *e.g.*, *Kifafi v. Hilton Hotels Ret. Plan*, 999 F.Supp.2d 88, 104–06 (D.D.C. 2013) (awarding fee of 15% of $140 million fund); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 989 (E.D. Tex. 2000) (finding that awards of 15% of mega fund were "common"); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465 488 (S.D.N.Y.1998) (awarding 14% fee out of $1.027 billion fund); and *In re Copley Pharm., Inc.*, 1 F. Supp. 2d 1407, 1415 (D. Wyo. 1998) (awarding fee of 13% of $150 million fund). "Some courts, however, have awarded percentage fees of more than 15% in mega fund cases." *Jewell*, 167 F. Supp. 3d at 1244 (citing *Tennille v. Western Union Co.*, 2014 WL 5394624 (D. Colo. Oct. 15, 2014), at *4 (awarding 30% of $180 million fund) and *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1204 (S.D. Fla. 2006) (awarding 31.33% of $1.075 billion fund)).

(ii) Lack of delay in the prosecution of the matter

The Court issued its final Judgment less than two years from the filing of the renewed class action complaint. Moreover, due to the persuasiveness KDW's complaint, which was based on the original one previously filed, followed by effective briefing and oral argument, the merits in the case essentially were decided by the Court within eight months of the filing of that complaint when the Court denied SSA's motion to dismiss. Class certification also was speedily granted only

several months later because KDW filed its motion for class certification within days of the filing of the complaint. And the facts clearly demonstrate that Class Counsel pushed the case forward at every step to speed up its resolution. The delays in the case between the original mailing of notice to class members and the entry of final Judgment are solely attributable to SSA, due to its inability to produce class lists consistent with the Court's class definition in its May 30, 2025 order.

(iii) No Windfall

KDW has spent more than 4,800 hours on this matter over a span of five years and will be spending hundreds or more in the event of an appeal. Kasdan Decl. at ¶ 8; p. 3, n. 3. This fact alone belies any notion that the fee request is a windfall. The amount of time (in years and hours worked) that it has taken KDW to obtain the excellent result here is indicative of the tenacity of the government in defending against the class action, the difficulties Class Counsel had to overcome to reach this point, and the uncertainty inherent in prosecuting this contingent case. This is *not* an instance where "the lawyer takes on a contingency fee representation that succeeds immediately and with minimal effort, suggesting very little risk of nonrecovery." *Fields*, 24 F.4th at 856. To the contrary, none of the briefing in this case was formulaic. Instead, much of the briefing and advocacy in this case on the part of Class Counsel required intense legal research and skill. To that end, KDW has made almost 100 filings, and has appeared in court at least 8 times and still faces risk in ultimately prevailing and obtaining fees given SSA's apparent insistence on appealing to the Fourth Circuit.

Moreover, KDW's professionalism and expertise, having in the past successfully brought two prior class against SSA, cannot be questioned. KDW is unaware of any other law firm in recent history that had such success in class actions against the government that resulted in the payment of past-due benefits to the public. Not only has the class representative, L.N.P., been

pleased in winning the case, but numerous other class members clearly have been more than satisfied with KDW's efforts to date, as expressed in their communications with KDW. *See* Kasdan Decl. at pp. 4–5 (quoting praise for KDW in emails and voice messages to the firm). Indeed, as detailed above, KDW's diligence in repeatedly catching SSA's mistakes, has increased the class size to the benefit of thousands more than SSA's original class list, and, if successful, the pending Rule 59(e) motion for clarification will lock in the higher class of some 171,000 members. Moreover, only some 276 individuals in toto have opted out. Doc. 170. If any class members object to the fee request, they will have the ability to express their dissatisfaction at the fairness hearing. *See Greenberg*, 63 F. Supp. 3d. at 52.

B. KDW's Fee Request is Reasonable Under A Percentage Of The Fund Approach Applicable To Common Fund Cases

This "merely large" or actual "mega-size" class action (depending on the outcome of the motion for clarification) is akin to a common fund case. *Allen*, 48 F.3d at 457; *Greenberg*, 2015 WL 4078042, at *7 (applying common fund analysis in determining Section 406(b) fees). Given, as discussed above, *Gisbrecht's* rejection of the lodestar method in the determination of Section 406(b) fees, and this circuit's preference for the percentage of fund methodology, the Court can further analyze KDW's request using this seven-factor common fund test used by other district courts within the Fourth Circuit and which closely parallels the seven factors analyzed by the *Greenberg* court in that Section 406 class action case (*see* pp. 18–20, *supra)*, as follows:

(1) <u>The results obtained for the class</u>: This factor is the most important. There is no denying that the bottom-line result in obtaining an estimated $62.7 million, let alone $420 million, in past-due benefit awards for thousands of minor children, is an excellent one. This extraordinarily favorable outcome, by itself, merits a large fee award for KDW.

(2) <u>The quality, skill, and efficiency of the attorneys involved</u>: KDW's work, again, is

beyond reproach. Its track record in obtaining past-due benefits from thousands in the *Greenberg* and *Steigerwald* class actions against SSA is unparalleled. The fact that KDW did not win every issue here is immaterial. *See*, *e.g.*, *Hensley*, 461 U.S. at 435 ("Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee.") and 435 n.11 (agreeing "with the District Court's rejection of 'a mathematical approach comparing the total number of issues in the case with those actually prevailed upon,'" and stating: "Nor is it necessarily significant that a prevailing plaintiff did not receive all the relief requested."). *Accord Williams v. Kingston Shipping Co., Inc.*, 925 F.2d 721, 726 (4th Cir. 1991) (quoting *Hensley*).

(3) The complexity and the duration of the case: This factor too favors KDW and its fee request: the case contains novel issues and, after five years, is not over yet given SSA's expected appeal. Moreover, under the Final Judgment Order, SSA will have a year to make recalculations (assuming it does not ask for more time), and KDW's fees unfairly will be delayed at least that much longer.

(**4) The risk of nonpayment**: KDW took on this matter on a pure contingency which under Section 406 does not allow attorneys to be paid on an hourly basis. Even though KDW has prevailed to date, it still is carrying the risk of further months or years of litigation with no recovery in the event of an appeal and a Fourth Circuit reversal. This factor weighs heavily in favor of KDW's fee request.

(5) Awards in similar cases: The *Greenberg* and *Steigerwald* class actions cases against SSA are most analogous to this one. In *Greenberg*, the court awarded 20%; in *Steigerwald*, the Sixth Circuit affirmed the district court's 15% award**.** *Greenberg* was the smaller case and KDW received the higher percentage; *Steigerwald* the larger one and the lower percentage. So too here:

if after the Court decides the Rule 59(e) motion for clarification and chooses to exclude COLA recipients, a 20% award is reasonable. If, however, the Court includes COLA recipients, thereby increasing the class size and amount of past-due benefits, then a smaller award of 10% is appropriate.

(6) <u>Objections</u>: The extraordinary efforts of KDW to respond to class members, their expressions of thanks and the low opt-at rate (0.15%), *see* Kasdan Decl. at ¶ 12–13; Doc. 170, all support the grant of KDW's fee request. Moreover, as in *Greenberg*, class members here were notified before the opt out deadline that Class Counsel would seek fees up to 25% of the past-due benefits. Those who remained in the class were again given notice on the class website that KDW established, that this motion had been filed, thereby giving all class members the opportunity to object. *See also Edmonds v. United States*, 658 F. Supp. 1126, 1142 (D.S.C. 1987) (holding that a fee ceiling established at the time of notice, where class members could request exclusion, "reflect[s] knowledgeable assent, in advance, to the fee"). Again, as in *Greenberg*, "[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." 63 F. Supp. 3d. at 52

(7) <u>Public Policy considerations</u>: Finally, public policy supports KDW's fee request. Encouraging skilled and capable counsel to bring risky but advantageous class actions, such as this one, benefits society in general. *See In re M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, at *10 (S.D. Cal. Aug. 30, 1999) ("[W]ithout able lawyers handling these matters not only do some of them go unprosecuted, but . . . you don't get the highest recovery."). Here, KDW brought this case on behalf of a class of minors as to whom Congress has decreed SSA should be particularly

protective. *See King v. Smith*, 392 U.S. 309, 327–28 (1968) (referencing the Social Security Act of 1935, noting that Congress was "deeply concerned with the dire straits [of] all needy children in the Nation" and quoting a House Committee Report: "the core of any social plan must be the child").

Moreover, it is especially important to incentivize private law firms such as KDW to bring these uncertain class actions against SSA. That is because the Legal Services Corporation Act, 42 U.S.C. 2996 et seq., prohibits any organization who receives government funding from bringing class actions against governmental agencies, such as SSA. Without a true incentive of reward, private attorneys in large law firms on the whole will not spend the significant time and resources it takes to ready, file and litigate a risky, contingent class action against SSA. With legal aid groups largely excluded and small firms incapable of handling class actions, SSA has had virtually a free hand to continue bad behavior such as that outed by Class Counsel here.

This is why the agency has been fighting this case so hard: SSA does not want to be forced to fix its errors more often or even settle and rectify errors quickly. Cases like this will incentivize further class actions only if class counsels can expect a reasonable, premium return on their investment in the event that they win. When they lose, the return on their investment will be zero. If they win and receive a return that does not provide a premium on their investment of time and resources—as is expected in contingency cases in all other areas of the law—others will not bring these cases. That is not in the public interest.[15]

V. CONCLUSION

For all the reasons set forth above, undersigned counsel respectfully request that the Court

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[15] As noted above, the *Barber/Johnson* factors substantially overlap with the *In re Cendant* factors discussed herein. *See* n. 14, *supra*. Thus, KDW's fee request is reasonable under those factors for the same reasons. To the extent the Court decides to apply those factors and desires further briefing, KDW requests the opportunity to submit a supplemental brief.

grant this Motion and an attorneys' fee award of 20% or 10% as explained above. KDW requests that the Court issue its decision after deciding the Rule 59(e) motion for clarification and after the fairness hearing so that the Fourth Circuit can, as necessary, efficiently hear argument on the fee award at the same time that appeals on any other issues are taken.

Dated: May 11, 2026

Respectfully submitted,

/s/ Joseph J. Green

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May 2026, Plaintiffs' Memorandum of Law in Support of Motion for Attorneys' Fees 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*

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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*** **Plaintiff,** **- versus -** **FRANK BISIGNANO, Commissioner of the Social Security Administration** ***and*** **THE SOCIAL SECURITY ADMINISTRATION** **Defendants.**	**Case No. 1:24-cv-01196-MSN-IDD**

DECLARATION OF NEREUS A. JOUBERT

I, Nereus A. Joubert, state as follows:

1. I am a Senior Trade Analyst at Georgetown Economic Services ("GES"), a subsidiary of Kelley Drye & Warren LLP.

2. I have experience using Structured Query Language ("SQL") to extract and manipulate data from databases. I have been a trade analyst for over 9 years. In this role, I have had many occasions to analyze and comment on SAS databases containing sales and cost data. I have a MSc. in Computational Finance and Risk Management from the University of Washington, a Master of Management from the Sauder School of Business at the University of British Columbia, and a BSc, cum laude in Mathematical Sciences from the University of Stellenbosch.

3. The Social Security Administration ("SSA") provided Class Counsel with four main datasets for 182,179 child auxiliaries in the above-referenced case, along with information

on the associated Number Holders and any other auxiliaries (e.g., spouses) of those Number Holders:

a. *BIC-C payments*: a history of monthly benefit amount ("MBA") payments to child auxiliaries. The file contains information on the Number Holder associated with each child auxiliary, as well as each auxiliary's first name, last name, date of birth, and a history of MBA payments by Effective Month Date ("EFMDT").

b. *BIC-B payments*: a history of MBA payments to spouse auxiliaries in the same format as the BIC-C payments data.

c. *BIC-A payments*: a history of MBA payments to the Number Holder by EFMDT.

d. *BIC-A PIA and FMAX*: a history of each Number Holder's Primary Insurance Amount ("PIA") and family maximum ("FMAX").

4. Using the datasets provided by the SSA, I calculated the total past-due benefits associated with the class members resulting from the Court's holding that the agency must use the Retirement Insurance Benefit ("RIB") rather than the Primary Insurance Amount ("PIA") of Early Retirees with Eligible Children—as defined in the Notices to class members—in determining whether the family maximum ("FMAX") has been exceeded, using the methodology described below.

5. I extended the *BIC-C payments* dataset to include a count of the total number of child auxiliaries and the aggregate MBA payments to such auxiliaries for each Number Holder and EFMDT. Similarly, I extended the *BIC-B payments* dataset to include a count of the total number of spouse auxiliaries and the aggregate MBA payments to such auxiliaries for each

Number Holder and EFMDT. I then added this spouse-auxiliary information to the *BIC-C payments* dataset.

6. I also extended the *BIC-C payments* dataset with the MBA of the Number Holder (from the *BIC-A payments* dataset) and the PIA and FMAX of the Number Holder (from the *BIC-A PIA and FMAX* dataset). If necessary, I forward filled Number-Holder MBAs, PIAs, and FMAXs. That is, if the Number-Holder MBA, PIA, or FMAX was not available in the *BIC-A payments* or *BIC-A PIA and FMAX* datasets for a particular EFMDT in the *BIC-C payments* dataset, I used the most recent available MBA, PIA, or FMAX prior to that EFMDT.

7. The *BIC-C payments* dataset does not contain a record for every monthly payment to the beneficiary. Instead, each EFMDT represents the date on which the MBA payment was last updated. Accordingly, I constructed date ranges during which the MBA payments were in effect. I set the EFMDT as the start date. If there was a subsequent EFMDT for the same beneficiary, I set that as the end date of the range. If there was not a subsequent EFMDT (because the EFMDT in question is the most recent date in the dataset for the beneficiary), I set the end date as the earlier of April 1, 2026 or the beneficiary's $18^{th}/19^{th}$ birthday date. The difference between the end date and the start date provides the assumed number of months for which the MBA was made to the child auxiliary.

8. The *BIC-C payments* dataset, extended as explained in paragraphs 5-7 above, now contains all information needed to determine whether a child auxiliary's benefits were improperly reduced on a particular EFMDT and, if so, to calculate the amount of past due benefits on that date.

9. A child auxiliary has had his benefits improperly reduced on a particular EFMDT if both of the below conditions are true:

a. The child auxiliary's MBA on the EFMDT is less than half the Number Holder's PIA on the EFMDT; and

b. The aggregate family benefit on the EFMDT (i.e., the Number Holder's MBA plus the aggregate MBA of all child auxiliaries associated with the Number Holder plus the aggregate MBA of all spouse auxiliaries associated with the Number Holder) is less than the Number Holder's family maximum on the EFMDT.

10. If the child auxiliary's benefits were improperly reduced, then:

a. The family-wide reduction in benefits on the EFMDT are equal to the Number Holder's PIA on the EFMDT minus the Number Holder's MBA on the EFMDT;

b. The per-beneficiary reduction in benefits on the EFMDT is equal to the family-wide reduction in benefits on the EFMDT divided by the total number of auxiliaries associated with the Number Holder on that EFMDT (i.e., the number of child auxiliaries plus the number of spouse auxiliaries).

c. The per-beneficiary reduction in benefits must be capped to ensure the child auxiliary's total benefit does not exceed half the Number Holder's PIA. Specifically, I calculate the capped per-beneficiary reduction in benefits as the lesser of (1) the per-beneficiary reduction in benefits calculated above and (2) half the Number Holder's PIA minus the child auxiliary's MBA.

d. The capped per-beneficiary reduction in benefits calculated above is a monthly amount. I extend this monthly amount using the date ranges described in paragraph 7. I, however, excluded the portion of extended reduction in benefits associated with any dates prior to May 10, 2024.

e. Finally, I set the extended per-beneficiary reduction in benefits to zero for child auxiliaries that opted out (a list of whom was given to me by Class Counsel).

11. Table 1 below provides the total improper reduction in benefits (for which past-due benefits must be paid by SSA pursuant to the Judgment in this case, hereafter the "Past-due Benefits") associated with child auxiliaries in two categories.

a. Category 1: All child auxiliaries that *started* receiving MBA payments between May 10, 2024 and May 30, 2025; and

b. Category 2: All child auxiliaries that received a Cost of Living Adjustment letter between May 10, 2024 and May 30, 2025 except those already included within category 1. I was told by Class Counsel to assume that any child who continued to receive payments in 2025 also received a COLA letter at the end of 2024. Thus, I used the continued receipt of payments in 2025 as a proxy for receipt of a COLA letter. Since we do not have a record of each monthly payment, I assumed that any child auxiliary with (1) an EFMDT in 2024 or later and (2) a $18^{th}/19^{th}$ birthday date in 2025 or later, would have received at least one MBA payment in 2025.

12. Additionally, I calculated the total Past-due Benefits for any spouse auxiliaries of the Number Holders associated with the child auxiliaries in each category.

13. Table 1 shows the estimated past-due benefits using a 19-year cut off. Table 2 shows the estimated past-due benefits using an 18-year cut off.

Table 1: Past-due Benefits for Child Auxiliaries (and Related Spouse Auxiliaries) in Each Category (19-year cutoff)				
Category	Count of Child Auxiliaries	Count of Associated Number Holders	Past-due Benefits for Child Auxiliaries After May 10, 2024 (USD)	Past-due Benefits for Related Spouse Auxiliaries After May 10, 2024 (USD)
Category1	25,425	14,415	62,716,807.02	7,901,450.46
Category2	146,141	89,555	356,653,545.48	60,102,759.80
Total	171,566	103,970	419,370,352.50	68,004,210.26

Table 2: Past-due Benefits for Child Auxiliaries (and Related Spouse Auxiliaries) in Each Category (18-year cutoff)				
Category	Count of Child Auxiliaries	Count of Associated Number Holders	Past-due Benefits for Child Auxiliaries After May 10, 2024 (USD)	Past-due Benefits for Related Spouse Auxiliaries After May 10, 2024 (USD)
Category1	25,425	14,415	58,220,099.67	7,692,243.68
Category2	116,547	68,357	313,451,947.05	55,999,940.44
Total	141,972	82,772	371,672,046.72	63,692,184.11

I, Nereus A. Joubert, hereby declare pursuant to 28 U.S.C. § 1746 and under penalty of perjury that I have read the foregoing statement and know the contents thereof, and that the same is true to the best of my knowledge, information, and belief.

Dated: May 11, 2026

Nereus A. Joubert

**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/ID

DECLARATION OF IRA T. KASDAN IN SUPPORT OF MOTION FOR ATTORNEY'S FEES PURSUANT TO 42 U.S.C. § 406(b)

I, Ira T. Kasdan, declare under penalty of perjury as follows:

1. I am a member of the bars of the District of Columbia, Maryland, numerous federal courts, including the Supreme Court of the United States.

2. I am a partner in the D.C. office of Kelley Drye & Warren LLP ("Kelley Drye"), which was appointed by this Court as Class Counsel for Plaintiffs in the above-captioned action ("Plaintiffs" or "Class Members"). Doc. 72. I am co-lead counsel in this case along with my partner, Damon Suden, who works out of Kelley Drye's New Yok City office.

3. I make this declaration based on my personal knowledge and am submitting this declaration in support of Kelly Drye's Motion for Attorneys' Fees Pursuant to 42 U.S.C. § 406(b) (the "Motion").

4. The Motion seeks reasonable attorney's fees for Kelley Drye as Class Counsel in the percent amount set out therein: either twenty percent (20%) or ten percent (10%)[1] of the past-due benefits paid to each class member and all other beneficiaries who receive past-due benefits as a result of this Court's Final Judgment Order and the entry of the Amended Judgment dated April 27, 2026, as may be later amended. Docs. 176, 181 (collectively the "Amended Judgment"). Such fees are to be paid out of the past-due benefits. In accordance with the Amended Judgment Defendant Social Security Administration ("SSA") will be required to recalculate the benefits of the Class Members and pay them past-due benefits from May 10, 2024 and prospectively going forward.

5. Attached hereto as **Exhibit A** is a true and correct excerpt of a transcript from the March 13, 2026, motion hearing in this case.

6. KDW's engagement letter with Lead Plaintiff L.N.P. reflects that Kelley Drye intended to seek a recover 25% (twenty-five percent) of L.N.P.'s and the Class Members' past due benefits resulting from a favorable outcome, but that "[i]n the event the lawsuit is not successful in obtaining past-due benefits, neither [L.N.P.] nor any member of a class, individually or collectively, will have any obligation of any nature to pay any attorney fees under this agreement." *See* **Exhibit B**, a true and correct copy of the engagement letter between KDW and L.N.P., attached hereto.

7. As a consequence, the class notice approved by the Court stated that Kelley Drye "intends to seek a reasonable fee up to 25% of any past-due benefits paid to class members, with such fee to be paid out of such past-due benefits. The Court will decide what percentage, if any, to

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[1] The Motion seeks twenty percent (20%) or ten percent (10%) dependent on the Court's ruling on the Motion for Clarification filed by Plaintiffs on May 8, 2026. Doc. 182. *See* Motion at 3–4 (presenting the parties' positions).

award Class Counsel. Class members will not have to pay anything to Class Counsel if they do not obtain a recovery of past-due benefits from SSA." *See* Docs. 108, 108-1, 109, 131, 131-1. 133.

8. For the period May 2019 through May 8, 2026, KDW has expended over $131,587.35 in out-of-pocket expenses[2] and its attorneys have devoted over 4,800 hours (equating to $4,184,597 in billable value) to achieve the outstanding victory reflected by the Amended Judgment.[3] Without the expectation of receiving a reasonable premium fee award in the event of a successful outcome, Kelley Drye would never have taken on L.N.P.'s matter in a class action which is inherently risky, time-consuming and expensive to litigate.

9. By Kelley Drye's estimate, as demonstrated by the Declaration of Nereus Joubert submitted herewith, the Final Amended Judgment affords relief to some 25,000 to 171,000 individuals. As a direct result of the recalculations required under the Amended Judgment, class members and related family members are entitled to receive through the end of April 2026, a minimum of $62.7 million to $420 million *in toto* in past-due benefits. *See* Motion at 3 (citing Joubert Declaration at p. 6). In addition, the individuals benefitting from the Court's Amended Judgment will receive even more money going forward based on their upwardly adjusted monthly benefit amounts resulting from the required recalculations.

10. During the course of litigating the matter over the last five years, Kelley Drye has authored and made close to 100 filings with this Court and the Fourth Circuit and has appeared in those courts some 8 times (including once telephonically) for oral argument or status or discovery conferences. In addition, Kelley Drye served two sets of discovery requests on SSA, pressed the

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[2] These costs were primarily related to expenses for mailing the notices to over 180,000 persons, and travel-related costs for court appearances.

[3] Apart from the hours expended to date, Kelley Drye anticipates spending hundreds, if not thousands of hours more depending upon appeals to the Fourth Circuit or beyond.

agency when it failed to comply and also took a Rule 30(b)6) deposition, and withdrew a second one for purposes of efficiency not to waste its own or SSA's time and resources. Kelley Drye also represented L.N.P. before the agency, including appearing before the Administrative Law Judge and drafting L.N.P.'s submissions to the ALJ and to SSA's Appeals Council.

11. As reflected by court records and described in the memorandum in support of the Motion, filed herewith, at all times Kelley Drye has made efforts to expedite resolution of the matter and obtain the maximum possible benefits for an expanded class of individuals in the most timely and efficient manner.

12. To service class members and keep them informed of developments, in or about October 2025, after the Court approved the class notice language, of Kelley Drye established a website located at https://kelleydrye.com/lnpclassaction (or https://lnpclassaction.com), that has been, and continues to be, highly trafficked. As well, Kelley Drye dedicated an email address and toll-free number for class members to contact the firm. More than 1,300 class members and/or their representatives have utilized both these avenues to communicate with Kelley Drye, numerous times. Kelley Drye attorneys painstakingly responded to their questions and updated them on the status of the case by phone and in writing, and many have expressed their thanks and gratitude.

13. Here is but a sampling of acknowledgments that Kelley Drye has received by email or voicemail for its work to date:

1. Email, 10/24/2025: "So glad to get your letter today! I feel vindicated—knew this was correct all along! I disputed the benefit calculation because they gave us 50% of the age 62 number and not 50% of the 67 number. I knew it was wrong. I appealed one level but literally no attorney I called to handle this for me even knew children of retirees received benefits at all so I dropped it. We were shorted alot of money over 3.5 years for 2 kids and we will continue receiving benefits for 3 more years. Thank you,"

2. Email, 10/24/2025: "Thank you all for sending me this notice as I am really upset with the SS[A]'s mishandling of my children's claim. . . . Thank you for representing families like mine and holding the Social Security Administration accountable for these miscalculations. I sincerely hope this case leads to full correction and restitution for every affected child."

3. Voicemail, 10/28/2025: "Hello thank you. I appreciate the, the job you guys are doing. . . . I have about six of my children that were on my retirement account."

4. Voicemail, 1/28/2026: " . . . excellent work. We are definitely affected. In fact, when I had the calculation all done, and then, when I went through and, and they used the PIA, I — I was like, it impacted me like $12,000 a year, which started last June May timeframe. Anyway, we definitely are in. . . . This is awesome. Thanks."

5. Email, 1/30/2026: "Thank You. I'm so happy to have my children a part of the class Action lawsuit."

6. Email, 2/2/2026"I just wanted to thank you guys for your efforts and I'm hopeful that we will win this case and receive additional compensation. My experience with Social Security has been a complete nightmare. . . . This isn't about me and mom, this is about our kids receiving their benefits, or at least part of it. . . . Thank you for all that you are doing."

7. Email, 2/10/2026: "Thank you very much for confirming that my child, [redacted] is a class member. I appreciate you taking the time to clarify this and for the additional information regarding the upcoming status conference and hearing. Thank you as well for your work on this matter."

8. Email, 2/24/2026: "When I applied for SS benefits a couple of years ago, I recall being surprised that SSA calculated less than half of the full retirement amount for each child, but I didn't have the stamina to figure it all out and to question them. Good luck with the case. I just calculated the difference using the material you sent and it's almost $200. I have two sons who qualify [redacted] and [redacted]. Thank you again and best of luck. We're in!"

9. Email, 4/1/2026: "We appreciate that your Firm has filed this lawsuit against the SSA and that you are looking out for our interests to recover as much of the unpaid and missing money as possible. Please keep us updated as to your progress and if there is a way we can be [of] assistance."

10. Email, 5/1/2026: "Hello! Please accept my gratitude for your excellent service and i am grateful to have your help to assist my case in behalf of my childrens [sic] we are very appreciating your efforts to win the case, Thank you very much im [sic] so proud of you and all your staffs again Thank you..."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 11, 2026

Ira T. Kasdan

EXHIBIT A

1 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
2 ALEXANDRIA DIVISION

3

L.N.P., on his own behalf :
4 and on behalf of his :
dependent children P.D.P. : Civil Action
5 and L.D.P. and on behalf of : No. 1:24-cv-1196-MSN-IDD
all others similarly :
6 situated, : March 13, 2026
: 10:02 a.m. - 10:24 a.m.
7 Plaintiffs, :
:
8 v. :
:
9 FRANK BISIGNANO and THE :
SOCIAL SECURITY :
10 ADMINISTRATION, :
:
11 Defendants, :
..............................:
12

13 TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE MICHAEL S. NACHMANOFF,
UNITED STATES DISTRICT JUDGE
14

APPEARANCES:
15

For the Plaintiffs: KELLEY DRYE & WARREN LLP
16 Ira Thane Kasdan, Esquire
Pro hac vice
17 3050 K Street N.W.
Suite 400
18 Washington, D.C. 20007

19 Damon William Suden, Esquire
Pro hac vice
20 175 Greenwich Street
3 World Trade Center
21 New York, NY 10007

22 For the Defendants: UNITED STATES ATTORNEY'S OFFICE
Meghan Elizabeth Loftus, AUSA
23 Kirstin O'Connor, AUSA
2100 Jamieson Avenue
24 Alexandria, VA 22314

25 (Continued)

(Continued)

Also Present: Marc Boxerman, SSA
L.N.P., Class Representative

Court Reporter: Diane Salters, B.S., CSR, RPR, RCR
Official Court Reporter
United States District Court
401 Courthouse Square
Alexandria, VA 22314
Email: Dianesalters.edva@gmail.com
Telephone: (301) 338-8033

Proceedings reported by machine shorthand from an FTR Gold recording. Transcript produced by computer-aided transcription.

1 THE COURTROOM DEPUTY: *L.N.P. v. Bisignano, et al.*,
2 Case Number 24-cv-1196.
3 MR. KASDAN: Good morning, Your Honor. Ira Kasdan on
4 behalf of the plaintiffs. With me is my colleague Damon Suden
5 and the lead plaintiff in the case, Mr. L.N.P.
6 THE COURT: Good morning.
7 MS. LOFTUS: Good morning, Your Honor. Assistant
8 United States Attorney Meghan Loftus. With me at counsel's
9 table is Assistant United States Attorney Kirstin O'Connor and
10 senior counsel for the Social Security Administration Marc
11 Boxerman, and we're here on behalf of the agency defendants.
12 THE COURT: Good morning. Good morning to you all.
13 This matter comes before the Court on the plaintiffs'
14 motion for entry of final judgment and the defendants' motion
15 for summary judgment, and I want to move through these things
16 quickly. I've got a jury trial starting at 10:30.
17 On the motion for summary judgment, I don't need to
18 hear argument. This matter has been fully briefed. I
19 understand the government seeking to preserve its position. I
20 do find that the issue was resolved at the motion to dismiss
21 stage. This was a legal conclusion. I don't find that summary
22 judgment changes that calculus, and the Court is not going to
23 revisit that conclusion that it's reached, so the motion for
24 summary judgment is denied.
25 I will grant the plaintiffs' motion to enter a final

1 judgment. I think we need to go through some of the terms of
2 the proposed order because the motion will be granted in part
3 and denied in part, or modified, but let me cut to the chase,
4 and then we'll go back to these details.
5 I am going to grant a stay. I do find that the
6 factors weigh in favor of permitting the government to appeal
7 this matter to the Fourth Circuit and that it would be
8 irreparable harm and tremendously difficult if the government
9 were to start to disburse this money before the Fourth Circuit
10 had weighed in. I don't find that there's a strong likelihood
11 of prevailing, but this is an issue of first impression; it's a
12 legal issue; and I'm not so confident of my own abilities as to
13 conclude that it's impossible to imagine the Fourth Circuit may
14 disagree. So it's not a reflection of any doubt in my mind,
15 but it's a recognition that reasonable minds can differ, and
16 the Fourth Circuit should have an opportunity to weigh in on
17 whether to affirm that decision or not. But in the interim,
18 the Court will enter a final judgment, and so there are a
19 couple of outstanding issues to resolve. One is the issue of
20 prospective damages -- that's in paragraph 1 -- and I don't
21 think I need to hear argument on that. I do find that it would
22 be unrealistic and impossibly complicated to expect people to
23 bring cases in the future, and that prospective relief is
24 justified, and a permanent injunction based on the four factors
25 is appropriate here, and so it only makes sense that if this

1 monthly, so there is a difference here, and under Plaintiffs'
2 theory, I think, it would virtually upend this Court's order on
3 class certification.
4 And unless Your Honor has further questions, that's
5 our position on that issue.
6 THE COURT: All right. Well, again, there are a lot
7 of challenging issues in this case, but I think, to be
8 consistent with the Court's previous ruling, I cannot adopt the
9 plaintiffs' proposal to reach back that far. I think it's
10 inconsistent with the Court's previous ruling on equitable
11 tolling and the statute of limitations. I do find that L.N.P.
12 is entitled to go back to October of 2019 or at the time when
13 he first challenged the calculation, but I don't find that
14 other class members would be able to do so, and so I will
15 modify paragraph 2 accordingly.
16 With regard to paragraph 5 -- this is about the timing
17 by which Social Security should have to comply -- I will hear
18 very briefly on this, Ms. Loftus, from you. Especially now,
19 given the narrowing of the size of the class and the
20 reach-back, I don't see why 12 months wouldn't be appropriate.
21 We also have the stay in which this wouldn't occur until after
22 the Fourth Circuit were to rule if they were to affirm this
23 Court's ruling. So is there anything you want to add? I
24 understand the pressures that Social Security faces.
25 MS. LOFTUS: Sure, Your Honor. We would just like to

1 the maintaining jurisdiction. Will that also include disputes
2 over the actual recalculation of benefits? Would you first
3 need those coming to you or some other process?
4 THE COURT: I would really like to not foresee those
5 coming to me, but I think, rather than sending it back to the
6 agency, that through class counsel, those issues could be
7 raised with the Court. My hope is that this really is a math
8 issue; that once the legal issue is decided, it's simply a
9 matter of the agency doing the math and paying the benefits.
10 So I would hope that we wouldn't have a slew of legal disputes
11 that would need the Court's intervention, but I think the best
12 way to do that is, rather than to send it back to the agency,
13 for the Court to retain jurisdiction through counsel to raise
14 if there are issues that come up during that year period.
15 MS. LOFTUS: Understood. Thank you.
16 THE COURT: Thank you very much, Counsel. The order
17 will be delayed until -- is it April 6th? -- whatever the date
18 is that we agreed to, and the matter will be stayed, and we'll
19 see what happens on appeal. Thank you.
20 CERTIFICATE OF REPORTER
21 I, Diane Salters, hereby certify that the foregoing
22 transcript is a true and accurate record of the stenographic
23 proceedings in this matter. /s/ Diane Salters
24 ______________________________
Diane Salters, CSR, RCR, RPR
25 Official Court Reporter

EXHIBIT B

Ira T. Kasdan

Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007

Tel: (202) 342-8864
Fax: (202) 342-8451
ikasdan@kelleydrye.com

July 8, 2024

Via Email

[redacted]
[redacted]
[redacted]

Re: **Engagement Letter Agreement**

Dear Mr. [redacted]:

Attached is the executed Engagement Letter dated May 24, 2021 between Kelley Drye& Warren LLP ("KDW") and you. Although your original class action suit was dismissed without prejudice for lack of exhaustion of administrative remedies, a dismissal that was upheld on appeal, you recognize and acknowledge that KDW continued to represent you – even in the administrative proceedings that followed. You also recognize and acknowledge that the Engagement Letter remains extant and that it continues to guide and control the renewed class action lawsuit that KDW is filing on your (and your children's) behalf, including at KDW's discretion, any subsequent appeal.

To signify your recognition and acknowledgement of the above, please sign below and return this letter to me as a PDF attachment.

Please let me know If you have any questions.

Sincerely,

Ira T. Kasdan
Partner

July 8, 2024

I RECOGNIZE, ACKNOWLEDGE AND AGREE TO
AND ACCEPT THE ABOVE:

[REDACTED] Digitally signed by [REDACTED]
DN: cn=[REDACTED]
email=[REDACTED]
Date: 2024.07.08 23:10:30 -04'00'

____

[REDACTED]

Date: July 8, 2024

ATTACHMENT

Ira T. Kasdan

Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007

Tel: (202) 342-8864
Fax: (202) 342-8451
ikasdan@kelleydrye.com

May 24, 2021

Via Email

Re: **Engagement Letter Agreement**

Dear Mr. :

We are very pleased that you have agreed to have Kelley Drye & Warren LLP serve as legal counsel, to represent you on behalf of your dependent, minor children over whom you have full custody, and as the named plaintiff in a class action lawsuit against the Social Security Administration ("SSA") and its Commissioner in federal district court. This letter and the attached Terms and Conditions shall constitute our agreement to provide legal services. As used herein, the terms "Kelley Drye," "Firm," "we" and "our" refer to Kelley Drye & Warren LLP, and the terms "you" and "your" refer to you, Mr. .

Scope of Representation. You have engaged us to bring a lawsuit against SSA and its Commissioner on behalf of a proposed class of one or more eligible children, for whom their representative payees have applied for and obtained Social Security retirement benefits prior to their full retirement age and who also applied for and obtained Social Security benefits for their eligible children (the "Matter").[1] Our clients in this matter will be you, as the named plaintiff in the class action lawsuit on behalf of your children, and, if the court certifies a class, the members of the plaintiff class in the lawsuit. **Please refer to the attached "Terms and Conditions" that are hereby incorporated herein, for information regarding the scope and limits of our representation of you.**

After execution of this engagement letter, changes may occur in the provisions or interpretation of applicable laws or regulations that may have an impact upon your future rights and liabilities. Unless you specifically engage us and we agree to do so, the scope of our engagement does not include advice with respect to future legal developments.

[1] This is a working definition of the class which may change.

May 24, 2021

Conflicts of Interest. There is no conflict of interest that we are aware of that would preclude our representation of you or other potential class members if class certification ultimately is granted.

Kelley Drye is a general service law firm that represents numerous clients, nationally and internationally, over a wide range of industries and matters. These may include debtors, creditors, and competitors of you, As a result, a conflict of interest might arise that could deprive you or other clients of the right to select Kelley Drye as their counsel. Accordingly, you agree to consider and discuss with us in good faith waiving any conflict of interest that Kelley Drye may bring to your attention that involves another client who has interests adverse to you on any matter that is not substantially related to (a) the legal services in the Matter, and (b) other legal services that Kelley Drye has rendered, is rendering, or will render to you.

If a conflict arises through no fault of our law firm, you agree that such circumstances will not be a basis for you to disqualify Kelley Drye in this or any other matter in which we may **be** representing you. If a conflict arises because Kelley Drye merges with another law firm or a particular lawyer joins our firm, you agree that it will be a sufficient remedy to screen such lawyer or lawyers causing the conflict from our engagement(s) for you, including from access to any relevant documents,

Duties as a Class Representative. You understand that Kelley Drye will file a class action lawsuit on behalf of you (on behalf of your children) and others similarly situated against SSA. You understand and agree that you will be a named plaintiff (on behalf of your children) in the case and designated as a potential class representative at our discretion and subject to court approval. You acknowledge that we have explained to you the duties and responsibilities of a class representative. By signing this agreement, you acknowledge and agree that you:

- Can fairly and accurately represent the interests of the class;
- Have a substantial interest in the outcome of the lawsuit;
- Will assist us representing our clients in this case in their prosecution of this case; and
- Will sit for a deposition, if requested.

You further recognize and agree that, if class certification is granted, Kelley Drye has a fiduciary obligation to prosecute this case in a manner that is fair, equitable and in the best interests of the entire class. With your input, Kelley Drye shall determine whether any offer of settlement is reasonable and shall, subject to court approval, have the right to settle class claims on such terms as are deemed fair, equitable and in the best interests of the class.

May 24, 2021

Staffing and Attorney Compensation. Kelley Drye may use other attorneys and legal assistants in our Firm besides me in the best exercise of our professional judgment. **Please refer to the attached "Terms and Conditions" that are hereby incorporated herein, for information regarding our fees and compensation and related details.**

Opinions Expressed by Counsel. We will endeavor to serve you effectively and strive to represent your interests vigorously. Any expressions on our part concerning the outcome of your legal matters are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed. You acknowledge that the outcome of this Matter is uncertain, and you understand that we have made and can make no promise or guarantee, by this letter or otherwise, about the outcome.

Cooperation of Client. In order for us to provide our services effectively, you agree to disclose fully and accurately all pertinent facts and to keep us apprised of all developments relating to any issues involved in this Matter. You further agree to cooperate fully with us and to be available to attend any meetings, conferences, hearings, and other proceedings as appropriate.

Please review this agreement carefully. If you have any questions concerning this agreement or our Terms and Conditions, do not hesitate to contact me. You are free to obtain independent legal advice about any of the provisions of this agreement about which you have questions.

If this agreement is acceptable to you, please acknowledge that you have reviewed it, understand it, and desire to retain us on the basis of the terms of this letter and the attached Terms and Conditions by signing, initialing and delivering to us the signed copy. We recommend that you retain a copy of this letter and our Terms and Conditions for your records.

We strive for our clients to be completely satisfied with our services. To that end, please contact me or any of the other attorneys with whom you are working if you ever have any questions or suggestions about how we might improve.

Thank you for allowing us to be of service. We look forward to working with you.

Very truly yours,

Ira T. Kasdan
Partner

ITK:dp

May 24, 2021

THE ABOVE AGREEMENT IS
ACCEPTED AND AGREED TO:

Date: 5/25/2021

Terms and Conditions re [redacted] Engagement Letter

1. **Termination**: You have the right to terminate our representation by written notice at any time, subject to court approval, if required. We have the same right to terminate our engagement for any reason, consistent with the applicable rules of professional responsibility; if you insist upon taking action that we consider repugnant or with which we have a fundamental disagreement; or for any other conduct that we deem to be inconsistent with the rules of professional conduct or any other law. If required, we will provide notice to or obtain permission from a court or other tribunal prior to terminating our representation.

2. **Applicable Law**: The laws of the District of Columbia will govern the interpretation of this agreement and our attorney-client relationship.

3. **Confidentiality**. We take reasonable measures to treat as confidential all confidences and secrets of our clients, to the extent permitted by law. Under the rules of professional responsibility, a lawyer is generally permitted to reveal client confidences, among other reasons, when reasonably necessary to prevent substantial bodily harm, prevent the client from committing certain crimes or fraud, secure legal advice about the lawyer's compliance with the rules of professional responsibility, and in a controversy between the lawyer and client.

4. **Dispute Resolution**. Any dispute relating to this engagement shall be decided exclusively by a state or federal court sitting in the District of Columbia without a jury. **Both Kelley Drye and you consent to the jurisdiction of those courts and waive any right to a trial by a jury.**

5. **Retention of Records**. Our policy is to keep each client's legal records for a period of seven (7) years after an engagement has ended, after which we may destroy those records according to our retention schedule. We will use reasonable efforts to give you at least 30 days' notice before we destroy your records. You are responsible to notify us about any change in your name or address so that we may provide such notice. If you want to make any special arrangements, you should raise them with us at or prior to conclusion of the engagement.

6. **Attorney-Client Privilege for Internal Communications**. We believe that it is in our clients' interest that Kelley Drye have the protection of the attorney-client privilege (which restricts disclosure of confidential communications between attorney and client in connection with internal reviews of our work for you. You agree that (a) any communication between any of our lawyers or staff and a lawyer at Kelley Drye who may be reviewing their work for compliance with professional conduct rules will be protected by the Firm's own attorney-client privilege, and (b) any such review will not constitute a conflict between our interests and your interests.

7. **Scope of Representation**. We will be representing you, currently as the sole named plaintiff on behalf of your children in a class action lawsuit. You understand and agree that this action will be brought on behalf of you and your children, and also as a representative of a proposed class of similarly situated claimants, against the SSA. That means that if the class is certified, you will be required to act in the best interests of the class as a whole.

Terms and Conditions re [redacted] Engagement Letter

Kelley Drye has a fiduciary obligation to prosecute this case in a manner that is fair, equitable and in the best interests of the class. With your input, Kelley Drye shall determine when any offer of settlement is reasonable and shall, subject to court approval, have the right to settle class claims on such terms as are deemed fair, equitable and in the best interests of the class.

Kelley Drye agrees to represent you in the Matter at the federal district court level. If the Matter results in an unfavorable ruling from the court (including but not limited to one that does not reach the merits, *e.g.,* if the government moves to dismiss and prevails on a theory that you did not exhaust your administrative remedies), we will have sole discretion in determining whether or not to represent you in any appeal of that ruling. Thus, we reserve the absolute right to opt not to pursue any appeals, or any further action on your behalf.

8. **Costs.** To the extent permitted by applicable rules of attorney ethics, you will not be responsible for advancing any costs, nor be responsible to pay any expenses or fees in connection with the Matter, other than fees from past-due benefits.

9. **Attorneys' Fees: Twenty-Five Percent Contingency Fee Agreement**. Kelley Drye will represent you in the Matter on a contingency fee basis. In this case, you will not directly pay Kelley Drye for our professional legal services in their representation of you in the Matter, because our fees for representing you will be paid by SSA out of your and/or your children's past-due benefits, and only if you receive a favorable determination from the court and/or the SSA, by settlement or by judgment. A "favorable determination" means a judgment from the court and/or settlement by SSA that SSA is obligated to pay you and/or your children's past-due or back payments. Similarly, our fee for representing the class (if one is certified) will be paid by SSA out of the past-due benefits of each of those class members who receive a favorable determination from the court and/or the SSA.

In the event of a favorable determination, Kelley Drye intends to charge 25% (twenty-five percent) of your and/or your children's and the class's past-due benefits resulting from the Matter, subject to court approval. You agree to have SSA pay twenty-five percent of the past-due benefits, subject to court approval, to pay your attorney fee.

In the event the lawsuit is not successful in obtaining past-due benefits, neither you nor your children nor any member of a class, individually or collectively, will have any obligation of any nature **to** pay any attorney fees under this agreement.

10. **Electronic Communications.** You agree that unless you specifically advise us otherwise, we are authorized to communicate with you electronically without encryption, notwithstanding such risks as interception, unauthorized access, authorized access by the owner if you are not the owner of the device used to communicate, viruses, and delays in transmission. We shall not be responsible for the effect on any computer system of any communication transmitted by this means, unless caused by our negligence.

Terms and Conditions re [redacted] Engagement Letter

11. **Severability**. Any provision of this agreement that is unenforceable in whole or in part shall be severed to the extent possible and necessary to make this agreement enforceable, unless that would materially change the intended effect of this agreement.

12. **Entire Agreement**. Our letter of engagement and these Terms and Conditions constitute the entire agreement between you and us with respect to our engagement in this matter. Any previous understanding, agreement, representation or warranty relating to our engagement is replaced by this agreement, is not being relied upon, and shall have no further effect. Any change to this agreement must be in writing and signed by you and us.