

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

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

Plaintiffs,)

- versus -)

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

Defendants.)

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

**PLAINTIFFS' REPLY MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO ENTER FINAL JUDGMENT
AND
IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

KELLEY DRYE & WARREN LLP

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

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

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PRELIMINARY STATEMENT

In response to Plaintiffs’ motion to enter judgment, Defendants, Commissioner Bisignano and the Social Security Administration (hereafter collectively “SSA” or the “agency”), filed a perfunctory cross-motion for summary judgment in favor of the agency and, alternatively, opposed entry of Plaintiffs’ proposed judgment on various grounds. *See* Dkts. 145 (“Motion”) and 146-47 (hereafter cited as “Opp.”).¹ The cross-motion for summary judgment should be denied because SSA concedes that the sole legal issue in the case has already been decided against it and there are no facts in dispute—the agency only filed the motion to preserve its arguments on appeal. Thus, with SSA’s motion denied, and both parties in agreement that a trial is unnecessary, the only question remaining is what form of judgment the Court should enter. For the reasons set out below, SSA’s arguments against various provisions in Plaintiffs’ proposed judgment are meritless and should be rejected. The Court should enter Plaintiffs’ proposed judgment (as amended below), and also deny SSA’s motion to stay the judgment pending appeal because it fails to satisfy the strict standards for such extraordinary relief.

ARGUMENT

I. SSA’S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED

SSA admits that, in ruling on its motion to dismiss, the Court “resolved the sole legal issue in this case against them by holding that SSA has been incorrectly calculating the children’s auxiliary benefit.” Opp. at 3. Nevertheless, SSA seeks summary judgment in its favor “[f]or the reasons set forth in their motion to dismiss” to “preserve them for appellate review.” *Id.* at 4. SSA’s motion should be denied for the reasons set forth in Plaintiffs’ opposition to Defendants’

¹ The briefs constituting Dkts. 146 and 147 are identical. Similarly, this brief will be filed twice as well, once as a reply to Plaintiffs’ motion, and once in opposition to SSA’s motion.

motion to dismiss, Dkt. 32, and the reasons expressed by the Court in its prior decision, Dkt. 49.²

In particular, as the Court properly held, Section 403(a) “provides that the SSA use only ‘actually payable benefits’—not those theoretically available—when determining if the family maximum has been reached.” Dkt. 49 at 8 (citing *Parisi by Cooney v. Chater*, 69 F.3d 614, 619 (1st Cir. 1995)). Thus, “[a] natural reading of this [Section 403] language suggests that the primary object of limitation is the ‘total monthly benefits’ produced by the operation of section 402 *as a whole*, and not ... theoretical entitlements created by one fragment of section 402 considered in artificial isolation from the rest of that same section, and wholly apart from the benefits that ultimately attach.” *Id.* at 9 (emphasis in original) (citing *Parisi*, 69 F.3d at 618). Therefore, “under the best reading of Section 403, the RIB (if taken), must be deducted from the family maximum,” instead of deducting the PIA. *Id.* at 10. SSA has provided no basis for the Court to revisit its prior interpretation of the statute, which was correct and is now the law of the case. *Zaklit v. Global Linguist Solutions, LLC*, 53 F. Supp. 3d 835, 846 (E.D. Va. 2014) (“Under the law of the case doctrine, ‘when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case’” unless there is a change in the facts, a change in controlling law, or the original decision was “dead wrong”) (citing *TFWS, Inc. v. Franchot*, 572 F.3d 186, 191 (4th Cir.2009)).³

Thus, because the Court has already ruled in favor of Plaintiffs on the sole legal issue,

² Plaintiffs, too, reserve all their arguments for appeal, as necessary.

³ SSA repeats an argument it previously made regarding the order in which benefits should be reduced when they are subject to reduction under both the family maximum and because of age. *Compare* Dkt. 147 at 3 (citing 42 U.S.C. § 402(q)(8)), *with* Dkt. 28 at 12-13 (citing 20 C.F.R. § 404.402(b)(1)(ii) and 20 C.F.R. § 404.410). As Plaintiffs explained in their opposition to the motion to dismiss, this argument has no merit: Section 402(q)(8) and its implementing regulations do not apply to children (who are not subject to reduction because of age) and do not alter the clear text of Section 403(a) which instructs the agency to use actual payable benefits—not theoretical entitlements—when determining whether the family maximum has been reached. *See* Dkt. 32 at 18–21.

and the parties agree “there are no disputed material facts that would necessitate a trial,” Opp. at 3, SSA’s motion for summary judgment should be denied and summary judgment should be entered in favor of Plaintiffs.⁴

II. THE COURT SHOULD ENTER PLAINTIFFS’ PROPOSED JUDGMENT

A. SSA Should Be Ordered To Use The Correct Formula Going Forward For Determining Whether Reduction Under The Family Maximum Is Necessary

SSA opposes Paragraph 1 of Plaintiffs’ proposed judgment, which requires the agency to fix the formula for determining whether reduction is necessary under the family maximum for the class members going forward. SSA claims that this injunctive relief, with the attendant “threat of contempt,” is a “drastic and extraordinary remedy” that courts should use only “sparingly” where there is irreparable harm and no adequate remedy at law. Opp. at 4-5, citing *Wudi Industrial Co. v. Wong*, 70 F.4th 183, 190 (4th Cir. 2023) (discussing standard for entry of permanent injunction). Not so. *Wong* was not a case brought under Section 405(g) of the Social Security Act and thus has no bearing here. Instead, *Califano v. Yamasaki*, 442 U.S. 682 (1979), controls.

In *Califano*, the Supreme Court held that Section 405(g), which authorizes courts to affirm, modify, or reverse agency action, includes the power to enter injunctive relief. *Id.* at 704-05. There, as here, SSA tried to invoke the maxim that equitable relief is only appropriate where there is no adequate remedy at law, but the Supreme Court held that this “reading of the statute is too grudging”:

Invoking the maxim that equitable relief is appropriate only when a party has no adequate remedy at law, [the Secretary] says that respondents would have an adequate remedy if a court simply reversed the Secretary’s decision not to grant them pre-recoupment

⁴ SSA “interprets Plaintiff’s motion [to enter final judgment] as seeking summary judgment on the terms of Plaintiff’s proposed judgment.” Opp. at 2. Whether construed as a motion for summary judgment or a motion to enter judgment, the outcome is the same: the Court should enter Plaintiffs’ proposed judgment. Plaintiffs moved for entry of final judgment because that is the approach the parties had discussed and presented to the Court. Dkt. 105.

oral hearings. In the face of such an order, he would be forced, he says, to suspend recoupment until the recipient was afforded a hearing.

The Secretary's reading of the statute is too grudging. Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction. [Citations omitted.] Nothing in either the language or the legislative history of § 205(g) indicates that Congress intended to preclude injunctive relief in § 205(g) suits.

Id. (emphasis added). The Supreme Court explained that “[i]njunctions can play an essential role in § 205(g) litigation” because without injunctive relief “a court for all practical purposes would be unable to ‘reverse’ a decision” by the agency. *Id.* Moreover, “[i]n class actions, injunctions may be necessary to protect the interests of absent class members and to prevent repetitive litigation.” *Id.* The Supreme Court also brushed aside the agency’s concern that injunctive relief could be enforced by contempt: “While the grant of injunctive relief makes the Secretary’s duty to comply enforceable by contempt, ‘[s]urely Congress did not intend § 205(g) to provide reluctant federal officials with a means of delay in the remote eventuality that they might not feel bound by the judgment of a federal court.’” *Id.* (citation omitted).

Following the Supreme Court’s command in *Califano* that injunctive relief is an “essential” part of Section 405(g) litigation and necessary to fully carry out a modification or reversal of agency action, courts regularly grant injunctive relief directing the agency to take corrective action—such as by calculating future benefits correctly. *See, e.g., Steigerwald v. Comm’r of Soc. Sec.*, 48 F.4th 632, 640 (6th Cir. 2022) (“The district court’s order of the Subtraction Recalculation merely implemented the district court’s modification of the SSA’s decision.”) (citing *Califano*); *Livermore v. Heckler*, 743 F.2d 1396, 1405 (9th Cir. 1984) (affirming district court order directing “recalculation of benefits erroneously calculated as well as prospective implementation of the correct formula”); *Bouchard v. Sec’y of Health & Hum. Servs.*, 583 F. Supp. 944, 956 (D. Mass.),

order amended, stay granted in part, 604 F. Supp. 171 (D. Mass. 1984) (“The Secretary is hereby permanently enjoined from calculating the eligibility for and amount of the optional state supplementary payment to the Supplemental Security Income Program in a manner inconsistent with the statutory and regulatory mandate.”); *Trujillo v. Heckler*, 582 F. Supp. 701, 703 (D. Colo. 1984) (court had entered permanent injunction holding that the agency could not terminate social security benefits in the absence of a material medical improvement or a showing of substantial error in the earlier proceeding).

Injunctive relief is especially important in class actions like the present case, because, as the Supreme Court held in *Califano*, it can “prevent repetitive litigation.” 442 U.S. 705. Indeed, without injunctive relief directing the agency to use the correct formula going forward, there is no guarantee that the agency will implement the correct formula or do so in a timely manner. In that eventuality, each of the ~200,000 class members would have to pursue their own individual administrative and judicial proceedings to ultimately obtain their rightful benefits—or perhaps initiate a new class action. This would surely result in the exact “repetitive litigation” that *Califano* held injunctive relief was designed to avoid.

B. SSA Must Pay Past-Due Benefits To The Class From The First Month They Were Underpaid

i. Any Class Member Who Received An “Initial Determination” Regarding Their Benefit Amount During The Class Period Has A Timely Claim

SSA objects to Paragraph 2 of the proposed judgment to the extent it provides for payment of past-due benefits to the class from the first month that the child received a benefit payment. Opp. at 5-7. The agency claims that such a provision will improperly compensate class members who have lapsed claims. *Id.* at 7. Specifically, SSA argues that some class members “received their initial determination or decision regarding their monthly child’s insurance benefit amount,

which would have included appeal rights, prior to May 10, 2024” and “chose not to timely exercise their appeal rights.” *Id.* Thus, according to SSA, such “un-appealed determinations as to the monthly benefit amount are final, binding, and time-barred.” *Id.* SSA argues, therefore, “a class defined by reference to *receipt of a determination with the notice of award of auxiliary benefits* between May 10, 2024 and May 30, 2025, would be a more consistent means to identify members who would be entitled to relief.” *Id.* at 10 n.4 (emphasis added).⁵

Plaintiffs agree that class members with untimely claims are not entitled to past-due benefits, but strongly disagree with SSA’s assertion that a claimant’s time to appeal runs only from “the notice of award of auxiliary benefits.” *Opp.* at 10 n. 4. Rather, class members who received during the class period, *any* “initial determination”—as defined in 20 C.F.R. § 404.902 with its attendant 60-day appeal right, *see* 20 C.F.R. § 404.909(a)(1)—in which SSA miscalculated their benefits (by using the PIA instead of the RIB), have timely claims and are eligible to receive past-due benefits. As explained below, most of the class members have received such an appealable “initial determination” during the class period in the form of an annual cost-of-living adjustment (“COLA”) letter setting forth the incorrect benefit amount and, therefore, have timely claims for purposes of this lawsuit.

Section 404.902 of the SSA regulations, entitled “Administrative actions that are initial determinations,” provides that any determination about “your entitlement or your continuing entitlement to benefits,” “the amount of your benefit,” or “a recomputation of your benefit” is an

⁵ Notably, SSA originally produced a list only of class members who had received original award notices during the class period, but admitted that this was an error and was forced by now to issue three supplemental lists consistent with the actual class definition. If SSA was dissatisfied with the class definition, it should have complained before Plaintiffs mailed close to 200,000 notices to the class members the agency identified. In any event, as explained herein, a change to the class definition is unnecessary. Any necessary clarity as to which class members are entitled to receive past-due benefits can be achieved by modifying the proposed final judgment instead. *See infra*, p. 8.

“initial determination” subject to “administrative and judicial review.” 20 C.F.R. § 404.902(a), (c), (d). Agency policy confirms that “[a] COLA is an initial determination subject to administrative and judicial review. Therefore, the claimant can question our calculation.” POMS: GN 03101.050(C); *see also* POMS: GN 04030.060 (“Effective June 1976, the conversion of a benefit rate or COLA constitutes an initial determination to which the rules of administrative finality apply in the same manner as to any other initial determination.”).

A COLA letter consists of a determination that the claimant continues to be entitled to benefits and the amount of the monthly benefit (reflecting the COLA). Further, each COLA letter specifically advises the recipient of his/her right to seek further review within 60 days:

If you disagree with any of these amounts, you must file an appeal with us in writing within 60 days from the date you get this letter. We will assume you got this letter 5 days after the date of the letter, unless you show us that you did not get it within the 5-day period. You must have good reason for waiting more than 60 days to file an appeal.

Exhibit A (sample, names redacted, COLA letters). SSA has stipulated that “all ... Cost of Living Adjustment (“COLA”) letters ... issued by Defendant the Social Security Administration to the class members as defined by the Court’s May 30, 2025 Order (Dkt. 72), are standardized and substantively the same but for individual dollar values and personal information.” Dkt. 103 at 1.⁶ COLA letters are sent annually to anyone who will continue to receive benefits the following year and, therefore, the vast majority of class members will have received one in or around December, 2024.⁷ *See generally* 42 U.S.C. § 415(i) (“If the Commissioner of Social Security determines that

⁶ Plaintiffs sought discovery of all COLA letters issued to class members. After a hearing before Magistrate Judge Davis, the parties agreed for SSA to provide this stipulation in lieu of producing all the COLA letters. *See* Dkt. 100.

⁷ For example, class members who aged-out upon turning 18 or 19 by December 2024 and thus no longer received auxiliary benefits based on their record holders’ early retirement, would not have received COLA letters.

the base quarter in any year is a cost-of-living computation quarter, the Commissioner shall, ***effective with the month of December*** of that year as provided in subparagraph (B), increase” the specified benefits, including the PIA) (emphasis added); POMS: Section NL 00803.045 (“Cost of Living Adjustment (COLA) Notices”) (“Before the month a COLA becomes effective, the system usually generates a notice to tell the recipient about the event and how much his/her SSI payments will be.”). Consequently, each class member who received an “initial determination” during the class period in the form of a COLA letter (or otherwise) has a timely claim for past-due benefits because the COLA letter gave them 60 days to challenge the calculation of their benefits, which period is tolled pending the outcome of this litigation. *American Pipe & Construction Company v. Utah*, 414 U.S. 538 (1974); *Potter v. Commissioner of Social Security*, 9 F.4th 369, 371 (6th Cir. 2021) (“filing a class action pauses the deadlines for members to file related individual actions”).⁸

For the sake of clarifying what was already implicit in the Court’s class certification decision, the Court can modify the proposed judgment submitted by Plaintiffs by adding the words in bold underline as follows

5. This Final Judgment applies to all members of the class, as defined in the Court’s class certification order, **who received during the class period an “initial determination,” 20 C.F.R. § 404.902, regarding their benefit amount,** and to whom notice was sent, excluding those who timely requested exclusion from the class as set forth in the exclusion reports filed by Class Counsel.

An amended proposed judgment is attached as **Exhibit B**.

ii. SSA Must Pay Past-Due Benefits To All Class Members With A Timely Claim Starting From The First Month Such Benefits Were Underpaid

For each class member with a timely claim, SSA does not address, nor can dispute, that the

⁸ The COLA letter is not reviving a lapsed claim on a miscalculation. It is affording the recipient the right to challenge the amount in the letter. If that challenge is successful, SSA is required to correct past underpayments by statute, regulation, and its own POMS. *See infra*.

Social Security Act and the agency’s own regulations require that SSA make payment of past-due benefits from the first date in which the beneficiary was underpaid—even if that was before May 10, 2024. 42 U.S.C. § 404(a)(1) (“*Whenever* the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, *proper adjustment or recovery shall be made....*”) (emphasis added); 20 CFR § 416.538 (“underpayment period” begins with “the first month for which there is a difference between the amount paid and the amount actually due for that month”). This is made even more apparent by the agency’s policies regarding COLA which provide that (since 1976) the agency cannot use COLA as an occasion to try to address a “substantive computation error” in the original benefit calculation *unless* such error “was unfavorable to the claimant” in which case, “we can always go all the way back and correct it.” POMS: GN 04030.060 (“Administrative Finality - Errors in Conversion Operations and Cost of Living Adjustments (COLAs)”).

As applied here, the SSA’s miscalculation of class members’ monthly benefits due to the misuse of the PIA rather than the RIB in determining whether the family maximum was exceeded is “a substantive computation error ... unfavorable” to the class member. Per 20 C.F.R. § 404.902 and the express language of the COLA letters, this substantive computational error can be challenged within 60 days of the receipt of COLA letter, “[i]f you disagree with any of these amounts.” *See Exhibit A.*⁹ At the same time, the error is one that SSA not only “*can* always go all the way back and correct” (POMS: GN 04030.060), but indeed is one that SSA statutorily *must*

⁹ The appeal is thus limited to a disagreement with the *amount* of the benefit award. By contrast, for example, a COLA letter would not allow an appeal to dispute an *entitlement or non-entitlement* of a benefit. This ability to challenge calculations that will correct miscalculations in the original benefit amount awarded, upon which the COLA benefit was built, is consistent with Congressional intent that “[w]henever” SSA “finds that more or less than the correct amount of payment has been made to any person under this subchapter, *proper adjustment or recovery shall be made....*” 42 U.S.C. § 404(a)(1) (emphasis added).

correct going back to the date the error was made. 42 U.S.C. § 404(a)(1) (“adjustment or recovery [of underpayments] *shall* be made...” (emphasis added). Accordingly, if Plaintiffs prevail on the merits, SSA *must*, as Paragraph 2 of Plaintiffs’ proposed judgment states, pay past-due benefits to those class members whose claims are tolled by this class action, from “the first such month” that the child received a benefit payment—even prior to May 10, 2024.

iii. At The Very Least, Past-Due Benefits Should Be Paid Back To The Date Plaintiff LNP Filed His Administrative Complaint In 2019

Alternatively, if the Court is not inclined to award past-due benefits to class members with timely claims from the inception of their benefits, then past-due benefits should at least be awarded commensurate with the date Plaintiff LNP filed his first administrative complaint in October 2019. Dkt 1 (Complaint, ¶ 66). This is because the filing of an administrative complaint with SSA tolls the statute of limitations for other members of the class. *Lopez v. Heckler*, 725 F.2d 1489, 1507 (9th Cir. 1984) (“We thus conclude that there is a strong possibility that plaintiffs will succeed in their argument that, in a section 405(g) class action, the limitations period is deemed tolled retroactively for unnamed class members from the date a class representative first files an administrative appeal.”), *judgment vacated on other grounds*, 469 U.S. 1082 (1984); *Owens v. Heckler*, 1984 WL 62779, at *5 (C.D. Cal. 1984) (“[T]he limitations period should be tolled from filing of plaintiffs’ administrative complaint.”). “The rationale for the rule is that when the issues are identical for all class members, the filing of a single administrative complaint gives the defendant adequate notice of the nature of the claim and opportunity to evaluate the effects of the claim on all similarly situated persons. This rationale for the rule certainly applies here where there is only a single issue of law presented which affects the entire class in the same manner.” *Owens*, 1984 WL 62779, at *5 (citations omitted).

Applied here, by October 24, 2019, when L.N.P. filed his administrative request for

reconsideration, SSA had “adequate notice” of the claim—with the “opportunity to evaluate the effects of the claim on all similarly situated persons”—that the agency was miscalculating his (and by extension all similarly situated) children’s benefits under the theory of this case. *See* Dkt. 1-5 at page 7 of 12 (quoting the ALJ’s administrative appeal decision explaining L.N.P.’s arguments in his October 24, 2019 letter seeking reconsideration). Thus, even if class members are not awarded all of their past-due benefits back to inception, they should at least receive benefits back to October 24, 2019—coextensive with the period for which L.N.P. and his children are indisputably entitled to benefits. *Opp.* at 7 (SSA agrees that LN.P.’s children are entitled to full past-due benefits).

C. The Court Should Retain Jurisdiction To Ensure Full And Timely Compliance

SSA objects to Paragraph 4 of Plaintiffs’ proposed judgment under which the Court would retain jurisdiction over this matter after judgment is entered to ensure timely compliance through the submission of bi-monthly reports.¹⁰ SSA argues that this “request for relief is premature” because “Plaintiff has not shown that the circumstances of this case, which do not involve a consent decree or settlement agreement, require that the court retain jurisdiction or that bi-monthly status reports are warranted.” *Opp.* at 8. But, as Plaintiffs already explained, courts routinely retain jurisdiction to enforce their judgments—especially in the context of a class action—including by submission of status reports. Dkt. 138 at 20-22 (citing cases). Indeed, for over 200 years it has been well settled that “[t]he jurisdiction of a Court is not exhausted by the rendition of its judgment, but continues until that judgment shall be satisfied.” *Wayman v. Southard*, 23 U.S. 1 (1825); *Burgos-Yantin v. Municipality of Juana Diaz*, 909 F. 3d 1 (1st Cir. 2018) (“Enforcement

¹⁰ *See* homepage for the *Steigerwald* class action (<https://www.steigerwaldclassaction.com/>) for all the progress/status reports filed by SSA in that case.

jurisdiction is ‘a creature of necessity,’ which grants a federal court the ‘inherent power to enforce its judgments.’”) (citing *Wayman*).

In an attempt to avoid this Court’s continuing jurisdiction, SSA argues that “Plaintiff seeks a remand for further administrative proceedings to require the agency to issue new determinations of the monthly benefit amounts and any past due benefits owed to the class,” and that such remand falls under sentence four of Section 405(g) pursuant to which, according to SSA, “the district court does not retain jurisdiction” after entering judgment. Opp. at 8, citing *Shalala v. Schaefer*, 509 U.S. 292, 296 (1993). SSA misapprehends both the law and the relief sought by Plaintiffs.

Judgment without remand for rehearing is appropriate and supported by the plain text of Section 405(g) and by Fourth Circuit precedent:

The statute governing review in Social Security cases authorizes us to reverse [or modify] the Secretary’s decision “***with or without remanding the cause for a rehearing.***” 42 U.S.C. § 405(g). We have previously exercised this discretion. *E. g.*, *Cyrus v. Celebrezze*, 341 F.2d 192 (4th Cir. 1965); *Thomas v. Celebrezze*, 331 F.2d 541 (4th Cir. 1964); *Underwood v. Ribicoff*, 298 F.2d 850 (4th Cir. 1962). Under this statute, we think it appropriate to reverse without remanding where the record does not contain substantial evidence to support a decision denying coverage under the correct legal standard and ***when reopening the record for more evidence would serve no purpose.*** [Citations omitted.] Because both circumstances are present in this case, ***we will not delay the case further by remanding to the Secretary on this issue.*** Instead we remand to the district judge, who should enter judgment for the claimant and ***direct the Secretary to pay her such benefits, if any, to which she may be entitled under the law and the regulations.***

Breden v. Weinberger, 493 F. 2d 1002, 1012 (4th Cir. 1974) (emphasis added). Notably, “[t]he Fourth Circuit has reversed without remanding in cases where significant delay has resulted or would result from the Commissioner’s failure to apply the correct legal standard.” *Kendall v. Astrue*, 906 F. Supp. 2d 433, 440 (D. Md. 2012) (citing cases).

Schaefer, cited by SSA, is not to the contrary. There, the Supreme Court rejected the

argument that “a district court proceeding under [sentence four of Section 405(g)] need not enter a judgment at the time of remand, but may postpone it and retain jurisdiction pending completion of the administrative proceedings.” 509 U.S. at 297. The Court held that this argument “is inconsistent with the plain language of sentence four, which authorizes a district court to enter a judgment ‘with or without’ a remand order, not a remand order ‘with or without’ a judgment.” *Id.* In the present case, by contrast, Plaintiffs are not seeking a remand without a judgment. Rather, Plaintiffs are seeking final judgment without a remand for rehearing—exactly as Section 405(g) permits. And after entering judgment, this Court retains jurisdiction to ensure compliance.

Plaintiffs seek judgment directing the agency to correct its formula for analyzing the family maximum and to pay past-due benefits to the class members—not for further hearings, “new determinations,” and new rounds of administrative and judicial review, as the agency apparently envisions. *Opp.* at 9 (positing that after judgment is entered “further administrative proceedings will be required for SSA to recalculate monthly benefit amounts and to issue past-due benefits to class members” and disgruntled class members “may appeal that determination administratively” and then “file a new complaint under 42 U.S.C. § 405(g) with the district court.”). In fact, the agency even intends that *after judgment is entered* it may exclude individuals from the class and those excluded people will also be forced to bring new administrative claims (and presumably new lawsuits) to obtain relief: “[A] putative class member whom the agency determines not to be a class member entitled to relief could administratively appeal the adverse determination.” *Opp.* at 11. This entire scheme is unworkable and contrary to basic class action law.

It is this Court’s responsibility to ensure that each class member as defined by the Court receives any past-due benefits to which he or she is entitled. *See Turner v. Orr*, 722 F.2d 661, 665–66 (11th Cir. 1984) (“the policy implicit in Fed.R.Civ.P. 23, which governs class actions, ...

places a special responsibility on the district court to protect potential class members and ensure that they receive the due process to which they are entitled.”). Indeed, the final judgment must specify or describe the members of the class, as reflected in Paragraph 5 of Plaintiffs’ proposed judgment. Fed. R. Civ. P. 23(c)(3). It is not for the agency to determine after judgment who is in and who is out of the class. And it is certainly not appropriate to relegate such decisions to the agency’s administrative process followed by potentially thousands of new lawsuits from excluded class members seeking to obtain their rightful benefits. Rather, this Court must supervise the identification of class members who are entitled to relief. For example, to the extent that SSA seeks to exclude someone from class membership post-judgment, the agency should be required to explain in each case the reason(s) therefor to allow for any needed Court review.

The Court has many oversight tools at its disposal—starting with the tools requested by Plaintiff (such as status reports) and also including the appointment of claims administrators or special masters to resolve disputes over class membership, all subject to the Court’s final determination. *See, e.g., Lyngaas v. Curaden AG*, 436 F. Supp. 3d 1019, 1025 (E.D. Mich. 2020), *aff’d*, 992 F.3d 412 (6th Cir. 2021) (“[A]ll that remains is to determine class membership, which will then determine the full extent of damages owed. As explained above, these issues may be resolved during a claims administration process as long as the defendants are afforded the opportunity to challenge the claims to class membership and the amount of damages owed. Further, ***this Court will be the ultimate decision-maker should either party object to the determinations of the claim administrator.***”) (emphasis added) (internal citation omitted); *Krakauer v. Dish Network, LLC*, 2017 WL 3206324, at *10 (M.D.N.C. 2017) (“The Court anticipates that some claims will raise substantial questions about whether a claimant is a class member ... For those claims, a summary decision process will be needed, either by the claims administrator or a special

master.”).

Deferring questions of class membership to the agency, with no oversight by this Court, would deprive class members of their due process rights and would result in a multiplicity of proceedings. The Court should not abdicate its oversight responsibility to the detriment of class members. Instead, it should retain jurisdiction, as requested by Plaintiffs, and supervise the agency’s compliance with the judgment at least through submission of bi-monthly status reports.

D. SSA Fails To Establish That 12 Months Is Insufficient Time To Pay Past-Due Benefits

SSA argues that 12 months is not sufficient time to pay past-due benefits to the class but fails to submit any actual evidence—such as agency affidavits—demonstrating that more than 12 months is required. Opp. 10-12. Indeed, as Plaintiffs previously noted (Dkt. 138 at 14 n.12), the agency testified under oath (through Mr. Gallagher) that it would only take 20-40 hours to not just write the code necessary to calculate past-due benefits but also to “*execute it, produce a sample, [and] look at aberrant findings.*” Gallagher Dep. 84:18-85:10. SSA’s suggestion that it would take longer to “perform the calculations” (Opp. at 11) is therefore unsupported. Indeed, after the code is written, the calculations can be performed by the push of a button.

SSA also posits that a technician will have to “review the record of each individual identified in the class list(s) produced by the agency for notice purposes, to verify class membership. This includes verifying that the child received at least one qualifying payment during the class period and met the other criteria of the class definition.” Opp. at 11. But the agency previously explained in an interrogatory response that it *already verified* that each child on the class list received at least one qualifying payment during the class period—indeed, the agency undertook a multi-step process to compile the class list that is very similar to the one they now claim will have to be performed after judgment is entered:

The agency first reviewed the Master Beneficiary Record (MBR) to identify number holders who receive retirement benefits, and then identified which of these number holders have children who received auxiliary benefits due to a parent's receipt of a reduced retirement benefit at any point from April 2024 through April 2025. ... Next, the agency refined the population by determining whether the parent retired before reaching full retirement age (FRA). ... The agency further refined this group of potential class members by including only beneficiaries whose Ledger Account File (LAF) codes indicate an active payment status (e.g., current pay or suspended for reasons not excluded from class inclusion). ... Next, the agency identified which of these remaining [child] beneficiaries receive a monthly benefit amount that is less than 50% of the parent's primary insurance amount (PIA). These are the individuals included in the class.

July 21, 2025 Resp. to Rog 2, **Exhibit C**. The unsupported claims in SSA's opposition are therefore contrary to this prior interrogatory response and should not be considered.¹¹

SSA also asserts that recalculating benefits "will also require significant revision of the agency's internal policy documents, such as in the Program Operations Manual System ("POMS")" and that "the change in policy and process ... would require significant resources to retrain staff in both the agency's field offices and processing centers." Opp. at 12. But SSA does not support these statements with any evidence and does not even provide an estimate of how much time they claim is needed to complete these tasks beyond the year already provided by Plaintiffs' proposed judgment. Given the agency's track record of exaggerating the amount of time it will take to make payments, *see* Dkt. 138 at 14–15 n. 13 (SSA claimed it would take one thousand work years to recalculate and pay 3 million beneficiaries, but paid 71% within two months after push back from Congress), the vague and unsupported assertions in SSA's opposition brief that it

¹¹ SSA also argued that "Plaintiff's [sic] assertion that each and every identified class member is 'indisputably . . . entitled to benefits' is simply incorrect." Pl.'s Br. at 15. Plaintiffs reference to "entitled to benefits" simply meant that the class members in this case have already been deemed entitled to benefits—unlike in many other SSA cases where entitlement is the issue in dispute. Plaintiffs agree that the *amount* of the benefit owed is at issue and that it is possible that some class members may not be awarded past-due benefits.

will need more than a year to make payment to about 200,000 people in the present case is simply not credible and should be disregarded.

E. The Judgment Should Reflect That Class Counsel Is Eligible For Fees Under Section 406(b)

SSA argues that it is premature to consider Class Counsel's eligibility for a fee award under Section 406(b). Opp. at 12-13. As a result, Defendants do not offer any substantive response to the arguments made in Plaintiffs' opening brief that Section 406(b) fees are available to Class Counsel. Instead, Defendants vaguely state in a footnote that the cases cited by Plaintiffs come from outside the circuit and "the same outcome is not required for this case, which involves different plaintiffs, different facts, and different questions of law." *Id.* at 13 n.7. Defendants do not specify what those differences are or, most importantly, why they matter. The issue is fully briefed and the Court should rule that Class Counsel is eligible for fees under Section 406(b) and include in the Judgment that Class Counsel may submit an application for fees within 14 days of the entry of judgment. As Plaintiffs previously noted, and Defendants do not dispute, it will be for the Court to ultimately determine what percentage fee to award. Dkt. 138 at 19-20.

III. THE COURT SHOULD DENY SSA'S REQUEST FOR THE STAY OF ANY UNFAVORABLE JUDGMENT PENDING APPEAL

SSA invokes Rule 62 of the Federal Rules of Civil to ask this Court not to enforce and thus stay "any judgment in Plaintiff's [sic] favor . . . pending the agency's appeal." Opp. at 13; *see* Motion, Dkt. 145, at 1 (citing Fed. R. Civ. P. 62). SSA's request should be denied on two grounds. First, it is premature. Second, SSA does not meet the standards for the extraordinary relief of a stay pending appeal.

A. SSA's Request Is Premature

SSA's request for a stay is premature because no judgment has been entered yet and nowhere in its brief does SSA state that it *will* appeal any adverse judgment which would be the

only basis on which to obtain a stay. That is consistent with the Class Notice which states: “SSA has indicated that it *intends to seek authority to appeal* the District Court’s ruling.” *See, e.g.*, Dkt. 108-1 (emphasis added). Not only are there no indicia that a definitive, official decision to appeal has been made by SSA, but as is well-known, any final appeal decision resides with the DOJ’s Solicitor General. 28 C.F.R. § 0.20 (Solicitor General determines, in consultation with agency involved, “whether, and to what extent, appeals will be taken by the Government to all appellate courts”). There certainly is no indication that SSA has actually sought authority for an appeal, or that DOJ has actually signed off on an appeal. Until an actual judgment is entered there is nothing for DOJ to evaluate in deciding whether to authorize an appeal. For this reason alone, SSA’s request for a stay should be denied.

B. In Any Event, SSA Fails To Meet Its Burden Under The *Nken* Factors For A Stay Pending Appeal

“A stay pending appeal is ‘an exercise of judicial discretion,’ the propriety of which ‘is dependent upon the circumstances of the particular case.’” *Boyle v. Trump*, 2025 WL 1808180 at *1 (4th Cir. 2025), (Wynn, J., concurring) (citing *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672–73 (1926))). It is an “intrusion into the ordinary process of administration and judicial review,” *Nken*, 556 U.S. at 427, and thus an “extraordinary remedy.” *SmartSky Networks, LLC v. Wireless Systems Sol.*, 630 F. Supp. 3d 718, 728 (M.D.N.C. 2022). *See also Williams v. Zbaraz*, 442 U.S. 1309, 1316 (1979) (Stevens, Circuit Justice) (“Where there is doubt, it should inure to the benefit of those who oppose grant of the extraordinary relief which a stay represents”). As such, an applicant “bears the burden of showing that the circumstances justify an exercise of that discretion.” *Nken*, 556 U.S. at 434.

Relying on the four *Nken* factors, SSA asks this Court to exercise its discretion to enter an immediate stay when any adverse judgment is entered against it. Opp. at 13-18. The agency asserts

that the Court “need not give these factors equal weight but should consider all of the factors . . .” *id.* at 14 (citation omitted), and claims that here “on balance, all the relevant factors weigh in favor of a stay.” *Id.* at 18. SSA misstates the law: “The first two factors of the traditional standard are the most critical.” *Nken*, 556 at 434. SSA not only fails to meet its burden to demonstrate those two most critical factors—likelihood of success on the merits and irreparable harm—it fails to establish the remaining two factors, namely, that the public interest favors a stay and that a stay will not substantially harm other interested parties. On balance, therefore, “the circumstances of the particular case” here, weigh heavily against the grant of SSA’s stay request. *Id.* at 433.

SSA is unlikely to succeed on the merits of an appeal. The parties agree that this Court’s denial of SSA’s motion to dismiss effectively was a ruling on the merits. *See* Dkt. 105 at ¶¶ 2, 6; Opp. at 3. The basis for the Court’s ruling was the plain language of Section 403(a) of the Social Security Act as confirmed by its correct interpretation by the First Circuit in *Parisi v. by Cooney v. Chater*, 69 F.3d 614 (1st Cir. 1995). Thus, the Court recognized that Section 403(a) makes it clear that in determining whether a family maximum is exceeded, SSA is required to use of the actual, not theoretical, benefit amount of the record holder, *i.e.*, here, an early retiree’s RIB, not the PIA. *See generally* Dkt. 49 at 8-10. The Court rejected SSA’s arguments that distinguished *Parisi* on the facts, and that sought to rely on “scattered” references of the PIA throughout the Act and the agency’s regulations. *Id.* at 10. The Court found it “even more curious why Congress did not explicitly reference the PIA in Section 403 if it intended the PIA to be deducted from the family maximum in this circumstance.” *Id.*¹² Accordingly, it found that its (and *Parisi*’s) statutory reading “was the best reading of Section 403” and that “the SSA has been interpreting Section 403

¹² This finding rebuts SSA’s claim that its construction of the statute is “consistent with Congressional intent.” Opp. at 14.

incorrectly.” *Id.*

SSA makes no attempt to respond to the Court’s analysis. Instead, it simply claims, with no support whatsoever, that it has “presented strong arguments on a substantial legal question that could result in a successful appeal.” *Id.* at 15. Conclusory assertions like that, however, are meaningless to help the agency meet its burden to demonstrate a likelihood of success on the merits. Moreover, this Court and the Fourth Circuit previously dismissed L.N.P.’s first lawsuit for failure to exhaust his remedies in order to give the agency, as it requested, the opportunity “to get its explanation on the record as to why it has interpreted [Section 403(a)] in a particular way.” *See L.N.P. v. Kijakazi*, 64 F.4th 577, 589 (4th Cir. 2023) (quoting and agreeing with SSA’s argument to the district court). Yet, after going through the administrative process, neither SSA’s ALJ nor its Appeals Council added any new explanation to its decades-old misinterpretation of the statute. *See* Dkt. 1 at ¶¶ 74-84. It has added nothing new at this juncture either.

Nor does SSA’s argument that “this case presents a matter of first impression,” (Opp. at 15), help it meet its burden: “Presenting a legal position that no other court has accepted but no court in the presiding court’s jurisdiction has rejected may remotely create an issue of first impression. However, if the position has little merit, there is no ‘likelihood of prevailing.’” *In re Hopeman Brothers, Inc.*, 667 B.R. 101, 109 (Bankr. E.D.Va. 2025).

SSA’s reliance (Opp. at 15) on *United States v. Fourteen Various Firearms*, 897 F. Supp. 271, 273 (E.D. Va. 1995), therefore, is misplaced. The issue there had not been decided by the Fourth Circuit—and hence was a matter of first impression within the circuit—but as the court noted, had been previously decided elsewhere in favor of the government. *Id.* at 273. The court noted its disagreement with the case outside the Fourth Circuit, but accepted the fact it “was thoughtfully decided and reasonable minds could differ respecting whether it or the decision now

on appeal was the correct reading of the applicable law.” *Id.* By contrast, this Court’s acceptance of *Parisi*, including that court’s analysis, interpretation, and holding specifically regarding 42 U.S.C. 403(a), which SSA itself has accepted for decades, see Dkt. 1 at ¶¶ 44-47, negates any favorable weight the agency might garner from a case of first impression in this Circuit.¹³

SSA will not suffer irreparable harm. SSA’s assertion of irreparable harm is premised on its arguments that complying with a Court order to recalculate benefits and issue past-due payments will require “significant time and resources” and the need to devote “additional resources to recover those payments” in the event of a reversal on appeal. Opp. at 16. Tellingly, SSA submits no declarations from agency officials to support its claims, and even admits that “the number of worker-hours necessary to recalculate benefits and issue supplemental payments has not yet been determined.” *Id.* at 15. Without evidence of its purported burden, SSA cannot make “a clear showing that it will suffer harm that is neither remote nor speculative, but actual and imminent.” *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 216 (4th Cir. 2019) (cleaned up). Moreover, it is long-established in this Circuit that “mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough” to establish irreparable harm. *Long v. Robinson*, 432 F.2d 977, 980 (4th Cir. 1970) (cleaned up).¹⁴

¹³ At oral argument when the case first began in 2021, this Court encouraged Plaintiffs’ counsel not to be “too pessimistic” of L.N.P.’s chances to prevail at the administrative level, signaling at that early stage that SSA’s merits case was weak. See *L.N.P. v. Kizakazi*, Civ. Case No. 21-CV-00820-MSN-TCB, Dkt. 29 (transcript of 11/16/21 oral argument) at 20. Nothing that SSA has done or argued since then has enhanced or buttressed its case on the merits.

¹⁴ Indeed, SSA’s claims of the time and effort that it will take to change its (wrong, albeit) “decades-long” practice, Opp. at 16, is belied by the similar claims it made last year when Congress eliminated the longstanding Windfall Elimination Provision in the Act, by passage of the Social Security Fairness Act (the “SSFA”). See Dkt. 138, at 14 n.13. SSA does not address this point directly, only alluding “that Plaintiff predicates his assessment on SSA’s adoption of technology pursuant to the Social Security Fairness Act.” Opp. at 11 (emphasis added). But the SSFA did not address or require any new “adoption of technology” or even set a deadline for the retroactive adjustments to benefits. It was only after *Congressional*

Regardless, irreparable harm is present only when money is unrecoverable. *Cf. Wages & White Lion Invs., L.L.C. v. U.S. Food & Drug Admin.*, 16 F.4th 1130, 1142 (5th Cir. 2021) (A plaintiff may also establish irreparable harm when its costs are unrecoverable due to the government's sovereign immunity). Here, of course, SSA undeniably has the means to recover any overpayments. *See* Opp. at 16 (citing 42 U.S.C. § 404(a)(1)(A) and 20 C.F.R. § 404.502).

Moreover, and if necessary, the Court can tailor relief to the class in a manner that best assures any required recovery by SSA. Plaintiffs' proposed judgment (at Paragraph 2) would allow SSA to recalculate and issue past-due benefits on a rolling basis over 12 months. SSA can first recalculate benefits and prioritize past-due payments for younger children who will be obtaining benefits for many years to come until their eligibility expires at the age of 18 or 19. For those children, SSA will have many years and opportunities to deduct, or entirely withhold, benefits to recoup overpayments in the event of a reversal on appeal. Recalculations and payments for older children or those whose eligibility has already expired can be held up until the appellate process ends. Under this scenario, SSA and the social security program would be fully protected.

But even if this Court were to enter a stay on the *payment* of past-due benefits, there is no reason for SSA not to undertake the *recalculations* of benefits. SSA complains that it will take much (unquantified) time and effort to complete the task. Opp. at 13, 15. But it should not be given extra time during an appeal to take no action at all. Otherwise, the relief the class is entitled to will unfairly be delayed even longer.

pressure that SSA sped up its work and got the job done. Dkt. 138, at 14 n.13. There is no reason why it cannot do the same here pursuant to *Court* order.

A stay is not in the public interest and class members will be substantially harmed.

While SSA cannot meet the standards for a stay under the first two most “critical factors,” it also fails to show that the public interest is in its favor, or that the class members will not be substantially harmed.

SSA was, or should have been, aware of the proper interpretation of Section 403(a) since the *Parisi* decision in 1995. Certainly, by 1999 it had acknowledged in the Federal Register that under Section 403 and 20 C.F.R. § 404.403, the agency was “*to consider the actual amount of benefits payable under the relevant benefit provisions, not purely theoretical entitlements*, in calculating the total monthly benefits payable on the worker’s earnings record under the family maximum.” 64 Fed. Reg. 57917, 57917 (October 27, 1999) (emphasis added). It reaffirmed its understanding the following year stating: “As a result of the Court’s decision [in *Parisi*], *we reassessed our interpretation in our prior regulations* and . . . decided to adopt the court’s holdings nationwide.” 65 Fed. Reg. at 38425 (June 21, 2000) (emphasis added). Notwithstanding, the agency continued to disregard its own admissions when it came to the eligible minor class members. Under no circumstances can allowing SSA to continue to flout the law be considered to be in the public interest. To the contrary, the “public interest is, of course, best served when government agencies act lawfully.” *CACI, Inc. Federal v. US Navy*, 674 F. Supp. 3d 257, 279 (E.D.Va. 2023) (cleaned up). *See also id.* (“It is evident that there is generally no public interest in the perpetuation of unlawful agency action;” “[t]o the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.”) (cleaned up; citation omitted). The mere fact alone that 200,000 or so class members are potentially entitled to relief, *see Opp.* at 11, 17, by itself demonstrates a “substantial” public interest and the need for immediate adherence by SSA to the law.

Contrary to SSA's contention, a stay will continue to harm class members who have been deprived of money they lawfully deserve and need. Statistics indicate that the poor and less educated tend to retire earlier. *See generally* "Why Less-educated Men Retire Younger."¹⁵ Especially those with young children are in more need for the benefits provided by law for those dependents. *See* "A Profile of Social Security Child Beneficiaries and their Families: Sociodemographic and Economic Characteristics:"¹⁶

- "Children whose family head lacked a college degree were more than twice as likely to receive benefits as were children whose parents graduated from college."
- "The families of child beneficiaries, as a whole and by benefit type, have substantially lower incomes than those of all children."
- "Social Security child benefits constitute an important part of the income of child beneficiary families. For example, child benefit payments alone comprised an average of 23.4 percent of total family income. [footnote omitted.] For 67.1 percent of beneficiaries, child benefits constituted less than 25 percent of family income; but for 11.1 percent, they accounted for 50 percent or more of family income. This shows that child benefits alone constitute a substantial portion of family income for a sizable segment of child beneficiaries."

Thus, this is not "bonus...money" as SSA characterizes it (Opp. at 17); these are benefits early retirees have earned for themselves and their eligible child's family members based on their contributions to the social security system over the lifetime of their employment. These are benefits persons have *expected* to receive based on their belief that SSA properly follows the law. *See Bowen v. City of New York*, 476 U.S. 467, 480 (1986) (class members "were entitled to believe

¹⁵ Kimberly Blanton, *Why Less-educated Men Retire Younger*, Ctr. for Ret. Rsch. at Bos. Coll.: Squared Away Blog (July 12, 2018), <https://crr.bc.edu/why-less-educated-men-retire-younger/>.

¹⁶ Christopher R. Tamborini, Emily Cupito & Dave Shoffner, *A Profile of Social Security Child Beneficiaries and Their Families: Sociodemographic and Economic Characteristics*, 71 Soc. Sec. Bull. 1 (2011). *See* <https://www.ssa.gov/policy/docs/ssb/v71n1/v71n1p1.html>

that their Government’s determination . . . was the considered judgment of an agency faithfully executing the laws of the United States.”) (citation omitted). In fact, these deserving class members will never be fully compensated for their losses resulting from SSA’s disregard of the law, as SSA does not pay, and class members thus will have been deprived of, interest that could have accrued had benefits been properly calculated and paid. *See Reed v. Lukhard*, 578 F. Supp. 40, 42 (W.D. Va. 1983) (“[T]he fact that other income is available does not mean that the denial of additional payments causes no irreparable harm; . . . these payments could, no doubt, go far toward improving the daily quality of [Social Security beneficiaries’] lives.”).

CONCLUSION

For all the above reasons, the Court should deny SSA’s Motion, enter Plaintiffs’ amended proposed final judgment (**Exhibit B** hereto), and deny SSA’s request for a stay pending appeal.

Dated: February 23, 2026

Respectfully submitted,

/s/ Joseph J. Green

KELLEY DRYE & WARREN LLP

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

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

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February 2026, Plaintiffs' Reply in Support of its Motion to Enter Final Judgment And In Opposition To Defendants' Motion For Summary Judgment was uploaded to this Court's CM/ECF system, which will electronically serve a copy of the same on all counsel of record.

Respectfully submitted,

/s/ Joseph J. Green

KELLEY DRYE & WARREN LLP

Joseph J. Green (VSB # 40336)

jgreen@kelleydrye.com

670 Maine Ave SW, Suite 600

Washington, DC, 20024

Tel: (202) 342-8400

Facsimile: (202) 342-8451

Counsel for Plaintiffs

EXHIBIT A

Social Security Administration Retirement, Survivors, and Disability Insurance

Important Information

BNC#: [REDACTED]



Your 2024 Social Security Cost of Living Adjustment

Your Social Security benefit will increase by **3.2%** in 2024 because of a rise in the cost of living.

| How Much You Will Get | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Your monthly benefit before deductions | \$822.00 |
| Deductions: | |
| Medicare Medical Insurance (If you did not have Medicare as of November 16, 2023 or if someone else pays your premium, we show \$0.00) | -\$0.00 |
| Medicare Prescription Drug Plan (We will notify you if the amount changes in 2024. If you did not elect withholding as of November 1, 2023, we show \$0.00) | -\$0.00 |
| U.S. Federal tax withholding | -\$0.00 |
| Voluntary Federal tax withholding (If you did not elect voluntary tax withholding as of November 16, 2023, we show \$0.00) | -\$0.00 |
| After we take any other deductions, you will receive the payment you are due for December 2023 on or about January 3, 2024. | \$822.00 |

The information above shows your monthly benefit amount before and after deductions. Please remember, we will pay you in the month following the month for which it is due.

If you reside outside the U.S., you may be able to get your benefit payments electronically. Visit the Department of the Treasury's website at www.godirect.gov for more information.

If you disagree with any of these amounts, you must file an appeal with us in writing within 60 days from the date you get this letter. We will assume you got this letter 5 days after the date of the letter, unless you show us that you did not get it within the 5-day period. You must have good reason for waiting more than 60 days to file an appeal. You can go to www.ssa.gov/non-medical/appeal to complete and submit the

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SSA-000033

"Request for Reconsideration" form, SSA-561-U2 online. You may also contact us by phone to request the form or go to our website at www.ssa.gov/forms to locate the form. If you need help with the form, please call us.

Need more help?

1. Visit www.ssa.gov for fast, simple, and secure online service.
2. If you are in the United States, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands, call us at **1-800-772-1213**. If you are deaf or hard of hearing, call TTY **1-800-325-0778**.
3. You may also call your local Social Security office.

If you are outside the United States or its territories:

- If you are in Canada, visit www.ssa.gov/foreign/canada.htm to find the office that services your area.
- Contact your nearest Federal Benefits Unit (FBU). Visit www.ssa.gov/foreign/foreign.htm for a list of FBUs.
- Write to the Social Security Administration at:

P.O. Box 17769
Baltimore, Maryland 21235-7769, USA

If you contact us, please refer to this letter. It will help us answer your questions.

How are we doing? Go to www.ssa.gov/feedback to tell us.

If You Move

Please let us know your correct address so we can continue to send you important Social Security information.

If You Work In 2024

If you are full retirement age or older for all of 2024, you may keep all of your benefits no matter how much you earn.

If you are younger than full retirement age at any time in 2024, and you are working outside the United States, you must tell us. Your work may affect your benefits.

If You Receive A Pension From Employment Not Covered By Social Security

Please let us know right away if you start receiving a retirement or disability pension for work in which you did not pay Social Security taxes. If you receive spouse's or surviving spouse's benefits, you must also report any changes to the pension you already receive.

Life Changes May Affect Your Benefits

Certain life changes may affect your eligibility for benefits. It is important to tell us if you marry, divorce, or your spouse or ex-spouse dies. If you have a child or stepchild who gets benefits on your record and no longer lives with you, please let us know. Visit www.ssa.gov/potentialentitlement to find out more.

Suspect Social Security Fraud?

If you suspect Social Security fraud, please visit <https://oig.ssa.gov/report> or call the Inspector General's Fraud Hotline at **1-800-269-0271** (TTY **1-866-501-2101**).

Help Prevent Identity Theft

Be aware of scams through the mail, internet, telephone, or in person. You should be careful when someone asks for personal information like your Social Security number. Please visit www.usa.gov/identity-theft to find out more.

Social Security Administration



Social Security Administration Retirement, Survivors, and Disability Insurance

Important Information

BNC#: [REDACTED]



Your 2024 Social Security Cost of Living Adjustment

Your Social Security benefit will increase by **3.2%** in 2024 because of a rise in the cost of living. You can use this letter as proof of your benefit amount if you need to apply for food, rent, or energy assistance. You can also use it to apply for bank loans or for other business. Keep this letter with your important financial records.

| How Much You Will Get | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Your monthly benefit before deductions | \$178.00 |
| Deductions: | |
| Medicare Medical Insurance (If you did not have Medicare as of November 16, 2023 or if someone else pays your premium, we show \$0.00) | -\$0.00 |
| Medicare Prescription Drug Plan (We will notify you if the amount changes in 2024. If you did not elect withholding as of November 1, 2023, we show \$0.00) | -\$0.00 |
| U.S. Federal tax withholding | -\$0.00 |
| Voluntary Federal tax withholding (If you did not elect voluntary tax withholding as of November 16, 2023, we show \$0.00) | -\$0.00 |
| After we take any other deductions, you will receive the payment you are due for December 2023 on or about January 3, 2024. | \$161.00 |

The information above shows your monthly benefit amount before and after deductions. Please remember, we will pay you in the month following the month for which it is due.

If you still get a paper check, you must visit the Department of the Treasury's website at www.godirect.gov to request electronic payments.

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SSA-000037

If you disagree with any of these amounts, you must file an appeal with us in writing within 60 days from the date you get this letter. We will assume you got this letter 5 days after the date of the letter, unless you show us that you did not get it within the 5-day period. You must have good reason for waiting more than 60 days to file an appeal. You can go to www.ssa.gov/non-medical/appeal to complete and submit the "Request for Reconsideration" form, SSA-561-U2 online. You may also contact us by phone to request the form or go to our website at www.ssa.gov/forms to locate the form. If you need help with the form, please call us.

Need more help?

1. Visit www.ssa.gov for fast, simple and secure online service.
2. Call us at **1-800-772-1213**, weekdays from 8:00 am to 7:00 pm. If you are deaf or hard of hearing, call TTY **1-800-325-0778**. Please mention this letter when you call.
3. You may also call your local office at **1-866-964-1301**.

SOCIAL SECURITY
4TH FLR
302 W 126TH ST
NEW YORK NY 10027

How are we doing? Go to www.ssa.gov/feedback to tell us.

Working And Getting Social Security At The Same Time

You can work and still get Social Security benefits. If you are at full retirement age or older, you may keep all of your benefits no matter how much you earn. Please visit www.ssa.gov/benefits/retirement/planner/ageincrease.html to determine your full retirement age using our Retirement Age Calculator.

If you are younger than full retirement age at any time in 2024, there is a limit to how much you can earn before we reduce your benefits. If you are working or planning to work, we usually ask you to estimate your earnings for the year. If you do not report your estimated earnings and get paid too much, you may have to repay benefits received.

- The 2024 earnings limit for people under full retirement age all year is \$22,320. We deduct \$1 from your benefits in 2024 for each \$2 you earn over \$22,320.
- The 2024 earnings limit for people reaching full retirement age is \$59,520. We deduct \$1 from your benefits in 2024 for each \$3 you earn over \$59,520 until the month you reach full retirement age.

If You Receive A Pension From Employment Not Covered By Social Security

Please let us know right away if you start receiving a retirement or disability pension for work in which you did not pay Social Security taxes. If you receive spouse's or surviving spouse's benefits, you must also report any changes to the pension you already receive.

my Social Security Online Services

Your personal **my Social Security** account gives you immediate access to important information and tools, putting you in control of your time. If you have an account, you can check your benefits, change your address or telephone number, start or change direct deposit, get a replacement Medicare card, and get a benefit verification letter. You can also choose to opt out of mailed notices for those available online. Please visit www.ssa.gov/myaccount to sign in or create your account.

Life Changes May Affect Your Benefits

Certain life changes may affect your eligibility for benefits. It is important to tell us if you marry, divorce, or your spouse or ex-spouse dies. If you have a child or stepchild who gets benefits on your record and no longer lives with you, please let us know. Visit www.ssa.gov/potentialentitlement to find out more.

Suspect Social Security Fraud?

If you suspect Social Security fraud, please visit <https://oig.ssa.gov/report> or call the Inspector General's Fraud Hotline at **1-800-269-0271** (TTY **1-866-501-2101**).

Help Prevent Identity Theft

Be aware of scams through the mail, internet, telephone, or in person. You should be careful when someone asks for personal information like your Social Security number. Please visit www.usa.gov/identity-theft to find out more.

Medicare Information

- To learn about Medicare eligibility or to apply, visit www.ssa.gov/medicare or call Social Security at **1-800-772-1213** (TTY **1-800-325-0778**).
- If you do not sign up for Medicare Part B (Medical Insurance) when you are first eligible, or if you cancel Part B and then get it later, you may have to pay a late enrollment penalty for as long as you have Part B.
- You can choose how you get your Medicare coverage - Original Medicare and Medicare Advantage. Visit www.medicare.gov for more information.
- For questions about Medicare coverage and billing, visit www.medicare.gov or call **1-800-MEDICARE (1-800-633-4227)** (TTY **1-877-486-2048**).
- Starting January 1, 2024, the Inflation Reduction Act will expand the Extra Help Program. New Extra Help income and resource limits will help people with Medicare qualify for more prescription drug savings. To get Extra Help, apply online at www.ssa.gov/medicare/part-d-extra-help or call Social Security at **1-800-772-1213** (TTY **1-800-325-0778**).
- The Medicare Savings Programs may help pay for Medicare premiums and other out-of-pocket costs for people with limited income and resources. You can start the application process when you apply for Extra Help or you can contact your state or local medical assistance (Medicaid) office. Visit www.medicare.gov/medicare-savings-programs to get information on how to contact your state.

Need Health Insurance Or Know Someone Who Does?

Visit www.healthcare.gov or call **1-800-318-2596** (TTY **1-855-889-4325**) to learn more.

Other Help For Older Adults and People with Disabilities

The Administration for Community Living offers older adults and people with disabilities a way to connect to a variety of community services and resources.

For Older Adults: Eldercare Locator at **1-800-677-1116** or www.eldercare.acl.gov



For People with Disabilities: Disability Information and Access Line (DIAL) at 1-888-677-1199 or www.acl.gov/DIAL

Social Security Administration



Social Security Administration
Retirement, Survivors, and Disability Insurance
Important Information

BNC#: [REDACTED]

[REDACTED] FOR
[REDACTED]
[REDACTED]

Notice of Cost-of-Living Adjustment (COLA)

Hello L [REDACTED] D F [REDACTED]

Your Social Security benefit will increase by **2.5%** in January 2025 because of a rise in the cost of living. You can use this letter as proof of your benefit amount if you need to apply for food, rent, or energy assistance. You can also use it to apply for bank loans or for other business. Keep this letter with your important financial records or access this information online by signing into your *my Social Security* account.

| How Much You Will Get In 2025 (Before Deductions) | Monthly Amount |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Your monthly benefit in 2025 <u>before</u> deductions | \$1,387.00 |
| 2025 Common Deductions: | Monthly Amount |
| Medicare Medical Insurance (Part B and Part C) If you did not have Medicare as of November 21, 2024, or if someone else pays your premium, we show \$0.00 | -\$0.00 |
| Medicare Prescription Drug Plan (Part D) We will notify you if the amount changes in 2025. If you did not elect withholding as of November 1, 2024, we show \$0.00 | -\$0.00 |
| U.S. federal tax withholding for non-citizens | -\$0.00 |
| Voluntary federal tax withholding If you did not elect voluntary tax withholding as of November 21, 2024, we show \$0.00 | -\$0.00 |
| How Much You Will Get In 2025 (After Deductions) | Monthly Amount |
| Your monthly benefit in 2025 <u>after</u> deductions This monthly amount may include deductions not listed above. | \$1,387.00 |

Right to Appeal

If you disagree with any of these amounts, you must file an appeal with us in writing within 60 days from the date you get this letter. We will assume you got this letter 5

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days after the date of the letter, unless you show us that you did not get it within the 5-day period. You must have good reason for waiting more than 60 days to file an appeal. You can go to www.ssa.gov/non-medical/appeal to complete and submit the "Request for Reconsideration" form, SSA-561-U2 online. You may also contact us by phone to request the form or go to our website at www.ssa.gov/forms to locate the form. If you need help with the form, please call us.

Medicare Information

For questions about Medicare, visit www.medicare.gov or call **1-800-MEDICARE (1-800-633-4227)** (TTY **1-877-486-2048**).

- If you do not sign up for Medicare Part B (Medical Insurance) when you are first eligible, or if you cancel Part B and then get it later, you may have to pay a late enrollment penalty for as long as you have it.
- If you have limited income and resources, you may be able to save money on your prescription drugs (Extra Help Program) or get help to pay for your Medicare premiums through a Medicare Savings Program (MSP). You can apply for Extra Help online and start your application process for the MSP at www.ssa.gov/medicare/part-d-extra-help. For help with MSP, you can visit www.medicare.gov/medicare-savings-programs or call your local Medicaid office.

For more information about your COLA and other benefits-related topics such as Medicare, Ticket to Work, Reporting Wages, Earnings Limits, Other Pensions, and more, go to www.ssa.gov/cola or scan the QR code.



If you would like a paper copy of any of this information, please contact us.

Need more help?

1. Visit www.ssa.gov for fast, simple and secure online service.
2. Call us at **1-800-772-1213**, weekdays from 8:00 am to 7:00 pm. If you are deaf or hard of hearing, call TTY **1-800-325-0778**. Please mention this letter when you call.
3. You may also call your local office at **1-888-472-2402**.

SOCIAL SECURITY
SUITE 200
5510 CHEROKEE AVE
ALEXANDRIA VA 22312

How are we doing? Go to www.ssa.gov/feedback to tell us.

Go paperless & get your COLA notice online at www.ssa.gov/myaccount
Tell us how we are doing at www.ssa.gov/feedback/COLA

Social Security Administration



Social Security Administration
Retirement, Survivors, and Disability Insurance
 Important Information

BNC#: [REDACTED]

[REDACTED] FOR
 P [REDACTED] DP [REDACTED]
 [REDACTED]

Notice of Cost-of-Living Adjustment (COLA)

Hello P [REDACTED] D P [REDACTED]

Your Social Security benefit will increase by **2.5%** in January 2025 because of a rise in the cost of living. You can use this letter as proof of your benefit amount if you need to apply for food, rent, or energy assistance. You can also use it to apply for bank loans or for other business. Keep this letter with your important financial records or access this information online by signing into your *my Social Security* account.

| How Much You Will Get In 2025 (Before Deductions) | Monthly Amount |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Your monthly benefit in 2025 <u>before</u> deductions | \$1,387.00 |
| 2025 Common Deductions: | Monthly Amount |
| Medicare Medical Insurance (Part B and Part C) If you did not have Medicare as of November 21, 2024, or if someone else pays your premium, we show \$0.00 | -\$0.00 |
| Medicare Prescription Drug Plan (Part D) We will notify you if the amount changes in 2025. If you did not elect withholding as of November 1, 2024, we show \$0.00 | -\$0.00 |
| U.S. federal tax withholding for non-citizens | -\$0.00 |
| Voluntary federal tax withholding If you did not elect voluntary tax withholding as of November 21, 2024, we show \$0.00 | -\$0.00 |
| How Much You Will Get In 2025 (After Deductions) | Monthly Amount |
| Your monthly benefit in 2025 <u>after</u> deductions This monthly amount may include deductions not listed above. | \$1,387.00 |

Right to Appeal

If you disagree with any of these amounts, you must file an appeal with us in writing within 60 days from the date you get this letter. We will assume you got this letter 5

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EXHIBIT B

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)

[AMENDED PROPOSED] FINAL JUDGMENT

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

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

It is further ORDERED that:

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

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

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

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

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

5. This Final Judgment applies to all members of the class, as defined in the Court's class certification order, who received during the class period an "initial determination," 20 C.F.R. § 404.902, regarding their benefit amount, and to whom notice was sent, excluding those who timely requested exclusion from the class as set forth in the exclusion reports filed by Class Counsel.

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

United States District Judge

EXHIBIT C

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

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

Plaintiff,

v.

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

Defendants.

Case No. 1:24cv1196 (MSN/IDD)

DEFENDANTS’ RESPONSE TO PLAINTIFF’S INTERROGATORY NO. 2

In accordance with this Court’s instruction of July 16, 2025, and without waiving any objections served on July 10, 2025, Defendants hereby respond to Plaintiff’s Interrogatory No. 2, served on June 26, 2025.

Interrogatory No. 2: Describe in detail the methodology or process you used to determine whether each person identified in response to Interrogatory No. 1 satisfies the class definition, including but not limited to: (a) a description and identification of each computerized database, electronic record, hard copy records, or other documents you used to prepare the list of class members; (b) a description of any computer queries you ran, including a list of search terms, search parameters, or other filters used; and (c) to the extent you performed any manual searches or review, a description of the protocol used to carry out such manual processes.

Objection to Interrogatory No. 2: Defendants object to the extent this interrogatory seeks information protected by the attorney-client privilege, the attorney work product privilege, the deliberative process privilege, or any other applicable privilege. Defendants further object to this interrogatory to the extent it seeks disclosure of information about SSA's proprietary databases. Defendants object to this interrogatory to the extent that it seeks disclosure of material otherwise protected by the Privacy Act of 1974, see 5 U.S.C. § 552a, or other federal statute.

Response to Interrogatory No. 2: The agency first reviewed the Master Beneficiary Record (MBR) to identify number holders who receive retirement benefits, and then identified which of these number holders have children who received auxiliary benefits due to a parent's receipt of a reduced retirement benefit at any point from April 2024 through April 2025. To do this, the agency looked at the Beneficiary Information Code(s) (BIC) for each number holder. The BIC is used to identify the beneficiary and the beneficiary's relationship to the number holder. A number holder has a BIC of A. BICs for children begin with the letter C. The agency used this date range because the court defined the class as eligible children of early retirees who received a child's insurance benefit between and including May 10, 2024, and May 30, 2025, and Social Security benefits are paid with a one-month delay. Next, the agency refined the population by determining whether the parent retired before reaching full retirement age (FRA). This required calculating the FRA based on the parent's date of birth according to SSA policy. If the initial month of benefit entitlement occurred before the parent's FRA, the child was included as a potential class member. The agency further refined this group of potential class members by including only beneficiaries whose Ledger Account File (LAF) codes indicate an active payment status (e.g., current pay or suspended for reasons not excluded from class inclusion). The agency included the following LAF codes: C (Current Pay), S0 (Suspended while determination of continuing

disability is pending), S6 (Suspended for development of address or direct deposit information), S8 (Suspended for Representative Payee development), and S9 (Suspended for reasons not separately defined). We excluded from the potential class beneficiaries with an LAF code that indicated that the benefits of a number holder or beneficiary (auxiliary child) were suspended for earning over the Annual Earnings Test limit. Next, the agency identified which of these remaining beneficiaries receive a monthly benefit amount that is less than 50% of the parent's primary insurance amount (PIA). These are the individuals included in the class.

In addition, the agency reviewed these remaining individuals to see if the number holder on whose record they received benefits was receiving Workers Compensation benefits because children are eligible to receive an auxiliary benefit on a parent's disability insurance benefit. However, it may be more advantageous for some number holders to elect to take a reduced insurance benefit rather than a disability benefit. Children of such number holders were included in the class only for the months the number holder elected to take a reduced insurance benefit. The agency also looked to see if an auxiliary spouse is on the record of a number holder who has only one auxiliary child whose auxiliary benefit is less than 50% of the family maximum to ensure that such auxiliary children were properly included in the class. The review of the Workers Compensation benefits and auxiliary spouses required a manual review.

CERTIFICATE OF SERVICE

We hereby certify that on July 21, 2025, we caused a copy of the foregoing to be sent via electronic mail to:

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

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

Counsel to Plaintiff and Class Counsel

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

Counsel for Defendants

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing response to Interrogatory No. 2 is true and correct to the best of my knowledge, information, and belief.

Dated:

**GREGORY
SCHALLER** Digitally signed by
GREGORY SCHALLER
Date: 2025.07.22
08:40:19 -06'00'