IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

STEPHANIE LYNN STEIGERWALD, on behalf of herself and the class,	)	
	)	**CASE NO.: 1:17-CV-1516**
Plaintiffs,	)	
	)	**JUDGE JAMES S. GWIN**
v.	)	
	)	**PLAINTIFFS' MOTION FOR**
NANCY A. BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY, ET AL.	)	**CLARIFICATION OR, IN THE ALTERNATIVE, TO ENFORCE JUDGMENT**
	)	
Defendants.		

Plaintiffs hereby file this Motion for Clarification or, in the Alternative, to Enforce the Court's Opinion and Order granting and entering summary judgment, as modified. Docs. 88, 89, 101. As explained more fully in the accompanying Memorandum in Support of this Motion (the "Memorandum"), Defendants continue to assert the impossibility of performing the Subtraction Recalculation for the Class Members in less than two years. In order to prove their point, Defendants have overcomplicated the Subtraction Recalculation process.

As documented in the Memorandum based on discovery taken by Class Counsel as allowed by the Court at the April 4 hearing, Defendants have been aware that the Subtraction Recalculation was not performed for at least 37,000 individuals ***since February 2018***. Nevertheless, Defendants did not *begin* to perform the Subtraction Recalculation "process" (as they have unilaterally defined it) until February 11, 2019. Moreover, Defendants have created an elaborate, bureaucratic process in order to implement the Court's straightforward Order.

The Court has provided Defendants eight months to perform the Subtraction Recalculations. Respectfully, eight months is enough time to get this done. The Court should

ensure that Defendants do so, with an appropriate further order.

Respectfully submitted,

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Dated: May 1, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2019, a copy of the foregoing Motion for Clarification or, in the Alternative, to Enforce Judgment and supporting documents was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ *Ira T. Kasdan*

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Attorney for Plaintiff and the class

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Plaintiffs,	)	**JUDGE JAMES S. GWIN**
v.	)	**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, TO ENFORCE JUDGMENT**
NANCY A. BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY, ET AL.	)	
Defendants.	)	

At the April 4, 2019 hearing, the Court allowed Plaintiffs to take discovery regarding Defendants' performance of the Subtraction Recalculation[1] (or lack thereof). Doc. 109 at 53:16-18. The Court then stated, "[a]nd perhaps you can – after doing that – you can file whatever motion you wish to make relative to how complicated the procedure should actually be, and [Defendants] can respond." *Id*. at 53:19-22.

As a consequence, Plaintiffs requested and received document discovery from Defendants Nancy A. Berryhill and the Social Security Administration ("SSA" or the "Agency," collectively, "Defendants") relating to Defendants' performance of the Subtraction Recalculation. Additionally, on April 18, 2019 Class Counsel took the deposition of the Agency's Rule 30(b)(6) Representative, Janet Walker. *See* Exhibit A, Rule 30(b)(6) Deposition of Janet Walker (hereinafter "Walker Dep."). Ms. Walker is the individual "in charge [] of the [Subtraction Recalculation] process," *id.* at 139:13-14, and "in charge of implementing the court

[1] Capitalized terms not defined herein are defined in the Class Notice. Doc. 80-1, at 2.

order in this case[.]" *Id.* at 18:13-17.[2]

One of the salient points Plaintiffs discovered at Ms. Walker's 30(b)(6) deposition is that ***since February 2018*** the Agency had been aware that the Subtraction Recalculation was not performed for at least 37,000 individuals. *See* Walker Dep. at 57:2-6; *id.* at 58:4-7. Nevertheless, Defendants did not even *begin* to perform the Subtraction Recalculation "process" (as they have unilaterally defined it) until February 11, 2019, ***a full year*** after Defendants had conclusive knowledge that recalculations needed to be performed for, at the very least, what turned out to be a large subset of the Class. *Id.* at 56:7-19. Instead, the Agency "went through a planning process, which we've been doing since – really since February of 2018 . . . ." *Id.* at 57:2-4.[3]

Nevertheless, despite all this purported "planning" for the Subtraction Recalculations for over a year, at her 30(b)(6) deposition, Ms. Walker, on behalf of the Agency, continues to represent that the Agency needs no less than two years to complete the Subtraction Recalculations for all Class Members. Walker Dep. at 183:10-12 ("If we're – if we have two years to process the work and do it effectively, we will get the work done accurately.").

Because Plaintiffs' discovery confirms that Defendants have not adhered to the Court's straightforward Order but have overcomplicated the "process," and because the Agency continues to assert that it will not complete the Subtraction Recalculations for all Class Members

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[2] Ms. Walker utilized a team of three attorneys and six staff members and prepared over three days for her 30(b)(6) deposition. *See* Walker Dep. at 10:10-12; *id.* at 14:13-16:20.

[3] On December 12, 2018, Ms. Walker emailed her team, confirming that the Agency's plan was not to even begin the Subtraction Recalculation process for any of the Class Members until the Court would issue "a [summary judgment] decision on the case." Exhibit B at SSA 2019-0118.

The Agency's decision to delay performance of its obligation is consistent with its consistent delaying tactics throughout this case, in moving to dismiss, opposing discovery, opposing class certification, opposing the class notice, opposing summary judgment, moving to amend the judgment and threatening to appeal, even though Ms. Walker has now conceded that the Agency knew it was wrong in at least 37,000 cases more than a year ago.

in under two years, Plaintiffs file this Memorandum in support of their Motion for Clarification or, in the, alternative, to Enforce the Court's Opinion and Order granting and entering summary judgment, as modified.

Although the eight months the Court provided the Agency to perform the Subtraction Recalculation have not yet expired, Plaintiffs bring this Motion now in the expectation that, given the Agency's current procedures and Ms. Walker's April 18 testimony, the Agency will not complete all Class Members' Subtraction Recalculations by the Court-imposed deadline of September 25, 2019, absent further Court intervention.

The Court should favor expediency over the Agency's plodding attempts at total accuracy, "down to the cent." Doc. 109 at 46:25. While the Agency argues that it needs the additional time to ensure full accuracy, as detailed herein, it is clear that the Agency still makes mistakes and will never get it fully right. Under the circumstances, where many Class Members have been waiting for their money for over a decade already,[4] the Agency does not deserve two years to attempt to right its wrongs.

I. Legal Standards

"[U]nder Rule 70, a Court has jurisdiction to enforce judgments requiring specific acts. *See* Fed. R. Civ. P. 70 ('If a judgment requires a party . . . to perform any other specific act and the party fails to comply . . . the court may order the act to be done')." *Stark v. Comm'r of Soc. Sec.*, 2017 WL 4475921, at *2 (N.D. Ohio 2017). Pursuant to Federal Rule of Civil Procedure 70(e), "[t]he court may also hold the disobedient party in contempt." *See, e.g., U.S. v. Work Wear Corp.*, 1977 WL 1407, at *1 (N.D. Ohio 1977) (imposing a fine pursuant to Fed. R. Civ. P.

[4] Ms. Walker explained at her 30(b)(6) deposition that the order in which the Subtraction Recalculation for Class Members is performed is "random." Walker Dep. at 73:5-74:19. In other words, the Agency is not prioritizing older cases. Under the Agency's schedule, Class Members who have been denied benefits due to them since 2002 may not receive any money for another two years.

70 of $5,000 per day for each day the defendant failed to comply with the court's order). "The primary purpose of a civil contempt order is to compel obedience to a court order and compensate for injuries caused by non-compliance." *McMahan & Co. v. Po Folks, Inc.*, 206 F.3d 627, 634 (6th Cir. 2000) (quotation omitted) (finding of civil contempt warranted pursuant to Fed. R. Civ. P. 70).

II. Argument

A. The Subtraction Recalculation "Process," As Unilaterally Determined By The Agency, Is Overcomplicated

The Court's Order states: "Defendant shall perform the subtraction recalculation within eight months from January 25, 2019." Doc. 101 at 4. This Order is clear, and it is straightforward.

The Agency has overly complicated what should be a straightforward process. Instead of performing the Subtraction Recalculations as ordered, the Agency has internally circulated and implemented an ***85-page*** Desk Guide. Exhibit C (Steigerwald Desk Guide V 1.7, Dated April 1, 2019, hereinafter "Desk Guide").[5] The Desk Guide dictates that each Class Members' Subtraction Recalculation, instead of being performed at once, go through three distinct phases. *See* Desk Guide at SSA2019-0190. These phases include the Agency's possible "develop[ment]" and "correcting" of the underlying record of each Class Member – an analysis Defendants previously stated was altogether unrelated to the Agency's performance of the Subtraction Recalculation, or failure to do so.

In an earlier filing dated February 15, 2018, during one of the contentious discovery disputes between the parties overseen by Magistrate Judge Ruiz, in elaborating on their position

[5] Although the Desk Guide is labelled Version 1.7, Ms. Walker stated at her deposition that the Desk Guide attached hereto is actually "Version 5." Walker Dep. at 23:12-18.

Defendants argued that anything that occurred prior to the Subtraction Recalculation is irrelevant to Plaintiffs' claim. "Plaintiff's sole claim with regard to the WO [windfall offset] is that the SSA failed to perform the WO recalculation[6] . . . Discovery related to the WO calculation – as opposed to the WO recalculation – is therefore irrelevant to Plaintiff's claim, and she should not be permitted to use discovery to attempt to substantiate claims she did not bring." Doc. 41 at 2. Defendants went on to explain:

> The Court's most recent order in this case [denying Defendants' Motion to Dismiss] demonstrates that Plaintiff's claim is limited to challenging the WO recalculation. As the Court explained, Plaintiff's primary claim is that "SSA has failed to perform a *second* windfall offset calculation *after* the final representative's fee is determined." . . . Indeed, it is undisputed that Plaintiff is *not* challenging her initial WO calculation, which Plaintiff concedes the SSA performed successfully . . . The Court therefore distinguished between the initial WO calculation and the WO recalculation . . . The Court also made clear that Plaintiff's challenge is limited to the WO recalculation.

Id. at 2-3 (emphasis in Doc. 41). At that time, Defendants conclusively stated: "whether or not the SSA is following its policies and procedures that apply to WO calculations ***has no bearing*** on whether the SSA is following its policies and procedures that apply to WO recalculations." *Id.* at 4 (emphasis added).[7]

Defendants have now (yet again) changed their tune. Although Defendants have repeatedly conceded, indeed, have *emphasized*, that this Class Action is about one thing and one thing only – Defendants' failure to perform the Subtraction *Re*calculation – the Agency has now unilaterally decided that it must go back and analyze each and every Class Members *initial* windfall offset calculation.

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6 Defendants employ the term "windfall offset recalculation" for what the Court, Plaintiffs and the Class Notice term the "Subtraction Recalculation."

7 Indeed, just a few months ago, Defendants still asserted that "[t]he windfall offset recalculation was merely the implementation ***of prior final decisions that were correct***." Doc. 96-1 at 11 n.4 (emphasis added).

The Agency has *now* defined the term "recalculation" to mean: "The 1st initial calculation *repeated* because SSA discovered information that impacts the original calculation (*i.e.* Fee Authorization)[.]" Exhibit D, Windfall Offset Recalculation Process, 4/02/2019, at SSA2019-0467. Once it completely repeats the entirety of the initial windfall offset calculation, the Agency has further determined that the *initial* windfall offset recalculation must be intensively rechecked, by a quality review team separate and apart from performance of the actual Subtraction Recalculation. Aside from being legally inconsistent, the Agency's procedure is unnecessarily time-consuming.

To wit, the Agency has created an elaborate process involving three "phases" and at least two comprehensive, mostly repetitive "quality reviews" of the first two of those "phases." Performance of the actual Subtraction Recalculation is certainly buried somewhere in this process. But it certainly is not streamlined.

In addition to these three distinct phases, the Agency has also implemented a comprehensive quality review procedure by the Agency's Office of Quality Review ("OQR") team. *See* Exhibit E (Steigerwald Review Instructions, Office of Analytics, Oversight and Review, Office of Quality Review, Updated March 2019, hereinafter "OQR Review"). At her 30(b)(6) Deposition, Ms. Walker explained that the purpose of the OQR Review is to "review the case." *Id.* at 137:20. In order to do so, "[t]hey're reviewing the same information that" had already been reviewed. *Id.* at 138:8-9. When questioned by her own counsel, Ms. Walker elaborated on the OQR's purpose: "They are looking for payment information, they're looking for the windfall offset period to ensure that that's accurate and -- but their analysis -- they do -- ***they do a deeper dive, because that's the purpose of a quality branch***[.]" *Id.* at 195:2-7 (emphasis added).

Ms. Walker made the decision to implement the OQR Review in 100% of cases for at least a 10 week period beginning March 25. *Id.* at 132:2-4 ("[W]e instituted the – the 100 percent quality review at that time and then we started back working cases March 25th."); *id.* at 132:19-20 ("[F]or Phases I and II, yes, they are doing a hundred percent review.)"; *id.* at 139:18-19 ("Q: So you made the decision? A: I made the decision.") This decision unambiguously delays performance of the Subtraction Recalculation and payment of any Retroactive Underpayments due for every single Class Member. Yet neither Ms. Walker, the Agency, nor its counsel received or requested Court approval to implement this additional process.

It is uncontested – and uncontestable – that the Subtraction Recalculations could be performed without an OQR Review, which is facially a review of work ***that has already been done***. And, although the Agency has developed an elaborate three-step process in order to perform the Subtraction Recalculation, Ms. Walker has conceded that the Agency can, as the Court suggested at the April 4 hearing, "just simply take the amount of the attorneys' fees that were awarded and then input that into . . . how that affects the monthly benefit." Walker Dep. at 171:1-6. Ms. Walker agreed that this could be done, albeit "inaccurately." *Id.* at 11-13 ("Q: Can you do that? Yes or No? Can the Agency do that? A: Inaccurately, yes."). Ms. Walker insists that the only way to get every payment as correct as possible is to implement the Agency's elaborate processes. Plaintiffs are, and the Court should be, skeptical.

B. The Agency Continues To Make Mistakes; It Will Never Achieve 100% Accuracy

In any case, Defendants current actions and myriad of continuing mistakes do not bode well for their goal of 100% accuracy, *even with* the layer upon layer of review they have stacked onto the Court's straightforward Order. The fact is that Defendants will never achieve 100% accuracy.

For example, the Desk Guide proclaims that Class Counsel shall not receive any correspondence from the Agency unrelated to this litigation, stating: "Due to PII restrictions, ***SSA is barred from disclosing information to the class counsel that is not directly related to the windfall offset recalculation and the attorney fees withheld from this underpayment***." Desk Guide at SSA2019-0196 (emphasis added). Despite this proclamation, since mid-March through the end of April Class Counsel has received (so far) more than 150 letters from the Agency unrelated to this Class Action, in which Class Counsel is listed – contrary to the Desk Guide's procedures – as counsel in non-*Steigerwald* cases. Class Counsel has received numerous calls and emails from SSA employees and from Class Members confused as to why Class Counsel has been listed as an attorney in non-*Steigerwald* related matters. As a result, Class Counsel and their staff have been forced to spend many hours – the vast majority of which have not been recorded as billings to this case – dealing with these issues caused solely by the Agency's continuing errors. *See* Exhibit F (email correspondence from March 15, 2019 through April 30, 2019 between Class Counsel and Defendants' counsel regarding these issues). The work Class Counsel will continue to do in order to clean up the Agency's mistakes in this regard alone will doubtless continue to accrue in the weeks and months to come.

The Agency should not be able to use the intricately bureaucratic structure it has created in response to this litigation to further delay payments to Class Members, many of whom have already been waiting over 15 years for payments to be made. But for Class Counsel's filing and prevailing in this lawsuit, no payments would ever be made. Even though the lawsuit has now been brought, and summary judgment has now been granted to the Class, the Agency is still slow walking, having developed an elaborate process to carry out the Court's straightforward Order.

At her April 18 deposition, Ms. Walker, on behalf of the Agency, continued to represent

that the Agency needs no less than two years to complete the Subtraction Recalculations for all Class Members. Walker Dep. at 183:10-12. Incredibly, she seemed to suggest that the Agency believed it needed two years to accomplish the Subtraction Recalculations, even in February of 2018, when it first learned that the size of an affected Class going back to 2012 was 37,000, stating: "We projected that we – we – we have been dealing with our two-year time frame to get the [37,000] cases done." Walker Dep. at 189:14-16; *see id.* at 189:9-16. Evidently the Agency believes two years is a magical number, which remains remarkably unchangeable, whether the Class consists of 37,000 members or 129,695.

There is additional evidence that the Agency's word – that it needs more than eight months to complete the Subtraction Recalculations – should not be taken at face value. Throughout this litigation, Defendants have made other assertions of fact to the Court that have turned out to be incorrect. To provide recent examples relevant to the Subtraction Recalculation, as confirmed by Ms. Walker's deposition:

First, Defendants have for months now told Class Counsel and the Court that the Class consists of two categories of individuals, "Category 1" and "Category 2" Class Members, and that only Category 2 Class Members would have a chance to receive Retroactive Underpayments. *See* Doc. 82 at 1 ("Exhibit A hereto, which was previously prepared by Defendants, describes the class members in 'Category 1' and 'Category 2.' In a footnote in Exhibit A, Defendants stated, *inter alia*, that, for the 29,346 'Category 2' class members, 'no underpayment would be due even upon performing the windfall offset recalculation to account for representatives' fees.'"). At the 30(b)(6) Deposition, Ms. Walker confirmed the Agency's belief that this was the case. *See* Walker Dep. at 52:6-53:15.

Second, Defendants' April 25, 2019 Status Report, Doc. 112, claims that to date "SSA

has completed 206 [Subtraction R]ecalculations." *Id.* at 2 (footnote omitted). It goes on to state: "No overpayments have been assessed." *Id.*

To date, Class Counsel has received 135 Notices of Payment, Non-Payment or Overpayment regarding this Class Action (far less than the 206 recalculations Defendants represented had been completed in their April 25 Status Report).[8] Those 135 Notices show that the two assertions Defendants made above are inaccurate.

The Notices that Class Counsel has received show that, as Ms. Walker was forced to acknowledge at her deposition – contrary to Defendants' prior assertions – some Category 2 Class Members *are* due Retroactive Underpayments. *See* Walker Dep. at 114:17-115:5. The Notices also show, contrary to Defendants' **April 25, 2019 Status Report**, that Class Members *have* been assessed overpayments. *See* Exhibit G at 1 (Redacted Notice of Overpayment dated **April 22, 2019**, stating, in part, "[w]e used $1,954.68 of your benefits to recover part of an overpayment on this record.").[9] Ms. Walker also confirmed at her 30(b)(6) deposition that overpayments were a possibility – contrary to Defendants' lawyer's assertion to the Court on April 4. *See* Walker Dep. at 42:13-43:3.

Third, in April 2018, Defendants provided Plaintiffs with two samples of Retroactive Underpayments due to 50 Class Members. *See* Exhibit H. At that time it took the Agency only one month to provide this sample of 100 Retroactive Underpayments due to Class Members. *See*

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[8] As of April 18, 2019, the date of the 30(b)(6) deposition, Class Counsel had received only 26 Notices. Walker Dep. at 108:21-109:2.

[9] It appears that the overpayment was "discovered" because the Agency failed to abide by the Court's Order and simply perform the Subtraction Recalculation. Class Counsel has previously argued and again here asserts its position that no overpayments should be assessed in the context of this case. *See* Doc. 76 at 8 n.4 ("The Court should not allow Defendants to use this litigation to obtain the return of any purported overpayments. To the degree that Defendants feel compelled to do so in proceedings separate and apart from this case, the Court's final judgment, if favorable to Plaintiffs, should restrict Defendants from doing anything in this matter other than performing the Subtraction Recalculation and making Retroactive Underpayments to deserving class members.").

Walker Dep. at 90. From the issuance of the Court's Order in January 25 to April 25 – a period of three months – the Agency has claimed it has performed only 206 Subtraction Recalculations. Doc. 112.

At her 30(b)(6) deposition, in response to questions as to why it is taking so much longer now for the Agency to perform the Subtraction Recalculations than it did in April 2018, ***Ms. Walker disclaimed any knowledge of the earlier sample and questioned its accuracy***. Walker Dep. at 93:16-22 ("[I]t appears [SSA] did a random sample, but I don't know the data that was used, I don't know the step process that was used. I would – I don't know what [SSA] used to come up with these numbers. Q: And so you don't know what the numbers actually represent at the end of the day? A: I don't – I do not know."). Although she is "in charge of the process," *id.* at 94:10-12, Ms. Walker had no idea what criteria were used in the April 2018 samples. *Id.* at 97:2-9 ("I don't know the criteria that [SSA] used . . . I don't know what [SSA's] criteria was. I need to know the methodology on this before I can answer."). Ms. Walker did not know whether the sample recalculations went through the three parts *now* required by the Desk Guide. *Id.* at 92:1-5 ("Q: So when the Agency did these 50 recalculations, did it go through the three phases or the three parts that we've been discussing until now? A: Actually I'm not sure. I'm not sure on this one."). Ms. Walker did not even know who performed the initial samples. *Id.* at 102. When provided with the name of the individual who evidently worked on the April 2018 sample, Ms. Walker had no idea who he was. *Id.* at 101-03.

The interrogatory responses Defendants provided in April 2018 stated, in no uncertain terms: "Defendants are providing the results of recalculations ***of any underpayments owed*** for" each of the two sets of "50 randomly chosen" Class Members. Exhibit H at 6 and 16. Defendants have never modified, revised, or withdrawn their interrogatories. Indeed, at the

Court hearing on April 4, Defendant's counsel Kate Bailey *relied on them* to argue that Class Counsel's fee request was a windfall. Doc. 109 at 8:17-24.[10] Two weeks later, at the Agency's 30(b)(6) Deposition, Ms. Walker disclaimed any knowledge of them or of their accuracy.

Fourth and finally, at her 30(b)(6) deposition Ms. Walker admitted that the Agency's estimates of the time needed to process the Class Members' Subtraction Recalculations are not scientifically reliable, but are instead simply "anecdotal." Walker Dep. at 80:4-22; *id.* at 82:13-16 ("Q: So, again, whatever the time is, it's provided not scientifically but anecdotally, correct? A: Correct."). In this regard, it is notable that the *actual* time it took to process the 100 samples in April 2018 (which Ms. Walker, the Agency's 30(b)(6) designee and the person "in charge of the process" had no knowledge of) was far shorter than the "anecdotal" time provided by Ms. Walker in her Declarations to this Court. *Compare* Exhibit H at 23 *to* Doc. 96-2 at ¶ 13.

III. Conclusion

Given the nature of the Class Members and the amount of time they have waited for relief, it would be highly inequitable to allow the Agency to continue to slow walk over the next five months, and then re-litigate the issue of whether it needs more time. It should be made clear now to Defendants that the September 25, 2019 deadline – extending the earlier deadline by five months – is the final one.

The Court has given the Agency eight months to perform the Subtraction Recalculations. Eight months are enough. The Court should not allow the Agency's convoluted procedures to further delay relief to the Class. The Court should clarify that its Order means what it says. *I.e.*,

[10] The Agency also extensively relied on the now evidently discredited April 2018 samples in its Opposition to Class Counsel's Motion for Fees. *See, e.g.*, Doc. 95 at 11 ("Defendants calculated the payment due for 100 individuals in Category 1, resulting in an average of $1,426.08 per individual. (ECF No. 90-1, PageID # 1091.)."). Class Counsel's contention that these numbers were not necessarily reliable has now been borne out. *See* Doc. 90-1 at 17; Doc. 109 at 9:15-16.

that the Agency should perform the Subtraction Recalculation for all Class Members within eight months, no more and no less, precisely as the Court asked the Agency at the April 4 hearing: "Why don't you just simply take the amount of the attorneys' fees that were awarded and then input that into how that affects the monthly benefit?" Doc. 109 at 49:7-9.[11] Alternatively, the Court should enforce its Order by warning the Agency that it will be held in contempt if the Subtraction Recalculations are not completed within the time allotted.

Respectfully submitted,

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Dated: May 1, 2019

[11] Class Counsel is mindful of those Class Members who may want the Agency to take a deeper dive into their files. Accordingly, we have suggested in a prior brief and at the hearing the following solution: "Some Class Members have informed Class Counsel of their belief that Defendants have made various types of mistakes within their cases other than failure to perform the Subtraction Recalculation. When sending out letters regarding any additional past-due benefits awarded (or not), Plaintiffs suggest that Defendants include a notice telling Class Members that they may request SSA to look into their underlying benefits apart from the Subtraction Recalculation, *but that SSA will only do so upon request*. Based on SSA precedent, there is no need for SSA to do so for every Class Member." Doc. 98 at 10 n.3.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

The undersigned declares under penalty of perjury that the foregoing Memorandum in Support of Motion for Clarification or, in the alternative, to Enforce Judgment complies with the page limitations for a Standard matter, and is 13 pages long.

/s/ *Ira T. Kasdan*

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Attorney for Plaintiff and the class