

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

STEPHANIE STEIGERWALD,	)	CASE NO.: 1:17-CV-1516
)	
Plaintiff,	)	JUDGE JAMES S. GWIN
	)	MAGISTRATE JUDGE DAVID RUIZ
v.)	
)	
NANCY A. BERRYHILL, ACTING)	
COMMISSIONER OF SOCIAL)	
)	
Defendants.)	

DECLARATION OF JANET WALKER

I, Janet Walker, pursuant to 28 U.S.C. § 1746, do hereby make the following declaration.

1. I am the Associate Commissioner of the Office of Public Service and Operations Support, which is a component of the Office of Operations of the Social Security Administration (“SSA” or “the agency”). I have been employed in this position since August 8, 2016. I have been employed by SSA since January 6, 1986.
2. During my April 18, 2019 deposition, I stated that the agency became aware of 37,000 potential class members in February 2018. To clarify for the record, in February 2018, the agency had identified approximately 9,404 individuals for whom a windfall offset recalculation had potentially not been performed once the amount of representatives’ fees was determined and paid.
3. In late March 2018, the agency became aware of 28,510 “category 1” individuals for whom the windfall offset recalculation had not been performed once the amount of representatives’ fees was determined and paid. The agency also became aware of 9,165 “category 2” individuals, for a total of 37,675.

4. As discussed in my February 21 declaration, beginning in February 2018, the agency undertook a variety of planning activities to lay the groundwork for performing class members' recalculations in accordance with any negotiated settlement or court order in this case. For example, we began communicating with regional executives as well as executives of other components at headquarters about the upcoming workload, and began working on cost estimates and preparing various implementation timelines and scenarios.
5. At that time, the agency's position was that it did not have the authority to withhold a percentage of underpayments for potential attorneys' fees under 42 U.S.C. § 406(b). In addition, to our best knowledge, the individuals identified did not have fee agreements with class counsel, nor had they been informed of the litigation and allowed to make an informed decision to become part of the class and potentially pay a percentage of any money due as attorney's fees; these factors provided further reasons the agency could not withhold fees should underpayments be performed at that time.
6. Once the agency became aware of the potential need to perform a large number of windfall offset recalculations in connection with this litigation, we began planning for the anticipated workload. This included analyzing the novel issue of how to withhold a percentage of any underpayment due to class members following a windfall offset recalculation and pay that amount as attorneys' fees as requested by class counsel in the event the court ruled that 42 U.S.C. § 406(b) applied in this case. The agency has never paid fees in this manner in the context of a windfall offset recalculation and the procedures necessary to withhold and pay fees in this manner are not automated within the agency's systems. This fee structure required an evaluation of the agency's policies and procedures to determine how technicians could manually process this part of the

process, as well as developing instructions and training for personnel tasked with performing these recalculations.

7. As illustrated in my February 21 declaration, the agency's organizational structure is such that planning for any large workload requires communication with multiple regional executives, as well as executives of other components at headquarters, developing plans for resource allocation and workload displacement, and identifying strategies to minimize the impact to the American public. Such coordination is especially important in planning to manage a large, nationwide workload such as this one because the workload affects various components of the agency across the country. Planning for this workload required identifying staff with the requisite skill, identifying the impact on the workloads of those individuals once they were assigned to class members' recalculations full time, and union notifications. We began that communication and planning in February 2018.
8. In July 2018, the Court certified a class and ordered the agency to provide plaintiffs with names and contact information for identified individuals. In late August 2018, the agency identified 129,859 individuals meeting the class definition. Thus, the class size for which the agency needed to plan expanded significantly, requiring us to revise our plans for resource allocation and workload displacement, develop new cost estimates, and reevaluate the potential impact to the public. Given the size and nationwide scope of the certified class, the agency needed to plan on a much larger, wider scale for the orderly and efficient performance of this workload. The agency worked quickly to develop tracking and communication tools designed to facilitate the orderly processing of this almost 130,000-person class. These tools were completed on an expedited timeline.

9. The agency began processing the recalculations shortly after the court issued its January 25, 2019 order, which included a finding that 42 U.S.C. § 406(b) does, in fact, apply to the facts of this case, and plaintiffs provided the names of those individuals who had opted out of the class. Once the court issued this order, the agency could withhold a percentage of any underpayment due to individuals who had not elected to opt out for payment of class counsel's fees.
10. As detailed in my February 21, 2019 declaration, the windfall offset recalculation is one of our most complicated, manual workloads and involves multiple components. The three-part process explained in my February 2019 declaration mirrors the agency's existing business process with the exception of the quality review process at the end of Parts 1 and 2, as well as the steps needed to withhold and pay class counsel's fee.
11. When a technician in one of our processing centers begins a windfall offset recalculation, he or she begins Part 1 of that process by reviewing the Title II record, which contains a line documenting the outcome of the last or most recent windfall offset determination. The Title II record only displays one line of windfall offset information, and that information normally corresponds to the most recent windfall offset determination on an individual's record. However, because this class spans a 15-year period, class members may have had multiple periods of eligibility resulting in multiple windfall offset periods. This is because, with the passage of time, individuals may have lost eligibility for benefits and then either reapplied or had their benefits reinstated, creating another windfall offset period. Without reviewing the individual's historical record, the technician has no idea if the windfall offset data reflected on the Title II record represents the windfall offset period at issue in this case.

12. Similarly, technicians must ensure that they use the representative fee corresponding to the appropriate windfall period. The court's order in this case requires the agency to recalculate class members' past-due benefits to account for fees paid to a prior attorney or non-attorney representative. An individual may have applied for and been awarded benefits for multiple periods over time, resulting in multiple fee awards, with multiple attorneys involved, and the technician must identify the correct fee amount for the correct period in order to process the current recalculation correctly.
13. In some cases, information appearing on the face of the individual's record may show that the representative fee amount is incorrect, requiring the technician to first obtain and correct the information. If a technician uses the wrong representative fee information in the new recalculation, the results of the recalculation will be incorrect. This will result in an individual receiving an incorrect underpayment amount, which in some cases may result in a class member being overpaid. In other cases, failing to review the record to ensure that the proper information is used to perform the recalculation may result in an individual erroneously not receiving an underpayment when, had the correct information been used, he or she would have been due additional past-due benefits.
14. Rather than disadvantage class members in this way, technicians must review the record in part 1 of the recalculation process, and the agency has instituted a quality process designed to identify and minimize errors and ensure class members are paid accurately.
15. Performing the windfall offset recalculation requires that the technician reconstruct the original windfall offset calculation that was performed prior to the authorization and payment of attorneys' fees. However, our systems do not retain all the prior windfall

offset computations. Only the outcome of the calculation is saved in the agency's systems

16. As explained in more detail below, in order to determine the correct underpayment amount, technicians must recreate the original computation and compare the results of that computation to the results of the recomputation that includes the representative's fees. Only after this is done can the technician correctly determine if an individual is due additional past-due benefits. The technician will subtract the result of the recomputation from the result of the recreated original computation to see if there is a difference. The result of this subtraction is the underpayment, if any, due to the individual. As explained in my February 21 declaration, these computations are complex and must be done manually.
17. To perform a recalculation, the processing center technician must identify the correct windfall offset period, and must then identify the Title II benefits paid for each month during that period. In most cases, the technician will be able to use the amount of Title II benefits already stored on the record. In the course of this review, however, if additional information appears on the face of the record showing that those numbers are incorrect, the processing center technicians will take action to obtain and use the correct information. If the amount of the Title II monthly benefit is incorrect, the entire recalculation will be incorrect. This review occurs in part 1 of the process, as explained in my February 21 declaration.
18. In part 2 of the recalculation process, technicians in the field office must identify the amount of Title XVI benefits paid monthly during the windfall-offset period. This is difficult because the Title XVI record terminates one year after an individual stops

receiving Title XVI benefits. Because Title XVI benefits can terminate at the time an individual begins to receive Title II benefits, the Title XVI records for many class members will be terminated. This requires technicians to manually review prior records and consider effects on the recomputation for the respective record. They may also have to locate and request a paper file in order to verify the first computation. Like before, if the technician finds information that may affect the amount of the monthly Title XVI benefit during the windfall-period, he or she will take action to ensure the correct information is used.

19. Once all the relevant information has been gathered (the correct windfall period, representatives' fee, month-by-month breakdown of Title II benefits during the windfall period, and month-by-month breakdown of Title XVI benefits during the period), the technicians enter the information manually into an electronic computation system. They enter the month-by-month Title II and Title XVI information first, to re-create the initial windfall offset calculation. They then enter the Title II, Title XVI, and representatives' fee information again, to obtain the second bottom-line figure. Finally, the second figure is subtracted from the first, resulting in the amount of underpayment, if any, due to the class member.
20. While technicians must review the record to identify the information and correct errors that may affect the recalculation, the agency has attempted to streamline the process as much as possible. Generally, our technicians perform what is known as "whole case processing," meaning that when reviewing or taking action on an individual's record, the employee must process and complete any required actions he or she identifies during the course of that review. In the case of class members' recalculations, however, technicians

have been instructed to process only those actions that affect the windfall offset recalculation, and to refer any other necessary actions to other components for completion in order to avoid delays in the recalculation process.

21. As explained in my February 21 declaration, an individual recalculation takes up to five hours. Part 1 takes at least 30 minutes, part 2 takes over two hours, and part 3 takes over one and a half hours.
22. The task times listed in my February 21 declaration are based on captured task time information based on work sampling as well as anecdotal experience of the agency's subject matter experts. To formulate the task time estimates, the agency evaluated the individual tasks that make up each part of the three-part recalculation process, as illustrated in the exhibit to my February 21 declaration, and compared those tasks to the recorded average task times for similar actions. The agency considered all available information related to each action when developing what it considered reliable estimates of the time required to complete each part of the recalculation process.
23. Finally, we note that given the complexity of these recalculations, as illustrated in my February 21 declaration and further explained above, the agency lacks the experienced and qualified staff needed to perform them in less than two years. The agency has designated 180 processing center technicians and 150 field office technicians in centralized processing locations to work on class members' recalculations full time. Completing the recalculations within eight months of the court's January 25 order would be impossible for SSA, as it would require full time work from at least three times as many employees as the agency has with the requisite skill. Completing this workload in eight months would require SSA to divert 540 Processing Center employees and 450

Field Office employees (combined 990 employees) to completing the recalculations for the class full time. Two-thirds of these employees simply would not have the training, experience, and expertise necessary to perform this complex work with a reasonable degree of accuracy. These recalculations require significant time and expertise to ensure that class members are paid accurately and are not disadvantaged by errors that could be avoided or minimized if the agency is allowed enough time to perform the necessary work.

24. In addition, the public service impacts of an eight-month timeline would be severe. Diverting 990 technicians from their day-to-day direct public service functions would have a dramatic, negative impact on SSA's ability to assist and pay benefits to the American public. Processing all class member recalculations in an eight-month period would result in a loss or significant delay of service to an estimated over 237,000 members of the public each month. Each month, this includes, but is not limited to approximately:

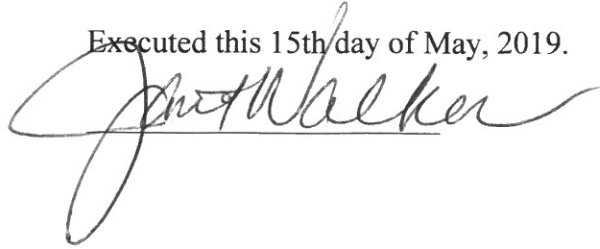
- 62,500 individuals needing post-entitlement actions reviewed in order to determine whether we can process their claim or require further development;
- 37,500 actions needed to pay benefits to Title II and Title XVI individuals, most of which are new claims;
- 25,000 actions needed that may affect eligibility for Title II and Title XVI;
- 18,750 actions related to changing the representative payee on our records, which if not done, will cause individuals to not receive a payment or for the payment to go to the wrong payee;

- 16,250 actions that directly impact current Title II benefit payments, such as payments to individuals in critical need situations (e.g., dire financial need, such as eviction or homelessness; non-receipt or interruption of benefit checks that has caused a hardship);
- 21,250 individuals needing a change of address to ensure payments and notices are properly received;
- 12,500 individuals awaiting a decision on their appeal or action to implement an appeal decision;
- 9,375 actions related to enrolling or ensuring individuals have medical coverage;
- compounded follow-ups from the public and their respective representatives because they will be waiting longer for SSA to take their actions, exacerbating the situation further;
- visitors and callers may experience longer wait times in our Field Offices and a lower rate of their calls being answered as well as increased time to resolve complex issues because the experienced technicians are unavailable for guidance; and
- since Processing Center employees also support SSA's national toll-free phone service, additional callers to our 800 number will experience a busy signal when calling while we are processing the Class' cases.

25. We would have little flexibility in choosing what actions to delay, meaning work directly affecting payments would be affected, which would present a significant hardship to the public. Allowing more time for SSA to complete these actions will reduce the negative impact on the American public.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of May, 2019.

A handwritten signature in black ink, appearing to read "Jonathan M. Walker", is written over a horizontal line.

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

STEPHANIE STEIGERWALD,	)	CASE NO.: 1:17-CV-1516
)	
Plaintiff,	)	JUDGE JAMES S. GWIN
	)	MAGISTRATE JUDGE DAVID RUIZ
v.)	
)	
NANCY A. BERRYHILL, ACTING)	
COMMISSIONER OF SOCIAL)	
)	
Defendants.)	

DECLARATION OF SAMARA RICHARDSON

I, Samara Richardson, pursuant to 28 U.S.C. § 1746, do hereby make the following declaration.

1. I am the Acting Associate Commissioner of the Office of Quality Review (OQR), which is a component of the Office of Analytics, Review, and Oversight of the Social Security Administration (“SSA” or “the agency”). I have been employed in this position since January 6, 2019. I have been employed by SSA since July 21, 1996.
2. My component conducts quality reviews, studies, and analysis of SSA programs, business processes, and service delivery. We also assess the accuracy of programmatic payments and transactions, and recommend corrective changes in programs, policies, procedures, or legislation. In this capacity, I have become familiar with OQR’s prior review of a sample of potential class members conducted as part of the *Steigerwald* litigation.
3. In April 2018, OQR reviewed a 100-case sample of potential class members. The purpose of our review was not to correct these cases or release payment at that time;

rather, it was an analysis conducted to identify potential underpayments and assess the timeline needed to complete the windfall offset computation. It did not involve an in-depth review of the Title II or Title XVI records for accuracy or events that may alter the windfall offset calculation. Rather, we used the information on the face of the Title II and Title XVI records to perform a review of the windfall offset portion of the recalculation in order to analyze the potential underpayment, if any, due to each of the 100 individuals.

4. Our 2018 review was limited in scope and involved only one aspect of a larger, more complex process rather than a full recalculation performed following the policies and procedures normally used by technicians who perform windfall offset recalculations. Specifically, our review did not include the in-depth Title II review necessary to verify the information needed to perform a full recalculation. In addition to foregoing the verifications required for “Part 1” of the recalculation procedure, our sample did not include “Part 3”: Because no payments were released, we did not need to manually prepare and release notices, prepare and release payments, withhold a percentage of the underpayment for potential attorney fees, release the fee, document the appointed representative database, or complete the final documentation of the case in our systems.
5. The results of this review were used by SSA as an initial determination of the potential impact of this workload on SSA’s resources. OQR reported that, to review just the windfall offset portion of the recalculation, it took an average of one and a half hours per case.
6. Because OQR’s review did not involve an in-depth review of the record or processing these cases to completion, our review of the cases took substantially less time than it

would for experienced technicians to accurately process cases to completion and release payment. The time estimates provided by OQR therefore are not indicative of the time needed to process each class member's recalculation.

7. As the agency processes class members' windfall offset recalculations, the agency has designated 120 of its 318 Assistance and Insurance Program Quality Branch reviewers to full-time review of class members' recalculations in order to ensure timely and accurate processing for the class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of May, 2019.

A handwritten signature in blue ink, appearing to read "Samara Richardson", is written over a horizontal line.

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

STEPHANIE STEIGERWALD,	)	CASE NO.: 1:17-CV-1516
)	
Plaintiff,	)	JUDGE JAMES S. GWIN
	)	MAGISTRATE JUDGE DAVID RUIZ
v.)	
)	
NANCY A. BERRYHILL, ACTING)	
COMMISSIONER OF SOCIAL)	
)	
Defendants.)	

DECLARATION OF DAWN WIGGINS

I, Dawn Wiggins, pursuant to 28 U.S.C. § 1746, do hereby make the following declaration.

1. I am the Acting Associate Commissioner of the Office of Income Security Programs (OISP), which is a component of the Office of Retirement and Disability Policy of the Social Security Administration (“SSA” or “the agency”). I have been employed in this position since January 2019, and, prior to that, I was the OISP Deputy Associate Commissioner for three years. I have been employed by SSA since September 1997.
2. My component provides agency-wide leadership and direction in the development, coordination, and promulgation of policies and procedures related to areas such as Supplemental Security Income, earnings, appeals, and payments. In this capacity, I am familiar with the policies related to the windfall offset recalculations at issue in this case.
3. Agency Title XVI laws, regulations, and policies state that we determine income monthly and count it the month it is received to determine title XVI eligibility and payment amounts each month. When we discover some of the income we previously used in our computations should have been excluded, such as representatives’ fees from title II

income (legal expenses incurred in the pursuit of benefits), excludable expenses must be deducted beginning in the first month of related income, and then deducted from any subsequent months of income, until the expense is exhausted. In other words, when accounting for representatives' fees, technicians are required to review an individual's historical record to find the first month of corresponding title II income, and must then deduct the representative's fee amount from that month of income and the following months until the entire amount of the representative's fee has been deducted from the title II income counted on the title XVI record. However, the initial months of title II income may not overlap with any of the months of title XVI eligibility; therefore, the representative's fee may have no effect on the windfall offset period at all.

- a. For example: an individual's record shows a Windfall Offset Amount of \$8,000, and the technician, following his or her review, establishes that a prior representative's fee of \$2,000 was not accounted for. Simply subtracting the fee from the Windfall Offset Amount on the record would result in a payment to the individual of \$2,000.
- b. However, if the technician were to review the individual's record and discover that the individual had one month of title II benefits before his or her title XVI eligibility began, that would result in a smaller underpayment due to the individual, as the fees must first be subtracted from the initial month of title II benefits. If, for example, the individual had been paid \$1,000 in title II benefits for the month before the individual's title XVI eligibility began, that would exhaust \$1,000 of the individual's \$2,000 representative's fee. Only \$1,000 of the individual's \$2,000 representative's fee would affect the windfall offset period, resulting in a \$1,000 underpayment due to the individual.

- c. Had the technician not reviewed the record, the individual would have been overpaid by \$1,000, which he may later be required to repay. As stewards of the public trust, the agency must disburse funds responsibly and cannot intentionally or knowingly overpay individuals. Nor can the agency prioritize expediency over accurately paying individuals the money they are due, potentially disadvantaging individuals who may assessed overpayments as a result.
- 4. In rare cases, it is possible that excluding a representative's fee from prior title II income may result in an overpayment. We expect that this will happen very rarely. Even if an individual is assessed an overpayment as a result of the recalculation, the agency's rules allow the individual to seek a waiver of the overpayment so that he or she does not have to repay it.
 - a. For example, an overpayment may result when the technician's review of the record shows that the initial offset amount was too low. Once the technician adjusts the offset amount while processing the recalculation, the individual will have been paid too much in past-due benefits.
 - b. An overpayment may also result from prior clerical errors such as if the fee adjustment was incorrectly posted on the title XVI record. Once the technician corrects this error while processing the recomputation, the individual might have paid too much in past-due benefits.
- 5. Once the agency became aware of the potential need to perform a large number of windfall offset recalculations in connection with this litigation, we began planning for the anticipated workload. This included analyzing the novel issue of how to withhold a percentage of any underpayment due to class members following a windfall offset

recalculation and pay that amount as attorneys' fees as requested by class counsel in the event the court ruled that 42 U.S.C. § 406(b) applied in this case. The agency has never paid fees in this manner in the context of a windfall offset recalculation and the procedures necessary to withhold and pay fees in this manner are not automated within the agency's systems. This fee structure required an evaluation of the agency's policies and procedures to determine how technicians could manually process this part of the process, as well as developing instructions and training for personnel tasked with performing these recalculations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of May, 2019.

A handwritten signature in black ink, appearing to read "Nam L. Wiggin", written over a horizontal line.

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

STEPHANIE STEIGERWALD,	)	CASE NO.: 1:17-CV-1516-JG
)	
<i>Plaintiff,</i>	)	JUDGE JAMES S. GWIN
	)	MAGISTRATE JUDGE DAVID RUIZ
v.)	
)	
NANCY A. BERRYHILL, ACTING)	
COMMISSIONER OF SOCIAL)	
SECURITY, ET AL.)	
)	
<i>Defendants.</i>)	

**DEFENDANTS' OBJECTIONS AND RESPONSES TO
PLAINTIFF'S FIRST GENERAL SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants hereby provide their objections and responses to Plaintiff's First General Set of Interrogatories.

OBJECTIONS AND RESPONSES TO DEFINITIONS AND INSTRUCTIONS

1. Defendants object to the definition of the term "Instructional Material" in Definition No. 11 to the extent its reference to "drafts" would require the disclosure of information protected by the deliberative process privilege, attorney-client privilege, or work product doctrine.

2. Defendants object to the definition of the term "Retroactive Underpayment" in Definition No. 15 to the extent it assumes that recalculating a windfall offset always results in an underpayment that Defendants are required to make to a Claimant; such a claim is inconsistent with SSA policy, regulations, and applicable law.

3. Defendants object to the definition of the term "Population B" in Definition 17 because it defines the temporal scope of the class based on the date of eligibility for Concurrent Payments rather than the date the representatives' fees were paid. As such, it does not reflect SSA

policy, which provides that the recalculation of the windfall offset to account for authorized representatives fees is triggered by the date of the fee authorization.

4. Defendants object to the definition of the terms “SSA,” “you” and “your” in Definition No. 19 because it includes, among other things, “all . . . attorneys” acting on behalf of Defendants, which implicates the attorney-client privilege or the work product doctrine, or both.

5. Defendants object to Definition No. 20 as overbroad and irrelevant to the extent it purports to include any individual whose representatives’ fees were known prior to the date of the initial windfall offset determination, rather than those, like Plaintiff, who claim that SSA did not do a recalculation of their windfall offset determination when the amount of representatives’ fees became known after the initial windfall offset determination. Defendants also object to Definition No. 17 as vague in that it does not refer specifically to the recalculation of the windfall offset, and to the extent it assumes that recalculating a windfall offset always results in an underpayment.

6. Defendants object to Instruction No. 7 to the extent that it purports to require the disclosure of information protected by the attorney-client, work product, or deliberative process privileges.

7. Defendants object to Instruction No. 9 insofar as it purports to require Defendants to support any claims of privilege beyond the requirements of Federal Rule of Civil Procedure 26(b)(5).

8. Defendants object to Instruction No. 11 to the extent it purports to require Defendants, where they “do not know the precise information requested,” to provide their “best estimate” regarding the information requested. Defendants object that the term “best” is highly subjective as used in this context and therefore unduly vague, and on the further ground that “best estimate” is subject to multiple meanings, including perhaps meaning “the best estimate that could


be made,” which itself would be objectionable because it would seem to seek information that is likely not in the possession, custody, or control of Defendants.

9. Defendants object to Instruction No. 12 insofar as it is inconsistent with the parties’ agreement as to the production of electronically stored information (“ESI”). The Parties have agreed to the following production format: discoverable ESI will be produced in either its native format or PDF in the first instance. Where feasible, such PDFs shall be electronically created, rather than scanned, and accompanied by a load file with header information (e.g., from, to, cc, bcc, date sent, time sent, and subject) if available. If ESI produced in PDF is not reasonably usable, upon request, the producing party shall re-produce the information in a reasonably usable form to the extent practicable.

10. Defendants object to Instruction No. 14 to the extent that it purports to require Defendants to supplement their discovery responses beyond the requirements of Federal Rule of Civil Procedure 26(e). In particular, Defendants object to the terms “continuing” and “promptly” as vague and potentially in excess of the scope of Rule 26(e)’s requirement that necessary supplementation be made in a “timely manner.”

11. Defendants object to Instruction No. 15 as overbroad, disproportionate to the needs of the case, irrelevant and unduly burdensome insofar as it purports to require Defendants to produce information after October 31, 2017, which is outside of the scope of the certified class.

As to the Objections:



Ruchi V. Asher
Assistant U.S. Attorney
Office of the U.S. Attorney, Northern
District of Ohio

RESERVATION OF OBJECTIONS

The foregoing objections to Definitions and Instructions and the following specific objections are based upon (a) Defendants' interpretation of the specific requests posed by Plaintiff and (b) information available to Defendants as of the date of this document. Defendants reserve the right to supplement these objections based upon (a) information that Plaintiff purports to interpret the requests differently than Defendants and/or (b) the discovery of new information supporting additional and/or amended objections.

INTERROGATORIES

(1) List the names of each witness you expect to call at trial in this action as well as the expected testimony of each witness.

RESPONSE:

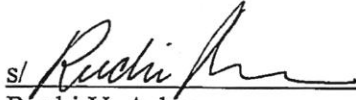
Defendants have not yet determined the witnesses they intend to call at the trial of this case. This answer will be supplemented in accordance with the Federal Rules of Civil Procedure, the Local Rules for the Northern District of Ohio, and the Case Scheduling Order.

(2) Explain, in detail and with specificity, all reasons why SSA did not perform the Subtraction Recalculation for the individuals in Population A.

RESPONSE:

Defendants object to this request to the extent it seeks information covered by the deliberative process privilege, the attorney-client privilege, or the attorney work product doctrine. Defendants further object on the basis that this request is overbroad, disproportionate to the needs of the case, and unduly burdensome in that it would require Defendants to manually examine 28,510 unique cases. The recalculation process is a complicated and predominantly manual one; the population includes individuals who did not receive recalculations over the course of five years in numerous offices.

As to the Objections:


s/ Ruchi V. Asher
Ruchi V. Asher
Assistant U.S. Attorney
Office of the U.S. Attorney, Northern
District of Ohio

Subject to and without waiving the foregoing objection, Defendants respond as follows:

The process of recalculating the windfall offset to account for authorized representatives' fees requires coordination among several different components of SSA, including the Field Office, Processing Center, and the Hearing and Appellate Offices. It also may require manual action by several different individuals within those offices. Thus, there are a variety of factors that can result in a failure to quickly complete the windfall offset recalculation to account for authorized representatives fees in an individual case, and a manual review of each individual case would be required to ascertain how each of the 28,510 cases were processed and at which point any errors would have been made.


However, the situations where the recalculations were not processed resulted primarily from a lack of communication between the technicians in the distinct components. There are several different systems involved in the recalculation of a windfall offset, with limitations that prevent communication between the components and require that the processes involved in a windfall offset recalculation be implemented manually. Adequate safeguards, such as follow-ups and systems alerts, may not have been implemented. This problem is exacerbated by the indefinite period of time that representatives have to submit fee petitions as well as the movement of claims from one component to another. The complexities described above are intended only to illustrate some of the errors that are most likely to have occurred in these cases.

(3) Explain in detail the processes that SSA would follow, including the records that SSA would review, if SSA is required to calculate and make a Retroactive Underpayment that may be due to the individuals in Population A.

RESPONSE:

Defendants object to this request to the extent it seeks information covered by the deliberative process privilege, the attorney-client privilege, or the attorney work product doctrine.

As to the Objections:


s/ Ruchi V. Asher
Assistant U.S. Attorney
Office of the U.S. Attorney, Northern
District of Ohio

Subject to and without waiving the foregoing objection, Defendants respond as follows:

If SSA is required to recalculate the windfall offset to account for later authorized representatives fees for the Individuals in Population A, SSA intends to follow the procedures described below. This procedure is based on SSA's legal position that any attorneys' fees payable in this case will be paid through the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and not withheld from class members' benefits pursuant to 42 U.S.C. § 406(b). SSA's systems features do not support withholding § 406(b) fees from underpayments during recalculation of the windfall offset. If the attorneys' fee must be paid directly as a percentage of any underpayment generated by processing a windfall offset recalculation, SSA's systems do not support automatic withholding of the underpayment, the determination of the amount due to the claimant or the amount due to the attorney, the issuing of payments to either the claimant or attorney, or the issuing

of appropriate notices. All of these functions would need to be performed manually, significantly increasing the time needed to complete each recalculation and, therefore, significantly delaying the completion of all of the recalculations.

Phase I: Processing Center

The windfall offset calculation is initiated in the Processing Centers (PC). The PC reviews the Title II claim for accuracy and any necessary development. Examples of necessary development include updating undeliverable addresses and representative payee information as well as ensuring that bank data and information regarding other benefits such as worker's compensations and pensions are current and accurate as of the time of review.

To review the Title II claim for accuracy and necessary development, the PC takes the following actions:

- The Benefit Authorizer (BA) reviews the case for necessary pending actions that may affect the benefit amount.
 - The BA looks for suspension actions, primary insurance amount (PIA) reductions, monthly benefit amount (MBA) reductions and deductions, work suspension, etc.
- The BA refers the case to the claims authorizer (CA) for additional development or review if necessary.
- Multiple systems, such as the MBR (Master Beneficiary Record) and PHUS (Payment History Update System), are accessed to address any necessary action and for computing Title II past due benefits accurately.
- The BA updates incorrect Title II past-due benefit information on appropriate systems as needed.

If any necessary action is pending, the BA takes appropriate steps via contact with claimant in either a phone call or a written notice, depending on the type of necessary action. The actions need to be resolved to ensure an accurate electronic referral to the Field Office (FO). The BA creates an electronic referral and sends it to the servicing FO with the correct/updated Title II past due benefit information.

Phase II: Field Office

The Field Office (FO) receives the automated electronic referral from the PC, which controls the transmittal of the case between components.

- The Title XVI Claims Specialist (CS) receives the electronic referral along with

any automated diaries that may appear on the Supplemental Security Income Display (SSID). As most of the cases are terminated, no diaries would be automatically sent to the SSID. This means that manual actions are required.

- Examples of situations in which the SSID may be terminated include cases where the beneficiary is deceased or where the individual has been in non-pay status for 12-months or longer.

If the SSID is terminated (most cases):

- The Title XVI CS reviews the Title II record for any outstanding issues, including, but not limited to, suspensions, representative payee development, whereabouts unknown, or death. The Title XVI CS must address and complete these issues prior to windfall offset.
- The Title XVI CS manually rebuilds the SSID by coding the correct/updated information.
 - Due to a systems limitation, this process can take several days to correctly rebuild the record.
- The Title XVI CS manually loads the SSID to the Modernized SSI Claims System.
- The Title XVI CS uses an electronic computation system, E-Comp, to manually perform the windfall offset recalculation.
 - The Title XVI CS has to identify the windfall offset period, manually calculate the Title XVI past due benefits, manually compute the offset amount based on paid attorney or authorized representative fee.
- The windfall offset recalculation deducts the approved attorney or authorized representative fee from the Title II countable income, which may result in an underpayment due in Title II.
- The Title XVI CS scans the computations into an electronic repository.
- The Title XVI CS returns the electronic referral to the PC with the federal and state offset amount along with the non-countable income based off prior paid attorney or authorized representative fee.
- The Title XVI CS updates the SSR via direct SSR update to amend the windfall and attorney or authorized representative data.
- The Title XVI CS manually terminates the record.

- **If the SSID is active:**

- The Title XVI CS reviews the Title II record for any outstanding issues, including, but not limited to, suspensions, representative payee development, whereabouts unknown, or death. The Title XVI CS must address and complete these issues prior to windfall offset. If there are pending issues, the Title XVI CS must address these first in order to have the correct monthly payment amount.
- The Title XVI CS uses an electronic computation system, E-Comps, to manually perform the windfall offset recalculation.
- The windfall offset recalculation deducts the approved attorney or authorized representative fee from the Title II countable income, which may result in an underpayment due in Title II.
- The Title XVI CS scans the computations into an electronic repository.
- The Title XVI CS returns the electronic referral to the PC with the federal and state offset amount along with the non-countable income based off prior paid attorney or authorized representative fee.
- The Title XVI CS updates the SSR via direct SSR update to amend the windfall and attorney or authorized representative data.

Phase III: Processing Center

Once the recalculation is completed, the Processing Center (PC) uses the revised windfall data to update the MBR and adjust benefits due, as necessary.

- The BA is alerted to the case electronically and reviews the returned electronic referral.
- The BA accesses multiple systems to:
 - Update final windfall data to the MBR
 - Update any new information to the MBR (address, bank, etc.)
 - Release the Title II underpayment
 - Send a notice through the notice system for release

Additional variations may be necessary in cases involving the following issues:

Claimant Deceased; dual entitlement cases; couples cases; Workman's Compensation / Public Disability Benefits; WEP (Windfall Elimination Provision) cases / Pensions; extended period of eligibility (EPE) / substantial gainful activity (SGA) work suspense; Prison Cases; Overpayment Cases; Whereabouts Unknown; Representative Payee Development; Start Date Records.

In addition to following the above procedures, the Agency intends process the cases in Population A using a designated team of staff from the Processing Centers and Field Offices. The Agency continues to investigate how to monitor, track, and complete these cases in light of the recent order on class certification.


(4) Explain in detail and with specificity how SSA compiled the list of individuals in Population A, including listing what documents, records and computer data and systems SSA used and/or reviewed and/or created to compile that list.

RESPONSE:

Defendants object to this request to the extent it seeks information covered by the deliberative process privilege, the attorney-client privilege, or the attorney work product doctrine. Defendants further object to Interrogatory 4 as disproportionate to the needs of the case and unduly burdensome to the extent it would require Defendants to provide details regarding all "documents, records and computer data and systems SSA used and/or reviewed and/or created to compile that list". The information required to compile the list of individuals in "Population A" was not readily available, was stored across multiple systems and databases, and the process of obtaining it required SSA to develop and write new code. To the extent that SSA tested or developed methodologies or code that ultimately did not assist SSA in providing this response, it is unduly burdensome for agency personnel to document the steps taken and manuals consulted in developing such methodologies and code. Defendants further object to

this request as the information it seeks is relevant to the size and scope of the class, which has already been certified and class discovery has closed.

As to the Objections:


s/ Ruchi V. Asher
Assistant U.S. Attorney
Office of the U.S. Attorney, Northern
District of Ohio

Subject to and without waiving the foregoing objection, Defendants respond as follows: A response to Interrogatory 4 is attached hereto as Attachment A.

(5) If you contend that between March 13, 2002 and August 31, 2012, SSA conducted the Subtraction Recalculation for all individuals for whom it was obligated to perform it over that time period, explain in detail and with specificity how SSA reached that conclusion, including listing what documents, records and computer data and systems SSA used and/or reviewed and/or created to reach that conclusion.

RESPONSE:


Defendants do not contend that between March 13, 2002 and August 31, 2012, SSA conducted the Subtraction Recalculation for all individuals for whom it was obligated to perform it over that time period.

(6) To the extent SSA contends that its non-performance of the Subtraction Recalculation for the individuals in Population A or Population B was not the result of a systemic SSA pattern or practice, explain in detail and with specificity every fact upon which SSA relies to support that contention, separately for each of those Populations.

RESPONSE:

Defendants object to this request to the extent it seeks information covered by the deliberative process privilege, the attorney-client privilege, or the attorney work product doctrine.

As to the Objections:


s/ Ruchi V. Asher
Assistant U.S. Attorney
Office of the U.S. Attorney, Northern
District of Ohio

Subject to and without waiving the foregoing objection, the Defendants respond as follows:

The process of recalculating the windfall offset to account for authorized representatives' fees requires coordination among several different components of SSA, including the Field Office, Processing Center, and the Hearing and Appellate Offices. It also may require manual action by several different individuals within those offices. Thus, there are a variety of factors that can result in a failure to quickly complete the windfall offset recalculation to account for authorized representatives fees in an individual case, and a manual review of each individual case would be required to ascertain how each of the 28,510 cases were processed and at which point any errors would have been made.

However, the situations where the recalculations were not processed resulted primarily from a lack of communication between the technicians in the distinct components. There are several different systems involved in the recalculation of a windfall offset, with limitations that prevent communication between the components and require that the processes involved in a windfall offset recalculation be implemented manually. Adequate safeguards, such as follow-ups and systems alerts, may not have been implemented. This problem is exacerbated by the indefinite period of time that representatives have to submit fee petitions as well as the movement of claims from one component to another. The complexities described above are intended only to illustrate some of the errors that are most likely to have occurred in these cases.

Because no individual in Population B has yet been identified, SSA does not have sufficient information to determine if any systemic pattern or practice exists with respect to any such individuals.

(7) In their Supplemental Responses To Interrogatories 1-3 In Plaintiff's First Set Of Interrogatories, Defendants state: "Category 2: Individuals for whom representatives' fees were paid out of retroactive benefits between September 1, 2012 and October 31, 2017 and for whom SSA made a windfall offset determination before the amount of representatives' fees was determined and paid out of retroactive benefits, but, after the amount of fees was determined and paid out of retroactive benefits, the records reflect that SSA has not yet recalculated the windfall offset, but to whom no underpayment would be due even upon performing the windfall offset recalculation to account for representatives' fees." [Footnote omitted.] With respect to the 9,165 individuals in Category 2 that SSA reported in its Supplemental Responses To Interrogatories 1-3 In Plaintiff's First Set Of Interrogatories, explain in detail and with specificity how SSA knows that no underpayment would be due even upon performing the windfall offset recalculation to account for representatives' fees, including identifying the documents, records and computer data and systems SSA used and/or reviewed and/or created to reach that conclusion.

RESPONSE:

Defendants object to this request to the extent it seeks information covered by the deliberative process privilege, the attorney-client privilege, or the attorney work product doctrine. Defendants further object to Interrogatory 7 as disproportionate to the needs of the case and unduly burdensome to the extent it would require Defendants to provide details regarding all "documents, records and computer data and systems SSA used and/or reviewed and/or created to reach that conclusion." The information required to identify the 9,165 individuals in Category 2 that SSA reported in its Supplemental Responses To Interrogatories 1-3 In Plaintiff's First Set Of Interrogatories was not readily available and the process of obtaining it required SSA to develop and write new code stored across multiple systems and databases. To the extent that SSA tested or developed methodologies or code that ultimately did not assist SSA in providing this response, it is unduly burdensome for agency personnel to document the steps taken and manuals consulted in developing such methodologies and code.

As to the Objections:

s/ Ruchi V. Asher
Ruchi V. Asher
Assistant U.S. Attorney
Office of the U.S. Attorney, Northern
District of Ohio

Subject to and without waiving the foregoing objections, Defendants respond as follows:

SSA knows that the 9,165 individuals identified in Category 2 of its Supplemental Responses To Interrogatories 1-3 In Plaintiff's First Set Of Interrogatories would not be due an underpayment even upon performing the windfall offset recalculation to account for authorized representatives' fees because they fall under POMS SI 02006.200.C.2.a. Titles II and XVI are distinct programs with different guidelines: Title II generally allows beneficiaries to collect retroactive payments beginning prior to the beneficiary's application date, whereas a Title XVI recipient can only collect payments as of his or her application date. Thus, an individual who applies under both programs on the same date and whose claims are subsequently allowed is entitled to collect retroactive Title II benefits for months that precede his or her Title XVI eligibility. Agency policy requires that allowable expenses such as representatives' fees be deducted from the first and any subsequent months of related income until no expense balance remains. Therefore, representatives' fees are deducted from the first month of Title II income, and continue to be deducted from subsequent months of Title II income until no fee balance remains. For those individuals in Category 2, the start of their retroactive Title II income preceded the dates of their Title XVI eligibility, and the entire authorized representatives' fee is deducted from monthly retroactive Title II benefits before the first date of eligibility for Title XVI retroactive benefits. If all months of Title II income

adjusted to account for the authorized representatives' fee precede the first month of Title XVI eligibility, the fee-adjusted Title II income cannot affect Title XVI income for any of the months that fall within the period of retroactive Title XVII benefits, and no underpayment could be due. SSA reviewed the records, computer data and systems identified in Defendants' Response to Interrogatory 4 in Defendants' Responses To Plaintiff's First Set of General Interrogatories, in particular Step 14 Category 2.

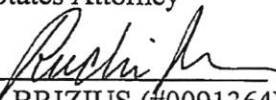
Respectfully submitted,

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Acting Assistant Attorney General

LESLEY FARBY
Assistant Director, Federal Programs Branch

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JUSTIN E. HERDMAN
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Attorneys for Defendants

CERTIFICATION

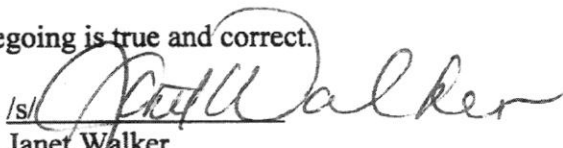
I, Janet Walker, am Associate Commissioner for the Office of Public Service and Operations Support. I believe, based on reasonable inquiry, that the foregoing response to Interrogatories 2, 3, 5, and 6 are true and correct to the best of my knowledge, information and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Dated:

By:

/s/


Janet Walker

Associate Commissioner for the Office of
Public Service and Operations Support
Social Security Administration

CERTIFICATION

I, William Martinez, am Associate Commissioner for the Office of Information Technology Programmatic Business Support. I believe, based on reasonable inquiry, that the foregoing response to Interrogatories 4 and 7 are true and correct to the best of my knowledge, information and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Dated:
Martinez

By: /s/Christopher Moan on behalf of William

William Martinez
Associate Commissioner for the Office of IT
Programmatic Business Support
Social Security Administration

CERTIFICATE OF SERVICE

I certify that, on this 23rd day of July, 2018, a copy of the foregoing was served via electronic mail and FedEx upon the following:

Ira T. Kasdan
Joseph D. Wilson
Bezalel Stern

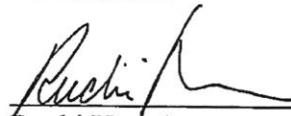
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Attorney for Plaintiff



Ruchi V. Asher
Assistant U.S. Attorney

Brizius, Erin E. (USAOHN)

From: Brizius, Erin E. (USAOHN)
Sent: Tuesday, December 4, 2018 10:44 AM
To: Kasdan, Ira; 'Stern, Bezalel'; 'Jon Ressler'; Wilson, Joseph D.
Cc: Asher, Ruchi (USAOHN); Bailey, Kate (CIV); Sandberg, Justin (CIV)
Subject: Steigerwald

Counsel,

In response to your inquiry, SSA has provided the following answer about the effect of the recalculation on SSA benefits:

In most cases, for class members in both categories, current benefits should not be reduced or otherwise affected by performance of the windfall offset recalculation and application of the income exclusion found in 20 C.F.R. § 416.1123(b)(3). Under SSA rules, SSA does not expect that releasing any underpayment will affect a class member's benefits in the month the underpayment is received. We note that for current Title XVI recipients, any underpayment paid may be considered "resources" affecting SSI eligibility if kept for more than 9 months after the payment is issued. See POMS SI 01130.600.

However, there may be rare cases in which the recalculation and application of the income exclusion may result in an overpayment. In addition, when reviewing an individual's record, the agency's normal rules and obligations continue to apply and may require the agency to take further action. Any such actions, while not directly related to the windfall offset recalculation, may affect an individual's current benefit amount.

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SENSITIVE UNITED STATES ATTORNEY COMMUNICATION

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Brizius, Erin E. (USAOHN)

From: Stern, Bezalel <BStern@KelleyDrye.com>
Sent: Monday, December 3, 2018 11:06 AM
To: Brizius, Erin E. (USAOHN); Asher, Ruchi (USAOHN); Sandberg, Justin (CIV); Bailey, Kate (CIV)
Cc: Kasdan, Ira; Wilson, Joseph D.; 'Jon Ressler'
Subject: Awaiting Your Response to Our Query - Steigerwald v. Berryhill

Erin,

During our November 20 status conference we reported to Judge Gwin that many class members had been asking whether they could possibly lose money and/or benefits by staying in the class. Judge Gwin instructed you to obtain an answer for us. After the conference was over, you confirmed your personal belief, as was Ira's, that class members' benefits would **not** be negatively affected by the performance of the Subtraction Recalculation itself. You did state, however, SSA's policy that once a class member's file is opened and reexamined, SSA takes whatever action it believes to be appropriate or desirable.

In August, Plaintiffs raised this issue in Plaintiffs' Motion for Approval of Proposed Class Notice, filed on August 17, 2018. See Doc. 76, PageID # 943, n. 4. SSA's Opposition to that Motion did not respond to that point of Plaintiffs' Motion at all, signaling SSA's agreement with Plaintiffs' position as set out in that footnote, as follows:

"[t]he relief that this Court should impose and that has been requested is the performance of the Subtraction Recalculation and the payment of any Retroactive Underpayments due. 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. See, e.g., *Guadamuz*, 662 F. Supp. at 1069 ("The Secretary shall identify all underpaid claimants who can be identified by computer, calculate the amount of their underpayment, and distribute reimbursement checks within six (6) months from the date of this order.").

Doc. 76, PageID # 943, n. 4.

Last Wednesday, November 28, I called you to follow up regarding this issue. I told you again, as Ira reported to the Judge and you on the 20th, that many class members have been raising it. You responded that you did not have an answer yet, but would likely have an answer by the beginning of this week.

Thank you.

Bez

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This message is subject to Kelley Drye & Warren LLP's email communication policy.
KDW-Disclaimer

Brizius, Erin E. (USAOHN)

From: Sandberg, Justin (CIV) <JSandber@civ.usdoj.gov>
Sent: Tuesday, April 16, 2019 6:44 PM
To: Stern, Bezalel; Kasdan, Ira
Cc: Brizius, Erin E. (USAOHN); Asher, Ruchi (USAOHN); Bailey, Kate (CIV); Wilson, Joseph D.; 'Jon Ressler'; Diane Shriver
Subject: RE: Steigerwald: Rule 30b6 Deposition Topics, Subpoena Response, Document Production
Attachments: Steigerwald - Objections to Rule 45 Subpoena April 16 2019.pdf

Good evening. We understand that we have an agreement on topics as reflected in my email on Friday at 6:42 p.m., as modified by your withdrawal of Topic 5, per the email below. With respect to the Rule 45 subpoena, please see the attached letter. And as noted in the attached letter, we are producing documents in the spirit of cooperation. They will follow in 6 emails. Please confirm your receipt of this email and the six that will follow. Best, Justin

From: Stern, Bezalel <BStern@KelleyDrye.com>
Sent: Sunday, April 14, 2019 2:28 PM
To: Sandberg, Justin (CIV) <JSandber@civ.usdoj.gov>; Kasdan, Ira <IKasdan@KelleyDrye.com>
Cc: Brizius, Erin E. (USAOHN) <EBrizius@usa.doj.gov>; Asher, Ruchi (USAOHN) <RAsher@usa.doj.gov>; Bailey, Kate (CIV) <katbaile@CIV.USDOJ.GOV>; Wilson, Joseph D. <JWilson@KelleyDrye.com>; 'Jon Ressler' <jressler@rooselaw.com>; Diane Shriver <dshriver@rooselaw.com>
Subject: RE: Steigerwald: Discovery Proposal
Importance: High

Justin,

Thank you for your Friday night email.

Given your objection, we will withdraw our Topic 5.

The Judge clearly wanted us to take discovery on the questions the Court raised toward the end of the April 4 Hearing (see Hearing Transcript at 40-54). These questions underlie Ms. Walker's Declarations, and are clearly included in Topics 1 and 6. However, given your "NBs", we are explicitly referencing the page numbers and highlighting some of the questions and issues in advance so that there will be no surprises, and to be sure Ms. Walker is aware of and will be responsive to the questions and issues posed by the Court that both the Court and we want to know the answers to.

Here is an abbreviation of quotations from the Hearing regarding some of what we and the Court are interested in knowing:

The Court asked: "Why is it that you can't come up with an algorithm or computer program that's able to automate these calculations?" Hearing Transcript at 40.

The Court asked: "How big of a sampling can you produce in 30 days?" *Id.* at 41.

The Court asked: "How many [Subtraction Recalculations] are you going to get done within the next 30 days? Or, you know, in total, between the ones you've already completed and the ones you anticipate you'll be able to finish in the next 30 days?" *Id.* at 42.

Ms. Bailey stated that the Agency is performing "a recalculation of windfall offset" for the Class Members. *Id.* at 48. The Court asked: "Why is that at issue here? I thought the decision in the case had been that you were

supposed to conduct the second recalculation after taking into consideration the attorneys' fees." *Id.* Ms. Bailey stated: "Exactly, Your Honor . . ." *Id.* The Court then asked: "Why are you going back to the initial recalculation? . . . 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?" *Id.* at 48-49. Ms. Bailey stated: "Because the regulations require them to take – because the windfall offset calculation isn't that simple to begin with . . ." *Id.* at 49. The Court then asked: "But you made the windfall offset calculation already on all these, right? You made it once." *Id.* Ms. Bailey replied: "It has been made once, yes." *Id.* The Court then stated: "Okay. And so the calculation in this should be, How does the payment of attorneys' fees affect the ongoing benefits." *Id.*

The Court asked: "If you find that the earlier calculation had been somewhat off, are you going to the beneficiary and say, Give us the money back?" *Id.* at 50. Ms. Bailey responded: "That's not my understanding." *Id.*

The Court asked: "Why has [the Agency] delayed this [performance of the Subtraction Recalculation] so badly?" *Id.* at 54.

The Court asked: "What impediments are insurmountable in terms of accomplishing this [performance of the Subtraction Recalculations] on a more – on a quicker basis?" *Id.*

Please note that the term "Subtraction Recalculation" is defined in the Class Notice in this case. The "Agency" refers to the Social Security Administration.

Regarding Topic 3, to be crystal clear, this Topic covers who Ms. Walker reported to, who she consulted with, **and** what factual information she received from the persons with respect to preparing her Declarations and for her deposition. We are only looking for facts, not deliberative process information.

As you know, we disagree with you regarding Ms. Walker's subpoena: Ms. Walker is required to provide the documents we have requested. Nonetheless, in the spirit of "comity," we will be satisfied with the document production we described on the phone on Friday, and as you have agreed to provide as set out in your email, notwithstanding any objections you may raise by letter. We agree with you that, should the document production conform to our agreement, there will be no need to involve the Court on this matter.

Please provide us with the subpoenaed documents (in accordance with the above) by Wednesday morning. If you simply bring them to the deposition, we will have to set aside time to go through the documents you provide before the deposition begins, and we don't want to waste Ms. Walker's time, or yours, or our own.

Bez

BEZALEL STERN

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From: Sandberg, Justin (CIV) [<mailto:Justin.Sandberg@usdoj.gov>]

Sent: Friday, April 12, 2019 6:42 PM

To: Kasdan, Ira <IKasdan@KelleyDrye.com>; Stern, Bezalel <BStern@KelleyDrye.com>

Cc: Brizius, Erin E. (USAOHN) <Erin.E.Brizius2@usdoj.gov>; Asher, Ruchi (USAOHN) <Ruchi.Asher@usdoj.gov>; Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>

Subject: Steigerwald: Discovery Proposal

Bez and Ira: Good evening. Here's what we propose as to the Rule 30(b)(6) deposition topics, with comments in parentheses.

- 1) As written. (NB: As you know, we don't interpret it to cover all of the topics set out in the list of topics that you appended to the notice.)
- 2) Whether SSA has sought additional funding from Congress to comply with the Court's January 25, 2019 order. (This is what we discussed on the phone.)
- 3) Who does Walker report to and who has she consulted with in preparing for the deposition. (This is what we discussed on the phone.)
- 4) Drop (Per our call, with the understanding that we'll touch base with the Agency about better or further fixes.)
- 5) What makes the workload at issue in this case difficult and unusual as compared to other workloads handled by SSA. (This is different than we discussed on the call. After conferring with folks here, we don't think that it makes sense for Ms. Walker to compare this case to other cases, given that she's not a lawyer and given the uncertainty about what level of detail is needed to adequately address other cases in recent years. Moreover, we understand the thrust of the question to be: Why does the agency contend that the recalculations are time-consuming and complicated as compared to the other things that it does? That she can be prepared to answer.)
- 6) As written. (NB: As you know, we don't interpret it to cover all of the topics set out in the list of topics that you appended to the notice.)
- 7) Drop. (We think that this should be dropped because it can be addressed by 8).
- 8) When did SSA recognize that it had not performed recalculations for class members and when did it start performing recalculations.

As for the subpoena, we intend send you a letter setting out our objections to the subpoena, including to the document demand. In light of these objections, we don't believe that we have an obligation to provide documents in response to the subpoena. Nonetheless, in the spirit of comity, we intend to produce, barring unforeseen circumstances, documents that we have identified – based on both the subpoena and our call today – as being the documents that you're interested in. In doing so, we've relied on the representation that, e.g., as to document request number 8, you don't want parts of 21,000 files but an email or memo discussing the number of cases that had been processed; we've applied that principle to other requests. (To be clear, we view this production as voluntary and not required by the subpoena, which we view as improper.) We intend to make the production on or before the date of the deposition. I recognize that you disagree with our legal views about the subpoena, but this proposal should obviate the need to resolve that dispute.

Please let me know what you think ASAP, so that we can keep things moving forward. – Justin

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