

**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' BRIEF IN RESPONSE
ANDREW SAUL, COMMISSIONER OF)	TO COURT INQUIRY REGARDING
SOCIAL SECURITY, ET AL.)	SETTLEMENT
)	
Defendants.)	

In their Brief in Response to Court Inquiry Regarding Settlement, Defendants state: “Class members are entitled to the recalculation that was litigated in this case; asking a class member who may be entitled to, say, \$10,000 to settle for a fraction of that entitlement would be unlawful and inequitable in light of SSA’s statutory and regulatory obligations.” Doc. 131 at 6. Although Plaintiffs do not believe that such a settlement would be unlawful, Plaintiffs agree with Defendants that such a settlement would be inequitable.

Since the June 12, 2019 status conference before the Court, Class Counsel has heard from various Class Members who want nothing more than to what they are entitled: Namely, for the Social Security Administration (“SSA”) to expeditiously perform the Subtraction Recalculation for them. That SSA is unforgivably and unconscionably delaying its performance should not be the impetus forcing the Class to settle for a sum certain, when at least some Class Members will undoubtedly deserve more.

In Plaintiffs’ Opposition to Defendants’ Motion to Stay, Doc. 129, Plaintiffs suggested an equitable solution by which all Class Members would be paid a sum certain now, and would, in

the future, *also* be given the opportunity to have the Subtraction Recalculation performed for them on an individualized basis, should they so request. *See id.* at 2-3. This solution obviates SSA's concerns that it must ensure that individual Class Members receive what they are due. Nevertheless, in their latest Brief before this Court, Defendants seem to reject this proposal out of hand. Doc. 131 at 7-8. Accordingly, absent some court's intervention, there is nothing more the Plaintiffs can do to advance this solution.¹

Finally, Plaintiffs join in Defendants' request that the Court rule on Class Counsel's pending fee motion, as to which both parties agree the Court still has jurisdiction. *See* Doc. 123-1 at 2 ("Defendant also requests that the Court issue a decision as soon as possible on the amount of attorneys' fees to be awarded. Issuing a prompt decision on fees would ensure that class members receive the maximum recalculations that they are due as soon as their individual recalculations are completed."). After the Court rules on the appropriate percentage of fees to be paid to Class Counsel, SSA will be able "to ensure that class members receive the maximum recalculations that they are due" (*i.e.*, the full Retroactive Underpayment less whatever percentage the Court awards for attorney's fees pursuant to 42 U.S.C. § 406(b)). Until that time, SSA must continue to withhold 20% of each Retroactive Underpayment from each Class Member. Allowing SSA a final, definitive percentage to withhold and pay to Class Counsel will at least somewhat streamline SSA's attenuated Subtraction Recalculation process, hopefully quickening SSA's current pace of performance.

¹ While Plaintiffs were hopeful that mediation on appeal would be successful, Defendants requested that the Sixth Circuit mediator cancel that mediation, and the mediator did so. Plaintiffs simply cannot force SSA to settle.

Plaintiffs also note that Defendants have filed a motion to stay with the Sixth Circuit. Plaintiffs are opposing the motion today. Plaintiffs will ask the Court of Appeals, as one alternative, to remand to this Court for a ruling on the parallel stay request that Defendants filed herein. If the Court of Appeals does remand, this Court will have another opportunity to help fashion a settlement of the case.

Respectfully submitted,

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Dated: July 1, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2019, a copy of the foregoing Brief in Response to Court Inquiry Regarding Settlement 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

Ira T. Kasdan
Counsel for the Plaintiff Class

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

The undersigned declares under penalty of perjury that the foregoing Brief in Response to Court Inquiry Regarding Settlement complies with the page limitations for a Standard matter, and is 2 pages long.

/s/ Ira T. Kasdan

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Counsel for the Plaintiff Class