

Exhibit 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

KEVIN HART, NINA SILVA-COLLINS and
LEE HARRIS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

CAROLYN W. COLVIN, Acting Commissioner
of Social Security, in her official capacity,

Defendant.

Case No. 3:15-cv-00623-JST

AMENDED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs are individuals whose Social Security Disability Insurance Benefits (“DIB”) and/or Supplemental Security Income (“SSI”) payments were either denied or terminated and for whom a consultative examination (“CE”) was prepared by Dr. Frank Chen. On February 9, 2015, Plaintiffs, on behalf of a putative class, filed against Carolyn W. Colvin, Acting Commissioner of Social Security in her official capacity (the “Acting Commissioner” or “SSA”), a Complaint alleging that SSA improperly relied on CEs from Frank Chen, M.D. Frank Chen performed consultative examinations for the California Disability Determination Service Division (“DDS”) from 2007 through 2013. As of December 30, 2013, the California DDS removed Dr. Chen from its panel of consultative examination providers for reasons related to the quality of his reports, the thoroughness of his examinations, and his manner toward claimants.

This Complaint and related allegations are hereinafter referred to as “the Case”;

WHEREAS, the Acting Commissioner expressly denies any wrongdoing, as alleged in the Case or otherwise, and does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged in the Case. Nonetheless, the Acting Commissioner considers it desirable to settle the Case on the terms set forth in this Settlement Agreement;

WHEREAS, Plaintiffs and the Acting Commissioner (collectively “the Parties”) wish to avoid further litigation in this matter and to bring the Case to a close, and have determined to settle the Case, including all claims that Plaintiffs, the certified Class (as defined below), and the members of that Class have brought or could have brought in the Case;

NOW, THEREFORE, in reliance on the mutual promises, covenants, releases, and obligations as set out in this Settlement Agreement, and for good and valuable consideration, the Parties hereby stipulate and agree to resolve all claims that were or could have been at issue in this Case as follows:

I. DEFINITIONS

As used in this Settlement Agreement:

A. The terms “ALJ” and “an administrative law judge” refer to an individual appointed in accordance with 5 U.S.C. § 3105, who conducts hearings and makes decisions on claims filed under Titles II and XVI of the Social Security Act (hereinafter referred to as “the Act”).

B. The term “Appeals Council” refers to the component of SSA’s Office of

Disability Adjudication and Review that, under direct delegation from the Commissioner of Social Security, provides the final level of administrative review for claims filed under Titles II and XVI of the Act.

C. The term “Class Member” refers to an individual who meets the criteria set forth in section II.

D. The term “Commissioner” refers to the Commissioner of Social Security, whether that individual be Commissioner or Acting Commissioner, as the case may be.

E. The term “current pay status” refers to the status of a Class Member who, despite a denial (or partial denial) of a claim for SSI or DIB (or a termination of his or her SSI or DIB) on an application for which the individual was examined by Dr. Chen, receives DIB or SSI benefits or payments as of October 14, 2015 (or, if awarded DIB, did receive such benefits until the individual converted to retirement insurance benefits once he or she reached full retirement age).

F. The term “days” means calendar days.

G. The “date the Class Member receives” a notice refers to the date five (5) days after the date on the notice, unless the Class Member establishes that the notice was received at a later date.

H. The “date of final approval” refers to the date on which an order granting final approval of this Settlement Agreement is entered, via the Electronic Case Filing System of the U.S. District Court for the Northern District of California, on the docket of the Case.

I. The “date on which the Settlement becomes effective” refers to the date as of which no timely appeals may be taken from the Court’s order granting final approval of this Settlement Agreement, and as of which any and all timely appeals of such an order have been resolved.

J. The term “DIB” refers to disability insurance benefits provided under the Social Security Disability Insurance (“SSDI”) program pursuant to Title II of the Act.

K. The term “Disability Processing Unit” refers to the Social Security Administration component with primary responsibility for readjudicating Group 1 claims for individuals whose final determination did not proceed past the initial or reconsideration levels, and Group 2 claims for individuals who qualify for a “Lookback Assessment” (as defined in Section III.B.2.b of this Settlement Agreement).

L. The term “final decision or determination” refers to a decision or determination, as those terms are defined by the regulations at 20 C.F.R. §§ 404.901 and 416.1401, that has become binding either through completion of the steps of the administrative review process defined by the regulations at 20 C.F.R. §§ 404.900 and 416.1400, resulting in a final decision of the Commissioner, or by the individual’s failure to timely request the next level of administrative review pursuant to the Commissioner’s regulations at 20 C.F.R. §§ 404.909, 404.933, 404.968, 416.1409, 416.1433, and 416.1468. Where the final determination is rendered at the initial administrative level, the date of the initial determination is the date of the final decision or determination. Where the final determination is rendered at the reconsideration level, the date of the reconsideration determination is the date of the final decision or determination. Where the final decision is rendered by an ALJ and either the

claimant did not seek Appeals Council review or the Appeals Council denied or dismissed the claimant's request for review, the date of the final decision or determination is the date of the ALJ's decision. Where the final decision is rendered by the Appeals Council (meaning that the Appeals Council reviewed the ALJ's decision and rendered a decision on the merits), the date of the Appeals Council's decision is the date of the final decision or determination. If, prior to the date of final approval, the claimant appealed a final decision of the Commissioner to a federal court pursuant to 42 U.S.C. §§ 405(g) or 1383(c)(3), and (1) that case is remanded by the court upon motion by the claimant pursuant to Section III.A.2.d or Section III.B.2.c.; or (2) the court grants relief from judgment upon motion by the claimant pursuant to Section III.A.2.d or Section III.B.2.c., then the date of the final decision or determination is (1) if review was denied by the Appeals Council, the date of the ALJ's decision; or (2) if review was granted by the Appeals Council, the date of the Appeals Council's decision.

M. The term "Partially Favorable decision or determination" refers to a final decision or determination finding that an individual was disabled on a claim for which he or she was examined by Dr. Chen, but not for the full period of time alleged.

N. A "previously-adjudicated period" refers to the period of time between the date of an individual's alleged onset of disability on the claim for which an Unfavorable decision or determination (as that term is defined in Section R), or a Partially Favorable decision or determination (as that term is defined in Section M), was rendered and the date of the Unfavorable decision or determination or Partially Favorable decision or determination, as applicable. A "previously-adjudicated period" also refers to the period between the date an individual is determined to have medically improved and the date of the Unfavorable decision or determination finding that the individual's disability has ended.

O. The terms “section” and “paragraph” refer to the numbered and lettered parts of this Settlement Agreement, respectively.

P. The term “SSA” refers to the Social Security Administration.

Q. The terms “SSI” and “SSI payments” refer to payments based on disability provided under the Supplemental Security Income program pursuant to Title XVI of the Act.

R. The term “Unfavorable decision or determination” refers to a final decision or determination finding that an individual was not disabled on a claim for which he or she was examined by Dr. Chen. “Unfavorable decision or determination” also refers to a final decision or determination finding that an individual who was previously awarded DIB or SSI is no longer disabled, upon a continuing disability review in which the individual was examined by Dr. Chen.

II. CLASS

A. **Rule 23(b)(2) Class Defined:** Pursuant to Federal Rule of Civil Procedure 23(b)(2), the Court has certified a plaintiff class consisting of all persons whose SSI or SSDI benefits were either denied or terminated and for whom a consultative examination was prepared by Dr. Frank Chen. Solely for purposes of the settlement of this Case, the parties have agreed to amend the class definition, and will request that the Court in approving this Settlement Agreement amend the certified class, so that the plaintiff class is defined as consisting of “all persons whose SSI or SSDI benefits were either denied or terminated and for whom a consultative examination was prepared by Dr. Frank Chen, and all persons who received a partially favorable decision or determination on their claim for SSI or SSDI benefits

and for whom a consultative examination was prepared by Dr. Chen.” In this Settlement Agreement, the plaintiff class as amended by this Section II.A is referred to as “the Class” and members of the Class are referred to as “Class Members.”

B. ***Settlement Agreement Binding on Class Members:*** As of the date on which the Settlement becomes effective, all Class Members are bound by the terms of the Settlement Agreement.

III. **INDIVIDUAL RELIEF**

A. **Group 1 Readjudication Relief for Class Members With Closed Claims Who Were Examined by Dr. Chen On or After January 1, 2011**

1. ***Eligibility for Group 1 Readjudication Relief:*** A Class Member eligible for Group 1 readjudication relief (“Group 1 claimant”) is someone who filed a claim for DIB or SSI or both; who, as part of that claim (or as part of a continuing disability review), underwent a consultative examination performed by Dr. Frank Chen on or after January 1, 2011; who received an Unfavorable decision or determination on that claim (or that continuing disability review), or a Partially Favorable decision or determination on that claim, on or before the date of final approval; and who is not in current pay status. A person who meets all of the requirements for eligibility in the preceding sentence and who, prior to the date of final approval, appealed a final decision of the Commissioner to a federal court pursuant to 42 U.S.C. §§ 405(g) or 1383(c)(3), is a Group 1 claimant only if he or she (1) obtains a judicial remand of that case upon motion by the claimant pursuant to Section 2.d; or (2) obtains relief from judgment in that case upon motion by the claimant pursuant to Section 2.d.

2. ***Group 1 Readjudication Relief – Readjudication Process:*** A Group 1 claimant

will be entitled to readjudication of his or her Unfavorable decision or determination or Partially Favorable decision or determination, provided the Group 1 claimant requests this relief within the time limit set forth in Section III.A.3 (for a Group 1 claimant who received an Unfavorable decision or determination) or Section III.A.4 (for a Group 1 claimant who received a Partially Favorable decision or determination) below. Any Group 1 claimant whose claim history reflects more than one basis for Group 1 eligibility (i.e., satisfaction of all of the conditions in paragraph III.A.1 above) and who proceeds through the readjudication process will proceed based on the earliest of his or her Group 1 eligibility bases. The process for readjudication shall be as follows:

(a) For Group 1 claimants whose Unfavorable decision or determination or Partially Favorable decision or determination was rendered at the DDS level:

Every Group 1 claimant who timely requests readjudication relief will be provided with forms that will provide him or her with the opportunity to submit supplemental evidence relating to the previously-adjudicated period within sixty (60) days from receipt of the forms. The forms shall include a notification that a Group 1 claimant may, prior to the expiration of the 60-day period, request a reasonable extension of time to submit supplemental evidence relating to the previously-adjudicated period.

Such supplemental information and evidence may include a re-articulation of the nature of the impairment(s) that existed during the previously-adjudicated period, the disclosure of medical providers who have information that bears on the claimant's condition during the previously-adjudicated period, and medical or other evidence that relates to his or her condition during the previously-adjudicated period. Within 60 days of the date of final approval, SSA will

provide to Class counsel a draft copy of the forms for submission of supplemental evidence. Within three business days of receiving these draft forms, Class counsel may provide comments on these draft forms to SSA, and SSA will consider those comments in good faith, but shall have no obligation to implement or accept any comments or changes from Class counsel. No Group 1 claimant will be obliged to provide any additional information in order to receive a readjudication, and if a Group 1 claimant elects not to provide additional information, he or she may proceed exclusively on the record that was created during his or her previous application process, as further described in this paragraph. Through its Disability Processing Unit, SSA will readjudicate claims by considering the original record and any supplemental information or evidence submitted by the Class Member that relates to the previously-adjudicated period, but without considering the consultative examination report prepared by Dr. Frank Chen. No consultative examinations will be purchased by SSA with respect to readjudication of the previously-adjudicated period. If, as a result of the readjudication, the Class Member is found to have been disabled for the previously-adjudicated period, or any portion thereof, he or she will receive the appropriate award of DIB or SSI back benefits or payments for the period of disability demonstrated. In addition, the Class Member, if found to have been disabled for the previously-adjudicated period (but not for a closed period of disability that is within the previously-adjudicated period and whose end date is before the end date of the previously-adjudicated period), may attempt to demonstrate that his or her disability continues to exist into the period after the

previously-adjudicated period, up to and including the date of the readjudication, through use of supplemental evidence; as part of this process of demonstrating continuing disability into the period after the previously-adjudicated period, if SSA in its discretion deems it appropriate, SSA may order a consultative examination to assess the Class Member's current medical condition. If the Class Member successfully demonstrates that his or her disability continues forward through the date of the readjudication decision, he or she will receive the appropriate award of back benefits or payments from the end of the previously-adjudicated period through the date of the readjudication decision, as well as appropriate current benefits or payments (subject to continuing disability reviews, reporting responsibilities, and any other rules and procedures generally applicable to recipients of DIB or SSI). Likewise, if the Class Member successfully demonstrates that his or her disability continues forward, but only for a closed period that does not continue forward to the date of the readjudication decision, he or she will receive the appropriate award of back benefits or payments from the end of the previously-adjudicated period to the end of the closed period demonstrated. Notwithstanding the foregoing, to the extent that the Class Member has an application for DIB or SSI pending at the time of the readjudication, SSA will not consider the period of disability alleged in that pending application in the readjudication.

(b) For Group 1 claimants whose Unfavorable decision or determination or Partially Favorable decision or determination was rendered at the ALJ level:

As part of the readjudication process for Group 1 claimants who timely request

readjudication relief and whose pertinent Unfavorable decision or determination or Partially Favorable decision or determination was rendered at the ALJ level, SSA will review the prior ALJ decision to assess whether Dr. Frank Chen's CE report was explicitly afforded no weight in the analysis. A new hearing will not be scheduled for a claimant if Dr. Chen's report was explicitly afforded no weight by the adjudicator, or if the decision was rendered for failure to meet non-medical criteria; the readjudication process will conclude for such a claimant. A hearing will be scheduled for all other claimants. For any claimant for whom a new hearing is scheduled, the claimant will be provided forms that provide him or her with the opportunity to submit supplemental evidence relating to the claim of disability that was previously denied. Such supplemental information and evidence may include a re-articulation of the nature of the impairment(s) that existed during the previously-adjudicated period, the disclosure of medical providers who have information that bears on the claimant's condition during the previously-adjudicated period, and medical or other evidence that relates to his or her condition during the previously-adjudicated period. Within 60 days of the date of final approval, SSA will provide to Class counsel a draft copy of the forms for submission of supplemental evidence. Within three business days of receiving these draft forms, Class counsel may provide comments on these draft forms to SSA, and SSA will consider those comments in good faith, but shall have no obligation to implement or accept any comments or changes from Class counsel. No Group 1 claimant will be obliged to provide any additional information in order to receive a new hearing, and if a Group 1 claimant elects not to provide

additional information, he or she may proceed on the record that was created during his or her previous application process, as further described in this paragraph. At the same time, should the Group 1 claimant allege that he or she is disabled at the date of the readjudication, the claimant will be asked to provide updated disability information pertaining to his or her current condition as well. At the hearing, the ALJ will have the discretion to take evidence for both the previously-adjudicated period and the current period (or any part thereof), should the ALJ find that most efficient in light of the circumstances of the case. The ALJ also may exercise his or her usual discretion to engage a vocational expert, procure a CE report, engage a medical expert, and the like. If, as a result of the readjudication, the Group 1 claimant is found to have been disabled for the previously-adjudicated period, or any portion thereof, he or she will receive the appropriate award of back benefits or payments for the period of disability demonstrated. If the Group 1 claimant is found to have been disabled for the previously-adjudicated period (but not for a closed period of disability that is within the previously-adjudicated period and whose end date is before the end date of the previously-adjudicated period), should that Group 1 claimant also successfully demonstrate that his or her disability continues forward through the date of the readjudication decision, he or she will receive the appropriate award of back benefits or payments from the end of the previously-adjudicated period through the date of the readjudication decision, as well as appropriate current benefits or payments (subject to continuing disability reviews, reporting responsibilities, and any other rules and procedures generally applicable to

recipients of DIB or SSI). Likewise, if the Group 1 claimant successfully demonstrates that his or her disability continues forward, but only for a closed period that does not continue forward to the date of the readjudication decision, he or she will receive the appropriate award of back benefits or payments from the end of the previously-adjudicated period to the end of the closed period demonstrated. Notwithstanding the foregoing, to the extent that the Class Member has an application for DIB or SSI pending at the time of the readjudication, SSA will not consider the period of disability alleged in that pending application in the readjudication.

(c) For Group 1 claimants who requested review of the ALJ's decision by the Appeals Council or for whom the Appeals Council took review on its own

motion: As part of the readjudication process for Group 1 claimants who timely request readjudication relief and whose pertinent Unfavorable decision or determination or Partially Favorable decision or determination was rendered at the Appeals Council level, or who requested Appeals Council review of an Unfavorable decision or determination or Partially favorable decision or determination rendered at the ALJ level, SSA will review the Unfavorable decision or determination or Partially Favorable decision or determination to assess whether Dr. Frank Chen's CE report was explicitly afforded no weight in the analysis. A new ALJ hearing will not be scheduled for a claimant if Dr. Chen's report was explicitly afforded no weight by the adjudicator, or if the decision was rendered for failure to meet non-medical criteria; and the readjudication process will conclude for such a claimant. The Appeals Council

will issue an Order of Remand to the ALJ, and a new hearing will be scheduled, for all other claimants. For any claimant for whom a new hearing is scheduled, the claimant will be provided forms that provide him or her with the opportunity to submit supplemental evidence relating to the claim of disability that was previously denied. Such supplemental information and evidence may include a re-articulation of the nature of the impairment(s) that existed during the previously-adjudicated period, the disclosure of medical providers who have information that bears on the claimant's condition during the previously-adjudicated period, and medical or other evidence that relates to his or her condition during the previously-adjudicated period. Within 60 days of the date of final approval, SSA will provide to Class counsel a draft copy of the forms for submission of supplemental evidence. Within three business days of receiving these draft forms, Class counsel may provide comments on these draft forms to SSA, and SSA will consider those comments in good faith, but shall have no obligation to implement or accept any comments or changes from Class counsel. No Group 1 claimant will be obliged to provide any additional information in order to receive a new hearing, and if a Group 1 claimant elects not to provide additional information, he or she may proceed on the record that was created during his or her previous application process, as further described in this paragraph. At the same time, should the Group 1 claimant allege that he or she is disabled at the date of the readjudication, the claimant will be asked to provide updated disability information pertaining to his or her current condition as well. At the hearing, the ALJ will have the discretion to take evidence for both the

previously-adjudicated period and the current period (or any part thereof), should the ALJ find that most efficient in light of the circumstances of the case. The ALJ also may exercise his or her usual discretion to engage a vocational expert, procure a CE report, engage a medical expert, and the like. If, as a result of the readjudication, the Group 1 claimant is found to have been disabled for the previously-adjudicated period, or any portion thereof, he or she will receive the appropriate award of back benefits or payments for the period of disability demonstrated. If the Group 1 claimant is found to have been disabled for the previously-adjudicated period (but not for a closed period of disability that is within the previously-adjudicated period and whose end date is before the end date of the previously-adjudicated period), should that Group 1 claimant also successfully demonstrate that his or her disability continues forward through the date of the readjudication decision, he or she will receive the appropriate award of back benefits or payments from the end of the previously-adjudicated period through the date of the readjudication decision, as well as appropriate current benefits or payments (subject to continuing disability reviews, reporting responsibilities, and any other rules and procedures generally applicable to recipients of DIB or SSI). Likewise, if the Group 1 claimant successfully demonstrates that his or her disability continues forward, but only for a closed period that does not continue forward to the date of the readjudication decision, he or she will receive the appropriate award of back benefits or payments from the end of the previously-adjudicated period to the end of the closed period demonstrated. Notwithstanding the foregoing, to the extent that the Class

Member has an application for DIB or SSI pending at the time of the readjudication, SSA will not consider the period of disability alleged in that pending application in the readjudication.

(d) For claimants who appealed a final decision of the Commissioner to federal court: Certain claimants appealed their final decisions to a federal court pursuant to 42 U.S.C. §§ 405(g) or 1383(c)(3) prior to the date of final approval. For any such claimant, assuming he or she otherwise meets the eligibility criteria to be a Group 1 claimant, as set forth in Section III.A.1, and submits a timely request for readjudication pursuant to Section III.A.3 or Section III.A.4 below, as applicable, SSA agrees to take the procedural steps described below upon request from the claimant or his or her counsel in the federal court case to counsel for SSA in the federal court case. For a claimant whose case is pending in federal court at the time of the request, SSA will file a notice of non-opposition in response to a motion for remand to the agency for further proceedings so long as (1) the motion is filed within ninety (90) days of the date the claimant receives Notice A or Notice A2 (as described below); (2) the basis for that motion is that the agency has entered into this Settlement Agreement under which the claimant is potentially eligible for relief, and that the claimant wishes to be eligible for consideration for such relief; and (3) SSA determines that Dr. Chen's report was afforded weight (i.e., more than no weight) in the ALJ's analysis. For a claimant whose case has resulted in a final judgment affirming the final decision of the Commissioner at the time of the request, the claimant may file a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6). So long as

(1) the Rule 60(b)(6) motion is filed within ninety (90) days of the date the claimant receives Notice A or Notice A2 (as described below); and (2) the basis for that motion is that the agency has entered into this Settlement Agreement under which the claimant is potentially eligible for relief, and that the claimant wishes to be eligible for consideration for such relief; and (3) SSA determines that Dr. Chen's report was afforded weight (i.e., more than no weight) in the ALJ's analysis, SSA will file a notice of non-opposition in response to such a motion. SSA reserves its right to oppose any motion for remand or motion for relief from judgment on any basis other than the agency's entering into this Settlement Agreement.

All completed Group 1 readjudication decisions or determinations that address the claimant's disability on the merits will be subject to administrative or judicial review under the statutes, rules, and regulations applicable to determinations and decisions and set forth at 42 U.S.C. §§ 405(g) and 1383(c)(3), and 20 C.F.R. §§ 404.929, 404.967, 416.1429, and 416.1467, with the exception that there will be no "reconsideration" step. Therefore, Group 1 claimants who receive a readjudication of a claim previously adjudicated at the DDS level may proceed to request an ALJ hearing without first seeking reconsideration of that readjudicated claim.

3. ***Group 1 Readjudication Relief -- Time to Request Readjudication:*** Except for Group 1 claimants seeking readjudication of a Partially Favorable decision or determination (discussed separately in Section III.A.4 below), in order to receive a readjudication, a Group 1 claimant must affirmatively request readjudication within ninety (90) days after the date he or she receives the notice informing him or her of his or her right to relief (described herein as "Notice A"), using the procedures described in that notice, unless the claimant demonstrates to

the satisfaction of SSA that this ninety (90)-day deadline was missed for good cause. The Disability Processing Unit will evaluate good cause using the standards set forth in 20 C.F.R. §§ 404.911 and 416.1411. Determinations that good cause is lacking are final and not subject to further review.

4. ***Special Procedures for Group 1 claimants who received Partially Favorable decisions or determinations:*** In order to receive a readjudication, a Group 1 claimant seeking readjudication of a Partially Favorable decision or determination must affirmatively request readjudication within one hundred eighty (180) days after the date he or she receives the notice informing him or her of his or her right to relief (described herein as “Notice A2”), using the procedures described in that notice, unless the claimant demonstrates to the satisfaction of SSA that this 180-day deadline was missed for good cause. The Disability Processing Unit will evaluate good cause using the standards set forth in 20 C.F.R. §§ 404.911 and 416.1411. Determinations that good cause is lacking are final and not subject to further review.

5. ***Notice of Group 1 Readjudication Relief for Group1 Claimants With Unfavorable decisions or determinations (“Notice A”):*** Attached to this Settlement Agreement is Notice A (Exhibit A), the language of which has been agreed to by the Parties. Personal information such as a Class Member’s address, appropriate field office, and similar information, will be included by SSA in Notice A. Contact information for Class counsel will be included by Class counsel where indicated in Notice A. SSA shall send Notice A by first class mail with a designated post office box as the return address within ninety (90) days after the date on which the Settlement becomes effective to the last known address in the “case information” section of the electronic claim file, or the pertinent disability application in the paper claim file, for each Class Member identified by SSA as potentially eligible for Group 1 readjudication relief who

received an Unfavorable decision or determination. Prior to sending Notice A, SSA shall match the addresses in its records for all Class Members who are not in current pay status against the U.S.P.S. National Change of Address (NCOA) file. Notice A will be sent in standard print format and, in addition, will be sent in Spanish to those individuals whose claims files indicate an existing record of receiving Notices in that language, and will be sent to individuals who have an existing election for a special notice option for the blind or visually impaired in the Special Notice Options format elected, pursuant to POMS NL 01001.001, 01001.010. Notice A, in addition to describing the potential relief available and the necessary steps to be taken, will also advise the Class Member of his or her right to retain a representative to assist with his or her claim. If mail is returned as undeliverable, SSA will query the Supplemental Security Record/Master Beneficiary Record, and, if necessary, contact the field office to request any updated address information the field office may have. If an updated address for the Class Member is found, SSA will mail another copy of Notice A to the Class Member at the updated address found. SSA shall bear the cost of printing and mailing copies of Notice A. Where, sixty (60) days after the mailing of Notice A, SSA records indicate that a Class Member to whom Notice A was mailed and not returned as undeliverable has not returned the required form that accompanied Notice A, SSA will mail a letter indicating that a time-sensitive form had been mailed to them 60 days earlier, summarizing information from the correspondence, and including a copy of Notice A. Receipt of, or a request for, another copy of Notice A shall not operate to toll or otherwise enlarge the time for return of the claim form.

6. ***Notice of Group 1 Readjudication Relief for Group1 Claimants With Partially Favorable decisions or determinations (“Notice A2”):*** Attached to this Settlement Agreement is Notice A2 (Exhibit A2), the language of which has been agreed to by the Parties. Personal

information such as a Class Member's address, appropriate field office, and similar information, will be included by SSA in Notice A2. Contact information for Class counsel will be included by Class counsel where indicated in Notice A2. SSA shall send Notice A2 by first class mail with a designated post office box as the return address within ninety (90) days after the date on which the Settlement becomes effective to: the last known address in the "case information" section of the electronic claim file, or the pertinent disability application in the paper claim file, for each Class Member identified by SSA as potentially eligible for Group 1 readjudication relief who received a Partially Favorable decision or determination. If so elected by a Class Member on the Representative Notification Request Form, SSA will also mail a copy of Notice A2 to the representative, if any, who assisted the Class Member on the prior claim, so long as that representative has not been disqualified from appearing in Social Security matters. Prior to sending Notice A2, SSA shall match the addresses in its records for all Class Members who are not in current pay status against the U.S.P.S. National Change of Address (NCOA) file. Notice A2 will be sent in standard print format and, in addition, will be sent in Spanish to those individuals whose claims files indicate an existing record of receiving Notices in that language, and will be sent to individuals who have an existing election for a special notice option for the blind or visually impaired in the Special Notice Options format elected, pursuant to POMS NL 01001.001, 01001.010. Notice A2, in addition to describing the potential relief available and the necessary steps to be taken, will also advise the Class Member of his or her right to retain a representative to assist with his or her claim. Because readjudication of a Partially Favorable decision or determination has the potential to result in an unfavorable determination or decision on the claim, Notice A2 will apprise the claimant of such risk, advise the claimant to carefully evaluate such risk before deciding to return the claim form seeking a readjudication, and advise

the claimant that he or she may wish to consult with counsel. If mail is returned as undeliverable, SSA will query the Supplemental Security Record/Master Beneficiary Record, and if necessary, contact the field office to request any updated address information the field office may have. If an updated address for the Class Member is found, SSA will mail another copy of Notice A2 to the Class Member at the updated address found. SSA shall bear the cost of printing and mailing copies of Notice A2. Receipt of, or a request for, another copy of Notice A2 shall not operate to toll or otherwise enlarge the time for return of the claim form.

B. Group 2 Relief for Class Members With Closed Claims Who Were Examined by Dr. Chen Between January 1, 2007 and December 31, 2010

1. ***Eligibility for Group 2 Relief:*** A Class Member eligible for Group 2 relief (“Group 2 claimant”) is someone who filed a claim for DIB or SSI or both; who, as part of that claim (or as part of a continuing disability review), underwent a consultative examination performed by Dr. Frank Chen between January 1, 2007 and December 31, 2010; who received an Unfavorable decision or determination on that claim (or that continuing disability review), or a Partially Favorable decision or determination on that claim, on or before the date of final approval; and who is not in current pay status. A person who meets all of the requirements for eligibility in the preceding sentence and who, prior to the date of final approval, appealed a final decision of the Commissioner to a federal court pursuant to 42 U.S.C. §§ 405(g) or 1383(c)(3), is a Group 2 claimant only if he or she (1) obtains a judicial remand of that case upon motion by the claimant pursuant to Section 2.c; or (2) obtains relief from judgment in that case upon motion by the claimant pursuant to Section 2.c. Class Members who are eligible to be Group 1 claimants are ineligible to be Group 2 claimants.

2. ***Group 2 Relief – Application for DIB or SSI and Lookback Assessment***

Process: A Group 2 claimant will be invited to apply for SSI or DIB or both by timely returning a claim form and indicating on the form whether he or she is currently disabled. A Group 2 claimant who (1) timely returns the claim form; (2) indicates on the form that he or she is currently disabled; (3) files a current application for DIB and/or SSI within the time limit set forth in paragraph III.B.3 below; and (4) is found to be disabled upon adjudication of his or her current application, will then become entitled to a Lookback Assessment for the previously-adjudicated period. The process for Group 2 relief shall be as follows:

- a) **Application for DIB and/or SSI Based on Present Disability Status:** Each Group 2 claimant may file an application for DIB or SSI or both. This application shall be filed and pursued in the normal manner, using SSA's online system if for DIB only, or telephone systems or by appearing at the appropriate SSA field office, and completing the forms that normally accompany or follow such applications. SSA will adjudicate these claims pursuant to the rules and regulations ordinarily applicable to disability claims. Decisions or determinations on these claims will be subject to administrative or judicial review under the rules and regulations applicable to determinations and decisions and set forth at 42 U.S.C. §§ 405(g) and 1383(c)(3), and 20 C.F.R. §§ 404.902, 404.907, 404.929, 404.967, 416.1402, 416.1407, 416.1429, and 416.1467.
- b) **Lookback Assessment:** For a Group 2 claimant who (1) timely returns the claim form; (2) indicates on the form that he or she is currently disabled and intends to file a current application for DIB and/or SSI; (3) files a current application for DIB and/or SSI within the time limit set forth in paragraph III.B.3 below; and (4) receives a favorable or partially favorable decision on his or her current

application, SSA's Disability Processing Unit will conduct a Lookback Assessment. No Lookback Assessment will be initiated until after any agency review of the current application has been completed and the decision or determination has been effectuated. In conducting the Lookback Assessments, SSA will evaluate the record, but without considering the consultative examination report prepared by Dr. Chen, and will request that the individual submit any additional evidence relevant to the Lookback Assessment Period (defined below). Additional consultative examinations will not be ordered as part of this Lookback Assessment. The Lookback Assessment will address a "Lookback Assessment Period." The Lookback Assessment Period means either (1) in the case of an eligible Group 2 claimant who received an Unfavorable decision or determination, the previously-adjudicated period, which begins on the alleged onset date and ends on the date of the Unfavorable decision or determination; (2) in the case of an eligible Group 2 claimant who received a Partially Favorable decision or determination, the previously-adjudicated period, which begins on the alleged onset date and ends on the date of the Partially Favorable decision or determination; or (3) in the case of a termination of benefits or payments upon a continuing disability review in which the individual was examined by Dr. Chen, the previously-adjudicated period, which begins on the date the individual is determined to have medically improved and the date of the final decision or determination finding that disability has ended. A Lookback Assessment is a readjudication of the Lookback Assessment Period; if, as a result of a Lookback Assessment, a Group 2 claimant is found to have been disabled for

the Lookback Assessment Period, or any portion thereof, he or she will receive the appropriate award of back benefits or payments for the period of disability demonstrated. A Lookback Assessment does not include a readjudication of any period between the date of the Unfavorable decision or determination or the Partially Favorable decision or determination, as the case may be, and the date as of which benefits or payments are awarded on the Group 2 claimant's current application; back benefits or payments for this intervening period are not available as part of the Lookback Assessment. The determination made by the Disability Processing Unit on a Lookback Assessment will be final and not subject to further administrative or judicial review.

- c) For claimants who appealed a final decision of the Commissioner to federal court:** Certain claimants appealed their final decisions to a federal court pursuant to 42 U.S.C. §§ 405(g) or 1383(c)(3) prior to the date of final approval. For any such claimant, assuming he or she otherwise meets the eligibility criteria to be a Group 2 claimant, as set forth in Section III.B.2, and submits a timely request for relief pursuant to Section III.B.3 or Section III.B.4, as applicable, SSA agrees to take the procedural steps described below upon (1) request from the claimant or his or her counsel in the federal court case to counsel for SSA in the federal court case; and (2) confirmation that the Group 2 claimant has been awarded benefits on the current application and the decision or determination has been effectuated. For a claimant whose case is pending in federal court at the time of the request, SSA will file a notice of non-opposition in response to a motion for remand to the agency for further proceedings so long as (1) the motion is filed within ninety (90)

days of the date on which the Group 2 claimant receives his or her award letter on his or her current application; (2) the basis for that motion is that the agency has entered into this Settlement Agreement under which the claimant is potentially eligible for relief, and that the claimant wishes to be eligible for consideration for such relief; and (3) SSA determines that Dr. Chen's report was afforded weight (i.e., more than no weight) in the ALJ's analysis. For a claimant whose case has resulted in a final judgment affirming the final decision of the Commissioner at the time of the request, the claimant may file a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6). So long as (1) the Rule 60(b)(6) motion is filed within ninety (90) days of the date on which the Group 2 claimant receives his or her award letter on his or her current application; (2) the basis for that motion is that the agency has entered into this Settlement Agreement under which the claimant is potentially eligible for relief, and that the claimant wishes to be eligible for consideration for such relief; and (3) SSA determines that Dr. Chen's report was afforded weight (i.e., more than no weight) in the ALJ's analysis, SSA will file a notice of non-opposition in response to such a motion. SSA reserves its right to oppose any motion for remand or motion for relief from judgment on any basis other than the agency's entering into this Settlement Agreement.

3. ***Group 2 Relief -- Time to Submit Claim Form and to File Current Application:***

Except for Group 2 claimants with a Partially Favorable decision or determination (discussed separately in Section III.B.4 below), in order to be eligible for Group 2 relief, a Group 2 claimant must: (1) return the claim form that will be included with Notice B within ninety (90) days of the

date the claimant receives Notice B (as described below), and indicate on that form that he or she is currently disabled; and (2) file a new application for DIB or SSI or both, within one hundred eighty (180) days of the date the claimant receives Notice B (as described below). Return of a properly completed claim form that conforms to the requirements of POMS GN 00204.010B will establish a protective filing date for the filing of the Group 2 claimant's new application as of the date SSA receives the form, but does not operate to toll the time for filing the new DIB or SSI application. The claimant may also demonstrate, to the satisfaction of SSA, that the ninety (90)-day deadline for returning the claim form was missed for good cause. SSA will evaluate good cause using the standards set forth in 20 C.F.R. §§ 404.911 and 416.1411. Determinations that good cause is lacking are final and not subject to further review.

4. ***Special Procedures for Group 2 claimants with Partially Favorable***

determinations or decisions: In order for a Group 2 claimant who has received a Partially Favorable determination or decision to be eligible for Group 2 relief, he or she must: (1) return the claim form that will be included with Notice B2 (as described below) within one hundred eighty (180) days of the date the claimant receives Notice B2, and indicate on that form that he or she is currently disabled; and (2) file a new application for DIB or SSI or both, within one hundred eighty (180) days of the date the claimant receives Notice B2. Return of a properly completed claim form that conforms to the requirements of POMS GN 00204.010B will establish a protective filing date for the filing of the Group 2 claimant's new application as of the date SSA receives the form, but does not operate to toll the time for filing the new DIB or SSI application. The claimant may also demonstrate, to the satisfaction of SSA, that the one hundred eighty (180)-day deadline for returning the claim form was missed for good cause. SSA will evaluate good cause using the standards set forth in 20 C.F.R. §§ 404.911 and 416.1411.

Determinations that good cause is lacking are final and not subject to further review.

5. ***Notice of Group 2 Relief for Group 2 Claimants With Unfavorable decisions or determinations (“Notice B”)***: Attached to this Settlement Agreement is Notice B (Exhibit B), the language of which has been agreed to by the Parties. Personal information such as a Class Member’s address, appropriate field office, and similar information, will be included by SSA in Notice B. Contact information for Class counsel will be included by Class counsel where indicated in Notice B. SSA shall send Notice B by first class mail with a designated post office box as the return address within ninety (90) days after the date on which the Settlement becomes effective to the last known address in the “case information” section of the electronic claim file, or the pertinent disability application in the paper claim file, for each Class Member identified by SSA as potentially eligible for Group 2 relief. Prior to sending Notice B, SSA shall match the addresses in its records for all Class Members who are not in current pay status against the U.S.P.S. National Change of Address (NCOA) file. Notice B will be sent in standard print format and, in addition, will be sent in Spanish to those individuals whose claims files indicate an existing record of receiving Notices in that language, and will be sent to individuals who have an existing election for a special notice option for the blind or visually impaired in the Special Notice Options format elected, pursuant to POMS NL 01001.001, 01001.010. Notice B, in addition to describing the potential relief available and the necessary steps to be taken, will also advise the Class Member of his or her right to retain a representative to assist with his or her claim. If mail is returned as undeliverable, SSA will query the Supplemental Security Record/Master Beneficiary Record, and if necessary, contact the field office to request any updated address information the field office may have. If an updated address for the Class Member is found, SSA will mail another copy of Notice B to the Class Member at the updated

address found. SSA shall bear the cost of printing and mailing copies of Notice B. Where, sixty (60) days after the mailing of Notice B, SSA records indicate that a Class Member to whom Notice B was mailed and not returned as undeliverable has not returned the required form that accompanied Notice B, SSA will mail a letter indicating that a time-sensitive form had been mailed to them 60 days earlier, summarizing information from the correspondence, and including a copy of Notice B. Receipt of, or a request for, another copy of the form shall not operate to toll or otherwise enlarge the time for return of the claim form.

6. ***Notice of Group 2 Readjudication Relief for Group 2 Claimants With Partially Favorable decisions or determinations (“Notice B2”):*** Attached to this Settlement Agreement is Notice B2 (Exhibit B2), the language of which has been agreed to by the Parties. Personal information such as a Class Member’s address, appropriate field office, and similar information, will be included by SSA in Notice B2. Contact information for Class counsel will be included by Class counsel where indicated in Notice B2. SSA shall send Notice B2 by first class mail with a designated post office box as the return address within ninety (90) days after the date on which the Settlement becomes effective to: the last known address in the “case information” section of the electronic claim file, or the pertinent disability application in the paper claim file, for each Class Member identified by SSA as potentially eligible for Group 2 readjudication relief. If so elected by a Class Member on the Representative Notification Request Form, SSA will also mail a copy of Notice B2 to the representative, if any, who assisted the Class Member on the prior claim, so long as that representative has not been disqualified from appearing in Social Security matters. Prior to sending Notice B2, SSA shall match the addresses in its records for all Class Members who are not in current pay status against the U.S.P.S. National Change of Address (NCOA) file. Notice B2 will be sent in standard print format and, in addition, will be

sent in Spanish to those individuals whose claims files indicate an existing record of receiving Notices in that language, and will be sent to individuals who have an existing election for a special notice option for the blind or visually impaired in the Special Notice Options format elected, pursuant to POMS NL 01001.001, 01001.010. Notice B2, in addition to describing the potential relief available and the necessary steps to be taken, will also advise the Class Member of his or her right to retain a representative to assist with his or her claim. Because performing a Lookback Assessment of a Partially Favorable decision or determination has the potential to result in an unfavorable determination or decision on the claim, Notice B2 will apprise the claimant of such risk, advise the claimant to carefully evaluate such risk before deciding to return the claim form seeking a readjudication, and advise the claimant that he or she may wish to consult with counsel. If mail is returned as undeliverable, SSA will query the Supplemental Security Record/Master Beneficiary Record, and if necessary, contact the field office to request any updated address information the field office may have. If an updated address for the Class Member is found, SSA will mail another copy of Notice B2 to the Class Member at the updated address found. SSA shall bear the cost of printing and mailing copies of Notice B2. Receipt of, or a request for, another copy of Notice B2 shall not operate to toll or otherwise enlarge the time for return of the claim form.

C. Group 3 Relief for Class Members With Open Claims

1. ***Eligibility for Group 3 Relief:*** A Class Member eligible for Group 3 relief (“Group 3 claimant”) is someone (1) who filed a claim for DIB or SSI or both; (2) who, as part of that claim (or as part of a continuing disability review), underwent a consultative examination performed by Dr. Frank Chen; and (3) who received an unfavorable decision or determination on that claim (or that continuing disability review), or a partially favorable decision or

determination on that claim, that, as of the date of final approval of this Settlement Agreement, is not a final decision or determination.

2. ***Group 3 Relief – Processing Guidance:*** Within twenty (20) days of the date on which the Settlement becomes effective, SSA will issue processing guidance to ALJs who will be handling claims of Group 3 claimants. The processing guidance will require ALJs to advise any Group 3 claimant who, at the time the guidance is issued, has not yet proceeded to hearing during his or her upcoming hearing that: (1) he or she received a CE from Dr. Chen, a provider who was later removed from the California DDS panel for reasons that include uncorrected deficiencies regarding the quality of his examination reports and the thoroughness of his examinations; (2) he or she has the option to have the report from Dr. Chen excluded from consideration in the forthcoming adjudication; and (3) the adjudicator has the discretion to consider whether ordering an additional CE is appropriate. The parties have negotiated and approved the language of this processing guidance to be issued to ALJs. SSA will provide Class counsel with a copy of this processing guidance. Group 3 claimants who have already proceeded to hearing but who have not received a decision from the ALJ at the time the processing guidance is issued will be provided the option to have Dr. Chen’s report excluded from consideration in the forthcoming adjudication. Claims of Group 3 claimants that are pending at the Appeals Council level at the date of final approval or thereafter will be remanded to an ALJ for processing in accordance with the processing guidance issued to ALJs unless the Appeals Council determines that the ALJ explicitly afforded no weight to Dr. Chen’s report in the analysis, or excluded Dr. Chen’s report from consideration (in which case the request for review will be processed pursuant to otherwise applicable regulations).

3. ***Notice of Group 3 Relief (“Notice C”):*** Attached to this Settlement Agreement is

Notice C (Exhibit C), the language of which has been agreed to by the Parties. Personal information such as a Class Member's address, appropriate field office, and similar information, will be included by SSA in Notice C. Contact information for Class counsel will be included by Class counsel where indicated in Notice C. No later than twenty (20) days after the date on which the settlement becomes effective, SSA shall send Notice C to the claimant; and the Class Member's appointed representative, if any. Notice C will be sent in accordance with HALLEX I-2-3-45 (for Spanish-language notices) and HALLEX I-2-3-50 (for visual impairments). SSA shall bear the cost of printing and mailing copies of Notice C.

IV. PROSPECTIVE RELIEF

A. *Study of the California DDS CE Provider Processes and Recommendations for Improvement:* SSA will, within thirty (30) days of the date on which the Settlement becomes effective, begin a study of the processes through which it monitors the California DDS's engagement, review, and retention of empaneled consultative examiners. The goal of the study, which SSA will complete within one (1) year and thirty (30) days of the date on which the Settlement becomes effective, will be to identify, for potential implementation, mechanisms to improve monitoring of the California DDS's engagement, review, and retention of empaneled consultative examiners. SSA, through its counsel, will provide written notice to Plaintiffs' counsel upon (1) the study's commencement; and (2) its conclusion. Nothing in this paragraph precludes SSA from conducting further study of the California DDS beyond the timeframes set forth above.

B. *Notice to Adjudicators in Open Claims of Disqualified California CE Providers:* Within thirty (30) days after completion of the study referenced in Section IV.A above, SSA

shall issue a document identifying processes for notifying adjudicators when an individual consultative examination provider previously engaged by the California DDS has been disqualified for conduct determined to undermine the reliability of that provider's previously-issued reports. The document will also identify, to the extent feasible, appropriate, and consistent with applicable law, processes for securing new consultative examinations and/or providing notice of such consultative examination provider's disqualification to claimants, and their authorized representative, if any, with administratively open claims pending at the ALJ or Appeals Council levels and who were examined by the disqualified provider for that administratively open claim.

V. PROCEDURES FOR APPROVAL OF SETTLEMENT

A. ***Preliminary approval:*** Following its execution, the Parties shall promptly present the Settlement Agreement to the Court with a request that the Court preliminarily approve the Settlement Agreement. The Parties shall further request that upon any preliminary approval the Court schedule a hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (hereinafter referred to as the "Fairness Hearing"), after which the Court will determine whether to grant its final approval of the Settlement Agreement.

B. ***Notice of Proposed Class Action Settlement and Fairness Hearing:*** Attached to this Settlement Agreement is a Notice of Proposed Class Action Settlement and Fairness Hearing ("Notice D") (Exhibit D), the language of which has been agreed to by the Parties. Notice D contains a brief description of the claims advanced by Plaintiffs and SSA's denial of liability for such claims, a summary of the terms of the proposed settlement, and information regarding the upcoming Fairness Hearing. Information related to the Fairness Hearing date and time, postmark deadline for written comments, and the manner of submission of certain

comments will be included in Notice D where indicated following any preliminary approval by the Court.

C. **Publication:** Within thirty (30) days after the date on which the Court preliminarily approves the Settlement Agreement, SSA shall deliver for publication a copy of Notice D, or such other notice as ordered by the Court, to the following five (5) newspapers with instructions that the Notice be published at least once per week for three (3) successive weeks as a one-eighth (1/8th) page advertisement: San Francisco Chronicle, San Francisco Examiner, San Luis Obispo Tribune, Monterey Herald, and Santa Cruz Sentinel. Class counsel will also disseminate notice of the settlement to the organizations listed in Exhibit E. The parties agree that such publication of Notice D, if approved by the Court, shall satisfy the notice requirement of Rule 23(c)(2) and Rule 23(e)(1) of the Federal Rules of Civil Procedure.

VI. **ENFORCEMENT**

A. Any party, including any member of the Class, may seek enforcement of this Agreement (the “Enforcement Parties”). The parties agree that the process set forth in this Section is the exclusive process for remedying alleged violations of this Agreement. The parties further agree that no other litigation action in the Case, including but not limited to the filing of any motions or pleadings, may be taken except as set forth in this Section VI. While enforcement may be sought against SSA in accordance with this Section VI by a Class Member without being represented by Class counsel in such an enforcement effort, such a Class Member must first state in writing to SSA that he or she requested representation from Class counsel, but that Class counsel has declined to represent the Class Member in the enforcement effort. SSA shall have no obligation to respond to any enforcement effort until such time as the Class Member either secures representation by Class counsel or provides the

required certification in writing to SSA.

B. In the event that one of the Enforcement Parties (the “Noticing Party”) believes that the other Enforcement Party (the “Receiving Party”) has not complied with a provision of this Agreement, the Noticing Party shall serve on the Receiving Party a written notice describing with particularity the alleged failure to comply. This notice must (1) identify the specific provision(s) of this Agreement that have allegedly been violated; (2) describe the errors or omissions upon which the alleged violation is based; and (3) identify reasonable measures that the Receiving Party can take to cure the alleged violation. The notice must be served promptly, and no later than sixty (60) days after the Noticing Party becomes aware, or reasonably should have become aware, of a potential violation.

C. Within sixty (60) days of the Responding Party’s receipt of a written notice from the Noticing Party, counsel for the Enforcement Parties will meet and confer in an effort to address the alleged failure to comply. Upon request, the Noticing Party will provide to the Receiving Party any reasonably available, non-privileged information that supports the alleged failure to comply.

D. If the Enforcement Parties are unable to resolve the alleged failure to comply, and the Noticing Party still wishes to pursue a remedy for the alleged violation of the Agreement, the Noticing Party shall request, no sooner than sixty (60) days after the date on which the notice was served, and no later than one hundred twenty (120) days after the date on which the notice was served, a mediation conference with Magistrate Judge Maria-Elena James. Should Judge James cease to be a Magistrate Judge for the United States District Court, Northern District of California, the Noticing Party shall request a mediation conference with the

Magistrate Judge then assigned to this case, or, if no Magistrate Judge is assigned at that time, with whichever Magistrate Judge is assigned by the Clerk of Court following a request for such assignment by the Noticing Party. The Noticing Party shall serve its request for mediation conference on the Receiving Party at the time the request is made. The Receiving Party may at any time prior to sixty (60) days after the date on which the notice was served take the measures to cure the alleged violation that were identified by the Noticing Party in its notice, in which case no request for mediation conference may be made.

E. No later than sixty (60) days after the date of the mediation conference, the Noticing Party may request judicial enforcement of the provision that has allegedly been violated by filing a motion for enforcement with the Court, which motion shall be subject to the Local Civil Rules for the Northern District of California. The Receiving Party may at any time prior to thirty (30) days after the date of the mediation conference take the measures to cure the alleged violation that were identified by the Noticing Party in its notice, in which case no request for judicial enforcement may be brought. The Parties agree that in the event the Court decides any motion for enforcement in favor of the Noticing Party, the remedy shall be limited to requiring the Receiving Party to comply with whichever provision(s) of Section III or Section IV the Court finds there has been a lack of compliance. The Enforcement Parties agree that any such motion for enforcement shall not include a request that any party or non-party to the Case be held in contempt.

VII. DISMISSAL AND SETTLEMENT AGREEMENT

Plaintiffs agree to the dismissal of the Case with prejudice under Federal Rules of Civil Procedure 41(a)(1) and 23(e), subject to the terms of the Settlement Agreement. In accordance

with the terms of this Settlement Agreement, immediately following, and no later than the day after, final approval of the Settlement Agreement the Parties will file a joint stipulation of dismissal with prejudice that incorporates the terms of this agreement, and which shall be effective three years after the date of final approval and which will be subject to the enforcement provisions set forth in Section VI of this Agreement. Notwithstanding the effective date of the joint dismissal, all other terms of this Settlement Agreement shall be effective upon the date on which the Settlement becomes effective. A copy of the joint stipulation of dismissal to be filed is attached as Exhibit F to this Agreement. SSA agrees to pay the amount of \$490,000 to Plaintiffs' counsel as attorneys' fees and costs incurred through the date of final approval and for any implementation and enforcement of this settlement following the date of final approval. This payment shall be the full and final payment for any and all claims for attorneys' fees, costs, or expenses. The amount of \$490,000 that SSA has agreed to pay to Plaintiffs' counsel shall be paid to Justice in Aging and the Legal Aid Society of San Mateo County, with the payment of that amount to be allocated between those two organizations in a manner to be communicated by Plaintiffs' counsel to counsel for Defendant at a later date. Plaintiffs' counsel Morrison & Foerster has agreed to waive any attorneys' fees and costs incurred in connection with this action. The parties negotiated this settlement term only after all of the substantive settlement terms were resolved.

VIII. RELEASES

Plaintiffs, the members of the Class defined above, and their heirs, administrators, representatives, attorneys, successors, and assigns, and each of them hereby RELEASE, WAIVE, ACQUIT, and FOREVER DISCHARGE the United States, the Commissioner, the Social Security Administration, the California Disability Determination Service, and all of their

officers, employees, and agents, from, and are hereby FOREVER BARRED and PRECLUDED from prosecuting, any and all claims, causes of action, and/or requests for relief that would be barred by the doctrine of res judicata were final judgment on the merits entered on all claims asserted in this Case.

IX. NO ADMISSION OF LIABILITY

A. Neither this Settlement Agreement nor any order approving it constitutes an admission by the Commissioner and/or the United States and/or any other released party of the truth of any allegation or the validity of any claim asserted in the Case, or of the liability of the Commissioner and/or the United States and/or any other released party, nor a concession or an admission of any fault or omission of any act or failure to act, or of any statement, written document, or report heretofore issued, filed or made by the Commissioner and/or the United States and/or any other released party.

B. Neither this Settlement Agreement nor any confidential papers related to the Agreement and created for settlement purposes only, nor any of the terms of either, may be offered or received as evidence against the Commissioner in any civil, criminal, or administrative action or proceeding, nor shall they be the subject of any discovery or construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of the Commissioner and/or the United States and/or any other released party, or as an admission by any party to this Settlement Agreement that the consideration to be given under the terms of this Agreement represents the relief that could have been recovered after trial.

X. DUTIES CONSISTENT WITH LAW AND REGULATIONS

Nothing contained in this Settlement Agreement shall impose on the Commissioner

and/or the United States any duty, obligation, or requirement, the performance of which would be inconsistent with law, as set forth in federal statutes or federal regulations or elsewhere in effect at the time of such performance.

XI. INTEGRATION

This Settlement Agreement and its Exhibits constitute the entire agreement of the Parties, and no prior statement, representation, or agreement that is not contained herein, will have any force or effect.

XII. MODIFICATION

This Settlement Agreement may be modified with the written agreement of Class counsel and counsel for Defendant and with the approval of the District Court, upon such notice to the Class, if any, as the District Court may require.

XIII. DUTY TO DEFEND

The Parties to this Settlement Agreement shall defend against any challenges to it in any forum.

XIV. SEVERABILITY

Should any non-material provision of this Settlement Agreement be found by a court to be invalid or unenforceable, then (A) the validity of other provisions of this Settlement Agreement shall not be affected or impaired, and (B) such provisions shall be enforced to the maximum extent possible.

XV. CONDITIONS THAT RENDER SETTLEMENT AGREEMENT VOID OR VOIDABLE

This Settlement Agreement shall be void if not approved as written at any stage by the Court.

XVI. EFFECT OF SETTLEMENT AGREEMENT IF VOIDED

A. Should this Settlement Agreement become void after its execution, the Commissioner will not object to reinstatement of this action in the same posture and form as it was pending as of the date of execution of this Agreement.

B. All negotiations in connection herewith, and all statements made by the Parties at or submitted to the District Court as part of the Fairness Hearing process, shall be without prejudice to the Parties to this Settlement Agreement and shall not be deemed or construed to be an admission by a party of any fact, matter, or proposition, nor admissible for any purpose in the Case other than with respect to settlement of same.

C. The Parties retain all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Case, and nothing in this Settlement Agreement shall be raised or construed by any party, Class Member, or party's counsel, to defeat or limit any claims, defenses, arguments, or motions asserted by either party. Neither this Settlement Agreement, nor the fact of its having been made, nor any exhibit or other document prepared in connection with this Settlement Agreement, shall be admissible, entered into evidence, or used in any form or manner in discovery in the Case or in any other action or proceeding for any purpose inconsistent with Rule 408 of the Federal Rules of Evidence.

D. The provisions set forth in section XI will apply even if the Settlement Agreement

is otherwise rendered void.

XVII. COUNTERPARTS

This Settlement Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

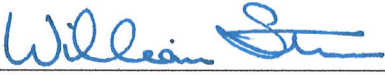
XVIII. WARRANTY

Plaintiffs' counsel and the Commissioner's counsel warrant that they are authorized to stipulate to settlement of the Case in accordance with the provisions set forth in the Settlement Agreement.

Dated: November 7, 2016

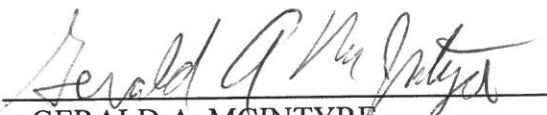
MORRISON & FOERSTER LLP

WILLIAM L. STERN
ROBERT T. PETRAGLIA
ELIZABETH BALASSONE

By: 

WILLIAM L. STERN
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
T: (415) 268-7000
F: (415) 268-7522
Attorneys for Plaintiffs
JUSTICE IN AGING

GERALD A. MCINTYRE
ANNA RICH
TRINH PHAN

By: 
GERALD A. MCINTYRE
JUSTICE IN AGING
3660 Wilshire Boulevard, Suite 718
Los Angeles, CA 90010
T: (213) 674-2900
F: (213) 550-0501
Attorneys for Plaintiffs
LEGAL AID SOCIETY OF SAN
MATEO

HOPE NAKAMURA

By: _____
HOPE NAKAMURA
LEGAL AID SOCIETY OF SAN
MATEO COUNTY
330 Twin Dolphin Drive, Suite 123
Redwood City, CA 94065
F: (650) 517-8973
Attorney for Plaintiffs

Dated: November 7, 2016

U.S. DEPARTMENT OF JUSTICE

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney
General

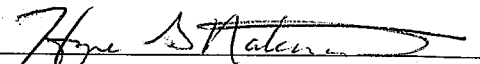
JUDRY L. SUBAR
Assistant Director
Federal Programs Branch

By: _____
M. ANDREW ZEE
United States Department of Justice
Civil Division
Federal Programs Branch
450 Golden Gate Avenue
Room 7-5395

By: _____
GERALD A. MCINTYRE
JUSTICE IN AGING
3660 Wilshire Boulevard, Suite 718
Los Angeles, CA 90010
T: (213) 674-2900
F: (213) 550-0501
Attorneys for Plaintiffs

LEGAL AID SOCIETY OF SAN MATEO

HOPE NAKAMURA

By:  _____
HOPE NAKAMURA
LEGAL AID SOCIETY OF SAN
MATEO COUNTY
330 Twin Dolphin Drive, Suite 123
Redwood City, CA 94065
F: (650) 517-8973
Attorney for Plaintiffs

Dated: November 7, 2016

U.S. DEPARTMENT OF JUSTICE

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney
General

JUDRY L. SUBAR
Assistant Director
Federal Programs Branch

By: _____
M. ANDREW ZEE
United States Department of Justice
Civil Division
Federal Programs Branch
450 Golden Gate Avenue
Room 7-5395

By: _____
GERALD A. MCINTYRE
JUSTICE IN AGING
3660 Wilshire Boulevard, Suite 718
Los Angeles, CA 90010
T: (213) 674-2900
F: (213) 550-0501
Attorneys for Plaintiffs
LEGAL AID SOCIETY OF SAN
MATEO

HOPE NAKAMURA


By: _____
HOPE NAKAMURA
LEGAL AID SOCIETY OF SAN
MATEO COUNTY
330 Twin Dolphin Drive, Suite 123
Redwood City, CA 94065
F: (650) 517-8973
Attorney for Plaintiffs

Dated: November 7, 2016

U.S. DEPARTMENT OF JUSTICE

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney
General

JUDRY L. SUBAR
Assistant Director
Federal Programs Branch

By:  _____
M. ANDREW ZEE
United States Department of Justice
Civil Division
Federal Programs Branch
450 Golden Gate Avenue
Room 7-5395

San Francisco, CA 94102
Telephone: (415) 436-6646
Fax: (415) 436-6632
Email: m.andrew.zee@usdoj.gov

Attorneys for Defendant

Exhibit A

EXHIBIT A**Social Security Administration
Important Information**

SOCIAL SECURITY
[6401 SECURITY BLVD
BALTIMORE, MD 21235]
Date:
BNC:

John Doe
123 Main St
Anytown, MD 12345

NOTICE OF CLASS ACTION SETTLEMENT AND REQUEST FORM**You May Be Eligible For Review Of Your Prior Disability Claim –
Please Return The Enclosed Form Within 90 Days After You Get This Notice**

You are receiving this notice and request form because of a class action settlement in a lawsuit. The lawsuit alleged the Social Security Administration should not have relied on consultative examination reports from Dr. Frank Chen. Plaintiffs alleged that Dr. Chen's reports were flawed in important ways and subject to complaints, and that he is no longer allowed to perform these examinations.

This notice is about an earlier disability application that we denied, or a decision to stop disability benefits that you were receiving. Our records show that Dr. Chen examined you between January 1, 2011, and December 31, 2013, as part of this claim, and you received an unfavorable decision.

As a result of this settlement, you may be eligible to have us review your prior claim. For some people, the review may result in current benefits and back benefits. If you want us to review your prior claim, you must return the enclosed "*Hart v. Colvin* Request Form" within 90 days. This review may or may not change the prior decision.

How We Will Review Claims

There are four steps to the review process under the settlement:

- 1) You must request review of your claim by returning the attached request form within 90 days of the date you receive this notice. We will assume you received this notice within 5 days of the date printed on the top of this notice unless you show you did not get it within the 5-day period.
- 2) We will determine whether you are eligible for review under the settlement. If we decide you are not eligible for review, we will send you a notice telling you why.

- 3) If we decide you are eligible for review, we will ask you to complete updated disability forms and give us any additional medical evidence that relates to your prior claim. Then, we will review your prior claim without considering Dr. Chen's report.
- 4) We will make a decision about your claim. This could mean you will receive current benefits and back benefits.

If you do not respond within 90 days, you may lose your chance for review. We will not consider a late request unless we find you had a good reason for not responding in time.

If You Have Or Want A Representative

You can have a friend, representative, or someone else help you. It is important to understand that if you had an appointed representative at the time of your prior claim, that representation ended after the decision on your claim became final. This means that if you want a representative to help you, you must appoint one by giving us a notice of appointment.

If you want more information about having, getting, or appointing a representative, you may call our toll-free number or contact a Social Security office as shown below. You may also visit our website at www.ssa.gov/pubs/EN-05-10075.pdf to read "Your Right to Representation" (Publication No. 05-10075). Be aware that a representative may charge a fee for his or her services.

If You Have Any Questions

If you have any questions about this notice or request form, please contact [designated plaintiff's firm], the lawyers who brought the *Hart v. Colvin* lawsuit, No. 3:15-cv-623-JST (N.D. Cal.). You may call them toll-free at [number and address below to be supplied by class counsel] or write to them at:

[Street Address]
[City, State ZIP]

You may also contact Social Security toll-free at the following number: 1-[number to be supplied by SSA].

If you call or visit a Social Security office, please have this notice with you. It will help us answer your questions.

If You Appealed Your Prior Claim To Federal Court

If you appealed your prior claim to Federal court, then in addition to returning the request form, you must do the following:

- If the Federal court case is still pending, you must file a motion within 90 days of the date you receive this notice asking the court to send your case back to us.
- If the court has ruled against you, you must file a motion within 90 days of the date you receive this notice asking the court for relief from the final judgment.

Enclosure(s):

Hart v. Colvin Request Form

Return Envelope

John Doe
123 Main Street
Anytown, MD 12345

Hart v. Colvin REQUEST FORM

IMPORTANT

**Return This Form Using the Enclosed Envelope Within 90 Days of Receiving It
If You Want Us To Review Your Prior Claim**

Part I: Request That Social Security Review My Prior Claim

By signing below, you are requesting that Social Security review your prior claim.

Date

Signature

Telephone Number

Part II: Updated Address

If your current address is different from the one printed at the top of this request form, please print your current address information below. Otherwise, you should leave Part II blank:

Street Address:

City, State, and Zip Code

Exhibit A2

EXHIBIT A2**Social Security Administration**
Important Information

SOCIAL SECURITY
[6401 SECURITY BLVD
BALTIMORE, MD 21235]
Date:
BNC:

John Doe
123 Main St
Anytown, MD 12345

NOTICE OF CLASS ACTION SETTLEMENT AND REQUEST FORM**You May Be Eligible For Review Of Your Prior Disability Claim If You Return The Enclosed Form Within 180 Days After You Get This Notice.**

You are receiving this notice and request form because of a class action settlement in a lawsuit. The lawsuit alleged the Social Security Administration should not have relied on consultative examination reports from Dr. Frank Chen. Plaintiffs alleged that Dr. Chen's reports were flawed in important ways and subject to complaints, and that he is no longer allowed to perform these examinations.

This notice is about an earlier disability application where you received a partially favorable decision. This means that you received benefits but only for part of the period covered by your application. Our records show that Dr. Chen examined you between January 1, 2011, and December 31, 2013, as part of this claim.

As a result of this settlement, you may be eligible to have us review your prior claim. For some people, the review may result in current benefits and back benefits. If you want us to review your prior claim, you must return the enclosed "*Hart v. Colvin* Request Form" within 180 days. This review may or may not change the prior decision.

How We Will Review Claims

There are four steps to the review process under the settlement:

- 1) You must request review of your claim by returning the attached "*Hart v. Colvin* Request Form" within 180 days of the date you receive this notice. We will assume you received this notice within 5 days of the date printed on the top of this notice unless you show you did not receive it within the 5-day period.
- 2) We will determine whether you are eligible for review under the settlement. If we decide you are not eligible for review, we will send you a notice telling you why.

- 3) If we decide you are eligible for review, we will ask you to complete updated disability forms and give us any additional medical evidence that relates to your prior claim. Then, we will review your prior claim without considering Dr. Chen's report.
- 4) We will make a decision about your claim. This could mean you will receive current benefits and back benefits.

If you do not respond within 180 days, you may lose your chance for review. We will not consider a late request unless we find you had a good reason for not responding in time.

PLEASE READ THE FOLLOWING VERY CAREFULLY

Your prior decision was partially favorable, and you may have received benefits as a result. If you ask us to review your prior claim, it is possible that the result will be the same. It is possible that the result will be better, which means we may decide you are entitled to benefits for the entire period covered by your application. It is also possible that the decision will be unfavorable, which means we will decide you were not entitled to the benefits you already received.

Before you return the request form asking us to review your claim, you should carefully consider the possible risks. Even if you do not want us to review your prior claim and choose not to return the request form, you may file a new claim if you believe you are disabled.

If you are currently receiving benefits, the review of your claim may result in additional benefits. However, we may decide that you were not disabled. If we review your claim and make an unfavorable decision finding that you were not disabled, it would mean that you were not entitled to the benefits you already received. In that case, benefits you may be currently receiving would no longer be paid. Also, if we decide that you were not disabled, it could mean that you were overpaid, and it is possible that you may have to pay us back some or all of the benefits we paid you.

You may also wish to ask questions of the attorneys who represent the members of the plaintiff class who brought the *Hart v. Colvin* lawsuit. For this purpose, we have provided contact information for the attorneys who represent the members of the class in this notice.

If You Have Or Want A Representative

You can have a friend, representative, or someone else help you. It is important to understand that if you had an appointed representative at the time of your prior claim, that representation ended after the decision on your claim became final. This means that if you want a representative to help you, you must appoint one by signing and giving us a notice of appointment. That person can be the representative who helped you on your prior claim, or another representative. If you want a representative to help you, you may wish to speak with that person before deciding whether to return the Request Form.

If you had a representative on your prior claim and want that person to receive a copy of this notice, please check the box on the enclosed "*Hart v. Colvin* Representative Notification Request Form," and we will send him or her a copy of this notice. You do not have to send a copy of this notice to your prior representative and may choose to work with any representative you want, or no representative. Remember that even if you want us to send a copy of this notice to your prior

representative, or choose to show it to another representative, you will still need to appoint that person as your representative so that he or she can help you while we review your prior claim.

If you want more information about having, getting, or appointing a representative, you may call our toll-free number or contact a Social Security office as shown below. You may also visit our website at www.ssa.gov/pubs/EN-05-10075.pdf to read “*Your Right to Representation*” (Publication No. 05-10075). Be aware that a representative may charge a fee for his or her services.

If You Have Any Questions

If you have any questions about this notice or request form, please contact [designated plaintiff’s firm], the lawyers who brought the *Hart v. Colvin* lawsuit No. 3:15-cv-623-JST (N.D. Cal.). You may call them, toll free, at [number and address below to be supplied by class counsel] or write to them at:

[Street Address]
[City, State ZIP]

You may wish to contact these attorneys before deciding whether to return the request form asking us to review your prior claim.

You may also contact Social Security toll free at the following number: 1-[number to be supplied by SSA].

If you call or visit a Social Security office, please have this notice with you. It will help us answer your questions.

If You Appealed Your Prior Claim To Federal Court

If you appealed your claim to Federal court, then in addition to returning the request form, you must do the following:

- If the Federal court case is still pending, you must file a motion within 90 days of the date you receive this notice asking the court to send your case back to us.
- If the court has ruled against you, you must file a motion within 90 days of the date you receive this notice asking the court for relief from the final judgment.

Enclosure(s):

Hart v. Colvin Request Form

Hart v. Colvin Representative Notification Request Form

Return Envelope

John Doe
123 Main St
Anytown, MD USA 12345

Hart v. Colvin REQUEST FORM

IMPORTANT

**Return This Form Using the Enclosed Envelope Within 180 Days of Receiving It
If You Want Us To Review Your Prior Claim.**

Before deciding whether to return this form, be sure to read carefully the attached notice that describes the potential benefits and risks of requesting review of your prior claim. If we review your prior claim, it is possible you could receive a better result, the same result, or a worse result, including a finding that you are not disabled. If you want a representative to assist you, you may wish to speak with that person before deciding whether to return this Request Form.

Part I: Request That Social Security Review My Prior Claim

By signing below, you are requesting that Social Security review your prior claim.

Date

Signature

Telephone Number

Part II: Updated Address

If your current address is different from the one printed at the top of this Request Form, please print your current address information below. Otherwise, you should leave Part II blank:

Street Address:

City, State, and Zip Code

John Doe
123 Main Street
Anytown, MD 12345

***Hart v. Colvin* REPRESENTATIVE NOTIFICATION REQUEST FORM**
USE THE ENCLOSED PREPAID ENVELOPE TO RETURN THIS FORM

You can have us send a copy of this notice to the representative who assisted you on your prior claim by checking the box below. If you do not wish for Social Security to send a copy of this notice to your prior representative, you should not mail in this form.

You do not have to send a copy of this notice to your prior representative and may choose to work with any representative you want, or no representative.

If my file shows that I had a representative on my prior claim, I would like Social Security to mail a copy of this notice to him or her.

(Please note: we will not be able to send a copy of this notice to a representative if you did not have a representative on your prior claim, or if that person has been disqualified from appearing in Social Security matters.)

Date

Signature

Exhibit B

EXHIBIT B**Social Security Administration**
Important Information

SOCIAL SECURITY
[6401 SECURITY BLVD
BALTIMORE, MD 21235]
Date:
BNC:

John Doe
123 Main St
Anytown, MD 12345

NOTICE OF CLASS ACTION SETTLEMENT AND REQUEST FORM**You May Be Eligible For Review Of Your Prior Disability Claim –
Please Return The Enclosed Form Within 90 Days After You Get This Notice**

You are receiving this notice and request form because of a class action settlement in a lawsuit. The lawsuit alleged the Social Security Administration should not have relied on examination reports from Dr. Frank Chen. Plaintiffs alleged that Dr. Chen's reports were flawed in important ways and subject to complaints, and that he is no longer allowed to perform these examinations.

This notice is about an earlier disability application that we denied, or a decision to stop disability benefits that you were receiving. Our records show that Dr. Chen examined you between January 1, 2007, and December 31, 2010, as part of this claim, and you received an unfavorable decision.

As a result of this settlement, you may be eligible to have us review your prior claim. For some people, the review may result in back benefits. If you want us to review your prior claim, you must return the enclosed request form within 90 days. This review may or may not change the prior decision.

How We Will Review Claims

There are five steps to the review process for your claim under the settlement:

- 1) You must request review of your claim by returning the enclosed "*Hart v. Colvin* Request Form" within 90 days of the date you receive this notice. We will assume you received this notice within 5 days of the date printed on the top of this notice unless you show you did not receive it within the 5-day period.
- 2) You must file a new application for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) (or both) within 180 days of the date you receive this notice.

- 3) If we find you are disabled and eligible for benefits on your new claim, then we will determine whether you are eligible for review of your prior claim under the settlement. If we decide that you are not eligible for review of your prior claim, we will send you a notice telling you why. If we find you are not disabled on your new claim, then you are not eligible for review of your prior claim.
- 4) If we decide you are eligible for review of your prior claim, we will ask you to complete updated disability forms and give us any additional medical evidence that relates to your prior claim.
- 5) If we decide you are eligible for review of your prior claim, we will review your claim without considering Dr. Chen's report. If we find that you were disabled during the period covered by your prior claim or any part of that time, you may receive back benefits for the period of disability established. If we find that you were not disabled during the period covered by your prior claim, you will not receive back benefits. That decision will be final and not subject to appeal.

If you do not respond within 90 days, you may lose your chance for review. We will not consider a late request unless we find you had a good reason for not responding in time.

You may file your new claim by visiting your local Social Security office. You can find more information about how to apply for SSDI or SSI by visiting www.socialsecurity.gov on the Internet. If you have specific questions, you may call toll-free at 1-800-772-1213. If you are deaf or hard of hearing, you may call our TTY number toll-free at 1-800-325-0778.

If you do not file your new claim within 180 days of the date you receive this notice, we will still decide your new claim, but you will not be eligible for review of your prior claim under the settlement agreement.

If You Have Or Want A Representative

You can have a friend, representative, or someone else help you. It is important to understand that if you had an appointed representative at the time of your prior claim, that representation ended after the decision on your prior claim became final. This means that if you want a representative to help you, you must appoint one by giving us a notice of appointment.

If you want more information about having, getting, or appointing a representative, you may call our toll-free number or contact a Social Security office using the instructions below. You may also visit our website at www.ssa.gov/pubs/EN-05-10075.pdf to read "Your Right to Representation" (Publication No. 05-10075). Be aware that a representative may charge a fee for his or her services.

If You Have Any Questions

If you have any questions about this notice or request form, please contact [designated plaintiff's firm], the lawyers who brought the *Hart v. Colvin* lawsuit, No. 3:15-cv-623-JST (N.D. Cal.). You may call them, toll free, at [number and address below to be supplied by class counsel] or write to them at:

[Street Address]
[City, State ZIP]

You may also contact Social Security toll free at the following number: 1-[number to be supplied by SSA]. If you call or visit a Social Security office, please have this notice with you. It will help us answer your questions.

If You Appealed Your Prior Claim To Federal Court:

If you appealed your prior claim to Federal court, then if you are found disabled on your new claim you must also do the following in order to request review of your prior claim:

- If the Federal court case is still pending, you must file a motion within 90 days of the date you receive a Notice of Award on your new claim asking the court to send your case back to us.
- If the court has ruled against you, you must file a motion within 90 days of the date you receive the Notice of Award on your new claim asking the court for relief from the final judgment.

Enclosure(s):

Hart v. Colvin Request Form

Return Envelope

John Doe
123 Main St
Anytown, MD USA 12345

Hart v. Colvin REQUEST FORM

IMPORTANT

**Return This Form Using the Enclosed Envelope Within 90 Days of Receiving It
If You Want Us To Review Your Prior Claim**

Part I: Request That Social Security Review My Prior Claim.

I believe that I am currently disabled, and I intend to file a new claim for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) (or both) within 180 days of the date I received the attached Notice. If I file a new claim for SSDI or SSI (or both), and am found disabled on my new claim, I request that the Social Security Administration review my prior claim.

Date

Signature

Telephone Number

Part II: Updated Address

If your address is different from the one printed at the top of this Request Form, please print your updated address information below. Otherwise, you should leave Part II blank:

Street Address:

City, State, and Zip Code

Exhibit B2

EXHIBIT B2**Social Security Administration**
Important Information

SOCIAL SECURITY
[6401 SECURITY BLVD
BALTIMORE, MD 21235]
Date:
BNC:

John Doe
123 Main St
Anytown, MD 12345

NOTICE OF CLASS ACTION SETTLEMENT AND REQUEST FORM**You May Be Eligible For Review Of Your Prior Disability Claim If You Return The Enclosed Form Within 180 Days After You Get This Notice.**

You are receiving this notice and request form because of a class action settlement in a lawsuit. The lawsuit alleged the Social Security Administration should not have relied on consultative examination reports from Dr. Frank Chen. Plaintiffs alleged that Dr. Chen's reports were flawed in important ways and subject to complaints, and that he is no longer allowed to perform these examinations.

This notice is about an earlier disability application where you received a partially favorable decision. This means that you received benefits but only for part of the period covered by your application. Our records show that Dr. Chen examined you between January 1, 2007, and December 31, 2010, as part of this claim.

As a result of this settlement, you may be eligible to have us review your prior claim. For some people, the review may result in additional benefits. If you want us to review your prior claim, you must return the enclosed request form within 180 days. This review may or may not change the prior decision.

How We Will Review Claims

There are five steps to the review process for your claim under the settlement:

- 1) You must request review of your claim by returning the attached "*Hart v. Colvin* Request Form" within 180 days of the date you receive this notice. We will assume you received this notice within 5 days of the date printed at the top of this notice unless you show you did not receive it within the 5-day period.

- 2) You must file a new application for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) (or both) within 180 days of the date you receive this notice.
- 3) If we find you are disabled and eligible for benefits on your new claim, then we will determine whether you are eligible for review of your prior claim under the settlement. If we decide that you are not eligible for review of your prior claim, we will send you a notice telling you why. If we find you are not disabled on your new claim, then you are not eligible for review of your prior claim.
- 4) If we decide you are eligible for review of your prior claim, we will ask you to complete updated disability forms and give us any additional medical evidence that relates to your prior claim.
- 5) If we decide you are eligible for review of your prior claim, we will review your prior claim without considering Dr. Chen's report. If we find that you were disabled during the period covered by your prior claim or any part of that time, you may receive back benefits for the period of disability established. If we find that you were not disabled during the period covered by your prior claim, you will not receive back benefits. That decision will be final and not subject to appeal.

If you do not respond within 180 days, you may lose your chance for review. We will not consider a late request unless we find you had a good reason for not responding in time.

You may file your new claim by visiting your local Social Security office. You can find more information about how to apply for SSDI or SSI by visiting www.socialsecurity.gov on the Internet. If you have specific questions, you may call toll-free at 1-800-772-1213. If you are deaf or hard of hearing, you may call our TTY number toll-free at 1-800-325-0778.

If you do not file your new claim within 180 days of the date you receive this notice, we will still decide your new claim, but you will not be eligible for review of your prior claim under the settlement agreement.

PLEASE READ THE FOLLOWING VERY CAREFULLY

Your prior decision was partially favorable, and you may have received benefits as a result. If you ask us to review your prior claim, it is possible that the result will be the same. It is possible that the result will be better, which means we may decide you are entitled to benefits for the entire period covered by your application. It is also possible that the decision will be unfavorable, which means we will decide you were not entitled to the benefits you already received.

Before you return the request form asking us to review your claim, you should carefully consider the possible risks. Even if you do not want us to review your prior claim and choose not to return the request form, you may file a new claim if you believe you are disabled. That would not create the same risks as asking us to review your prior claim.

If you are currently receiving benefits, the review of your claim may result in additional benefits. However, we may decide that you were not disabled. If we review your claim and make an unfavorable decision finding that you were not disabled, it would mean that you were not entitled to the benefits you already received. In that case, benefits you may be currently receiving would no longer be paid. Also, if we decide that you were not disabled, it could mean that you were overpaid, and it is possible you may have to pay us back some or all of the benefits we paid you.

You may also wish to ask questions of the attorneys who represent the members of the plaintiff class who brought the *Hart v. Colvin* lawsuit. For this purpose, we have provided contact information for the attorneys who represent the members of the class at the bottom of this notice.

If You Have Or Want A Representative

You can have a friend, representative, or someone else help. It is important to understand that if you had an appointed representative at the time of your prior claim, that representation ended after the decision on your claim became final. This means that if you want a representative to help you, you must appoint one by signing and giving us a notice of appointment. That person can be the representative who helped you on your prior claim, or another representative. If you want a representative to help you, you may wish to speak with that person before deciding whether to return the Request Form.

If you had a representative on your prior claim and want that person to receive a copy of this notice, please check the box on the enclosed form and we will send him or her a copy of this notice. You do not have to send a copy of this notice to your prior representative and may choose to work with any representative you want, or no representative. Remember that even if you want us to send a copy of this notice to your prior representative, or choose to show it to another representative, you will still need to appoint that person as your representative so that he or she can help you while we review your prior claim.

If you want more information about having, getting, or appointing a representative, you may call our toll-free number or contact a Social Security office using the instructions below. You may also visit our website at www.ssa.gov/pubs/EN-05-10075.pdf to read "*Your Right to Representation*" (Publication No. 05-10075). Be aware that a representative may charge a fee for his or her services.

If You Have Any Questions

If you have any questions about this notice or request form, please contact [designated plaintiff's firm], the lawyers who brought the *Hart v. Colvin* lawsuit, No. 3:15-cv-623-JST (N.D. Cal.). You may call them toll free at [number and address below to be supplied by class counsel] or write to them at:

[Street Address]

[City, State ZIP]

You may wish to contact these attorneys before deciding whether to return the request form asking us to review your prior claim.

You may also contact Social Security toll-free, at the following number: 1-[number to be supplied by SSA].

If you call or visit a Social Security office, please have this notice with you. It will help us answer your questions.

If You Appealed Your Prior Claim To Federal Court

If you appealed your claim to Federal court, then if you are found disabled on your new claim, you must also do the following in order to request review of your prior claim:

- If the Federal court case is still pending, you must file a motion within 90 days of the date you receive a Notice of Award on your new claim asking the court to send your case back to us.
- If the court has ruled against you, you must file a motion within 90 days of the date you receive a Notice of Award on your new claim asking the court for relief from the final judgment.

Enclosure(s):

Hart v. Colvin Request Form

Hart v. Colvin Representative Notification Request Form

Return Envelope

John Doe
 123 Main St
 Anytown, MD 12345

Hart v. Colvin REQUEST FORM

IMPORTANT

**Return This Form Using the Enclosed Envelope Within 180 Days of Receiving It
 If You Want Us To Review Your Prior Claim**

Before deciding whether to return this form, be sure to read carefully the attached notice that describes the potential benefits and risks of requesting review of your prior claim. If we review your prior claim, it is possible you could receive a better result, the same result, or a worse result, including a finding that you are not disabled. If you want a representative to assist you, you may wish to speak with that person before deciding whether to return this Request Form.

Part I: Request That Social Security Review My Prior Claim

I believe that I am currently disabled, and I intend to file a new claim for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) (or both) within 180 days of the date I received the attached notice. If I file a new claim for SSDI or SSI (or both), timely and I am found disabled on my new claim, and am otherwise eligible, I request that the Social Security Administration review my prior claim.

 Date

 Signature

 Telephone Number

Part II: Updated Address

If your current address is different from the one printed at the top of this request form, please print your current address information below. Otherwise, you should leave Part II blank:

Street Address:

City, State, and Zip Code

John Doe
123 Main Street
Anytown, MD 12345

***Hart v. Colvin* REPRESENTATIVE NOTIFICATION REQUEST FORM**
USE THE ENCLOSED ENVELOPE TO RETURN THIS FORM

You can have us send a copy of this notice to the representative who assisted you on your prior claim by checking the box below. If you do not wish for Social Security to send a copy of this notice to your prior representative, you should not mail in this form.

You do not have to send a copy of this notice to your prior representative and may choose to work with any representative you want, or no representative.

If my file shows that I had a representative on my prior claim, I would like Social Security to mail a copy of this notice to him or her.

(Please note: we will not be able to send a copy of this notice to a representative if you did not have a representative on your prior claim, or if that person has been disqualified from appearing in Social Security matters.)

Date

Signature

Exhibit C

EXHIBIT C**Social Security Administration**
Important Information

SOCIAL SECURITY
[6401 SECURITY BLVD
BALTIMORE, MD 21235]
Date:
BNC:

John Doe
123 Main St
Anytown, MD 12345

NOTICE OF CLASS ACTION SETTLEMENT AND REQUEST FORM**Please Return The Enclosed Form Within 30 Days After You Get This Notice**

You are receiving this notice and request form because of a class action settlement in a lawsuit. The lawsuit alleged the Social Security Administration should not have relied on examination reports from Dr. Frank Chen. Plaintiffs alleged that Dr. Chen's reports were flawed in important ways and subject to complaints, and that he is no longer allowed to perform these examinations.

This notice is about your pending disability application or continuing disability review. Our records show that between January 1, 2007, and December 31, 2013, Dr. Chen examined you as part of this claim. Our records also show that your claim is either currently pending before an administrative law judge (ALJ) or has recently been decided by an ALJ, and you either still have time to appeal or have already done so.

As a result of this settlement, you are entitled to choose whether we consider this doctor's report when we decide your claim. You should return the attached request form indicating your preference within 30 days of the date you receive it, or, if your hearing has already been scheduled, no fewer than 5 days before the hearing date.

If You Have Not Had A Hearing Before An ALJ Yet

If you have not had your ALJ hearing yet, you should return the attached request form within 30 days of the date you receive this notice and tell us whether you want us to consider or ignore Dr. Chen's report. If your hearing has already been scheduled, you should return the attached request form no fewer than 5 days before the hearing date. If you tell us that you do not want us to consider Dr. Chen's report, then we will make a decision on your claim by considering all of the evidence in your record except for his report. The ALJ may also decide to send you for a new consultative examination with another doctor. If the ALJ decides that a new consultative examination report is necessary, you will receive a separate notice explaining this.

If you want to have the ALJ consider Dr. Chen's report, then the ALJ will consider it. The ALJ will also consider the reasons Dr. Chen was removed from the consultative examination panel. The ALJ should also consider whether ordering an additional consultative examination is appropriate. The ALJ should explain the weight, if any, he or she gives to Dr. Chen's report.

At your hearing, the ALJ will remind you of your right to decide whether we consider the doctor's report when we decide your claim.

If You Have Had A Hearing But Have Not Received An ALJ Decision Yet

If you have already had an ALJ hearing but have not gotten a decision yet, you should return the attached request form within 30 days of the date you receive this notice. Please tell us whether you want us to consider or ignore Dr. Chen's report when deciding your claim. If you tell us that you do not want us to consider his report, then we will make a decision on your claim by considering all of the evidence in your record except for that report. The ALJ may also decide to send you for a new consultative examination with another doctor. If the ALJ decides that a new consultative examination is necessary, you will receive a separate notice explaining this.

If You Have Already Received An ALJ Decision

If you have already received an ALJ decision on your claim, you should request that the Appeals Council review the ALJ's decision if you have not already done so. Remember that you have 60 days from the date you receive the ALJ's decision to request Appeals Council review. However, your time to request review can be extended if we find that you had good cause for not meeting this deadline.

If you did not have a chance to state your preference to the ALJ, once you request review, or if you have already requested review of the ALJ's decision, the Appeals Council will consider whether Dr. Chen's report was given any weight in the ALJ's decision. If the Appeals Council determines that the ALJ explicitly gave no weight to Dr. Chen's report, the Appeals Council will not grant review on the basis of the doctor's report (but may grant review on other bases, if warranted).

If the Appeals Council determines that the ALJ did not make it clear that no weight was given to Dr. Chen's report when deciding your claim, the Appeals Council will grant your request for review and send your claim to an ALJ for further consideration. If the Appeals Council sends your claim back to an ALJ, you will have the option to choose whether the ALJ considers Dr. Chen's report when deciding your claim on remand.

If You Have Or Want A Representative

You can have a friend, representative, or someone else help you with your claim. If a representative is helping you with your claim, you should contact that person to let him or her know about this notice. You may want to do so before returning the request form. If we have information about your representative in your file, we will send him or her a copy of this notice. That person's name will also be listed below.

If you want more information about having, getting, or appointing a representative, you may call our toll-free number or contact a Social Security office as shown below. You may also visit our website at www.ssa.gov/pubs/EN-05-10075.pdf to read "*Your Right to Representation*"

(Publication No. 05-1007bout 5). Be aware that a representative may charge a fee for his or her services.

If You Have Any Questions

If you have any questions about this notice and request form, you can contact [designated plaintiff's firm to be supplied by class counsel], the lawyers who brought the *Hart v. Colvin* lawsuit, No. 3:15-cv-623-JST (N.D. Cal.), by writing to them at [address to be supplied by class counsel], or calling them at [number to be supplied by class counsel]. You may also call [HO phone number to be supplied by SSA], or write this office. For your convenience, our address is on the first page of this notice.

Enclosure(s):

Hart v. Colvin Request Form

Return Envelope

cc:

[Representative of record]

John Doe
123 Main St
Anytown, MD 12345

***Hart v. Colvin* REQUEST FORM**

IMPORTANT

Return This Form Using the Enclosed Envelope Within 30 Days of Receiving It, Or No Fewer Than 5 Days Before A Scheduled Hearing

Please check below to indicate whether you want the ALJ to consider Dr. Chen's report when deciding your claim.

_____ Yes, I want the ALJ to consider Dr. Chen's report.

_____ No, I do not want the ALJ to consider Dr. Chen's report.

Date

Signature

Exhibit D

**Notice of Proposed Class Action Settlement and Fairness Hearing
Regarding Consultative Examinations by a Certain Doctor in
Social Security Disability Claims**

This proposed settlement may affect your rights if you were examined by Dr. Frank Chen between January 1, 2007, and December 31, 2013, in connection with your claim for Social Security Disability Insurance or Supplemental Security Income. You must have received an unfavorable or partially favorable decision on that claim, or had a continuing disability review where benefits were stopped.

What Is The Lawsuit About?

The lawsuit is called *Hart v. Colvin*, Civil Action No. 3:15-cv-00623-JST (N.D. Cal.). Plaintiffs said that the Social Security Administration should not have relied on consultative examination reports from this doctor when it denied disability claims or stopped benefits. This doctor examined people in the San Francisco Bay Area and in counties along the coast as far south as San Luis Obispo. Social Security denies any wrongdoing or liability. The parties are proposing to settle the lawsuit.

What Are The Terms Of The Proposed Settlement?

This notice contains only a summary of the proposed settlement. To fully understand the proposed settlement, you should read the entire proposed settlement agreement. The proposed settlement provides that:

1. If you are a class member with a closed disability claim or continuing disability review who was examined by this doctor between January 1, 2011, and December 31, 2013, you can have your case decided again if you were not receiving disability benefits as of October 14, 2015. If Social Security finds you disabled for the period covered by your original application or continuing disability review, Social Security will also give you the opportunity to show that you continued to be disabled after that period
2. If you are a class member with a closed disability claim or continuing disability review who was examined by this doctor between January 1, 2007, and December 31, 2010, and you are not receiving disability benefits as of October 14, 2015, you may be able to have your case decided again. To have your case decided again, you first have to file a new claim for current disability benefits and be found disabled and eligible for current disability benefits. If Social Security decides your case again and finds you disabled for the period covered by your original application or continuing disability review, Social Security will not give you the opportunity to show that you continued to be disabled after that period. You will not be able to appeal the decision that Social Security makes when it looks at your case again.
3. If you are a class member with an open claim or continuing disability review, you will have the chance to decide whether you want Social Security to consider this doctor's report when it makes a decision on your open claim or review.
4. Social Security will also provide other relief. This relief includes guidance to administrative law judges and Appeals Council adjudicators and a study of the processes through which Social Security monitors the California Disability

Determination Service Division's consultative examination provider process, under which Dr. Chen performed examinations.

5. As part of the settlement, lead counsel for class plaintiffs—Morrison & Foerster LLP—agreed to waive its fees for work done on this lawsuit. Morrison & Foerster's co-counsel, not-for-profit organizations called Justice in Aging and Legal Aid Society of San Mateo County, will be paid fees of \$490,000 for work done on this lawsuit.

How Will The Court Decide Whether To Approve The Proposed Settlement?

The Court will need to approve the proposed settlement before it becomes final.

The Court will hold a public hearing, called a fairness hearing, to decide if the proposed settlement is fair. The hearing will be held on _____, 2016 at _____, at the following address:

United States District Court
Northern District of California
450 Golden Gate Avenue, Courtroom 9 -19th Floor
San Francisco, California 94102.

What Can You Do If You Object To The Settlement Or Have Other Comments?

IF YOU AGREE with the proposed settlement, you do not have to do anything at this time. You have the right to attend the fairness hearing, at the time and place above.

IF YOU DISAGREE OR HAVE COMMENTS about the proposed settlement, you can write to the Court or ask to speak at the hearing. You must do this by writing to the Clerk of the Court, at the following mailing address:

Clerk of the Court
United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102.

Your written comments or request to speak at the fairness hearing must be postmarked by _____, 2016.

The Clerk will provide copies of written comments to the lawyers who brought the lawsuit and to the Social Security Administration by filing the comments on the court's electronic case filing system.

If your comments involve your health or other personal information, and you do not want such information to be widely available, you may ask the Court to keep your comments private by requesting that they be filed "_____." If you do this, your comments will be seen by the Court, the lawyers, and the Social Security Administration, but will not be made public. If you do not say that you want your comments "_____", they may be read, downloaded, or distributed by anyone who has an account with the Court's public access service. Do not include your social security number with your comments.

The Court will decide who gets to speak at the fairness hearing.

What Can You Do If You Have Questions?

If you have any questions about this lawsuit or about the proposed settlement, or want a copy of the proposed settlement, please contact the lawyers who brought the lawsuit at:

Hart Class Counsel
Justice in Aging
1330 Broadway, Suite 525
Oakland, CA 94612

Tel. (510) 663-1055

Exhibit E

Exhibit E

AIDS Legal Referral Panel
Alameda County Homeless Action Center
Bay Area Legal Aid
Bay Area Social Security Claimants Representatives
California Rural Legal Assistance, Inc.
Contra Costa Senior Legal Services
Disability Rights California
Disability Rights Education & Defense Fund, Inc.
East Bay Community Law Center
Law Foundation of Silicon Valley
Legal Aid of Marin
Legal Services for Seniors
Legal Services for Northern California
National Organization of Social Security Claimants Representatives
Positive Resource Center
Santa Clara County Asian Law Alliance
Senior Citizens Legal Services

Exhibit F

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

KEVIN HART, NINA SILVA-COLLINS,)
and LEE HARRIS, on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

v.)

CAROLYN W. COLVIN, Acting)
Commissioner of Social Security, in her)
official capacity,)

Defendant.)

Case No. 3:15-cv-00623-JST

**JOINT STIPULATION OF DISMISSAL
WITH PREJUDICE**

Hon. Jon S. Tigar

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiffs, Kevin Hart, Nina Silva-Collins, and Lee Harris, on behalf of themselves and all others similarly situated, including the Class to which reference is made in the Settlement Agreement approved in the captioned action [ECF No. __] and the members of that Class, and Defendant, Carolyn W. Colvin, Acting Commissioner of Social Security, in her official capacity, stipulate to the dismissal with prejudice of this action in its entirety subject to the following terms:

1. The dismissal with prejudice shall be effective three years from the date this Joint Stipulation of Dismissal is filed.
2. This Joint Stipulation of Dismissal incorporates the terms of the Settlement Agreement executed by the parties on [insert date] and finally approved by the Court on [insert date] [ECF No. __].

Dated: [month] [day], [year].

Respectfully submitted,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GERALD A. McINTYRE (SBN 181746)
gmcintyre@justiceinaging.org
JUSTICE IN AGING
3660 Wilshire Blvd., Suite 718
Los Angeles, CA 90010
Telephone: (213) 674-2900 / F: (213) 550-4001

ANNA RICH (SBN 230195)
arich@justiceinaging.org
TRINH PHAN (SBN 267288)
tphan@justiceinaging.org
JUSTICE IN AGING
1330 Broadway, Suite 525
Oakland, CA 94612
Telephone: (510) 663-1055 / F: (510) 663-1051

WILLIAM L. STERN (SBN 96105)
WStern@mofocom
CLAUDIA M. VETESI (SBN 233485)
CVetesi@mofocom
ROBERT T. PETRAGLIA (SBN 264849)
RPetraglia@mofocom
ELIZABETH BALASSONE (SBN 280563)
EBalassone@mofocom
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-7000 / F: (415) 268-7522

HOPE NAKAMURA (SBN 126901)
hnakamura@legalaidsmc.org
LEGAL AID SOCIETY OF SAN MATEO
COUNTY
330 Twin Dolphin Drive, Suite 123
Redwood City, CA 94065
Telephone: (650) 558-0915 / F: (650) 517-8973

KATHRYN LANG (SBN 204102)
klang@justiceinaging.org
JUSTICE IN AGING
1444 Eye Street NW, Suite 1100
Washington, DC 20005
Telephone: (202) 683-1997 / F: (202) 289-7224

Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

U.S. DEPARTMENT OF JUSTICE

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
JUDRY L. SUBAR
Assistant Director
Federal Programs Branch

M. ANDREW ZEE (CA Bar No. 272510)
United States Department of Justice
Civil Division, Federal Programs Branch
450 Golden Gate Avenue, Room 7-5395
San Francisco, CA 94102
Telephone: (415) 436-6646
Fax: (415) 436-6632
Email: m.andrew.zee@usdoj.gov

Attorneys for Defendant