

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  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARVIN DARNELL ORR,  
  
Plaintiff,  
  
v.  
  
CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
  
Defendant.

No. 2:14-cv-1251-EFB

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) finding that he was not eligible to receive the Supplemental Security Insurance (“SSI”) benefits that he was previously paid. The parties’ cross-motions for summary judgment are pending. For the reasons discussed below, plaintiff’s motion is denied and the Commissioner’s motion is granted.

I. BACKGROUND

Plaintiff was previously found to be eligible to receive SSI under Title XVI of the Social Security Act. Administrative Record (“AR”) 41. However, it was subsequently determined that he did not meet the resource limitations of the Act for entitlement to SSI. Specifically, Social Security Administration (“SSA”) concluded that plaintiff’s financial resources exceeded the amount permitted by the agency’s regulations due to plaintiff becoming the beneficiary of a special needs trust. AR at 108-109. Thus, on June 18, 2013, the SSA issued a Notice of

1 Overpayment, notifying plaintiff that he was not entitled to receive SSI for the months of  
2 December 2012 through June 2013 due to excessive resources. *Id.* at 80-88; *see* 20 C.F.R.  
3 § 416.1205 (providing limitation on resources for eligibility for SSI). Plaintiff was also informed  
4 that his monthly SSI payments would cease. AR at 99-109.

5 The SSA upheld its determination on reconsideration. *Id.* at 111-114. Plaintiff then  
6 requested a hearing, which was held before administrative law judge (“ALJ”) David Blum. *Id.*  
7 193-203. The ALJ issued a fully favorable decision, finding that plaintiff’s special needs trust  
8 met the Medicaid trust exception provided in 42 U.S.C. § 1396p<sup>1</sup> and was therefore not a  
9 countable resource. *Id.* at 41-43. However, the Appeals Council subsequently reopened  
10 plaintiff’s case, *id.* at 33-37, and, on June 17, 2014,<sup>2</sup> issued a decision finding that plaintiff’s  
11 special needs trust was not exempt from resource counting. *Id.* at 6-8. The Appeals Council  
12 concluded that the trust did not satisfy the Medicaid trust exception because (1) the trust could be  
13 terminated during plaintiff’s lifetime and the assets distributed to someone other than plaintiff and  
14 therefore was not for the sole benefit of the beneficiary, and (2) the language of the trust did “not  
15 specify that the State is the first payee upon termination of the trust.” *Id.* at 6-7.

16 Plaintiff now seeks review of the Appeals Council’s decision. ECF No. 1 at 1.

17 ////

18 ////

19 ////

20 ////

---

21 <sup>1</sup> 42 U.S.C. 1369p(d)(4)(A) and (C) set forth exceptions to the general rules that trust  
22 assets count as income and resources for purposes of Medicaid eligibility. These exceptions are  
23 also SSI exceptions to resource counting, but are still commonly referred to as Medicaid  
24 exceptions in the SSI context. *See* Program Operations Manual System (“POMS”) SI  
01120.203(A).

25 <sup>2</sup> The Appeals Council originally issued a decision finding the trust not exempt from  
26 resource counting on March 20, 2014. AR 30-32. On May 21, 2014, plaintiff timely filed in this  
27 court her complaint seeking review of the March 20 decision. ECF No. 1. On June 17, 2014,  
28 after plaintiff initiated this action, the Appeals Council reissued its decision, again finding that the  
trust was not exempt. AR 6-8. The only difference between the two decisions is that the latter  
acknowledges that plaintiff’s representative submitted a letter briefing the issues before the  
Appeals Council.

1 II. LEGAL STANDARDS

2 The Commissioner's decision will be upheld if the findings of fact are supported by  
3 substantial evidence in the record and the proper legal standards were applied. *Schneider v.*  
4 *Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000); *Morgan v. Comm'r of the*  
5 *Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th  
6 Cir. 1999).

7 The findings of the Commissioner as to any fact, if supported by substantial evidence, are  
8 conclusive. *See Miller v. Heckler*, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is  
9 more than a mere scintilla, but less than a preponderance. *Saelee v. Chater*, 94 F.3d 520, 521 (9th  
10 Cir. 1996). "It means such evidence as a reasonable mind might accept as adequate to support a  
11 conclusion."<sup>3</sup> *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v.*  
12 *N.L.R.B.*, 305 U.S. 197, 229 (1938)).

13 III. ANALYSIS

14 Plaintiff challenges the Commissioner's determination that his special needs trust did not  
15 satisfy the exception to resource limitation provided in 42 U.S.C. 1396p(d)(4)(A). ECF No. 17.

16 SSI is needs-based program. To be eligible for benefits, a claimant must satisfy a  
17 financial need requirement. A married individual cannot have more than \$3,000 in countable  
18 resources. 42 U.S.C. § 1382(a)(3); 20 C.F.R. § 416.1205(c). Countable resources are defined as  
19 "cash or other liquid assets or any real or personal property that an individual (or spouse, if any)  
20 owns and could convert to cash to be used for his or her support and maintenance. 20 C.F.R.  
21 § 416.1201. Generally, a trust is a countable resource for determining eligibility for SSI.

22 ////

23 ////

24 ////

25 ////

26

---

27 <sup>3</sup> Although the issue before the court differs from the traditional case seeking review of  
28 the denial of benefits, the parties do not dispute that the substantial evidence standard applies to  
the instant dispute.

1 42 U.S.C. § 1382b(e); *see also* Program Operations Manual System (“POMS”) SI  
2 01120.201(A)(1), (B)(1).<sup>4</sup> However, there is an exception to this rule for irrevocable special  
3 needs trusts that meet certain criteria. 42 U.S.C. § 1396p(d)(4)(A); POMS SI 01120.203.

4 A trust is not considered a countable resource for purposes of SSI eligibility if it a “trust  
5 containing the assets of an individual under age 65 who is disabled . . . and which is established  
6 for the benefit of such individual by a parent, grandparent, legal guardian, or court if the State  
7 will receive all amounts remaining in the trust upon the death of such individual up to an amount  
8 equal to the total medical assistance paid on behalf of the individual under a State plan . . . .” 42  
9 U.S.C. § 1396p(d)(4)(A); *see also* POMS SI 01120.203.

10 Neither party disputes that plaintiff is a disabled individual under the age of 65 and that  
11 the trust was established by a court. The parties, however, disagree over whether the special  
12 needs trust provides that upon termination of the trust the State will receive all amounts remaining  
13 in the trust up to an amount equal to the total medical assistance paid on behalf of plaintiff under  
14 a State plan, and whether the trust was create for the sole benefit of plaintiff. ECF No. 17 at 4-7;  
15 ECF No. 23 at 2. Plaintiff also contends that if the court finds the trust is not excepted from  
16 resource counting, he should be granted leave to amend the trust to align with the requirements of  
17 42 U.S.C. § 1396p(d)(4)(A). ECF No. 17 at 7.

18 A. State Medical Assistance Reimbursement Requirement

19 For a trust to be exempt from resource counting, it must provide that “the State will  
20 receive all amounts remaining in the trust upon the death of such individual up to an amount  
21 equal to the total medical assistance paid on behalf of the individual under a State plan . . . .” 42  
22 U.S.C. § 1396p(d)(4)(A). The agency’s POMS interpreting this statute states that:

23 ////

---

24  
25 <sup>4</sup> The SSA’s POMS is an internal agency document used by the agency’s employees to  
26 process claims. “POMS may be ‘entitled to respect’ . . . to the extent it provides a persuasive  
27 interpretation of an ambiguous regulation, but it does not impose judicially enforceable duties on  
28 either this court of the ALJ.” *Carillo-Yeras v. Astrue*, 671 F.3d 731, 735 (9th Cir. 2011)  
(citations and some quotations omitted); *see also Christensen v. Harris Cnty.*, 529 U.S. 576  
(2000) (an agency manual’s interpretations of a statute can be relied on “only to the extent that  
those interpretations have the ‘power to persuade.’”).

1 To qualify for the special needs trust exception, the trust must  
2 contain specific language that provides that upon the death of the  
3 individual, the State(s) will receive all amounts remaining in the  
4 trust, up to an amount equal to the total amount of medical  
5 assistance paid on behalf of the individual under the State Medicaid  
6 plan(s). The State(s) must be listed as the first payee and have  
7 priority over payment of other debts and administrative expenses

8 . . . .

9 POMS SI 01120.203(B)(1)(h).

10 The Appeals Council’s decision found that the trust language did not comply with POMS  
11 SI 01120.203(B)(1)(h), quoting language from Article Three, Paragraph D (“Paragraph D”) of the  
12 trust. AR 7. That section of the trust provides that “[o]n the death of the beneficiary or other  
13 termination of this trust, the trustee may in the trustee’s discretion, pay any death taxes  
14 attributable to any part of the trust estate or otherwise, last illness and funeral expenses, and  
15 expenses related to administration or distribution of the trust estate if, in the trustee’s opinion, the  
16 other satisfactory provisions have not been made for the payment of these expenses.” *Id.* at 55,  
17 153, 154.

18 Plaintiff does not challenge the Appeals Council’s finding that the State must be the first  
19 payee upon termination of the trust to be exempt from resource counting under 42 U.S.C.  
20 § 1396p(d)(4)(A). Rather, plaintiff contends that when viewing the trust instrument in its  
21 entirety, the only reasonable interpretation is that upon termination of the trust the trustee is  
22 required to reimburse the Medicaid program prior to making any other distributions. ECF No. 17  
23 at 6.

24 Plaintiff’s argument relies on Article Three, Paragraph B of the trust document. That  
25 section states that it is the intent of the trustor that the trust “shall not be construed as an available  
26 resource to the beneficiary under” 42 U.S.C. § 1369p(d)(4)(A). *Id.* at 54-55. That paragraph  
27 further provides that “the trustee is directed on the death of the beneficiary, or other termination  
28 of the trust, to satisfy from the balance of the trust assets all proper State claims for  
reimbursement for medical assistance paid on behalf of the beneficiary under a State plan, up to  
an amount equal to the total medical assistance paid.” *Id.* at 55.

////

1 Plaintiff argues that because in Paragraph B the trustee is “directed” to reimburse the State  
2 for medical costs but in Paragraph D all payments are at the trustee’s “discretion,” the State, as a  
3 mandatory payee, has priority over subsequent discretionary payees. ECF No. 17 at 6. Plaintiff  
4 contends that a different interpretation would render meaningless the intention that the trust fall  
5 within the exception delineated in 42 U.S.C. § 1396p(d)(4)(A).<sup>5</sup> *Id.*

6 The problem with plaintiff’s argument is that the trust does permit the trustee, upon  
7 plaintiff’s death, to pay other parties before making payments to the state for reimbursement of  
8 medical assistance. While the trust does direct the trustee upon termination of the trust to  
9 reimburse the state for medical assistance paid on plaintiff’s behalf, it simply fails to state that  
10 that those payments must be made prior to any other distributions. As observed by the Appeals  
11 Council, the trust permits the trustee to “pay any death taxes attributable to any part of the trust  
12 estate or otherwise, last illness and funeral expenses related to administration or distribution of  
13 the trust estate . . . .” AR 7, 153, 154. The trust does not state that these discretionary payments  
14 may be made only after payments are made under Paragraph B. Instead, the language of the trust  
15 authorizes the trustee, in his discretion, to pay other expenses prior to reimbursing the state.  
16 Thus, the trust does not require that “the State will receive *all amounts* remaining in the trust  
17 upon the death of such individual up to an amount equal to the total medical assistance paid on  
18 behalf of the individual under a State plan.” 42 U.S.C. § 1396p(d)(4)(A) (emphasis added).

19 Accordingly, the Appeals Council’s finding that the trust does not meet the requirements  
20 of 42 U.S.C. 1396p is supported by substantial evidence in the record and is not clearly erroneous  
21 or contrary to law. Therefore, it must be upheld.

22 ////

---

23  
24 <sup>5</sup> Plaintiff also claims that “California Probate Code section 3605(f) makes it clear that  
25 Medicaid claims are to be paid and treated as preferred claims prior to any other distribution.”  
26 ECF No. 17 at 6. Section 3605(f) provides that the California Department of Health Services has  
27 four months from the notice of the trusts termination to make a claim with the trustee, and where  
28 the trust assets are distributed prior to the expiration of the four month period, the department  
“has a claim against the distributes . . . .” Cal. Prob. Code § 3605 (f). Although this section  
creates a cause of action to obtain reimbursement from distributes, nothing in this section  
prohibits a trust from granting the trustee authority to make payments to another before  
reimbursing the state. Thus, this statute provides little assistance to plaintiff’s position.

1           B. Sole benefit

2           The Appeals Council also found that plaintiff's trust did not satisfy the exception provided  
3 in 42 U.S.C. § 1396p(d)(4)(A) because it was not established for the sole benefit of plaintiff. AR  
4 6-7.

5           To meet the exception, a special needs trust must be "established for the benefit of [the  
6 disabled individual]." 42 U.S.C. § 1396p(d)(4)(A). The SSA has interpreted this language to  
7 require the trust be established for the sole benefit of the disabled individual. POMS SI  
8 01120.203(B)(1)(e). A trust is established for the sole benefit of the individual "if the trust  
9 benefits no one but that individual, whether at the time the trust is established or at any time for  
10 the remainder of the individual's life." POMS SI 01120.201(F)(2)(a). Any provisions that "allow  
11 for termination of the trust prior to the individual's death and payment of corpus to another  
12 individual or entity (other than the State(s) or another creditor for payment for goods or services  
13 provided to the individual), will result in disqualification for the special needs trust exception."  
14 *Id.*; *see also* POMS SI 01120.199(F)(1) ("[A]fter reimbursement to the State(s), all remaining  
15 funds are disbursed to the trust beneficiary.") (emphasis omitted).

16           As the Appeals Council explained, the trust permits the trustee to terminate the trust  
17 during plaintiff's lifetime and distribute remaining trust assets to someone other than plaintiff.  
18 Article Three, Paragraph C provides as follows: "Despite any contrary provisions in this trust, if  
19 the existence of this trust has the effect of rendering the beneficiary ineligible for SSI, . . . the  
20 trustee may, but need not, terminate this trust in whole or in part." AR 55. The trust provides  
21 that if it is terminated during plaintiff's lifetime, the trustee shall distribute the trust assets "as the  
22 beneficiary may direct by exercise of a special power of appointment to any one or more persons  
23 or entities . . . ." *Id.* at 54-55. It also states that "[i]t is the intent of [the] trust that if it terminates  
24 during the beneficiary's lifetime . . . the distributee shall conserve, manage, and distribute the  
25 proceeds of the former trust estate for the benefit of the former beneficiary . . . . This request is  
26 precatory, not mandatory." *Id.* at 55

27           Plaintiff does not, indeed cannot, challenge the Appeals Council's finding that this  
28 language permits early termination and distribution of assets to individuals other than plaintiff.

1 Instead, plaintiff argues that the provision permitting early termination is void and unenforceable  
2 because it is inconsistent with California Probate Code section 3604. ECF No. 17 at 6-7.

3 Plaintiff contends that section “3604 provides the statutory authority for terminating a special  
4 needs trust prior to the death of the beneficiary” and that the termination provision in trust is  
5 “void as not being a termination provision permitted under California law.” *Id.* at 7.

6 Section 3604 governs the establishment and maintenance for a special needs trust. Under  
7 that section, “a special needs trust may be established and continued only if the court determines  
8 that the incompetent person has a disability that substantially impairs the individual’s ability to  
9 care for himself or herself and constitutes a substantial handicap, the incompetent person is likely  
10 to have special needs that will not be met without the trust, and the money to be paid to the trust  
11 does not exceed the amount that appears reasonably necessary to meet the special needs of the  
12 incompetent person.” *Shewry v. Arnold*, 125 Cal. App. 186, 194 (2004) (citing Cal. Prob. Code  
13 3604(b)). If at any time any of these requirements are no longer satisfied and there is a claim for  
14 Medicaid reimbursement, the appropriate entity seeking reimbursement “may petition the court  
15 for an order terminating the trust.” Cal. Prob. Code 3604(c). While this section permits an  
16 agency seeking Medicaid reimbursement to petition a court for an order terminating a trust that no  
17 longer satisfies the minimum requirements for a special needs trust, it does not--as plaintiff  
18 contends--purport to provide the sole statutory basis for terminating a trust during a beneficiary’s  
19 lifetime, and plaintiff cites to no authority to support that proposition. Furthermore, plaintiff’s  
20 argument in that regard is beside the point.

21 Even if the trust’s early termination provision renders it void and unenforceable under  
22 California Probate Code section 3604, that does not cure the trust’s defect and somehow cause it  
23 to qualify under the exception to the resource limitations under the Social Security Act. Plaintiff  
24 still must amend the trust to omit the offending provision. *See* POMS SI 01120.227(D)(2)  
25 (requiring a trust to meet the exception requirements of 42 U.S.C. § 1396p(d)(4)(A), “without  
26 regard to the presence of a null and void clause. Trust provisions that fail to meet the  
27 [requirements] must be amended or removed, in order not to count as a resource.”).

28 ////



1           Accordingly, the Appeals Council finding that plaintiff's special needs trust did not meet  
2 the exception to resource counting provided in 42 U.S.C. § 1396p(d)(4)(A) is supported by  
3 substantial evidence and is not clearly erroneous or contrary to law.

4           C. Leave to Amend the Special Needs Trust

5           Plaintiff requests that if the court determines that his special needs trust is a countable  
6 resource, the matter be remanded to the SSA with instructions to allow plaintiff 90 days to amend  
7 the trust to satisfy the requirements of the Medicaid trust exception. ECF No. 17 at 7-9.

8           SSA's POMS, which the Commissioner relies on in this case, provides that where a trust  
9 was found excepted from resource counting under 42 U.S.C. § 1396p(d)(4)(A), but later found to  
10 not satisfy the exception's requirements, the trust "shall continue to be excepted from resource  
11 counting, provided the trust is amended to conform with the requirement of [42 U.S.C.  
12 § 1396p(d)(4)(A)] within 90 days. POMS SI 01120.199(A)(2). The 90 day period begins to run  
13 the day the recipient or his representative is informed that the trust contains provisions that must  
14 be amended to remain in compliance with the exception requirements. *Id.* If the trust fails to  
15 meet the Medicaid exception requirements after the 90-day period, the trust will be counted as a  
16 resource. *Id.*

17           On September 5, 2013, an ALJ determined that plaintiff's trust satisfied the requirements  
18 of the Medicaid reimbursement exception and was therefore not a countable resource. AR 38-43.  
19 The decision provided that if plaintiff did not appeal the ALJ's decision "and the Appeals Council  
20 does not" review it on its own, the decision would become final. *Id.* at 39; *see* 20 CFR  
21 416.1469(a) ("Anytime within 60 days after the date of a decision or dismissal that is subject to  
22 review under this section, the Appeals Council may decide on its own motion to review the action  
23 that was taken in your case."). The Appeals Council did not issue a Notice of Review within 60  
24 days of the ALJ's decision. However, on February 18, 2014, the Appeals Council notified  
25 plaintiff that his case was being reopened based on its determination that the ALJ erred in finding  
26 that his trust was exempt from resource counting. *Id.* at 33-37.

27           In response to that notification, plaintiff timely submitted a letter to the Appeals Council,  
28 dated March 19, 2014, arguing that his trust satisfies the requirements of section 1396p(d)(4)(A)

1 and, alternatively, that “the trustee should be afforded a 90 day grace period in which to amend  
2 the trust” to comply with the requirements of the Medicaid reimbursement exception. *Id.* at 20-  
3 26. The letter further provided that the “trustee in this instance is requesting that the court modify  
4 the trust . . . and it is expected that the court will do so within 90 days of the Notice of Appeals  
5 Council Action . . . .” *Id.* at 26.

6 Despite plaintiff’s request for 90 days to amend his special needs trust to conform with the  
7 Medicaid reimbursement exception, on March 20, 2014, the Appeals Council issued its decision  
8 finding that plaintiff’s trust was a countable resource. *Id.* at 27-32. That request was ignored.  
9 Not only did the decision not address plaintiff’s request, but it erroneously stated that no  
10 comment or evidence was received in response to the notice reopening plaintiff’s case. The  
11 decision also notified plaintiff that it was the final decision of the Commissioner in his case, and  
12 that if he disagreed with the decision his recourse was to file a civil action. *Id.* at 27.

13 On March 25, 2014, plaintiff submitted a letter to the Appeals Council, notifying the  
14 Appeals Council that he timely submitted a letter on April 19, and requesting that it reconsider its  
15 decision. With no response from the Appeals Council, plaintiff was left with little choice but to  
16 initiate this action on May 21, 2014. ECF No. 1; *see* 42 U.S.C. 405(g) (requiring a civil action  
17 challenging the Commissioner’s final decision to be initiated within 60 days of the decision).  
18 Thereafter, the Appeals Council reissued its decision, acknowledging plaintiff’s April 19 letter,  
19 but again finding that plaintiff’s trust was a countable resource. AR 3-8. Like the prior decision,  
20 this decision made no mention of plaintiff’s request to amend the trust. *Id.*

21 Thus, the record establishes that plaintiff’s special needs trust was determined to be  
22 exempt from resource counting by the ALJ on September 5, 2013. *Id.* at 41-43. More than five  
23 months passed before the Appeals Council notified plaintiff that it was reopening his case based  
24 on its determination that the ALJ erred in finding that his trust satisfied the Medicaid  
25 reimbursement exception. *Id.* at 33-37. Notwithstanding the Appeals Council finding that the  
26 ALJ had erred, the trust was “to be excepted from resource counting, provided the trust [was]  
27 amended to conform with the requirements of [42 U.S.C. § 1396p(d)(4)(A)] within 90 days.”  
28 POMS SI 01120.199(A)(2). On April 19, 2014, plaintiff timely notified the Appeals Council of

1 his intent to modify the trust to conform with the requirements of the Medicaid reimbursement  
2 exception. However, the following day the Appeals Council issued its decision, which it labeled  
3 as the final decision of the Commissioner, finding that the trust did not satisfy the exception and  
4 was therefore a countable resource. The Appeals Council's actions deprived plaintiff of the  
5 opportunity to amend his trust to satisfy the requirements of section 1396p(d)(4)(A), an  
6 opportunity that is authorized by the SSA's own internal policy manual which the Commissioner  
7 urges the court to apply in this case.

8 The Commissioner argues that remand is inappropriate as the 90-day amendment period  
9 expired in May 2014, and plaintiff failed to provide any evidence that he or his representative  
10 amended the trust. ECF No. 23 at 7. This argument ignores entirely the procedural history of  
11 plaintiff's administrative appeals and, more specifically, the Appeals Council's March 20, 2014  
12 decision. In that decision the Appeals Council determined that plaintiff's trust did not satisfy the  
13 Medicaid exception and was therefore a countable resource, notified plaintiff that the decision  
14 was the final decision of the Commissioner, and also informed plaintiff that his remaining  
15 recourse was to seek review of that decision in this court. *Id.* at 27-32. Thus, the SSA, despite  
16 having notice that of plaintiff's intention to amend the trust, completely deprived plaintiff of his  
17 opportunity to bring his trust into compliance with 42 U.S.C. § 1396p(d)(4)(A).

18 Accordingly, the court finds that remand is appropriate to provide plaintiff an opportunity  
19 to amend his trust as contemplated by POMS SI 01120.199(A)(2).<sup>6</sup>

20 **IV. CONCLUSION**

21 Accordingly, it is hereby ORDERED that:

- 22 1. Plaintiff's motion for summary judgment is granted;
- 23 2. The Commissioner's cross-motion for summary judgment is denied;
- 24 3. The matter is remanded for further proceedings consistent with this order; and

25 //

26 \_\_\_\_\_  
27 <sup>6</sup> In a footnote, the Commissioner notes that it "is unclear whether Plaintiff would have  
28 the ability to amend the trust now that its assets are exhausted." ECF No. 23. At 8 n.4. That issue  
is not before this court. Furthermore, whether the trust can be amended is a matter better suited  
for resolution by the state court.

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

4. The Clerk is directed to enter judgment in plaintiff's favor.

DATED: March 30, 2016.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE