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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION

12 DENISE NADER,)	Case No.: C17-06568 KAW
13 Plaintiff,)	
14 v.)	STIPULATION RE REMAND; [PROPOSED]
15 ERIC D. HARGAN,)	ORDER AS MODIFIED
16 Defendant.)	
17)	
18)	
19)	

21 The parties, through their counsel, hereby stipulate as follows:

22 On November 13, 2017, Plaintiff filed this action challenging an Administrative Law Judge’s
 23 (“ALJ”) decision in ALJ No. 1-854995573, Docket No. M-12-1555. ECF No. 1; ECF 1-1, at 26. The
 24 ALJ found that Medicare is entitled to a repayment of \$187,802.15 from an award that Plaintiff’s husband
 25 received. *Id.* Plaintiff contends that the decision is incorrect because the Alameda County Superior Court
 26 upheld an arbitration award that assigned a lower reimbursement amount to Medicare, and Medicare was
 27 represented by counsel during those proceedings. *Id.*

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1 On July 30, 2018, the government filed the Administrative Record for this action. ECF No. 36.
2 Unfortunately, it does not contain a transcript of the administrative hearing before the ALJ. Despite
3 diligent efforts, the agency cannot obtain a functioning copy of the audio from that hearing.

4 Plaintiff contends that the transcript of the administrative hearing is vital to her challenge that the
5 underlying ALJ decision in this matter is not supported by substantial evidence. Because the Court’s
6 review is generally limited to the administrative record, 5 U.S.C. § 706, Plaintiff contends that she will be
7 severely prejudiced if she is unable to cite to that hearing.

8 The Social Security Act provides the sole avenue for administrative and judicial review of
9 Medicare claims. *Heckler v. Ringer*, 466 U.S. 602, 614 (1984). Section 1395ff(b)(1)(A) of the Social
10 Security Act reads:

11 [A]ny individual dissatisfied with any initial determination shall be
12 entitled to reconsideration of the determination, and. . . a hearing
13 thereon by the Secretary [and] to judicial review of the Secretary's
14 final decision after such hearing as is provided in section 405(g) of
15 this title.

16 42 U.S.C. § 1395ff(b)(1)(A).

17 The Court may “for good cause shown before the [Secretary] files the [Secretary’s] answer,
18 remand the case to the [Secretary] for further action by the [Secretary], and it may at any time order
19 additional evidence to be taken before the [Secretary]. . . .” 42 U.S.C. § 405(g). That statute “permits the
20 district court to remand without making any substantive rulings as to the correctness of the [Secretary’s]
21 decision.” *Raitport v. Callahan*, 183 F.3d 101, 104 (2d Cir. 1999); *See Prime Healthcare Services—San*
22 *Dimas LLC v. Price*, C 18-8099-JAK, Dkt No. 47.

23 Further, in the course of preparing an opening brief for the hearing of this matter before the District
24 Court, Plaintiff has determined that facts which have developed since 2012 in connection with the funds
25 which Medicare claims must be paid to it are not part of the administrative record. Plaintiff believes that
26 these facts should be brought to the attention of the Medicare Appeals Council in a re-adjudication before
27 an administrative law judge of the issues in this matter. In the event that a decision is again rendered
28 against Plaintiff, the administrative record will then be complete and up to date and will permit a full and
29 fair hearing before this Court.

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1 The parties thus agree, pursuant to 42 U.S.C. § 405(g) and 42 C.F.R. § 405.1138, that (1) this
2 matter be remanded to the Secretary with direction to remand the matter to be re-adjudicated before the
3 Administrative Law Judge, and (2) each party shall bear her own fees and costs with respect to the remand
4 of this action.

5 IT IS SO STIPULATED.

6
7 DATED: October 29, 2018

Respectfully submitted,

8 ALEX G. TSE
United States Attorney

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10 /s/ David Pereda
DAVID PEREDA
Assistant United States Attorney

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12
13 LAW OFFICE OF WILLIAM CAMPISI JR.

14 /s/* William Campisi Jr.
WILLIAM CAMPISI JR.

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16 PURSUANT TO STIPULATION, IT IS SO ORDERED. This matter is remanded to the Secretary
17 of the U.S. Department of Health and Human Services with direction to remand the matter to be re-
18 adjudicated before the Administrative Law Judge. Each party shall bear her own fees and costs with
19 respect to the remand of this action; and it is further
20

21 ORDERED, that this matter is stayed and parties are to file a status report by May 3, 2019.

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23
24 Dated: 11/2/18

25 Kandis Westmore
KANDIS A. WESTMORE
UNITED STATES MAGISTRATE JUDGE

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28 STIPULATION; [PROPOSED] ORDER
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*CERTIFICATION

Pursuant to Civil L.R. 5-1(i)(3), I, David Pereda, hereby attest that Mr. Campisi concurred in the filing of this document.