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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AMERICAN COUNCIL OF THE BLIND, a
District of Columbia non-profit corporation,
SCARLETT MILES, MARVELENA
QUESADA, ARLENE DOHERTY, ALICE
MARJORIE DONOVAN, BILLIE JEAN
KEITH, GEORGE P. SMITH, MARY ANN
ALEXANDER, AND LAURA M. RUSSELL
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

MICHAEL ASTRUE, Commissioner of
Social Security Administration, in his official
capacity, and SOCIAL SECURITY
ADMINISTRATION,

Defendants.

No. C 05-4696 WHA

CLASS ACTION

**ORDER AMENDING
COMPLIANCE SCHEDULE
AND VACATING HEARING**

In this class action involving visually impaired social security beneficiaries and their rights under Section 504 of the Rehabilitation Act to receive communications from the Social Security Administration (SSA) in Braille and Microsoft Word formats, defendants move to amend the implementation schedule governing the relief ordered by the Court. Plaintiffs filed a statement of non-opposition, as well as a joint stipulation outlining the parties' agreement on this matter (Dkt. No. 375). For the reasons set forth below, defendants' motion is **GRANTED**.

On October 20, 2009, following a bench trial held in September 2009, the undersigned entered judgment in favor of plaintiffs under Section 504 of the Rehabilitation Act, requiring SSA to provide blind and visually impaired beneficiaries, recipients, and representative payees in the

1 Title II and Title XVI benefits programs with the option of receiving notices and communications
2 in Braille and navigable Microsoft Word CD formats (Dkt. No. 323). Various implementation
3 milestones, as well as a final compliance deadline of April 15, 2010, were set forth therein.

4 On December 24, 2009, defendants moved to amend the implementation schedule based
5 upon a comprehensive implementation plan developed within SSA (Dkt. No. 348). The basis for
6 the motion was that (1) the original implementation deadlines were established without reference
7 to the inner-workings of SSA, and (2) to implement the judgment properly, a staggered
8 implementation would be necessary. While the motion was pending, the parties reached an
9 agreement on the revised schedule, and plaintiffs withdrew their opposition to the motion (Dkt.
10 No. 366). In an order issued on January 22, 2010, defendants' motion was granted and the
11 compliance schedule was amended (Dkt. No. 368). The January 22 order found that adopting
12 defendants' comprehensive plan — which divided implementation into two stages, and was
13 designed to ensure greater manageability and reliability of the notice-generating process — would
14 be in the best interests of class members.

15 While the original compliance schedule set a final deadline of April 15, 2010, for *all* SSA
16 notices to be available in Braille and Microsoft Word format, the amended plan only required
17 partial compliance with this deadline. Specifically, the revised schedule retained the April 15
18 deadline for notices and communications that were *centrally generated* by SSA, which accounted
19 for approximately 70% of all notices and communications mailed each year. Notices and
20 communications that were *locally generated* at field offices and other locations, however, were
21 given extended, staggered deadlines. The reasoning behind this separation between centrally
22 generated and locally generated notices was based upon the logical decision to generate *all*
23 special-format SSA notices from one central location. In other words, once the central location
24 was equipped to generate and mail notices in Braille and Microsoft Word format, the local offices
25 would be connected to the “central hub,” and their notices would *also* print from the central
26 location. The benefits of this approach were two-fold: (1) increased manageability of having only
27 one central printing location, and (2) savings in costs by not having to purchase special printing
28 equipment and train personnel at each local office.

1 On March 25, 2010, defendants filed the instant motion, seeking to amend only the April
2 15 deadline established for centrally generated notices (Dkt. No. 372). Defendants seek a five-
3 week extension to May 24, 2010, which they claim is necessary due to a combination of two
4 factors: (1) closures due to record snow-fall in Washington, D.C. in early February 2010 (causing
5 approximately two weeks of delay) and (2) difficulty in converting notices to Braille and
6 navigable Microsoft Word format, due to inaccurate estimates of the complexity of SSA notices
7 (causing the rest of the delay) (Parry Decl. ¶¶ 15–21). Related to this extension, SSA requests
8 that the date after which “no social security benefits may be reduced or terminated to any
9 individual shown in the SSA records to be blind or visually impaired . . . unless . . . the method of
10 notice, if any, selected by said person was followed,” be extended to May 24, and the date by
11 which SSA must “file a certificate of compliance” with the above obligations be extended to May
12 26 (Br. 10; Dkt. No. 323 at 40–41).

13 SSA also requests additional time to provide “Record Specification” notices in the new
14 format. These notices — which were not discussed in any of the previous motions — did not fall
15 within SSA’s special notice policy prior to the date of judgment, are generated by an entirely
16 separate process than all other notices mentioned above (indeed, they are generated by third-party
17 vendors), and are “strictly informational and non-decisional” (Parry Decl. ¶ 38). Finally, SSA
18 informed the Court that it had decided to grant requests under 45 C.F.R. § 85.51 by beneficiaries
19 for notices and communications in large print and audio CDs.

20 Plaintiffs’ filed a statement of non-opposition and a joint stipulation on April 1, outlining
21 additional provisions agreed upon by the parties (Dkt. No. 375). In their statement, plaintiffs
22 consented to the relief requested based upon SSA’s decision to implement the following:

- 23 1. In order to inform relevant SSA staff of its decision to grant requests made under
24 45 C.F.R. § 85.51 for large print and audio CDs, SSA will either issue a new
25 Emergency Message or revise its existing Emergency Message by June 15, 2010.
- 26 2. SSA will provide a schedule with specific dates for revising all relevant agency
27 documents to conform to its decision to grant requests for large print and audio
28 CDs in the June 15, 2010 monitoring report submitted to plaintiffs.

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3. SSA will provide a time schedule with specific dates for actually providing the large print and audio CD formats that will be provided to class members in the September 15, 2010 monitoring report.

* * *

Having reviewed defendant’s motion and attached declarations, this order finds that good cause supports the requested extension of the April 15 deadline for centrally generated notices, and that the requested extensions are both reasonable and in the best interests of the class.

First, with respect to the April 15 implementation deadline, this order accepts defendants’ proffered reasons why implementation is now five weeks behind schedule. As explained in the prior order, defendants have been diligent in meeting all other deadlines, and have substantially complied with the terms of the judgment. Moreover, this order finds that the interests of absent class members would not be protected if defendants were forced to cut short the already abbreviated testing and implementation period. Nobody will benefit if the updated system is plagued with malfunctions and errors due to an unreasonably rushed deployment. As such, the request to extend this deadline to May 24, 2010, is **GRANTED**.

Second, with respect to the April 15 deadline after which “no social security benefits may be reduced or terminated to any individual shown in the SSA records to be blind or visually impaired . . . unless . . . the method of notice, if any, selected by said person was followed,” it makes little sense to leave this deadline in place while the compliance deadline has been extended. Moreover, any beneficiaries who receive benefits to which they are not entitled would generally be required to repay the amount to the government anyway. 42 U.S.C. 404(a)(A)(1), 1383(b)(1)(A); 20 C.F.R. 404.502, 416.560, 416.570. As such, the request to extend this deadline to May 24, 2010, is also **GRANTED**.

Third, given that the above deadlines have been extended to May 24, 2010, the request to extend the deadline by which SSA must “file a certificate of compliance under oath stating in detail what was done to comply” with these obligations is **GRANTED**. SSA must file this certificate of compliance by **NOON ON MAY 26, 2010**.

1 *Fourth*, this order adopts SSA’s proposed schedule governing the production of Record
 2 Specification notices in Braille and Microsoft Word format. This schedule is shown below (Br.
 3 14; Parry Decl. ¶ 39):

4	RECORD SPECIFICATION NOTICE CATEGORY	FREQUENCY OF NOTICES	IMPLEMENTATION DEADLINE
5	Representative Payee	Twice per month	July 26, 2010
6	Representative Payee Final Accounting	Twice per month (beginning in August 2010)	July 26, 2010
7	Payee Fee Adjustment	Annually, in November	November 1, 2010
8	Step Parent	Annually, in November	November 1, 2010
9	National Change of Address	Four times per year	February 1, 2011
10	Good News #2.75	Monthly	February 1, 2011
11	Beneficiary Recontact	Monthly	February 1, 2011
12	CPS	Daily	May 1, 2011
13	TALC Mail	Daily	May 1, 2011
14	Mid-Year Mailer	Annually, in July	July 1, 2011
15	Continuing Disability Review Mailer	Four times per year	September 1, 2011
16	Title II COLA	Annually, in November	November 20, 2011

17 Unlike centrally generated and locally generated notices, these notices are not generated
 18 by SSA. Rather, they are produced by third-party vendors. Additionally, these notices are purely
 19 informational and do not affect a beneficiary’s entitlement to benefits. Given these two factors,
 20 the schedule proposed by SSA for these particular notice types is reasonable and in the best
 21 interests of the class, because (1) the information contained within these notices do not affect
 22 entitlement to benefits, and (2) delaying the implementation of these notices will allow SSA to
 23 focus on ensuring that centrally generated notices — which account for 70% of all notices, and
 24 may affect entitlement — are available in Braille and Microsoft Word format by May 24, 2010.
 25 As such, SSA’s request to amend the compliance schedule to add these *new* dates for Record
 26 Specification notices is **GRANTED**.
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For the reasons set forth above, SSA's motion to amend the compliance schedule is
GRANTED. The hearing on this motion scheduled for April 8, 2010, is **VACATED.**

IT IS SO ORDERED.

Dated: April 2, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE