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United States District Court
For the Northern District of California

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**

INTRODUCTION

In this class action involving blind and visually impaired social security beneficiaries and their rights under Section 504 of the Rehabilitation Act to receive notices and 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. Class counsel do not oppose defendants' proposed amendments (Dkt. No. 366 at 2). For the reasons set forth below, defendants' motion is **GRANTED**.

STATEMENT

1
2 On October 20, 2009, following a bench trial held in September 2009, the undersigned
3 entered judgment in favor of plaintiffs under Section 504 of the Rehabilitation Act, requiring SSA
4 to provide blind and visually impaired beneficiaries, recipients, and representative payees in the
5 Title II and Title XVI benefits programs with the option of receiving notices and communications
6 in Braille and navigable Microsoft Word CD formats (Dkt. No. 323). Various implementation
7 milestones, as well as a final compliance deadline of April 15, 2010, were set forth therein.

8 Since the October 20 judgment was entered, SSA has successfully met with all
9 implementation milestones set forth therein. As an example, SSA provided timely notice to blind
10 and visually impaired social security recipients and payees by the deadline of December 31, 2009,
11 despite the last-minute addition of “fraud prevention” language by the undersigned. Additionally,
12 both class counsel and SSA have worked diligently together to develop an agreed-upon
13 implementation plan, and completed this process without requiring intervention by the
14 undersigned. As part of this jointly approved implementation plan, SSA appointed Mr. John
15 Carlo as project manager for the entire implementation process (Carlo Decl. ¶¶ 1, 2). Mr. Carlo
16 promptly formed an executive-level steering committee to meet on a daily basis to identify
17 implementation problems, refine strategies, and solve any problems that arise (*id.* ¶ 4). Over the
18 past two months, this committee has focused on developing (and implementing) a plan to meet
19 the undersigned’s final deadline of April 15, 2010. As a direct result of this plan, SSA has
20 accomplished the following (*id.* ¶¶ 6–15; Parry Decl. ¶ 11; Reply 2):

- 21 1. Established several methods, including internet and intranet
22 applications and a special toll-free number, to collect alternative
notice preferences of class members;
- 23 2. Began training of SSA employees through internal “emergency
24 message” broadcasts and interactive video training;
- 25 3. Developed a special notice option management tracking tool for the
telephone call notice option;
- 26 4. Designed posters to be placed in SSA offices apprising the public of
27 new notice formats and specifically revised its civil rights poster to
28 include provisions regarding reasonable accommodation rights
under Section 504 of the Rehabilitation Act;

1 that the most efficient and prudent course of action is to simply connect these local offices with
 2 the upgraded Central Print system, rather than extensively revamp each local office with new
 3 equipment. This course of action, however, requires that the implementation process for centrally
 4 generated notices be completed first (*id.* ¶¶ 5, 15). Once the modifications to Central Print are
 5 completed, the local systems will then be retooled to allow the transmission of locally generated
 6 notices to Central Print for distribution to social security recipients (*id.* ¶ 13).

7 Table 1 below summarizes the phased implementation plan proposed by SSA.

PROCESS	COMPLETION DATE
Development of the Special Notice Option Architecture	April 15, 2010
Production of Centrally Generated Notices in Braille and Microsoft Word CD Formats	April 15, 2010
Production of Locally Generated Notices (TNA, DPS, DGS, AURORA)	September 30, 2010
Production of Locally Generated Notices (DDS)	Rolling Implementation: October 1, 2010, to December 31, 2011
TABLE 1	

16 In the schedule proposed above, TNA, DPS, DGS, and AURORA each represent different
 17 document printing and production systems currently in use by SSA field offices. DDS, as
 18 mentioned earlier, refers to State Disability Determination Services offices.

19 In their motion, SSA sets forth detailed explanations as to why their proposed timeline is
 20 the most efficient and sensible course of action. Having reviewed defendants’ supporting
 21 declarations, the undersigned agrees. From both a cost and manageability standpoint, the creation
 22 of a central hub where *all* special notices are generated — and to which all field offices will be
 23 connected — is a superior alternative to installing specialized printing equipment in offices across
 24 the country (and training employees and technicians to use and maintain them) (*id.* ¶ 3). For class
 25 members, this would ensure that future modifications or corrections to special notice formats,
 26 such as upgrading the version of Microsoft Word, could be done on a single system, rather than
 27 thousands of separate systems. As such, the extension of deadlines for the implementation of
 28 locally generated notices appears justified and reasonable.

1 As for the “rolling implementation” proposed for the approximately 8 million notices sent
2 through DDS offices, this is apparently due to the fact that DDS offices are creatures of state
3 governments (Payne Decl ¶ 3). As such, each office uses its own data system to generate notices.
4 Because of this lack of uniformity, each DDS office will require individual modification to (1)
5 store the new special notice preferences, and (2) connect to the Central Print system (*id.* ¶¶ 3, 4).
6 These implementation efforts would also need to follow the completion of the implementation
7 process for centrally generated notices (*id.* ¶ 8). Additionally, since SSA cannot modify the
8 various document systems used by each individual DDS office at the same time (the vendor being
9 used to perform this implementation does not have the staff to do this), the “rolling
10 implementation” plan reflects this reality (*ibid.*). Since DDS notices account for only 6% of all
11 notices generated by SSA, the undersigned will accept the proposed schedule pertaining to the
12 implementation of these notices.

13 On a separate but related matter, because of the substantial extensions requested by SSA,
14 the parties propose implementing an interim notice system whereby SSA will send a Braille or
15 Microsoft Word cover letter to any recipient who has requested either of these special notice
16 formats whenever notice of *any* potential adverse action (*i.e.*, a reduction, suspension, or
17 termination of benefits) is mailed to a class member by standard print after April 15, 2010. This
18 interim measure is directed towards the following requirement set forth in the findings of fact and
19 conclusions of law: “After April 16, 2010, no social security benefits may be reduced or
20 terminated to any individual shown in the SSA records to be blind or visually impaired . . . unless
21 such person was first provided with the notice prescribed above and the method of notice, if any,
22 selected by said person was followed” (Dkt. No. 323 at 40–41). SSA asks the undersigned to
23 allow this interim measure to satisfy — but only until the deadlines set forth in Table 1 are
24 reached — the requirement that “the method of notice, if any, selected by said person was
25 followed.” After the proposed deadlines have passed, the *entire* notice (and not just a cover
26 letter) would have to be in the requested format for this requirement to be satisfied. Class counsel
27 do not oppose this interim measure proposal (Dkt. No. 366 at 2).
28

1 On this issue, the undersigned agrees with the parties that this is the best compromise
2 between the competing interests at stake. On one hand, preventing SSA from reducing or
3 terminating benefits to blind or visually impaired recipients unless the person was first provided
4 with their preferred notice format is aimed directly at protecting the interests of class members
5 and ensuring that the judgment has its intended effect. On the other hand, given the fact that only
6 70% of notices will be available in Braille and Microsoft Word by April 16, 2010, strict
7 enforcement of this limitation during the extension period may result in a staggering amount of
8 overpaid benefits. The interim notice measure represents the parties' prudent compromise on
9 these equally legitimate concerns.

10 CONCLUSION

11 For the reasons set forth above, and having considered all briefs and declarations
12 submitted by the parties, IT IS HEREBY ORDERED:


- 13 1. The final compliance deadline of April 15, 2010 is **AMENDED**. The deadlines set
14 forth in Table 1 of this order now govern the relief ordered by the Court.
- 15 2. The interim measure detailed by SSA in their reply brief and described above,
16 whereby a standardized cover letter in Braille or Microsoft Word format
17 (depending upon the recipient's preference) is sent to the recipient whenever SSA
18 sends *any* notice of a potential adverse action by means of standard print after
19 April 15, 2010, is **APPROVED**. This approval is temporary in that it applies *only* to
20 the period between April 15, 2010, and the applicable implementation deadline set
21 forth in Table 1.
- 22 3. For the period between April 15, 2010, and the applicable implementation deadline
23 set forth in Table 1, the interim measure will satisfy the requirement set forth in the
24 findings of fact and conclusions of law that "the method of notice, if any, selected
25 by said person was followed." To be clear, once a particular deadline has passed,
26 the interim measure will *not* satisfy this requirement. Thus, for locally generated
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1 notices (non-DDS), the interim measure will *not* satisfy this requirement after the
2 September 30 deadline has passed.

3 4. The hearing on this motion scheduled for January 28, 2010, is **VACATED**.

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5 **IT IS SO ORDERED.**

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7 Dated: January 22, 2010.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE