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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**ROBERT SMITH, et al.,**  
Plaintiffs,  
  
v.  
  
**LOUIS W. SULLIVAN, M.D.,**  
Secretary of Health and  
Human Services, et al.  
Defendants.

Civil Action No.  
S-83-1609 EJC-EM  
  
STIPULATION AND ORDER

STIPULATION AND ORDER

IT IS STIPULATED by plaintiffs and defendants, through their respective counsel, that relief to the class members not yet afforded relief, defined in the Court's Orders dated December 1, 1989, and October 3, 1990, as all persons who, between October 28, 1983 and April 8, 1984, resided in the Ninth Circuit

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and who had an application for disability insurance benefits or Supplemental Security Income payments denied or had their benefits terminated based upon a finding that they did not have a severe impairment, shall be implemented as follows:

1. The Social Security Administration (SSA) shall, by means of its data processing systems, immediately commence identification of the names, Social Security numbers and last known addresses of all potential class members. Such identification shall be completed within 75 days of the date of this Order.

2. Within 120 days of the date of this Order, SSA will issue instructions to all SSA adjudicators for screening and readjudicating the claims of class members and will simultaneously provide copies of all instructions and directives to class counsel.

3. Upon completion of the identification procedure described in paragraph 1 above, and within 10 days of the issuance of instructions described in paragraph 2 above, SSA shall send a notice by first class mail to each potential class member so identified, at his or her last known address. This notice will advise potential class members of possible entitlement to a redetermination of their claims and will further state that the potential class member must return the enclosed pre-addressed postage-paid card or form within 60 days from the date of receipt of the notice in order to receive consideration for relief.

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4. If a person who receives a notice pursuant to paragraph  
3 requests class membership more than 60 days after receiving  
such notice, the Secretary shall determine whether that person  
has "good cause" for the late request, as defined in 20 C.F.R.  
§§ 404.911, 416.1411. Denials of class membership for untimely  
requests shall be reviewable in the same manner as any other  
class membership denial, in accordance with the procedures set  
forth in paragraphs 8 and 9 of this stipulation.

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5. In the event that a notice mailed pursuant to paragraph  
3 is returned as undeliverable, SSA will attempt to obtain  
updated addresses by providing a computer tape to state  
departments of social services in states and other jurisdictions  
located in the Ninth Circuit, with a request for the performance  
by the latter of a computerized match with public assistance,  
food stamp and/or other relevant records. SSA will use its best  
efforts to effect, subject to the requirements of the Privacy  
Act, as amended by the Computer Matching and Privacy Protection  
Act, 5 U.S.C. § 552a, computer matches with any compatible,  
current and archival state data systems. Such matches are  
restricted to data available under income and maintenance  
programs. This attempt to deliver otherwise undeliverable  
notices to potential class members is conditioned upon the  
willingness and ability of the various state agencies to  
participate in a matching process.

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6. SSA will thereafter mail a second notice to all  
potential class members for whom updated addresses are obtained.

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7. For those individuals who timely respond to a notice described in either paragraph 3 or 5 above, SSA will screen the applicable claims folders or other relevant records to determine if they are class members. Those individuals who have been determined not to be class members will be notified in writing of such determination and will be further informed of their right to a review thereof, in accordance with the procedures set forth in paragraphs 8 and 9 of this stipulation.

8. Individuals who disagree with a finding that they do not meet the class membership criteria may contact or write class counsel for additional review. Class counsel may, within 60 days of the date of the class determination notice, notify in writing the Office of the General Counsel, Department of Health and Human Services, Social Security Division, Social Security Administration, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21225, and state that he or she wishes to review the individual's claims file. Within 30 days of class counsel's written request to review the file, SSA will make available that individual's claims file or other relevant documents on which the class membership decision may have been based at a designated SSA field office in the Ninth Circuit, or other mutually acceptable location, and will notify class counsel in writing. Such files will be available for review by class counsel for 30 days. At the expiration of the 30 days, if class counsel has still not reviewed the file, it shall be assumed that review is no longer

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desired, and SSA's non-class membership determination shall become final and not subject to further review.

9. If class counsel's review of the file establishes that there is a dispute as to whether the individual is a class member, class counsel will again notify the Office of the General Counsel. Both parties will then attempt to resolve the dispute. In the event the parties are unable to settle the dispute, class counsel may submit any unresolved dispute to the Court for final resolution by proper motion made within 30 days of the date of written reaffirmation, by the Office of the General Counsel, of the prior non-class membership determination. Failure of class counsel to request a judicial determination within the aforesaid 30 day period shall render SSA's non-class membership determination final and not subject to further review.

10. The claims of individuals determined to be class members will be reviewed and, if determined to be eligible, class members will be paid from:

- (a) the sixth month following the date of alleged onset of disability, or 12 months prior to the date of filing, whichever is later, in cases where benefits under title II were denied;
- (b) the date of application, in cases where benefits under title XVI were denied; or
- (c) the date of the termination of benefits.

11. The Secretary shall redetermine the applications of all persons found to be class members using the Secretary's present

1 severity regulations. Where, upon such review, an individual's  
2 impairments are considered to have been severe (either  
3 individually or in combination), the Secretary shall evaluate the  
4 individual's claim in accordance with as many steps as are needed  
5 of the sequential evaluation process set forth at 20 C.F.R.  
6 §§ 404.1520, 416.920. All class members who were denied at any  
7 level of the administrative appeals process shall receive a new  
8 readjudication at the reconsideration stage of the administrative  
9 process. The claims of class members shall be redetermined to  
10 ensure that the decision upon which class membership is based was  
11 correct based on the evidence of record. The Secretary will  
12 consider new evidence, but only as it pertains to the period  
13 covered by the decision rendered during the time period at issue  
14 in the instant case. For consideration of a disability beginning  
15 subsequent to the decision upon which class membership is based,  
16 class members are required to have filed a new application. All  
17 class members will receive notices informing them of the decision  
18 made concerning their claims following readjudication. Class  
19 members shall retain all rights to administrative and judicial  
20 review of decisions made as a consequence of this Order.

21 12. At the option of SSA, class members with subsequent  
22 disability claims active and simultaneously pending at any  
23 administrative level of review at the time the class claim is  
24 being evaluated may have all other claims covered by this  
25 stipulation consolidated with the current claim.  
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13. Class members having individual actions pending in federal court with respect to the unfavorable administrative decision resulting in class membership may elect either to have their claim remanded for administrative review (with the Court retaining jurisdiction to review final decisions) or to have the action proceed in federal court pursuant to, and subject to the limitations contained in, 42 U.S.C. § 405(g). Nothing in this stipulation shall be construed to avoid or preclude the ~~net~~ net ~~indicate~~ effect of a final court decision where a class member decides to proceed with his or her individual action in federal court or to authorize the relitigation in such individual actions of issues previously determined by the United States Court of Appeals for the Ninth Circuit in the instant case. Nothing in this Order shall be construed as precluding members of the class from obtaining greater relief on alternative grounds.

14. SSA will monitor the implementation of this order and will provide to this Court and plaintiffs' counsel, on a quarterly basis, reports containing the following information:

- (a) the number of persons notified initially of potential class membership;
- (b) the number of persons who responded to the notice;
- (c) the number of persons responding who were found not to be class members;
- (d) the number of persons responding determined to be class members;

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(e) the number of class members found eligible for disability benefits upon readjudication by the DDS;

(f) the number of class members whose applications were denied upon readjudication by the DDS.

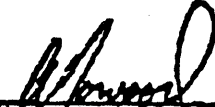
Upon application by either party this reporting requirement may be altered or amended.

15. The terms set forth in this stipulation shall be in full settlement and satisfaction of any and all claims and demands, of whatever nature, the plaintiffs had or may hereafter acquire against the defendants, and any of their agencies, agents, servants, employees or instrumentalities on account of and with respect to the incidents, claims or circumstances giving rise to and/or alleged in the pleadings filed herein..

16. This stipulation shall not be construed as an admission by defendants that their position in this litigation was not substantially justified. Nor shall this stipulation be construed as an admission of liability for attorneys' fees on the part of the defendants, their agents or employees. This Agreement shall not serve as precedent in any other litigation.

Respectfully submitted,

Dated: 6/17/91

  
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ANTHONY W. MORROD  
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Dated: June 18, 1991

Carole F. Grossman  
CAROLE F. GROSSMAN  
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SO ORDERED:

DATED: 6/21/91

Edward J. Garcia  
EDWARD J. GARCIA  
United States District Judge

