

**IN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE**

RONALD JANTZ,

Complainant,

v.

MICHAEL J. ASTRUE,
Commissioner,
Social Security Administration,

Agency.

EEOC Case No.: 531-2006-00276X

Agency No: HQ-O6-2518-SSA

**COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY BRIEF
IN SUPPORT OF HIS MOTION FOR CLASS CERTIFICATION**

Complainant Ronald Jantz ("Complainant"), individually and on behalf of all others similarly situated, by and through his counsel of record, respectfully submits this motion for leave to file a reply brief in support of his Motion For Class Certification. A reply brief is necessary to address certain arguments raised by the Agency in its opposition, and will assist the EEOC in facilitating a resolution of this motion. Complainant's reply brief is attached hereto as Exhibit 1.

The Agency has stated that it will not oppose this Motion. Specifically, on February 15, 2008, the parties submitted a joint letter to the EEOC enclosing their proposed stipulated class certification schedule. In that letter, the parties wrote:

The parties have discussed whether the schedule should accommodate the filing of a reply brief by the Class Agent in support of class certification, and have agreed to postpone that issue until such time that the Agency files its opposition brief. *The Agency has agreed that it will not oppose a request for leave to file such a reply brief, if the Class Agent deems it necessary.*

See Letter dated February 15, 2008, attached hereto as Exhibit 2. Therefore, this Motion is unopposed.

WHEREFORE, Complainant respectfully requests that the EEOC grant this Motion for leave to file a reply brief in support of his Motion For Class Certification.

Dated: August 1, 2008

Respectfully submitted,

BERGER & MONTAGUE, P.C.
BROWN, GOLDSTEIN & LEVY, LLP
DISABILITY RIGHTS ADVOCATES
SCHNEIDER WALLACE
COTTRELL BRAYTON KONECKY, LLP



Attorneys for Complainant

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2008, a copy of Complainant's Motion for Leave to File a Reply Brief in Support of His Motion For Class Certification, a proposed Reply Brief, and a proposed Order were sent by UPS Overnight Delivery, to:

Clary Simmonds, Esq.
Social Security Administration
Office of the General Counsel
6401 Security Boulevard
Room 542 Altmeyer
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Daniel F. Goldstein

EXHIBIT 1

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**IN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE**

RONALD JANTZ, individually and on behalf of all others similarly situated,)	
)	
Complainant,)	
)	
v.)	
)	EEOC No. 531-2006-00276X
MICHAEL J. ASTRUE,)	
Commissioner,)	Agency No: HQ-06-2518-SSA
Social Security Administration,)	
)	Judge: David Norken
Agency)	
)	
)	

**COMPLAINANT'S REPLY TO AGENCY'S OPPOSITION TO
MOTION FOR CLASS CERTIFICATION**

I. INTRODUCTION

The Agency's Opposition does not contest critical facts warranting class certification and instead focuses prematurely on numerous merits-related issues. Of greatest import, SSA does not dispute that it uses uniform personnel policies that permit the Agency to exercise unchecked subjective discretion in granting promotions. That discretion has enabled widespread discrimination, as evidenced by what SSA's statistician, Dr. Lisa Harpe, characterizes as "a statistically significant disparity in competitive promotions between people with targeted disabilities and those without."¹

SSA's use of unfettered discretion in promotion decisions, its failure to take adequate steps to address the low promotion rates of targeted disabled employees (TDEs) within the Agency, and the statistics presented by Complainant's experts present common questions that fulfill the commonality requirement for class certification. SSA tries to argue, strangely, that a general policy of unfettered discretion is not a specific agency practice susceptible to class treatment. *Opposition* at 2. The opposite is true: if leaving those who would discriminate free to do so without explanation is not addressed on a class basis where statistical evidence shows its endemic effect, then the easiest and simplest refuge for discrimination – unbounded discretion – is altogether beyond the reach of the law. Indeed, *Taylor v. Soc. Sec. Admin.*,² determined that class treatment is warranted for claims of promotion discrimination alleged to arise from this very practice. In its vociferous argument that an official regime of unfettered discretion cannot support class certification, SSA entirely ignores *Taylor*, discussed at length in Complainant's

¹ Deposition of Lisa Harpe, Ph.D. ("Harpe Dep.") 70:3-5, attached as Exhibit V to the Declaration of Daniel Goldstein, Esq., which is appended to Complainant's Motion for Class Certification ("Goldstein Decl.").

² EEOC Appeal No. 07A50060 (May 5, 2006).

opening brief, much less attempts to distinguish or take issue with it – a clear admission that SSA knows of no reason this Court should not follow *Taylor*.

Lacking substantive arguments, SSA stoops to *ad hominem* attacks, alleging that Complainant has tried to sandbag the Agency by attaching heretofore unrevealed declarations of putative class members to its Motion for Class Certification. *Opposition* at 22-24. At the same time, SSA does not tell the Court that it has engaged in precisely the conduct it condemns: SSA's Exhibits 7, 8, 9, 11, 12, 13, 14, 15, 17, 18 and their authors make their maiden appearance as attachments to SSA's Opposition.

SSA's attacks on Complainant's experts are also completely unfounded and, in any event, go to the merits of this case rather than to the considerations governing class certification. SSA unashamedly lambastes Complainant's experts for relying on supposedly flawed and incomplete data that the Agency itself produced. *Opposition* at 25-26. The accuracy of SSA's assertion, however, is academic at best, since SSA's expert, with access to more comprehensive information (that was not disclosed to Complainant), found statistically significant disparities between the promotion rates of TDEs and non-TDEs that indicate widespread discrimination.

Even though, as detailed in the opening brief, Complainant had limited discovery, the existing record fully satisfies the requirements for class certification. SSA's attacks on typicality, numerosity and other requirements for class certification rise little above a schoolyard "is not." Sometimes, these arguments circle back on themselves, such as SSA simultaneously lauding itself as the employer of choice for TDEs (based on a magazine claim whose methodology is unknown), while asserting that it does not employ a sufficient number of qualified TDEs to support the existence of a class. *Opposition* at 10-12.

This case in every respect epitomizes the circumstances for which class action procedures were developed — one in which a clearly defined group suffers from the same circumstances (the consequences of granting managers unbounded discretion to discriminate without accountability) and from the defendant’s same failure to act (SSA’s failure to carry out its affirmative action mandates).

II. SSA’S ATTACKS ON CLASS CERTIFICATION MISS THE MARK.

A. CLASS CLAIMS OF DISABILITY DISCRIMINATION ARE NOT RESTRICTED TO FACIALLY DISCRIMINATORY POLICIES.

SSA erroneously claims that “group based” claims of disability discrimination can *only* be brought under 42 U.S.C § 12112(b)(6) and can *only* challenge facially discriminatory policies. *Opposition* at 8. The cases the Agency cites are to the contrary. In *Glover v. United States Postal Serv.*, EEOC Appeal No. 01A04428 (April 23, 2001), the Commission certified a class of disabled Postal Service employees under a class-wide disparate treatment theory. In *Cyncar v. United States Postal Serv.*, EEOC Appeal No. 0720030111 (February 1, 2007), the Commission certified a class of persons with disabilities with reasonable accommodation claims. Neither case held that complainants may only challenge facially discriminatory policies under the Rehabilitation Act.

The plain language of the Rehabilitation Act makes clear that Section 501 plaintiffs have available to them all the “powers, remedies, and procedures set forth” in Title VII of the Civil Rights Act. 29 U.S.C. § 794(a); *see also* 42 U.S.C. § 2000e-5; 42 U.S.C. § 12117(a). This includes pattern and practice class action claims of employment discrimination under disparate impact and disparate treatment theories, such as the denial of promotion claims that are raised here. *See Teamsters v. U.S.*, 431 U.S. 324 (1977). Section 505 permits this court to fashion “an equitable or affirmative action remedy...or other appropriate relief” that would, despite the Agency’s protests, be consistent with merit promotion principles. *Cf.* 29 U.S.C. § 794(a) and 5 C.F.R. § 335.103(b)(4).

B. COMPLAINT HAS MET THE REQUIREMENTS FOR MAINTAINING A CLASS ACTION AGAINST A FEDERAL AGENCY EMPLOYER.

1. Numerosity

To establish numerosity, a class must be sufficiently numerous to make a consolidated complaint by the members of the class impractical. *See, Mastren v. U.S. Postal Serv.*, EEOC Appeal No. 01922994 (October 27, 1993). No set number of class members is required to meet the numerosity prerequisite, and each case must be evaluated individually. *Id.*

The narrower class proposed by Complainant includes current and former SSA employees with targeted disabilities who, on or after August 22, 2003, applied for promotion and made a Best Qualified List (BQL), but were denied equal promotional opportunities. According to data produced by SSA, TDEs applied for promotion and made the BQL 2,545 times during the relevant time period.³ SSA does not directly dispute that Complainant has established numerosity for this class of individuals.

Oddly, SSA challenges the numerosity of the broader proposed class. This class includes current and former SSA employees with targeted disabilities who have been denied equal promotional opportunities since August 22, 2003 and is unarguably in the thousands. SSA's annual reports to the EEOC on the number of TDEs in its workforce show that in FY 2004, there were between 1422 and 1469 TDEs; in FY 2005 there were between 1350 and 1422 TDEs; in FY 2006 there were between 1311 and 1370 TDEs; and in FY 2007 there were between 1284 and 1311 TDEs.⁴ Without question, the numbers are sufficiently large to make joinder impracticable.

³ Declaration of Richard Drogin, Ph.D. ("Drogin Decl.") ¶4 and Table 1, attached as Exhibit G to the Goldstein Decl.

⁴ *SSA MD-715 Report FY 2004*, Part E "Employees with Targeted Disabilities," *SSA MD-715 Report FY 2005*, Part E "Employees with Targeted Disabilities," *SSA MD-715 Report FY 2006*,

Contrary to Commission precedent, the Agency claims, *Opposition* at 12, that numerosity cannot be met when all members of a protected group are alleged to be class members. *See Basu v. Dep't of Agriculture*, EEOC Appeal No. 01A10660 (June 27, 2001) (“There can be no dispute that the members of the class consisting of all Asian agency employees would be too numerous to join as individual parties to a consolidated action...members of such a class number in excess of 1800.”); *Madrid v. Dep't of Army*, EEOC Appeal No. 01981636 (July 17, 2001) (finding numerosity satisfied where eligible class members included 1400 current Hispanic employees who applied for but did not receive promotions or who were denied opportunities to receive promotions.).

2. Commonality

EEOC regulations require Complainant to demonstrate questions of fact common to the class. 29 CFR § 1614.204(a)(ii). One common question of law or fact is sufficient. *National Organization for Women, Inc. v. Scheidler*, 172 F.R.D. 351, 360 (N.D.Ill. 1997). Complainant’s motion and supporting evidence show a number of common factual and legal issues, including SSA’s standardized nationwide promotion process, which permits decision makers to exercise unfettered discretion. Agency declarants confirm that SSA maintains and uses a centralized personnel system. *See, e.g., Decl. of Charles Lewis*, ¶1 (“Our office is responsible for supporting the development and implementation of automated payroll, time and attendance, and personnel systems on a nationwide basis”).⁵ Moreover, Complainant’s challenge to specific provisions in

Part E “Employees with Targeted Disabilities,” *SSA MD-715 Report FY 2007*, Part E

“Employees with Targeted Disabilities,” attached as Exhibits J, K, L, M to the Goldstein Decl.

⁵ The degree of centralization of SSA’s personnel policies is a merits issue that has no bearing on class certification. *See Orłowski v. Domminck’s Finer Foods, Inc.*, 172 F.R.D. 370, 373 (N.D.Ill.1997) (holding that the extent to which promotional decisions are centralized is disputed and that to resolve the dispute would be to address the merits, which is inappropriate at class certification); *Meiresonne v. Marriott Corp.*, 124 F.R.D. 619, 622 (N.D.Ill.1989) (defendant’s

the Collective Bargaining Agreement and the Management Officials Promotion Plan is further evidence of commonality. *See Anderson v. Boeing Co.*, 222 F.R.D. 521, 536 (N.D.Okla.2004) (“Plaintiffs’ side by side comparison of the operative sections of the collective bargaining agreements governing hourly workers...provides strong evidence they were all subject to common practices and policies.”).

SSA’s promotion practices cause statistically significant disparities in promotion rates for TDEs at multiple grade levels. After analyzing the promotion rate of TDEs from the BQL, Dr. Drogin concluded that the chance that the promotional outcomes were the product of random fluctuation is one in ten trillion.⁶ Dr. Seberhagen, using the 80% rule taken from the EEOC’s Uniform Guidelines on Employee Selection Procedures, found a statistically significant “pattern of adverse impact against employees with targeted disabilities in the SSA’s noncompetitive and competitive promotion selection procedures for promotions to Grades 7-13.”⁷ These statistical analyses raise a strong inference of class wide discrimination and also present additional common questions of fact and law.

SSA hopes to explain away the disparities in promotion rates by pointing to hypothetical “functional limitations” of TDEs. However, the BQL process, which screens out unqualified applicants,⁸ makes this proposed class analogous to class claims brought on behalf of racial minorities or women where variations in abilities are expected. In any case, the qualifications of any one individual for a particular job is a question that goes to the merits of this case and should thus be evaluated at a later stage of this proceeding. *Glover v. U.S. Postal Serv.*, EEOC No.

challenges to accuracy of plaintiff’s characterization of centralized decision-making process inappropriate because “clearly merits-oriented”).

⁶ Drogin Decl., ¶8, attached as Exhibit G to the Goldstein Decl.

⁷ *Impact of Employee Selection Procedures on Employees with Targeted Disabilities at the Social Security Administration* at 6, attached as Exhibit C to the Goldstein Decl.

⁸ Deposition of Mark Anderson [3/14/07] 79:8-9, attached as Exhibit N to the Goldstein Decl.

01A04428 (rejecting argument that “putative class is impractical because such a class would require a review of each potential class member to determine whether or not s/he is an individual with a disability who sought a promotion for which s/he is qualified, but was not selected for promotion.”).

Complainant has also identified a common agency culture that permits biases against TDEs to persist and negatively impact their promotional opportunities. The existing record includes voluminous evidence that TDEs at SSA confront discriminatory attitudes and are subject to stereotyping and bias.⁹ Indeed, TDEs are the “harbingers of success or failure for the Federal Government’s efforts with respect to all individuals with disabilities”¹⁰ *precisely because* of the heightened bias they face in the workplace. For this historically disadvantaged group, SSA is failing in its obligation to be a “model employer.” The Agency’s failure to comply with its affirmative action obligations under Section 501 of the Rehabilitation Act creates additional common issues of fact and law. SSA addresses Section 501 of the Rehabilitation Act only insofar as it relates to nonaffirmative action employment discrimination. *Opposition* at 5-6.

The existence of a uniform promotion system combined with an agency culture that permits discriminatory biases to flourish is a well-established basis for class certification in employment discrimination class actions, particularly when combined with probative statistical disparities such as those that are present here. The Agency completely ignores extensive Commission and federal court precedent certifying class complaints on this basis. *See Class Cert. Brief* at 38-40.

⁹ Declaration of Peter Blanck, Ph.D., J.D. (“Blanck Decl.”) 15-17, 19-23, attached as Exhibit P to the Goldstein Decl.

¹⁰ Statement of Carlton M. Hadden, Director of EEOC’s Office of Federal Operation, available at <http://www.eeoc.gov/abouteeoc/meetings/6-28-06/hadden.html>, attached as Exhibit T to the Goldstein Decl.

SSA also argues that the class may not aggregate disabilities. *Opposition* at 8. Not only has Complainant brought his claim on behalf of all TDEs, but the EEOC tracks TDEs as a group to determine compliance with its “model employer” regulations and the Rehabilitation Act.¹¹ SSA is currently conducting a barrier analysis of TDEs as a group.¹² Even Dr. Baldwin, SSA’s expert, agrees that it makes sense to study whether TDEs are experiencing discrimination as a group.¹³

The unremarkable fact that potential class members are employed in different work components, at different grade levels, and have varying levels of expertise and training, does not defeat commonality. *See Moten v. Federal Energy Regulatory Commission*, EEOC Request No. 05960233 (April 8, 1997) (recognizing that Commission has certified class complaints challenging promotional policies when selection criteria are not uniform and the positions involve varying skills and duties).

Under these circumstances, the superiority of a class action cannot be gainsaid. Absent class certification, the court would face hundreds of adjudications on behalf of persons with a variety of disabilities in which the data developed by Complainant’s statisticians and Dr. Blanck, SSA’s subjective promotion policy, and the absence of affirmative action would be re-litigated in an infinite loop.

2. Typicality

The Agency’s focus on Mr. Jantz’s individual complaint and his reports of investigation to attack his typicality is misplaced. The relevant inquiry concerns the issues Mr. Jantz raises as

¹¹ 29 U.S.C. § 791(b), *et seq.*; 29 C.F.R. § 1614.203(b).

¹² *SSA MD-715 Report FY 2006*, at 17, attached as Exhibit L to the Goldstein Decl; *see also* *SSA Opposition* at 35-36.

¹³ Deposition of Marjorie Baldwin (“Baldwin Dep.”) 42:6-12; 95:1-9, attached as Exhibit NN to the Goldstein Decl.

part of his motion for class certification, not the issues raised in his individual complaint. Complainant's motion makes clear that the only claims that he seeks to certify are denial of promotion claims based on his status as a TDE. Mr. Jantz asserts a pattern and practice claim under disparate treatment and disparate impact theories. These are the types of claims that have been designated for decades as warranting class treatment. *See Teamsters v. U.S.*, 431 U.S. 324 (1977).

SSA's ploy of attaching "happy camper" declarations to its opposition is routinely recognized by the courts as insufficient to defeat class certification. *See Joseph v. GMC*, 109 F.R.D. 635, 640 (D.Col.1986) ("The mere fact that some class members may not wish to become members of the class or pursue claims against GM does not indicate that their interests are antagonistic to those of the named plaintiffs or the remainder of the class, so that class action treatment would be inappropriate."); *Jordan v. Swindall*, 105 F.R.D. 45 (D.Ala.1985) ("Evidence that some female police officers do not believe they are victims of sex discrimination is beside the point of class certification").

3. Adequacy

SSA does not dispute the adequacy of Complainant or his counsel to fairly and adequately protect the interests of the putative class.

III. THE AGENCY'S ATTACKS ON COMPLAINANT'S EXPERTS ARE SPECIOUS.

The bulk of SSA's attacks on Complainant's experts attempt to dispute the merits of their opinions, and present the type of statistical dueling that is irrelevant at class certification, where the issue is whether common issues of fact and law predominate. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974) ("We find nothing in either the language or history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in

order to determine whether it may be maintained as a class action.”). Complainant’s expert reports are based on sound, scientifically accepted methodologies. Together with the anecdotal and factual evidence Complainant has presented, these reports make a threshold showing of class-wide issues of fact and law. “It would be inappropriate...to look beyond the methodology and critique the prospective results of its application to a complete set of data. A party and its experts should not be expected to have fully evaluated all data at the preliminary stage of class certification.” *Midwestern Machinery v. Northwest Airlines, Inc.*, 211 F.R.D. 562, 566 (D. Minn. 2001); *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1179 -1182 (9th Cir. 2007) (upholding district court’s decision to rely on social framework and statistical analyses in granting class certification and noting that “it is enough that [the expert] presented properly-analyzed, scientifically reliable evidence tending to show that a common question of fact...exists with respect to all members of the class.”).

- A. COMPLAINTANT’S STATISTICAL EXPERTS COULD ONLY ANALYZE DATA PRODUCED BY SSA; IF THAT DATA IS UNRELIABLE, IT IS A PROBLEM OF SSA’S OWN MAKING THAT GOES TO THE MERITS OF THIS CASE.

With regard to the statistical analyses of Drs. Seberhagen and Drogin, both well-respected and experienced scholars and statisticians, SSA’s expert has admitted that the analyses they performed given the data available to them were appropriate.¹⁴ SSA ripostes that Complainant’s experts, by using the data that SSA grudgingly turned over, have relied on flawed information. *Opposition* at 25-26. This, too, is a misdirected merits attack during class certification, albeit one with a certain shamelessness, since SSA is attempting to exploit an alleged deficiency that, to the extent it exists, is of its own making.

¹⁴ Harpe Dep. 165:7-166:3, attached as Exhibit V to the Goldstein Decl.

SSA's expert Dr. Harpe also takes issue with Dr. Drogin's analysis for supposedly failing to break down the statistical comparison by "cohort variables." Dr. Harpe never validated the cohort variables she used.¹⁵ In any event, even after controlling for these unvalidated "cohort variables" (using the more detailed information that SSA failed to provide Complainant), Dr. Harpe found statistically significant disparities between the promotion rates of TDEs and non-TDEs indicative of widespread discrimination.¹⁶

SSA claims that Complainant's reliance on self-identified TDEs somehow invalidates his statistical comparisons and argument for class certification. That some severely disabled employees may not have chosen to self identify as TDEs is of no moment. What matters is whether this identified group of disabled employees has been denied equal promotional opportunities.

SSA argues, on a murky record, that Complainant's statistics may be skewed, because under Schedule A, TDEs may be referred to hiring officials as long as they meet the minimum qualifications for a position, even if they are not the "best qualified" for a position. SSA has not shown this practice, if it exists, is sufficiently widespread to warrant consideration.¹⁷ Dr. Baldwin, an SSA expert, admitted that she has not conducted "any analysis of how many SSA employees are actually referred under the Schedule A provision for any particular position," and does not even know if any employees have been separately referred.¹⁸ Dr. Harpe testified that

¹⁵ Harpe Dep. 139:3-20, attached as Exhibit V to the Goldstein Decl.; Rebuttal Declaration of Richard Drogin, Ph.D., ¶7, attached as Exhibit H to the Goldstein Decl.

¹⁶ Harpe Dep. 70:3-71:12, 73:1-9; Harpe Decl. ¶ 13, attached as Exhibit 22 to SSA Opposition.

¹⁷ An employee hired under Schedule A, 5 C.F.R. § 213.2102(u) or (gg), can be converted to competitive status after two years of satisfactory employment. According to the Agency, all but 114 of the 1278 disabled employees hired under these and similar authorities have already been converted to competitive status. Declaration of Adam Gower, ¶8, attached as Exhibit 17 to SSA Opposition.

¹⁸ Baldwin Dep. 72:4-17, attached as Exhibit NN to the Goldstein Decl.

she had no way of determining whether any promotional candidates were separately referred under Schedule A using the BQL data provided by SSA.¹⁹ At the end of the day, this controversy, whatever its fascinations, is proper meat for determination of the merits, but is a distraction from the issues determinative of class certification.

B. DR. BLANCK’S EXPERT REPORT IS NOT SPECULATIVE.

Although Dr. Blanck employed a methodology, social framework analysis, that is recognized as reliable, SSA desperately attempts to discredit his report. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 255-56 (1989) (approving admission of expert testimony based on social science research about sex stereotyping); *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1179 (9th Cir. 2007) (considering social framework analysis and noting that “properly analyzed social science data, ... may add probative value to plaintiffs’ class action claims.”) *Ellis v. Costco Wholesale Corp.*, 240 F.R.D. 627, 650 (N.D.Cal. 2007). Dr. Blanck, after an exhaustive review of thousands of pages of documents and sworn testimony, as well as his own renowned research, concluded that SSA has a common organizational culture, features of which “create ... barriers to the career advancement of employees with Targeted Disabilities.”²⁰ Whatever attack may yet come, Blanck’s conclusion suffices to show that common issues of fact are present: “it is enough that [the expert] presented properly-analyzed, scientifically reliable evidence tending to show that a common question of fact...exists with respect to all members of the class.” *Id.* at 1179 –1180.

V. CONCLUSION

For the reasons discussed above, Complaint respectfully requests that this matter be certified for class treatment.

¹⁹ Harpe Dep. 194:9-195:2.

²⁰ Blanck Dec. at 6-8, attached as Exhibit P to the Goldstein Decl.

Date: August 1, 2008

Respectfully submitted,

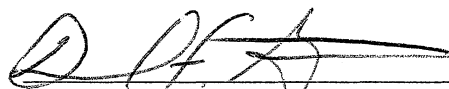
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A handwritten signature in black ink, appearing to be "D. P. A.", written over a horizontal line.

Attorneys for Complainant

EXHIBIT 2



SOCIAL SECURITY

Office of the General Counsel

February 15, 2008

The Honorable David Norken
Equal Employment Opportunity Commission
Baltimore District Office
10 South Howard Street, 3rd Floor
Baltimore, MD 21201

Re. *Ronald Jantz v. Michael J. Astrue, Commissioner, Social Security Administration*
EEOC No. 531-2006-00276X; Agency Case No. HQ-06-2518-SSA

Dear Judge Norken:

The parties have met and conferred, and are jointly writing the EEOC in order to submit a Stipulated Class Certification Schedule for approval by Your Honor. The parties have been working diligently on class certification issues and require a brief extension of time for expert discovery related to class certification, in part due to some issues that arose and have now been resolved. These issues were resolved amicably by the parties, who have sought to avoid burdening Your Honor with additional correspondence where possible. The class certification schedule reflected in the attached Stipulation is as follows:

February 25, 2008 - Agency will depose Plaintiffs' expert Dr. Lance Seberhagen;

April 11, 2008 – Class agent will serve any additional expert reports;

May 9, 2008 – Deadline for Agency to depose Class Agent's experts;

June 6, 2008 – Deadline for Agency to submit its expert reports;

July 3, 2008 – Deadline for Class Agent to depose Agency's experts;

July 31, 2008 – Deadline for Class Agent to file motion for class certification;

August 28, 2008 – Deadline for Agency to file opposition to motion for class certification.

This schedule affords counsel for both sides a period for expert discovery on the class certification issues that they believe will be helpful in facilitating the Court's resolution of the motion for class certification. The parties respectfully request that the Court approve this schedule, and are available to answer any questions.

The parties have discussed whether the schedule should accommodate the filing of a reply brief by the Class Agent in support of class certification, and have agreed to postpone that issue until such time that the Agency files its opposition brief. The Agency has agreed that it will not oppose a request for leave to file such a reply brief, if the Class Agent deems it necessary.

Thank you for your continued attention to this matter.

Respectfully submitted,
BERGER & MONTAGUE, P.C.

/s/ Shanon J. Carson

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Counsel for Plaintiffs

Dated: February 15, 2008

Respectfully submitted,
SOCIAL SECURITY ADMINISTRATION

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Dated: February 15, 2008

PROPOSED ORDER

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**IN THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE**

RONALD JANTZ, individually and on behalf
of all others similarly situated,

Complainant,

v.

MICHAEL J. ASTRUE,
Commissioner,
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Agency.

EEOC No. 531-2006-00276X
Agency No.: HQ-06-2518-SSA

Judge: David Norken

**[Proposed] ORDER GRANTING
COMPLAINANT'S MOTION FOR
LEAVE TO FILE A REPLY BRIEF IN
SUPPORT OF HIS MOTION FOR CLASS
CERTIFICATION**

ORDER

Upon consideration of Plaintiff's Motion for Leave to File a Reply Brief in
Support of His Motion for Class Certification, it is this _____ day of August, 2008,

ORDERED, that the Motion be, and hereby is, **GRANTED**.

Hon. David Norken