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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

COLIN SCHOLL, et al.,  
Plaintiffs,  
v.  
STEVEN MNUCHIN, et al.,  
Defendants.

Case No. 20-cv-05309-PJH

**ORDER RE: NOTICE TO CLASS MEMBERS**

Re: Dkt. No. 51

United States District Court  
Northern District of California

On October 2, 2020, this court issued an order granting plaintiffs’ motion for notice to class. Dkt. 62. The court declined to order certain relief in the first instance, instead requiring the parties to meet and confer and file either a joint proposed plan or separate proposed plans if the parties were unable to reach an agreement regarding notice to class members. *Id.* at 12. Unable to reach an agreement, the parties have filed separate proposed plans. Dkts. 65, 67. Having read the proposed plans filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court rules as follows.

**A. IRS Website**

Defendants state that they will update the IRS website<sup>1</sup> to reflect the court’s preliminary injunction order and to provide information to incarcerated individuals about

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<sup>1</sup> Defendants state that the FAQ page has already been revised to remove the statement that incarcerated persons cannot receive the advance payment and currently states: “Answer is being revised to reflect the Order Granting Motion for Notice to Class Members in Colin Scholl v. Steven Mnuchin, No. 20-cv-05309 (N.D. Cal. Oct. 2, 2020).” Dkt. 65 at 3 n.4.

1 their eligibility for the advance refund payments. Dkt. 65 at 3. Further, defendants will  
2 revise the FAQ to state that the IRS is taking steps to comply with the court's order and  
3 that incarcerated individuals who have not received the advance refund may provide  
4 information to the IRS to allow the IRS to consider the individual's eligibility for such a  
5 refund. Id. The FAQ will also indicate that the information may be filed using the online  
6 non-filers tool or by mailing a 2019 simplified paper tax return to the IRS. Id.

7 Plaintiffs state that some portions of the FAQ have not been updated and some  
8 IRS employees have pointed to language on the IRS website to instruct class members,  
9 advocates, correctional authorities, and others that it would be fraud for an incarcerated  
10 person to file a claim. Dkt. 67 at 1–2 (citing Declaration of Kelly M. Dermody (“Dermody  
11 Decl.”), Dkt. 68, ¶ 2. Plaintiffs request that the court order defendants to: (1) remove all  
12 statements on its websites that incarcerated persons are ineligible for EIP funds; (2)  
13 revise language in the FAQ #14 so that the answer to the question, “Does someone who  
14 is incarcerated qualify for the Payment?” is, “Yes, if they meet the eligibility criteria  
15 described above in response in Q A1”; and (3) send a memo to individuals who staff the  
16 IRS hotline or otherwise interact with the public to answer questions regarding the EIP  
17 program, notifying them that nobody should be advised that incarcerated persons are  
18 ineligible.” Dkt. 67 at 3.

19 The court notes that the parties agree as to the broad principle that the IRS  
20 website should be updated to reflect the court's preliminary injunction order and its order  
21 for notice to class members. Further, the differences between the parties on this issue  
22 are not significant. Accordingly, the court ORDERS defendants to update the IRS.gov  
23 website (and any other related page) to state that incarcerated individuals who have not  
24 received the advanced refund payment may provide information to the IRS to allow the  
25 IRS to consider the individual's eligibility for the refund. The website shall indicate that  
26 individuals may file using the online non-filers tool or by mailing a simplified paper tax  
27 return to the IRS. Defendants shall update all FAQs and any other pages that discuss  
28 the eligibility of incarcerated individuals for an EIP to reflect the court's order. These

1 updates shall be completed no later than midnight Eastern Daylight Time on October 8,  
2 2020, though any later technical or nonmaterial corrections may be updated as  
3 necessary. Defendants shall also communicate to IRS employees or other federal  
4 employees who interact with the public to answer questions regarding EIP in accordance  
5 with the guidance posted on the IRS.gov website and the court's orders.

6 **B. Communication to Prison Officials**

7 Defendants propose to notify prison officials for whom the IRS has contact  
8 information and the notification will notify prisoners of the court's preliminary injunction  
9 order and provide instructions for how class members may take action to provide their  
10 information to the IRS, if they have not already done so. Dkt. 65 at 4. Defendants state  
11 that the notification can include a cover letter addressed to prison officials urging them to  
12 disseminate information expeditiously. Id. Finally, defendants assert that they are willing  
13 to conduct outreach to other federal agencies and private organizations that work directly  
14 with class members to obtain their assistance in providing information about the court's  
15 preliminary injunction order and steps class members can take to provide their  
16 information to the IRS. Id.

17 Plaintiffs also argue that communication to prison officials is necessary and  
18 request the IRS to send the following documents: (1) a cover letter; (2) the court-  
19 approved notice, attached hereto; (3) a sample Form 1040 and Form 1040-SR that can  
20 be used to file paper claims; and (4) a set of instructions explaining how to fill the Form  
21 1040/1040-SR for purposes of obtaining a payment. Dkt. 67 at 4. Further, the cover  
22 letter should include: (a) a summary of the IRS's change in position; (b) a statement  
23 retracting the IRS's prior communication to prison officials that EIPs should intercepted  
24 and returned; (c) a statement that incarcerated persons should be permitted to submit  
25 claim forms and receive payments sent by the IRS; and (d) a statement strongly  
26 recommending and urging prison administrators to prominently post and distribute copies  
27 of the notice, Form 1040/1040-SR, and instructions for those forms to incarcerated  
28 persons as expeditiously as possible. Id.

1 As with the updates to the IRS website, there is some agreement between the  
 2 parties on this issue. Defendants are willing to distribute notice to prison officials for  
 3 which it has contact information and the parties agree as to most of the documents to be  
 4 included in that communication. Thus, the court ORDERS defendants to distribute the  
 5 following documents to all state and federal correctional facilities for which it maintains  
 6 any communication channel: (1) a cover letter that includes<sup>2</sup> the four main points  
 7 addressed by plaintiffs in the proposed plan; (2) an electronic version of the simplified  
 8 paper return (Form 1040/1040-SR) referred to in Rev. Proc. 2020-28 with instructions on  
 9 how to complete the simplified form; and (3) legal notice, as described below.

10 Both parties have submitted proposed legal notice language and the substance of  
 11 the two proposals are similar. Dkt. 65-1; Dkt. 68-1. The court finds plaintiffs' proposed  
 12 legal notice language easier to understand for non-lawyers and thus shall be included in  
 13 the notice communication to prison officials. However, the parties may again meet and  
 14 confer on any specific objections raised by defendants to language in plaintiffs' notice.  
 15 Defendants shall transmit notice to prison officials no later than midnight Eastern Daylight  
 16 Time on October 8, 2020. Defendants shall conduct outreach to other federal agencies  
 17 and private organizations that work directly with class members as described in their  
 18 proposed plan. While the court declines to assign a specific deadline to this task,  
 19 defendants should use reasonable efforts to expeditiously conduct this outreach.

20 **C. Mailed Notice to Class Members**

21 Plaintiffs contend that the court should further order defendants to mail  
 22 individualized notice to class members based on information currently in the IRS's  
 23 database. Dkt. 67 at 5. Plaintiffs acknowledge some difficulties associated with mailing  
 24 notice but argue that any shortcomings are not a reason to forego any attempt at  
 25 individualized notice. Id. at 6. Plaintiffs posit that the IRS has a serviceable database

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 27 <sup>2</sup> The court notes that specific language for the cover letter was not included in any filing  
 28 and takes no position on the specific language for the cover letter. As indicated above,  
 however, the cover letter should adhere to the court's preliminary injunction order, the  
 order granting notice to class members, and this order.

1 that includes information concerning individuals incarcerated as of October 2019. Id.

2 While defendants do not specifically address this issue in their current briefing,  
3 they do contend that they do not have the current or last known address for individuals  
4 who were incarcerated earlier this year but who have since been released. Dkt. 65 at 5–  
5 6. Further, in their opposition to plaintiffs’ motion for notice to class, defendants detailed  
6 significant obstacles to providing effective individualized notice including outdated  
7 addresses, unformatted and invalidated data, and incomplete data. Dkt. 56 at 7.  
8 Ordering the IRS to provide individualized notice would force the IRS to reallocate  
9 resources from its other commitments to disbursing advance refund payments for eligible  
10 individuals. Id. Finally, any mailed notice will not arrive in time to postmark a simplified  
11 paper return by October 15, 2020. Id.

12 Defendants have identified significant practical hurdles to issuing individualized  
13 notice to class members and the court is cognizant of the agency’s monumental tasks to  
14 process and issue EIPs while also conducting its normal operations. However, the court  
15 notes that in September, the IRS mailed millions of individualized notices to American  
16 taxpayers encouraging them to file for an EIP. Further, imperfections in the IRS’s  
17 database is not a compelling reason to at least attempt individualized notice with the  
18 understanding that some mailed notices will not reach their intended recipients.

19 While the IRS’s communication to prison officials is necessary, it is not, by itself,  
20 sufficient to meet the requirements of Rule 23. In addition to their normal duties, prison  
21 officials are struggling to manage COVID-19’s impact on their facilities. As third parties to  
22 this lawsuit, they do not have a stake in the resolution of this case and may not diligently  
23 distribute notice to class members. Individualized notice mailed to class members is  
24 superior to electronic notice to prison officials and appropriate under Rule 23(d)(1)(B).

25 For the foregoing reasons, the court ORDERS defendants to mail individualized  
26 notice to those class members for whom they have a mailing address. That notice shall  
27 include a copy of the finalized legal notice, a paper Form 1040 (or 1040-SR as  
28 applicable), and instructions on completing the Form 1040. Defendants shall mail notice

1 no later than October 15, 2020.

2 **D. Deadline to Submit Simplified Paper Returns**

3 Defendants state that they have moved the deadline to file using the online non-  
4 filer tool from October 15, 2020 to November 21, 2020. Dkt. 65 at 3. They further state  
5 that they have not agreed to move the deadline to file using the simplified paper tax  
6 returns and the deadline remains October 15, 2020. Id. In their motion for notice to class  
7 members, plaintiffs briefly urged the court to order defendants to modify this latter  
8 deadline and in their reply brief, plaintiffs squarely requested the court order such relief  
9 pursuant to the All Writs Act.

10 In their proposed plan, plaintiffs again assert that the court should order  
11 defendants to extend the deadline by which taxpayers may file a paper tax return under  
12 the All Writs Act. Dkt. 67 at 7. Plaintiffs state that they advised defendants before  
13 defendants filed the proposed plan that plaintiffs would renew their request so that  
14 defendants could address the issue. Id. at 9. They argue that if the court is inclined to  
15 provide defendants an opportunity to address this issue, then such response should be  
16 within one business day. Id.

17 However, the court takes note of plaintiffs' contention in their proposed plan that  
18 the IRS is advising community organizations that assist low-income non-filers with claims  
19 for EIPs that those non-filers can mail their simplified paper tax returns by October 30,  
20 2020. Dkt. 67 at 8 (citing IRS, An Instructional Guide for Community Organizations  
21 Helping Non-Filers Get Economic Impact Payments in 2020, Publication 5420-C (Rev.  
22 10-2020), Catalog No. 74950B, <https://www.irs.gov/pub/irs-pdf/p5420c.pdf>, (last viewed  
23 October 7, 2020 at 9:00 a.m.)). A screenshot of the relevant portion of the publication is  
24 as follows:

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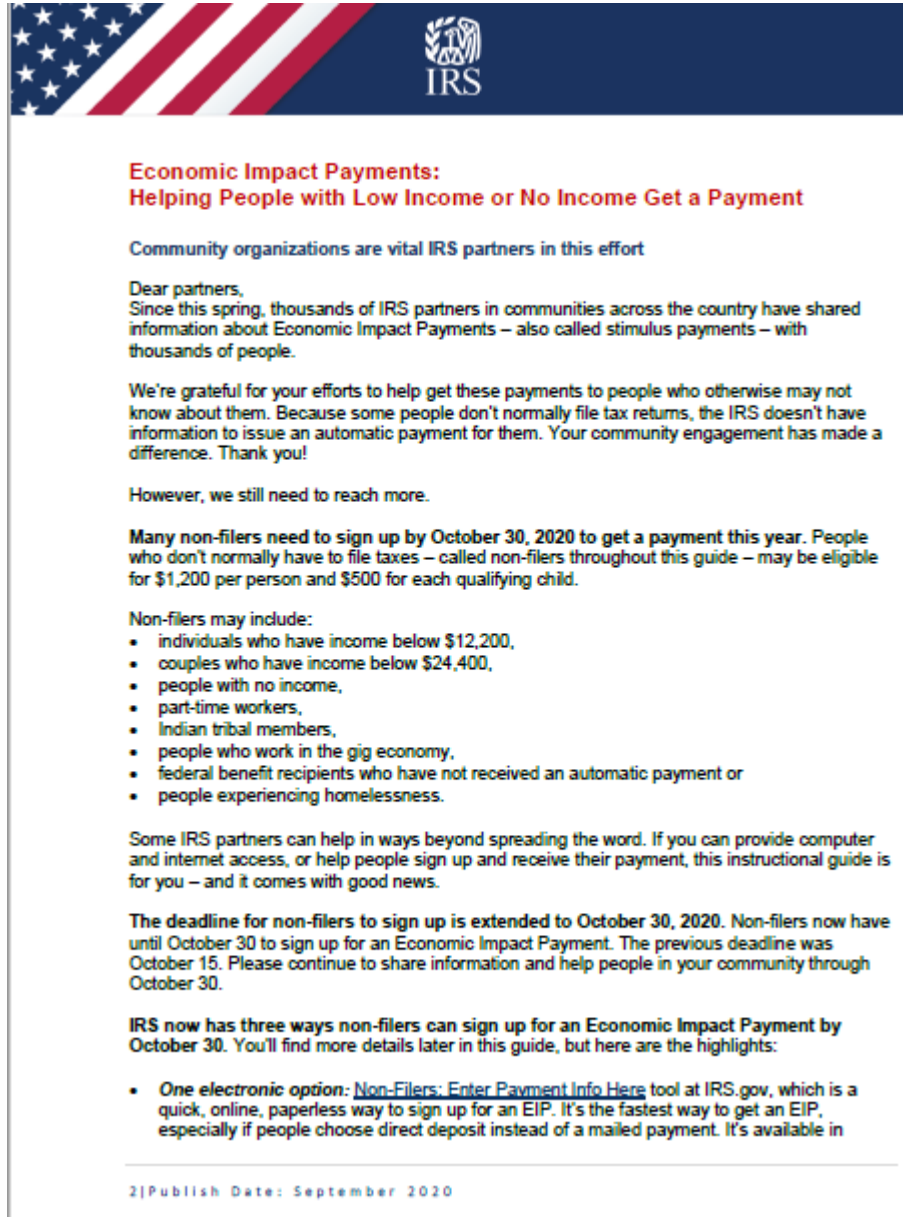
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United States District Court  
Northern District of California

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The fact that the IRS is willing to extend the simplified paper tax return deadline in a publication to community organizations contradicts defendants’ position that “[t]his deadline cannot practically be extended.” Dkt. 65 at 6.

Accordingly, the court recognizes that the IRS has effectively extended the deadline to October 30, 2020 and published that change to the public. While plaintiffs did not file a motion for relief, the court will hold the IRS to its own statement and ORDERS

1 the deadline for class members to postmark their simplified paper returns extended to  
2 October 30, 2020.

3 **IT IS SO ORDERED.**

4 Dated: October 7, 2020

5 /s/ Phyllis J. Hamilton  
6 PHYLLIS J. HAMILTON  
7 United States District Judge

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12 United States District Court  
13 Northern District of California  
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