

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NATIONAL ASSOCIATION OF THE DEAF,)
et al.,)
Plaintiffs,)
v.)
MASSACHUSETTS INSTITUTE OF)
TECHNOLOGY,)
Defendant.)

Case No. 3:15-cv-30024-MGM

REPORT AND RECOMMENDATION
REGARDING DEFENDANT’S MOTION TO STAY OR DISMISS
(Dkt. No. 24)

ROBERTSON, U.S.M.J.

The National Association of the Deaf and four individually named plaintiffs, C. Wayne Dore, Christy Smith, Lee Nettles, and Diane Nettles (collectively, “Plaintiffs”), bring this putative class action under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”), and Title III of the Americans with Disabilities Act of 1990, 29 U.S.C. §§ 12181 – 12189 (“ADA”), against Massachusetts Institute of Technology (“MIT”), for failure to provide equal access for deaf and hard of hearing individuals to much of the audio and audiovisual content that MIT makes available online to the general public for free by not providing captioning. Plaintiffs seek declaratory and injunctive relief requiring MIT to provide timely, accurate captioning of this content.

Plaintiffs have filed a related case against Harvard University and its governing board, the President and Fellows of Harvard College (collectively, “Harvard”), for failure to provide equal access for deaf and hard of hearing individuals to much of the audio and audiovisual content that it makes available online to the general public for free by not providing captioning.

Nat'l Ass'n of the Deaf, et al., v. Harvard University, et al., No. 3:15-cv-30023-MGM. As in this case, Plaintiffs rely on Section 504 and Title III of the ADA and seek declaratory and injunctive relief requiring Harvard to provide timely, accurate captioning of its content. The complaints are largely identical, differing only in the factual allegations relating to the locations and substance of the online content Plaintiffs attribute to Harvard and the online content they attribute to MIT.

Invoking the doctrine of primary jurisdiction, MIT has filed a motion seeking to dismiss the action or stay it until the Department of Justice issues regulations on website accessibility under the ADA (Dkt. No. 24). Alternatively, MIT seeks dismissal of both counts of Plaintiffs' complaint for failure to state a claim (*id.*). Plaintiffs oppose MIT's motion (Dkt. No. 35). The United States has filed a statement of interest in opposition to Harvard's motion as well (Dkt. No. 34). The motion papers filed by the parties in this case are virtually identical to motion papers filed by the parties in Plaintiffs' case against Harvard. Counsel for Harvard and MIT expressly acknowledged as much at oral argument on September 10, 2015.

Having reviewed all of the pleadings relating to this motion (Dkt. Nos. 1, 24, 25, 34, 35, 41, 47, 48, and 49) and having heard the parties at oral argument, for the reasons set forth in the Report and Recommendation Regarding Defendants' Motion to Stay or Dismiss issued this same date in *Nat'l Ass'n of the Deaf, et al., v. Harvard University, et al.*, No. 3:15-cv-30023-MGM, the court RECOMMENDS that MIT's motion be denied in its entirety.¹

¹ The parties are advised that under the provisions of Fed. R. Civ. P. 72(b) or Fed. R. Crim. P. 59(b), any party who objects to these findings and recommendations must file a written objection with the Clerk of this Court within fourteen (14) days of the party's receipt of this Report and Recommendation. The written objection must specifically identify the portion of the proposed findings or recommendations to which objection is made and the basis for such objection. The parties are further advised that failure to comply with this rule shall preclude further appellate review by the Court of Appeals of the District Court order entered pursuant to this Report and

/s/ Katherine A. Robertson
KATHERINE A. ROBERTSON
United States Magistrate Judge

DATED: February 9, 2016

Recommendation. *See Keating v. Sec'y of Health & Human Servs.*, 848 F.2d 271, 275 (1st Cir. 1988); *United States v. Valencia-Copete*, 792 F.2d 4, 6 (1st Cir. 1986); *Scott v. Schweiker*, 702 F.2d 13, 14 (1st Cir. 1983); *United States v. Vega*, 678 F.2d 376, 378-79 (1st Cir. 1982); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603, 604 (1st Cir. 1980). *See also Thomas v. Arn*, 474 U.S. 140, 154-55 (1985). A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof.