

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LEONARD BRIGGS, GEORGE SKINDER, LOUIS )  
MARKHAM, FRANCIS MCGOWAN, ERIC )  
ROLDAN, ROLANDO S. JIMENEZ, AND )  
JENNIFER WARD, on behalf of themselves and all )  
others similarly situated, )

Plaintiffs, )

v. )

MASSACHUSETTS DEPARTMENT OF )  
CORRECTION; CAROL HIGGINS O'BRIEN, )  
COMMISSIONER OF THE MASSACHUSETTS )  
DEPARTMENT OF CORRECTION; KATHERINE )  
CHMIEL, DEPUTY COMMISSIONER OF )  
CLASSIFICATION, PROGRAMS, AND REENTRY )  
DIVISION; KELLY RYAN SUPERINTENDENT )  
OF MCI-SHIRLEY; SEAN MEDEIROS, )  
SUPERINTENDENT OF MCI-NORFOLK; )  
STEVEN O'BRIEN, SUPERINTENDENT OF THE )  
MASSACHUSETTS TREATMENT CENTER; )  
PAUL HENDERSON, ACTING )  
SUPERINTENDENT OF MCI-FRAMINGHAM; )  
AND MASSACHUSETTS PARTNERSHIP FOR )  
CORRECTIONAL HEALTHCARE, )

C.A. No. \_\_\_\_\_

Defendants. )

**CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

1. This is a class action lawsuit based on the willful and deliberate refusal of the Defendants to comply with federal laws protecting the rights of Plaintiffs and similarly situated individuals who are deaf or hard of hearing in the custody of the Massachusetts Department of Correction ("DOC").

2. The Defendants named in this case have failed to comply with federal law, including the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 *et seq.*, the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc-1 *et seq.*, and the Constitution of the United States.

3. Through their policies and practices, Defendants discriminate against deaf and hard of hearing individuals in DOC custody. They have done this by denying deaf and hard of hearing individuals adequate, equally effective, and reliable means of communication, leaving Plaintiffs isolated and unable to communicate with others, including their loved ones outside of prison. Defendants’ failure to provide adequate access to auxiliary aids and services necessary to accommodate deaf and hard of hearing individuals in their custody deprives Plaintiffs of the ability to take advantage of educational, vocational, and rehabilitative programming, to receive equal access to medical and mental health services, and to participate in religious services. The DOC Defendants also fail to provide deaf and hard of hearing individuals in the DOC with adequate notification of important daily events and safety announcements, and to provide adequate interpretive services at administrative meetings and hearings, including disciplinary hearings, thus depriving them of the ability to adequately represent themselves and defend against undue punishment. In some cases, Plaintiffs have been disciplined due to their inability to hear instructions or announcements. In addition, the DOC Defendants discriminate against deaf and hard of hearing prisoners in work assignments.

4. As a result of Defendants’ discriminatory policies and practices, deaf and hard of hearing individuals in the Massachusetts DOC are:

(A) Prevented from fully and effectively communicating by telephone or other telecommunications means with family, friends, attorneys, and other advocates outside of prison;

(B) Denied full access to educational, vocational, and rehabilitative programs and services for which they could receive good conduct deductions to reduce their overall incarceration time, improve their prospects for gaining parole release, and improve their prospects for successfully transitioning back into the community upon their release;

(C) Unable to fully access religious services;

(D) Unable to fully access necessary and adequate medical treatment;

(E) Excluded from full participation in medical, mental health, and counseling services and programs offered by the DOC and medical contractor Massachusetts Partnership for Correctional Healthcare (“MPCH”);

(F) Unable to hear and understand safety announcements, fire alarms, and announcements for meals, prison counts, visits, appointments, and other important daily activities;

(G) Denied the ability to meaningfully participate and represent themselves in disciplinary and other administrative proceedings and to defend against punishment resulting from their failure to hear instructions or announcements; and

(H) Discriminated against in work assignments.

5. Plaintiffs seek declaratory and injunctive relief on their own behalf and on behalf of the class of all deaf and hard of hearing individuals in DOC custody for the harms they have suffered and continue to suffer as a result of the Defendants’ discrimination.

## **II. JURISDICTION & VENUE**

6. This Court has jurisdiction over Plaintiffs’ federal law claims pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

7. Plaintiffs are entitled to declaratory and other relief deemed necessary and proper pursuant to 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

### **III. THE PARTIES**

#### **A. Plaintiffs**

9. Named Plaintiffs Leonard Briggs, George Skinder, Rolando S. Jimenez, Louis Markham, Francis McGowan, Eric Roldan, and Jennifer Ward (collectively, "Plaintiffs") are men and women with a hearing disability who are currently under DOC custody and control.

10. Mr. Leonard Briggs has been profoundly deaf since birth; he is eighty years old. Plaintiff Briggs communicates via American Sign Language ("ASL") and British Sign Language. English is his secondary language. He is currently incarcerated at MCI-Shirley, located at 1 Harvard Road, Shirley, MA 01464.

11. Mr. George Skinder has been diagnosed with profound hearing loss since he was three years old and communicates primarily via ASL. English is his secondary language. He is twenty-seven years old and requires bilateral hearing aids to enhance his hearing, though they cannot correct his hearing disability. He is currently incarcerated at MCI-Norfolk, located at 2 Clark Street, Norfolk, MA 02056.

12. Mr. Rolando S. Jimenez developed profound hearing loss in DOC custody and requires bilateral hearing aids. Plaintiff Jimenez is fifty-six years old. His primary language is Spanish; English is his secondary language. He is currently incarcerated at MCI-Norfolk, located at 2 Clark Street, Norfolk, MA 02056.

13. Mr. Louis Markham was born deaf; he is sixty-three years old. He communicates via ASL. He is currently incarcerated at the Massachusetts Treatment Center located at Thirty Administration Road, Bridgewater, MA 02324.

14. Mr. Francis McGowan has been profoundly deaf since birth and communicates primarily via ASL. English is his secondary language. He is fifty-eight years old and is currently incarcerated at the Massachusetts Treatment Center located at Thirty Administration Road, Bridgewater, MA 02324.

15. Mr. Eric Roldan has been deaf since birth. Plaintiff Roldan requires bilateral hearing aids to enhance his ability to hear sounds and communicates via ASL. He is twenty-nine years old and is currently incarcerated at the Massachusetts Treatment Center located at Thirty Administration Road, Bridgewater, MA 02324.

16. Ms. Jennifer Ward has severe hearing loss and requires bilateral hearing aids. Her hearing disability is degenerative and could be corrected by surgical intervention. Plaintiff Ward communicates in English. She is forty-five years old and is currently incarcerated at MCI-Framingham located at 99 Loring Avenue, Framingham, MA 01701.

**B. Defendants**

17. Defendant DOC is an executive department of the Commonwealth of Massachusetts responsible for the operation of the state prison system and for the care and custody of prisoners held in its eighteen facilities. It is a “public entity” within the meaning of the ADA, *see* 42 U.S.C. § 12131(1), and a recipient of federal funding within the meaning of the Rehabilitation Act, *see* 29 U.S.C. § 794.

18. Defendant Carol Higgins O’Brien is the Commissioner of the DOC. By statute, Defendant Higgins O’Brien’s responsibilities include the establishment and enforcement of standards relating to the care, custody, and safety of all persons confined in state correctional

facilities. *See* M.G.L. c. 124, § 1. She is responsible for the administration of all state correctional facilities in accordance with federal and state law. Defendant Higgins O'Brien maintains an office at DOC Central Headquarters, 50 Maple Street, Suite 3, Milford, Massachusetts 01757. She is sued in her official capacity.

19. Defendant Katherine Chmiel is the Deputy Commissioner of Classification, Programs, and Reentry. Defendant Chmiel is responsible for the following divisions of the DOC: Health Services Division, Division of Inmate Training & Education, Division of Inmate Risk & Placement, Classification Division, Program Services Division, Victim Services, and Reentry Services Division. In this capacity, Defendant Chmiel oversees the ADA Coordinator for the DOC, who is a staff member in the Health Services Division, the DOC division responsible for ensuring the delivery of quality health care to all DOC prisoners. Defendant Chmiel maintains an office at DOC Central Headquarters, 50 Maple Street, Suite 3, Milford, Massachusetts 01757. She is sued in her official capacity.

20. Defendant Kelly Ryan is the Superintendent of MCI-Shirley. According to M.G.L. c. 125, § 14 and 103 DOC 101.01, the Superintendent of a prison is responsible for the custody and control of all prisoners and for the overall functioning of the institution. Defendant Ryan maintains an office at MCI-Shirley, 1 Harvard Rd, Shirley, Massachusetts 01464. She is sued in her official capacity.

21. Defendant Paul Henderson is the Acting Superintendent of MCI-Framingham. According to M.G.L. c. 125, § 14 and 103 DOC 101.01, the Superintendent of a prison is responsible for the custody and control of all prisoners and for the overall functioning of the institution. Defendant Henderson maintains an office at MCI-Framingham, 99 Loring Drive, P.O. Box 9007, Framingham, Massachusetts 01701. He is sued in his official capacity.

22. Defendant Steven O'Brien is the Superintendent of the Massachusetts Treatment Center, which is located within the Bridgewater Correctional Complex. According to M.G.L. c. 125, § 14 and 103 DOC 101.01, the Superintendent of a prison is responsible for the custody and control of all prisoners and for the overall functioning of the institution. Defendant O'Brien maintains an office at the Massachusetts Treatment Center, 30 Administration Road, Bridgewater, Massachusetts 02324. He is sued in his official capacity.

23. Defendant Sean Medeiros is the Superintendent of MCI-Norfolk. According to M.G.L. c. 125, § 14 and 103 DOC 101.01, the Superintendent of a prison is responsible for the custody and control of all prisoners and for the overall functioning of the institution. Defendant Medeiros maintains an office at MCI-Norfolk, 2 Clark Street, Norfolk, Massachusetts 02056. He is sued in his official capacity.

24. Massachusetts Partnership for Correctional Healthcare, LLC is a Massachusetts entity contracted by the DOC to provide health services to the state prison population, beginning on July 1, 2013 and continuing to the present date. MPCH is owned by MHM Correctional Services, Inc. and the Centene Corporation, via their jointly held Missouri entity, Centurion Managed Care, LCC. Defendant MPCH has a business office at 110 Turnpike Road, Suite 308, Westborough, Massachusetts 01581.

#### **IV. STATEMENT OF FACTS**

25. For more than ten years, deaf and hard of hearing prisoners, including Plaintiffs, have been seeking accommodations from the DOC. These prisoners' continuing efforts, assisted by advocates and attorneys at Prisoners' Legal Services ("PLS"), have included direct correspondence with DOC administrators, grievances, and Requests for Reasonable Accommodation of Special Needs filed per DOC policy (103 DOC 207).

26. For example, on May 2, 2012, Defendant Chmiel attended a meeting on behalf of the DOC with advocates and organizations from across Massachusetts that serve the deaf and hard of hearing community concerning prison access issues. During this meeting, these advocates requested that DOC provide deaf and hard of hearing prisoners with access to video phones and other adaptive communication equipment, accessible programming and, in turn, the opportunity for deaf and hard of hearing prisoners to earn good conduct deductions from their sentences.

27. In November 2014, attorneys at PLS raised the communication needs of Plaintiffs with the DOC through written correspondence with the Superintendents of MCI-Shirley, the Massachusetts Treatment Center, and the Associate General Counsel at the DOC's Legal Division. PLS attorneys also sought to attend meetings scheduled by the DOC involving several of the Plaintiffs, DOC facility administrators, and the Massachusetts Commission for the Deaf & Hard of Hearing. The DOC officials denied PLS' requests. Following the meetings between December 2014 and March 2015, the Commission recommended accommodations for each of these Plaintiffs; the Defendants have failed to follow these recommendations.

28. In March 2015, PLS sent a letter to the Secretary of the Massachusetts Executive Office of Public Safety and Security, Defendant Higgins-O'Brien, and the MPCH Medical Director detailing the discrimination that deaf and hard of hearing prisoners face in DOC custody and the failure of the DOC and MPCH to provide full and equal access to communication, programs, services, activities, and notifications. It also specified actions necessary to remedy the disparate and unlawful treatment of deaf and hard of hearing prisoners by the DOC and MPCH. The letter was copied to the Massachusetts Attorney General, DOC General Counsel, counsel for MPCH, and the Commissioner of the Massachusetts Commission for the Deaf & Hard of Hearing. The

letter further requested that the DOC and MPCH respond in writing within 30 days indicating how each planned to specifically address the violations described therein.

29. PLS only received one response to its March 2015 letter. On April 8, 2015, DOC Assistant Deputy Commissioner of Clinical Services suggested that dissatisfied deaf and hard of hearing prisoners file grievances or engage in the Request for Reasonable Accommodation of Special Needs Process, but failed to address any of the concerns raised or provide a plan of action for addressing them. Each of the Plaintiffs, as well as other deaf and hard of hearing prisoners, however, had already followed both of these processes without favorable results. Given Defendants' systematic failure to comply with their legal obligations, the suggestion in the April 8<sup>th</sup> letter was totally inadequate.

30. The Defendants are aware of their obligations under federal law, as well as the United States Constitution, but have not remedied their ongoing pattern and practice of discrimination. The Defendants continue to engage in disability-based discrimination against deaf and hard of hearing individuals in at least six different areas: (a) ineffective access to telecommunications; (b) inadequate access to auxiliary aids and services; (c) inadequate and unequal access to programs and services, including medical and mental health treatment; (d) ineffective notification of prison alerts and announcements; (e) ineffective communication during administrative proceedings; and (f) inadequate access to prison vocational and employment opportunities.

**A. Inadequate Access to Telecommunications**

31. The telecommunications services that the DOC provides to deaf and hard of hearing prisoners for communicating with family, friends, attorneys, advocates, and other individuals outside of prison is inferior to the telecommunication services provided to hearing prisoners.

32. Telecommunications are very important to individuals in DOC custody because maintaining family bonds and connections to one's support network in the community has been shown to be one of the best ways of reducing recidivism. The ability to foster family and community ties motivates prisoners to improve themselves and helps prepare them to make a positive transition back to life in the community.

33. The Federal Communications Commission ("FCC") has also recognized that family contact during incarceration is associated with lower recidivism rates and that prisoners' access to telephone service that is fair, just, and reasonable "benefits society by making it easier for inmates to stay connected to their families and friends." 79 Fed. Reg. 69682 (Nov. 21, 2014). The FCC further recognizes that lower recidivism rates "[m]eans fewer crimes, decreases the need for additional correctional facilities, and reduces the overall costs to society." *Id.* Prisoner access to telephone services "also helps families and the estimated 2.7 million children of incarcerated parents in our nation, an especially vulnerable part of our society." *Id.*

34. Most deaf and hard of hearing individuals in DOC custody cannot use traditional telephones to communicate with individuals outside of prison.

1. Telecommunications Devices for the Deaf

35. The only telecommunications method currently available for deaf prisoners in the DOC are telecommunications devices for the deaf ("TDDs"), and even these are provided only on a limited basis in select facilities. TDDs are electronic devices for text communication via a telephone line to enable people with hearing and speech disabilities to communicate by phone. TDDs are also called teletypewriters ("TTYs"). Based on fifty-year-old technology, the TTY is basically a telephone equipped with a keyboard and a screen that displays text. For two parties

to have a direct TTY conversation, both must have a TTY. TTYs cannot connect to a videophone.

36. Due to the fact that TTYs only enable written communications, they are by nature an unsatisfactory and ineffective means of communication for many deaf individuals. Writing usually does not provide effective communication for deaf individuals because ASL is their native language. English is generally considered a second language for most deaf persons who became deaf before acquiring language. Therefore, the reading and writing skill level of many deaf individuals, including several Plaintiffs and others incarcerated in DOC institutions, is generally much lower than that of hearing people.

37. TTY is inferior, outdated technology that does not allow effective communication for most deaf people. In fact, most people in the deaf community do not use or own such devices. TTY also requires users to take on the expense of maintaining a telephone land line. Most deaf individuals in the United States who use ASL have abandoned TTY technology, and now primarily utilize videophones.

38. Some deaf and hard of hearing prisoners who do not know ASL must still be provided TTYs in order to achieve equal access to telecommunications services. However, not every DOC facility has TTY services, and in the ones that do, the services are wholly inadequate for named Plaintiffs and class members to communicate effectively and equally, as compared to hearing prisoners. Furthermore, it takes approximately four times as long to communicate using a TTY than it does to communicate in a traditional telephone call.

39. This fact was recently recognized by the FCC. On November 5, 2015, the FCC released its Second Report and Order and Third Notice of Proposed Rulemaking in the Matter of Rates for Interstate Inmate Calling Services, Docket 12-375. In an effort to lower the burden on deaf

and hard of hearing prisoners, the FCC implemented a mandatory discount requiring providers to charge no more than 25 percent of a regular ICS call for TTY-to-TTY calls.<sup>1</sup> In addition, the Order clarifies that 47 U.S.C. § 225(c) and § 225 (b)(1) require that TTY-based telecommunication relay systems (TRS) and speech-to-speech (STS) be made available and accessible to individuals held in correctional facilities.<sup>2</sup>

40. Plaintiff Ward, who has bilateral hearing loss and is deaf in her left ear, has requested use of a TTY at MCI-Framingham because her parents own a TTY machine and her father and paternal grandparents are hearing impaired. Plaintiff Ward was informed that one did not exist. She has never used a TTY machine at MCI-Framingham and therefore has not been able to communicate effectively with her father or paternal grandparents for years.

41. The TTY at the Massachusetts Treatment Center where Plaintiffs Markham, McGowan, and Roldan are housed, is locked in the booking office. Access to the TTY is subject to the discretion of facility staff and it is often not made available until after business hours. Access is thus much more restricted than access to telephones for hearing prisoners. Similarly, at MCI-Shirley and MCI-Norfolk, the TTYs are kept in locked offices and can only be accessed by requesting an appointment; access is determined by the availability of staff and of the particular office.

42. Thus, even in facilities with a TTY, the equipment is not accessible to deaf and hard of hearing prisoners to the degree that telephones are accessible to hearing prisoners.

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<sup>1</sup> Second Report and Order and Third Notice of Proposed Rulemaking in the Matter of Rates for Interstate Inmate Calling Services at ¶227, Docket 12-375, Federal Communications Commission, Released November 5, 2015 and available at: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db1105/FCC-15-136A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db1105/FCC-15-136A1.pdf)

<sup>2</sup> *Id.* At ¶¶ 231-238.

43. Moreover, according to Plaintiff Briggs, on multiple occasions when he attempted to use the TTY at MCI-Shirley, the call either did not connect or the connection was very poor.

2. Videophones

44. Videophones and free or low-cost internet-based video links (collectively, “videophones”) are replacing TTYs in the deaf and hard of hearing community because they allow deaf and hard of hearing individuals to communicate with one another directly in ASL. When using a videophone, callers can see each other, usually over an internet connection. As a result, many deaf households no longer own a TTY and have no way to accept a TTY call, as they rely exclusively on videophones for telecommunication.

45. Deaf individuals using videophones can also call a Video Relay Service (“VRS”) to place calls to people who do not understand ASL or do not have a videophone. The mechanics of VRS are very similar to those of traditional TTY relay service – the caller is routed to an interpreter, the caller gives the interpreter the number of the party he is trying to reach, and the interpreter then interprets the conversation into spoken English.

46. Videophones and VRS permit deaf people to use ASL instead of having to carry out every telephone call in written English through a TTY.

47. Provision of videophones would enable deaf prisoners to place telephone calls to deaf family and friends, the vast majority of whom no longer have TTY devices.

48. In its 2015 Order, the FCC strongly encourages correctional facilities to provide prisoners with communication disabilities with access to more advanced forms of TRS, such as videophones and captioned telephones, and to comply with their existing obligations under federal laws, “including Title II of the ADA, which require the provision of services to inmates

with disabilities that are as effective as those provided to other inmates.”<sup>3</sup> The FCC further acknowledges that some facilities have installed videophones and other forms of TRS, often as a result of litigation based on federal statutes, but strongly encourages facilities to make the necessary changes voluntarily without further litigation.<sup>4</sup>

49. Deaf individuals in DOC custody have repeatedly requested videophone access, but have been denied this access. Plaintiff Briggs and his advocates in the community have been pursuing this issue with DOC officials for well over five years.

50. Although the DOC has contracted with Sorenson Communications for video phones and VRS to be installed at select DOC facilities since August of 2014, the Defendants have yet to provide access to these devices and services at any of the DOC facilities throughout Massachusetts.

51. Videophone technology would enable the Plaintiffs and other class members to effectively communicate with family, friends, attorneys, advocates, and other parties outside of the DOC facilities in which they are housed to the same degree as prisoners without hearing disabilities.

52. However, due to the Defendants’ continuing failure to make videophone technology available, Plaintiffs and other deaf and hard of hearing prisoners who use ASL continue to suffer. For instance, aside from infrequent visits, Plaintiff Briggs has been unable to communicate with his three sons, five grandchildren, friends, and advocates in the community for over seven years.

### 3. Other Telecommunication Issues

53. Some prisoners housed in DOC facilities are hard of hearing but not deaf. A subset of these hard of hearing prisoners are able to use a traditional telephone provided the telephone has

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<sup>3</sup> *Id.* at ¶230

<sup>4</sup> *Id.* at ¶ 230.

either an internal or external amplification speaker and is compatible with hearing aids. In order for hard of hearing individuals to be able to effectively use such telephones, however, they must be allowed to use the devices in an environment that is shielded from ambient noise. Because hearing aids essentially amplify sound, it is difficult for hard of hearing individuals to hear an individual (on the telephone or otherwise) effectively when they are in an environment with background noise.

54. As a result, it is often difficult or impossible for Plaintiffs and other prisoners who suffer from hearing disabilities to communicate with their families, friends, attorneys, and advocates by phone because the amplification button is often not functioning properly or is simply not available on the telephone handsets provided.

55. For example, Plaintiff Jimenez had to keep his finger continuously on the telephone volume button to keep it at the highest level during his calls on some phones while he was housed at Bay State Correctional Facility<sup>5</sup> in order to amplify the sound, which only slightly improved his ability to hear the individual on the other end of the call and left the telephone communication inadequate. When he uses phones with adjustable volume and a good hearing aid – which he, at times, has had to borrow from another prisoner – Plaintiff Jimenez can hear about fifty percent of his telephone conversations clearly.

56. Since his move to MCI-Norfolk in May 2015, Plaintiff Skinder has been able to use phones that have adjustable volume. By turning the volume of the telephone and his hearing aid all the way up, he estimates that he is able to discern roughly seventy-five percent of what the other person on the telephone is saying. Sadly, missing one quarter of the content of his telephone conversation is a vast improvement from his experience trying to use the telephones at

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<sup>5</sup> Plaintiff Jimenez was moved from Bay State Correctional Facility to MCI-Norfolk where he is currently housed in or around April 2015.

MCI-Shirley, where he could only understand a small fraction of his conversations with family, friends, and advocates because the volume amplification function was inoperative.

57. For Plaintiff Ward, amplification only slightly enhances the sound when she communicates using the phones at MCI-Framingham. Additionally, because there is no door to the room where the telephone with the amplification function is stationed, there is often so much background noise that it makes it impossible for her to hear the person on the phone.

**B. Inadequate Access to Auxiliary Aids and Services**

58. Individuals in the custody of DOC are wholly dependent on the DOC and prison staff for all of their basic daily needs, including food, exercise, and safety. They rely on the DOC for education, vocational, and rehabilitative programming and medical, mental health, and religious services, among other things. Likewise, deaf and hard of hearing individuals in DOC custody are dependent on the DOC to provide hearing devices, interpreter services, and other auxiliary aids and services to be able to hear prison alerts, participate in all aspects of prison life, and avoid forced reliance on and exploitation by other prisoners.

59. As stated above, the DOC has contracted out health services for the state prison population to MPCH. Though the DOC cannot contract away its responsibilities to provide accommodations or equal access to programs and services in accordance with the requirements of federal and constitutional law, MPCH has the responsibility to comply with the same legal standards.

60. Per its contract with the DOC, MPCH's responsibilities include, but are not limited to:

(A) Providing a comprehensive program of medical, dental, and mental health services to all prisoners and civilly committed persons in DOC custody;

(B) Making all decisions with respect to the type, timing, and level of medical services needed by DOC prisoners, including the determination of whether a prisoner is in need of clinical care, referral to an outside specialist, or otherwise needs specialized care;

(C) The purchase or lease of patient-specific equipment that is recommended by a physician's order, which shall then become the property of the DOC;

(D) Maintenance of medical devices prescribed by a clinician for a prisoner, which explicitly includes hearing assistance devices and other patient-specific equipment, in accordance with the manufacturer's recommendations. This entails timely repair or replacement of such devices due to reasonably expected wear and tear;

(E) Regardless of the cause, timely repair or replacement of medically prescribed devices is a priority in all instances in which the loss, damage, or destruction thereof results, or is likely to result, in an adverse impact on the health of the prisoner or on the prisoners' ability to participate in programs and activities within the facility; and

(F) Providing translation services to meet the needs of the prisoner population, with neither prisoners nor DOC staff utilized as translators. MPCH may utilize the DOC's language line translation service or other translation services.

61. MPCH also plays a central role in the DOC's Request for Reasonable Accommodation of Special Needs process. Under 103 DOC 207, such Requests may be initiated in two ways: by requesting a medically prescribed accommodation from medical staff or by completing the Request for Reasonable Accommodation of Special Need(s) form and submitting it to the ADA Coordinator at the institution. In determining whether a prisoners' request is warranted, the ADA Coordinator is required to confer with appropriate medical staff and cannot substitute his

or her judgment for that of medical staff when an accommodation has been prescribed. *See* 103 DOC 207.04.

62. Unfortunately, both the DOC and MPCH fail to provide appropriate auxiliary aids and services to deaf and hard of hearing prisoners. By failing to do so, the DOC and MPCH not only put these individuals at a disadvantage in terms of their personal development and rehabilitation by depriving them of DOC programming and services, but the Defendants also negatively impact their ability to maintain their personal health, earn good conduct deductions from their sentences, and earn parole release.

1. Hearing Devices

63. The Defendants have consistently failed to provide deaf and hard of hearing individuals in their custody with individual hearing devices that would enable them to hear prison alerts and participate in other aspects of prison life.

64. The DOC and MPCH have refused to provide medically required hearing aids to deaf and hard of hearing prisoners, in spite of the obvious adverse impacts upon the individual prisoners and in contravention of clear findings and recommendations of licensed audiologists. When provided, audiological testing for DOC prisoners takes place at Lemuel Shattuck Hospital; following the appointment, the audiologist transmits a report to medical staff at the evaluated prisoner's facility.

65. For example, Plaintiffs Jimenez, Ward, and Skinder, who have severe to profound hearing loss in both ears, have been repeatedly denied access to two functioning hearing aids by MPCH and the DOC. The Defendants repeatedly refuse to promptly repair and maintain Plaintiffs' bilateral hearing aids, often informing them that they only need one functioning hearing aid at a time, despite audiologist prescriptions to the contrary.

66. Plaintiff Ward went over a year with ill-functioning hearing aids. The tubing in one of her aids had a hole in it. She was forced to make due by covering the hole with scotch tape to make her aid minimally functional. Although the tubing has now been replaced and both hearing aids have finally been adjusted, the amplification is still inadequate because Ms. Ward has not been provided with suitable batteries. Moreover, the audiologist prescribed new hearing aids for Ms. Ward, but she has been waiting several months to be taken to the doctor to be fitted for these new aids.

67. Plaintiff Jimenez similarly went over a year with only one hearing aid, which was old, cracked, ill-fitting, and did not function properly. He received new hearing aids in December 2014 that were not tailored to his particular hearing needs and much too weak. Moreover, these hearing aids stopped functioning entirely on or around August 3, 2015. Medical staff failed to have the aids properly repaired; to date, Plaintiff Jimenez is forced to use ill-functioning hearing aids.

68. Plaintiff Skinder was without a functional right hearing aid for over eighteen months. Prior to receiving a new left hearing aid in April 2015, he was left without any working hearing aids for almost two months. In or around July 2015, the tube in Plaintiff Skinder's left hearing aid cracked and he requested a new one from medical staff. While he awaited an appropriate replacement tube, Mr. Skinder had to fashion an ill-fitting tube from old parts he could find to ensure that he had at least one partially-functioning hearing aid. It was not until October of 2015 that he received properly functioning hearing aids.

69. At times, MPCH and the DOC have adopted policies or practices that also prevent deaf and hard of hearing individuals in custody from having access to hearing aids that they already possess. For example, even though Plaintiff Ward entered the DOC with two hearing aids, she

was forced to turn them into the facility because they were not issued by the DOC medical contractor, and it was only after two years that she was issued one functioning hearing aid.

70. Further, MPCH and the DOC fail to fix broken hearing devices promptly. Plaintiffs who utilize hearing aids have reported waiting weeks or longer to receive batteries needed in order for their hearing aids to function, and as mentioned above, several Plaintiffs have waited well over a year for at least one of their hearing aids to be repaired.

71. When Plaintiffs' hearing devices are not functioning properly, their ability to communicate and understand their environment is seriously compromised. They are forced to observe the clock and other prisoners closely, taking their cues from them to ensure they are in the right place at the right time. This increases the danger that they face of exploitation and verbal and physical abuse from other prisoners. Plaintiffs' inability to hear and understand orders, instructions, and announcements also places them at risk of receiving disciplinary tickets and being subject to staff uses of force for noncompliance with orders and instructions. In fact, on several occasions, Plaintiffs Ward and Skinder received disciplinary tickets due to their inability to hear instructions or announcements.

## 2. Interpreter Services

72. For deaf and hard of hearing individuals who rely on ASL as their primary form of communication, use of a qualified ASL interpreter is necessary to ensure effective and reliable communication between a deaf or hard of hearing individual and an individual who does not use ASL to communicate.

73. ASL is a complete, complex language that employs signs made with the hands and other movements, including facial expressions and postures of the body. It is a language distinct from English – it is not simply English in hand signals. It has its own vocabulary and its own rules for grammar and syntax. Accordingly, trained and qualified sign language interpreters are essential

to providing deaf and hard of hearing ASL users with complete access to necessary information; staff or other prisoners with limited knowledge of ASL are not appropriate interpreters.

74. As noted above, writing usually does not provide effective communication for deaf or hard of hearing individuals whose primary language is ASL. English is generally considered a second language for most people who became deaf or suffered profound hearing loss before acquiring language. In addition, many deaf people acquire English as their second language later in life – past the critical period of language acquisition. The average deaf person reads at approximately a fourth grade level.

75. Lip-reading alone does not provide effective communication for most deaf and hard of hearing individuals; the upper limits of estimates for the accuracy of deaf individuals lip-reading sentences have been as low as 10% to 30% words correct. Lip-reading in English is extremely difficult because only a small fraction of the sounds used in the language are clearly visible on the mouth, and many sounds that are visible look identical on the lips. In addition to these inherent difficulties, the ability to accurately lip-read is affected by the speaker's facial bone structure, facial musculature, facial hair, lighting, physical proximity to the speaker, and other external factors. Even if a primary ASL user were able to understand the sounds appearing on a speaker's or an oral interpreter's lips, for the reasons discussed above, he or she would not necessarily understand the English language or the speaker's vocabulary.

76. Thus, provision of qualified sign language interpreter services is necessary to allow deaf individuals in DOC custody who use ASL to communicate effectively and accurately with DOC officials, DOC employees, and medical personnel.

77. Hard of hearing individuals and deaf individuals who do not communicate via sign language, like many late-deafened individuals, and who rely heavily on lip-reading require the

services of qualified oral interpreters to ensure their access to effective communication. An oral interpreter presents on the lips and face, through the use of pace, translation, and expressions, what is being said to the deaf or hard of hearing consumer. Due to the difficulties inherent in lip-reading noted above, unless the individual is trained as an oral interpreter, it is not a sufficient means of communication for deaf and hard of hearing individuals.

78. The Defendants fail to provide adequate access to both sign language and oral interpreters for deaf and hard of hearing individuals.

79. The DOC fails to provide these services to Plaintiffs in contravention of its Language Assistance Plan (“LAP”) and Interpreter Services Policy (103 DOC 488), which are specifically aimed at addressing the language needs of prisoners in DOC custody.

80. The DOC’s LAP exists to ensure that language will not prevent staff from communicating effectively with limited English proficient (“LEP”) individuals – a person who is unable to speak, read, write or understand English language at a level that allows him or her to interact effectively with DOC staff. The plan requires that the DOC Commissioner appoint LEP Coordinators and Institutional LEP Monitors responsible for identifying and addressing the needs of LEP individuals in the DOC. At each facility, the Superintendent and LEP Coordinators and Monitors are charged with, among other things, ensuring access to interpreter services pursuant to the DOC’s Interpreter Services Policy.

81. The Interpreter Services Policy specifically states that, when a prisoner requests an interpreter or a correctional staff member believes that one is needed, telephonic services shall be used. *See* 103 DOC 488.03. The policy prohibits the DOC from using other prisoners as interpreters in the following areas: Internal Perimeter Security, or Departmental investigations or questioning, Booking and Admissions, Health Services Unit (medical), Classification Boards,

Inmate Grievances and Disciplinary Hearings. *See* 103 DOC 488.03(1) and (2). In addition, the policy mandates that interpreter services information be provided during the standard introduction at classification and discipline proceedings and admission and booking, and that the service be used during grievance interviews. *See* 103 DOC 488.03 (4) and (5).

82. Despite this clear guidance and the DOC Defendants' knowledge of the language needs of deaf and hard of hearing individuals in their facilities, they have failed to provide a comparable alternative to the telephonic interpreter services – Video Remote Interpreting – that they are mandated to provide to other prisoners who are unable to effectively communicate in English.

a) *Interpreters for Access to Medical Services*

83. The DOC and MPCH are responsible for the medical care of all individuals incarcerated in DOC facilities.

84. Deaf and hard of hearing individuals who rely on ASL require sign language interpreters to communicate accurately and effectively with medical staff. Others who rely on lip-reading require oral interpreters or other auxiliary devices.

85. As noted above, per its contract, MPCH is responsible for setting up the type and timing of medical services that prisoners in DOC custody receive and for arranging translation services to meet said prisoners' needs. This necessarily includes arranging translation services for the appointments MPCH schedules on a daily basis in every DOC facility.

86. However, deaf and hard of hearing prisoners are rarely, if ever, provided interpreters for medical and mental health appointments.

87. Despite requests for interpreters from Plaintiffs who rely on ASL, the fact that it should be obvious to medical providers that they cannot communicate without an interpreter, and the existence of Video Remote Interpreting technology, Plaintiffs have been prescribed medication

and undergone surgery and medical procedures and testing, including audiology testing, for years almost entirely without ASL interpretation.

88. An ASL interpreter was provided for the first time for one of Plaintiff McGowan's medical appointments at the Massachusetts Treatment Center sometime in the spring of 2015. However, the interpreter provided for his appointment was the same interpreter hired to interpret two classes per week for Plaintiffs Markham, McGowan, and Roldan as part of the Sex Offender Treatment Program. Rather than schedule the medical appointment before or after one of the classes attended by these three Plaintiffs, the Defendants cancelled the class so that she could serve as the interpreter for the medical appointment.

89. Plaintiff Briggs has never had an ASL interpreter for any medical appointment in a DOC facility. While he has been able to acquire some degree of understanding through writing notes back and forth with medical staff during standard medical appointments, this mode of limited and incomplete communication is not appropriate. Moreover, the absence of a qualified interpreter becomes significantly more problematic and potentially dangerous when issues arise that are new or out of the ordinary. This arrangement is made worse by Mr. Briggs' poor eyesight and arthritis in his hands, which make written communication even more inappropriate. In addition, for several years, Plaintiff Briggs has been experiencing double vision in his left eye as a result of swelling of his optic nerve; he is also developing cataracts. To slow the progression of the cataract and reduce the swelling, he is supposed to receive eye injections administered at outside hospitals every five weeks, but these are often delayed. Due to the lack of consistent ASL interpretation, Plaintiff Briggs does not have a clear understanding of his diagnosis or any treatment plan. As a deaf individual, impairment of his eyesight is extremely concerning and loss thereof would be gravely debilitating.

90. Plaintiff Markham has repeatedly requested an ASL interpreter in order to access mental health services to help him deal with stress and other issues and assist him in meeting rehabilitation goals. Still, he has never been provided an interpreter for mental health services.

91. Plaintiff Roldan has had two documented seizures at the Massachusetts Treatment Center. Neither DOC nor medical staff provided him with an ASL interpreter during medical appointments regarding the seizures. Moreover, medical staff prescribed Plaintiff Roldan medication, but did not tell him what it was or what it was meant to treat. As a consequence, he had no understanding of his medical diagnosis or for what, specifically, the medication is being prescribed until his counsel informed him that his medical records indicate that he was diagnosed with a seizure disorder. Furthermore, Plaintiff Roldan does not understand what preventative measures he should be taking aside from taking the prescribed medication and staying hydrated.

92. Plaintiffs routinely have to communicate with medical staff by making gestures, pointing at a diagram of the human body, writing out messages, or relying on interpretation by other prisoners with limited knowledge of ASL. These alternatives fail to ensure that deaf and hard of hearing prisoners understand their diagnoses and treatment, are able to provide informed consent, and are able to maintain privacy with regard to their medical information.

b) *Interpreters for Access to Prison Programming*

93. The Defendants provide educational, vocational, and rehabilitative programming and religious services, as well as a grievance process, for individuals in DOC custody.

94. Newly admitted prisoners must attend an orientation program that covers a broad range of topics important for each of them to understand, such as: telephone access, visiting procedures, mail, classification procedures, programming, reentry, access to medical services, disciplinary procedures, canteen services, prisoner counts and movement, recreation, personal property, facility and housing rules, grievance procedures, and emergency evacuation.

95. The Defendants fail to provide deaf and hard of hearing prisoners with interpreters for prisoner programming, including orientation, unit meetings, and educational and vocational courses.

96. For example, during orientation, the Defendants did not provide ASL interpretation to any of the Plaintiffs whose primary language is ASL.

97. Plaintiff Briggs sought to participate in educational and rehabilitative programming for more than ten years, but, due to the absence of interpreters, he could not; now eighty years old, nearing the end of his sentence, and facing significant health issues, he feels that it is now too late. Plaintiff Markham repeatedly requested to participate in vocational programming, but has been prohibited from participating because of the lack of an ASL interpreter. Plaintiff Roldan has also been denied access to programming, and was even told to drop out of a class that was otherwise appropriate for him for lack of an ASL interpreter. Plaintiff Skinder has attempted to participate in a number of courses without the benefit of a qualified ASL interpreter; despite his requests, he has never been afforded an interpreter. Recently, Plaintiff Skinder took the admissions examination in hopes that he would be able to attend Boston University courses while at MCI-Norfolk. He was not afforded an ASL interpreter for this exam; despite getting high scores in mathematics, he was informed that he was not eligible to take courses due to his low scores in English.

98. Similarly, deaf and hard of hearing prisoners have been denied equal access to employment and vocational programming on the basis of their disability and the DOC Defendants' unwillingness to provide accommodations. For example, Plaintiff Markham has been denied vocational opportunities such as woodshop at the Massachusetts Treatment Center because he has not had access to the requisite educational programming.

99. The only DOC facility in Massachusetts that regularly provides access to some ASL interpretation is the Massachusetts Treatment Center. However, the interpreting is provided on a very limited basis for the required Sex Offender Treatment Program (“SOTP”) and took approximately five years of advocacy by deaf prisoners to obtain. The ASL interpreter currently provides interpreting for just three SOTP classes per week to Plaintiffs Markham, McGowan, and Roldan as a group and Plaintiffs report that the interpreter who does the majority of the ASL interpreting is difficult to understand and is often absent with no substitute provided for the classes.

100. Due to the unavailability of interpreting, Plaintiffs Markham, McGowan, and Roldan receive less sex offender treatment programming than hearing prisoners participating in the SOTP receive every week. Furthermore, the content they receive in each class is less than what hearing prisoners have access to because of the nature of the interpreting process. Accordingly, their progress in the program is hampered, negatively impacting the likelihood that they may face civil commitment proceedings at the completion of the sentences.

101. Having limited or no access to interpreting diminishes the ability of deaf and hard of hearing prisoners to benefit from educational, vocational, and rehabilitative programming; to become eligible for specialized correctional programming; to earn good conduct deductions from their sentences; to be classified to lower security facilities; and to qualify for parole release.

c) *Interpreters for Religious Services*

102. The Defendants do not provide an interpreter for religious services which, for example, Plaintiff McGowan would like to attend but cannot understand without an ASL interpreter.

d) *Interpreters for PREA Information*

103. The DOC Defendants also fail to comply with the Prison Rape Elimination Act (“PREA”) 42 U.S.C. §15607 et seq. and its implementing regulations, which require that deaf

and hard of hearing prisoners have an equal opportunity to participate or benefit from all aspects of the DOC's efforts to prevent, detect and respond to sexual abuse and sexual harassment. *See* 28 C.F.R. §115.16(b)-(c).

104. The implementing regulations specify that such steps “shall include, when necessary to ensure effective communication with inmates who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.” *Id.* The regulations also require that materials be provided in formats or through methods that ensure effective communication with prisoners with disabilities including those with limited reading skills. *Id.*

105. PREA explicitly forbids DOC reliance on prisoners as interpreters, readers or as other types of assistants except in emergency situations. Prisoners are required to receive sexual abuse prevention information at orientation and shortly after admission.

106. The DOC's internal Sexually Abusive Behavior and Prevention Policy, 103 DOC 519, states that information regarding sexually abusive behavior and prevention will be provided to all incoming prisoners by written, verbal, and video presentations and translated into their own language when necessary. *See* 103 DOC 519. It also states that when literacy is presented as a problem, a staff member shall assist the prisoner in understanding the material. *Id.*

107. The DOC Defendants regularly fail to comply with federal PREA regulations and with their own internal policy as Plaintiffs, particularly those who rely on ASL, have never received sexual abuse prevention information with the benefit of an interpreter. Indeed, Plaintiff Briggs had never heard of PREA. Such a violation is particularly troubling in that deaf and hard of hearing prisoners are reportedly more victimized by sexual assault in prison due to their hearing impairment.

3. Other Auxiliary Aids

108. Other auxiliary aids and services are also necessary to ensure the effective participation of deaf and hard of hearing prisoners in all aspects of prison life.

109. Some deaf and hard of hearing individuals in the DOC would be able to fully participate in educational, vocational, and rehabilitative programs, orientation, religious services, medical services, the grievance process, and other activities with the assistance of auxiliary aids, such as computer assisted real-time translation, videotext displays, and FM listening systems.

110. Plaintiffs Jimenez and Ward are among those who would benefit from these types of accommodations, but have not received them in spite of their requests. For instance, currently, Plaintiff Jimenez only attends church services on Sundays, as they are held in a small room where he is able to hear a portion of what is said. He would like to attend more services, but he is unable to understand church services held in the auditorium due to the background noise that his hearing aids cannot filter.

111. In addition, television programming available to prisoners at DOC facilities can be made accessible to those with hearing impairments through captioning. Captioning can be either open (viewable by all viewers) or closed (viewable only by those who opt to activate the caption chip within every television).

112. Officers at DOC facilities frequently fail to make captioning for deaf or hard of hearing prisoners available, even after it has been requested. For example, officers at the Massachusetts Treatment Center regularly show movies without closed captioning for Plaintiffs Markham, McGowan, and Roldan or claim that it is not available.

**C. Access to Visual Notification of Alerts and Announcements**

113. DOC institutions do not have effective systems for conveying the content of regular audio alerts and announcements to deaf and hard of hearing prisoners, placing them at risk of

serious physical injury and other harms, including receipt of disciplinary tickets for noncompliance with orders and instructions of staff.

114. Plaintiffs have repeatedly experienced problems due to their inability to hear and understand the content of announcements, including missing meals, missing medical appointments and calls for the medication lines, missing or being late for visits with attorneys and loved ones, and confrontations with staff who believe that they are willfully not standing for count or following other instructions.

115. In addition, DOC facilities lack effective visual systems for notifying deaf and hard of hearing prisoners of emergency alarms and announcements, which also places them at risk of serious physical injury and other harms.

116. For example, the facilities at which Plaintiffs are housed – MCI-Shirley, MCI-Norfolk, the Massachusetts Treatment Center, and MCI-Framingham – all lack sufficient notification lights, displays, and signs for notifying Plaintiffs and other deaf and hard of hearing prisoners of emergencies and other announcements. In order to follow instructions and announcements that they cannot hear or understand, Plaintiffs must generally rely on other prisoners for direction or, if they can discern that an announcement has been made, try to guess what to do based on the time of day and other visual observations. Regarding standing for count, which occurs four times each day, for the last fifteen years, Plaintiff Briggs has had to watch the clock and repeatedly get up to look out his cell window to see if staff are coming.

117. While small emergency alarm notification lights exist in some areas of these facilities, none have been placed in crucial areas, including near and visible from Plaintiffs' cells.

118. Plaintiffs and other deaf and hard of hearing individuals who use hearing aids are particularly vulnerable when they are not wearing them, like when they are in the shower or

asleep, and other prisoners might not think or know to alert them. For example, there were at least two fire drills at the Massachusetts Treatment Center in 2014 during which Plaintiff Markham was left behind in his unit. On one of these two occasions, Plaintiff Roldan was also left behind as he was in the shower and could not hear the alarm without his hearing aids. Because of their vulnerability, several Plaintiffs feel compelled to regularly sleep wearing hearing aids, in spite of discomfort and the potential for negative health effects.

**D. Failure to Provide Accommodations during Administrative Proceedings and Meetings**

119. Deaf and hard of hearing prisoners cannot meaningfully engage in disciplinary, classification, and parole proceedings because they do not have access to accommodations necessary to facilitate their effective communication and participation.

120. If prisoners violate the rules and regulations of DOC facilities, they generally receive disciplinary tickets and are subject to disciplinary proceedings conducted by hearing officers, which can result in sanctions. Prisoners are entitled to have an opportunity to defend themselves, to learn the evidence against them, and to understand the parameters of their punishment.

121. However, when deaf and hard of hearing prisoners are denied interpreters and/or assistive listening devices or other auxiliary aids and services during disciplinary proceedings, they are unable to understand the officers conducting the proceedings, the evidence against them, or the results of the proceedings. Absent proper accommodations, prisoners are denied the ability to defend themselves and may be punished without complete understanding of the disciplinary sanctions the hearing officer renders, which may include a period of solitary confinement.

122. At least three of the Plaintiffs have received disciplinary tickets as a result of being unable to hear count or other announcements due to their hearing disabilities; interpreters were not provided during the resulting disciplinary proceedings. In addition, some of the Plaintiffs

have been placed in solitary confinement following the receipt of disciplinary tickets, but have not been afforded interpreters prior to the imposition of such a harsh punishment.

123. Other administrative proceedings in which individuals in DOC custody commonly participate relate to classification – the process by which prisoners are assigned to particular facilities – and parole – the process by which prisoners can be granted early release under the supervision of the Parole Board. Both processes involve several steps during which the prisoners’ ability to understand and communicate are essential.

124. Unfortunately, when deaf and hard of hearing prisoners are denied interpreters and/or assistive listening devices or other auxiliary aids and services during classification and parole proceedings, they are unable to fully participate and advocate for themselves due to their hearing disabilities.

125. The DOC Defendants regularly fail to accommodate deaf and hard of hearing prisoners during classification and parole proceedings. Plaintiff Briggs, for example, must seek the assistance of other prisoners to serve as unqualified ASL interpreters during both classification and parole proceedings, impairing his ability to communicate and breaching his privacy.

**E. Unequal and Improper Treatment by Correctional Officers**

126. Correctional officers at DOC facilities throughout Massachusetts often do not recognize the difficulty that deaf and hard of hearing prisoners have communicating, and refuse to interact with them in a way that makes it possible to communicate. Some officers even single out deaf and hard of hearing prisoners for derogatory and abusive treatment based on their disability.

127. On information and belief, DOC facilities throughout the state typically do not train correctional officers on how to interact with deaf and hard of hearing individuals, nor do they adequately notify new officers which prisoners under their supervision suffer from such disabilities.

128. Correctional officers at DOC facilities are often insensitive to the Plaintiffs' disabilities. They have mocked their inability to hear, accused them of faking their disability, and attempted to humiliate them in front of other prisoners. Others officers refuse to acknowledge the Plaintiffs' deafness. Officers occasionally yell at them in an attempt to communicate because they do not understand the limitations of their hearing abilities and sometimes cite them for misconduct when they fail to respond to instructions that they do not hear. Several Plaintiffs have had correctional officers repeatedly tell them that they are not "really deaf" and mock the manner in which they speak.

### **CLASS ACTION ALLEGATIONS**

129. Plaintiffs Briggs, Skinder, Jimenez, Markham, McGowan, Roldan, and Ward bring this Complaint on their own behalves and on behalf of a class of persons similarly situated ("the Class"), pursuant to the provisions of Fed. R. Civ. P. 23(b)(2). Plaintiffs seek to certify a class of all individuals who are currently or will in the future be within the custody of the DOC and who: (i) the Defendants classify as deaf or hard of hearing or who notify the Defendants in writing, personally or through a family member or advocate, that he or she is deaf or hard of hearing; and (ii) require accommodations, including interpreters or other auxiliary aids or services to communicate effectively, to access Defendants' programs and services, and/or to hear or understand telephone communications, alarms, instructions, or loudspeaker system announcements.

130. The Class is so numerous, and membership so fluid, that joinder of all members is impracticable. According to the DOC's response to a public records request in 2014, the DOC determined that there were sixty-two deaf and hard of hearing prisoners in its custody as of June 2012. On information and belief, the number of deaf and hard of hearing prisoners currently in

DOC custody is greater due to the aging prisoner population. Further, the Class is readily identifiable from information and records in the possession of the Defendants.

131. Numerous common questions of law and fact exist as to all members of the Class. These common questions include, but are not limited to: whether the DOC and named Defendants fail to provide adequate means for deaf or hard of hearing individuals to communicate with individuals outside of DOC facilities; whether the Defendants systematically fail to provide adequate access to individual hearing devices, sign language interpreters, and other auxiliary aids and services to individuals who are deaf or hard of hearing; whether the Defendants systematically fail to provide individuals who are deaf or hard of hearing with full and equal access to services, programs, or privileges comparable to access provided to hearing individuals in DOC custody; whether the Defendants impose a substantial burden on individuals' religious exercise who are deaf or hard of hearing; whether the Defendants' conduct has resulted in harm, and may result in serious future harm, to deaf or hard of hearing individuals by denying them effective communication with medical personnel; and whether the Defendants have caused harm, and may cause serious future harm, to deaf or hard of hearing individuals by failing to provide notification to them of prison warnings and announcements in a manner comparable to that provided to hearing individuals in DOC custody.

132. Plaintiffs' claims are typical of the claims of the members of the Class. The policies and practices described in this Complaint, or lack thereof, apply equally to the named Plaintiffs and to all the other members of the Class, and the injuries suffered by the named Plaintiffs stem from the same policies and practices that affect all members of the Class.

133. Plaintiffs and Plaintiffs' counsel will fairly and adequately protect and represent the interests of the Class. Plaintiffs' interests are consistent with, and are not antagonistic to, the

interests of the Class as a whole. Plaintiffs' counsel are experienced in the protection and enforcement of the statutory and constitutional rights of incarcerated individuals, including deaf individuals.

134. Class action treatment is a fair and efficient method to adjudicate the controversy. Among other things, class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of evidence, effort, and expense that multiple individual actions would engender.

135. Defendants have acted and refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive and declaratory relief with respect to the Class as a whole.

## **CLAIMS FOR RELIEF**

### **COUNT I**

**Discrimination on the Basis of a Disability in Violation of the  
Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.  
(Against all Defendants by the Plaintiffs on behalf of themselves and  
the class of similarly situated individuals)**

136. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

137. The purpose of the ADA is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title II of the ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Title III of the ADA states that "[n]o individual shall be discriminated against on the

basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation...” 42 U.S.C. § 12182.

138. The claims under the ADA are brought against Defendants DOC and MPCH as departments, agencies, or instrumentalities of the State of Massachusetts, as well as against Defendants Higgins O’Brien, Chmiel, Ryan, Medeiros, O’Brien, and Henderson in their official capacities. To be clear, the DOC, which maintains custody and control over Plaintiffs, cannot contract away its liability for any violations of the ADA by MPCH, a private employer contracted to provide health care services to Massachusetts prisoners.

139. Defendants DOC and MPCH are “public entit[ies]” within the meaning of 42 U.S.C. § 12131(1)(B). In the alternative, MPCH constitutes a “place of public accommodation” within the meaning of 42 U.S.C. § 12181(7).

140. Plaintiffs are each a “qualified individual with a disability” within the meaning of Title II and Title III of the ADA. 42 U.S.C. §§ 12131(2), 12102(2).

141. By the actions of the Defendants described above, Plaintiffs have, by reason of such disability, been “excluded from participation in or be[en] denied the benefits of the services, programs, or activities of” public entities and have been subjected to discrimination by public entities, in violation of Title II of the ADA, 42 U.S.C. § 12132. To the extent that MPCH is deemed a place of public accommodation, rather than a public entity, MPCH’s actions have discriminated against Plaintiffs on the basis of their disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations” in violation of Title III of the ADA, 42 U.S.C. § 12182.

142. At all times relevant to this action, the ADA was in full force and effect in the United States and Plaintiffs had a right not to be subjected to discrimination on the basis of their disability by the Defendants. 42 U.S.C. § 12132.

143. The U.S. Department of Justice (“DOJ”) regulation implementing Title II of the ADA requires the provision of effective communication as part of its nondiscrimination mandate. 28 C.F.R. § 35.160. This regulation states: “A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public, and companions with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a); *see* 28 C.F.R. §36.303(c) (requiring public accommodations to ensure effective communication with individuals with disabilities).

144. In order to ensure effective communication, the ADA requires that “a public entity” furnish “appropriate auxiliary aids and services where necessary to afford individuals with disabilities...an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.” 28 C.F.R. § 35.160(b)(1); *see* 28 C.F.R. §36.303 (concerning the obligations of public accommodations).

145. Auxiliary aids and services include, but are not limited to, “qualified interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments,” 42 U.S.C. § 12103, such as computer-aided transcription services, assistive listening systems, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videophones, and videotext displays. 28 C.F.R. § 35.104; *see* 28 C.F.R. § 36.303.

146. In determining what type of auxiliary aid and service is necessary, “a public entity shall give primary consideration to the requests” of the individual with disabilities. 28 C.F.R. § 35.160(b)(2).

147. The Defendants have failed to give consideration to Plaintiffs’ reasonable requests for accommodations by denying them videophone services, visual alert and notification systems, and by denying their requests for interpreter services, individual hearing devices, and other auxiliary aids and services.

148. As a result, Plaintiffs have been unable to communicate effectively with individuals outside of prison. Plaintiffs are unable to equally access and participate in administrative proceedings, educational, vocational, and rehabilitative programming and medical, mental health, religious, and other DOC services. Plaintiffs are unable to equally participate in daily life and understand safety alerts and other notifications. and Plaintiffs are excluded from employment and vocational benefits and opportunities.

149. The Defendants’ failure to provide effective communication for individuals with hearing disabilities denied and continues to deny, on the basis of their disability, Plaintiffs the same access to Defendants’ services, benefits, activities, programs, or privileges as the access provided to hearing individuals.

150. As a proximate result of the Defendants’ violations of Plaintiffs’ rights under the ADA, Plaintiffs have suffered and continue to suffer from discrimination, unequal treatment, exclusion (including exclusion from Defendants’ services, benefits, activities, programs, and privileges), violations of their rights under the laws of the United States, unequal access to good conduct deductions to reduce their overall incarceration time and improve their prospects for gaining parole release, unnecessary disciplinary measures, injury to their health, financial loss, loss of

dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, and embarrassment.

151. The Defendants' failure to comply with the ADA has resulted, and will continue to result, in harm to Plaintiffs, as Plaintiffs will continue to be in the custody or under the supervision of DOC, and will continue to attempt to use or avail themselves of the services, benefits, activities, programs, and privileges of the Defendants. This harm will continue unless and until the Defendants make modifications to their policies, practices, and procedures pursuant to the ADA.

## COUNT II

**Discrimination on the Basis of a Disability in Violation of the  
Rehabilitation Act, 29 U.S.C. § 794 et seq.  
(Against all Defendants by the Plaintiffs on behalf of themselves and  
the class of similarly situated individuals)**

152. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

153. The purpose of the Rehabilitation Act is to ensure that no "qualified individual with a disability in the United States...shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." 29 U.S.C. § 794(a).

154. The claims under the Rehabilitation Act are brought against Defendants DOC and MPCH as departments, agencies, or instrumentalities of the State of Massachusetts, as well as against Defendants Higgins O'Brien, Chmiel, Ryan, Medeiros, and Henderson in their official capacities as employees of DOC. To be clear, however, the DOC cannot contract away its liability for any violations of the Rehabilitation Act by MPCH, a private employer contracted to provide health care services to Massachusetts prisoners.

155. Defendants DOC and MPCH receive federal financial assistance within the meaning of 29 U.S.C. § 794(a).

156. The operations of the Defendants are programs or activities within the meaning of 29 U.S.C. § 794(b).

157. Plaintiffs are each an “individual with a disability” within the meaning of the Rehabilitation Act, 29 U.S.C. § 705(20).

158. The DOJ regulation implementing the Rehabilitation Act clarifies the requirements for Federal financial recipients, including correctional facilities, stating: “A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to qualified handicapped persons with impaired sensory, manual, or speaking skills where a refusal to make such provision would discriminatorily impair or exclude the persons in the program receiving federal financial assistance.” 28 C.F.R. § 42.503(f).

159. Appropriate auxiliary aids under the DOJ regulations include, but are not limited to, “qualified interpreters...and telephonic devices.” 28 C.F.R. § 42.503(f).

160. The Defendants have discriminatorily impaired Plaintiffs’ ability to communicate effectively with medical personnel, prison staff, and individuals outside of prison and/or excluded Plaintiffs from educational, vocational, and rehabilitative programming and prison announcements and notifications. They have done this by failing to provide appropriate auxiliary aids and services in violation of the Rehabilitation Act.

161. The Defendants’ failure to provide appropriate auxiliary aids and services for individuals with hearing disabilities denied and continues to deny, on the basis of their disabilities, Plaintiffs the same access to Defendants’ services, benefits, activities, programs, or privileges as the access provided to hearing individuals.

162. The failure to provide appropriate auxiliary aids and services, and the failure to provide comparable access to services, benefits, activities, programs or privileges are policies, regular practices, and/or customs of the Defendants. These failures are ongoing and continue to this date.

163. The Defendants' failure to provide appropriate auxiliary aids and services has subjected Plaintiffs to discrimination on the basis of their disability in violation of their rights under the Rehabilitation Act, in ways that include, but are not limited to, the following:

- a. Inadequate access to telecommunications devices;
- b. Inadequate access to sign language interpreters, individual hearing devices, and other appropriate auxiliary aids and services to enable them to participate in administrative proceedings and to participate and benefit from Defendants' programs, services, and activities; and
- c. Inadequate access to prison alarms and audio alerts and notifications.

164. The Defendants have also violated the Rehabilitation Act by excluding prisoners who are deaf or hard of hearing from Defendants' employment and vocational benefits and opportunities. *See* 28 C.F.R. 42.503.

165. As a proximate result of Defendants' violations of Plaintiffs' rights under the Rehabilitation Act, Plaintiffs have suffered and continue to suffer from discrimination, unequal treatment, exclusion (including exclusion from Defendants' services, benefits, activities, programs, and privileges), violations of their rights under the laws of the United States, unequal access to good conduct deductions to reduce their overall incarceration time and improve their prospects for gaining parole release, unnecessary disciplinary measures, injury to their health, financial loss, loss of dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, and embarrassment.

166. The Defendants' failure to comply with the Rehabilitation Act has resulted in harm to Plaintiffs, and the Defendants are liable to Plaintiffs for harms suffered. The Defendants' failure to comply with the Rehabilitation Act will continue to result in harm to Plaintiffs, as Plaintiffs will continue to be in the custody or under the supervision of DOC and will continue to attempt to use or avail themselves of the services, benefits, activities, programs, and privileges of Defendants. This harm will continue unless and until the Defendants make modifications to their policies, practices and procedures pursuant to the Rehabilitation Act.

### **COUNT III**

#### **Violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1 et seq.**

**(Against Defendants Higgins O'Brien, Chmiel, Ryan, Medeiros, O'Brien, and Henderson  
by the Plaintiffs on behalf of themselves and the class of similarly situated individuals)**

167. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

168. Under the RLUIPA, Governments may not impose substantial burdens on the religious exercise of institutionalized persons "even if the burden results from a rule of general applicability." 42 U.S.C. § 2000cc-1(a).

169. The claims under RLUIPA are brought against Defendants DOC as a department, agency, or instrumentality of the Commonwealth of Massachusetts, as well as against Defendants Higgins O'Brien, Chmiel, Medeiros, Ryan, Henderson, and O'Brien in their official capacities as employees of the DOC.

170. As a department, agency, or instrumentality of the Commonwealth of Massachusetts, or officials of such entities, the Defendants are each a "government" within the meaning of RLUIPA. *See* 42 U.S.C. § 2000cc-5(4)

171. Plaintiffs are “institutionalized persons” within the meaning of RLUIPA. *See* 42 U.S.C. § 2000cc-1.

172. The Defendants have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by RLUIPA, by unlawfully imposing a substantial burden on Plaintiffs’ religious exercise. They have done so by failing to provide interpreters or other means for enabling Plaintiffs to effectively communicate at weekly worship services. The substantial burden the Defendants have imposed on Plaintiffs’ religious exercise affects programs or activities that receive Federal financial assistance.

173. The Defendants’ failure to comply with RLUIPA has resulted, and will continue to result in, harm to Plaintiffs, as Plaintiffs will continue to be in DOC custody and continue to attempt to participate in weekly worship services unless and until Defendants make modifications to DOC policies, practices, and procedures pursuant to RLUIPA.

#### **COUNT IV**

**Violation of Free Exercise Rights under First and Fourteenth  
Amendments to the United States Constitution  
(Against Defendants Higgins O’Brien, Chmiel, Ryan, Medeiros, O’Brien, and Henderson  
by the Plaintiffs on behalf of themselves and the class of similarly situated individuals)**

174. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

175. Defendants Higgins O’Brien, Chmiel, Ryan, Medeiros, O’Brien, and Henderson, acting under color of Massachusetts statutes and regulations, deprived and continue to deprive Plaintiffs of their free exercise of religion, as secured by the First and Fourteenth Amendments to the United States Constitution, and enforceable through 42 U.S.C. § 1983, by discriminating against Plaintiffs because of their hearing disabilities and mode of speech and substantially burdening their religious exercise.

176. The failure of Defendants Higgins O'Brien, Chmiel, Ryan, Medeiros, O'Brien, and Henderson to comply with the First and Fourteenth Amendments of the United States Constitution has resulted, and will continue to result in, harm to Plaintiffs, unless and until Defendants make modifications to their policies, practices, and procedures consistent with constitutional requirements, as Plaintiffs will remain in the custody of DOC.

**COUNT V**

**Violation of Free Speech Rights under the First and Fourteenth  
Amendments to the United States Constitution  
(Against Defendants Higgins O'Brien, Chmiel, Ryan, Medeiros, O'Brien, and Henderson  
by the Plaintiffs on behalf of themselves and the class of similarly situated individuals)**

177. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

178. Defendants Higgins O'Brien, Chmiel, Ryan, Medeiros, O'Brien, and Henderson, acting under color of Massachusetts statutes and regulations, deprived and continue to deprive Plaintiffs of their freedom of speech, as secured by the First and Fourteenth Amendments to the United States Constitution, and enforceable through 42 U.S.C. § 1983, by preventing Plaintiffs from effectively communicating with people outside of the prison. Despite multiple complaints in writing to DOC officials, the DOC – through the official actions of Defendants – has denied and continues to deny Plaintiffs access to telecommunications devices that would give them the ability and opportunity to communicate with people outside of prison.

179. The Defendants' failure to comply with the First and Fourteenth Amendments of the United States Constitution has resulted, and will continue to result in, harm to Plaintiffs unless and until the Defendants make modifications to their policies, practices, and procedures consistent with constitutional requirements, as Plaintiffs will remain in the custody of DOC.

**COUNT VI**

**Violation of Rights to Privacy and Informed Consent under the First and Fourteenth Amendments of the United States Constitution  
(Against all Defendants by the Plaintiffs on behalf of themselves and the class of similarly situated individuals)**

180. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

181. The Defendants, acting under color of Massachusetts statutes and regulations, by their policies, practices, and acts, deprived and continue to deprive Plaintiffs of their rights to privacy and informed consent, as secured by the First and Fourteenth Amendments to the United States Constitution, and enforceable through 42 U.S.C. § 1983, by forcing Plaintiffs to use unqualified sign language interpreters who are not bound to maintain confidentiality in the administration of medical treatment, and by providing medical treatment to Plaintiffs without the assistance of a qualified interpreter or other assistive devices such that Plaintiffs receive information sufficient to reach an informed judgement on whether to consent to a particular treatment and be free from unwanted medical treatment.

182. The Defendants' failure to comply with the First and Fourteenth Amendments of the United States Constitution has resulted in, and will continue to result in, harm to Plaintiffs unless and until all Defendants make modifications to their policies, practices, and procedures consistent with constitutional requirements, as Plaintiffs will remain in the custody of DOC.

**COUNT VII**

**Violation of Right against Cruel and Unusual Punishment under the Eighth and Fourteenth Amendments of the United States Constitution:  
Deliberate Indifference to Serious Medical Needs  
(Against all Defendants by the Plaintiffs on behalf of themselves and the class of similarly situated individuals)**

183. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

184. The Defendants, acting under color of Massachusetts statutes and regulations, by their policies, practices, and acts, violated and continue to violate the rights of Plaintiffs to be free from cruel and unusual punishment, as protected by the Eighth and Fourteenth Amendments to the United States Constitution, as enforceable through 42 U.S.C. § 1983, by being deliberately indifferent to Plaintiffs' serious medical needs. The Defendants' failure to provide qualified interpretive services and assistive devices during medical and mental health treatment rises to a systemic deficiency in all instances in which communication between the patient and medical personnel are essential to the efficacy of the treatment in question.

185. The Defendants' failure to comply with the Eighth and Fourteenth Amendments of the United States Constitution has resulted in, and will continue to result in, harm to Plaintiffs unless and until all Defendants make modifications to their policies, practices, and procedures consistent with constitutional requirements, as Plaintiffs will remain in the custody of DOC.

### **COUNT VIII**

#### **Violation of Right against Cruel and Unusual Punishment under the Eighth and Fourteenth Amendments of the United States Constitution:**

##### **Unsafe Conditions of Confinement**

**(Against Defendants Higgins O'Brien, Chmiel, Ryan, Medeiros, O'Brien, and Henderson by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)**

186. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

187. Defendants Higgins O'Brien, Chmiel, Ryan, Medeiros, O'Brien, and Henderson, acting under color of Massachusetts statutes and regulations, by their policies, practices, and acts, violated and continue to violate the rights of Plaintiffs to be free from cruel and unusual punishment, as protected by the Eighth and Fourteenth Amendments to the United States

Constitution, as enforceable through 42 U.S.C. § 1983, by failing to provide Plaintiffs with safe conditions of confinement in that Defendants have failed to take necessary safety precautions, install equipment, and establish procedures to ensure that Plaintiff are made aware of emergency alarms and announcements. Plaintiffs, who are unable to provide for their own safety while in DOC custody, have the right not to be subjected to the unreasonable threat of injury or death by fire and need not wait until actual casualties occur in order to obtain relief from such conditions.

188. The Defendants' failure to comply with the Eight and Fourteenth Amendments of the United States Constitution has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs unless and until Defendants make modifications to their policies, practices, and procedures consistent with constitutional requirements, as Plaintiffs will remain in the custody of DOC.

### **COUNT IX**

#### **Violation of Right to Due Process in Disciplinary Proceedings under the Fourteenth Amendment of the United States Constitution (Against Defendants Higgins O'Brien, Chmiel, Ryan, Medeiros, O'Brien, and Henderson by the Plaintiffs on behalf of themselves and the class of similarly situated individuals)**

189. Plaintiffs hereby incorporate each preceding and succeeding paragraph as though fully set forth herein.

190. Defendants Higgins O'Brien, Chmiel, Ryan, Medeiros, O'Brien, and Henderson, acting under color of Massachusetts statutes and regulations, by their policies, practices, and acts, violated and continue to violate Plaintiffs' right to due process, as protected by the Fourteenth Amendments to the United States Constitution, as enforceable through 42 U.S.C. § 1983, by failing to provide Plaintiffs with interpretive services or other assistive devices during all stages of disciplinary proceedings.

191. The Defendants' failure to comply with the Fourteenth Amendment of the U. S. Constitution has resulted, and will continue to result in, harm to Plaintiffs unless and until all Defendants are ordered by this Court to make modifications to their policies, practices, and procedures consistent with constitutional requirements, as Plaintiffs will remain in the custody of DOC.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court:

- a. Certify this case as a Plaintiff class action pursuant to Fed. R. Civ. P. 23 (b)(2), certify that named Plaintiffs Briggs, Skinder, Jimenez, Markham, McGowan, Roldan, and Ward are proper representatives of the class, and appoint the undersigned as class counsel;
- b. Adjudge and decree that the Defendants, by the organizations, systems, policies, practices, and conditions described above, have violated and continue to violate Title II of the ADA, Section 504 of the Rehabilitation Act, the Religious Land Use and Institutionalized Persons Act, and the Constitution of the United States;
- c. Enjoin the Defendants from refusing to provide the proper interpretive services, TDD, videophones, and other assistive devices that are required for deaf and hard of hearing prisoners to fully participate in and benefit from the programs and services offered by these public entities, and required to ensure their physical safety;
- d. Enjoin the Defendants from depriving Plaintiffs and Plaintiff Class members of the protections of Title II of the ADA, Section 504 of the Rehabilitation Act, the Religious Land Use and Institutionalized Persons Act, the First,

Eighth, and Fourteenth Amendments of the United States Constitution  
pursuant to 42 U.S.C. § 1983;

- e. Award reasonable attorneys' fees and costs; and
- f. Award Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,

Plaintiffs Leonard Briggs, George Skinder,  
Rolando S. Jimenez, Louis Markham,  
McGowan, Eric Roldan and Jennifer Ward,

By their attorneys,

Dated: November 24, 2015

/s/ Tatum Pritchard

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