

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**BRANDON COBB, MARY HILL, and
JOSEPH NETTLES, on behalf of
themselves and all others similarly
situated,**

Plaintiffs,

v.

**GEORGIA DEPARTMENT OF
COMMUNITY SUPERVISION, and
MICHAEL NAIL, in his official capacity
as Commissioner of the Georgia
Department of Community Supervision,**

Defendants.

Civil Action No.
1:19-cv-03285-WMR

CLASS ACTION

SETTLEMENT AGREEMENT

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Plaintiffs Brandon Cobb, Mary Hill, and Joseph Nettles, on behalf of themselves and all others similarly situated (the “Plaintiffs”), and Defendants Georgia Department of Community Supervision (“DCS”), and its Commissioner Michael Nail (collectively “Defendants” and, together with Plaintiffs, the “Parties”), hereby enter this Settlement Agreement (the “Agreement”) as a resolution of all claims for prospective relief asserted by Plaintiffs in this action.

RECITALS

WHEREAS, on July 19, 2019, six Plaintiffs, including Cobb and Nettles, initiated a putative class action in the U.S. District Court for the Northern District of Georgia by filing a complaint initially alleging that Defendants are violating Title II of the Americans with Disabilities Act, 42 U.S.C. S 12131 *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. S 794 *et seq.*, and Plaintiffs’ due process rights under the Fourteenth Amendment by failing to make reasonable modifications to their policies and practices for Deaf or Hard of Hearing individuals on probation or parole in the State of Georgia;

WHEREAS, on July 1, 2021, Plaintiffs Cobb, Nettles, and Hill filed their Second Amended Complaint (hereinafter “Complaint”).

WHEREAS, on October 13, 2022, the Court issued an Order denying Defendants’ motion for summary judgment and certifying a class of

[a]ll present and future deaf or hard of hearing individuals supervised by DCS, whose hearing qualifies as a disability under the ADA and Rehabilitation Act and who require hearing-related accommodations and services to communicate effectively and/or to access or participate equally in programs, services, or activities available to individuals supervised by DCS[;]

WHEREAS the Parties subsequently engaged in productive settlement negotiations and jointly agreed to mediate the case before proceeding to trial;

WHEREAS, the Parties, by and through undersigned counsel, participated in mediation sessions before Magistrate Judge Christopher C. Bly at the courthouse for the Northern District of Georgia located in Atlanta, Georgia on March 2, 2023, March 14, 2023, April 3, 2023, May 11, 2023, June 15, 2023, and July 24, 2023;

WHEREAS, as a result of these mediation sessions, the Parties reached a mutually agreeable resolution of the case as set forth in this Agreement;

WHEREAS, the policies and practices that Defendants will implement pursuant to this Agreement are within the relief Plaintiffs seek in their Complaint;

WHEREAS, during the pendency of the litigation, Defendants have taken remedial measures;

WHEREAS, the Plaintiffs believe that the resolution of this matter with this Agreement is in the best interest of the members of the certified plaintiff class;

WHEREAS, the Parties desire, through this agreement, to avoid the costs and burdens associated with further litigation, the Parties have determined to settle this matter as set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, conditions, and covenants set forth below, the Parties agree, through their respective authorized representatives, to be bound by the terms and conditions set forth below.

DEFINITIONS

a. **“ADA Coordinator”** means the individual appointed by the Commissioner to coordinate DCS’ compliance with ADA requirements.

b. **“Appears to be Deaf or Hard of Hearing”** means, for any individual, any one of these four criteria are met: (i) an individual appears to be using sign language or gesture; (ii) an individual is visibly using a device to assist with hearing (e.g., hearing aid, cochlear implant/implantable device, etc.); (iii) an individual self-identifies as being Deaf or Hard of Hearing or as someone with hearing loss who uses an alternative means of communication; and/or (iv) an individual for whom DCS observes communication barriers that appear to be related to hearing ability.

c. **“Auxiliary Aids and Services”** means auxiliary aids and services as defined by 28 C.F.R. § 35.104, which includes: Qualified Interpreters on-site or through Video Remote Interpreting services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are Deaf or Hard of Hearing.

d. **“Communication Assessment”** means the assessment of Auxiliary Aids and Services that would provide for Effective Communication based upon a supervisee’s responses to the DCS Communication Assessment Form.

e. **“Communication Assessment Form”** means the DCS form which documents an individual’s hearing disability and all information needed for completion of a supervisee’s

Communication Plan. The Communication Assessment Form agreed upon by the Parties is attached to this Agreement as Exhibit 1.

f. **“Communication Plan”** means the individualized list of Auxiliary Aids and Services and reasonable modifications that will be provided by DCS to individuals with hearing disabilities in the various different categories of interactions between DCS and the individual to provide Effective Communication. The form agreed upon by the Parties that DCS uses to generate the Communication Plan is attached to this Agreement as Exhibit 2.

g. **“Critical Interactions”** means those interactions in which the risks of miscommunication or misunderstanding are high and the consequences of miscommunications or misunderstandings may have serious repercussions for Deaf or Hard of Hearing supervisees. By way of example, Critical Interactions shall include: (i) the initial explanation of the conditions of DCS supervision at Intake, any subsequent changes thereto, and any other instances in which the contents of legal documents are provided or reviewed; (ii) instances in which a communication with DCS occurs with the intention of substantively discussing the reasons leading to and the consequences of arrest or revocation, such as waivers; and (iii) any interactions with a supervisee in a carceral setting.

h. **“Deaf or Hard of Hearing”** means a supervisee, if unaided by hearing aids or any medical device, is unable to hear to a sufficient degree to be able to understand the spoken word such that this hearing level or loss qualifies as a disability under the ADA and the Rehabilitation Act.

i. **“Effective Communication”** means communication with individuals who have hearing disabilities that is as effective as communications with others. Effective Communication

is achieved by furnishing appropriate Auxiliary Aids and Services and reasonable modifications where necessary.

j. **“Effective Date”** means the date this Agreement receives final approval by the Court following the final approval hearing.

k. **“External Communication Assessment”** means a Communication Assessment conducted by a Qualified Assessor to determine what Auxiliary Aids and Services which would provide for Effective Communication. An External Communication Assessment will be used as set forth in Paragraphs 2-9 to complete an individual’s Communication Plan.

l. **“Intake”** means the process from the point of time an individual initially reports to DCS as a new or former felony probationer or parolee under the supervision of DCS through the conclusion of orientation and explanation of the conditions of DCS supervision.

m. **“Internal Communication Assessment”** means a Communication Assessment conducted by the ADA Coordinator to determine what Auxiliary Aids and Services would provide for Effective Communication.

n. **“Internal Intake Assessment”** means the initial inquiry, conducted when the supervisee first encounters DCS as a new or former felony probationer or parolee, regarding whether the individual may Appear to Be Deaf or Hard of Hearing.

o. **“Presumed to Know Sign Language”** means, for any supervisee, that (i) the CSO observes the supervisee appearing to use sign language or gesture; (ii) the supervisee responds affirmatively to the CSO verbally asking the supervisee: “Do you know sign language?,” or does not appear to understand the question; or (iii) the supervisee indicates, by pointing, gesture, or

nodding affirmatively to an “ASL interpreter” symbol with “A.S.L.” written and finger-spelled underneath on a prepared document shown by the CSO.

p. **“Qualified Assessor”** means a person, contracted through the Georgia Department of Behavioral Health and Developmental Disabilities (“DBHDD”) or otherwise, who is familiar with American Sign Language, oral communication, gestural communication, who has experience assessing the reading and writing ability of Deaf and Hard of Hearing individuals, and who is able to determine which appropriate Auxiliary Aids and Services including all types of Qualified Interpreters would provide Effective Communication. The Qualified Assessor performs an External Communication Assessment.

q. **“Qualified Individual with a Disability”** means an individual with a disability who with or without reasonable modifications to policies, practices, or procedures, or the provision of Auxiliary Aids and Services meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. § 12131(2).

r. **“Qualified Interpreter”** means an interpreter who, via a VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, given the individual with hearing disabilities’ language, skills, and education. Qualified Interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. In accordance with O.C.G.A. § 24-6-651, a qualified interpreter must be certified as an interpreter for hearing impaired persons by the Registry of Interpreters for the Deaf or be a court qualified interpreter. For purposes of this Agreement, a Certified Deaf Interpreter (“CDI”) is also considered a Qualified Interpreter.

s. **“Unplanned Critical Interaction”** means a Critical Interaction between a Deaf or Hard of Hearing supervisee and DCS where DCS did not have sufficient advance notice to allow for DCS to arrange for Auxiliary Aid and Service(s) required for a Critical Interaction.

t. **“Video Remote Interpreting”/“VRI”** means a fee-based service that uses video conferencing technology to access an off-site interpreter to provide real-time sign language or oral interpreting services for conversations between hearing people and people who are deaf or have hearing loss.

TERMS AND CONDITIONS

Applicability

1. The terms in this Agreement apply to Deaf or Hard of Hearing individuals who are under the supervision of DCS.

Communication Assessment and Plan

2. Each supervisee shall receive an Internal Intake Assessment to determine whether the supervisee Appears to be Deaf or Hard of Hearing.

a. For any supervisee who Appears to be Deaf or Hard of Hearing and is Presumed to Know Sign Language, all subsequent communication at the initial meeting with DCS will take place with VRI until a Communication Plan is completed. Intake shall not proceed further without an in-person interpreter consistent with the Communication Plan.

b. For any supervisee who Appears to be Deaf or Hard of Hearing and is not Presumed to Know Sign Language, DCS will contact the ADA Coordinator to determine

which other Auxiliary Aids or Services to provide and until the ADA Coordinator is available to discuss, Intake will not proceed.

- c. If DCS staff is unable to establish any meaningful communication via any of the methods outlined above, DCS staff shall contact the ADA Coordinator for guidance on how to proceed and until the ADA Coordinator is available to discuss, Intake will not proceed.

3. Upon a determination by DCS staff that the supervisee Appears to be Deaf or Hard of Hearing, DCS staff will arrange to have the ADA Coordinator join the meeting to describe what communication access is, explain the supervisee's right to Effective Communication during supervision, and outline the Communication Assessment process. As a part of this discussion, if the supervisee became Deaf or Hard of Hearing as a minor, the ADA Coordinator will offer the supervisee an opportunity to consent to an External Communication Assessment. The outline the ADA Coordinator will follow for his discussion is attached to this Agreement as Exhibit 3. If the ADA Coordinator is unavailable to join the call, DCS staff and the supervisee will reschedule that call for a later date and not proceed with Intake in the interim time period. The ADA Coordinator and DCS staff will have the supervisee execute a Communication Assessment Acceptance/Refusal form to the External Communication Assessment, the form of which is attached to this Agreement as Exhibit 4.

4. A Communication Assessment will be completed for every supervisee who Appears to be Deaf or Hard of Hearing as follows:

- a. Supervisees who were born Deaf or Hard of Hearing, or who answer yes to the question "Were you a minor when you became deaf or hard of hearing?" shall

receive an External Communication Assessment, unless the supervisee does not consent to such External Communication Assessment, in which case the ADA Coordinator shall complete the Internal Communication Assessment with the supervisee.

- b. Supervisees who became Deaf or Hard of Hearing as an adult shall receive an Internal Communication Assessment to be completed by the ADA Coordinator unless conditions are present that the ADA Coordinator believes warrant an External Communication Assessment.

5. If the supervisee consents to an External Communication Assessment, DCS will then engage an outside agency to assist in completing the External Communication Assessment. DCS will give preference to the services of DBHDD. The memorandum of understanding between DCS and DBHDD is attached to this Agreement as Exhibit 5. Defendants will be responsible for scheduling the External Communication Assessment (virtual or in-person) with the supervisee and the outside agency. If DCS staff was unable to establish meaningful communication with the supervisee in order to obtain consent at Intake, the outside agency will seek such consent before proceeding to the External Communication Assessment. The results of the External Communication Assessment will be documented on the Communication Assessment Form.

6. If the supervisee does not consent to the External Communication Assessment, the Communication Assessment Acceptance/Refusal Form must be completed. If the supervisee does not consent to the External Communication Assessment or became Deaf or Hard of Hearing as an adult, the ADA Coordinator will complete the Internal Communication Assessment using the Communication Assessment Form. The supervisee's responses to those questions, as well as any

Auxiliary Aids and Services used in filling out the Communication Assessment Form will be documented on the form.

7. The Communication Assessment Form completed during the Internal Communication Assessment or External Communication Assessment will be used by the ADA Coordinator to create the supervisee's individualized Communication Plan which will list all effective Auxiliary Aids and Services.

8. The Communication Plan will list the supervisee's accommodations, including the appropriate Auxiliary Aids and Services that will be provided to the supervisee to provide Effective Communication as well as the supervisee's preferred method of communication.

9. A copy of the supervisee's Communication Plan will be provided to the supervisee and loaded into the DCS Portal system.

Notation, Tracking, and Following Communication Plan

10. The information recorded in a supervisee's Communication Plan will be recorded in the DCS Portal, provided to the supervisee, and communicated to DCS staff.

11. DCS staff will comply with the Communication Plan unless specific showings of fundamental alteration or undue burden pursuant to 28 C.F.R. § 35.164 are made or a departure is made in accordance with Paragraph 13.

12. Third party vendors approved by DCS will be contractually required to meet all requirements required by the ADA and the Rehabilitation Act. Vendors who are found by DCS to have violated the ADA and the Rehabilitation Act will lose approval status.

13. Departures from the Communication Plan will require approval from the DCS ADA Coordinator. Departures will be documented in the DCS Portal and, where appropriate, remedial measures taken.

Communication Assessment and Plans for Current Supervisees

14. DCS will provide DBHDD with the expert reports of Drs. Judy Shephard-Kegl and Amy June Rowley, including the individual assessments for named-plaintiffs Brandon Cobb and Mary Hill. Consistent with Paragraphs 2-9, DBHDD will then complete a Communication Assessment Form and the ADA Coordinator will complete a Communication Plan for Mr. Cobb and Ms. Hill.

15. For all other current Deaf or Hard of Hearing supervisees, a Communication Assessment and a Communication Plan will be completed in accordance with Paragraphs 2-9 herein.

Use of VRI

16. DCS' use of VRI for interactions between DCS and Deaf or Hard of Hearing supervisees will be subject to the following conditions:

- a. VRI is identified as appropriate in the supervisee's Communication Plan;
- b. The technical requirements specified in 28 CFR § 35.160(d) for VRI are met or exceeded and VRI is functioning; and
- c. In accordance with O.C.G.A. § 24-6-657, the interpreter must be in full view of and spatially situated so as to assure Effective Communication with the Deaf or Hard

of Hearing supervisee and the screen size of the device used for VRI must be sufficient to meet this requirement.

17. For any supervisee who is Deaf or Hard of Hearing and VRI is identified as appropriate in the supervisee's Communication Plan, DCS staff will use the agency issued Chromebook as the primary delivery method for VRI services to supervisees who are Deaf or Hard of Hearing.

18. DCS staff should ask the supervisee to repeat back the supervisee's understanding of the directions/information given.

19. A DCS-issued cell phone should only be utilized in emergency situations when a properly charged and maintained Chromebook has failed to connect to VRI services. The nature of the Chromebook's failure and the circumstances necessitating emergency use of a different device shall be documented in the case management system. Any interactions with supervisees employing VRI services should be treated as a qualifying event requiring recording with a body-worn camera. If a Chromebook and/or similar device is used for VRI services, the CSO shall record both the Chromebook screen and the supervisee. If such a recording cannot be accomplished with one DCS staff member, a second DCS staff member with a body-worn camera should record simultaneously to ensure both the supervisee and VRI services are captured for the duration of the interaction.

Auxiliary Aids and Services for Critical Interactions

20. DCS will provide in-person interpreter(s) for Critical Interactions for supervisees who require any type of interpreter(s) in their Communication Plans. For supervisees who do not require any type of interpreter(s) in their Communication Plans, DCS will provide one or more

Auxiliary Aids and Services for Critical Interactions that are the same as those identified on supervisees' Communication Plans for Intake.

21. In the event of an Unplanned Critical Interaction, DCS shall immediately arrange for one or more Auxiliary Aids and Services required for Critical Interactions set forth in Paragraph 20 above. If those Auxiliary Aids and Services for Critical Interactions are not immediately available, DCS will use one or more Auxiliary Aids and Services identified in the supervisee's Communication Plan as appropriate stop-gap measures until the Auxiliary Aids and Services required for Critical Interactions become available. To the extent the stop-gap measures identified in the supervisee's Communication Plan are unavailable, DCS staff will immediately contact the ADA Coordinator to determine next steps. In any situation in which DCS uses these stop-gap measures, DCS shall seek remedial action as necessary to ensure that any information that was attempted to be shared during the stop-gap period is communicated effectively. For example, if DCS calls an interpreting agency and requests an in-person interpreter and that interpreter will not arrive on-site for two hours or more, then DCS may use VRI as a stop-gap measure to communicate with the supervisee to the extent that is consistent with the supervisee's Communication Plan, until the in-person interpreter arrives.

22. For any Critical Interaction between DCS staff and supervisees occurring in a jail post-arrest in which DCS is implicated, DCS staff will notify jail administration beforehand of the supervisee's need for appropriate Auxiliary Aids and Services and seek permission to provide appropriate Auxiliary Aids and Services during DCS interactions. These Auxiliary Aids and Services are set forth in Paragraph 20 above. The CSO must document any denial of DCS provided Auxiliary Aids and Services for attempted DCS encounters in the GA Reentry Web Portal and notify the ADA Coordinator within the next business day of notification of denial. The attempt to

schedule or otherwise arrange for these Auxiliary Aids and Services should occur immediately, and no later than, within one (1) business day of notification of the post-arrest and should be documented in the case management system. The expectation will be that the meeting between DCS staff and supervisees occurring in jail will be within four (4) business days of notification of arrest and every effort will be made to retain Auxiliary Aids and Services within that time frame. A good faith effort that results in a failure to obtain Auxiliary Aids and Services within that time frame will not constitute a material breach of this Agreement.

Deaf Interpreters

23. DCS will provide a CDI or equally effective Auxiliary Aid or Service, as identified in the Communication Assessment and Communication Plan of an individual Deaf or Hard of Hearing supervisee for that type of interaction.

Written Documents

24. Communication Plans will include information about whether, to what extent, and in what circumstances Deaf or Hard of Hearing supervisees can understand written documents and can communicate in written English.

25. Supervisees who, because of their disability, cannot read and write in English, will receive information in another, accessible form which will be reflected on the Communication Plan.

26. DCS will utilize the appropriate Auxiliary Aids and Services to ensure that Deaf or Hard of Hearing supervisees who cannot read and write English receive Effective Communication to access the content of written information throughout the duration of their supervision.

27. DCS will communicate the contents of any documents mailed to or delivered to a supervisee's residence that are not Critical Interactions for example, guidelines or instructions such as Halloween guidelines, using the Auxiliary Aids and Services provided for in the Communication Plan for Field Interactions.

Supervisee Interpreter and Disability Service Refusal Form

28. To the extent that a Deaf or Hard of Hearing supervisee seeks to decline the use of Auxiliary Aids and Services, that supervisee may complete a Supervisee Interpreter and Disability Service Refusal Form, in the form of the one attached to this Agreement as Exhibit 6.

29. To the extent that a supervisee seeks to decline the use of Auxiliary Aids and Services prior to the completion of a Communication Plan, DCS Staff is required to immediately notify the ADA Coordinator.

Classes, Polygraphs, and Programming

30. Third-party contractors that DCS approves for use by supervisees for programs or services related to their supervision must comply with the ADA and the Rehabilitation Act, including providing Effective Communication to supervisees free of charge.

31. To that end, as a condition of an entity being listed as an "approved vendor" by DCS, the entity must agree to comply with the ADA and the Rehabilitation Act. DCS will assess third-party contractors' compliance with the ADA and the Rehabilitation Act and will remove entities from its "approved vendor" list in the event that an entity fails to provide Effective Communication or equal access to supervisees with disabilities.

32. DCS will ensure that all supervisees who are Deaf or Hard of Hearing are provided notice that third-party contractors must comply with the ADA and the Rehabilitation Act and will require DCS staff to report any third-party contractor who fails to comply with the ADA and the Rehabilitation Act. DCS shall provide supervisees' Communication Plans to third-party contractors that provide programs or services related to those supervisees' supervision.

Training

33. DCS staff will be trained annually and as needed on principles and practical skills to comply with DCS' ADA Policy, the ADA and the Rehabilitation Act, and with the terms of this Agreement.

34. This training shall include the "teach back" or "restatement" technique which shall be used with Deaf or Hard of Hearing supervisees whenever practical. The Parties will collaborate on how to incorporate this technique into training materials.

ADA Policy

35. DCS will require all employees to receive training on and to adhere to DCS' ADA Policy, the form of which is attached to this Agreement as Exhibit 7.

36. The ADA Policy will maintain a grievance process to be used by Deaf or Hard of Hearing supervisees substantially in the form of the one attached to this Agreement as Exhibit 7.

Periodic Evaluation

37. DCS will make biannual attempts in good faith to evaluate whether communication access is effective and in compliance with the ADA and the Rehabilitation Act and make changes to their ADA Policy, practices, and procedures as necessary. This will include periodic attempts

to discuss with Deaf or Hard of Hearing supervisees whether the communication they are being provided is effective and whether they understand information that is being communicated to them.

Compliance Plan and Opportunity to Cure

38. Plaintiffs will provide DCS written notice of any perceived violation of this Agreement. This process will include:

- a. Plaintiffs' counsel will report concerns to DCS and/or its counsel and initiate a process for addressing violations;
- b. DCS will timely investigate each concern for a period of time not to exceed two (2) weeks, unless additional time is needed to thoroughly investigate. Defendants will notify Plaintiffs' counsel should additional time be required within the two (2) week period. Within two (2) weeks following the conclusion of the investigation, Defendants will provide a mechanism for feedback, counseling, training, and potential adverse employment action for DCS staff who fail to comply with this term sheet and the final settlement agreement; and
- c. While the investigation is ongoing, DCS will cure the deficiency by repeating the interaction to the extent possible, using the appropriate Auxiliary Aids and Services to ensure Effective Communication.

39. DCS will provide Plaintiffs' counsel the following documents every three months for the term of this Agreement, to begin on the date of final approval of this Agreement for a period of four (4) years, consistent with the term of this Agreement. If a motion brought by Plaintiffs

pursuant to Paragraph 42 is pending at the time the term of the Agreement is set to expire, the term of the Agreement shall be extended until the Court rules on the motion.

- a. A roster of all current Deaf or Hard of Hearing supervisees, to include names and the most current contact information available to DCS.
- b. Copies of Deaf or Hard of Hearing supervisees' Communication Assessment Forms and Communication Plans. Subsequent production will include only new or revised Deaf or Hard of Hearing supervisees' Communication Assessments and Communication Plans.
- c. Copies of the Supervisee Communication Assessment Acceptance/Refusal Form and the Supervisee Interpreter and Disability Service Refusal Form.
- d. Documentation of any departure from Communication Plans pursuant to Paragraphs 11 and 13.
- e. Face sheets and Portal case notes for all current Deaf or Hard of Hearing supervisees.
- f. BodyCam videos for all Deaf or Hard of Hearing supervisees.
- g. DCS staff communications concerning scheduling the use of Auxiliary Aids and Services, including any Receipts for the same.
- h. Copies of documents establishing requirement that third-party contractors comply with ADA and the Rehabilitation Act.

- i. Documents establishing completion of training by DCS staff actively supervising Deaf or Hard of Hearing supervisees on ADA policy, practices, and procedures. DCS currently offers training once a year in February, March, and May.

40. Any complaints or concerns by any Deaf or Hard of Hearing supervisees relating to this Agreement shall be referred to DCS counsel, who shall investigate the complaint and determine whether remedial action is required within two (2) weeks of receipt of any complaints or concerns, unless additional time is needed to thoroughly investigate. Defendants will advise Plaintiffs' counsel should additional time be required within the two (2) week timeframe. Within two (2) weeks following the conclusion of its investigation of any complaints or concerns, DCS will provide a written response to each complaint and provide a copy of the complaint and the written response to Plaintiffs' counsel.

41. If, after using the process described above, Plaintiffs believe that Defendants are in material breach of this Agreement, Plaintiffs will provide Defendants written notice describing the alleged breach. Defendants will provide a written statement responding to the notice within 15 business days of receipt of notice. Should Plaintiffs believe that Defendants' response is inadequate, counsel for the Parties will confer in a good faith effort to resolve their dispute. Plaintiffs will not file an enforcement motion unless and until the Parties confer and the dispute remains unresolved.

42. Only after following the above procedure, Plaintiffs may request enforcement of this Agreement by seeking an Order requiring DCS to show cause why it should not be held in contempt, or by seeking an order for other relief upon noticed motion before the Court. Any such

motion will cite the provision(s) at issue and allege that Defendants have breached said provision(s).

Fees and Costs

43. The Defendants have agreed to pay Plaintiffs' counsel the total sum of \$1,250,000 in attorneys' fees and costs in complete resolution of the *Cobb* case, the payment of which is contingent upon the Court's final approval of the Agreement. The payment represents settlement of Plaintiffs' counsel's attorney's fees and costs in litigating this matter to settlement as well as anticipated fees and costs associated with monitoring Defendants' compliance with the Settlement.

44. Defendants shall make payment and transfer of the fees to Plaintiffs' counsel within thirty (30) days of the Court's final approval of this Agreement.

Class Action Settlement Procedures

45. The Parties shall jointly submit this Agreement to the Court for preliminary approval pursuant to Fed. R. Civ. P. 23, which will include the proposed written notice to the class.

46. The Parties agree to the following notice procedure ("Notice") to notify the class of the Agreement:

- a. Within ten (10) calendar days following the Court's preliminary approval of this Agreement, Defendants will provide Plaintiffs' counsel a roster of all current Deaf or Hard of Hearing supervisees known to DCS, to include names and the most current contact information available to DCS.
- b. Within sixty (60) calendar days following receipt of the roster above, Plaintiffs shall cause the written settlement notice to be mailed to all Deaf or Hard of Hearing

supervisees identified by Defendants, and shall cause the same to be made available, in both written and ASL video format, online at the location indicated in the settlement notice.

47. The Parties agree that they shall jointly seek to set the final approval hearing within forty-five (45) days after Notice is completed pursuant to Paragraph 46, or as otherwise directed by the Court, for the Court to consider and determine whether the final approval order and the judgment should be entered.

Construction, Effect, and Standard Terms of Agreement

Binding Effect

48. This Agreement contains the entire Agreement between the Parties and is binding upon Plaintiffs and the class, the Defendants named in the lawsuit in their official capacities, and on Defendants' successors in office, employees and agents.

49. The Court will retain jurisdiction during the term of the Agreement to enforce the terms of this Agreement.

Governing Law

50. This Agreement is governed by, and interpreted under, federal law and the laws of the State of Georgia.

Implementation and Time Frames

51. The Parties shall work in good faith to carry out all of the terms of this Agreement. Unless a more specific time frame is specified in this Agreement, the Parties will complete all actions required by this Agreement in a reasonable period of time.

Severability

52. The obligations governed by this Agreement are severable. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if for any reason a part of this Agreement is determined to be invalid or unenforceable, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

Modification

53. The Parties may jointly stipulate to make changes, modifications, and amendments to the requirements of this Agreement.

Release

54. All claims for declaratory and injunctive relief asserted in the Complaint shall be finally and fully settled and released, subject to the terms and conditions of this Agreement, which the Parties enter into freely, voluntarily, knowingly, and with the advice of counsel. The named Plaintiffs and unnamed class members hereby release the Defendants in their official capacities from, and are barred and precluded from prosecuting any claims, causes of action or requests for any injunctive or declaratory relief that have been asserted in this litigation, provided that in no event shall this release be deemed to release or otherwise affect in any way: (a) any claim for money damages; (b) any claim not directly related to the effectiveness of communication provided by DCS to class members; (c) any claim related to medical or mental health diagnosis or treatment; (d) any defenses or objections able to be asserted in a revocation hearing or criminal proceeding; or (e) any claim regarding any act, incident, or event that occurs after the expiration of the Agreement.

Execution and Effective Date

55. This Agreement may be executed electronically in multiple counterparts and emailed or faxed signatures will be valid and enforceable. This Agreement shall be effective upon the Effective Date.

Term of Agreement

56. Unless otherwise agreed by the Parties with approval of the Court, this Agreement and the Court's order approving and entering it shall terminate four (4) years from the Effective Date. For the avoidance of doubt, this Agreement shall not terminate upon the filing and/or adjudication of a motion pursuant to Paragraph 42 of this Agreement.

IN WITNESS WHEREOF, the Parties, by and through their authorized counsel, intending to be legally bound, have executed this Agreement this 21st day of September, 2023.

ON BEHALF OF PLAINTIFFS:

AMERICAN CIVIL LIBERTIES UNION
DISABILITY RIGHTS PROGRAM

s/ Brian L. Dimmick

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