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Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

DAVID D. VANVALKENBURG,

Plaintiff,

v.

**OREGON DEPARTMENT OF
CORRECTIONS,** a state agency,

Defendant.

Case No. 3:14-cv-00916-BR

SECOND AMENDED COMPLAINT

Plaintiff alleges:

INTRODUCTION

1.

Plaintiff David D. VanValkenburg is a deaf individual who was an inmate incarcerated at correctional institutions managed by defendant Oregon Department of Corrections from 2000 to 2014. During Mr. VanValkenburg's fourteen years within the Oregon correctional system,

defendant continually and systematically failed to provide Mr. VanValkenburg with an interpreter of any kind and did not engage in effective communication with Mr. Van Valkenburg. Specifically, defendant failed to provide effective communication during intake interviews and new inmate orientations, educational classes and training, other classes and programs offered, and in confidential settings such as medical, dental, religious services and counseling meetings. Instead, defendant required Mr. VanValkenburg to train inmates to act as interpreters for him, who were unqualified and failed to keep Mr. VanValkenburg's information confidential. Defendant's ongoing conduct violates the Americans with Disabilities Act as Amended and Oregon disability discrimination law and constitutes a pattern and practice of discrimination and a disability-based environment of hostility that started in 2000 and continues to this day.

PARTIES

2.

At all times mentioned herein, plaintiff David VanValkenburg, an individual, was an inmate within the Oregon Department of Corrections correctional system, and was housed at the the following facilities: Oregon State Penitentiary ("OSP"), Oregon State Correctional Institution ("OSCI"), Snake River Correctional Institution ("SRCI"), Santiam Correctional Institution ("SCI") and Columbia River Correctional Institution ("CRCI"). On December 1 2014, Plaintiff was released from Defendant's custody and is currently on Post-Prison Supervision.

3.

At all times mentioned herein, defendant Oregon Department of Corrections ("Defendant") was and is a state agency charged with managing the correctional institutions within the State of Oregon, including OSP, OSCI, SRCI, SCI and CRCI. Defendant is responsible for ensuring that all of its facilities and systems, including its correctional facilities and the employees and agents of those correctional facilities, comply with state and federal disability laws.

VENUE

4.

Defendant has an office for the transaction of business in Multnomah County and conducts regular, sustained business activity in Multnomah County. Defendant operates a prison in Multnomah County, CRCI, where Plaintiff currently resides.

FACTS

Mr. VanValkenburg

5.

At all material times, Mr. VanValkenburg is deaf.

6.

Mr. VanValkenburg's deafness substantially limits one or more of his major life activities, including but not limited to his ability to hear and to effectively communicate with hearing individuals.

7.

Mr. VanValkenburg's primary form of language and communication is American Sign Language ("ASL").

8.

Mr. VanValkenburg also has some limited communication skills with the English language through written notes. When Mr. VanValkenburg communicates in writing, it is significantly slower and less effective than ASL.

Oregon State Penitentiary (OSP)

9.

On or about November 2000 through December 2000, Mr. VanValkenburg was housed at OSP for processing.

10.

Defendant's personnel at OSP knew that Mr. VanValkenburg was deaf and did not inquire what auxiliary aids would assist Mr. VanValkenburg while at OSP.

11.

Defendant did not provide an interpreter for Mr. VanValkenburg during intake, orientation or processing while Mr. VanValkenburg was at OSP.

12.

Mr. VanValkenburg was not able to understand any part of the orientation or effectively communicate with defendant while at OSP.

13.

Mr. VanValkenburg requested interpretive services at OSP, and defendant denied the requests.

14.

All inmates must have a counselor assessment upon intake and processing when they first come into defendant's custody.

15.

Mr. VanValkenburg requested qualified interpretive services for his counselor assessment at OSP; however, his request was denied.

16.

Mr. VanValkenburg did not understand defendant's counselor and defendant's counselor was not able to properly assess Mr. VanValkenburg in the same manner as non-disabled inmates.

17.

Defendant conducts an initial medical exam on all inmates when they first come into defendant's custody.

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18.

Mr. VanValkenburg again asked for qualified interpretive services for his medical exam at OSP; however, none were provided.

19.

Mr. VanValkenburg did not understand defendant's medical personnel and defendant's medical personnel were not able to properly assess Mr. VanValkenburg in the same manner as non-disabled inmates.

20.

At no time while at OSP did Mr. VanValkenburg receive an interpreter of any kind. Any and all of Mr. VanValkenburg's requests for an interpreter at OSP were denied.

Oregon State Correctional Institution (OSCI)

21.

From on or about December 2000 through on or about July 2001, Mr. VanValkenburg was housed at OSCI.

22.

Program counselors at OSCI conduct intake interviews and conduct an orientation for all new inmates at OSCI.

23.

Despite Mr. VanValkenburg's requests for interpretive services, defendant failed to provide Mr. VanValkenburg an interpreter of any kind and did not engage in effective communication with Mr. VanValkenburg during the intake interviews or new inmate orientation at OSCI.

24.

At all material times, defendant offered medical services, dental services, and religious services for all inmates at OSCI.

25.

Despite the confidential nature of those services and despite requests from Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind for those services and did not engage in effective communication with Mr. VanValkenburg.

26.

At all material times, defendant offered inmates at OSCI program counseling as part of its offender management and rehabilitation program. Part of the purpose of that program is to reduce recidivism and assist inmates' rehabilitation.

27.

Despite the confidential nature of program counseling services and despite requests from Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind for those services and did not engage in effective communication with Mr. VanValkenburg during any meetings with his program counselor.

28.

At all material times, defendant offered inmates at OSCI education, training, classes, and other programs, including the opportunity to work. Part of the purpose of those programs is to prepare inmates to successfully re-enter society with practical skills and viable work ethic.

29.

Defendant failed to provide Mr. VanValkenburg with an interpreter of any kind for the education, training, classes, and other programs offered at OSCI and did not engage in effective communication with Mr. VanValkenburg as part of offering these programs or services.

30.

Despite requests from Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind while at OSCI and did not engage in effective communication with Mr. VanValkenburg. At no time while at OSCI did defendant provide Mr.

VanValkenburg with an interpreter of any kind. Any and all of Mr. VanValkenburg's requests for an interpreter at OSCI were denied.

Snake River Correctional Institution (SRCI)

31.

From on or about July 2001 through May 2012, Mr. VanValkenburg was housed at SRCI.

32.

At all material times, program counselors at SRCI conducted intake interviews and orientations for all new inmates.

33.

Defendant failed to provide Mr. VanValkenburg an interpreter of any kind and did not engage in effective communication with Mr. VanValkenburg during the intake interviews or new inmate orientation at SRCI.

34.

At all material times, defendant offered inmates medical services, dental services, and religious services at SRCI.

35.

Despite the confidential nature of those services and despite requests from Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind for those services and did not engage in effective communication with Mr. VanValkenburg while at SRCI.

36.

At all material times, defendant offered inmates at SRCI program counseling as part of its offender management and rehabilitation program. Part of the purpose of that program is to reduce recidivism and assist inmates' rehabilitation.

37.

Despite the confidential nature of those counseling services and despite requests from Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind for those services and did not engage in effective communication with Mr. VanValkenburg.

38.

At SRCI, defendant offered inmates education and training, including the opportunity to work, as well as the opportunity to attend other classes and programs. Part of the purpose of these programs is to prepare inmates to successfully re-enter society with practical skills and viable work ethic.

39.

Defendant failed to provide Mr. VanValkenburg with an interpreter of any kind for the education, training, classes, and other programs offered at OSCI and did not engage in effective communication with Mr. VanValkenburg as part of offering these programs or services.

40.

Despite requests from Mr. VanValkenburg, at no time while at SRCI did defendant provide Mr. VanValkenburg with a qualified interpreter.

41.

If Mr. VanValkenburg and defendant needed to communicate while at SRCI, defendant required Mr. VanValkenburg to use non-confidential, untrained and primarily unqualified inmates as interpreters, including known gang members. If no available inmates knew ASL, defendant required Mr. VanValkenburg to teach inmates ASL so that defendant and Mr. VanValkenburg could communicate. However, when an inmate interpreter was transferred, discharged or disciplined, (*e.g.*, sent to "the hole,") Mr. VanValkenburg had to start training a new inmate so that he could have a chance at even limited communication with defendant.

42.

Defendant's failure to provide qualified interpreter and, specifically, Defendant's practice of using inmate interpreters, caused Mr. VanValkenburg to be disciplined. When Mr. VanValkenburg challenged his discipline, and objected to defendant's use of the inmate interpreter as part of the discipline process, defendant still used the unqualified inmate interpreter as part of the discipline process. Ultimately, Mr. VanValkenburg was sent to solitary confinement. Had qualified, confidential interpreters been provided during the discipline process, and during the occurrences giving rise to the discipline process, Mr. VanValkenburg would not have been disciplined.

43.

After nearly ten years of working to train his own interpreters at SRCI for free, defendant paid Mr. VanValkenburg to train his own unqualified, inmate interpreters so that Mr. VanValkenburg and defendant could communicate from on or about 2011 through on or about May 2012.

Santiam Correctional Institution (SCI)

44.

From on or about May 2012 through on or about January 2014, Mr. VanValkenburg was housed at SCI. Program counselors at SCI conducted intake interviews and orientations for all new inmates.

45.

Defendant failed to provide Mr. VanValkenburg an interpreter of any kind and did not engage in effective communication with Mr. VanValkenburg during the intake interviews or new inmate orientation at SCI.

46.

At all material times, defendant offered medical services, dental services and religious services at SCI.

47.

Despite the confidential nature of those services and despite requests from Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind for those services and did not engage in effective communication with Mr. VanValkenburg while at SCI.

48.

At all material times, defendant offered inmates at SCI program counseling as part of its offender management and rehabilitation program. Part of the purpose of that program is to reduce recidivism and assist inmates' rehabilitation.

49.

Despite the confidential nature of those counseling services and despite requests from Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind for those services and did not engage in effective communication with Mr. VanValkenburg.

50.

At SCI, defendant offered inmates education and training, including the opportunity to work, as well as the opportunity to attend other classes and programs. Part of the purpose of those programs is to prepare inmates to successfully re-enter society with practical skills and viable work ethic.

51.

Despite requests from Mr. VanValkenburg, at no time while at SCI did defendant provide Mr. VanValkenburg with a qualified interpreter.

52.

Defendant told Mr. VanValkenburg that, if he wanted to communicate with defendant via ASL, Mr. VanValkenburg had to teach another inmate ASL.

53.

Mr. VanValkenburg taught several inmates limited ASL while at SCI, but none could provide effective communication.

54.

Furthermore, although defendant required Mr. VanValkenburg to train other inmates to act as his interpreter, unlike at SRCI, defendant would not pay Mr. VanValkenburg for his time in training those interpreters because, according to defendant, there was not "a documented need" for such communication.

55.

Frustrated with defendant's continued refusal to make any attempt whatsoever to accommodate him for over twelve years, on June 3, 2013, Mr. VanValkenburg filed an inmate discrimination complaint with defendant.

56.

The June 3, 2013 complaint referenced that the ADA law required that he be provided a qualified ADA interpreter and defendant was violating the law. Defendant claimed that it did not receive Mr. VanValkenburg's June 3, 2013, complaint until January 29, 2014, and denied the complaint.

Columbia River Correctional Institution (CRCI)

57.

On or about January 2014, defendant transferred Mr. VanValkenburg to CRCI in Portland, Oregon.

58.

From on or about January 2014 to the present, Mr. VanValkenburg has been housed at CRCI.

59.

When he arrived at CRCI in Portland defendant finally provided Mr. VanValkenburg with a qualified, non-inmate interpreter. He had not, for fourteen (14) years previously communicated in ASL with any of defendant's employees or agents. However, even at CRCI defendant continued to fail to accommodate him in pre-scheduled medical appointments in February or March 2014. Even at CRCI, defendant fails to follow its own policy of not relying on inmate interpreters.

**Allegations Relevant to Defendant's Ongoing and
Continuous Failure to Accommodate**

60.

Defendant has both previously housed and currently houses inmates who are deaf or hearing impaired, including plaintiff. Defendant has consistently failed to provide those inmates with equal access to its programs or services and has failed to provide them with effective communication or auxiliary aids.

61.

By systematically denying deaf or hearing impaired inmates with effective communication, auxiliary aids and equal access to its programs and services, defendant's practices alleged herein constitute an ongoing and longstanding pattern and practice of discrimination and constitute an unlawful disability-based hostile environment. This includes denying deaf or hearing impaired inmates effective communication, auxiliary aids and equal access to programs and services, including but not limited to, medical and dental appointments, counseling sessions, educational programs, religious services, orientation and intake sessions, opportunities to communicate with family and friends, employment opportunities and other classes and programs. These practices have harmed Mr. VanValkenburg on a continuing and ongoing basis from the time of his intake at OSP to the present.

62.

All but one of the inmate interpreters used by Mr. VanValkenburg were not qualified and could not provide effective communication and none of the inmate interpreters were bound by any confidentiality whatsoever. Because the inmate interpreters were not bound by confidentiality, Mr. VanValkenburg's safety was placed at risk by having to use the inmate interpreters for confidential settings.

63.

Defendant allows religious groups to hold services at its facilities for the benefit of any inmate who wishes to attend, and to make pastors available to inmates. At all times, prior to January 2014, Mr. VanValkenburg has been excluded from meaningful participation in these religious services. Mr. VanValkenburg has never benefited from these services as non-disabled inmates do and has never been able to meet, confidentially, with any pastors or other clergy persons since at no point prior to January 2014 has defendant ever provided confidential interpreters for such meetings.

64.

Defendant provides educational classes at its facilities for the benefit of any inmate who wishes to attend. At all times, prior to January 2014, Mr. VanValkenburg has been excluded from meaningful participation in these classes. Mr. VanValkenburg has never benefited from these educational classes as non-disabled inmates do.

65.

Defendant offers other classes and programs at its facilities for the benefit of any inmate who wishes to attend. At all times, prior to January 2014, Mr. VanValkenburg has been excluded from meaningful participation in these other classes and programs. Mr. VanValkenburg has never benefited from these classes and programs as non-disabled inmates do.

66.

Defendant has failed to use any method of communication that Mr. VanValkenburg can fully understand. Mostly, personnel orally communicate with Mr. VanValkenburg and he cannot hear their words. As a result of his inability to hear and understand, Mr. VanValkenburg has been disciplined by defendant.

67.

For many years while housed at correctional facilities managed by defendant, defendant made no telephone access available to Mr. VanValkenburg. From the time he was at SRCI forward, defendant has made available TTY machines for deaf or hearing impaired inmates who wish to use the telephone. However, TTY machines are no longer a practical method for deaf or hearing impaired inmates to make telephone calls. Nearly all deaf or hearing impaired people in the United States now use video telephones so that each participant can see the ASL communication. As a result, TTY technology is effectively obsolete as a means of communication with other deaf persons, and is highly inefficient when communication with hearing persons. As a result, Mr. VanValkenburg has been unable to have the same opportunity to communicate via telephone with his family and others as is provided to non-disabled inmates. Furthermore, Mr. VanValkenburg was provided with limited access to the TTY machines unlike hearing inmates who had have virtually unlimited access to telephones. For an extended period of time, the TTYs provided did not work properly. Even when they did work, they took substantially more time to use than regular telephone communication. Despite numerous requests from Mr. VanValkenburg, for many years defendant refused to provide Mr. VanValkenburg's requests to extend the amount of time to use TTY to account for the sluggish technology and to accommodate his disability.

68.

At CRCI, Mr. VanValkenburg has access to a TTY and a video phone. However, unlike the regular telephone, which is in the main area of CRCI and may be accessed by non-disabled

inmates at any time, the TTY machine and video phone are locked away in a room which is of limited access to Mr. VanValkenburg. Mr. VanValkenburg often must wait for hours at a time in order to make phone calls to friends, family, or his attorneys. Defendant's placement of the videophone in a locked room used by inmates for other purposes denies him equivalent access to telephone services.

69.

Defendant provides inmates work opportunities during their incarceration. Inmates earn "points" that they can use like money to purchase goods from the prison store. Defendant has passed Mr. VanValkenburg up for work opportunities because he is deaf and failed to make reasonable accommodations to allow Mr. VanValkenburg, a deaf individual, to work in these positions. As a result, Mr. VanValkenburg has been denied an opportunity to work and earn points during his incarceration equal to the opportunity that non-disabled inmates have.

Injury

70.

Defendant's maintenance of a disability-based environment of hostility, evidenced by the actions referenced herein have injured Mr. VanValkenburg and denied him an equal opportunity to take advantage of services that would aid in his ongoing process of rehabilitation. Mr. VanValkenburg has been denied effective communication with his doctors, counselors, and family. He has been subjected to punishment as a result of miscommunication that would not have occurred if a qualified interpreter had been present. He has been denied an opportunity to participate in the same educational, religious, employment, and other classes and programs as non-hearing impaired individuals. As a result of this discrimination, Mr. VanValkenburg has suffered emotional distress including, but not limited to, fear, stress, aggravation, loss of self-worth, humiliation, frustration, anxiety and depression. Accordingly, Mr. VanValkenburg is entitled to compensatory damages pursuant to ORS 659A.885(3) and 42 U.S.C § 12133

71.

Defendant has also discriminated against Mr. VanValkenburg by denying him employment opportunities that are available to non-hearing impaired individuals. Defendant has utilized unnecessary job requirements that screen out deaf individuals such as Mr. VanValkenburg. Defendant has also refused to provide any reasonable accommodations that may be necessary to allow Mr. VanValkenburg to enjoy the same employment opportunities that are available to non-deaf inmates. As a result of this discrimination, Mr. VanValkenburg has been denied the opportunity to earn compensation and has suffered severe emotional distress including, but not limited to, fear, stress, aggravation, loss of self-worth, humiliation, frustration, anxiety, and depression. Accordingly, Mr. VanValkenburg is entitled to compensatory damages pursuant to ORS 659A.885(3) and 42 U.S.C § 12133.

72.

Unless enjoined, defendant will continue to engage in the unlawful acts and the pattern and practice of discrimination described above. Mr. VanValkenburg has no adequate remedy at law. Mr. VanValkenburg is now suffering and will continue to suffer irreparable injury from defendant's acts and the pattern or practice of discrimination unless relief is provided by this Court. Accordingly, Mr. VanValkenburg is entitled to injunctive relief pursuant to ORS 659A.885(1) and 42 U.S.C § 12133.

73.

Plaintiff gave timely notice of his tort claim to Defendant on March 20, 2014.

FIRST CLAIM FOR RELIEF

(Disability Discrimination – ORS 659A.142)

74.

Mr. VanValkenburg realleges paragraphs 1 through 73 as though fully set forth herein.

75.

Mr. VanValkenburg has a physical impairment that substantially limits one or more of his major life activities.

76.

Mr. VanValkenburg is an individual with a disability, as defined by ORS 659A.104 and is a qualified person with a disability under 42 U.S.C. §12131(2).

77.

Defendants actions alleged herein constitute a pattern or practice of discrimination that occurred on an ongoing and continuous basis from 2000 to the present.

78.

The term "state government," as that term is defined by ORS 659A.142(1) and ORS 174.111, includes defendant.

79.

Defendant has injured Mr. VanValkenburg in violation of ORS 659A.142(5) and its accompanying regulations, including but not limited to OAR 839-006-0270 and OAR 839-006-0295, by committing the following discriminatory acts or practices:

- a. Refusing to recognize that Mr. VanValkenburg is a qualified individual with a disability;
- b. Maintaining a pattern and practice of discrimination against Mr. VanValkenburg and all other deaf inmates;
- c. Intentionally failing to accommodate Mr. VanValkenburg's disability in refusing to provide an interpreter or adequate auxiliary aids;
- d. Failing to make reasonable modifications in policies, practices, or procedures, when such modifications were necessary to afford Mr. VanValkenburg with access to defendant's services, programs, or activities, and when such modifications would not be unduly burdensome and would not fundamentally alter the nature of services provided by defendant;

- e. Intentionally refusing to provide Mr. VanValkenburg with an equally effective method of communication as is provided to other individuals incarcerated at defendant's correctional institutions;
- f. Excluding Mr. VanValkenburg from and denying Mr. VanValkenburg participation in the benefits of defendant's services, programs, or activities solely by reason of Mr. VanValkenburg's disability;
- g. Failing to provide qualified interpretive services during orientation and counselor assessments and meetings, medical and dental examinations, religious services, educational programs, rehabilitative programs and other voluntary programs and classes offered by or through defendant;
- h. Using inmates who was are not qualified in ASL to interpret conversations between Mr. VanValkenburg and defendant's personnel, including conversations which involved the disclosure of confidential information;
- i. Requiring Mr. VanValkenburg to train his own interpreters, with or without pay;
- j. Failing to provide qualified interpretive services for support group meetings, thereby excluding Mr. VanValkenburg from participating in these services, programs, or activities;
- k. Failing to provide qualified interpretive services for religious services and inmate work opportunities, thereby excluding Mr. VanValkenburg from participating in these services, programs, or activities;
- l. Failing to provide adequate technology that would allow Mr. VanValkenburg the same opportunity to communicate with his family and others as is available to non-hearing impaired inmates;
- m. Refusing to make reasonable accommodations to job requirements regarding oral and written communication skills, thereby denying Mr. VanValkenburg an equal opportunity to work and earn points during his incarceration, and requiring Mr. VanValkenburg to

perform menial work;

- n. Failing to conduct any investigation to determine what auxiliary aids are necessary and appropriate in order for Mr. VanValkenburg to participate in equal access to its facilities' services, programs, and activities; and
- o. Failing to provide any means by which Mr. VanValkenburg can understand oral communications and respond to Defendant's staff.
- p. Maintaining a disability-based environment of hostility.

80.

Once Defendant had actual knowledge of Mr. VanValkenburg's disability on or about 2000 and thereafter, Defendant failed to take reasonable steps necessary to ensure that Mr. VanValkenburg, an individual with a disability, would not be excluded, denied services, segregated or otherwise treated differently from other individuals because of use of inappropriate or ineffective auxiliary aids. At no time did defendant inquire to Mr. VanValkenburg about the best way to communicate with him. As a result, Mr. VanValkenburg has been injured by defendant's discriminatory activities.

81.

Mr. VanValkenburg has suffered damages, both real and intangible, as a result of defendant's discriminatory conduct.

82.

Defendant's conduct was carried out with wanton, conscious, reckless, and outrageous disregard for Mr. VanValkenburg's civil rights, mental health, and welfare.

83.

Mr. VanValkenburg is entitled to equitable relief, and is entitled to compensatory damages in an amount to be determined at trial, but in no event less than \$450,000, as well as attorney fees and litigation costs pursuant to ORS 659A.885(1) and ORS 20.107.

SECOND CLAIM FOR RELIEF

(Disability Discrimination – 42 U.S.C. §12131-12165 et seq.)

84.

Mr. VanValkenburg realleges paragraphs 1 through 73 as though fully set forth herein.

85.

Defendants actions alleged herein constitute a pattern or practice of discrimination that occurred on an ongoing and continuous basis from 2000 to the present.

86.

Defendant is a "public entity" as that term is defined under 42 U.S.C. §12131(1).

87.

Defendant has injured Mr. VanValkenburg in violation of 42 U.S.C § 12132 and its accompanying regulations, including but not limited to 28 C.F.R. § 35.130 and 28 C.F.R. § 35.152, by committing the following discriminatory acts or practices:

- a. Refusing to recognize that Mr. VanValkenburg is a qualified individual with a disability;
- b. Maintaining a pattern and practice of discrimination against Mr. VanValkenburg and all other deaf inmates;
- c. Intentionally failing to accommodate Mr. VanValkenburg's disability in refusing to provide an interpreter or adequate auxiliary aids;
- d. Failing to make reasonable modifications in policies, practices, or procedures, when such modifications were necessary to afford Mr. VanValkenburg with access to defendant's services, programs, or activities, and when such modifications would not be unduly burdensome and would not fundamentally alter the nature of services provided by defendant;
- e. Intentionally refusing to provide Mr. VanValkenburg with an equally effective method of communication as is provided to other individuals incarcerated at defendant's prisons;
- f. Excluding Mr. VanValkenburg from and denying Mr. VanValkenburg participation in the

benefits of defendant's services, programs, or activities solely by reason of Mr. VanValkenburg's disability;

- g. Failing to provide qualified interpretive services during orientation and counselor assessments and meetings, medical and dental examinations, religious services, educational programs, rehabilitative programs and other programs and classes offered by or through defendant;
- h. Using inmates who was are not qualified in ASL to interpret conversations between Mr. VanValkenburg and defendant's personnel, including conversations which involved the disclosure of confidential information;
- i. Requiring Mr. VanValkenburg to train his own interpreters, with or without pay;
- j. Failing to provide qualified interpretive services for support group meetings, thereby excluding Mr. VanValkenburg from participating in these services, programs, or activities;
- k. Failing to provide qualified interpretive services for religious services and inmate work opportunities, thereby excluding Mr. VanValkenburg from participating in these services, programs, or activities;
- l. Failing to provide adequate technology that would allow Mr. VanValkenburg the same opportunity to communicate with his family and others as is available to non-hearing impaired inmates;
- m. Refusing to make reasonable accommodations to job requirements regarding oral and written communication skills, thereby denying Mr. VanValkenburg an equal opportunity to work and earn points during his incarceration, and requiring Mr. VanValkenburg to perform menial work;
- n. Failing to conduct any investigation to determine what auxiliary aids are necessary and appropriate in order for Mr. VanValkenburg to participate in equal access to its facilities' services, programs, and activities; and

- o. Failing to provide any means by which Mr. VanValkenburg can understand oral communications and respond to defendant's staff.
- p. Maintaining a disability-based environment of hostility.

88.

Once defendant had actual knowledge of Mr. VanValkenburg's disability on or about 2000 and thereafter, defendant failed to take reasonable steps necessary to ensure that Mr. VanValkenburg, an individual with a disability, would not be excluded, denied services, segregated or otherwise treated differently from other individuals because of use of inappropriate or ineffective auxiliary aids. At no time did defendant inquire to Mr. VanValkenburg about the best way to communicate with him. As a result, Mr. VanValkenburg has been injured by defendant's discriminatory activities.

89.

Mr. VanValkenburg has suffered damages, both real and intangible, as a result of defendant's discriminatory conduct.

90.

Defendant's conduct was carried out with wanton, conscious, reckless, and outrageous disregard for Mr. VanValkenburg's civil rights, mental health, and welfare.

91.

Mr. VanValkenburg is entitled to equitable relief, and is entitled to compensatory damages in an amount to be determined at trial, but in no event less than \$450,000, as well as attorney fees and litigation costs pursuant to 42 U.S.C. § 12205.

PRAYER FOR RELIEF

WHEREFORE, Mr. VanValkenburg requests a trial by jury and requests the Court should grant judgment in favor of Mr. VanValkenburg against defendant and grant the following relief:

- a. On plaintiff's First and Second Claims for Relief:

1. Compensatory damages in an amount to be determined at trial but in no event less than \$450,000;
2. Attorneys fees, costs and disbursements, pursuant to ORS 659A.885(1), ORS 20.107 and/or 42 U.S.C. § 12205;
3. An Order that:
 - a) Requires defendant to institute a program instructing all employees on the proper and legal obligations to deaf inmates;
 - b) Requires defendant to develop and implement written materials for disabled inmates, which will be provided to them at the time of their arrival at defendant's facilities, providing disabled inmates notice of their rights pursuant to, and of the availability of accommodations under, ORS 659A.142;
 - c) Requires defendant to implement and enforce an effective communications policy that covers all services, programs, and activities offered at its prisons;
 - d) Requires defendant to implement a grievance procedure to resolve disability related issues and advise disabled inmates of their rights to access this grievance procedure;
 - e) Requires defendant to enter into a contract with one or more interpreting services to provide interpreters for deaf or hearing impaired inmates to provide equal access to programs and services, including medical and dental appointments, counseling sessions, educational programs, religious services, orientation sessions, and other classes and programs offered by defendant;
 - f) Requires defendant to only use qualified interpreters when interpreters are used to communicate with deaf or hearing impaired inmates;
 - g) Requires that defendant not use other inmates as interpreters;
 - h) Requires defendant to develop and implement a plan to conduct a fact-specific investigation for deaf or hearing impaired inmates as to what auxiliary aids are necessary and appropriate to ensure equal access to its facilities' services, programs, and activities, including but not limited to ensuring effective communication;
 - i) Requires defendant to install video phones at each prison and allow

deaf or other hearing impaired inmates the same access to the video phones as hearing inmates have with telephones;

- j) Requires defendant to modify its job requirements to only require good oral and written communication skills for those positions where such skills are essential to the effective performance of the position;
- k) Requires defendant to waive the requirement of good oral and written communication skills for those positions where such skills are incidental to the performance of the position and a hearing impaired inmate applies for such a position;
- l) Requires defendant to develop and implement a system of notifying deaf or hearing impaired inmates of yard out bells, meal bells, and any other forms of simple communication to all inmates in the block or prison population;

B. All such other relief as the Court deems just and equitable.

Dated this 18th day of March, 2015.

/s Matthew C. Ellis
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