

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

ATLANTA DIVISION

**BRANDON COBB, CARLOS HERRERA,
JOSEPH NETTLES, ERNEST WILSON,
JEREMY WOODY, and JERRY COEN,
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

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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U.S. Dep’t of Justice, The Americans with Disabilities Act Title II
Technical Assistance Manual, at II-7.1100 (1993)7

Plaintiffs,¹ deaf and hard of hearing individuals under GDCS supervision,² are likely to suffer irreparable injury absent injunctive relief because GDCS routinely fails to provide qualified ASL interpreters and other auxiliary aids and services and reasonable modifications, in violation of the ADA and Section 504.

In their opposition (“Opp. Br.”), GDCS touts a number of accommodations it says are “available” to Plaintiffs. But GDCS has not, in fact, provided these services to Plaintiffs, and most of the auxiliary aids and services they cite are not “available.” For example, GDCS references its use of telecommunications services like Video Relay Services (“VRS”) at in-person meetings, but such use is illegal as a matter of federal law. GDCS reports that its officers use Plaintiffs’ family members to interpret for them, but that too violates federal law. GDCS claims that its officers have communicated the terms of Plaintiffs’ supervision to them by writing notes, but

¹ Defined terms have the same meaning ascribed to them as in Plaintiffs’ opening memorandum of law (“Br.”). A supplemental declaration of Jeremy Woody and a declaration of Karen Peltz Strauss are defined here in as Woody Supp. Decl. and Strauss Decl., respectively.

² This includes Jerry Coen who, while he may be on “unsupervised status” (*see* Opp. Br. at 5, 6; Mays Decl. at 17), is nonetheless subject to GDCS supervision for the remainder of his probation. The declarations attached to GDCS’s opposition brief, are referred to herein as the Declarations of Mariah Mitchell (“Mitchell Decl.”), Richard Mays (“Mays Decl.”), Cody Franklin (“Franklin Decl.”), Edward Dowdell, Sr. (“Dowdell Decl.”), Shaonna Branch (“Branch Decl.”), William Driver (“Driver Decl.”) and Quentina Burroughs-Lee (“Burroughs-Lee Decl.”).

the majority of Plaintiffs—because of their disabilities—cannot read English. GDCS claims that these and other communication attempts must be effective because, otherwise, Plaintiffs would have had their probation or parole revoked. That Plaintiffs have not been sanctioned during supervision does not mean that GDCS is effectively communicating the rules, but rather that Plaintiffs have self-imposed requirements (*e.g.*, curfews) over and beyond what is required, or have found ways to understand in spite of GDCS’s failures. Simply put, GDCS is failing to provide effective communication to Plaintiffs, placing them at serious risk of irreparable harm.

Plaintiffs want the opportunity to understand (and therefore comply with) the terms of their supervision on an equal basis with their hearing peers. To accomplish this, GDCS must comply with its obligations under federal law to effectively communicate with Plaintiffs, giving primary consideration to their individual communication needs, which include ASL interpreters, Deaf interpreters (“DIs”),³

³ A DI is a Deaf person who works with a (hearing) ASL interpreter to facilitate effective communication as part of a team of interpreters. A DI is frequently necessary where a deaf individual’s communication method is idiosyncratic, highly contextual, or difficult for a hearing person to understand. Because DIs share with deaf clients a distinct set of linguistic, cultural, and life experiences, communication between the deaf client and DI is often more nuanced and successful than with a hearing interpreter alone. Some people may require a DI for all significant communication with hearing individuals, while others may only require a DI in specific, complex, or high-stakes encounters. Compl. ¶ 21.

and/or CART. These auxiliary aids and services are not mere expressions of preference; they are required under the ADA to ensure effective communication.

ARGUMENT

A. Plaintiffs Are Likely to Succeed on the Merits

It is plain that Defendants are failing to ensure effective communication with Plaintiffs, despite the requirements of federal law. As a result, Plaintiffs are being excluded from and denied the benefits of probation and parole services by reason of their disability, and are being denied an equal opportunity to understand, participate in, and succeed at community supervision.

1. Defendants Are Failing to Communicate Effectively with Plaintiffs in Violation of the ADA and the Rehabilitation Act

The ADA requires that state agencies “take appropriate steps to ensure that communications with . . . [individuals] with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a)(1). This includes a requirement to “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 of a public entity.” 28 C.F.R. § 35.160(b)(1). Auxiliary aids and services are defined to include “[q]ualified interpreters on-site or through video remote interpreting (VRI) services.” 28 C.F.R. § 35.104. To determine which auxiliary aids and services are necessary to establish

equally effective communication, a public entity “shall give primary consideration to the requests of the individuals with disabilities.” 28 C.F.R. § 35.160(b)(2). The U.S. Department of Justice has stated that “[t]he state or local government must honor the person’s choice, unless it can demonstrate that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden . . .” DOJ Guidelines, ADA Requirements: Effective Communication, <https://www.ada.gov/effective-comm.htm> (last accessed 9/6/2019).

Disregarding these authorities, GDCS relies on methods of communication with Plaintiffs which are inadequate and contrary to law. For example, GDCS repeatedly references its officers’ use of VRS. *See, e.g.*, Opp. Br. at 6–7, 14–15, 20; Branch Decl. ¶¶ 18–19; Burroughs-Lee Decl. ¶ 5(c); Franklin Decl. ¶ 17; Mitchell Decl. ¶ 17. But VRS is a federally funded service to provide *telecommunications*. It is only appropriate for communications in which a telephone would be used—that is, for remote communication, where two parties are in different physical locations. Federal regulations prohibit the use of VRS when both parties are in the same physical location, as is the case in an in-home visit to a supervised individual. Strauss Decl. ¶¶ 47, 52; 70 Fed. Reg. 8034, 8037 (Feb. 17, 2005) (“In circumstances where a person with a hearing disability desires to communicate with someone in person,

he or she may not use VRS but must either hire an ‘in-person’ interpreter or a VRI service.”); 47 C.F.R. § 64.601(47) (VRS only intended where a telephone call would be made); Reminder That Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot Be Used as a Substitute for “In-Person” Interpreting Services or Video Remote Interpreting (VRI), 70 FR 59346 (Oct. 12, 2005). VRS interpreters are required to disconnect calls when they realize that both parties are in the same location. *See, e.g.*, Woody Decl. ¶¶ 9, 13; Strauss Decl. ¶ 52.

GDCS claims that its officers effectively communicate with Plaintiffs by using family members as “interpreters.” *See* Opp. Br. at 7; Dowdell Decl. ¶ 17; Franklin Decl. ¶ 14; Mitchell Decl. ¶ 17; Worley Decl. ¶ 16. But this, too, is expressly prohibited by federal law, which provides that public entities “shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication,” 28 C.F.R. § 35.160(c)(2), and which excludes family members who cannot interpret “impartially” from the definition of “qualified interpreter,” 28 C.F.R. § 35.104.

Defendants further claim that they effectively communicate with Plaintiffs through “writing” and “text messages.” *See* Opp. Br. at 7, 14; Branch Decl. ¶ 14; Franklin Decl. ¶ 14; Mays Decl. ¶¶ 14, 17; Worley Decl. ¶ 16. But most Plaintiffs do not read or write English and require interpreters to communicate effectively and

to understand written documents. *See* Compl. ¶ 25; Herrera Decl. ¶¶ 3, 5; Nettles Decl. ¶¶ 3–4, 10, 17; Woody Decl. ¶ 2. Defendants also cite to “body language, simple hand gestures, and head movements” as components of effective communication. *See* Franklin Decl. ¶ 19; Worley Decl. ¶ 16. This must be rejected. Head movements and body language cannot be “equally effective” communication about the complex requirements of supervision. *See* Compl. ¶ 5.

GDCS has, on a handful of occasions, provided one ASL interpreter to some Plaintiffs. *See* Opp. Br. at 6–7, 14; Branch Decl. ¶ 17; Mitchell Decl. ¶ 17. But these occasions have typically occurred only after Plaintiffs or their counsel have repeatedly requested interpreters. *See, e.g.*, Cobb Decl. ¶ 18; Woody Decl. ¶ 9. Even then, the interpreters were not always qualified, and Defendants have never provided DIs. *See* Cobb Decl. ¶¶ 5, 19, 22, 24; Mitchell Decl. ¶ 14; Woody Decl. ¶¶ 12. In any event, GDCS’s occasional provision of interpreters underscores the feasibility of accommodating Plaintiffs.

The overwhelming majority of Plaintiffs’ encounters with GDCS and its officers, including visits in Plaintiffs’ homes, have taken place without effective communication and often using methods prohibited by federal law. *See, e.g.*, Cobb Decl. ¶¶ 11–12, 14–17, 21; Herrera Decl. ¶¶ 14–17, 22–24, 26, 28–31, 32; Nettles Decl. ¶¶ 8–10, 14–19; Wilson Decl. ¶¶ 6, 8; Woody Decl. ¶¶ 5–6, 8–17.

The subjective belief of Defendants’ officers that communication has been effective, *see* Branch Decl. ¶ 21; Dowdell Decl. ¶ 18; Franklin Decl. ¶ 19; Mays Decl. ¶ 18; Mitchell Decl. ¶ 18; Worley Decl. ¶ 16, should be disregarded. *See Pierce v. Dist. of Columbia*, 128 F. Supp. 3d 250, 269–70 (D.D.C. 2015) (even if Defendant’s staff believed that they were communicating effectively with the plaintiffs on any particular occasion, their opinions about whether the plaintiffs were able to understand them “amount[s] to entirely uninformed speculation”); *Argeyni v. Creighton Univ.*, 703 F.3d 441, 446 (8th Cir. 2013) (“[I]t is especially important to consider the complainant’s testimony carefully because ‘the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective.’”) (quoting U.S. Dep’t of Justice, *The Americans with Disabilities Act Title II Technical Assistance Manual*, at II-7.1100 (1993)); *Borngesser v. Jersey Shore Med. Ctr.*, 774 A.2d 615, 621 (N.J. App. Div. 2001) (whether defendant thought communication was effective is irrelevant; the Section 504 inquiry must focus “upon the qualified handicapped person and whether, objectively, he or she in fact had sufficient communication with the recipient so as to have understood what was occurring and to be able to participate in and benefit from the federally funded services, as much as a similarly situated nonhandicapped person could have”).

That Plaintiffs have, for example, appeared for appointments after receiving written notice, *see* Opp. Br. at 6; Mays Decl. ¶ 17, shows only that Plaintiffs have found a way, with difficulty, to comply with GDCS requirements—not that GDCS is providing effective communication. Similarly, that Plaintiffs have not filed formal grievances, *see* Opp. Br. at 10–11, 14, 18, 20, does not indicate effective communication. The grievance process is itself inaccessible to Plaintiffs, as it is written in complex English and grievances must be written in English.

GDCS avers that Plaintiffs who are on probation were provided with the terms of their probation at the time they were sentenced. *See* Opp. Br. at 18. This presumes that Plaintiffs were afforded communication access at the time of their sentencing, that they understood and remember the terms of their probation, and that these terms have not changed in the years since. In any event, any effective or ineffective communication at sentencing does not alter GDCS’s present obligations under federal law. Plaintiffs must be able to communicate with their supervision officers, ask clarifying questions, respond to questions, and resolve any miscommunications. None of this can even theoretically take place at sentencing.

GDCS claims that the “poor communication” with Plaintiffs on the sex offender registry has occurred with agencies separate from GDCS. *Id.* at 19. But according to their own declarations, GDCS officers have supervision responsibilities

for individuals on the sex offender registry. *See* Branch Decl. ¶ 6; Dowdell Decl. ¶ 6; Franklin Decl. ¶ 7; Worley Decl. ¶¶ 5–6. The declarants have supervised more than 700 individuals on this registry, *see* Branch Decl. ¶ 8; Dowdell Decl. ¶ 8; Franklin Decl. ¶ 9; Worley Decl. ¶ 8, and several have specialized training in supervising people on the registry, *see* Dowdell Decl. ¶¶ 3–6. One of the duties of GDCS supervision officers who supervise probationers or parolees who are on the registry is to ensure that the supervisee is registering with the sheriff’s office. *See* Franklin Decl. ¶ 7.⁴ GDCS displays rules for both sex offenders on probation and parole on its website.⁵

2. GDCS’s Policy and “Options” Are Deficient

GDCS’s two-page “Interpreters” policy is deficient under federal law. *See* Driver Decl. Attach. 2. The policy only requires interpreters in limited circumstances, such as at revocation hearings. *Id.* at 2. Even then, the policy provides interpreters only if the individual is both indigent and deaf. *Id.* This limitation is

⁴ GDCS appended its “Sex Offender Registration and Supervision” policy to one of its officer’s declarations. Driver Decl., Attach. 2. GDCS attached a “Georgia Sex Offender Registration Notification Form” that was submitted by one of the Plaintiffs consistent with this policy. Franklin Decl. Attach. 1.

⁵ *Sex Offender Special Conditions of Supervision*, GDCS <https://dcs.georgia.gov/sex-offender-special-conditions-supervision-1> (for individuals on probation); *Sex Offender Special Conditions of Supervision*, GDCS <https://dcs.georgia.gov/sex-offender-special-conditions-supervision-0> (for individuals on parole).

contrary to the requirements of the ADA and Section 504. Moreover, as Plaintiffs' declarations attest, the policy is not being followed, as *no* Plaintiff had an interpreter at his initial intake meeting with GDCS officers.

Defendants list "options" for communication with Plaintiffs, which it concedes "may have not been used in the past." *See* Opp. Br. at 8–9, 14–15. But most of these are not adequate auxiliary aids and services for in-person meetings. Text Telephone and Text Typewriter are not for in-person use and require a level of written English that most Plaintiffs do not possess. *Cf.* Cobb Decl. ¶ 4; Herrera Decl. ¶ 3; Nettles Decl. ¶ 4; Woody Decl. ¶ 2. Like VRS, Voice Carry-Over and CapTel are federally funded telecommunications services which are not permitted for in-person use. Moreover, Voice Carry-Over and CapTel require the participant to speak for themselves; most Plaintiffs do not speak.

The three in-person services that GDCS lists—ASL interpreters, Video Remote Interpreting Services ("VRI"), and CART—may provide effective communication for Plaintiffs. But GDCS is rarely, if ever, using these services.

3. Lack of Revocation Does Not Show Effective Communication

Defendants' reasoning that they *must* have effectively communicated with Plaintiffs because none of them have been subjected to revocation proceedings is inaccurate and irrelevant. *See* Opp. Br. at 5, 14, 16-17, 20; Dowdell Decl. ¶ 16;

Franklin Decl. ¶ 16; Mays Decl. ¶ 16; Mitchell Decl. ¶ 16; Worley Decl. ¶ 15. Plaintiffs and class members have indeed experienced probation violations and subsequent incarcerations in the past due to lack of communication access. *See* Woody Supp. Decl. ¶ 6. For the very reason that Plaintiffs do not understand the terms of their probation, they are excessively cautious, self-imposing liberty restrictions such as curfews because they are not sure if these are requirements of probation. *See, e.g.*, Herrera Decl. ¶¶ 26–27; Wilson Decl. ¶ 12.

On several occasions, Plaintiffs have managed to avoid miscommunications with probation only because of the ongoing efforts of Plaintiffs' counsel, who have worked extensively with Plaintiffs. Plaintiffs' counsel have hired interpreters at counsel's expense to interpret documents that GDCS provided but failed to communicate effectively. Plaintiffs' counsel have contacted individual GDCS officers to inform them of their obligations to provide interpreters. And Plaintiffs' counsel have contacted GDCS officers to request clarification of documents and rules. *See, e.g.*, Cobb Decl. ¶ 18. Plaintiffs' counsel have gone to considerable lengths to prevent their clients' unnecessary incarceration by, essentially, providing the communication access that GDCS should be providing. That this advocacy may have helped Plaintiffs avoid revocation says nothing about the effectiveness of GDCS's attempts at communication.

B. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief

Irreparable harm is presumed where a defendant has violated or otherwise eviscerated the purpose of a statute providing for injunctive relief. *See Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984). Courts routinely find that discrimination on the basis of a disability, *see, e.g., Doe v. Judicial Nominating Comm'n for Fifteenth Judicial Circuit of Fla.*, 906 F. Supp. 1534, 1545 (S.D. Fla. 1995), and incarceration constitute irreparable harm, *see, e.g., In re Norris*, 192 B.R. 863, 867 (Bankr. W.D. La. 1995). Here, Plaintiffs report present, ongoing harms from GDCS's violation of federal law, and they fear real, tangible risks of future incarceration from the same violations. These are not "phantom threats." *See* Opp. Br. at 17. These are real, present, concrete harms that directly arise from Defendants' failures to ensure effective communication. *See e.g., Woody Supp. Decl.* ¶ 6.

For example, Mr. Woody was forced to quit a suitable job because he could not communicate with his GDCS officer about the officer's apparently mistaken belief that the job was contrary to Mr. Woody's supervision terms. *Woody Decl.* ¶ 11. For further example, Mr. Woody's GDCS officer denied his request for a travel permit to go to a church retreat out of state based on a misunderstanding about Mr. Woody's fines and fees. Without effective communication, Mr. Woody could not

clarify that his fines had been cleared, and that the GDCS officer was mistaken in using these supposed outstanding fines as a reason to deny the travel permit. Mr. Woody missed an important religious encounter because of the lack of effective communication.

Mr. Herrera fears that he is subject to a curfew based on a document that he cannot read and that no one from GDCS has interpreted for him, so he remains at home from 6pm to 6am every day, even though this does not appear to be a substantive term of his supervision. Herrera Decl. ¶¶ 26–27. Mr. Wilson self-imposes the same restriction on his liberty because of his fear of accidentally violating a rule he does not understand. Wilson Decl. ¶ 12. These liberty restrictions—which make it difficult to find and maintain a job and social ties—are solely the result of a lack of effective communication.

Plaintiffs’ fears of re-incarceration are not theoretical. Miscommunications on probation and parole have led to reincarceration of Mr. Woody and current and former class members. *See* Woody Supp. Decl. ¶¶ 4, 6. All Plaintiffs have experienced, and will continue to experience, real and constant fear, stress, and anxiety surrounding their inability to understand their terms of supervision absent injunctive relief.

The fact that Plaintiffs are entitled to a hearing at which Georgia is required

to show by a preponderance that they have violated the terms of their supervision (see Opp. Br. at 16) does not mitigate Plaintiffs' showing of irreparable harm.⁶ Plaintiffs would still be subject to the fear, anxiety, and disruption of a revocation hearing, and would likely be jailed for months pending such a hearing. Nor is it clear that GDCS would be required establish at the hearing that it effectively communicated the rules of supervision to the deaf and hard of hearing supervised individual before penalizing that individual for a technical violation of those rules.

GDCS claims Plaintiffs' "delay" in filing this case precludes their request for relief. Opp. Br at 4, 17. But the cases GDCS relies upon are inapposite. The "delay" in those cases referred to the time that elapsed between the filing of the complaint and the subsequent request for injunctive relief. *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (preliminary injunction motion filed "over three years after plaintiffs' first complaint was filed"); *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (five-month delay after filing the complaint). Here, the complaint and the preliminary injunction motion were filed the same day—there has been no

⁶ To the extent that GDCS claims that Georgia law requires, prior to revocation, intent to violate a condition of probation, see Opp. Br. at 16, it misstates the law. See, e.g., *Bearden v. Georgia*, 461 US 660, 668 n. 9 (1983) ("We do not suggest that, in other contexts, the probationer's lack of fault in violating a term of probation would necessarily prevent a court from revoking probation."); *Glenn v. State*, 827 S.E. 2d 698 (Ga. App. 2019) ("Only slight evidence [of a probation violation] is required to authorize revocation.").

delay. Plaintiffs in this action have moved swiftly after retaining counsel to seek injunctive relief.

C. The Remaining Factors Favor Preliminary Injunctive Relief

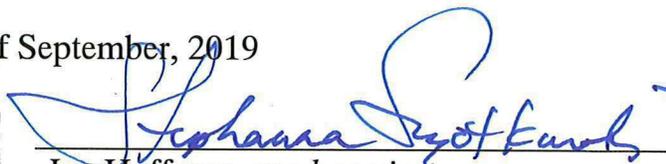
The state's expenditure of funds "cannot be considered a harm if the law requires it." *Concerned Parents to Save Dreher Park Ctr. v. City of W. Palm Beach*, 846 F. Supp. 986, 993 (S.D. Fla. 1994) (citing *Stone v. City and Cnty. of San Francisco*, 968 F.2d 850, 858 (9th Cir. 1992)). There can be no harm to GDCS here where the relief Plaintiffs seek fits squarely within the public interest of eliminating discrimination on the basis of disability. *See, e.g., K.G. ex rel. Garrido v. Dudek*, 839 F. Supp. 2d 1254, 1260 (S.D. Fla. 2011) (citing *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010)). And unlike in *N.L.R.B. v. Express Pub. Co.*, 312 U.S. 426, 435 (1941), where plaintiffs sought an injunction that encompassed a restraint on unlawful acts that were "dissociated from those which a defendant has committed," here Plaintiffs seek an injunction that is directly related and limited to GDCS's failure to effectively communicate with them under federal law.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court issue an order directing Defendants to immediately provide qualified ASL interpreters, auxiliary aids and services, and reasonable modifications, as determined by each

individual's preferred method of communication, to Plaintiffs and to all other deaf and hard of hearing individuals subject to GDCS supervision, including: (i) at every meeting and encounter with a GDCS officer; and (ii) to facilitate effective communication of the contents of any written documents related to the terms of these individuals' supervision.

Respectfully submitted this 11 day of September, 2019



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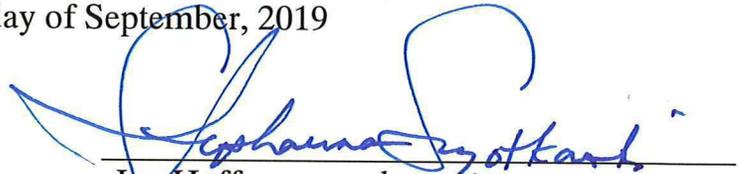
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CERTIFICATION OF COMPLIANCE

I hereby certify that the typeface used herein is 14-point Times New Roman and that the memorandum is compliant with L.R. 5.1 and L.R. 71.

Respectfully submitted this 11 day of September, 2019



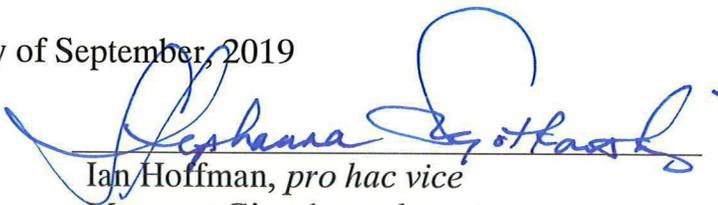
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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2019, I caused the foregoing Reply Memorandum of Law in Further Support of Plaintiffs' Motion for Preliminary Injunction with declarations attached thereto to be electronically filed with the Clerk of Court using the CM/ECF system.

Respectfully submitted this 11 day of September, 2019



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

BRANDON COBB, *et al.*,
Plaintiffs, v.

**GEORGIA DEPARTMENT OF
COMMUNITY SUPERVISION, *et al.*,**
Defendants.

No. 1:19-cv-03285-WMR

CLASS ACTION

**Declaration of Karen Peltz
Strauss in Support of Plaintiffs’
Reply Memorandum of Law in
Further Support of Plaintiffs’
Motion for Preliminary
Injunction**

1. I, Karen Peltz Strauss, offer this declaration for the Court’s consideration on Plaintiffs’ motion for preliminary injunction and for all other purposes allowed by law. All statements in this declaration are within my personal knowledge.

QUALIFICATIONS

2. I am an attorney who, since the 1980s, has been one of the country’s leading experts on all matters related to telecommunications access for people with disabilities, and in particular telecommunications relay services (TRS).
3. I received my Bachelors of Arts from Boston University in 1978, my J.D. from the University of Pennsylvania Law School in 1981, my L.L.M.

- from the Georgetown University Law Center in 1983, and an Honorary Doctors of Law from Gallaudet University in 2011.
4. I have worked on TRS in several capacities: as an advocate for disability organizations, a legal consultant for TRS providers, and a regulator.
 5. From 1981 until 1983, I was a graduate fellow at the Institute for Public Representation at the Georgetown University Law Center, where I first became acquainted with the needs and legal rights of people with hearing disabilities through my work drafting and advocating for federal legislation designed to make polling places in federal elections accessible to people with all types of disabilities, including people who are deaf and hard of hearing. In 1984, this law, the Voting Accessibility for the Elderly and Handicapped Act, was enacted by Congress.
 6. From 1983 to 1984, I spent one year at the U.S. Department of Health and Human Services, in the Inspector General Division of the Office of General Counsel, enforcing compliance with Medicaid and Medicare statutes and regulations.
 7. From 1984 until 1996, I was Supervising Attorney at Gallaudet University's National Center for Law and Deafness (prior to that time called the National Center for Law and the Deaf), where, in addition to handling cases for deaf clients and addressing general matters concerning

the provision of accessible services for the deaf community, I worked with consumer organizations, telephone companies, state regulatory agencies and the U.S. Congress as the primary drafter of Title IV of the Americans with Disabilities Act of 1990 (ADA). Title IV put into place requirements for nationwide telecommunications relay services (TRS), codified in section 225 of the Communications Act.

8. During the years following passage of Title IV, I worked with deaf consumer organizations to prepare written input to the Federal Communications Commission (FCC) for the development of regulations implementing the requirements of Title IV of the ADA. These included requirements for calls made via TRS to be functionally equivalent – or as effective as – voice telephone services. For example, such requirements included guarantees that TRS calls (1) be handled by skilled communications assistants (CAs) who are prohibited from altering the content of a conversation, (2) be private and confidential, (3) be answered within reasonable times, and (4) be free of restrictions regarding their length, time, or type – understanding that such calls were designed to be an equivalent replacement for voice telephone calls made over distances, not a substitute for in-person communications.

9. Also during this period, I worked with Congress to draft legislation to make telephones compatible with hearing aids and cochlear implants (enacted as the Hearing Aid Compatibility Act of 1988); and assisted in obtaining support for legislation requiring all televisions to have built-in technology to decode and display closed captions for people who could not hear audio (enacted as the Television Decoder Circuitry Act of 1990).
10. From 1996 until 1999, I was Legal Counsel for Telecommunications Policy for the National Association of the Deaf, where I continued my work to ensure the ongoing and effective implementation of laws governing telecommunications and television access for people with disabilities, including the national TRS program.
11. During this period, I was instrumental in drafting and advocating for a federal law that mandated closed captioning on television programs (Section 713 of the Communications Act) and a federal mandate for telecommunications equipment and services to be equipped with accessibility features for all types of disabilities (Section 255 of the Communications Act).
12. From 1999 until 2001, I was appointed, and served as the Deputy Chief of the FCC's newly established Consumer Information Bureau (CIB), a

position that required oversight of the Commission's disability policies and regulations, including its TRS program.

13. In this position, I was responsible for setting up, staffing and assigning responsibilities to employees in a newly formed Disability Rights Office within CIB. In addition, I oversaw the FCC's Consumer Education Office, an office dedicated to enhancing outreach and education to consumers of our nation's telecommunications products and services.

14. During this time and under my leadership, in 2000, the Commission adopted rules authorizing video relay services (VRS), requiring speech-to-speech services (STS), Spanish language relay services, mandates for improved access to 911 emergency services via TRS, and new standards for relay calls to be answered more quickly by CAs.

15. In addition, under my tenure, the Commission adopted rules requiring easy dialing nationwide access to TRS via "711".

16. From 2001 until 2010,

- I returned to Gallaudet University for one year from 2002-03, in the distinguished position of the "Powrie V. Doctor Chair of Deaf Studies," a position in which I was provided with financial support to begin research and development of a

manuscript on the efforts of people who are deaf and hard of hearing to obtain telecommunications access in America.

- Also during this period, I was hired as a consultant by the federally funded Rehabilitation and Engineering Research Center on Telecommunications Access, which was jointly administered by Gallaudet University's Technology Access Program and the University of Wisconsin's Trace Center, to address matters of telecommunications policy affecting people who are deaf and hard of hearing.
- In addition, during this period, I consulted for two national TRS providers in proceedings before the FCC. These providers were: (1) Ultratec/Captel, Inc., a provider of captioned telephone relay services, for which I prepared documents and made oral presentations at the FCC that succeeded in winning approval, in 2007, of FCC authorization to provide (and receive compensation for) an Internet protocol version of captioned telephone relay services and (2) Communication Service for the Deaf, a provider of video relay services. For both clients, I addressed various regulatory and compliance TRS-related matters before the FCC, including, but not limited to, matters

pertaining to rate-setting, permissible provider practices, TRS ten-digit numbering, user registration, and confidentiality and privacy.

- In 2007, I formed a coalition of over 300 local, regional and national organizations, the Coalition of Organizations for Accessible Technology (COAT), and was primary drafter of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), a law that updated many of the telecommunications accessibility laws that came before it to bring them in line with more modern digital and wireless technology. Relevant here is that this law updated the scope and definition of the federal TRS mandate, specifically to expand the financial support for interstate relay services to require contributions from interconnected VoIP providers (along with telephone companies that had been supporting this program), and to ensure that people using different types of TRS could use these services to call each other (as compared to the original language of the statute, which implied that a person with a disability could only use these services to call hearing people).

17. From 2010 until 2019:

- In 2010, I returned to the FCC to become the Deputy Bureau Chief of the FCC's Consumer and Governmental Affairs Bureau (CGB), previously CIB, where I again assumed the responsibility of overseeing the agency's disability access programs and policies including the Commission's Disabilities Rights Office. That office continued to work to ensure that our nation's mandates for telecommunications access are fully implemented.
- In this role, I oversaw adoption of multiple rulemakings covering every type of TRS, including traditional text-based TRS, VRS, STS, IP CTS, and IP Relay. TRS issues over which I presided included, but were not limited to, compensation methodologies and rate setting, compliance mandates, structural reforms of the VRS program, federal certification standards for TRS providers, and user eligibility requirements.
- In addition, during this period I was responsible for oversight of approximately 15-20 rulemakings to implement the CVAA, including rulemakings to require disability access to advanced communications services, such as email and text messaging, as well as the products used with these services; to ensure access to

television programs shown on the Internet; to establish a communications equipment distribution program for people who are both deaf and blind; and to make 911 more accessible to people with disabilities. I also oversaw the development of rules to mandate improved volume control on cell phones, better hearing aid compatibility with such telephones, and to approve the use of real-time text (a means of enabling communication between two mobile phone users via text, in real-time) in lieu of TTYs over wireless telephone services.

- Further, during this period, I established the FCC's Disability Advisory Committee, which continues to bring consumers, industry, and government together to confer on telecommunications issues, including TRS issues, of relevance to consumers with disabilities.

18. I left the FCC on December 31, 2018, and I am presently a legal consultant for consumer organizations, institutional and educational researchers, and private companies on matters addressing communications access for people who are deaf and hard of hearing. My clients include providers of IP CTS and VRS, two forms of TRS.

19. Throughout my career, I have frequently testified before the U.S. Congress as an expert witness.
20. I have presented at countless local, regional, and national conferences on matters related to telecommunications access for people with disabilities. In addition, I have given many telecommunications presentations across the globe, including presentations in Italy, Australia, Russia, Denmark, Switzerland, and Mexico, and remotely in Columbia, Brussels and Austria.
21. I have also written extensively on telecommunications access for people with disabilities, including:
 - In 2006, I published, through Gallaudet University Press, A New Civil Right: Telecommunications Access for Deaf and Hard of Hearing Americans, a 430 page textbook that chronicles what was then a 40-year history of efforts by persons who are deaf and hard of hearing to obtain telecommunications access in America. Included in the book are five chapters detailing the successful struggles to obtain first state, and later federal, laws requiring TRS. Also included are detailed descriptions of FCC rules implementing these laws.

- I have contributed chapters on telecommunications-related matters to several books, including several editions of Legal Rights, The Guide for Deaf and Hard of Hearing People, edited by the National Association of the Deaf (previous editions were called Legal Rights of Hearing-Impaired People):
Communication Access for Persons with Hearing Loss:
Compliance with the Americans with Disabilities Act, edited by Mark Ross; and The Americans with Disabilities Act: From Policy to Practice, edited by Jane West.
- In addition, I have been a contributing author to many publications, including the Temple Law Review, for which I prepared a scholarly article entitled “Breaking Down the Telephone Barrier – Relay Service on the Line,” and various newsletters and magazines published by the National Association of the Deaf, Telecommunications for the Deaf and Hard of Hearing, Inc. and other consumer-based organizations.

22. I have served out numerous federal advisory appointments, including a Presidential appointment to the Federal Advisory Committee on the Public Interest Obligations of Digital Broadcasters, and appointments to the United States Access Board’s Telecommunications Access Advisory

Committee and its Electronic and Information Access Advisory Committee, the FCC's Hearing Aid Compatibility Advisory Committee, and the FCC's Consumer/Disability Advisory Committee.

23. I have also served on the disability advisory boards of telecommunications companies, including AT&T and Bell Atlantic.
24. The experience and knowledge that I have gained over these many decades has enabled and required me to have in depth knowledge of virtually every FCC rule and policy governing TRS. As a regulator, in particular, I had to develop an intimate familiarity with permissible provider practices. As a consultant for TRS providers, I have used this knowledge to ensure compliance by my clients with FCC regulations and guidelines.

PREPARATION AND COMPENSATION

25. In preparing this declaration, I have reviewed the Complaint and Answer filed in this case, Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction, Brief by Defendants Opposing Plaintiffs' Motion for Preliminary Injunction, and the declarations of Brandon Cobb, Ernest Wilson, Joseph Nettles, Carlos Herrera, Jeremy Jay Woody, Mariah Mitchell, Richard Mays, Cody

Franklin, Caleb Worley, Edward Dowdell, Sr., Shaconna Branch, William Driver, and Quintina Borroughs-Lee.

26. I am being compensated for my time at the rate of \$300 per hour.

DEFINITIONS

27. **Captioned Telephone** means a telephone equipped with special software and a screen for displaying captions that allows the user to simultaneously listen to, and read the text of, what the other party has said.
28. **Captioned Telephone Service (CTS)** is used by persons with a hearing disability who speak for themselves and who may have some residual hearing. CTS allows people who are hard of hearing to speak directly with another party on a telephone call and to both listen to and simultaneously read captions of what that other party responds, in real-time, generally on a captioned telephone, which has a text screen to display captions of that other party's utterances. The captions are generated by the CA through speech recognition or transcription methods. When speech recognition is used, the CA repeats or re-voices what the hearing person says, and technology automatically transcribes the CA's voice into text, which is then transmitted directly to the user's

captioned telephone text display. This is unlike traditional TRS, where the CA types what the hearing person on the call says.

29. **Communication Access Real-time Translation (CART)** may also be referred to as real-time captioning. A CART provider translates the spoken word into English text using a stenotype machine with a phonetic keyboard and special software. The captions created by the CART provider are displayed on a laptop or on a large display screen. CART can be provided on site or remotely.
30. **Communications Assistant (CA)** is an operator employed by a TRS provider who facilitates telephone calls between people with hearing and speech disabilities and other individuals. A CA can be skilled in typing to complete text-based forms of TRS, in sign language to complete VRS calls, or in understanding speech disabilities, to complete speech-to-speech calls.
31. **Georgia Relay** is the Georgia provider of TRS. The Georgia Public Service Commission is responsible for the establishment, implementation, administration and promotion of Georgia Relay. At present, Georgia Relay services are provided by Hamilton Relay, as selected through a competitive bidding process and under contract to the Commission. Georgia Relay is funded by a monthly surcharge on

residential and business telephone access lines in the state. Georgia Relay does not provide video relay services.

32. **Hearing Carry Over (HCO)** allows a person with a speech disability, but who wants to use his/her own hearing, to listen to the called party and type his/her part of the conversation – either using a TTY, a computer, or a cell phone – or sign his/her part of the conversation on a videophone. The CA reads/speaks these words to the called party, and the caller hears responses directly from the called party.
33. **Internet Protocol Relay Service (IP Relay)** is a text-based form of TRS that uses the Internet, rather than traditional telephone lines, for the leg of the call between the person with a hearing or speech disability and the CA. Otherwise, the call is generally handled just like a TTY-based TRS call. The person with a hearing or speech disability may use a computer or other web-enabled device to communicate with the CA.
34. **IP CTS** combines elements of captioned telephone service and IP Relay. IP captioned telephone service can be provided in a variety of ways, but uses the Internet – rather than the telephone network – to provide the link and captions between the caller with a hearing disability and the CA. It allows the user to simultaneously both listen to, and read the text of, what the other party in a telephone conversation is saying. IP captioned

telephone service can be used with an existing voice telephone and a computer or other Web-enabled device (e.g., a cell phone) without requiring any specialized equipment.

35. **Speech-to-Speech Relay Service (STS)** is used by a person with a speech disability who has the ability to hear over the phone. The CA (who is specially trained in understanding a variety of speech disorders) repeats what the caller says in a manner that makes the caller's words clear and understandable to the called party. No special telephone is needed.
36. **Telecommunications Relay Services (TRS)** are defined by Title IV of the Americans with Disabilities Act as "telephone transmission services" that "provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio." 47 U.S.C. § 225(a)(3). Otherwise stated, these are telephone services that allow persons with hearing or speech disabilities to place to and receive telephone calls from another person (typically to a person who does not have a hearing or speech disability) in

a manner that must be functionally equivalent to the voice telephone calls that people without hearing and speech disabilities make. TRS is available in all 50 states, the District of Columbia, Puerto Rico and many U.S. territories for local and/or long-distance calls. There is no cost to the TRS user. Rather, all telephone subscribers share in the costs for these services, through separate intrastate and interstate funding mechanisms. A TRS call may be initiated by either a person with a hearing or speech disability, or a person without such disability. TRS is generally available in English and Spanish.

37. **Teletypewriter (TTY)** is a text telephone that uses Baudot technology to allow individuals to place and receive telephone calls using a keyboard to type their telephone conversations. The text is read on a display screen and/or a paper printout. Developed in the late 1960s, TTYs provided the only means of telephone communication for individuals with speech or hearing disabilities in the pre-digital and wireless era. Consumer use of TTYs, now considered antiquated technology, has plummeted over the past decade.
38. **TTY-based TRS** is a “traditional” TRS service by which a person with a hearing or speech disability uses a TTY to call a relay center, and either gives the CA the number of the person he or she wishes to call or types

that number to be connected. The CA then makes a voice telephone call to the other party to the call and relays the call back and forth between the parties by speaking what a text user types and typing what the other party speaks. This traditional form of TRS is administered by state relay service programs, such as Georgia Relay, that are certified by the FCC to administer these services on behalf of the common carriers in their states. These states select providers via competitive bids to handle calls made within their states; such providers are then compensated for their intrastate calls through state funding mechanisms, generally through a surcharge on consumer telephone bills. They are compensated for their interstate calls from the FCC-administered Interstate TRS Fund.

39. **Videophone (VP)** means a telephone with a camera and screen for visual, real-time communication. Individuals can use videophones to either make point-to-point (direct) calls to other videophone users or to make and receive video relay service calls.
40. **Video Relay Service (VRS)** is an Internet-based form of TRS that enables people with hearing or speech disabilities who use sign language to make telephone calls over broadband with a videophone. The signer communicates with the CA in sign language using video conferencing equipment (videophone). The CA then speaks what is signed to the

hearing person, and signs responses from that person back to the signer.

VRS allows conversations to flow in near real time and in a faster and more natural manner than text-based TRS and has become the preferred type of relay service for most deaf people who use sign language as their primary language.

41. **Video Remote Interpreting (VRI)** means an interpreting service using a remote interpreter to interpret between two people who are in the same physical location. The interpreter connects via video conference technology. VRI requires dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in 28 C.F.R. § 35.160(d). Typically, VRI services use a fee-for-service compensation scheme, and generally, though not always, are arranged by appointment. They are never compensable through the FCC's Interstate TRS Fund.
42. **Voice Carry Over (VCO)** allows a person with a hearing disability, but who wants to use his or her own voice, to speak directly to the called party and receive responses in text (using TRS or IP Relay) or in ASL (using VRS) from the CA. No typing or signing is required by the calling party. This service is particularly useful to late deafened individuals who have lost their hearing after acquiring speech, but who can still speak.

BACKGROUND

43. Title IV of the ADA allows TRS providers to be compensated for the reasonable costs of handling TRS calls. Individual states that have relay programs, such as Georgia, may develop their own funding mechanisms to compensate TRS providers that handle intrastate relay calls within their states. Since the 1990s, most states have recouped relay costs by simply adding a surcharge to telephone bills, as Georgia has done.
44. The costs of interstate and Internet-based TRS calls are funded from the Telecommunications Relay Service Interstate Fund (TRS Interstate Fund), which is overseen by the FCC and administered by a TRS Fund Administrator (currently Rolka Loube - <http://www.rolkaloube.com/trs/>) The costs of providing interstate TRS are recovered through an annual contribution that must be made to the Fund by all carriers of telecommunications services, including wireline, Voice over Internet Protocol (VoIP), cellular, paging, 800, 900, packet-switched, private line, satellite, international and resale services.
45. The TRS Interstate Fund was originally established to provide a federal mechanism that would ensure the availability of financial support for interstate TRS calls, in response to an initial reluctance by individual state programs to assume these costs in their relay programs. In addition,

this Fund has been used to compensate providers of Internet Protocol (IP)-based forms of TRS (VRS, IP Relay and IP CTS), since the early 2000s when the FCC authorized each of these services. For VRS, this authorization was granted in 2000, for IP Relay, it was in 2002 and for IP CTS, this occurred in 2007. Annually, the FCC holds a rate proceeding that sets the per minute interstate and IP TRS per-minute rates paid from this Fund, which remain in place from July of the first year to June of the following year (the current TRS Fund year is July 1, 2019 through June 30, 2020). In this same rate proceeding, the FCC calculates and then directs covered interstate and international telephone carriers to make a specified annual contribution into the Interstate TRS Fund.

46. Given that the very definition of TRS in Title IV of the ADA is that these are “telephone transmission services,” compensation to providers of these services, including VRS, is authorized by the FCC for communications that take place over distances only, and therefore, may only be used in instances in which a traditional phone call would be utilized. These services should not be confused with VRI, which is generally a fee-for-service offering used to facilitate in-person communication.

Additionally, unlike traditional TRS, VRS is governed entirely by the FCC; thus, state programs, including Georgia Relay, do not provide,

govern or fund VRS. There are presently five VRS providers certified to provide this service by the FCC: Sorenson Communications, Convo, ASL Global, ZVRS, and Purple (the latter two are in the process of merging into a single company). To get paid for VRS, a VRS provider reports the minutes it handles to the TRS Fund Administrator, which determines whether the provider is in compliance with the FCC's rules. If the provider is in compliance, its services will be compensated from the FCC's Interstate TRS Fund. If a VRS provider allows use of its VRS in an unauthorized manner – such as by providing in-person communications, or VRI – the TRS Fund Administrator will withhold compensation for minutes associated with such services as these communications are not telephone calls.

CONCLUSIONS

47. The declarations of various Georgia Department of Community Supervision (GDCS) employees and the GDCS Opposition Brief, GDSC are erroneous in suggesting that various forms of telecommunications are “options available to GDCS” or services which “[G]DCS Supervision Officers can engage . . . to facilitate communication” with deaf and hard of hearing probationers and parolees for in-person interactions. See, e.g., Borroughs-Lee Decl. at ¶ 5; Franklin Decl. at ¶¶ 13-14; Mays Decl. at ¶

13; Worley Decl. at ¶ 13; Dowdell Decl. at ¶ 13; Driver Decl. at ¶¶ 11-12; Mitchell Decl. at ¶ 13; Branch Decl. at ¶¶ 13-14, 18-19; Brief by Defendants Opposing Plaintiff's Motion for Preliminary Injunction (Defense Opp at 8-9). These telephone services, including the Georgia Relay and Sorenson VRS, are not permissible substitutes for appropriate auxiliary aids and services needed for in-person communication with deaf and hard of hearing probationers and parolees for several reasons.

- Compensation for communications conducted via any type of TRS, including VRS, IP Relay, CTS, VCO, HCO, and STS are not permitted for in-person encounters such as meetings with probation and parole officers. As forms of TRS, compensation for these relay services is only permitted in circumstances in which an individual would normally communicate over the telephone.
- The FCC has made clear, on more than one occasion, that use of any telecommunications relay service for in-person communications violates FCC rules. For example, in 2005, the FCC issued two public notices to remind the public that even though both services use the Internet and a video connection to permit communication between people with and without hearing disabilities, “VRS is to be used only when a person with a hearing

disability, who absent such disability would make a voice telephone call, desires to make a call to a person without such a disability through the telephone system (or . . . the hearing person desires to make such a call to a person with a hearing disability). . . . In circumstances where a person with a hearing disability desires to communicate with someone in person, he or she may not use VRS but must either hire an “in-person” interpreter or a VRI service.” Federal Communications Commission, “Clarification of Telecommunications Relay Service Marketing and Call Handling Procedures and Video Relay Service Procedures,” 70 FR 8034-01, 2005 WL 363686 (Feb. 17, 2005), at <https://www.federalregister.gov/documents/2005/02/17/05-3066/clarification-of-telecommunications-relay-service-marketing-and-call-handling-procedures-and-video>.

- The FCC further noted that “employers, State and local government entities and public accommodations are required under the ADA to provide persons with hearing disabilities a reasonable accommodation, and the accommodation may entail the use of a sign language interpreter.” The Commission cautioned that “VRS cannot be used as a substitute” for such interpreter if the

communication does not “entail the use of the telephone.” Thus, although VRI may sometimes be used – generally for a fee – when an interpreter cannot be physically present for two persons who are together at the same location, TRS and VRS are only limited to providing access to the telephone system. Federal

Communications Commission, “Reminder That Video Relay Service (VRS) Provides Access to the Telephone System Only and Cannot Be Used as a Substitute for ‘In-Person’ Interpreting Services or Video Remote Interpreting (VRI),” 70 FR 59346-01, 2005 WL 2507767 (Oct. 12, 2005), at

[https://www.federalregister.gov/documents/2005/10/12/05-20133/reminder-that-video-relay-service-vrs-provides-access-to-the-telephone-system-only-and-cannot-be.](https://www.federalregister.gov/documents/2005/10/12/05-20133/reminder-that-video-relay-service-vrs-provides-access-to-the-telephone-system-only-and-cannot-be)

48. Multiple declarations by employees of the Georgia Department of Community Supervision suggesting that any of the services offered by Georgia Relay or TRS supported by the Interstate TRS Fund can be used to facilitate communications with deaf and hard of hearing probationers and parolees demonstrate a fundamental misunderstanding of the services themselves.

49. There are two reasons why these telecommunications relay options cannot always fulfill GDCS' legal obligations to achieve effective communication with all people with hearing disabilities, and, in particular, the plaintiffs in this case. First, the communication needs of people with hearing disabilities are not all identical. Some individuals may have the ability to speak, while others may not. Some individuals may have partial hearing, while others may not have the ability to hear anything. Some individuals may have English language skills, while others may rely exclusively on American Sign Language (ASL), a language that has a different syntax, grammar and vocabulary than English. The communication needs of a person with a hearing loss will depend on a number of factors, including when the individual lost his or her hearing (pre or post learning language), his or her residual hearing, his or her familiarity with the English language, his or her ability to speak, and his or her reliance on ASL. For this reason, not all types of relay services will be suitable for every individual.
50. In this case, the services offered by Georgia Relay cannot meet the particular needs of plaintiffs in this case who use ASL to communicate because (with the exception of STS, which assists people with speech disabilities, and therefore is not relevant to this proceeding) Georgia's

state relay services are generally text-based, that is, they require the ability to read English text and either speak (CTS relay) or type written English (TTY-to-text relay). By way of further explanation:

- STS and HCO require the user to utilize their own hearing to listen to the communications made by the other party to the call, and thus are inappropriate for persons with hearing disabilities. For this reason, none of the plaintiffs referenced in this declaration would benefit from either of these TRS methods.
- VCO, CTS, and IP CTS require the user to utilize their voice. These forms of TRS are thus inappropriate for individuals who cannot or typically do not use speech to communicate.
- Traditional TTY-based TRS and IP Relay require the user to type in English or Spanish and therefore is not particularly effective for ASL users who are not fluent in or cannot type in a written language.

51. The statement in the Brief by Defendants Opposing Plaintiff's Motion for Preliminary Injunction (Defense Opp at 9) and Quintina Burroughs' declaration that VRS is provided through Georgia Relay (Burroughs Decl. at ¶5(d)) is incorrect. Georgia does not offer VRS, which is needed

by most of the plaintiffs in this case who communicate primarily using sign language.

52. The second reason that GDSC cannot rely on Georgia relay services or any interstate or Internet-based telecommunications relay service funded through the FCC to provide communication with probationers and parolees in all instances is that, as noted above, FCC guidelines prohibit compensation for in-person communications that occur using VRS. This is because TRS is a telephone service, paid for by telephone subscribers, through their telephone companies. As such, TRS providers and their CAs must disconnect any calls when the callers are in the same physical location.
53. By way of example, in his declaration, Cody Franklin states: “If a probationer or parolee identifies himself or herself as having a hearing impairment, I and other DCS Community Supervision Officers can engage any of the services offered by Georgia Relay to facilitate communications.” Franklin Decl. at ¶13. This statement would be correct only if (1) such officers would be using Georgia Relay to communicate by telephone with an individual with a hearing disability who is able to read English, and therefore can use traditional TRS or CTS, the two text-based services offered by Georgia Relay, and (2) the

individual on probation or parole is able to communicate back in writing using either of these services. It is not correct if the probationer or parolee with the hearing disability only uses sign language to communicate, because Georgia Relay offers no video relay services. It is also not correct if the communications are taking place in person, because all relay services are, by law, intended only for communications taking place over distances by telephone.

54. Joseph Nettles became deaf at the age of 3 years old, prior to acquiring speech. He does not understand many words in English. His first language is ASL. As such, Mr. Nettles would derive no benefit from VCO, CTS or IP CTS, each of which require the ability to speak or understand English or Spanish, the two languages available under the FCC's TRS rules. Mr. Nettles would similarly not be able to have meaningful communication using a text-based form of TRS, such as traditional TTY-to-voice TRS or IP Relay, as both of these forms of communication require an understanding of written communication in English or Spanish. In order to understand communication on a telephone call, Mr. Nettles would benefit most from the use of a videophone and VRS. For in-person communications with his probation officer and other personnel from GDCS, Mr. Nettles would need a

qualified sign language interpreter because of his reliance on ASL. This could be provided either in person or through a remote interpreting service – i.e., VRI – that is arranged through and paid for by GDCS. However, FCC rules would prohibit VRS providers from handling and then billing for any in-person communications provided to Mr. Nettles. Because VRS providers are private entities in the business of offering this service in exchange for payment from the Interstate TRS Fund, if a VRS CA learns during a VRS call that communication is taking place in the same room between two parties, such as Mr. Nettles and a probation officer, the CA would disconnect the call to remain in compliance with FCC rules.

55. Brandon Cobb became deaf as a toddler, prior to acquiring speech. He does not understand many words in English. His first and primary language is American Sign Language (ASL). As such, Mr. Cobb would derive no benefit from VCO, CTS or IP CTS, each of which require either hearing or the ability to speak or understand English or Spanish, the two languages available under the FCC's TRS rules. Mr. Cobb would similarly not be able to have meaningful communication using a text-based form of TRS, such as traditional TTY-to-voice TRS or IP Relay, as both of these forms of communication require an understanding

of written communication in English or Spanish. In order to understand communication on a telephone call, Mr. Cobb would benefit most from the use of a videophone and VRS. For in-person communications, because of his limited English skills, Mr. Cobb needs two qualified sign language interpreters – one who is hearing and one who is deaf – to achieve effective communication with his parole officer and other personnel from GDCS. In the past, Mr. Cobb has had difficulty understanding interpreters provided through a remote connection, such as through VRI, and his declaration notes that VRI does not provide deaf interpreters. For this reason, in his case, VRI may not always be a suitable option to obtain effective communication for him. Additionally, FCC rules prohibit VRS providers from handling and then billing for any in-person communications provided to Mr. Cobb. Because VRS providers are private entities in the business of offering this service in exchange for payment from the Interstate TRS Fund, if a VRS CA learns during a VRS call that communication is taking place between two parties when both parties are in the same room, such as between Mr. Cobb and Ms. Mariah Mitchell, as suggested may occur in her Declaration (Mitchell Decl. at ¶ 19), the CA would disconnect the call to remain in compliance with FCC rules.

56. Carlos Herrera has been deaf his entire life and as such became deaf prior to acquiring speech. He does not understand many words in English. His first and primary language is ASL. As such, Mr. Herrera would derive no benefit from VCO, CTS or IP CTS, each of which require either hearing or the ability to speak or understand English or Spanish, the two languages available under the FCC's TRS rules. Mr. Herrera would similarly not be able to have meaningful communication using a text-based form of TRS, such as traditional TTY-to-voice TRS or IP Relay, as both of these forms of communication require an understanding of written communication in English or Spanish. In order to understand communication on a telephone call, Mr. Herrera would benefit most from the use of a videophone and VRS. For basic in-person communications, because of his limited English skills, Mr. Herrera needs at least one qualified sign language interpreter; however, based on his declaration, to more effectively communicate and understand more detailed information, Mr. Herrera needs two qualified sign language interpreters – one who is hearing and one who is deaf. While a single interpreter could be provided in person, if VRI services do not offer deaf interpreters, VRI may not be an option to achieve effective communication with Mr. Herrera in circumstances where complicated information, such as rules

and terms of his probation are given to him. Moreover, FCC rules would prohibit VRS providers from handling and then billing for any in-person communications provided to Mr. Herrera. Because VRS providers are private entities in the business of offering this service in exchange for payment from the Interstate TRS Fund, if a VRS CA learns during a VRS call that communication is taking place between two parties in the same room, such as between Mr. Herrera and a probation officer, the CA would disconnect the call to remain in compliance with FCC rules. Mr. Cody Franklin, in his declaration, states that he has used Sorenson VRS to communicate with Mr. Herrera (see Franklin Decl. at ¶ 17). If he has done so for in-person communications, and Sorenson VRS has billed the FCC for such communications, this has been done in violation of FCC rules. Additionally, Mr. Franklin's statement that he will engage one or more services provided by Georgia Relay to communicate with Mr. Herrera in the future would violate Mr. Herrera's right to effective communication under Title II of the Americans with Disabilities Act even if these communications are by telephone because Georgia Relay does not offer VRS, which would be needed for Mr. Herrera to communicate in ASL.

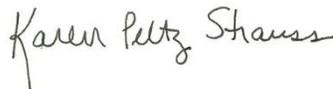
57. Jeremy Jay Woody has been deaf his entire life and as such became deaf prior to acquiring speech. He does not understand many words in English. His first and primary language is ASL. As such, Mr. Woody would derive no benefit from VCO, CTS or IP CTS, each of which require either hearing or the ability to speak or understand English or Spanish, the two languages available under the FCC's TRS rules. Mr. Woody would similarly not be able to have meaningful communication using a text-based form of TRS, such as traditional TTY-to-voice TRS or IP Relay, as both of these forms of communication require an understanding of written communication in English or Spanish. In order to understand communication on a telephone call, Mr. Woody would benefit most from the use of a videophone and VRS. For in-person communications, Mr. Woody would need a qualified sign language interpreter because of his reliance on ASL. This could be provided either in person or through a remote interpreting service – i.e., VRI – that is arranged through and paid for by GDCS. However, FCC rules prohibit VRS providers from handling and then billing for any in-person communications provided to Mr. Woody. Ms. Shaonna Branch indicates in her declaration that VRS was used for all communications with Woody during 10/20/2017-07/11/2018 and on various additional

dates in 2018 and 2019 (Branch Decl. at ¶18, 19). To the extent that these calls were completed and billed to the TRS Interstate Fund, such billing was in violation of the FCC's prohibition against paying VRS providers for VRI, and should be reported to the FCC to allow for adjustment of compensation to the VRS providers that handled them. If a VRS CA learns during a VRS call that communication is taking place between two parties in the same room, such as between Mr. Woody and Ms. Branch, they are supposed to disconnect the call to remain in compliance with FCC rules. While VRS providers might be permitted to handle these calls at their own expense, I am unaware of instances in which these for-profit providers have been willing to provide these services for free. In all likelihood then, the calls that took place to complete in-person communications with Mr. Woody were in violation of this FCC prohibition.

58. Ernest Wilson lost his hearing in 2002 as an adult after first acquiring speech and fluency in English. He does not use ASL and so he would derive no benefit from using VRS or VRI. Thus, engaging an interpreter or Sorenson VRS to communicate with Mr. Wilson, as is suggested in Mr. Edward Dowell's declaration, (Dowell Decl. at ¶ 19) would not ensure effective communication for Mr. Wilson. However, because Mr.

Wilson can speak, in order to make a telephone call, he might benefit from the use of CTS, IP CTS, VCO, TTY-based TRS or IP Relay. Each of these forms of TRS would allow him to receive communications in real-time from the other party in text through a communications assistant. For in-person communications where CTS/IP CTS is not permitted, Mr. Wilson could benefit from CART, which would allow Mr. Wilson to read in real-time the text of what the other person is saying.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was signed in Washington, D.C. on the 11th day of September 2019.



Karen Peltz Strauss

Jeremy Woody Declaration

I, Jeremy Woody, declare:

1. This paper describes things that have happened to me personally. Everything in this paper has happened to me. I promise that everything written here is true and correct. I know that I might be a witness in this case, and that I might be asked to explain these facts in person. If this happens, I will say the same things that are written in this paper.
2. In 2004 I was arrested in Georgia. I signed a plea agreement. I spent a few months in boot camp and then would spend 5 years on probation. It was my first time on probation.
3. At the beginning of my probation, in 2005, I went to meet my probation officer in Douglasville, which is in Douglas County, Georgia. I wrote a note asking for an ASL interpreter. But my probation officer, Mr. Ford, did not get an interpreter. He told me I had to sign some papers. I signed a lot of papers. I did not understand what they said because the English was really complicated. But I did not want to get in trouble so I signed the papers.
4. I wanted to move to Washington State because I could access better treatment there. So I went to the Douglasville probation office again. I saw Mr. Ford again. Again, Mr. Ford did not provide an interpreter. Mr. Ford told me to sign a lot of papers about my interstate transfer. I wanted an interpreter so I could

understand the papers I was signing. But Mr. Ford would only communicate with me by written notes. It was not good communication. I signed the papers about the interstate transfer because I did not want to get in trouble. I thought that Mr. Ford had finished my interstate transfer, and so I moved to Washington state. I lived in Washington for years and things were fine.

5. But then I applied for SSI and the Social Security office said that I could not get SSI because there was a warrant out for me. I was shocked. I had no idea why there was a warrant. I thought everything was okay with probation. So I called Mr. Ford to find out what was happening. But the Douglas County probation office told me that Mr. Ford had retired. The probation office said I had new officer, Ms. ^{Robbins}~~Robins~~. Ms. ^{Robbins}~~Robins~~ said that there was a warrant out for me because I had not been in contact with her and because I was not supposed to move to Washington state. She said she did not have records that my probation had been transferred. The probation office had been sending me letters to an address in Peachtree City, Georgia, even though I had told Mr. Ford that I lived in Washington. I had no idea what happened. Mr. Ford had made it seem like everything was fine.

6. When I got back to Georgia, I was arrested. I went to jail and then spent two years in prison for violating my probation. This was all because the probation office thought I had not kept in contact with them. But this was because

of a miscommunication with probation. I never understood a lot of the papers I signed. Maybe I did not follow a rule from the long documents I signed without an interpreter. Or maybe Mr. Ford did not fill out the paperwork to transfer my probation correctly. But I know that I spent two years in prison for supposedly breaking a technical rule I never understood.

7. I promise that everything in this paper is true and correct. I know that this is a serious paper. I know that I am signing this paper "under penalty of perjury." I know that this means that if I lie, I could get a new criminal charge for lying. I promise that I am telling the truth.

This paper was interpreted into ASL for me by

Laura Clark, NICM, SCIL

I signed this paper on September 8, 2019, in Atlanta, Georgia.

Jeremy Jay Woody
Jeremy Jay Woody