

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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DISABILITY POLICY CONSORTIUM, INC., )  
DONALD DAWES, SARAH GALES, )  
ROBERT HACHEY, GAYLE JOHNSON, )  
LAURA MENESES-OSTAPCHUK, JAMES )  
OSTAPCHUK, MICHELLE PIROG, AND )  
JUDI RODGER, )  
Plaintiffs, )  
v. ) C.A.  
COMMONWEALTH OF MASSACHUSETTS, )  
EXECUTIVE OFFICE OF HEALTH AND )  
HUMAN SERVICES, AND MASSHEALTH, )  
Defendants. )

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**COMPLAINT**

Pursuant to 42 U.S.C. § 12131, *et seq.*, of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”), plaintiffs Disability Policy Consortium, Inc. (“DPC”), Donald Dawes (“Dawes”), Sarah Gales (“Gales”), Robert Hachey (“Hachey”), Gayle Johnson (“Johnson”), Laura Meneses-Ostapchuk (“Meneses-Ostapchuk”), James Ostapchuk (“Ostapchuk”), Michelle Pirog (“Pirog”), and Judi Rodger (“Rodger”) (hereinafter collectively referred to as “Plaintiffs”), as and for their complaint against defendants, Commonwealth of Massachusetts (“Commonwealth”); Executive Office of Health and Human Services (“EOHHS”); and MassHealth (hereinafter collectively referred to as “Defendants”) allege, upon information and belief:

**JURISDICTION AND VENUE**

1. Jurisdiction of this Court is proper pursuant to 28 U.S.C. §§ 1331 and 1343

because the Plaintiffs herein seek relief afforded them by the ADA and Section 504.

2. This Court has jurisdiction over Plaintiffs' claims for injunctive relief pursuant to 28 U.S.C §§ 2201 and 2202 and Rule 65 of the Federal Rules of Civil Procedure.

3. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and it is the district in which a substantial part of property that is the subject of the action is situated.

### **PARTIES**

4. Plaintiff, Disability Policy Consortium, Inc. (hereinafter referred to as "DPC"), is a non-profit organization incorporated under the laws of the Commonwealth of Massachusetts, with its principal place of business located at 59 Temple Place, Boston, Suffolk County, Massachusetts. DPC is a Massachusetts organization of volunteer disability rights activists who share a common goal of equal opportunity for all individuals with disabilities.

5. Plaintiff, Donald Dawes, is a natural person who resides at 9 Hastings Street, West Roxbury, Suffolk County, Massachusetts. Dawes is blind, and as such, he is a qualified individual with a disability within the definition of the ADA, Title II, and Section 504. 42 U.S.C. §§ 12102 and 12131(2); 29 U.S.C. § 705(20). He is employed as a Braille proofreader at National Braille Press in Boston, Massachusetts.

6. Plaintiff, Sarah Gales, is a natural person who resides at 405 Eagle Street, No. 2, North Adams, Berkshire County, Massachusetts. Gales is blind, and as such, she is a qualified individual with a disability within the definition of the ADA, Title II, and Section 504. 42 U.S.C. §§ 12102 and 12131(2); 29 U.S.C. § 705(20). She is employed by AdLib, in Pittsfield, Massachusetts.

7. Plaintiff, Robert Hachey, is a natural person who resides at 22 Grant Street, Waltham, Middlesex County, Massachusetts. Hachey is blind, and as such, he is a qualified individual with a disability within the definition of the ADA, Title II, and Section 504. 42 U.S.C. §§ 12102 and 12131(2); 29 U.S.C. § 705(20). He is unemployed, but he is the President of the Bay State Council of the Blind, a Massachusetts nonprofit corporation.

8. Plaintiff, Gayle Johnson, is a natural person who resides at 2 Mt. Auburn Street, #505, Cambridge, Middlesex County, Massachusetts. Johnson is blind, and as such, she is a qualified individual with a disability within the definition of the ADA, Title II, and Section 504. 42 U.S.C. §§ 12102 and 12131(2); 29 U.S.C. § 705(20).

9. Plaintiff, Laura Meneses-Ostapchuk, is a natural person who resides at 30 Pratt Street, Apt. 2, Mansfield, Bristol County, Massachusetts. Meneses-Ostapchuk is deaf, and as such, she is a qualified individual with a disability within the definition of the ADA, Title II, and Section 504. 42 U.S.C. §§ 12102 and 12131(2); 29 U.S.C. § 705(20).

10. Plaintiff, James Ostapchuk, is a natural person who resides at 30 Pratt Street, Apt. 2, Mansfield, Bristol County, Massachusetts. Ostapchuk is deaf, and as such, he is a qualified individual with a disability within the definition of the ADA, Title II, and Section 504. 42 U.S.C. §§ 12102 and 12131(2); 29 U.S.C. § 705(20).

11. Plaintiff, Michelle Pirog, is a natural person who resides at 276 Massachusetts Avenue, Arlington, Middlesex County, Massachusetts. Pirog has neuro-cognitive deficits that are expressed by a delay in reading, oral processing, and comprehension; a long history of epilepsy related seizures; and major depression, and as such, she is a qualified individual with a disability within the definition of the ADA, Title II, and Section 504. 42 U.S.C. §§ 12102 and 12131(2); 29 U.S.C. § 705(20).

12. Plaintiff, Judi Rodger, is a natural person who resides at 95 Washington Street, Boston, Suffolk County, Massachusetts. Rodger has a cognitive/developmental disability, and as such, she is a qualified individual with a disability within the definition of the ADA, Title II, and Section 504. 42 U.S.C. §§ 12102 and 12131(2); 29 U.S.C. § 705(20). She is employed by the Arc of Greater Boston, Brighton, Massachusetts.

13. Defendant, Commonwealth of Massachusetts, is a State established by and organized under its Constitution and laws and it is a public entity within the meaning of 28 C.F.R. § 35.104.

14. Defendant, EOHSS, is an agency of the Commonwealth located in Boston, Massachusetts.

15. Defendant, MassHealth, is an agency of EOHHS and the Commonwealth and does business within the Commonwealth.

### **STANDING**

16. Plaintiffs, Dawes, Gales, Hachey, Johnson, Meneses-Ostapchuk, Ostapchuk, Pirog, and Rodger, have suffered “injury in fact” that is “actual or imminent.”

17. Plaintiffs, Dawes, Gales, Hachey, Johnson, Meneses-Ostapchuk, Ostapchuk, Pirog, and Rodger, are currently unable to access various forms and other materials and information from MassHealth that provide beneficial information and/or are necessary for their membership. Plaintiffs, Dawes, Gales, Hachey, Johnson, Meneses-Ostapchuk, Ostapchuk, Pirog, and Rodger, have all been MassHealth members for at least several years and will be MassHealth members for the foreseeable future. Therefore, a real and immediate threat exists that Defendants’ existing or imminently threatened noncompliance with the ADA and Section 504 will cause a future harm.

18. A causal connection exists between the injuries and damages suffered by Dawes, Gales, Hachey, Johnson, Meneses-Ostapchuk, Ostapchuk, Pirog, and Rodger, and Defendants' noncompliance with the ADA and Section 504.

19. The injuries and damages suffered by Dawes, Gales, Hachey, Johnson, Meneses-Ostapchuk, Ostapchuk, Pirog, and Rodger, will be redressed by a decision in their favor: (1) an injunction directing Defendants to evaluate and modify their policies, practices, and procedures toward persons with visual, hearing and cognitive/developmental disabilities, including Plaintiffs, and requiring Defendants to make all forms and communications accessible to persons with visual, hearing and cognitive/developmental disabilities, as required by the ADA and Section 504; and (2) a monetary damages award.

20. DPC has numerous members in the Commonwealth of Massachusetts who are also MassHealth members and have visual, hearing and cognitive/developmental disabilities and are qualified individuals with a disability within the definition of the ADA, Title II, and Section 504.

21. DPC has associational standing to sue on its own behalf for injuries directly inflicted upon it.

22. Defendants' failure to comply with the ADA and Section 504 has caused DPC to divert resources to investigate, test, and counteract Defendants' discriminatory conduct. This diversion of resources has reduced the resources available for the DPC to carry out its mission of providing services and support through educating and advocating for each individual's quality of life, and guiding statewide development of policies that ensure that programs and services enable people with disabilities to participate in the political, economic, and social mainstream of the Commonwealth.

23. A causal connection exists between DPC's injury and Defendants' noncompliance with the ADA and Section 504.

24. DPC's injuries will be redressed by a decision in its favor: (1) an injunction directing Defendants to evaluate and modify their policies, practices, and procedures toward persons with visual, hearing and cognitive/developmental disabilities, including Plaintiffs, and requiring Defendants to make all forms, information and communications accessible to persons with visual, hearing and cognitive/developmental disabilities, as required by the ADA; and (2) a monetary award compensating DPC for the diversion of its resources and frustration of its mission.

25. DPC also has associational, or representative, standing to sue as a representative of its members who have been harmed because (a) its members, including Plaintiffs, Dawes, Gales, Hachey, Johnson, Meneses-Ostapchuk, Ostapchuk, Pirog, and Rodger, would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to DPC's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

### **GENERAL ALLEGATIONS**

26. MassHealth is the second largest health insurer in the Commonwealth of Massachusetts. It provides health insurance, or assists in paying for private health insurance, to over one million Massachusetts residents. MassHealth pays for healthcare services for certain low-income and medium-income residents.

27. Many MassHealth forms, materials and other information are not accessible to persons with visual, hearing or developmental/cognitive disabilities.

28. MassHealth forms, materials and other information that are not in accessible

formats, include, but are not limited to, administrative notices, bills, general correspondence, review forms, time reporting forms for personal services, and the automated telephone answering system.

29. MassHealth requires some members to fill out review forms on an annual basis, which are not in an accessible format for blind persons.

30. Plaintiff, Dawes, has been a MassHealth member for approximately twenty-five years.

31. In April 2010, Dawes received a two-page printed letter from MassHealth regarding changes in administration of services. Dawes cannot read printed letters.

32. In April 2010, Dawes used a computer scanner to make an image copy of the MassHealth letter and used Open Book software from Freedom Scientific to convert the text to an electronic text format using quality speech and the latest optical character recognition (OCR) technology.

33. The MassHealth letter had non-text characters, symbols, and graphics that made the document inaccessible using Open Book software.

34. MassHealth sent Plaintiff Dawes a recertification form with a deadline in or around December 2010.

35. On or around January 26, 2011, Dawes informed MassHealth that the form was not accessible and asked for the deadline to be extended.

36. On or around January 26, 2011, MassHealth refused to extend the deadline, informing Dawes that either the form had to be in on time or his membership would be canceled.

37. MassHealth failed to provide Dawes with an option to receive any MassHealth documents in Braille or any other accessible format.

38. Plaintiff, Gales, has been a MassHealth member for approximately 6 years.
39. Since she became a MassHealth member, Gales has encountered difficulty on several occasions in obtaining correspondence from MassHealth in an accessible format.
40. On or around September 21, 2009, Gales received an inaccessible MassHealth review form in the mail.
41. The MassHealth review form is a form that all members, except members on welfare or social security, are required to complete once each year.
42. Gales is required to complete the annual MassHealth review form.
43. Gales contacted a MassHealth representative on or around September 22, 2009, who informed her that MassHealth did not have an alternative format or method for filling out the review form.
44. MassHealth directed her to call the Springfield enrollment center and physically go to the Springfield enrollment center to fill out the form. The Springfield enrollment center is located approximately 75 miles away from Plaintiff Gales' house.
45. MassHealth failed to provide Gales with an accessible format for the annual review form.
46. In or around January 2011, Gales received another inaccessible review form from MassHealth.
47. Gales could not fill out the inaccessible form and her MassHealth services ended.
48. MassHealth failed to provide Gales with any accessible format for the annual review form and failed to provide Gales with any assistance to complete the form over the telephone, which resulted in her MassHealth services being terminated.
49. Gales then had a coworker fill out the inaccessible form and MassHealth began

her services again retroactively.

50. Plaintiff, Hachey, has been a MassHealth member for his entire life.

51. Hachey utilizes several MassHealth services such as doctor visits, prescription drugs, dental visits, and occasional outpatient procedures.

52. In or around January or February 2009, Hachey received inaccessible printed materials from MassHealth, including administrative notices and bills.

53. After receiving each of these inaccessible materials, Hachey asked MassHealth representatives for accessible formats for the materials.

54. MassHealth failed to provide Hachey with a reasonable accommodation to enable him to access the materials.

55. Plaintiff, Johnson, has been a MassHealth member for 30 years. Throughout the past thirty years, Plaintiff, Johnson, has had difficulty obtaining MassHealth services, including primary, secondary, and tertiary care including pharmacy benefits. Johnson requested information from MassHealth in an accessible format in the fall of 2010.

56. MassHealth failed to provide such information in the fall of 2010.

57. Due to her inability to read inaccessible forms, Johnson missed a deadline for recertification and other information in the fall of 2010.

58. Plaintiff, Meneses-Ostapchuk, has been a member of MassHealth since 1997.

59. In April of 2010, Meneses-Ostapchuk requested information from MassHealth in an accessible format.

60. MassHealth failed to provide such information in April 2010.

61. In April 2010, Meneses-Ostapchuk missed a deadline for recertification and/or other requests from MassHealth for information because she was not able to understand the

material's content.

62. As a result of missing the deadline, MassHealth, cancelled, stopped, and/or suspended her enrollment in or around April 2010.

63. In or around April 2010, Meneses-Ostapchuk went to the MassHealth office in Taunton, Massachusetts to determine what information was needed to re-enroll in MassHealth.

64. Meneses-Ostapchuk requested an interpreter to assist her in meeting with a MassHealth representative.

65. MassHealth failed to provide an interpreter or any other accommodation to enable Meneses-Ostapchuk to meet with a MassHealth representative regarding her MassHealth membership.

66. MassHealth failed to provide Meneses-Ostapchuk with reasonable accommodations to enable her to complete forms and access services.

67. Plaintiff, Ostapchuk, has been a member of MassHealth since 1997.

68. In April 2010, Ostapchuk requested information from MassHealth in an accessible format.

69. MassHealth failed to provide such information in April 2010.

70. In April 2010, Ostapchuk missed a deadline for recertification and/or other requests from MassHealth for information because he was not able to understand the material's content.

71. As a result of missing the deadline, MassHealth, cancelled, stopped, and/or suspended his enrollment in or around April 2010.

72. MassHealth failed to provide Ostapchuk with reasonable accommodations to enable him to complete forms and access services.

73. Plaintiff, Pirog, has been a MassHealth member for 23 years.

74. In the spring of 2011, Pirog attempted to contact MassHealth because she was not able to understand the content of a MassHealth form.

75. MassHealth failed to provide her with a reasonable accommodation to enable her to access and complete the form.

76. In the spring of 2011, Pirog missed a deadline for recertification and/or other requests from MassHealth for information.

77. As a result of missing the deadline, MassHealth cancelled, stopped, and/or suspended her enrollment in June 2011.

78. Pirog has had problems navigating MassHealth's telephone answering system. The automated telephone system referred her to different numbers and locations for various parts of one problem. Pirog requested call backs from MassHealth to clarify the purpose of the communications. MassHealth never returned her phone calls.

79. MassHealth failed to provide Pirog with reasonable accommodations to enable her to complete forms and access services.

80. Plaintiff, Rodger, has been a MassHealth member for fifty years.

81. Within the past year, Rodger attempted to speak to a MassHealth representative through the main telephone number, (800) 841-2900.

82. This telephone number is inaccessible to persons with a cognitive or developmental disability due to the confusing and deep hierarchical menu options, referral to additional telephone numbers, and the inability to reach a live operator for assistance.

83. Due to MassHealth's inaccessible telephone number to persons with cognitive and developmental disabilities, Rodger had difficulty navigating the multiple menu options and had

to wait an long period of time to talk to a MassHealth representative.

84. When she finally reached a MassHealth representative, Rodger inquired about the status of her MassHealth membership. The MassHealth representative informed her that her membership was fine without inquiring about the circumstances.

85. MassHealth failed to provide Rodger with a reasonable accommodation to enable her to access services.

86. Defendants should be ordered to provide some or all of the following: accessible formats for printed materials: e-mails with forms included in the body of the message or attached as a rich text or Microsoft Word document; Braille versions of printed materials; electronic versions of forms in rich text or Microsoft Word format; the option to fill out forms over the telephone; Vlogs (American Sign Language video presentations); forms with 24 point font or larger; making all forms available on MassHealth's website in rich text or Microsoft Word format; accessible menu options on the automated telephone system with the ability to reach a representative at any time while navigating the menu options; and/or patient advocate services.

#### **PRE-SUIT REMEDIAL EFFORTS BY DPC**

87. Plaintiff, DPC, has raised the issues regarding lack of accessible forms, materials and other information from MassHealth in multiple meetings and discussions with EOHHS officials since 2007.

88. DPC has raised the issue regarding lack of accessible forms, materials and other information from MassHealth with an Assistant Massachusetts Attorney General for Civil Rights on numerous occasions.

89. On September 12, 2008, Governor Deval Patrick released the Community First Olmstead Plan. The Press Release stated that the Olmstead Plan is "a roadmap and action plan

reflecting the Governor's commitment to ensuring that people with disabilities and elders have access to community-living opportunities and supports that address each individual's diverse needs, abilities and backgrounds."

90. In the Community First Olmstead Plan, the Commonwealth expressed the following objective:

**OBJECTIVE 5:**

Implement system-wide improvement processes in the existing and future long-term support delivery systems

d) Provide recommendations to the EOHHS Office of Health Equity regarding the adoption of a focus on disparities in accessing HCBS services. Analysis would include looking at disparities by race; language; sexual orientation; disability type, especially among individuals who are Deaf, late-deafened, hard of hearing or deaf blind; and individuals dealing with communication barriers on top of another disability (physical, cognitive, or psychiatric). (*Completion Date: Ongoing*).

91. EOHHS, DPC, other state agency partners, and 49 community partners participated in a series of forums entitled The Olmstead Initiatives in October 2009.

92. The Olmstead Initiatives, a report written by DPC, was published in February 2010.

93. Electronic draft copies of The Olmstead Initiatives were made available to key EOHHS participants prior to the time the final report was published.

94. Printed copies of the final version of The Olmstead Initiatives report were sent to EOHHS officials in May 2010.

95. The report states:

MassHealth is one of many agencies of the Commonwealth that advocates assert are not yet meeting their obligations under Title II of the ADA to provide written information in alternative formats including Braille, large print, and audio recordings. Electronic forms on web sites are not always accessible. And the effective communication obligation also requires that new technologies be

incorporated when they are necessary to eliminate barriers to the flow of information. As an example, Vlogs (American Sign Language video presentations) have not yet been incorporated in the public education programs of the Department of Public Health or other state entities.

96. MassHealth's Director, Terry Dougherty, informed DPC on or around June 16, 2010 that MassHealth did not have a timetable for making MassHealth documents accessible.

**FIRST CAUSE OF ACTION**  
**CLAIM FOR INJUNCTIVE RELIEF FOR INTENTIONAL VIOLATIONS OF THE  
PLAINTIFFS' RIGHTS UNDER TITLE II OF THE AMERICANS WITH  
DISABILITIES ACT AND SECTION 504 OF THE REHABILITATION ACT**

97. Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs.

98. Congress enacted the ADA upon finding, among other things, that "society has tended to isolate and segregate individuals with disabilities" and "such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2).

99. In response to these findings, Congress explicitly stated that the ADA's purpose is to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1)-(2).

100. The ADA provides, *inter alia*, that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §§ 12132.

101. Pursuant to the ADA, persons with disabilities are "qualified" if such person, "with or without reasonable modifications to rules, policies, or practices, the removal of

architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

102. Provisions of the ADA define the term “public entity” to include state and local governments, as well as their agencies and instrumentalities. 42 U.S.C. § 12131(1); *see also* 28 C.F.R. § 35.104.

103. Although the ADA does not compel States to undertake measures that would impose an undue financial or administrative burden, threaten historic preservation interests, or effect a fundamental alteration in the nature of the program or activity, 28 C.F.R. § 35.150(a)(2) and (a)(3), ordinary considerations of cost and convenience alone cannot justify a State’s failure to provide individuals with a meaningful right of access to programs and activities.

104. Where necessary to ensure that communications with individuals with hearing, vision, and cognitive/developmental disabilities are as effective as communications with non-disabled persons, the Commonwealth of Massachusetts, as a “public entity,” must provide appropriate auxiliary aids. 28 C.F.R. § 35.160(b)(1).

105. Pursuant to the ADA’s provisions and regulations, “auxiliary aids” include such services as qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to

individuals who are deaf or hard of hearing; qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision; acquisition or modification of equipment or devices; and other similar services and actions. 42 U.S.C.A. § 12103(1); 28 C.F.R. § 35.160(b)(1). Auxiliary aids for persons with cognitive/developmental disabilities include simplified automated telephone menu options and providing the option for a caller to bypass the automated system and speak to a live person. *See generally*, 28 C.F.R. § 35.161.

106. Pursuant to the ADA and Federal Regulations enacted pursuant to the ADA, as a “public entity,” the Commonwealth of Massachusetts may not charge an individual with a disability for using an auxiliary aid. 28 C.F.R. § 35.130(f).

107. The enforcement provisions of Title II of the ADA incorporate by reference Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), and authorize private citizens to bring suits for equitable relief and monetary damages. 42 U.S.C. § 12133.

108. Defendants’ acts and omissions alleged herein violate Title II of the ADA, 42 U.S.C. § 12101 *et seq.*, and the applicable regulations.

109. Plaintiffs are specifically protected under the ADA. 42 U.S.C. §§ 12102(2) and 12131(2); 28 C.F.R. § 36.104.

110. Defendants have committed multiple ongoing and continuous violations of the ADA and the Rehabilitation Act, and unless restrained from doing so, Defendants will continue to violate the ADA and the Rehabilitation Act. Said conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at law.

111. Consequently, Plaintiffs are entitled to injunctive relief pursuant to section 308 of the ADA. 42 U.S.C. § 12133.

112. Plaintiffs are also entitled to reasonable attorneys' fees and costs pursuant to section 504 of the Rehabilitation Act, 29 U.S.C. § 794a, and ADA regulations. 42 U.S.C. § 12133; 28 C.F.R. 35.175.

**SECOND CAUSE OF ACTION**  
**CLAIM FOR COMPENSATORY DAMAGES AND OTHER MONETARY RELIEF FOR VIOLATIONS OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §§ 12131, *et seq.*, AND SECTION 504 OF THE REHABILITATION ACT OF 1973, 29 U.S.C. § 794(a).**

113. As a result of each Defendant's intentional violations of the Plaintiffs' rights under Title II of the ADA and § 504 of the Rehabilitation Act, each individual Plaintiff has endured great mental, psychological, and emotional pain, suffering, and anguish, and has experienced shame, mortification, indignity, disgrace, embarrassment, humiliation, anger, discomfort, stigma, demoralization, inconvenience, delay, worry, distress, anxiety, nervousness, depression, powerlessness, and other injuries to his or her feelings and sensibilities. Each Plaintiff will continue to suffer all of the foregoing for an indefinite period of time.

114. Each Defendant's intentional violations of the Plaintiffs' rights under Title II of the ADA and § 504 of the Rehabilitation Act has caused Plaintiff, DPC, to divert much of its limited resources to enforce the Plaintiffs' rights in this case and has reduced the resources available for the DPC to carry out its mission. Therefore, DPC should be awarded monetary relief compensating it for its diversion of resources and the frustration of its mission.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court order the Defendants to provide the following relief:

## **EQUITABLE RELIEF – COMMUNICATION AUXILIARY AIDS**

1. Within a reasonable time to be determined by the court, provide an option to all MassHealth clients to receive all MassHealth forms, materials and other communications in an accessible format of their choice within a reasonable time.

2. Accessible formats for printed materials shall include but not be limited to e-mails with forms included in the body of the e-mail message or attached as a rich text or Microsoft Word document; Braille versions of printed materials; electronic versions of forms in rich text or Microsoft Word format; the option to fill out forms over the telephone; Vlogs (American Sign Language video presentations); forms with 24 point font or larger; making all forms available on MassHealth's website in rich text or Microsoft Word format, audio recordings; qualified interpreters onsite or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; qualified readers; compact discs; "readers" for blind persons; and/or taped text.

3. Video remote interpreting (VRI) services provided shall comply with 28 C.F.R. § 35.160(d), and provide real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images; a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers; a clear, audible transmission of voices; and adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

4. The automated-attendant telephone system shall be modified to comply with 28 C.F.R. § 35.161, and provide effective real-time communication for individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay

systems, including Internet-based relay systems. MassHealth shall establish and implement a policy to respond to telephone calls from a telecommunications relay service in the same manner that it responds to other telephone calls. Additionally, MassHealth shall simplify its automated menu options and modify its automated systems to have an option for the caller to bypass the automated system and speak to a live person.

5. MassHealth recipients shall be given the option of submitting timesheets and other forms electronically.

6. Within a reasonable time to be determined by the court, EOHHS shall complete a review of all communications within its agencies to ensure that all clients receiving services from EOHHS agencies, subcontractors, and/or vendors comply with Titles II and III of the ADA and § 504 of the Rehabilitation Act.

7. Within six months of the conclusion of this matter, all Executive Offices of the Commonwealth shall complete a review of all their communications to ensure that all clients receiving services from the Executive Offices' agencies, subcontractors, and/or vendors comply with Titles II and III of the ADA and § 504 of the Rehabilitation Act.

8. Within six months of the conclusion of this matter, Defendants shall provide training to all their employees engaged in any type of customer service in agencies of the Commonwealth regarding the rights of people and obligations of the Commonwealth, its agencies, subcontractors, and/or vendors under Title II of the ADA and § 504 of the Rehabilitation Act.

9. Defendants shall prepare reports assessing progress, identifying barriers, and steps to be taken to overcome the barriers including funding, personnel, and timetables.

**COMPENSATORY DAMAGES**

10. Monetary damages to each individual Plaintiff in an amount that will fairly and adequately compensate each Plaintiff for his or her endurance of great mental, psychological, and emotional pain, suffering, and anguish, shame, mortification, indignity, disgrace, embarrassment, humiliation, anger, discomfort, stigma, demoralization, inconvenience, delay, worry, distress, anxiety, nervousness, depression, powerlessness, and other injuries to his or her feelings and sensibilities and continued suffering of all of the foregoing for an indefinite period of time.

11. Award DPC monetary relief for diversion of its resources and the frustration of its mission.

**COSTS OF LITIGATION AND ATTORNEYS' FEES**

12. The costs of bringing this action and reasonable attorneys' fees.

**OTHER RELIEF**

13. Such other relief as the court deems appropriate.

**THE PLAINTIFFS HEREBY CLAIM THEIR RIGHT TO HAVE THIS COMPLAINT TRIED BY A JURY.**

Respectfully submitted,

Plaintiffs,  
By their attorneys,

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