IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

MARY ANN MCBRIDE; BRIAN STANLEY WITTMAN; and RALPH WILLIAMS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

MICHIGAN DEPARTMENT OF CORRECTIONS;
DANIEL H. HEYNS, in his official capacity as Director of the Michigan Department of Corrections;
THOMAS FINCO, in his official capacity as Deputy Director of the Correctional Facilities Administration;
RANDALL TREACHER, in his official capacity as Chief Deputy Director of the Michigan Department of Corrections; ANTHONY STEWART, in his official capacity as Warden of the Women's Huron Valley Correctional Facility; JEFFREY WOODS, in his official capacity as Warden of the Chippewa Correctional Facility; and CATHLEEN STODDARD, in her official capacity as Warden of the Carson City Correctional Facility,

Defendants.

Case No. _____

Hon. _____

CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, through their counsel, state as follows:

1. Plaintiffs Mary Ann McBride, Brian Stanley Wittman, and Ralph Williams (collectively, "Plaintiffs") are deaf or hard of hearing inmates in the custody of the Michigan Department of Corrections (the "Department" or "MDOC"). While in MDOC custody, Plaintiffs have been denied the assistance and accommodation that they require to effectively communicate and to participate in MDOC programs, services, and activities, in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 *et seq.*; the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*; the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*; and the First and Fourteenth Amendments of the Constitution of the United States.

Plaintiffs bring this action on behalf of themselves and all deaf or hard of hearing persons who are or will be confined in Michigan's prisons.

2. As a result of the above-captioned Defendants' ("Defendants") failure to provide the assistance required by prisoners who are deaf or hard of hearing to effectively communicate, Plaintiffs have been excluded from a variety of programs and activities offered by the Department, have been punished as a result of their disabilities, and have otherwise suffered harm.

3. Among the injuries suffered by Plaintiffs as a result of Defendants' failure to provide for effective communication, and to provide other necessary accommodations and assistance, Plaintiffs are unable to adequately maintain contact with loved ones; have access to educational opportunities (including academic classes, vocational training, and other programs) offered to prisoners; access necessary medical care; participate in religious services; or access telephone and television services. Because Defendants have failed to provide them adequate assistance, Plaintiffs are forced to serve their time largely isolated from, and unable to effectively communicate with, other individuals.

4. For example, Defendants do not allow Plaintiffs to use videophones, a standard method of telecommunication for speakers of American Sign Language ("ASL"). At some MDOC correctional facilities, Defendants provide telecommunications devices for the deaf ("TDDs"), also known as teletypewriters

("TTYs"), which are electronic devices for text communication via a telephone line that attempt to enable people with hearing and speech disabilities to communicate by telephone. But TDDs and TTYs are archaic devices based on fifty-year-old technology, cannot connect to videophones, and are not a viable means to communicate for many ASL speakers for whom written English is a second language. Without access to a videophone, Plaintiff McBride, for example, is unable to communicate with her deaf friends and relatives outside of prison, including her two brothers.

5. Defendants have been denied access to interpreters for critical services. For example, Plaintiff Wittman's requests for an interpreter during medical visits have been repeatedly denied, and he is, therefore, unable to communicate effectively with medical professionals.

6. Defendants' failure to accommodate Plaintiffs' disabilities has resulted in improper disciple being inflicted on Plaintiffs. For example, Plaintiffs have been disciplined for not following orders that they could not hear. Plaintiffs also have been unable to defend themselves in hearings or proceedings stemming from disciplinary charges brought against them, because they could not effectively communicate with hearing officers and investigators. Some prison officers even single out deaf and hard of hearing inmates for unequal, abusive, and demeaning treatment due to their disability.

7. On one occasion, Plaintiff Williams was not allowed use of his hearing aid during a misconduct hearing. As a result of this proceeding during which he was unable to hear or communicate, Mr. Williams was forced to serve 40 days in solitary confinement, also without being permitted access to his hearing aid.

8. Defendants' failure to accommodate Plaintiffs' disabilities properly has jeopardized Plaintiffs' safety. For example, Defendants have not ensured that visual safety alerts, such as fire alarms and alarms signaling emergency lockdowns, are accessible to Plaintiffs. Defendants' failure to provide Plaintiffs the assistance they need means that Plaintiffs are forced to rely on other prisoners on a daily basis, placing them in constant danger of exploitation and physical and verbal abuse by those prisoners.

9. Defendants' systematic failure to provide deaf or hard of hearing prisoners the assistance they require improperly infringes upon the rights of all deaf or hard of hearing prisoners in MDOC custody. Plaintiffs, therefore, seek class-wide declaratory and injunctive relief requiring Defendants to provide the assistance necessary for prisoners who are deaf or hard of hearing to adequately participate in programs and services and to enjoy equal rights as hearing prisoners while incarcerated, and enjoining Defendants from denying equal rights to deaf or

hard of hearing prisoners as a result of their disabilities, or punishing them because of their disabilities.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343(a)(3) because this action seeks to redress the deprivation, under color of state law, of Plaintiffs' civil rights.

11. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57.

12. This Court has jurisdiction to grant injunctive relief pursuant to Fed. R. Civ. P. 65.

13. This Court has personal jurisdiction over each of the Defendants. MDOC is a Michigan state agency, and the other Defendants all reside and/or work in Michigan.

14. Venue of this action lies in this judicial district pursuant to 28 U.S.C. § 1391(b) because some of the Defendants live in the district, a substantial part of the events giving rise to claims herein occurred within the district, and all Defendants are residents of Michigan.

PARTIES

A. Plaintiffs

15. Named Plaintiffs Mary Ann McBride, Brian Stanley Wittman, and Ralph Williams are individuals with a hearing disability currently incarcerated at facilities under MDOC's custody and control.

16. Mary Ann McBride is a 51-year-old woman currently incarcerated at the Women's Huron Valley Correctional Facility ("WHV"), an MDOC correctional facility located at 3201 Bemis Road, Ypsilanti, Michigan 48197-0911. Ms. McBride has been at WHV for the past five years. She has been completely deaf since birth. She communicates primarily through ASL. She also can read and write in English.

17. Brian Stanley Wittman is a 45-year-old male currently incarcerated at the Carson City Correctional Facility ("DRF"), an MDOC correctional facility located at 10274 Boyer Road, Carson City, Michigan 48811. Mr. Wittman has been at DRF for four years. He became deaf at age 22 as a result of a surgery he underwent in the United States Marines Corps. He suffered a bilateral, profound loss of hearing, which has grown progressively worse over time. Mr. Wittman has a cochlear implant. His ability to hear with the implant varies depending upon environmental factors, such as the weather and ambient noise, and sound frequency. Mr. Wittman has a difficult time hearing women's voices. Mr.

Wittman is best able to understand oral communication when he is speaking with someone face-to-face. Under these conditions, Mr. Wittman can sometimes comprehend speech by supplementing his compromised hearing abilities with lip reading. He has also learned basic ASL. During time periods in which his implant is broken, Mr. Wittman's ability to communicate is minimal.

18. Ralph Williams is a 59-year-old male currently serving a life sentence at the Chippewa Correctional Facility ("URF"), an MDOC correctional facility located at 4269 W. M-80, Kincheloe, Michigan 49784. Mr. Williams has been at URF for approximately two years. He lost most of his hearing in his left ear in 1977 due to an injury he suffered in the United States Army. He currently wears a hearing aid on his left ear. More recently, Mr. Williams also has developed substantial hearing loss in his right ear. Mr. Williams is learning basic ASL from other inmates.

B. Defendants

1. State Agency Defendant

19. Defendant MDOC is the Michigan state agency responsible for the supervision and custody of approximately 43,000 incarcerated individuals. MDOC operates 33 correctional facilities throughout Michigan that house individuals under MDOC's supervision and custody. MDOC, through the Correctional Facilities Administration ("CFA"), is responsible for the operations

of Michigan's prison system and oversight of the State's 33 correctional facilities, including, *inter alia*, managing and coordinating educational and work programming at MDOC facilities, and coordinating and monitoring healthcare services for inmates of MDOC facilities. MDOC's administrative offices are located at 206 East Michigan Avenue, Grandview Plaza, Lansing, Michigan 48933.

2. Defendants Sued in Their Official Capacities

20. Defendant Daniel H. Heyns is the Director of MDOC. Defendant Heyns is responsible for directing the administration of Michigan's correctional system, which includes MDOC. On information and belief, Defendant Heyns is aware of MDOC's treatment of deaf and hard of hearing individuals.

21. Defendant Thomas Finco is MDOC's Deputy Director of CFA. As the head of CFA, Defendant Finco is responsible for the operation and oversight of MDOC correctional facilities, including the management and coordination of the facilities' educational and work programming, the coordination and monitoring of healthcare services for inmates, and promulgating and administering MDOC's policies. On information and belief, Defendant Finco is aware of MDOC's treatment of deaf and hard of hearing individuals.

22. Defendant Randall Treacher is the Chief Deputy Director of MDOC. Defendant Treacher is responsible for MDOC's day-to-day operations, including,

inter alia, the direct supervision of Defendant Finco, and the operation and oversight of MDOC's Bureau of Health Care Services, which coordinates, manages, and delivers healthcare services to individuals in MDOC's custody, and responds to healthcare-related grievances filed by such individuals. On information and belief, Defendant Treacher is aware of MDOC's treatment of deaf and hard of hearing individuals.

23. Defendant Anthony Stewart is the warden of WHV. As Warden, Defendant Stewart is the legal custodian of all individuals incarcerated at WHV, and is responsible for their safe, secure, and humane treatment. On information and belief, Defendant Stewart is aware of WHV's treatment of deaf and hard of hearing individuals at WHV, and he is aware of specific written grievances by deaf and hard of hearing individuals at WHV regarding the violation of their rights.

24. Defendant Jeffrey Woods is the warden of URF. As Warden, Defendant Woods is the legal custodian of all individuals incarcerated at URF, and is responsible for their safe, secure, and humane treatment. On information and belief, Defendant Woods is aware of URF's treatment of deaf and hard of hearing individuals at URF, and he is aware of specific written grievances by deaf and hard of hearing individuals at URF regarding the violation of their rights.

25. Defendant Cathleen Stoddard is the warden of DRF. As Warden, Defendant Stoddard is the legal custodian of all individuals incarcerated at DRF, and is responsible for their safe, secure, and humane treatment. On information and belief, Defendant Stoddard is aware of DRF's treatment of deaf and hard of hearing individuals at DRF, and she is aware of specific written grievances by deaf and hard of hearing individuals at DRF regarding the violation of their rights.

26. At all relevant times, Defendants were acting under color of state law, pursuant to their authority as officials, agents, contractors, or employees of the State of Michigan; within the scope of their employment as representatives of public entities, as defined in 42 U.S.C. § 12131(1); and as representatives of a "department, agency, special purpose district, or other instrumentality of a State" under 29 U.S.C. § 794(b).

STATEMENT OF FACTS

27. For years, MDOC has failed to provide the deaf and hard of hearing inmates housed at its facilities the accommodations that are required by Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504").

28. Defendants are aware of their obligations under federal laws. Nevertheless, Defendants have not remedied their past pattern and practice of discrimination and continue to discriminate against deaf and hard of hearing

individuals. On information and belief, Defendants have not implemented any detailed policies or procedures specific to deaf and/or hard of hearing inmates and the accommodations they require at all MDOC facilities, nor have they issued any manuals or other guidance documents on the subject within at least the last five years.

29. On information and belief, Defendants have identified certain facilities that are not appropriate for deaf and hard of hearing inmates, but have nonetheless housed some deaf and hard of hearing inmates at those facilities. For example, Mr. Williams resides at URF even though, on information and belief, Defendants themselves have not identified URF as appropriate to house deaf or hard of hearing inmates.

30. Defendants engage in disability-based discrimination in at least five different areas: (i) inadequate access to telecommunications; (ii) inadequate access to auxiliary aids and services; (iii) inadequate visual notification of prison alerts and announcements; (iv) ineffective communication during disciplinary proceedings; and (v) unequal treatment of deaf and hard of hearing inmates by prison officers.

A. Inadequate Access to Telecommunications

31. The telecommunication services that MDOC provides deaf and hard of hearing individuals in its custody in order for them to communicate with

family, friends, and other individuals outside of prison is inferior to the telecommunication services provided to hearing inmates.

32. Telecommunications are very important to individuals in MDOC's custody because they foster the family and community ties that are fundamental to motivate inmates to improve themselves and to prepare them to make a positive transition back to civilian life once their sentence is complete.

33. The Federal Communications Commission ("FCC") has recognized that inmate access to telephone services at fair, just, and reasonable rates "benefits society by making it easier for inmates to stay connected to their families and friends." 79 Fed. Reg. 69682 (Nov. 21, 2014). According to the FCC, "family contact during incarceration is associated with lower recidivism rates," and "[l]ower recidivism means fewer crimes, decreases the need for additional correctional facilities, and reduces the overall costs to society." *Id.* Inmate access to telephone services "also helps families and the estimated 2.7 million children of incarcerated parents in our nation, an especially vulnerable part of our society. In addition to coping with the anxiety associated with a parent who is not present on a daily basis, these young people are often suffering severe economic and personal hardships and are often doing poorly in school, all of which are exacerbated by the inability to maintain contact with their incarcerated parent." *Id.*

34. Most deaf and hard of hearing MDOC inmates cannot use traditional telephones to communicate with individuals outside of prison.

1. Telecommunications Devices for the Deaf

35. The only telecommunications methods for deaf inmates available at MDOC, which are provided on a limited basis and only by some MDOC facilities, are telecommunications devices for the deaf ("TDDs"). TDDs are electronic devices for text communication via a telephone line to enable people with hearing and speech disabilities to communicate by telephone. TDDs are also called teletypewriters ("TTYs"). Based on fifty-year-old technology, the TDD is basically a telephone equipped with a keyboard and a screen that displays text. For two parties to have a direct TDD conversation, each party must have a TDD. TDDs cannot connect to a videophone.

36. The TDD is inferior, outdated technology that does not allow effective communication for most deaf people, and most people in the deaf community do not use or own one. Deaf individuals in the United States who use ASL have abandoned TDD technology, and now primarily utilize videophones.

37. Some deaf and hard of hearing inmates who do not know ASL still require provision of TDDs in order to achieve access to telecommunication services. Not every facility has TDD services, and the ones that do are wholly inadequate for named Plaintiffs and class members to communicate effectively.

38. For example, the TDD at WHV functions poorly. Ms. McBride has never been able to place an outgoing phone call through the use of the device. But even if the TDD functioned properly, Ms. McBride could not use it to communicate with her deaf friends and relatives, including her two brothers. The TDD direct-messaging system works only if both the caller and recipient have access to a TDD device. Ms. McBride's friends and family, like most deaf and hard of hearing persons, rely on the use of videophones instead of TDDs. On information and belief, communicating with friends and family outside WHV is also difficult and frustrating for hard of hearing inmates who are unable to hear voices over the telephone.

39. Likewise, the TDD service at DRF is inadequate. The service is cost prohibitive. On information and belief, use of the TDD costs an inmate approximately five times the rate of a traditional telephone call, or roughly $23 for a ten-minute call. Furthermore, it takes approximately twice as long to communicate using a TDD than it does to communicate orally in a traditional telephone call. Thus, it is approximately ten times as expensive for an inmate at DRF to communicate via TDD rather than through a traditional telephone call. TDD access is at DRF's discretion.

40. It is very difficult for Mr. Wittman, for example, to communicate through a traditional telephone. Mr. Wittman must ask the other caller to repeat

himself frequently; the process is "tedious." Further, Mr. Wittman does not use DRF's TDD as a result of its high cost. As a result, Mr. Wittman essentially cannot communicate with family members through oral communication, and is instead confined to written correspondence.

41. Mr. Williams, for example, cannot use a traditional telephone to communicate with friends and family because he cannot hear the person on the other end of the telephone line. On information and belief, URF currently has no TDD device, no videophone, and no telephone amplifier.

2. Videophones

42. Videophones and free or low-cost internet-based video links (collectively, "videophones") are replacing TDDs in the deaf and hard of hearing community because they allow deaf and hard of hearing individuals to communicate with one another directly in ASL, without having to communicate through written English, a language in which it is difficult for some of them to communicate. When using a videophone, callers can see each other, usually over an internet connection. As a result, many deaf households no longer own a TDD and have no way to accept a TDD call, as they rely exclusively on videophones for telecommunication.

43. Deaf individuals using videophones can also call a Video Relay Service ("VRS") to place calls to people who do not understand ASL or do not

have a videophone. The mechanics of VRS are very similar to those of traditional TDD relay service—the caller is routed to an interpreter, the caller gives the interpreter the number of the party he is trying to reach, and the interpreter then interprets the conversation into spoken English.

44. Videophones and VRS permit deaf people to use ASL instead of having to carry out every telephone call in written English through a TDD. Due to the fact that TDDs rely on written communications, they are by nature an unsatisfactory and ineffective means of communication for many deaf individuals. Writing usually does not provide effective communication for a deaf individual. English is generally considered a second language for most deaf persons who became deaf before acquiring language—ASL is their native language. Additionally, many deaf people acquire English as their second language much later in life. Therefore, the English reading and writing skill level of many deaf individuals, including those incarcerated at MDOC institutions, is generally much lower than that of hearing people.

45. Provision of videophones would also ensure that deaf inmates could place telephone calls to deaf family and friends, the vast majority of whom no longer have TDD devices.

46. Deaf individuals in Defendants' custody have repeatedly requested videophone access, but have been denied this access.

47. On information and belief, Defendants do not provide access to videophones at any of the MDOC facilities throughout Michigan.

48. Videophone technology would enable Ms. McBride, Mr. Wittman, Mr. Williams, and other class members to communicate with family, friends, and other parties outside of the MDOC facilities in which they are housed.

3. Other Telecommunication Issues

49. Some inmates housed in Michigan prisons are hard of hearing but not profoundly deaf. Certain of these hard of hearing inmates can use a traditional telephone provided the telephone has either an internal or external amplification speaker.

50. For example, a telephone amplifier would allow Mr. Wittman to communicate with his family by phone. He has requested access to such an amplifier, but DRF denied the request, claiming that the technology was incompatible with existing telephone handsets.

B. Inadequate Access to Auxiliary Aids and Services

51. Individuals in the custody of MDOC are wholly dependent on MDOC and prison staff for all of their basic daily needs, including food, exercise, and safety. Such individuals rely on MDOC for medical, dental, educational, mental health, employment, and religious services, among other services. Deaf and hard of hearing individuals in the custody of MDOC are also dependent on

MDOC to provide hearing devices, interpreter services, and other auxiliary aids and services to be able to hear prison alerts, participate in all aspects of prison life, and avoid exploitation from other inmates.

1. Hearing Devices

52. MDOC has consistently failed to provide deaf and hard of hearing individuals in its custody with individual hearing devices that would enable them to hear prison alerts or participate in other aspects of prison life.

53. On information and belief, MDOC has refused to provide individual hearing aids to deaf and hard of hearing inmates that would benefit from them at its facilities throughout Michigan. For example, even though Mr. Williams has developed substantial hearing loss in his right ear, URF has denied his requests to have an audiologist examine his right ear, as well as his requests for a hearing aid for that ear.

54. MDOC also sometimes prevents individuals in its custody from having access to hearing aids that they own. For example, on one occasion Mr. Williams was made to serve 40 days in solitary confinement without being permitted access to his hearing aid. During this time Mr. Williams's ability to hear and communicate was minimal.

55. Further, MDOC has prevented individuals in its custody from taking steps necessary to fix broken hearing devices promptly. For example, on one

occasion when the battery in Mr. Williams's hearing aid failed, it took two weeks for Mr. Williams to receive a new battery.

56. More egregiously, in 2012, an inmate assaulted Mr. Wittman and broke his cochlear implant, and it took approximately four months to get it fixed. Mr. Wittman's cochlear implant broke again in December 2013, and it took approximately three months to get it fixed. Both times Mr. Wittman received resistance from DRF staff when he requested that staff ship the implant out to be fixed by its manufacturer, Cochlear Americas. Initially, DRF took the position that the implant was a personal device, not a medical one, and that DRF had no responsibility to facilitate its repair. On information and belief, the U.S. Department of Veterans Affairs ("VA"), not DRF, has covered all costs for the repair of Mr. Wittman's implant.

57. In another instance, in July 2014, Mr. Wittman sent out the FM transmitter/receiver used with his cochlear implant for repairs by the VA. Even after this medical equipment was repaired by the VA and returned to MDOC's custody, Mr. Wittman did not receive the equipment for 53 days, despite making repeated requests to MDOC officials for their help in locating it. Mr. Wittman was told that prison officials were waiting for the equipment to be cleared by superiors in MDOC.

58. Mr. Wittman has made repeated requests to have the transmitter/receiver for his cochlear implant listed along with his other property on his property card to avoid similar situations in the future, but these requests have been ignored. Mr. Wittman also wrote a letter to Defendant Finco requesting that a policy be put in place to cover the repair and return of medical equipment like his cochlear implant and its transmitter/receiver. Mr. Wittman received a response stating that MDOC was not interested in enacting such a policy because Mr. Wittman's case was a rare instance.

59. During time periods in which his implant and/or its related equipment are broken, Mr. Wittman's ability to communicate is minimal. He has to observe other inmates closely, and follow them to ensure he is in the right place at the right time. This increases the danger that Mr. Wittman faces of exploitation and verbal and physical abuse from other inmates. In fact, on one occasion, Mr. Wittman was "jumped" from behind by another inmate due to his inability to hear the approach of his assaulter.

2. Sign Language Interpreter Services

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

61. A qualified sign language interpreter is necessary because ASL is a complete, complex language that employs signs made with the hands and other movements, including facial expressions and postures of the body. It is a language distinct from English—it is not simply English in hand signals. It has its own vocabulary, and its own rules for grammar and syntax.

62. As noted above, writing usually does not provide effective communication for a deaf individual. English is generally considered a second language for most deaf persons who became deaf before acquiring language—ASL is their native language. Also, several deaf people acquire English as their second language later in life—past the critical period of language acquisition. Therefore, the English reading and writing skill level of many deaf individuals, including those incarcerated at MDOC, is generally much lower than that of hearing people.

63. Lip-reading usually does not provide effective communication for a deaf individual and is generally far less effective than written communication. It is extremely difficult to lip-read English because only a small fraction of the sounds used in the language are clearly visible on the mouth, and many sounds that are visible look identical on the lips. In addition to these difficulties in lip-reading, the ability to accurately lip-read is affected by the speaker's facial bone structure, facial musculature, facial hair, lighting, and other external factors.

Moreover, even if an ASL user were able to understand the sounds appearing on a speaker's lips, for the reasons discussed above, he would not necessarily understand the English language or the vocabulary the speaker was using.

64. Thus, provision of qualified sign language interpreter services is necessary to allow deaf individuals who use ASL in MDOC's custody and under MDOC's supervision to communicate effectively with MDOC officials, MDOC employees, and medical personnel.

65. Defendants fail to provide adequate access to sign language interpreters for deaf individuals in MDOC's custody and control and under MDOC's supervision.

66. On information and belief, Defendants do not provide adequate access to sign language interpreters at MDOC facilities throughout Michigan.

a) Interpreters for Access to Medical Services

67. Defendants are responsible for the medical care of all individuals incarcerated by MDOC.

68. Deaf individuals who rely on ASL require sign language interpreters to communicate effectively with medical staff.

69. Deaf and hard of hearing inmates at WHV purportedly share access to an ASL interpreter for two hours each Wednesday and Friday, but this is an inadequate amount of time. Further, on information and belief, weeks can go by

when there are no ASL interpreters at all. In addition, this limited schedule of ASL services does nothing in cases of medical emergencies. For example, for one medical emergency, Ms. McBride had to communicate with medical staff by pointing at a diagram of the human body and scrawling out messages.

70. DRF provides no ASL interpreters in at least the unit of the facility where Mr. Wittman is housed, the (security) Level I unit. Mr. Wittman has specifically requested an interpreter for meetings with prison staff and medical visits, but DRF has denied the requests. For example, no interpreter was present at a recent medical visit by Mr. Wittman, and Mr. Wittman therefore had to communicate about his health by passing notes back and forth. Likewise, DRF denied Mr. Wittman's requests for access to an interpreter when his cochlear implant was broken, and his ability to communicate was therefore minimal.

71. On information and belief, other MDOC facilities throughout Michigan also do not provide adequate access to interpreters for inmates' medical appointments.

b) Interpreters for Access to Prison Programs

72. Defendants provide educational, mental health, and counseling programs for individuals in MDOC's custody.

73. WHV frequently fails to provide an interpreter for inmate programming, such as career workshops, unit meetings, and educational and

business courses. For example, prison staff have instructed Ms. McBride to request an interpreter for these programs, but the programs are often announced only days ahead of time. This leaves Ms. McBride insufficient time to request and obtain approval for an interpreter. Even when Ms. McBride requests an interpreter for an event, these requests often are not granted. In the rare case that a request is granted, Ms. McBride often is not made aware that the interpreter will be at the event prior to its start, and thus may not know to attend.

74. On information and belief, other MDOC facilities throughout Michigan also do not provide adequate access to interpreters for educational and business courses, and other inmate programming.

c) Interpreters for Religious Services

75. WHV does not provide an interpreter for religious services which, for example, Ms. McBride would like to attend but cannot understand without an interpreter. There are volunteer interpreters at religious services for some (but not all) faiths. For example, there are sometimes volunteer interpreters at Jehovah's Witnesses services held at WHV. However, there are typically no volunteer interpreters at Protestant services held at WHV, which Ms. McBride would like to attend but does not because she cannot understand them.

76. DRF also does not provide interpreters for religious services, which Mr. Wittman, for example, would like to attend but has difficulty understanding without an interpreter.

77. On information and belief, other MDOC facilities throughout Michigan also do not provide adequate access to interpreters for religious services.

3. Other Auxiliary Aids

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

79. For example, television programming available to inmates at MDOC facilities can be made accessible to those with hearing impairments through captioning. Captioning can be either open (viewable by all viewers) or closed (viewable only by those who opt to activate the caption chip within every television).

80. On information and belief, officers at MDOC facilities frequently refuse to turn on captioning for deaf or hard of hearing inmates that request it. For example, officers at DRF regularly refuse to turn on closed captioning for Mr. Wittman when he requests it because they believe, mistakenly, that Mr. Wittman can hear everything with his cochlear implant. At WHV closed captioning is left on for some televisions, but not the television in the facility's fitness area.

Officers at WHV have told Ms. McBride that it is not their job to ensure that there is closed captioning.

C. Access to Visual Notification of Alerts and Announcements

81. MDOC institutions do not have effective systems for public address or audio alerts and announcements for deaf and hard of hearing inmates, thereby creating serious safety risks and other harms.

82. MDOC facilities lack effective visual systems for notifying deaf and hard of hearing inmates about alarms and announcements, and the systems they do have function poorly or are used only sporadically.

83. For example, WHV lacks an effective system of notification lights or signs for notifying Ms. McBride and other deaf and hard of hearing inmates. WHV has a single, red notification light outside the officer's station in the facility's Gladwin Housing Unit B. This light is sometimes used to announce inmate "count time"—officers sometimes turn the light on when count starts and off when count is over. The light is not used for any other purpose. In addition, officers sometimes use signs to instruct inmates to form lines for medicine or food, or to notify inmates of an emergency or lockdown. But they use these visual cues only occasionally, and the signs are only visible in certain parts of the facility. Ms. McBride cannot see the signs or the single, red notification light in her cell or in the television room, for example.

84. On information and belief, WHV has issued pagers to approximately six deaf and hard of hearing inmates, including Ms. McBride, to help the facility notify these inmates of alarms and announcements. WHV uses the pagers only sporadically, however. Although officers are supposed to send pages during emergencies, Ms. McBride has not received pages for emergencies or alarms such as fire drills. For example, there were at least two fire drills held in December 2014, and Ms. McBride did not receive any page for either fire drill. On information and belief, other inmates have similarly not been sent pages for alarms or mobilizations. In addition, pages have often arrived too late to be of benefit. On information and belief, this is because the officers sending them fail to account for the time lapse between the moment they send the page and the moment the page arrives at the inmate's pager.

85. Because WHV has not instituted an effective system of visual notification for alarms or announcements, Ms. McBride, for example, must try to rely on other inmates to show her where to go and when, or observe other inmates and follow them around the facility in an attempt to comply with instructions she cannot hear.

86. Problems suffered by Mr. Wittman relating to his cochlear implant provide another example. When Mr. Wittman's cochlear implant is working properly, he can hear alarms and announcements at DRF. But the noisy

environments common within DRF interfere frequently with the implant's functioning—a fact the officers do not understand or acknowledge.

87. Mr. Wittman could not hear alarms or announcements at DRF when his implant was broken in 2012 (for approximately four months) and 2013 (for approximately three months). Furthermore, Mr. Wittman removes the implant when he goes to sleep, which makes him unable to hear. Because the unit of DRF in which Mr. Wittman resides does not have any system of visual notification to notify him of an alarm or announcement, he must try to rely upon his bunkmate to inform him of emergencies and announcements when he is in his bunk and his implant is removed and/or broken, which is clearly inadequate.

88. Mr. Williams' hearing disability, for example, severely impairs his ability to communicate within URF. He removes his hearing aid when he goes to sleep, which makes him unable to hear. URF does not have any system of visual notification to alert deaf or hard of hearing inmates of alarms or announcements. Mr. Williams must therefore try to rely upon his bunkmates to inform him of instructions from officers or messages broadcast over the prison's speaker system, which is clearly inadequate.

89. In the two-week period that Mr. Williams' hearing aid did not have a functioning battery, Mr. Williams had to rely on other inmates to alert him to where he was supposed to be and when, exposing him to an increased risk of

exploitation and verbal and physical abuse from other inmates. URF has no system of signage, posters, or monitors to provide visual displays of warnings or other announcements.

D. Failure to Provide Effective Communication at Parole and Disciplinary Proceedings

90. Deaf and hard of hearing inmates are subjected to disciplinary proceedings and parole hearings without effective communication.

91. For example, on information and belief, at least one hard of hearing inmate was not provided an interpreter for her recent parole hearing. The hearing was held by an examiner via teleconference. This inmate agreed to proceed with the hearing despite not being able to communicate effectively without an interpreter. Although this inmate believes that the hearing examiner may have been willing to postpone her hearing if she demanded it, such a postponement could have delayed her release date from prison because parole hearings can take a long time to schedule.

92. When inmates violate the rules and regulations of MDOC facilities, they undergo disciplinary proceedings conducted by hearing officers. Inmates have an opportunity to defend themselves, to learn the allegations against them, and to understand the parameters of their punishment.

93. During these proceedings, deaf and hard of hearing inmates may be punished even when they do not understand the charges against them or the

parameters of their punishment, as a result of their disability. Moreover, inmates are denied the ability to defend themselves when they cannot hear what is happening during the hearings.

94. When they are denied interpreters and/or assistive listening devices or other auxiliary aids or services, deaf and hard of hearing inmates are unable to hear the officer conducting the proceeding, the allegations against them, or any of the results of the proceeding. They are disciplined without complete knowledge of the claims against them or the length of their punishment.

95. On one occasion, for example, officers at URF took Mr. Williams from his cell at night, and placed him in solitary confinement. Mr. Williams requested his hearing aid, which he was not wearing at the time officers removed him from his cell. The officers did not honor his request, and Mr. Williams was forced to appear at a misconduct hearing without the hearing aid. As a result of the proceeding—during which Mr. Williams was completely unable to hear or communicate—URF ordered that Mr. Williams serve 40 days in solitary confinement.

96. Furthermore, DRF did not allow Mr. Wittman access to an interpreter when he appeared in front of a hearing officer to contest a ticket issued to him for a disciplinary infraction.

E. Unequal and Improper Treatment by Officers

97. Officers at MDOC facilities throughout Michigan often do not recognize the difficulty that deaf and hard of hearing inmates have communicating, and refuse to interact with such inmates in a way that makes it possible to communicate. Some officers even single out deaf and hard of hearing inmates for abusive treatment due to their disability.

98. On information and belief, MDOC facilities throughout Michigan typically do not train officers on how to interact with deaf and hard of hearing individuals, nor do they adequately notify new officers of which inmates suffer from such impairments.

99. Officers at WHV are often insensitive to Ms. McBride's disability, and some are cruel. In the past they have mocked her inability to hear, and attempted to humiliate her in front of other inmates. Others do not realize or acknowledge Ms. McBride's deafness. Officers occasionally yell at her or cite her for misconduct when she fails to respond to instructions that she did not hear.

100. Communication within WHV is extremely difficult for Ms. McBride. None of the officers know ASL. To communicate with them, Ms. McBride attempts to write messages on a notepad. Many of the officers refuse to write back, however. They insist that Ms. McBride read their lips, which is often impossible.

101. On information and belief, officers at WHV also will sometimes scream at deaf and hard of hearing inmates in an attempt to communicate with them because they do not understand the limitations on their hearing abilities.

CLASS ACTION ALLEGATIONS

102. Plaintiffs McBride, Wittman, and Williams bring this Complaint on their own behalves and on behalf of a class of persons similarly situated (the "Class"), pursuant to the provisions of Fed. R. Civ. P. 23(b)(2).

103. Plaintiffs seek to certify a class of all deaf or hard of hearing inmates who currently are or will in the future be within the custody or supervision of MDOC, and who primarily rely on ASL and/or require hearing devices, auxiliary aids, or other services for in-person communication, and/or to hear or understand telephone communications or loudspeaker system announcements or alarms.

104. The Class is so numerous, and membership so fluid, that joinder of all members is impracticable. On information and belief, there are currently over 110 deaf and hard of hearing inmates in the Class. Further, the Class is readily identifiable from information and records in the possession of Defendants.

105. Numerous common questions of law and fact exist as to all members of the Class. These common questions include, but are not limited to: whether Defendants systematically fail to provide adequate access to telecommunications services, individual hearing devices, sign language interpreters, and other

auxiliary aids and services to individuals who are deaf or hard of hearing; whether Defendants' conduct has resulted in harm, and may result in serious future harm, to deaf or hard of hearing individuals by denying them effective communication with medical personnel; whether Defendants have caused harm, and may cause serious future harm, to deaf or hard of hearing individuals by failing to provide notification to them of prison warnings and announcements in a manner comparable to that provided to hearing individuals in MDOC's custody; whether Defendants systematically fail to provide individuals who are deaf or hard of hearing with access to services, programs, or privileges comparable to access provided to hearing individuals in MDOC's custody; whether MDOC and named Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard impose a substantial burden on individuals' religious exercise who are deaf or hard of hearing; and whether MDOC and named Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard fail to provide adequate means for deaf or hard of hearing individuals to communicate with individuals outside of MDOC facilities.

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

107. Plaintiffs and Plaintiffs' counsel will fairly and adequately protect and represent the interests of the Class. Plaintiffs' interests are consistent with, and are not antagonistic to, the interests of the Class as a whole. Plaintiffs' counsel are experienced in the protection and enforcement of the statutory and constitutional rights of incarcerated individuals, including deaf individuals.

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

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

CLAIMS FOR RELIEF

COUNT I

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

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

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

112. The claims under the ADA are brought against Defendant MDOC as a department, agency, or instrumentality of the State of Michigan, as well as against Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard in their official capacities as employees of MDOC.

113. Defendant MDOC is a "public entity" within the meaning of 42 U.S.C. § 12131(1)(B).

114. Plaintiffs are each a "qualified individual with a disability" within the meaning of Title II of the ADA, 42 U.S.C. § 12131(2).

115. By the actions of the Defendants described above, Plaintiffs have, by reason of such disability, been "excluded from participation in or be[en] denied the benefits of the services, programs, or activities of" public entities and have been subjected to discrimination by public entities, in violation of Title II of the ADA, 42 U.S.C. § 12132.

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

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

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

119. Auxiliary aids and services include, but are not limited to, "qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments," 42 U.S.C. § 12103, such as computer-aided transcription services, assistive listening systems, closed caption

decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videophones, and videotext displays. 28 C.F.R. § 35.104.

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

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

122. Defendants subjected Plaintiffs to discrimination solely on the basis of their disability by not ensuring that adequate access to qualified sign language interpreter services, individual hearing devices, and other auxiliary aids and services are made available to individuals with hearing impairments in MDOC's custody or under MDOC supervision.

123. Plaintiffs have been unable to communicate effectively by telephone with individuals outside of prison, unable to participate in educational, mental health, employment, disciplinary, and other MDOC services, and unable to learn of daily life and safety alerts and other notifications as effectively as hearing individuals in MDOC's custody.

124. Defendants have failed to give consideration to Plaintiffs' requests, denying them their requests for videophone services, for visual alert and notification systems, for interpreter services, for individual hearing devices, and for other auxiliary aids and services.

125. On information and belief, Defendants have failed to provide effective communication or to provide comparable access to services, benefits, activities, programs, or privileges, policies, regular practices, and/or customs. These failures are ongoing and continue to this date.

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

a. inadequate access to sign language interpreters, individual hearing devices, and other appropriate auxiliary aids and services to enable them to participate in and benefit from Defendants' programs;

b. inadequate access to prison audio alerts and notifications; and

c. inadequate access to telecommunications devices.

127. As a proximate result of Defendants' violations of Plaintiffs' rights under the ADA, Plaintiffs have suffered and continue to suffer from discrimination, unequal treatment, exclusion (including exclusion from Defendants' services, benefits, activities, programs, and privileges), violations of

their rights under the laws of the United States, financial loss, loss of dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, embarrassment, and unnecessary loss of rights and privileges, including unnecessary disciplinary measures.

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

COUNT II

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

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

130. The purpose of the Rehabilitation Act is to ensure that no "qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or

be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794(a).

131. The claims under the Rehabilitation Act are brought against Defendant MDOC as a department, agency, or instrumentality of the State of Michigan, as well as against Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard in their official capacities as employees of MDOC.

132. Defendants receive Federal financial assistance within the meaning of 29 U.S.C. § 794(a).

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

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

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

136. Appropriate auxiliary aids include, but are not limited to, "qualified interpreters . . . and telephonic devices." 28 C.F.R. § 42.503(f).

137. Defendants discriminatorily impaired Plaintiffs' ability to communicate effectively with medical personnel, prison staff, and individuals outside of prison and/or excluded Plaintiffs from educational, vocational, and prison-wide announcements. They have done this by failing to provide appropriate auxiliary aids in violation of the Rehabilitation Act.

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

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

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

a. inadequate access to sign language interpreters, individual hearing devices, and other appropriate auxiliary aids and

services to enable them to participate in and benefit from Defendants' programs;

b. inadequate access to prison audio alerts and notifications; and

c. inadequate access to telecommunications devices.

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

142. As a proximate result of Defendants' violations of Plaintiffs' rights under the Rehabilitation Act, Plaintiffs have suffered, and continue to suffer, from discrimination, unequal treatment, exclusion (including exclusion from Defendants' services, benefits, activities, programs, and requirements), financial loss, loss of dignity, frustration, humiliation, emotional pain and suffering, anxiety, trauma, embarrassment, unnecessary loss of rights and privileges, including unnecessary disciplinary measures, and injury to their health.

143. Defendants' failure to comply with the Rehabilitation Act has resulted in harm to Plaintiffs, and Defendants are liable to Plaintiffs for harms suffered. Defendants' failure to comply with the Rehabilitation Act will continue to result in harm to Plaintiffs, as Plaintiffs will continue to be in the custody or under the supervision of MDOC and will continue to attempt to use or avail themselves of the services, benefits, activities, programs, and privileges of Defendants. This harm will continue unless and until Defendants are ordered by this Court to make

modifications to their policies, practices and procedures pursuant to the Rehabilitation Act.

COUNT III

Violation of the Religious Land Use and Institutionalized Persons Act of 2000 "Substantial Burden on Religion Exercise" (42 U.S.C. § 2000cc et seq.) (Against all Defendants by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

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

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

146. The claims under RLUIPA are brought against Defendant MDOC as a department, agency, or instrumentality of the State of Michigan, as well as against Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard in their official capacities as employees of MDOC.

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

148. Plaintiffs are "institutionalized persons" within the meaning of RLUIPA. 42 U.S.C. § 2000cc-1.

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

150. Defendants' failure to comply with RLUIPA has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will continue to be in MDOC's custody and continue to attempt to participate in weekly worship services unless and until Defendants are ordered by this Court to make modifications to MDOC policies, practices, and procedures pursuant to RLUIPA.

COUNT IV

Violation of Free Exercise Rights under First and Fourteenth Amendments of the United States Constitution
(42 U.S.C. § 1983)
(Against Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

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

152. Under the First Amendment of the United States Constitution, as made applicable to States through the Fourteenth Amendment, States "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. Amend. I.

153. 42 U.S.C. § 1983 creates a cause of action when a "person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."

154. Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard, acting under color of Michigan statutes and regulations, deprived and continue to deprive Plaintiffs of their free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiffs because of their mode of speech and by substantially burdening their religious exercise.

155. Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard's failure to comply with the First and Fourteenth Amendments of the United States Constitution has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of MDOC or under the

supervision of MDOC and continue to attempt to participate in weekly worship services unless and until Defendants are ordered by this Court to make modifications to their policies, practices, and procedures pursuant to the First and Fourteenth Amendments of the United States Constitution.

COUNT V

Violation of Free Speech Rights Under the First and Fourteenth Amendments of the United States Constitution
(42 U.S.C. § 1983)
(Against Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard by the Plaintiffs on behalf of themselves and a class of similarly situated individuals)

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

157. Under the First Amendment of the United States Constitution, as made applicable to States through the Fourteenth Amendment, States "shall make no law . . . abridging the freedom of speech." U.S. Const. Amend. I.

158. 42 U.S.C. § 1983 creates a cause of action when a "person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."

159. Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard, acting under color of Michigan statutes and regulations, deprived and continue to deprive Plaintiffs of their freedom of speech, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by preventing Plaintiffs from communicating with people outside of the prison. Despite multiple complaints in writing to MDOC, MDOC—through the official actions of Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard—has denied and continues to deny Plaintiffs access to telecommunications devices that would give them the ability and opportunity to communicate with people outside of prison.

160. Defendants Heyns, Finco, Treacher, Stewart, Woods, and Stoddard's failure to comply with the First and Fourteenth Amendments of the United States Constitution has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs as Plaintiffs will remain in the custody of MDOC or under the supervision of MDOC and continue to attempt to communicate with people outside prison, unless and until all Defendants are ordered by this Court to make modifications to their policies, practices, and procedures pursuant to the First and Fourteenth Amendments of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays that the Court:

a. Certify this case as a Plaintiff class action pursuant to Fed. R. Civ. P. 23 (b)(2), certify that named Plaintiffs Mary Ann McBride, Brian Stanley Wittman, and Ralph Williams are proper representatives of the class, and appoint the undersigned as class counsel;

b. Adjudge and decree that Defendants, by the organizations, systems, policies, practices, and conditions described above, have violated and continue to violate Title II of the ADA, Section 504 of the Rehabilitation Act, the Religious Land Use and Institutionalized Persons Act, and the Constitution of the United States;

c. Enjoin the Defendants from refusing to provide the proper interpretative services, TDD, videophones, and other hearing devices that are required for deaf and hard of hearing inmates to fully participate in and benefit from the programs offered by these public entities, and required to ensure their physical safety;

d. Enjoin the Defendants from depriving Plaintiffs and Plaintiff Class members of the protections of the First and Fourteenth

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

e. Award reasonable attorneys' fees and costs; and

f. Award Plaintiffs such other and further relief as the Court deems just and proper.

Dated: March 31, 2015

Respectfully submitted,

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