

2012 WL 1555186 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah County

Merle BALDRIDGE, Plaintiff,
v.
OREGON DEPARTMENT OF CORRECTIONS, a state agency, Defendant.

No. 120404976.
April 20, 2012.

Amount of Claim: \$900,000
Fee Authority: Or Laws 2012, ch. 48, sec. 2; ORS 21.160(1)(c)
Claim More Than \$50,000; not Subject to Mandatory Arbitration

Complaint (Disability Discrimination; Employment Discrimination; Retaliation; Negligence; Declaratory Judgment)

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Plaintiff alleges:

1.

At all times mentioned herein, Plaintiff Merle Baldridge ("Plaintiff") was an inmate at the Coffee Creek Correctional Facility ("CCCF") and currently is an inmate at the Columbia River Correctional Institution ("CRCI").

2.

At all times mentioned herein, Defendant Oregon Department of Corrections ("Defendant") was and is a state agency charged with managing the prisons of the State of Oregon, including CRCI and CCCF. Defendant is responsible for ensuring that all of its facilities and systems, including its prisons and the employees and agents of those prisons, comply with state disability laws.

3.

At all material times, Plaintiff is deaf, which substantially limits one or more of his major life activities. Plaintiff is an individual with a disability, as defined by [ORS 659A.104](#). Plaintiff's deafness substantially limits his ability to hear and to effectively communicate with hearing individuals. Plaintiff's primary form of language and communication is American Sign Language ("ASL") and Plaintiff has some communication skills with the English language through written notes.

4.

On or about April 25, 2011, Plaintiff was transported to CCCF from the Clackamas County Jail after sentencing. Defendant did not provide an interpreter for Plaintiff during intake. On or about April 26, 2011, CCCF presented an orientation to all new inmates, including Plaintiff, whereby films were shown. The films had audio, but no closed captioning. CCCF personnel knew that Plaintiff was hearing impaired and did not inquire what auxiliary aids would assist Plaintiff. Plaintiff requested either captioning or qualified interpretive services with respect to the orientation films. Defendant denied the requests. Plaintiff was denied all means of communication during orientation. Plaintiff was not able to understand any part of the orientation. Plaintiff was not able to ask any questions. Plaintiff was not able to understand the questions of other inmates or the prison personnel's responses.

5.

All inmates must have a counselor assessment, which Plaintiff submitted to at CCCF. Plaintiff requested qualified interpretive services for this assessment; but this request was denied by CCCF personnel, citing budgetary reasons. Plaintiff did not understand the counselor and the counselor was not able to properly assess Plaintiff in the same manner as non-disabled inmates.

6.

Defendant conducts an initial medical exam on all new inmates. During the period of around May 4, 2011 to May 9, 2011, an initial medical examination was conducted on Plaintiff. Plaintiff again asked for qualified interpretive services and none were provided. During this initial medical examination, Plaintiff was in pain because of an ulcer and recent hernia surgery, and the lack of effective communication prohibited him from fully conveying his symptoms and from understanding his diagnosis. Subsequent to the exam, Plaintiff continued to experience physical pain as a direct result of his inability to get proper medical care. Plaintiff did not understand the medical personnel and the medical personnel were not able to properly assess Plaintiff in the same manner as non-disabled inmates.

7.

At no time while at CCCF did Plaintiff receive an interpreter of any kind.

8.

On or about May 11, 2011, Plaintiff was transferred to CRCI. Program counselors at CRCI conduct intake interviews for all new inmates. All intake interviews are confidential and no other inmates attend. On or about May 12, 2011, a CRCI program counselor, Mr. Hasley, attempted to conduct an intake interview with Plaintiff, using the interpretive services of another inmate, Edward Simpson. Mr. Simpson is not a qualified ASL interpreter and has limited knowledge of ASL. Mr. Simpson cannot interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, and is not able to provide impartial or confidential interpreting.

9.

Both because inmate Simpson was not a qualified interpreter, and because of Plaintiff's fear that inmate Simpson may disseminate the reason for his incarceration to fellow inmates, thereby jeopardizing his safety, Plaintiff requested a qualified interpreter instead of inmate Simpson. Ms. Hasley did not provide a qualified interpreter. Plaintiff subsequently refused to speak with Mr. Hasley when no qualified interpreter was provided. Plaintiff never benefited from an intake interview as other

non-disabled inmates do.

10.

CRCI requires all new inmates to attend an orientation. On or about May 17, 2011, Plaintiff was required to attend a CRCI orientation. Plaintiff requested and was again denied qualified interpretive services. Defendant did not even attempt to provide Plaintiff with an inmate interpreter. Defendant did not provide Plaintiff with any auxiliary aid. As a result, Plaintiff was denied all means of communication during orientation. Plaintiff was not able to understand any part of the orientation. Plaintiff was not able to ask any questions. Plaintiff was not able to understand the questions of other inmates or the prison personnel's responses.

11.

Plaintiff had a medical appointment on June 1, 2011, and a dental appointment on June 2, 2011. CRCI sent inmate Simpson to both appointments to serve as an interpreter. On both occasions, Plaintiff informed the medical/dental personnel that inmate Simpson was not a qualified interpreter and knew very little sign language. On both occasions, the medical/dental personnel told Plaintiff that they had no control over the situation. As a result, inmate Simpson had access to Plaintiff's confidential medical information and, because inmate Simpson has limited knowledge of ASL, Plaintiff was unable to effectively communicate with the medical and dental care providers.

12.

During Plaintiff's incarceration, CRCI personnel have attempted to use inmate Simpson as an interpreter on numerous occasions, or have simply done without having an interpreter at all. Plaintiff has refused to sign with inmate Simpson because inmate Simpson is not a qualified interpreter and does not know how to effectively communicate in ASL. On at least one occasion, inmate Simpson physically threatened Plaintiff because Plaintiff refused to allow inmate Simpson to be the interpreter.

13.

Defendant is aware that inmate Simpson is not qualified to be an ASL interpreter. Defendant is further aware of the extreme danger to an inmate's safety when other inmates find out personal and confidential information about an inmate.

14.

Plaintiff has continually requested, and been denied, qualified interpretive services for medical and dental appointments conducted at CRCI. Handwritten notes and finger spelling have proven to be inadequate. Plaintiff has never benefited from medical and dental services as non-disabled inmates do. Plaintiff has physically suffered because he has been unable to adequately communicate with medical and dental service providers.

15.

Defendant allows Alcoholics Anonymous and other support group meetings to take place in CRCI for the benefit of any

inmate who wishes to attend. Plaintiff requested qualified interpretive services for these meetings, but Defendant refused. As a result, Plaintiff has been excluded from participating in Alcoholics Anonymous and other support group meetings. As Plaintiff has struggled with alcoholism, these services are critical to his recovery. Plaintiff has never benefited from these services as non-disabled inmates do.

16.

Defendant allows religious groups to hold services at CRCI for the benefit of any inmate who wishes to attend. Plaintiff requested qualified interpretive services for these services, but Defendant refused. As a result, Plaintiff has been excluded from participating in these religious services. Plaintiff has never benefited from these services as non-disabled inmates do.

17.

Defendant provides educational classes at CRCI for the benefit of any inmate who wishes to attend. Plaintiff requested qualified interpretive services for these classes, but Defendant refused. As a result, Plaintiff has been excluded from participating in these classes. Plaintiff has never benefited from these educational classes as non-disabled inmates do.

18.

Defendant has failed to use any method of communication that Plaintiff can fully understand. Mostly, CRCI personnel orally communicate with Plaintiff and he cannot hear their words. As a result of his inability to hear and understand, Plaintiff has been disciplined by CRCI personnel. On at least one occasion, Plaintiff became confused by the visitation procedures and did not respond to oral prompts by CRCI personnel. As a result of his confusion about visitation procedures due to the oral communication that he did not hear, Plaintiff was confined to his bunk for eight hours.

19.

CRCI makes available TTY machines for hearing impaired inmates who wish to use the telephone. TTY machines are no longer a practical method for deaf inmates to make telephone calls. The vast majority of deaf people in the United States now use video telephones so that each participant can see the ASL communication. TTY technology is effectively obsolete. Plaintiff has requested access to video telephones but no access has been provided. As a result, Plaintiff has been unable to have the same opportunity to communicate via telephone with his family and others as is provided to non-hearing impaired inmates.

20.

Plaintiff is eligible to purchase and have an in-cell television. However, until recently, Defendant's institutions only permitted and sold 7-8 inch televisions, which are too small to have effective closed captioning capacity. Defendant recently changed the policy to allow 13-inch televisions, which are large enough to allow for effective closed captioning, but those televisions are much more expensive than the smaller televisions. In response to an investigation by the U.S. Department of Justice, Defendant agreed in February 2009 to adopt a policy in which it would allow deaf and hearing impaired inmates to purchase larger televisions with closed captioning for the same price as non-hearing impaired inmates are able to purchase smaller televisions.

21.

In 2011, Plaintiff ordered a 13-inch television so that he could benefit from closed captioning. However, Defendant failed to follow the terms of the Department of Justice settlement. Plaintiff was required to pay \$219 for a 13-inch television even though other inmates were able to purchase 8-inch televisions for \$159. Plaintiff was effectively required to pay more to receive the same benefit as non-hearing impaired inmates.

22.

Defendant provides inmates work opportunities during their incarceration. Inmates earn “points” that they can use like money to purchase goods from the prison store. Defendant posts available job opportunities. However, all of the postings for these positions list “good oral and written communication skills” as a job requirement, even for manual labor jobs such as painting and gardening. Plaintiff has sought out work positions that will earn him 12-18 “points” per day, but has been excluded from inmate work opportunities because of his disability. Plaintiff requested a waiver of these communication skill job requirements as a reasonable accommodation for his disability, but Defendant’s staff has refused to make reasonable accommodations to allow Plaintiff, a hearing impaired individual, to work in these positions. Instead, Defendant employs Plaintiff to clean the toilets. Because he has been denied any real opportunity to work full time, Plaintiff is only employed about five minutes per day doing menial tasks like putting away chairs, wiping off tables and cleaning toilets. As a result, Plaintiff has been denied an opportunity to work and earn points during his incarceration equal to the opportunity that non-disabled inmates have.

23.

On March 9, 2012, Plaintiff submitted a Grievance Form to initiate Defendant’s grievance process, set forth at [OAR 291-109-0100 et seq.](#) The Grievance Form stated that Plaintiff had applied for a recycling job multiple times and had not been given an equal opportunity to be hired and, in fact, was never even given an interview. The Grievance Form stated that he had seen ten other inmates get recycling jobs since he had first applied in 2011. In the posting for the recycling job, Defendant stated that it was seeking an applicant with “[g]ood oral and written communication skills.”

24.

On March 15, 2012, a member of Defendant’s staff responded to Plaintiff’s grievance by stating that he did not know why Plaintiff was denied employment, but surmised that Plaintiff did not have enough experience for the recycling position. The staff member then suggested that Plaintiff enroll in educational courses offered by Defendant. Plaintiff had previously requested that Defendant provide qualified interpretive services so that Plaintiff would be able to enroll in these same educational courses, but Defendant denied that request.

25.

Upset with Defendant’s response, on March 29, 2012, Plaintiff submitted a Grievance Appeal Form, pursuant to [OAR 291-109-0170](#). Plaintiff stated that he had seen numerous other inmates hired for the recycling job ahead of him even though they had poor English communication skills and a history of disciplinary write ups. Plaintiff requested an opportunity to work in the recycling position or a qualified interpreter so that he would be able to enroll in educational courses.

26.

On April 5, 2012, Plaintiff received a Complaint Receipt Memo. The document reflected that the grievance appeal was originally accepted, but that someone later crossed out the word “accepted” and instead wrote “Denied. Lawsuit filed. Litigation Pending.”

27.

A few days earlier, on April 1, 2012, Plaintiff submitted a separate Grievance Form. In this grievance, Plaintiff complained that the unit officer who assigned work duties had asked every other inmate what job duty they wished to perform. Because Plaintiff is hearing impaired, the unit officer did not ask Plaintiff which duty he wished to perform and instead, assigned him to clean toilets. The Grievance Form stated that this practice had been happening for the last six months.

28.

On April 4, 2012, Plaintiff received a Complaint Receipt Memo denying the April 1 grievance and listing “lawsuit filed, litigation pending” as the reason for the denial.

29.

On April 2, 2012, Plaintiff filled out another Grievance Form. This grievance related to being denied participation in a wellness workshop that Defendant made available to inmates who signed up for it. Plaintiff had submitted a request to attend the workshop on March 1, 2012, and asked that he be provided with a qualified interpreter during the workshop sessions. Defendant did not respond to Plaintiff's request and, when Defendant published a list on March 20, 2012, showing those inmates who had expressed interest in the workshop, Plaintiff's name was not included. Plaintiff was excluded from participating in this service. Plaintiff did not benefit from this service as non-disabled inmates did.

30.

On April 5, 2012, Plaintiff received a Complaint Receipt Memo denying the April 2 grievance and listing “lawsuit filed, litigation pending” as the reason for the denial.

31.

As of April 5, 2012, there was no lawsuit filed or litigation pending. Plaintiff had, as of August 26, 2011, sent to Defendant a Tort Claim Notice that threatened litigation against Defendant.

32.

Defendant's actions have injured Plaintiff and denied him an equal opportunity to take advantage of services that would aid in his ongoing process of rehabilitation. Plaintiff has been denied effective communication with his doctors, counselors, and family. He has been subjected to punishment as a result of miscommunication that would not have occurred if a qualified interpreter had been present. He has been denied an opportunity to participate in the same educational, religious, employment, and rehabilitative programs as non-hearing impaired individuals. As a result of this discrimination, Plaintiff has suffered severe emotional distress including, but not limited to, fear, stress, aggravation, loss of self-worth, humiliation,

frustration, anxiety, depression, as well as physical pain. Accordingly, Plaintiff is entitled to compensatory damages pursuant to [ORS 659A.885\(3\)](#).

33.

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

34.

Defendant has both previously housed and currently houses inmates who are deaf or hearing impaired, including Plaintiff. Defendant has consistently failed to provide those inmates with equal access to its programs or services and has failed to provide them with effective communication or auxiliary aids. By systematically denying deaf or hearing impaired inmates with effective communication, auxiliary aids and equal access to its programs and services, Defendant is engaged in a longstanding pattern and practice of discrimination. This includes denying deaf or hearing impaired inmates effective communication, auxiliary aids and equal access to programs and services, including but not limited to, medical and dental appointments, counseling sessions, educational programs, religious services, orientation and intake sessions, opportunities to communicate with family and friends, employment opportunities and rehabilitative programs, such as Alcoholics Anonymous.

35.

Unless enjoined, Defendant will continue to engage in the unlawful acts and the pattern and practice of discrimination described above. Plaintiff has no adequate remedy at law. Plaintiff is now suffering and will continue to suffer irreparable injury from Defendant's acts and the pattern or practice of discrimination unless relief is provided by this Court. Accordingly, Plaintiff is entitled to injunctive relief pursuant to [ORS 659A.885\(1\)](#).

FIRST CLAIM FOR RELIEF

(Disability Discrimination - [ORS 659A.142](#))

36.

Plaintiff realleges paragraphs 1 through 35 as though fully set forth herein.

37.

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

38.

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

- a. Refusing to recognize that Plaintiff is a qualified individual with a disability;
- b. Maintaining a pattern and practice of discrimination against deaf inmates;
- c. Intentionally failing to accommodate Plaintiff's disability in refusing to provide an interpreter or adequate auxiliary aids;
- d. Failing to make reasonable modifications in policies, practices, or procedures, when such modifications were necessary to afford Plaintiff with access to Defendant's services, programs, or activities, and when such modifications would not be unduly burdensome and would not fundamentally alter the nature of services provided by Defendant;
- e. Intentionally refusing to provide Plaintiff with an equally effective method of communication as is provided to other individuals incarcerated at Defendant's prisons;
- f. Excluding Plaintiff from and denying Plaintiff participation in the benefits of Defendant's services, programs, or activities solely by reason of Plaintiff's disability;
- g. Failing to provide qualified interpretive services during initial orientation and counselor assessment sessions;
- h. Failing to provide qualified interpretive services during medical and dental examinations;
- i. Using a fellow inmate who was not a qualified ASL interpreter to interpret conversations between Plaintiff and Defendant's personnel, including conversations which involved the disclosure of confidential information;
- j. Failing to provide qualified interpretive services for Alcoholics Anonymous and other support group meetings, thereby excluding Plaintiff from participating in these services, programs, or activities;
- k. Failing to provide qualified interpretive services for religious services, educational and GED opportunities, and inmate work opportunities, thereby excluding Plaintiff from participating in these services, programs, or activities;
- l. Failing to provide adequate technology that would allow Plaintiff the same opportunity to communicate with his family and others as is available to non-hearing impaired inmates;
- m. Requiring Plaintiff to pay full price for a larger television that employs effective closed captioning, such that Plaintiff, a hearing impaired inmate, is required to pay more to receive the same benefit as non-hearing impaired inmates;
- n. Refusing to make reasonable accommodations to job requirements regarding oral and written communication skills, thereby denying Plaintiff an equal opportunity to work and earn points during his incarceration, and requiring Plaintiff to perform menial work;
- o. Failing to conduct an investigation to determine what auxiliary aids are necessary and appropriate in order for Plaintiff to participate in equal access to its facilities' services, programs, and activities; and
- p. Failing to provide any means by which Plaintiff can understand oral communications and respond to Defendant's staff.

39.

Once Defendant had actual knowledge of Plaintiff's disability on or about April 25, 2011, and thereafter, Defendant failed to take reasonable steps necessary to ensure that Plaintiff, an individual with a disability, would not be excluded, denied services, segregated or otherwise treated differently from other individuals because of use of inappropriate or ineffective auxiliary aids. As a result, Plaintiff has been injured by Defendant's discriminatory activities.

40.

Plaintiff has suffered damages, both real and intangible, as a result of Defendant's discriminatory conduct.

41.

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

42.

Plaintiff is entitled to equitable relief, and is entitled to compensatory damages in an amount to be determined at trial, but in no event less than \$300,000, as well as attorney fees and litigation costs pursuant to [ORS 659A.885\(1\)](#) and [ORS 20.107](#).

SECOND CLAIM FOR RELIEF

(Employment Discrimination - [ORS 659A.112](#))

43.

Plaintiff realleges paragraphs 1 through 35 as though fully set forth herein.

44.

At all material times, Plaintiff was qualified to perform the essential functions of the recycling position and other prison work opportunities, with or without accommodation, pursuant to [ORS 659A.115](#).

45.

At all material times, Plaintiff was a person with a disability because his hearing impairment substantially limited one or more major life activities.

46.

Defendant has injured Plaintiff in violation of [ORS 659A.112](#) and its accompanying regulations, including but not limited to [OAR 839-006-0206](#), by committing the following discriminatory acts or practices:

- a. Refusing to hire Plaintiff for the recycling position and other prison work opportunities on the basis of Plaintiff's disability;
- b. Utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability;
- c. Failing to make reasonable accommodations to the known physical limitations of Plaintiff that would allow Plaintiff to work in the recycling position and in other prison work opportunities;
- d. Denying employment opportunities to Plaintiff based on Defendant's need to make reasonable accommodation to the physical impairments of Plaintiff;
- e. Using qualification standards or other selection criteria, based on an individual's unaided hearing, that screen out Plaintiff and other individuals with disabilities, and that are not job-related for the positions in question or consistent with business necessity;
- f. Failing to engage in a meaningful interactive process to determine if a reasonable accommodation was required what reasonable accommodations would be appropriate to allow Plaintiff to work in the recycling position and in other prison work opportunities; and
- g. Discriminating in the terms, conditions or privileges of employment on the basis of Plaintiff's disability by allowing other inmates, but not Plaintiff, to choose their daily work duties.

47.

Plaintiff has suffered damages, both real and intangible, as a result of Defendant's discriminatory conduct.

48.

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

49.

Plaintiff is entitled to equitable relief, and is entitled to compensatory damages in an amount to be determined at trial, but in no event less than \$200,000, as well as attorney fees and litigation costs pursuant to [ORS 659A.885\(1\)](#) and [ORS 20.107](#).

THIRD CLAIM FOR RELIEF

(Retaliation - [ORS 659A.030\(0\)](#))

50.

Plaintiff realleges paragraphs 1 through 35 as though fully set forth herein.

51.

Plaintiff engaged in a protected activity by threatening litigation and bringing litigation that opposed Defendant's unlawful employment practices of discriminating against individuals with disabilities.

52.

In direct response to Plaintiff's opposition to Defendant's unlawful employment practice, Defendant discriminated against Plaintiff by denying him the right to engage in grievance procedures that are available to all other inmates.

53.

Defendant has injured Plaintiff in violation of [ORS 659A.030\(f\)](#) and its accompanying regulations by retaliating against Plaintiff because he engaged in a protected activity.

54.

Denying an inmate employee's grievances because one opposes disability discrimination is reasonably likely to dissuade or deter a reasonable inmate employee from engaging in the protected activity of opposing disability discrimination or filing a lawsuit for disability discrimination.

55.

Plaintiff has suffered damages, both real and intangible, as a result of Defendant's discriminatory conduct.

56.

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

57.

Plaintiff is entitled to equitable relief, and is entitled to compensatory damages in an amount to be determined at trial, but in no event less than \$100,000, as well as attorney fees and litigation costs pursuant to [ORS 659A.885\(1\)](#) and [ORS 20.107](#).

FOURTH CLAIM FOR RELIEF

(Negligence) 58.

Plaintiff realleges paragraphs 1 through 35 as though fully set forth herein.

59.

Defendant owes Plaintiff a duty to operate its facilities in a manner that is free from unlawful discrimination.

60.

Defendant negligently violated that duty by failing to acquaint itself and its agents with Oregon law and its prohibitions against discrimination based on an individual's disability.

61.

As a result of Defendant's negligent conduct, Plaintiff has suffered damages, both real and intangible. He has been denied an equal opportunity to take advantage of services that would aid in his ongoing process of rehabilitation. Plaintiff has been denied effective communication with his doctors, counselors, and family. He has been subjected to punishment as a result of miscommunication that would not have occurred if a qualified interpreter had been present. He has been denied an opportunity to participate in the same educational, religious, and rehabilitative programs as non-hearing impaired individuals. He has been prevented from participating in the same employment opportunities as are available to non-hearing impaired individuals. As a result of this discrimination, Plaintiff has suffered severe emotional distress including, but not limited to, fear, stress, aggravation, loss of self-worth, humiliation, frustration, anxiety, depression, as well as physical pain.

62.

Plaintiff is entitled to compensatory damages arising out of Defendant's negligent conduct in an amount to be determined at trial, but in no event less than \$300,000.

FIFTH CLAIM FOR RELIEF

(Declaratory Action - [Article 1, Section 8 of the Oregon Constitution](#))

63.

Plaintiff realleges paragraphs 1 through 35 as though fully set forth herein.

64.

Plaintiff has a constitutionally protected right to free speech under [Article 1, Section 8 of the Oregon Constitution](#) to present and file grievances against Defendant.

65.

Defendant has implemented administrative rule [OAR 291-109-0140\(3\)\(h\)](#) which denies inmates the rights to pursue grievances if the grievance relates to “[c]laims or issues for which the inmate has filed a Notice of Tort with the Oregon Department of Administrative Services, Risk Management Division” and administrative rule [OAR 291-109-0140\(3\)\(i\)](#) which denies inmates the rights to pursue grievances if the grievance relates to “[c]laims or issues that the inmate is pursuing in pending litigation in state or federal courts.”

66.

Defendant has violated Plaintiff’s constitutionally protected right to pursue grievances against Defendant by categorically denying Plaintiff’s grievances solely because Plaintiff has threatened to bring civil litigation against Defendant or, as Defendant believes, has pending litigation against Defendant. Defendant has also violated Plaintiff’s constitutionally protected right to pursue grievances against Defendant by enacting [OAR 291-109-0140\(3\)\(h\)-\(i\)](#).

67.

Defendant’s denial of Plaintiff’s grievances on account of his filing a tort claim notice or because of pending litigation is an act that would chill or silence a person of ordinary firmness from future free speech activities.

68.

Those who do not file tort claim notices that threaten litigation, or who are not engaged in litigation, receive expedited consideration of their grievances pursuant to the Department of Corrections grievance procedures set forth at [OAR 291-109-0150](#) to [0170](#). Those who do file tort claim notices that threaten litigation—regardless of whether a lawsuit is ultimately filed or not—or who are otherwise engaged in litigation, do not receive expedited consideration of their grievances pursuant to the Department of Corrections Grievance procedures set forth at [OAR 291-109-0150](#) to [0170](#).

69.

Defendant’s policy and practice of denying grievances because one threatens to bring or actually brings civil litigation does not advance the legitimate goals of Defendant and are unnecessary to the maintenance or order in the institution.

70.

Defendant’s actions against Plaintiff, as well as its regulations set forth at [OAR 291-109-0140\(3\)\(h\)-\(i\)](#), are in violation of [Article 1, Section 8 of the Oregon Constitution](#) and, as such, should be declared unconstitutional pursuant to [ORS 28.010](#).

71.

Plaintiff is entitled to costs, including reasonable attorney fees, pursuant to [ORS 28.100](#). Plaintiff is also entitled to reasonable attorney fees because he brings this declaratory action to vindicate an important constitutional right applicable to all citizens without any gain peculiar to Plaintiff.

WHEREFORE, Plaintiff requests a trial by jury and requests the Court should grant judgment in favor of Plaintiff against Defendant and grant the following relief:

a. On Plaintiff's First Claim for Relief, compensatory damages in an amount to be determined at trial but in no event less than \$300,000, plus attorneys fees, costs and disbursements, pursuant to [ORS 659A.885\(1\)](#) and [ORS 20.107](#);

b. On Plaintiff's Second Claim for Relief, compensatory damages in an amount to be determined at trial but in no event less than \$200,000, plus attorneys fees, costs and disbursements, pursuant to [ORS 659A.885\(1\)](#) and [ORS 20.107](#);

c. On Plaintiff's Third Claim for Relief, compensatory damages in an amount to be determined at trial but in no event less than \$00,000, plus attorneys fees, costs and disbursements, pursuant to [ORS 659A.885\(1\)](#) and [ORS 20.107](#);

d. On Plaintiff's Fourth Claim for Relief, compensatory damages in an amount to be determined at trial but in no event less than \$300,000;

e. On Plaintiff's Fifth Claim for Relief, an Order Declaring Unconstitutional:

(1) Defendant's Denial of Plaintiffs' grievances on account of Plaintiff's filing of a Tort Claim Notice or because of perceived or actual litigation;

(2) [OAR 291-109-0140\(3\)\(h\)](#); and

(3) [OAR 291-109-0140\(3\)\(i\)](#);

f. Plaintiff prays that the Court enter an Order that:

(1) Requires Defendant to institute a program instructing all employees on the proper and legal obligations to individuals with disabilities;

(2) Requires Defendant to develop and implement written materials for disabled inmates, which will be provided to them at the time of their arrival at Defendant's facilities, providing disabled inmates notice of their rights pursuant to, and of the availability of accommodations under, [ORS 659A.142](#);

(3) Requires Defendant to implement an effective communications policy that covers all services, programs, and activities offered at its prisons;

(4) Requires Defendant to implement a grievance procedure to resolve disability related issues and advise disabled inmates of their rights to access this grievance procedure;

(5) Requires Defendant to enter into a contract with one or more interpreting services to provide interpreters for hearing impaired inmates to provide equal access to programs and services, including medical and dental appointments, counseling sessions, educational programs, religious services, orientation sessions, and rehabilitative programs, such as Alcoholics Anonymous;

(6) Requires Defendant to only use qualified interpreters when interpreters are used to communicate with hearing impaired inmates;

(7) Requires that Defendant not use other inmates as interpreters;

(8) Requires Defendant to develop and implement a plan to conduct a fact-specific investigation for disabled inmates as to what auxiliary aids are necessary and appropriate to ensure equal access to its facilities' services, programs, and activities, including but not limited to ensuring effective communication;

(9) Requires Defendant to install video phones at each prison and allow hearing impaired inmates the same access to the video phones as hearing inmates have with telephones;

(10) Requires Defendant to abide by its settlement with the U.S. Department of Justice and allow hearing impaired inmates to purchase 13-inch televisions with closed captioning capabilities for the same price as non-hearing impaired inmates can purchase 8-inch televisions;

(11) Requires Defendant to modify its job requirements to only require good oral and written communication skills for those positions where such skills are essential to the effective performance of the position;

(12) Requires Defendant to waive the requirement of good oral and written communication skills for those positions where such skills are incidental to the performance of the position and a hearing impaired inmate applies for such a position;

(13) Requires Defendant to develop and implement a system of notifying hearing impaired inmates of yard out bells, meal bells, and any other forms of simple communication to all inmates in the block or prison population;

(14) Requires Defendant to assure that inmates do not suffer retaliation as a result of a request for a qualified interpreter; and

(15) Requires Defendant to offer Plaintiff suitable full-time employment.

g-All such other relief as the Court deems just.

Dated this 20th day of April, 2012.