

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Consolidated Civil Action No. 16-cv-02733-STV

BIONA CHARMAINE ROGERS,
ANDREW ATKINS, and
MARK TREVITHICK,
Plaintiffs,

v.

COLORADO DEPARTMENT OF CORRECTIONS,
RICK RAEMISCH,
RYAN LONG, and
MIKE ROMERO,
Defendants.

Civil Action No. 1:18-cv-02926-MEH

LEONID RABINKOV,
ANDREW ATKINS, and
MARC TREVITHICK,
on behalf of themselves and others similarly situated,
Plaintiffs,

v.

COLORADO DEPARTMENT OF CORRECTIONS,
Defendant.

JOINT MOTION FOR ENTRY OF CONSENT DECREE

The parties, through counsel, hereby submit the attached Consent Decree and respectfully request that this Court approve and sign it and enter it as an Order of this Court.

1. Plaintiffs in these consolidated cases are prisoners in the custody of the Colorado Department of Corrections (“CDOC”) who are either Deaf or who have Deaf family members

with whom they wish to communicate by phone. Plaintiffs alleged that the lack of videophones in Colorado Department of Corrections facilities violated Plaintiffs’ rights under the First Amendment to the United States Constitution, Title II of the Americans with Disabilities Act (“Title II” or “ADA”), 42 U.S.C. §§ 12131 *et seq.*, and Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. § 794. CDOC denies and continues to deny such liability.

2. On September 18, 2019, this Court granted the motion of Plaintiffs Bionca Rogers, Marc Trevithick, Andrew Atkins, and Leonid Rabinkov for summary judgment as to liability under Title II and Section 504, granted CDOC’s motion for summary judgment as to Cathy Begano for failure to exhaust administrative remedies, and denied CDOC’s motions on other respects. Order, ECF 158, at 48.

3. The Court ordered CDOC to make videophones available to deaf and hard of hearing inmates and inmates communicating with deaf or hard of hearing individuals, and to “[a]dopt effective and comprehensive policies and procedures regarding the use and implementation of videophones, including for appropriate compliance monitoring and videophone maintenance and repair.” *Id.*

4. Following receipt of this Order, the parties met for two settlement conferences and were able, with the assistance of Magistrate Judge N. Reid Neureiter, to reach agreement on a comprehensive injunctive settlement, memorialized in the attached Consent Decree, as well as damages and attorneys’ fees, memorialized in separate documents.

5. The Consent Decree requires CDOC to install additional videophones in three facilities – the Colorado Territorial Correctional Facility, Denver Women’s Correctional Facility, and the Denver Reception and Diagnostic Center – and requires that if an eligible prisoner is

housed in another facility for more than two weeks, CDOC will install a videophone for that prisoner's use. Consent Decree ¶ II(A). The Consent Decree sets forth detailed terms governing the use of videophones designed to ensure equivalence of availability with conventional telephones, and contains terms requiring that videophones be maintained in working condition. *Id.* ¶ II(C)-(D).

6. Under the Consent Decree, CDOC is required to post notices to ensure that eligible prisoners are aware of the availability of videophones, *id.* ¶ III, and will provide certain information to Plaintiffs' counsel to permit them to monitor compliance, *id.* ¶ IV.

7. Finally, the Consent Decree provides a framework for dispute resolution pursuant to which the parties must meet and confer before submitting any dispute to the Court for resolution. *Id.* ¶ V.

8. Because the Consent Decree tracks and implements this Court's Order of September 18, 2019, the parties respectfully request that the Court retain jurisdiction until termination to enforce or modify it, and to interpret the rights and obligations of the parties. *Id.* ¶ XIII.

WHEREFORE, the parties request this Court sign the attached Consent Decree and enter it as an Order of this Court.

Respectfully submitted this 7th day of February, 2020.

CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

/s/ Amy F. Robertson
Amy F. Robertson
1245 E. Colfax Ave., Suite 400
Denver, CO 80203
Phone: 303.757.7901
arobertson@creeclaw.org

Martha M. Lafferty
525 Royal Parkway, #293063
Nashville, TN 37229
615.913.5099
mlafferty@creeclaw.org

Counsel for Plaintiffs

PHILIP J. WEISER, Attorney General

/s/ Kathleen Spalding
Maritza Braswell
Kathleen Spalding
Colorado Department of Law
Office of the Attorney General
Civil Litigation & Employment Law/Tort Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203
Kit.Spalding@coag.gov
Maritza.Braswell@coag.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that, on February 7, 2020, I served the foregoing **JOINT MOTION ENTRY OF CONSENT DECREE** upon all parties herein by e-filing with the CM/ECF system maintained by the court which will provide notice to the following:

Maritza Braswell
Maritza.Braswell@coag.gov

Kathleen Spalding
kit.spalding@coag.gov

Counsel for Defendants

I also served this pleading on petitioner Howell F. Roberts, III, by sending it by first class mail, postage prepaid, to:

Howell F. Roberts, III
CDOC No. 09353
Buena Vista Correctional Facility
P.O. Box 2017
Buena Vista, CO 81211-2017

s/ Safietou Marième Diop
Paralegal
Civil Rights Education and Enforcement Center