

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DENICE BROWN, KAREN COMORATO,
PATRICIA GREBLOSKI, and
ANTOINETTE WHALEY,

Plaintiffs,

vs.

FREE LIBRARY OF PHILADELPHIA,

Defendant.

C. A. No.: _____

COMPLAINT

INTRODUCTION

1. Almost forty years after Congress mandated, through passage of the Rehabilitation Act, that institutions in receipt of federal funds could not discriminate on the basis of disability, defendant Free Library of Philadelphia (“Library”) has initiated and subsequently expanded a NOOK e-reading device lending program for older library patrons knowing that this device is completely inaccessible to its blind patrons. The Library has developed this lending program in an effort to “bridge the digital divide” between young and old patrons, but in doing so has needlessly exacerbated the “digital divide” between disabled and non-disabled library patrons.

2. Because today’s technology can offer blind individuals greater access to books, periodicals, and other materials that were traditionally available only in print, the Library has the statutory responsibility to ensure that it offers fully accessible e-reading technology. In the past, when libraries provided only print books, the libraries and their blind patrons had to rely on separate processes to obtain accessible versions of books. However, because e-books are not inherently visual, audible, or tactile, they provide individuals with an opportunity to access content through whatever methods are accessible to them. For the first time, there exist

commercially available portable e-book readers that allow blind and sighted readers to use the same means of accessing the written word and get at the same content. By choosing to lend inaccessible devices, the Library discriminates against its blind patrons and segregates them needlessly from its programs and activities.

JURISDICTION

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

PARTIES

5. Plaintiff Denice Brown is a 54-year-old resident of Philadelphia and a retired elementary school teacher. Ms. Brown is blind and uses audio recordings and text-to-speech programs to read books, newspapers, and magazines. In addition to reading the newspaper daily, Ms. Brown reads a book a month. She is particularly interested in biographies, autobiographies, and books about African-American history. Ms. Brown is a member of the Library. She uses the Library's Walnut Street location, known as the Library for the Blind and Physically Handicapped ("braille and talking book branch"), and also attends technology trainings and poetry readings at the Library's Central Parkway branch. Because of her love of reading and interest in technology, she is interested in borrowing an accessible e-reading device from the Library.

6. Plaintiff Karen Comorato is a 57-year-old resident of Philadelphia. Ms. Comorato is blind. She enjoys romance and historical novels as well as good mysteries. Ms. Comorato uses audiobooks from the Library's braille and talking book branch, but the few print books that are converted to audio by the National Library Service of the Library of Congress for lending become available only after long delays. An accessible e-book reader would be a

substantial purchase for Ms. Comorato; as a result she would be interested in participating in the Library's e-reader lending program if it were accessible.

7. Plaintiff Patricia Grebloski is a 70-year-old resident of Philadelphia. Ms. Grebloski has worked in the insurance and medical transcription industries. Ms. Grebloski is blind. She enjoys reading non-fiction books about history and current events, as well as mysteries. She is a member of the Library, but except for occasional events at the Central Parkway branch, she generally uses the braille and talking book branch. She is frustrated by the length of time (years, if ever) that it takes for her to receive a new release from the specialized branch. Ms. Grebloski is an avid public radio listener and enjoys interviews of popular authors. Although she would like to read their books, they are often not available in braille or audio and, when they are, the books are no longer new and what her friends and others are talking about. She is very interested in the e-reader lending program because she would be able to read new releases at the same time that the sighted world is reading and discussing these books.

8. Plaintiff Antoinette Whaley is a 66-year-old resident of Ardmore, Pennsylvania and a member of the Library. Ms. Whaley is blind. She began her career as a mathematician and computer scientist at the National Security Agency, later serving as a computer instructor for several vocational rehabilitation agencies. She has also taught math and psychology at the high school and college levels. Ms. Whaley enjoys reading novels, particularly historical fiction. She primarily uses the Library's braille and talking book branch. She would be interested in participating in the Library's e-reader lending program, if it were accessible.

9. Defendant Free Library of Philadelphia is a governmental entity operated by the City of Philadelphia. In Fiscal Year 2011, the Library received more than \$45 million in city and state funds, and benefited from more than \$13 million in additional expenditures from the Free Library of Philadelphia Foundation. The Library receives federal financial assistance as that

term is used in 29 U.S.C. § 794, including funding for its e-reader lending program, as described below.

FACTUAL ALLEGATIONS

10. An electronic book (“e-book”) is a digital file consisting of the content of a book formatted to be read on a dedicated device, smartphone, tablet, or personal computer. The e-book itself consists of digital code recorded on an electronically-readable medium and is not inherently visual, audible, or tactile. Rather, an e-book can be read using a device that renders the code visually, audibly, or tactilely.

11. In recent years, e-books have become increasingly popular with the proliferation of tablet computers and portable e-book reading devices.

12. The NOOK Simple Touch is an e-book reader developed and sold by Barnes & Noble. While some e-book reading devices with touch-screen interfaces are accessible to blind users through audio or tactile cues, the NOOK’s menus and controls are accessed solely through a touch screen that provides no such feedback. Nor is the device accessible through external applications or devices, such as text-to-speech screen readers or braille displays. Therefore, a user who is unable to see the screen cannot determine which books are loaded on the device, select a book, or access or change any of the device’s settings.

13. The Library has repeatedly been alerted to the federal requirement to acquire only accessible technology and the need to conform its practices to federal law:

- a. In July 2009, the American Library Association (“ALA”), of which the Library is a member, passed a resolution “strongly recommend[ing]” that its members ensure that electronic resources comply with federal accessibility guidelines. *See* Exhibit A.

- b. In November 2009, as part of a mass mailing to public libraries, the National Federation of the Blind (“NFB”) and the Reading Rights Coalition, a cross-disability advocacy group, mailed a letter to Hedra L. Packman, Director of Library Services, Christine D. Caputo, then Assistant Chief of the Office of Public Service Support, and Jennifer Donsky, then a Reference and Research Librarian at the Philadelphia Free Library, about the need and legal requirement to ensure accessibility of e-books at public libraries. A copy of the body of that letter is attached as Exhibit B.
- c. In June 2010, the United States Departments of Justice and Education issued a “Dear Colleague Letter” warning educational institutions not to procure or use inaccessible e-book technology because the use of such technology would violate federal law.
- d. In May 2011, the Department of Education released a “Frequently Asked Questions” document confirming that the prohibition on inaccessible e-books articulated “long-standing law” and emphasizing that accessibility required people with disabilities to “acquire the same information, engage in the same interactions, and enjoy the same services” as sighted persons.
- e. In August 2011, the ALA’s Washington Office posted to its official District Dispatches blog, a letter from the NFB that referenced the “Dear Colleague Letter” and the FAQ and reminded ALA members, *again*, that the law prohibited libraries from buying and lending inaccessible e-reading devices.

14. Despite these repeated advisories, the Library initiated a lending program in November 2011, in which the Central Parkway branch offers several dozen inaccessible NOOK Simple Touch e-reading devices for loan, free of charge, to Library patrons 50 years of age or older. Each circulating NOOK is pre-loaded with 25 books, including *New York Times* bestsellers and classics. If a patron wants to read a different book in the Library's collection of e-book titles, a librarian will load that book on the device prior to checkout.

15. The Library received \$25,000 of federal funding to initiate its NOOK lending program. These federal funds were given to the Library by Pennsylvania's Office of Commonwealth Libraries under a federal grant program established by the Library Services and Technology Act, 20 U.S.C. § 9121, *et seq.*, which is administered by the federal Institute of Museum and Library Services ("IMLS").

16. IMLS regulations require grantees to comply with Section 504 of the Rehabilitation Act. 45 C.F.R. § 1180.44(a). IMLS regulations further explain that any recipient of its funds may not "[d]eny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service" that it offers. 45 C.F.R. § 1170.12(a)(1) (National Endowment for the Humanities regulation implementing Section 504, adopted by the IMLS in 45 C.F.R. § 1180.44(b)). Nor may recipients of IMLS funding "[p]rovide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others." 45 C.F.R. § 1170.12(a)(4).

17. The Library purchased 65 inaccessible NOOK devices when accessible alternatives were available.

18. In December 2011, after learning of the Library's NOOK lending program, the NFB sent another letter to the Library detailing the accessibility problems of NOOK devices and the Library's legal obligations under federal law. The NFB urged the Library to enter into discussions to find an amicable resolution that would serve all of the Library's patrons, but the Library did not respond. *See* Exhibit C.

19. Ignoring its legal obligations, the Library has announced plans to expand its NOOK lending program by making NOOK devices available for loan at four additional branches. NOOK devices are already available at the Philadelphia City Institute and Wynnefield branches, and plans are underway to lend NOOKs from the Bustleton and Schuylkill Falls locations by early May.

20. On March 28, 2012, Plaintiff Denice Brown visited the Library's Central Parkway branch. When she asked to borrow a NOOK device, she was told that there was a special form that must be filled out by patrons seeking to borrow a NOOK, and that the Library did not have anyone who could help her fill out the paper document. From the description, Ms. Brown believed the form was an extensive questionnaire, "like a job application." Ms. Brown asked if she could have her mother fill it out and fax it to the Library. She was told that the form could not be faxed. After further exchange, Ms. Brown learned that the form only required her name, address, phone number, and signature. Eventually, a Library representative agreed to help Ms. Brown complete the form. Ms. Brown was then given a NOOK for a two-week period.

21. Ms. Brown's trouble with the device began as soon as she tried to turn it on. The power button is one of two traditional buttons on the device (the other, a "wake up button," activates the screen). Ms. Brown was only able to tell whether the machine was on or off because she could see (with her limited residual vision) a flash of light or something moving on the screen.

22. On April 19, 2012, Plaintiff Patricia Grebloski visited the Philadelphia City Institute Branch to check out a NOOK. The librarian supervising the NOOK lending program at that branch told her that the NOOKs do not have any audio, and questioned why she would want to check out a device that she would not be able to use. Ms. Grebloski explained that she was interested in newer books that were not available through the braille & talking book branch, and if she borrowed a NOOK, someone could tell her what books were available. The librarian reiterated that he did not think the NOOK would provide her any benefit without audio. Frustrated by the librarian's response to her request, Ms. Grebloski left the Library without a NOOK.

FIRST CLAIM FOR RELIEF

(Section 504 of the Rehabilitation Act of 1973)

23. Plaintiffs reallege and incorporate by reference the preceding allegations of this Complaint as if fully set forth herein.

24. Each plaintiff is substantially limited in the major life activity of seeing. Accordingly, they are individuals with a disability as defined under the Rehabilitation Act, 29 U.S.C. § 705(20).

25. The Library receives federal financial assistance as that term is used in Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

26. The activities described above, including the lending of inaccessible NOOK e-reading devices to library patrons over the age of 50, are programs and/or activities of the Library, as those terms are used in Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

27. NOOK e-book reading devices are inaccessible to blind persons who are qualified to borrow the devices, including plaintiffs Brown, Comorato, Grebloski, and Whaley.

28. The Library has violated the Rehabilitation Act by excluding blind persons from participation in, denying these individuals the benefits of, and/or subjecting each such individual to discrimination under the Library's programs and/or activities through the actions and conduct described above.

29. With respect to the alleged discriminatory conduct, the Library acted intentionally or with reckless or callous indifference to the federally protected rights of others and/or with deliberate indifference to the strong likelihood that its acts would likely result in a violation of federally protected rights.

30. The Library's discriminatory conduct has harmed and will continue to harm Plaintiffs Brown, Comorato, Grebloski, and Whaley. Plaintiffs are thus persons aggrieved by the Library's discriminatory acts.

SECOND CLAIM FOR RELIEF

(Violation of Title II of the ADA)

31. Plaintiffs reallege and incorporate by reference the preceding allegations of this Complaint as if fully set forth herein.

32. Each plaintiff is substantially limited in the major life activity of seeing. Accordingly, they are individuals with a disability as defined under the Americans with Disabilities Act, 42 U.S.C. § 12102(2).

33. The Library is a public entity as that term is used in Title II of the ADA, 42 U.S.C. § 12132.

34. The activities described above, including the lending of inaccessible NOOK e-reading devices to library patrons over the age of 50, are services, programs and/or activities of the Library.

35. NOOK e-book reading devices are inaccessible to blind persons who are qualified to borrow the devices, including plaintiffs Brown, Comorato, Grebloski, and Whaley.

36. The Library has violated Title II of the ADA by excluding blind patrons from participation in, denying these individuals the benefits of, and/or subjecting each such individual to discrimination under the Library's services, programs and/or activities. 42 U.S.C. § 12132.

37. The Library has violated Title II of the ADA by failing to administer its services, programs, and/or activities in the most integrated setting that would meet the needs of disabled and non-disabled patrons alike. 28 C.F.R. § 35.130(d).

38. With respect to the alleged discriminatory conduct, the Library acted intentionally or with reckless or callous indifference to the federally protected rights of others and/or with deliberate indifference to the strong likelihood that its acts would likely result in a violation of federally protected rights.

39. The Library's discriminatory conduct has harmed and will continue to harm Plaintiffs. Plaintiffs are thus persons aggrieved by the Library's discriminatory acts and failures to act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court declare the Library's conduct to be in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and Title II of the ADA, 42 U.S.C. § 12132.
3. That this Court issue an injunction ordering the Library to comply with Section 504 of the Rehabilitation Act and Title II of the ADA by refraining from lending any inaccessible e-book reading device to its patrons;
4. That this Court award Plaintiffs reasonable attorneys' fees and costs; and

5. That this Court order such additional or alternative relief as may be just, proper, and equitable.

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Attorneys for Plaintiffs

EXHIBIT A

**2008-2009 ALA CD#52 Revised
2009 ALA Annual Conference**

Purchasing of Accessible Electronic Resources Resolution

- Whereas, ALA Policy 54.3.2 states that "library materials must be accessible to all patrons including people with disabilities";
- Whereas, ALA Policy 54.3.2, "Library Services for People with Disabilities" states that "libraries should use strategies based upon the principles of universal design to ensure that library policy, resources and services meet the needs of all people" and "universal design" has a principle of equitable use where, "...design is useful and marketable to people with diverse abilities" (Association of Specialized and Cooperative Library Agencies, (ASCLA) Issues, Universal Design);
- Whereas, The Federal Government has created regulations based on Section 508 of the Rehabilitation Act that ensure that its technology is accessible to its employees and the public;
- Whereas, Public and private academic college and university libraries, public libraries, and other libraries must ensure "effective communication" under Section 504 of the Rehabilitation Act, as interpreted by the Department of Education's Office for Civil Rights, as well as Title II (public libraries) and/or Title III (private libraries) of the Americans with Disabilities Act;
- Whereas, A number of court cases and structured negotiation settlements have upheld the precedent that the Americans with Disabilities Act (ADA) applies to the content of web sites, such as the National Federation of the Blind, et. al., v. Target Corporation, the National Federation of the Blind v. Law School Admissions Council Inc., the National Federation of the Blind v. Connecticut Attorney General's Office (IRS Forms), and American Council of the Blind Staples Accessible Web Site and Point of Sale Settlement Agreement, Rite Aid Web Accessibility Agreement, and Accessible Credit Reports Agreement;
- Whereas, Many libraries receiving state funding must acknowledge the importance of web accessibility issues within state statutes, policies and/or guidelines, through Section 508 and/or WCAG (i.e. Illinois, California, New York, Kentucky, etc.);
- Whereas, "Effective communication" requires that library materials and services provided through library websites be equally accessible to people with disabilities as to people without disabilities, unless doing so would constitute an undue burden or a fundamental alteration of the library program (see ALA Library Services for People with Disabilities Policy (adopted 2001); ADA Title II Regulation, 28 C.F.R. § 35.160-164; ADA Title III Regulation, 28 C.F.R. § 36.303 (www.ada.gov);

Purchasing of Accessible Electronic Resources Resolution/2

Whereas, The World Wide Web Consortium (W3C) has endorsed widely accepted guidelines, Web Content Accessibility Guidelines 2.0, which, the Guidelines state, "will make content accessible to a wider range of people with disabilities, including blindness and low vision, deafness and hearing loss, learning disabilities, cognitive limitations, limited movement, speech disabilities, photosensitivity [and combinations thereof, and in addition] can make Web content more usable to users in general";

Whereas, ALA Council adopted the Office for Information Technology Policy (OITP) Digitization Workgroup's values, through "Resolution on Principles for Digital Content," stating that "[e]quitable access to digital library materials is ensured through maximum accessibility, ubiquity, sustainability, and barrier-free access" (ALA Council Document 20.9, 2007); and

Whereas, ALA Council adopted a Resolution on Accessible Digitization Projects in 2007, which resolves that the American Library Association strongly encourage all libraries engaging in digitization projects to adopt Section 508 regulations to ensure that they are creating versions of materials that are accessible to persons using screen-reader or other assistive technologies; now, therefore, be it

Resolved, That the American Library Association (ALA) strongly recommends:

1. That all libraries purchasing, procuring, using, maintaining and contracting for electronic resources and services require vendors to guarantee that products and services comply with Section 508 regulations, Web Content Accessibility Guidelines 2.0, or other applicable accessibility standards and guidelines; and
2. That all libraries purchasing, procuring, and contracting for electronic resources and services ensure, through their own testing protocols or by requiring vendor guarantees, that electronic products and services have been fully tested and found to be in compliance with applicable accessibility regulations, guidelines, and criteria; and
3. That funding authorities, including private institutions, the federal government and state and local governments, provide adequate funding to allow all libraries purchasing, procuring, and contracting for electronic resources and services the ability to comply with accepted standards and laws of accessibility for people with disabilities.

Adopted by the Council of the American Library Association

Wednesday, July 15, 2009

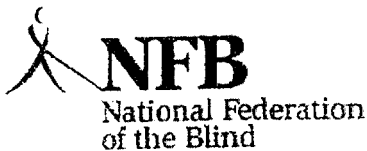
In Chicago, Illinois



Keith Michael Fiels

ALA Executive Director and ALA Council Secretary

EXHIBIT B



2001

November 20, 2009

Marc Maurer, *President*

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Baltimore, MD 21230-4998
Phone (410) 659-9314 Fax 410 685 5653
www.nfb.org

[REDACTED]
[REDACTED]
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Dear Colleague:

I write on behalf of the Reading Rights Coalition, a cross-disability group of more than thirty organizations that are committed to ensuring that electronic books (e-books) are accessible to and usable by anyone wishing to read them.

An increasing number of libraries are lending or considering lending electronic books. We are concerned that many of these electronic books are not being offered in ways that are accessible to over thirty million Americans who are blind or have other print disabilities. Although e-books can be readily made usable by print-disabled people, some libraries are buying the kinds that we can't read.

Libraries are covered by the Americans with Disabilities Act of 1990 (ADA). In addition, libraries that receive federal funding are covered by Section 504 of the Rehabilitation Act of 1973. Both of these laws require libraries to ensure that their communications with people with disabilities are as effective as their communications with nondisabled people. Many state laws mirror these federal laws and further extend the rights of individuals with disabilities to access public libraries.

E-books have the potential to make books available to people with print disabilities to the same extent and on the same basis as people without disabilities. Print books are generally

(*Voice of the Nation's Blind*)

inaccessible to people with print disabilities, including those who are blind, have low vision, have learning disabilities such as dyslexia, or have manual disabilities that make holding a book or turning pages difficult. Until now, people with print disabilities and the libraries that serve them have relied on alternative versions of print books in formats such as Braille or audio. These books are expensive to produce, difficult to obtain, and do not come out until long after the print editions. These barriers hinder literacy, educational attainment, employment, and access to information for people with print disabilities.

Because e-books are files made up of 0's and 1's, they are not inherently visual. They could be accessed by print-disabled individuals through whichever sense (sight, hearing, or touch) is most useful to them. However, the publishers and vendors of e-books and e-book readers are restricting accessibility for people with print disabilities.

For example, Adobe, which offers e-books online through a subscription service to libraries, once provided a text-to-speech option through Adobe Reader that would read the book aloud. But Adobe has turned off the text-to-speech capability, and Adobe's proprietary software for Adobe Digital Editions does not function with screen access software used by the blind and other individuals with print disabilities (screen access software converts text on a computer screen into synthesized speech or displays it on a Braille device). Similarly, the Barnes & Noble e-book reader and Kindle Books for PCs and Mac platforms do not work with screen access software. The Amazon Kindle 2 and Kindle DX, Sony Reader, B&N Nook, and other e-book reading devices have on-screen menus without audio interfaces, so they cannot be used by people who are blind. Some e-book readers offer text-to-speech that can read books aloud, but publishers are demanding that the feature be turned off. As a result, a great opportunity for Americans with print disabilities has become a barrier.

"Separate but equal" has been rejected by the Supreme Court as a legal standard to be used in the United States. In this

case, access to books by individuals with print disabilities is clearly unequal. Individuals without disabilities can access e-books twenty-four hours a day, seven days a week, through the Internet or an e-book reader from the comfort of their own homes or from many other locations. However, individuals with disabilities cannot get many books; or, if they can get them, they must certify their disability, contact the library during business hours, order the book, and wait days or weeks for the book to be found in an accessible format.

Since e-books are readily made accessible, libraries can no longer rely on separate, unequal access for people with disabilities. Vendors also have no excuse for making their e-books inaccessible. Many vendors and publishers simply aren't interested in providing accessible e-books. Libraries, which are major purchasers of e-books, can change that.

In recognition of the purchasing power and the legal obligations of libraries, the American Library Association recently adopted a resolution regarding purchasing accessible electronic resources, which calls upon libraries to require their vendors of electronic resources to verify compliance with accessibility standards and to ensure that electronic resources are user-tested. The Los Angeles Public Library system has already announced that it will suspend purchase of e-books that are compatible with Adobe Digital Editions because these books are not accessible to all of the Library's patrons. This action has gotten Adobe's attention, but a single library system, however large, cannot exert the kind of pressure that will force companies to alter their technology and business models to include accessibility.

We are asking public libraries to make it clear that they will not purchase e-books that can't be used by all of their patrons. If you hold the line on accessibility, vendors will provide accessible e-books. If you don't insist on accessibility, few vendors will provide it. Libraries that purchase inaccessible technology expose themselves to potential liability. On the other hand, when libraries insist on accessibility, accessibility happens.

We would be happy to discuss this critically important issue further with you. Please feel free to contact me by e-mail at officeofthepresident@nfb.org or by telephone at (410) 659-9314. Thank you for your attention to this matter.

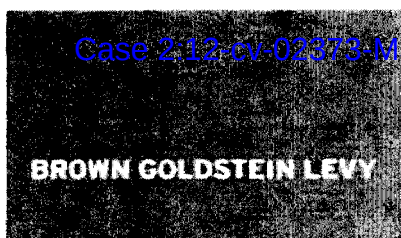
Sincerely,

A handwritten signature in black ink, appearing to read "Marc Maurer", with a stylized flourish at the end.

Marc Maurer, President
NATIONAL FEDERATION OF THE BLIND
On behalf of
Reading Rights Coalition

MM/wmb

EXHIBIT C



Daniel F. Goldstein
dfg@browngold.com

December 16, 2011

VIA E-MAIL: reardons@freelibrary.org
AND FIRST CLASS MAIL

Ms. Siobhan A. Reardon
President and Director
Philadelphia Free Library
1901 Vine Street
Philadelphia, PA 19103-1189

Re: Philadelphia Free Library's Violations of the ADA
and Rehabilitation Act

Dear Ms. Reardon:

I represent the National Federation of the Blind (NFB), an organization whose membership includes blind Americans across the country, including blind patrons of the Philadelphia Free Library ("Library"). I have learned that the Library has purchased and is lending more than 60 Barnes & Noble NOOK e-book readers, which are inaccessible to blind and visually-impaired patrons. Because it is technically feasible for e-readers to be accessible to blind and visually-impaired patrons, but the devices purchased by the Library are not, the Library is in violation of Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act ("Section 504").

The NFB is a national nonprofit membership organization of over 50,000 members. The ultimate purpose of the NFB is the complete integration of the blind into society on an equal basis. The NFB engages in advocacy, education, research, technology, and programs encouraging the independence and self-confidence of people who are blind or have low-vision.

As you announced last month, the Library has purchased dozens of Barnes & Noble NOOK e-book readers and launched a pilot program in which the Library loads the devices with content and makes them available for aging patrons to borrow for a set amount of time. In the Library's press release, you expressed an interest in expanding device-lending programs to all library patrons. While the NFB recognizes the enormous promise that e-book technology offers, this program, using these devices, violates federal law.

NOOK e-readers are not accessible to blind individuals. The menus and controls are accessed solely through a touch screen interface, without audio or tactile feedback, making them inaccessible. Nor is the device accessible through external applications or devices, such as text-to-speech screen readers or Braille displays. Therefore, if a user cannot see the screen, she cannot know which book she has selected, what the device settings are or how to change them,

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or how to navigate the on-screen menu. Furthermore, although some NOOK devices have a “read to me” feature available for some children’s books that incorporate recorded audio, it does not have a text-to-speech engine to read its electronic books.

Technology advances in general can enable blind Americans to have greater access to books, periodicals, and other materials traditionally only available in print. In the past, when libraries provided only print books, the libraries and their blind patrons had to rely on separate processes to obtain accessible versions of books. However, because e-books, which consist of zeros and ones, are not inherently visual, aural, or tactile, they offer individuals the opportunity to access content through whatever methods are accessible to them.

As Dr. Marc Maurer, the NFB’s President, wrote to you and all other ALA members two years ago, the capability of electronic books to be accessible precludes libraries from continuing to rely on separate, unequal processes for people with disabilities. It is no excuse that a vendor has not made its product accessible. The inaccessibility of the NOOK does not result from the absence of existing technology to make e-books accessible. Rather, it is entirely the product of Barnes & Noble’s lack of interest in providing e-books and e-book devices that are accessible to people who are blind or print-disabled. When libraries insist on the accessibility of the products and services they purchase – as the law requires them to do – manufacturers respond.

In recognition of both the purchasing power and the legal obligations of libraries, the American Library Association recently adopted a resolution regarding Purchasing Accessible Electronic Resources, which calls upon libraries “purchasing, procuring, using, maintaining and contracting for electronic resources and services [to] require vendors to guarantee that products and services comply with Section 508 regulations, Web Content Accessibility Guidelines 2.0, or other applicable accessibility standards and guidelines.” (ALA Policy 52, attached.)

Legal Obligations of the Philadelphia Free Library

The Library is a government entity subject to Title II of the ADA and a recipient of federal funds subject to Section 504 of the Rehabilitation Act. Blind and print-disabled individuals are qualified individuals with disabilities within the meaning of the ADA and Section 504. 28 C.F.R. § 35.104; 34 C.F.R. § 104.3. Therefore, the Philadelphia Free Library may not provide them unequal or separate access to the benefits of services, programs, and activities it offers. 28 C.F.R. § 35.130; 34 CFR § 104.4. Under Title II of the ADA and Section 504, individuals with visual impairments may not be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity based on their visual impairment or other disability. 28 C.F.R. § 35.130(a). In addition, people with vision and print disabilities are entitled to effective communication under the ADA and Section 504. 28 C.F.R. § 35.160.

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In May 2011, the Department of Education released a “Frequently Asked Questions” document clarifying the obligations of educational institutions, including libraries, under the ADA and the Rehabilitation Act with respect to e-books and other technology.¹ In general, the ADA and Section 504 require covered entities that use e-book readers to ensure that the devices are accessible or that students with print disabilities are afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students, with substantially equivalent ease of use.

Although the FAQs focused primarily on schools, these requirements apply equally to libraries. In fact, FAQ Number 14 specifically addresses the obligations of libraries that purchase inaccessible e-reader devices, such as the Barnes & Noble NOOK. It notes that if a library has unintentionally purchased e-book readers to loan that are not accessible to the blind, then the library must also purchase sufficient numbers of equivalent devices that are accessible for individuals with print disabilities. Of course, the better course is to acquire accessible e-book readers initially. But even an initial mistake does not excuse a library’s later violation of the law by expanding an inaccessible program.

When the Library offers its patrons the use of an inaccessible device such as the NOOK, it discriminates against patrons who are blind or print-disabled because the device is inaccessible to, and hence unusable by, those patrons. Although the Library offers some accessible downloadable e-books to eligible individuals through Overdrive, that program is not an equal alternative to lending devices because those books can only be used by individuals who have access to a computer or other compatible device. As the Library frequently notes, many of its patrons do not have computers or internet access at home. This is particularly true of Philadelphians with disabilities, who, research has shown, are less likely than those without disabilities to have access to computers or the Internet. As you noted in the Library’s press release, the NOOK lending program is intended to “bridge the digital divide” for older patrons. Ironically, it is older patrons who are more likely to be affected by vision loss and blindness, and thus will be unable to take advantage of the pilot program.

The NFB is willing to meet to discuss a resolution that ensures that the Philadelphia Free Library will cease to engage in unlawful conduct and will use technology that is accessible and compliant with federal law. However, because the library has already purchased inaccessible NOOK devices, and is therefore denying access to individuals with disabilities, any meeting should happen quickly. While we are confident an agreement can be reached, we will pursue litigation if necessary.

¹ This document is attached to this letter.

BROWN, GOLDSTEIN & LEVY, LLP

Siobhan A. Reardon
December 15, 2011
Page 4

Please contact me by the end of this calendar year if you wish to discuss this matter further.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. F. Goldstein', with a long horizontal flourish extending to the right.

Daniel F. Goldstein

DFG/tt
Enclosures

VIA E-MAIL ONLY

cc: Marc Maurer, President, National Federation of the Blind (w/ encl)
Anne Langford, Esq., U. S. Department of Justice, Civil Rights Division (w/ encl.)
Bradley Feuer, Esq., Vice President & Assistant General Counsel,
Barnes & Noble, Inc. (w/ encl)

CIVIL COVER SHEET

12 2373

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules. The form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket. INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Denice Brown, Karen Comoerato, Patricia Grebloski and Antoinette Whaley (b) County of Residence of First Listed Plaintiff <u>Philadelphia</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) 2159254400 Kairys Rudovsky Messing & Feinberg 718 Arch St. Ste 501S, Phila. PA 19106	DEFENDANTS Free Library of Philadelphia County of Residence of First Listed Defendant <u>Philadelphia</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) ☐ 1 U.S. Government Plaintiff ☒ 2 U.S. Government Defendant ☒ 3 Federal Question (U.S. Government Not a Party) ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td>☐ 1</td> <td>☐ 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td>☐ 4</td> <td>☐ 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>☐ 2</td> <td>☐ 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>☐ 5</td> <td>☐ 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>☐ 3</td> <td>☐ 3</td> <td>Foreign Nation</td> <td>☐ 6</td> <td>☐ 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4	Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5	Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4																				
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5																				
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 440 Other Civil Rights	☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition	☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act ☐ 462 Naturalization Application ☐ 463 Habeas Corpus - Alien Detainees ☐ 465 Other Immigration Actions	☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)							
☒ 1 Original Proceeding	☐ 2 Removed from State Court	☐ 3 Remanded from Appellate Court	☐ 4 Reinstated or Reopened	☐ 5 Transferred from another district (specify)	☐ 6 Multidistrict Litigation	☐ 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>29 U.S.C. 794; 42 U.S.C. 12102</u> Brief description of cause: <u>Discrimination based on Disability (blindness)</u>
VII. REQUESTED IN COMPLAINT:	☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE <u>May 2, 2012</u>	SIGNATURE OF ATTORNEY OF RECORD <u>[Signature]</u>	MAY 02 2012
FOR OFFICE USE ONLY		

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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MSG

UNITED STATES DISTRICT COURT

Case 1:12-cv-02373-MSG Document 1-2 Filed 05/02/12 Page 2 of 3

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Philadelphia, PA

Address of Defendant: Philadelphia, PA

Place of Accident, Incident or Transaction: Philadelphia PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, David Ruben, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 5/2/2012

Attorney-at-Law

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/2/2012

Attorney-at-Law

Attorney I.D.#

MSG

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

CASE MANAGEMENT TRACK DESIGNATION FORM

Denice Brown, et al.

CIVIL ACTION

v.

Free Library of Philadelphia

12 2378
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

Date

5/2/12

Telephone

215 925 4400

Attorney-at-law

215 925 5365

FAX Number

Attorney for
Plaintiffs

drudovsky@krlawphila.com

E-Mail Address

MAILED

General Information

Case Name	BROWN et al v. FREE LIBRARY OF PHILADELPHIA
Docket Number	2:12-cv-02373
Court	United States District Court for the Eastern District of Pennsylvania
Nature of Suit	Civil Rights: Americans with Disabilities - Other