

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

DENICE BROWN, ET. AL.,

Plaintiffs,

v.

Civil Case No.: 12-cv-2373

FREE LIBRARY OF PHILADELPHIA,

Defendant.

NOTICE OF DISMISSAL

Plaintiffs, by undersigned counsel, submit this Notice to Dismiss with Prejudice pursuant to FED. R. CIV. P. 41(a)(2). Plaintiffs and Defendant have entered into a Final Settlement Agreement. *See* Exhibit 1.

Respectfully Submitted,

/s/

Daniel F. Goldstein (*Pro Hac Vice*)
Sharon Krevor-Weisbaum (*Pro Hac Vice*)
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EXHIBIT 1

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

DENISE BROWN, ET AL., Plaintiffs,	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
FREE LIBRARY OF PHILADELPHIA, Defendant.	:	NO. 12-CV-2373

SETTLEMENT AGREEMENT

This settlement agreement ("Agreement") is made and entered into this 22nd day of October, 2012, by and between the Free Library of Philadelphia ("Library"), on one hand, and Denise Brown, Karen Comorato, Patricia Grebloski, and Antoinette Whaley ("Plaintiffs"), on the other.

BACKGROUND

1. The Philadelphia Free Library is an independent city agency that operates 54 branch libraries throughout the City of Philadelphia. The Library's mission is to advance literacy, guide learning, and inspire curiosity among all of its patrons and City residents. Consistent with that mission, the Library is strongly committed to making its programs available to patrons who are blind or have other print disabilities.

2. In November, 2011, pursuant to a grant, the Library initiated a pilot program aimed at providing patrons over the age of 50 with access to e-reader technology. In addition to offering training classes that included accessible devices, the Library began lending Nook Simple Touch devices to patrons 50 years of age or over from its Central Parkway location. In April and May, 2012, the Library expanded its lending program to the Philadelphia Institute, Wynnefield, Bustleton, and Schuylkill Falls branches.

3. The Nook Simple Touch is a mainstream e-reading device manufactured and sold by Barnes & Noble. The device is inaccessible to the blind. Specifically, it lacks text-to-speech output of its content and with the exception of a power button and a “wake up” button, all of the Nook’s features and settings are operated through a touch screen that provides no audible or tactile feedback.

4. Plaintiffs are blind library patrons over the age of 50 who would like to participate in the Library’s e-reading device lending program.

5. Plaintiffs filed suit against the Library in the United States District Court for the Eastern District of Pennsylvania, Case Number 2:12-cv-02373-MSG (the Action), alleging that the Library’s lending program violates Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”) and title II of the Americans with Disabilities Act (“ADA”). Plaintiffs contend that the Rehabilitation Act prohibits a recipient of federal funds from discriminating against or excluding people with disabilities from its programs or activities. Similarly, title II of the ADA prohibits a public entity from excluding persons with disabilities from participating in or denying them the benefits of its services, programs, or activities. Moreover, Plaintiffs contend that blind Library patrons must not be provided different or separate goods or services unless doing so is necessary to ensure that access to the goods and services is equally as effective as that provided to others. 28 C.F.R. § 36.201(a); 28 C.F.R. § 36.202(a); and 28 C.F.R. § 36.202(c). Instead, the Library must administer its services, programs, and/or activities in the most integrated setting appropriate to the needs of disabled and non-disabled patrons alike. 28 C.F.R. § 35.130(d).

6. While it denies any legal liability alleged in Plaintiffs’ Complaint, the Library has been responsive to the concerns raised by Plaintiffs’ lawsuit.

7. The Parties share a common goal of creating a single, integrated e-book reader lending program that uses only e-book reading devices that are accessible to both blind and non-disabled library patrons.

8. In the hope of reaching this shared goal in a cooperative manner, the Library and the Plaintiffs agree as follows:

DEFINITIONS

9. "E-book reading device" means a tablet computer or other portable device that allows a consumer to read electronic books.

10. "Fully accessible" with regard to e-book reading devices means that a blind individual may access or acquire the same information, engage in the same transactions, and enjoy the same benefits and services of the e-book reading device, as would a non-disabled individual with substantially equivalent ease of use.

ACCESSIBILITY TIMETABLE

11. Beginning on the effective date of this Agreement, the Library shall hereafter purchase only mainstream e-reading devices that are fully accessible to both patrons who are blind and patrons who do not have such disabilities.

12. As an intermediate step towards a fully integrated lending program, the Library shall supplement its e-reading device lending program within 60 days of the effective date of this Agreement by acquiring ten (10) mainstream e-reading devices that are fully accessible to both patrons who are blind and patrons who do not have such disabilities. Two (2) of these devices shall be available at each of the five (5) branches currently lending Nook devices. These devices shall initially be reserved for patrons with visual impairments or other print disabilities. The Library may not require proof of a disability to borrow an accessible device, but it may require

borrowers to attest in writing that the device is being borrowed on behalf of someone eligible for the device. To promote this program, the Library shall:

- a. Train its technology instructors and staff members who answer patron questions how to use the accessibility features of the accessible devices it purchases.
- b. Widely publicize the availability of accessible devices to ensure that blind persons who are patrons of the Library or are otherwise eligible to be patrons are made aware of the new availability of accessible e-book readers.

13. Within 4 years of this Agreement, the Library shall stop lending inaccessible e-reading devices.

14. Within 4 years of this Agreement, when an inaccessible device is retired from the Library's circulating collection, the Library may replace it in general circulation with one of the accessible devices that the Library had purchased and theretofore reserved for patrons with visual impairments or other print disabilities.

15. In an effort to effectuate full and equal access by the blind to the Library's technology-based programs or services, including its digital collections, the Library shall:

- a. Within 30 days of the effective date of this Agreement, make a public announcement that it has purchased 10 accessible e-reading devices, which it is reserving for the use of its patrons with visual impairments or other print disabilities.
- b. Utilize its best efforts to ensure that all new contracts with its vendors contain an accessibility clause requiring that information technology products and services sold to the Library will not cause the Library to be in violation of its obligations under the Rehabilitation Act or title II of the ADA.

16. In consideration of the Library's commitment to this Agreement, Plaintiffs shall, within three business days of the execution date of this Agreement, Dismiss the Action, with prejudice, but with the mutual request that the Court retain jurisdiction to enforce the terms of all relief encompassed herein.

17. Plaintiffs completely release and forever discharge the Library from any and all claims, rights, demands, actions, obligations, liabilities, and causes of action, including attorney's fees and costs, alleged in the Action.

CONSTRUCTION OF THIS AGREEMENT

18. This Agreement shall have effect from the date of execution by the Parties and shall continue in force for a period of four years from the date of execution.

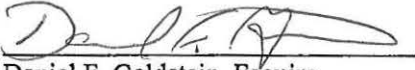
19. This Agreement shall be governed, construed, and interpreted in accordance with the laws of the United States of America, and in circumstances where the laws of the United States do not control the matter at issue, the law of the Commonwealth of Pennsylvania shall govern without regard to the conflicts of law provisions thereof.

20. This Agreement contains the entire agreement of the Parties concerning the subject matter hereof, and supersedes any other prior agreements, either oral or written. No modification to this Agreement shall be effective unless reduced to writing signed by the duly authorized representatives of the Parties. Each signatory represents that he/she is authorized by their respective Party to enter into this Agreement on such Party's behalf.

21. This Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument. The Parties agree that an electronic or facsimile transmission of this signed Agreement shall have the same force and effect as a signed original of the Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Defendant, by its authorized representatives, and Plaintiffs, in duplicates of like tenure and effect, execute this Agreement, consisting of 7 pages (including the signature pages), by signing below voluntarily and with full knowledge of the significance of all of its provisions.

HAVING ELECTED TO SIGN THIS RELEASE, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN CONSIDERATION, DENICE BROWN, KAREN COMORATO, PATRICIA GREBLOSKI, AND ANTOINETTE WHALEY ENTER INTO THIS RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS BROWN, COMORATO, GREBLOSKI, OR WHALEY HAS OR MIGHT HAVE HAD PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT AGAINST THE FREE LIBRARY OF PHILADELPHIA.

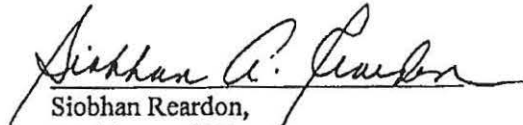

Daniel F. Goldstein, Esquire
Counsel for Plaintiffs


Craig M. Straw, Chief Deputy
Counsel for Defendant


David Rudovsky, Esquire
Counsel for Plaintiffs


Robert Heim, Chair
Board of Trustees

Denice Brown
Plaintiff
SSN:
DOB:
Address:


Siobhan Reardon,
President and Director

Karen Comorato
Plaintiff
SSN:
DOB:
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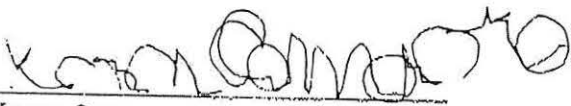
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