

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

2010 JAN 29 12 33 PM

CLERK OF COURT

GARY MINNIS, LARRY MORE, DAVID
RICHARDSON, RONALD ROMAN,
DELONTE TINSLEY, and WOLFJUNGE
WOLFSBURGER, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

GENE JOHNSON, Director, VDOC, FRED
SCHILLING, Director Health Services, VDOC
ROBIN HULBERT, Director of Mental, VDOC,
G.K. WASHINGTON, Regional Director,
VDOC, LOIS FEGAN, Agency Management
Lead Analyst, VDOC, DONALD GUILLORY,
Director, VC Enterprises, WALTER A.
MCFARLANE, Superintendent, VC Education,
SHARON TRIMMER, Director of Special
Education and Gifted Education, VC Education,
SHELDON RETCHIN, CEO, VCUHS, JOHN
DUVAL, CEO, MCV, DEBORAH DAVIS,
COO, MCV, AMANDA DODD, Manager of
Patient Relations, MCV, EDDIE L. PEARSON,
Warden, Powhatan Correctional Center, P.C.
HUNNEL, Assistant Warden, Powhatan
Correctional Center, SANDRA PARKER,
Principal, Powhatan Education, RONALD W.
TONEY, Medical Director, Powhatan, K.
WATSON, Nurse, Powhatan, B. MORRIS,
Chaplain, Powhatan, VIRGINIA DEPARTMENT
OF CORRECTIONS, VIRGINIA
CORRECTIONAL ENTERPRISES, the
VIRGINIA DEPARTMENT OF
CORRECTIONAL EDUCATION, the
VIRGINIA COMMONWEALTH UNIVERSITY
HEALTH SYSTEM, the MEDICAL COLLEGE
OF VIRGINIA, AND THE POWHATAN
CORRECTIONAL CENTER,

Defendants.

Case No. 1:10CV96
(TSE|TRJ)
CLASS ACTION COMPLAINT

**CLASS ACTION COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES**

I. PRELIMINARY STATEMENT

1. This is a class action based on the willful and deliberate refusal of the defendants, all of whom are Virginia state agencies, departments, or employees, to comply with state and federal laws protecting the rights of the plaintiffs, who are deaf individuals in the custody of the Virginia Department of Corrections (“VDOC”).

2. The state agencies and departments named as defendants in this case are VDOC, the Virginia Correctional Enterprises (“VC Enterprises”), the Virginia Department of Correctional Education (“VC Education”), the Virginia Commonwealth University Health System (“VCUHS”), the Medical College of Virginia (“MCV”), and the Powhatan Correctional Center (“Powhatan”) (collectively, “State Agency Defendants”). The individual named defendants, who are State Agency Defendant employees sued in their official and individual capacities (“Defendants”),¹ have failed to comply with state and federal laws, including the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, the Virginians with Disabilities Act, Code of Virginia § 51.5-40, and the Code of Virginia § 2.2-3401, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.*, and the Constitutions of Virginia and the United States.

3. Through their policies and practices, the Defendants discriminate against deaf individuals in VDOC’s custody. They have done this by failing to provide adequate access to qualified sign language interpreters (“interpreters”) in a variety of settings including medical appointments, educational and mental health programs, and religious services. VDOC refuses to provide deaf individuals in its custody with adequate notification of daily events and safety

¹ For purposes of this Complaint, “Defendants” does not include State Agency Defendants unless otherwise noted.

announcements, and denies deaf individuals in its custody adequate means to communicate with individuals outside of prison.

4. As a result of the Defendants' discriminatory policies and practices, deaf individuals in VDOC's custody:

- have been unable to effectively communicate with their health care providers at VDOC and MCV regarding serious medical conditions;
- have been excluded from participation in VDOC, VC Enterprises and VC Education programs and classes;
- have been unable to attend worship services and practice their religion;
- have been subject to disciplinary action — including disciplinary segregation — due to misunderstandings with prison staff;
- have missed prison-wide fire alarms; and,
- have been prevented from contacting family and friends outside of prison.

5. VDOC compounds its discriminatory practices by concentrating the deaf men in its custody at the aging medium-security Powhatan facility — even in cases where, under VDOC guidelines, similarly-situated hearing individuals are assigned to lower-security facilities where they enjoy greater freedom and more opportunities for work and rehabilitation.

6. Plaintiffs seek declaratory and injunctive relief and damages on their own behalf and on behalf of the class of all deaf and hard of hearing individuals in VDOC's custody for the harms they suffer and continue to suffer as a result of the Defendants' discrimination.

II. JURISDICTION

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

8. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

9. This Court has jurisdiction to grant injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

III. VENUE

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because some Defendants reside in this district and because a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred in this district.

IV. PARTIES

A. Plaintiffs

11. Named Plaintiffs Minnis, More, Richardson, Roman, Tinsley, and Wolfsburger, (collectively, "Plaintiffs") are men with a hearing disability currently incarcerated at Powhatan under VDOC's custody and control.

12. Mr. Gary Minnis has been deaf since early childhood. He relies on ASL to communicate and requires a sign language interpreter to allow him to communicate effectively with persons who do not know ASL.

13. Mr. Larry More has been deaf since early childhood. He relies on ASL to communicate and requires a sign language interpreter to allow him to communicate with persons who do not know ASL.

14. Mr. David Richardson is deaf. He lost his hearing in prison. Since he lost his hearing as an adult, he can speak English but must read lips or rely on written English or ASL to understand others.

15. Mr. Ronald Roman has been deaf since early childhood. He relies on ASL to communicate and requires a sign language interpreter to allow him to communicate effectively with persons who do not know ASL.

16. Mr. Delonte Tinsley has been deaf since early childhood. He relies on ASL to communicate and requires a sign language interpreter to allow him to communicate effectively with persons who do not know ASL.

17. Mr. Wolfjunge Wolfsburger, formerly known as Tony Branch, has been deaf since early childhood. He relies on American Sign Language (“ASL”) to communicate effectively and requires a sign language interpreter to allow him to communicate with persons who do not know ASL. Mr. Wolfsburger was incarcerated at Powhatan under the name Tony Branch.

B. Defendants and State Agency Defendants

i. State Agency Defendants

18. VDOC is the Virginia state agency responsible for the supervision and custody of over 30,000 inmates and nearly 60,000 offenders under court-ordered supervision.²

19. Virginia Correctional Enterprises (“VC Enterprises”) is the Virginia state work program that employs individuals under VDOC custody, including individuals at Powhatan.

20. Virginia Department of Correctional Education (“VC Education”) is the Virginia state agency responsible for providing educational programs to individuals under VDOC custody.

21. Virginia Commonwealth University Health System (“VCUHS”) is the health system run by Virginia Commonwealth University, a state university.³

² Virginia Department of Corrections, Strategic Planning Report, 2010-12, <http://www.vaperforms.virginia.gov/agencylevel/stratplan/spReport.cfm?AgencyCode=799>.

22. Medical College of Virginia (“MCV”) is a medical school and hospital facility within the VCUHS system. *Id.*

23. Powhatan Correctional Center (“Powhatan”) is a medium-security VDOC correctional facility in State Farm, VA.

ii. Defendants Sued in Their Individual and Official Capacities

24. Mr. Gene Johnson is the Director of VDOC and is responsible for the day-to-day operations of VDOC. On information and belief, he is aware of VDOC’s policies and practices regarding deaf individuals.

25. Mr. Fred Schilling is the Director of Health Services at VDOC and oversees and directs medical, nursing, dental, and mental health services, among other VDOC services. He is additionally responsible for developing and ensuring compliance with policies and procedures related to health services throughout the Virginia correctional system. On information and belief, he is aware of VDOC’s policies and practices regarding deaf individuals.

26. Dr. Robin Hulbert is the Director of Mental Health Services at VDOC and is responsible for mental health services for all individuals in VDOC’s custody. Dr. Hulbert also advises on the training and development of prison officers on mental health issues. On information and belief, she is aware of VDOC’s policies and practices regarding deaf individuals.

27. Mr. G.K. Washington is the Regional Director of VDOC for the Central Region. He is responsible for overseeing prisons and correctional units in the Central Region, including Powhatan. He is also responsible for responding to appeals of complaints and grievances brought by individuals in VDOC custody. He is aware of VDOC’s policies and practices

³ VCU Health System Organizational Structure, <http://www.vcuhealth.org/upload/docs/vcuhs%20org%20structure%209%2009.pdf> (last visited Jan. 27, 2010).

regarding deaf individuals and he is aware of specific written complaints by deaf individuals at Powhatan regarding the violation of their rights.

28. Ms. Lois Fegan is the Agency Management Lead Analyst, VDOC Division of Operations, and is responsible for ensuring that individuals in VDOC's custody have interpreters for off-site medical appointments. She is aware of VDOC's policies and practices regarding deaf individuals and she is aware of specific written complaints by deaf individuals at Powhatan regarding the violation of their rights.

29. Mr. Donald Guillory is the Director of VC Enterprises and is responsible for the policies and procedures of the work programs provided in the Virginia correctional system. On information and belief, he is aware of VDOC and VC Enterprises' policies and practices regarding deaf individuals.

30. Mr. Walter A. McFarlane is the Superintendent of VC Education and is responsible for VDOC educational programs. On information and belief, he is aware of VDOC and VC Education's policies and practices regarding deaf individuals.

31. Ms. Sharon Trimmer is the Director of Special Education and Gifted Education at VC Education, and is responsible for providing special education to the individuals in VDOC custody. She is aware of VDOC's and VC Education's policies and practices regarding deaf individuals.

32. Dr. Sheldon Retchin is the Vice President of Health Services and Chief Executive Officer of the VCUHS, which includes MCV. Individuals in the custody of VDOC at Powhatan are routinely sent to MCV for offsite medical care. Dr. Retchin is responsible for medical services provided to individuals in VDOC's custody taken to hospitals in VCUHS. On information and belief, he is aware of VCUHS' policies and practices regarding deaf individuals.

33. Mr. John Duval is the Chief Executive Officer of MCV and is responsible for medical services provided to individuals in VDOC's custody taken to hospitals under his supervision. On information and belief, he is aware of MCV's policies and practices regarding deaf individuals.

34. Ms. Deborah Davis is the Chief Operating Officer of MCV Hospitals and is responsible for the day-to-day hospital operations and compliance with hospital policies. On information and belief, she is aware of MCV's policies and practices regarding deaf individuals.

35. Ms. Amanda Dodd is the Manager of Patient Relations at MCV. She is responsible for ensuring that MCV patients have access to adequate services. On information and belief, she is aware of MCV's policies and practices regarding deaf individuals. On information and belief, she is aware of specific written complaints addressed to Patient Relations by deaf individuals at Powhatan regarding the violation of their rights.

36. Mr. Eddie L. Pearson is the Warden of Powhatan. As Warden, Mr. Pearson is the legal custodian of all individuals incarcerated at Powhatan, and is responsible for their safe, secure, and humane treatment. On information and belief, he is aware of VDOC's policies and practices regarding deaf individuals and he is aware of specific written complaints by deaf individuals at Powhatan regarding the violation of their rights.

37. Mr. P.C. Hunnel is Assistant Warden of Powhatan. He is aware of VDOC's policies and practices regarding deaf individuals and he is aware of specific written complaints by deaf individuals at Powhatan regarding the violation of their rights.

38. Ms. Sandra Parker is the Principal of Powhatan education programs run by VC Education and is responsible for all education services provided to the individuals incarcerated at Powhatan. She is aware of VDOC's and VC Education's policies and practices regarding deaf

individuals and she is aware of specific written complaints by deaf individuals at Powhatan regarding the violation of their rights by VC Education.

39. Dr. Ronald W. Toney, M.D. is medical director at Powhatan. He is aware of VDOC's policies and practices regarding deaf individuals and he is aware of specific written complaints by deaf individuals at Powhatan regarding the violation of their rights.

40. Ms. K. Watson, RN, is a member of the medical unit at Powhatan. She is aware of VDOC's policies and practices regarding deaf individuals and she is aware of specific written complaints by deaf individuals at Powhatan regarding the violation of their rights.

41. Mr. B. Morris is the chaplain at Powhatan. He is aware of VDOC's policies and practices regarding deaf individuals and he is aware of specific written complaints by deaf individuals at Powhatan regarding the violation of their rights.

42. All individual named defendants are sued in their official and individual capacities. At all relevant times, all Defendants were acting under color of state law, pursuant to their authority as officials, agents, contractors or employees of the Commonwealth of Virginia; within the scope of their employment as representatives of public entities, as defined in 42 U.S.C. § 12131(1); as representatives of a "department, agency, special purpose district, or other instrumentality of a State" under 29 U.S.C. § 794; and as representatives of "state agencies" under Code of Va. § 51.5-40 and Code of Va. § 2.2-3401.

V. STATEMENT OF FACTS

43. VDOC has twice been sued by deaf men incarcerated at Powhatan over lack of access to prison programs and services at Powhatan.⁴ In 2002, Otis Hill sued due to the lack of any sign language interpreter services for VDOC's mandatory pre-release life skills course, and

⁴ The state agency actions, policies, practices, and customs described in this Complaint were in fact carried out by the state agencies' officers, agents, or employees acting in either in their individual or official capacities.

in 2004, Wesley Chase sued VDOC over lack of access to educational programs. To this day, however, VDOC still refuses to provide sign language interpreters for educational and mental health programs at Powhatan, including mandatory pre-release courses. VDOC was also sued by a hard of hearing woman held at Fluvanna Correctional Center after she was repeatedly disciplined for missing announcements that she could not hear. To this day, however, VDOC has not implemented visual alerts to accommodate deaf and hard of hearing individuals throughout its facilities.

44. Hill v. Virginia Dept. of Corrections, Chancery No. HS-948-4 (Va. Cir. Ct. (Richmond) 2002): Otis Hill, a deaf man incarcerated at Powhatan, sued VDOC under the Virginians with Disabilities Act, Code of Va. § 8.01-216. Hill, who was incarcerated in 1997, repeatedly “attempted to enroll in programs given at or by [V]DOC facilities, including anger management, substance abuse, and job training programs,” throughout his nearly five years in prison. Hill’s requests for sign language interpreters to enable him to participate in these classes and his resulting grievances were denied. In 2002, Hill was informed that he would be required to take a mandatory life skills course prior to his release. Hill once again requested a sign language interpreter. VDOC employees told Hill that “we may not be ready for you” and instead informed him that they would “waive[]” the requirement that he participate in the pre-release life skills course. Hill, who continued to attend classes even without an interpreter, eventually reached a settlement with VDOC. Under the terms of the settlement, VDOC agreed to provide two course instructors and a “qualified, certified sign language interpreter” to meet with Hill, who by this time had been released from prison, and to provide him with all 54 hours of the life skills course instruction.

45. Chase v. Baskerville, 508 F. Supp. 2d 492 (E.D. Va. 2007), *aff'd* 305 Fed Appx. 135 (4th Cir. 2008): In 2004, just two years after VDOC settled with Hill, Wesley Chase filed a *pro se* lawsuit against various Powhatan and VDOC employees for their failure to provide him with a sign language interpreter for the functional literacy class in which he was enrolled at Powhatan.⁵ Some of the defendants sued by Chase, including Sandra Parker, Principal of VC Education programs at Powhatan, and Sharon Trimmer, Director of Special Education and Gifted Education at VC Education, are still responsible for overseeing educational programs at Powhatan. Warden Alton Baskerville was transferred from Powhatan to another institution in the VDOC system. Chase is still incarcerated at Powhatan and now, nearly five years after he filed his lawsuit and nearly seven years after he first sought to take classes at Powhatan, VDOC still has not provided him with a sign language interpreter for educational programs.

46. Sorrells v. Wheeler, No. 3:08-cv-00039 (W.D. Va. 2009): Jannett Sorrells, a hard of hearing woman incarcerated at Fluvanna Correctional Center, was repeatedly disciplined for missing morning count. She took to wearing her prison daytime clothes to bed so that when she was awakened late by others who lived in her cellblock, she would not also be disciplined for wearing her night clothes during count. Although at different times over a three year period VDOC personnel promised in writing to provide basic accommodations to Ms. Sorrell, such as awakening her five minutes before count, they failed to follow through on these promises and even went so far as to subject Ms. Sorrell to disciplinary hearings after the fact. Ms. Sorrells' suit was settled in March 2009.

47. VDOC is aware of its obligations under state and Federal laws. Nevertheless, VDOC and the other State Agency Defendants have not remedied their past pattern and practice

⁵ Chase's complaint survived a motion to dismiss and an appeal to the Fourth Circuit on sovereign immunity grounds. On remand Chase, who was apparently not represented by counsel at the time, failed to file an opposition to the state's motion for summary judgment. Summary judgment was eventually entered against him.

of discrimination and continue to discriminate against deaf individuals, resulting in disability-based discrimination in at least four different areas: (i) inadequate access to sign language interpreters; (ii) inadequate access to prison alerts; (iii) inadequate access to communication devices; and (iv) improper assignment of deaf men under VDOC's custody to Powhatan, regardless of the nature of their conviction or their prior behavior.

A. Inadequate access to sign language interpreters

48. Individuals in the custody of VDOC are wholly dependent on VDOC for medical, dental, educational, mental health, and religious services, among other services. Individuals in the custody of VDOC are also dependent on VDOC and prison staff for all of their basic daily needs, including food, exercise, and safety.

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

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

51. Writing usually does not provide effective communication for a deaf individual. English is generally considered a second language for most deaf persons who became deaf before acquiring language — ASL is their native language. Therefore, the English reading and writing skill level of many deaf individuals, including those incarcerated at Powhatan, is generally much lower than that of hearing people.

52. Thus, a sign language interpreter is necessary to allow deaf individuals in VDOC's custody to effectively communicate with VDOC and prison officials and employees.

53. VDOC, through its policies and practices, fails to provide adequate access to sign language interpreters for deaf individuals in its custody and control.

54. On information and belief, VDOC does not regularly provide interpreters for programs and services in the local and regional jails where individuals are held before being assigned to long-term correctional facilities. For example, Mr. Wolfsburger was held at Riverside Regional Jail from 2005 to 2007. During the whole course of his time at Riverside Regional Jail, Mr. Wolfsburger did not have regular access to a sign language interpreter to assist him in communicating with VDOC employees or enable him to participate in any classes or programs. In November 2007, he was transferred to Middle River Regional Jail, where there were several other deaf individuals. Once again, however, VDOC did not provide these individuals with regular access to a sign language interpreter.

55. VDOC has a policy of providing one sign language interpreter at Powhatan for six hours on one day a week.

56. On information and belief, although the number of deaf individuals in VDOC custody fluctuates, at any given time there are 15-20 deaf individuals incarcerated at Powhatan. Thus, each of these individuals has, on average, only 25 minutes per week during which he can clearly communicate with and understand Powhatan staff, counselors, and medical personnel. Further, since a sign language interpreter is present only one day per week, deaf individuals are without access to a sign language interpreter, and thus unable to clearly communicate with and understand staff, counselors, and medical personnel, except for the short time they are scheduled to see the interpreter.

57. VDOC's failure to provide adequate access to sign language interpreters for the deaf individuals in its custody affects nearly every aspect of their lives.

iii. Medical services

58. VDOC is responsible for the medical care of all individuals in its custody, including but not limited to individuals incarcerated at Powhatan.

59. Deaf individuals require sign language interpreters to communicate effectively with medical staff.

60. After receiving numerous written requests, VDOC is aware that deaf individuals need sign language interpreters for their medical appointments. Nevertheless, VDOC staff often schedules onsite medical care for deaf individuals incarcerated at Powhatan on days when there is no sign language interpreter available.

61. When this occurs, deaf individuals cannot effectively explain their condition to medical personnel. They have the unacceptable choice of either foregoing much-needed medical treatment or subjecting themselves to medical procedures that they do not understand, conducted by medical staff that is unable to adequately communicate with them or understand their symptoms.

62. Mr. Richardson has had problems with his teeth. When he finally had a dental appointment last year, there was no interpreter, so he had the choice of undergoing medical treatment without being able to understand his dentist, or foregoing needed treatment. Richardson needs to have an interpreter at his dental appointments so that his dentist can communicate with him effectively, and so that Mr. Richardson can understand why his teeth hurt.

63. On July 7, 2009, Mr. Wolfsburger had an eye appointment with a specialist at MCV. Since an interpreter was not provided, Mr. Wolfsburger was unable to communicate with the medical staff and understand the medications that were being put in his eyes and could not effectively exercise his right to participate in medical decisions concerning him. Mr. Wolfsburger's vision has deteriorated since that visit. He needs an interpreter present at his future visits so that he can understand why his vision is getting worse and understand what medications were being prescribed and put into his eyes.

64. Occasionally, Powhatan medical staff will attempt to communicate with deaf individuals by writing notes to them in English, using complicated medical terminology.

65. As noted above, written communication is often not sufficient to provide effective communication for a deaf individual because English is not a deaf person's first language. Moreover, written communication is slow and cumbersome in a healthcare setting, and information that would otherwise be spoken, or interpreted, may not be written down because it takes too much time.

66. For example, Mr. Minnis blacked out while playing basketball in summer 2008. There was no interpreter at Powhatan at the time, and VDOC had no policy in place that would allow it to use one of the many video interpreting-on-demand services designed for emergencies such as this. Instead, Mr. Minnis had to write notes in the middle of the medical emergency in order to describe his condition to the nurse. This process took longer and was less clear than if an interpreter had been present, resulting in a lower standard of care than a hearing individual would have received.

67. When individuals incarcerated at Powhatan cannot be cared for by medical staff onsite, they are referred to MCV for offsite care. MCV and VDOC each have independent duties

under state and federal law to make sure that an interpreter is available for deaf individuals in VDOC's custody when they are taken offsite for medical care.

68. When deaf individuals in VDOC's custody are referred to MCV for offsite medical care, VDOC policies require that they be awakened early, placed on a van with other individuals in VDOC's custody, and put in a holding cell at MCV until their appointment. VDOC has a policy that while at MCV, the individuals awaiting medical care are shackled.

69. VDOC and MCV are aware that the hand shackles used to restrain individuals while they are being treated at MCV prevent deaf individuals from communicating effectively with medical staff through a sign language interpreter.

70. In mid-2009, Powhatan health care personnel referred Mr. Wolfsburger to specialists at MCV because of his deteriorating vision and other health problems. A sign language interpreter was present for Mr. Wolfsburger's July 22, 2009 appointment at MCV. However, Mr. Wolfsburger was prevented from communicating with the interpreter and the health care providers because a VDOC Correctional Officer ("CO") refused to remove the metal handcuffs binding Mr. Wolfsburger's hands. The metal handcuffs used by VDOC made it painful and nearly impossible for Mr. Wolfsburger to communicate using sign language.

71. The sign language interpreter present on July 22, 2009 requested that the VDOC Correctional Officer ("CO") accompanying Mr. Wolfsburger remove the handcuffs so that Mr. Wolfsburger could communicate. The CO refused to do so.

72. Despite this incident and Mr. Wolfsburger's complaint, VDOC continues to use metal shackles on all deaf individuals during outside medical appointments, even though the shackles prevent the deaf individuals from communicating effectively.

73. Compounding the problem, on numerous occasions over the past year, there has been no interpreter present when deaf individuals under VDOC's custody have been taken to MCV for medical appointments.

74. VDOC personnel transported Mr. Wolfsburger to the MCV on eight separate occasions between July 2009 and November 2009 for appointments related to his vision and other health issues. Although both VDOC and MCV repeatedly acknowledged throughout this period that Mr. Wolfsburger required an interpreter for these appointments, they repeatedly failed to provide him with one. Mr. Wolfsburger went to seven separate appointments with no interpreter present and was unable to communicate effectively with his medical provider. As a result, Mr. Wolfsburger has gone without effective medical care for his eyes and his eyesight has continued to deteriorate.

75. VDOC and MCV have also failed to provide interpreters during hearing tests required to obtain a hearing aid. Mr. More had a hearing aid before he entered VDOC custody, but it broke while he was in VDOC custody. He has been sent for two separate offsite hearing tests, and there was no interpreter available either time. Over a year later, he has still not received his hearing aid. Mr. Wolfsburger was also sent offsite for a hearing test. He, too, had no interpreter.

76. The failure to provide adequate access to sign language interpreters for medical services has resulted in harm to deaf individuals in VDOC's custody. It puts deaf people at risk of future serious harm from lack of adequate medical treatment, and it violates their rights under the Americans with Disabilities Act, the Rehabilitation Act, and the Virginians with Disabilities Act. Further, it is a violation of VDOC and MCV's obligation to provide sign language

interpreters under the Code of Virginia § 2.2-3401 and a violation of the Constitutions of the United States and Virginia.

iv. Educational and Mental Health Services

77. VDOC provides mental health programs for individuals in VDOC custody, including but not limited to individuals incarcerated at Powhatan.

78. The mental health programs provided by VDOC at Powhatan include Anger Management, Substance Abuse, work programs, the Breaking Barriers program and the Sex Offender program. They also include the mandatory pre-release life skills program designed to prepare individuals for the return to civilian life and integration into the community.

79. VDOC, through VC Education, provides educational classes for individuals in VDOC custody, including but not limited to individuals incarcerated at Powhatan. Code of Va. § 22.1-340.

80. VC Education courses provided at Powhatan include courses such as the Adult Basic Education Program, computer courses, business courses, and the Dads, Inc. program for incarcerated fathers. VC Education is also required to “develop a functional literacy program for inmates testing below a selected grade level, which shall be at least at the twelfth grade or GED level” and “create a system for identifying prisoners with learning disabilities.” Code of Virginia § 22.1-344.1.

81. Deaf individuals require sign language interpreters to effectively participate in these programs.

82. VDOC and VC Education are aware that deaf individuals need sign language interpreters to effectively participate in these programs.

83. VDOC does not provide interpreters for the mandatory life skills program.

84. On information and belief, VDOC does not provide interpreters for any of the mental health programs it offers at Powhatan.

85. VC Education does not provide interpreters for any of the educational classes it offers at Powhatan. In December 2008, employees from the Virginia Department for the Deaf and Hard of Hearing (“VDDHH”) participated in a resource fair at Powhatan. On information and belief, VDDHH employees met with a representative of the VC Education programs at Powhatan, who informed them that VC Education does not provide interpreters for its classes at Powhatan.

86. Deaf individuals under VDOC’s custody have requested to participate in educational and mental health programs at Powhatan, but they have been denied access or have been unable to effectively participate because VDOC and VC Education have not provided sign language interpreters.

87. Mr. Wolfsburger needs to participate in the mandatory life skills program. He also wants to participate in a computer class and an art class. In 2008, he requested to participate in a computer class. Instead, he was placed in a GED class — with no interpreter. On information and belief he met with VC Education principal Sandra Parker in summer 2009, and again requested to participate in computer classes. Again, he was not given an interpreter. VDOC also failed to provide him with an interpreter for the mandatory life skills program.

88. Due to a lack of sign language interpreters at the classes offered to individuals incarcerated at Powhatan, Mr. Wolfsburger is unable to attend, understand and participate in the programs for which he is eligible to the same extent as hearing individuals in the custody of VDOC.

89. Mr. Tinsley has requested to participate in numerous classes offered by VDOC and VC Education, and has expressed particular interest in the computer skills class. Mr. Tinsley wants to open his own business when he is released from Powhatan and believes that the classes offered by VDOC and VC Education would help him to improve his skills and increase his chances of success upon release.

90. Mr. Tinsely has requested to participate in the offered programs with an interpreter, but his requests have been denied. Due to a lack of sign language interpreters at these classes, Mr. Tinsley has been and continues to be unable to participate in educational programs that are available to and allow hearing individuals to gain new skills intended to benefit them upon release.

91. VDOC and VC Education's failure to provide adequate access to sign language interpreters for educational and mental health services has resulted in harm, and may result in future harm, to deaf individuals in VDOC's custody. Such failure also violates their rights under the U.S. and Virginia Constitutions, the Americans with Disabilities Act, the Rehabilitation Act, and the Virginians with Disabilities Act. Further, it is a violation of VDOC and VC Enterprises' obligation to provide sign language interpreters under the Code of Virginia § 2.2-3401.

v. Work Programs

92. VDOC, thorough VC Enterprises, operates work programs in VDOC facilities.

93. VC Enterprises does not provide sign language interpreters in connection with its work programs, including for mandatory work meetings held at its Powhatan worksites.

94. The lack of interpreters for VC Enterprises work programs limits the ability of deaf individuals in VDOC custody to obtain a job in VC Enterprises. For those deaf individuals who do obtain VC Enterprises jobs, the lack of interpreters limits their opportunities to advance,

opportunities that are available to their hearing peers. Mr. More works in the shop at Powhatan that produces license plates for antique cars and motorcycles. The shop is operated by VC Enterprises. There is currently no sign language interpretation available for group meetings at work, so he is unable to understand crucial work-related information.

95. For example, in March 2009, he had to attend a mandatory work meeting. He was required to sit through the meeting without an interpreter. Afterwards, he wrote a note to his supervisor asking what the meeting was about. The supervisor gave him a short answer that left Mr. More feeling like he was “in the dark” and wondering whether he was missing important information about opportunities to change assignments. Additionally, in April 2009, Mr. More and another deaf individual were at work when all the other individuals went into another room for no apparent reason. Mr. More and the other deaf individual followed them but the same supervisor angrily threw them out of the meeting and gave them a two day suspension from work for being “late” to the meeting. His hearing co-workers later told Mr. More that the supervisor had announced an “immediate meeting” over the loudspeaker. Mr. More was able to write a note explaining the situation to Capt. Jones, who talked to Mr. More’s supervisor and had the suspension reversed. On information and belief, suspensions such as the ones received by Mr. More and his friend result in lost pay and can eventually result in the loss of a job.

96. VDOC’s and VC Enterprises’ failure to provide adequate access to sign language interpreters for work programs has resulted in harm, and may result in future harm, to deaf individuals in VDOC’s custody. It also violates their rights under the U.S. and Virginia Constitutions, the Americans with Disabilities Act, the Rehabilitation Act, and the Virginians with Disabilities Act. Further, it is a violation of VDOC and VC Enterprises’ obligation to provide sign language interpreters under the Code of Virginia § 2.2-3401.

vi. Religious services

97. VDOC provides religious services for individuals in its custody, including but not limited to individuals incarcerated at Powhatan. VDOC may not impede the religious freedom of the people in its custody. VDOC provides chaplains to organize religious services and discussion groups and to oversee outside volunteers who assist with the services.

98. Deaf individuals under the custody of VDOC require sign language interpreters to effectively participate in the religious services and programs of their choice.

99. VDOC is aware that deaf individuals need sign language interpreters to effectively benefit from these programs and services.

100. Currently, VDOC has a policy of not providing sign language interpreters for its weekly Protestant worship services. A deaf pastor does conduct a Protestant sign language service, but only one Sunday a month, and a volunteer interpreter occasionally comes one additional Sunday per month. In contrast, hearing individuals may attend and participate in these services every week.

101. Deaf individuals incarcerated at Powhatan have requested that VDOC provide sign language interpreters for these religious services.

102. Since at least 2008, Mr. More has requested that VDOC provide sign language interpreters at weekly Protestant worship services and has actively sought community volunteers to assist with interpreting.

103. Despite Mr. More's efforts, VDOC still does not provide sign language interpreters for weekly Protestant worship services or any other worship service or religious programs.

104. VDOC's failure to provide sign language interpreters for religious services and programs imposes a substantial burden on deaf individuals' religious exercise. VDOC's failure to provide adequate access to sign language interpreters for religious services has resulted in harm, and may result in future harm, to deaf individuals in VDOC's custody. It also violates their First Amendment right to the free exercise of religion. There is no valid, rational connection between VDOC's failure to provide interpreters for weekly religious services and a legitimate governmental interest. No alternative means of exercising their right to the free exercise of their religion remains open to deaf individuals in VDOC custody, and accommodation will have little to no impact on fellow individuals in custody or prison staff. VDOC's failure to accommodate deaf individuals' free exercise also violates their rights under the Americans with Disabilities Act, the Rehabilitation Act, and the Virginians with Disabilities Act, and a violation of the Religious Land Use and Institutionalized Persons Act of 2000 and the Code of Virginia § 2.2-3401.

vii. Communications with Prison Staff, Employees and Officials

105. As the state agency responsible for the custody of inmates, VDOC must ensure that deaf individuals in its custody can communicate with and understand the instructions given by its staff and employees.

106. Upon information and belief, none of the named Defendants or staff at Powhatan are qualified sign language interpreters.

107. Thus, deaf individuals in the custody of VDOC require sign language interpreters to adequately communicate with and understand instructions from prison staff and employees. Without sign language interpretation, deaf individuals are unable to understand VDOC policies and safety measures or understand and respond to prison staff instructions.

108. VDOC is aware that deaf individuals require sign language interpreters to adequately communicate with prison staff.

109. However, due to VDOC policy that allows deaf individuals in its custody only approximately 25 minutes per week with a sign language interpreter, deaf individuals in VDOC's custody are frequently required to communicate with prison staff and employees through less effective means, such as written communication and gestures.

110. For the majority of time when there is no sign language interpreter present, deaf individuals incarcerated at Powhatan attempt to communicate with prison staff by writing short messages in English. Prison staff, especially COs, frequently refuse to read these messages or fail to respond to them in a way that deaf individuals can understand by, for example, writing back to them. This refusal to write messages back and forth has resulted in a lack of communication and even in incidents that have given rise to disciplinary measures against deaf individuals incarcerated at Powhatan.

111. For example, on May 14, 2009, Mr. Wolfsburger approached a CO and attempted to request her help in locating a form. The CO refused to communicate with Mr. Wolfsburger by writing notes or by other means and gestured for him to go away while mocking him in front of other individuals in custody.

112. In response, Mr. Wolfsburger put his finger to his nose — the ASL sign for being “bored” or “fed up.” The CO accused Mr. Wolfsburger of approaching her in a “threatening manner” and brought disciplinary charges against him. Mr. Wolfsburger was tried, convicted and sentenced to isolation, in spite of expert testimony explaining that the gesture the CO described was in fact the ASL sign for being “bored” and not a threatening gesture.

113. VDOC's failure to provide adequate access to sign language interpreters for communications between staff and incarcerated individuals has resulted in harm, and may result in future harm, to deaf individuals in VDOC's custody. It also violates their rights under the U.S. and Virginia Constitutions, the Americans with Disabilities Act, the Rehabilitation Act, and the Virginians with Disabilities Act. Further, it is a violation of VDOC's obligation to provide sign language interpreters under the Code of Virginia § 2.2-3401.

B. Inadequate Access to Prison Alerts

114. VDOC is responsible for ensuring that deaf individuals in its custody can understand the numerous life-event announcements and safety alerts made in each correctional facility every day.

115. Given the nature of institutional life, incarcerated individuals rely on VDOC to notify them of basic daily events like wake up calls, meal times, sick calls, recreation times, work times, program times, and lights out. In addition, individuals in VDOC's custody rely on VDOC to notify them of events like the arrival of a letter or a visitor.

116. On information and belief, VDOC uses auditory means, such as a loudspeaker or a CO calling out the announcement, to convey these life-event announcements.

117. Incarcerated individuals also rely on VDOC to notify them when there is an institution-wide emergency, such as a fire or a riot, that requires evacuation, or in the event of a lock-down.

118. On information and belief, VDOC primarily uses auditory means, such as a loudspeaker or a CO calling out the announcement, to convey these safety alerts.

119. Deaf individuals in VDOC's custody cannot hear auditory life-event announcements or safety alerts.

120. VDOC is aware that deaf individuals in its custody require alternative means of receiving these auditory alerts and announcements, but it refuses to provide an adequate alternative notification system.

121. Deaf individuals incarcerated at Powhatan routinely miss life event announcements. Because they are in a correctional setting, missing the designated time for waking up, eating, recreation, or work can cause them to forego the activity, such as a meal, altogether, or face discipline for being late.

122. Mr. Richardson and Mr. Roman often miss counts, calls, meals, recreation, and other prison activities because they cannot hear the announcements for them.

123. In October 2009, Mr. Richardson missed breakfast, lunch, and dinner meals because he was unable to hear the announcements. He told PCC staff about this, but they continue to fail in communicating the announcements to him and the other deaf individuals in custody.

124. Mr. Richardson and other deaf individuals also miss out on recreational opportunities available to hearing individuals in VDOC custody when VDOC staff fail to take simple steps like turning on the closed captioning on the DVDs played in Powhatan.

125. Some deaf individuals in custody have arrived late to work because they were unable to hear the announcements. For instance, on August 9, 2009, after not hearing and not being notified of the work-call announcement, Mr. Richardson was late for work.

126. Mr. More is also unable to hear the life-event announcements over the loudspeaker. For example, Mr. More recently needed to exchange his clothing for mending. He missed the weekly announcement for the clothing exchange because he could not hear it. When he submitted a written request to exchange his clothing mid-week, the VDOC employee

responsible for the exchange would not let him exchange his clothing and would not accept Mr. More's explanation that he could not hear the weekly announcement. The VDOC employee told Mr. More to wait for the next announcement — which would again be made over the loudspeaker.

127. Deaf individuals incarcerated at Powhatan have missed or nearly missed important non-recurring events, like the arrival of a visitor, because they cannot hear the announcement.

128. In summer 2008, Mr. More had a visitor who waited half an hour and almost left Powhatan without seeing him. Because Powhatan personnel made only oral announcements concerning the visitor, Mr. More was unaware that someone had come to see him until another person in custody took the time to communicate with him directly.

129. Deaf individuals incarcerated at Powhatan have also missed safety alerts, including fire alarms, putting them at risk of suffering serious harm if there is a fire or similarly dangerous event at Powhatan.

130. In April 2009, there was a fire alarm and evacuation at Powhatan. Deaf individuals had to rely on others in custody to alert them and assist them in leaving the building. In addition to being frightening and disorienting for the deaf individuals in VDOC custody, the situation also showed what a significant safety threat the lack of visual alerts poses to deaf individuals. Mr. Wolfsburger complained in writing to VDOC about the April fire drill, but VDOC still has not done anything to remedy the situation. In a subsequent fire drill in winter 2009, Mr. Roman was in his room when a hearing individual in custody came and tapped on his door. Because Mr. Roman has limited lipreading ability, the other individual was able to tell him to evacuate. Mr. Roman noted that he was one of the last people to leave his area. He

understood that it was a fire drill only when he got outside and was able to ask others to explain the situation. Being one of the last to leave created unnecessary stress for Mr. Roman, and in a real emergency, could have put him in serious danger.

131. Mr. Richardson, Mr. Roman, and Mr. More have each requested that VDOC install an alternative notification system, such as electronic displays or beepers, so that the deaf and hard of hearing individuals in VDOC custody can receive life-event announcements and safety alerts through non-auditory means.

132. VDOC has denied these requests for an alternative notification system.

133. VDOC has responded to complaints by deaf individuals in its custody by instructing the individuals to refer to prison daily plans or schedules but, on information and belief these plans and schedules are often kept in places that are difficult or impossible for incarcerated individuals to access. VDOC has also told some deaf individuals in custody that VDOC staff will alert them individually in the future, but VDOC staff have consistently failed to follow through on these promises.

134. VDOC's failure to provide alternative means of notifying deaf individuals in its custody about life-event announcements and safety alerts has resulted in harm, and may result in serious future harm, to deaf individuals in VDOC's custody. It also violates their rights under the U.S. and Virginia Constitutions, the Americans with Disabilities Act, the Rehabilitation Act, and the Virginians with Disabilities Act.

C. Inadequate Access to Communication Devices

135. VDOC provides hearing individuals in its custody with access to telecommunications services in order for them to communicate with family, friends, and other individuals outside of prison.

136. Communication with friends and family during incarceration is essential to maintaining the kind of community ties that enable incarcerated individuals to re-integrate into civilian life upon release.

137. Deaf individuals in VDOC's custody cannot use traditional telephones to communicate with individuals outside of prison.

138. VDOC is aware that deaf individuals in its custody require alternative means of communicating with individuals outside of prison, but it does not provide sufficient alternatives.

i. Telecommunications Devices for the Deaf

139. As the federal Bureau of Prisons has recognized, "[t]elephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development." 28 C.F.R. § 540.100. Telephone and other forms of telecommunication are very important to individuals in VDOC custody because they foster the family and community ties that are fundamental to motivating them to improve themselves and that prepare them to make a positive transition back to civilian life once their sentence is complete.

140. VDOC provides deaf individuals in its custody with very limited access to telecommunications devices for the deaf ("TDD"). A TDD is a telephone equipped with a keyboard and a display screen, used by individuals who have hearing or speech impairments. A TDD allows individuals to send and receive typed messages using a keyboard attached to a telephone line. For two parties to have a direct TDD conversation, each party must have a TDD.

141. On information and belief, two kinds of TDD units are available at Powhatan: permanent TDD units are installed in the phone banks in the cellblocks and at least one portable

TDD unit is usually kept in the Watch Office, the office used by on-duty COs. There are problems with both kinds of TDDs at Powhatan.

142. On information and belief, many of the cellblock TDDs are broken or inoperative. In addition, the cellblock TDDs are blocked by VDOC policy from dialing the 1-800 or 711 numbers necessary to use special federally-mandated relay services that allow deaf individuals to communicate with hearing individuals by telephone.

143. Deaf individuals may access the relay services using the portable TDD unit, but they must submit a request in advance and they can ordinarily use the portable unit only after 9:00 pm unless they make special arrangements with mental health staff to use the unit during the day. Deaf individuals in VDOC custody at Powhatan are therefore frequently unable to communicate with people outside the prison, in contrast to their hearing peers. Deaf individuals are entitled to fully operational cellblock TDDs on which the relay numbers have been unblocked so that they can use relay services on these units.

ii. Cellblock TDDs

144. VDOC has been aware since at least April 2009 that many of the cellblock TDDs are broken and give error messages when deaf individuals attempt to use them to contact other TDD users.

145. For example, in the Spring of 2009, Mr. Wolfsburger attempted to use the TDD units installed in the cellblock phone banks to place a direct call to individuals outside of prison who have TDD units. However, Mr. Wolfsburger was unable to get through because the TDD unit in the phone bank gave him an error message.

146. Mr. Roman has unsuccessfully attempted to call his mother and girlfriend, both of whom have TDDs. After following VDOC telephone procedures and adding his mother's and

his girlfriend's TDD numbers to the TDD contact list, Mr. Roman tried calling them directly, but their numbers still came up as invalid on the TDD line. As a result of VDOC's policy, Mr. Roman was unable to contact his mother and girlfriend directly using the TDD in the cellblock phone banks at Powhatan.

iii. Portable TDDs and Relay Services

147. Under VDOC policy, individuals incarcerated at Powhatan cannot dial 711 or 800 numbers from the TDDs installed in the cellblocks because they are blocked. On information and belief, these numbers can be easily unblocked by VDOC. Thus, deaf individuals cannot use the cellblock TDD units to place relay calls to friends and family who do not have their own TDD units.⁶ They must use the portable TDD units that, on information and belief, are ordinarily kept in the Watch Office, on which the 711 and 800 numbers have been unblocked.

148. Mr. Wolfsburger, Mr. Tinsley, Mr. Roman, and Mr. Minnis have friends and family who do not own TDDs, and they must use a relay service to communicate with those individuals outside of prison. These men have complained in writing to prison officials since at least November 2008 that they are unable to access relay services through the TDD units

⁶ Relay services allow TDD users to communicate with individuals who do not have TDDs. Since many individuals and businesses do not have TDD devices, federally-mandated relay services have been established throughout the United States.

Relay services operate as follows: the party using the TDD places a call to a relay center, and a relay operator answers the call using another TDD. The caller provides the operator with the phone number of the party with whom they wish to communicate, and the operator places the call. When a hearing person answers the phone, the relay operator explains the relay service and states the name of the caller. The responses of the hearing person are typed by the relay operator into a TDD, and transmitted over the telephone lines to the TDD user. The call proceeds with the relay operator voicing what the TDD user types to the hearing person receiving the call, and typing what the hearing person speaks. The process can also work the other way — a hearing person who has no TDD can call deaf individuals from a traditional telephone by using the relay service.

The relay service is free of cost to the users, and the caller pays only for the cost of the call to the party with whom the caller wishes to converse. To connect to a relay services center, an individual can either dial "711" from anywhere within the United States or dial the toll-free "800" number of the relay service in the caller's locality. Accordingly, TDD relay services in Virginia may be accessed in two ways — by calling 711 or by calling Virginia's toll-free relay service number.

installed in the inmate-accessible cellblock areas. VDOC officials have informed them that relay services are inaccessible on those telephones because it is VDOC policy to block the 711 and 800 numbers necessary to connect with relay services on the TDDs installed in the cellblocks. However, on information and belief, VDOC can unblock 711 and 1-800 numbers on these phones.

149. Deaf individuals thus must make personal calls from the Watch Office, in the presence of VDOC staff. VDOC staff have the TDD unit set to print out a written record of each conversation, which they confiscate and keep. On information and belief, hearing individuals making calls from the cellblocks are not subject to this level of monitoring.

150. Further, VDOC staff provide access to the portable TDD units only on a limited basis. For example, when the TDD unit is kept in the Watch Office, deaf individuals are allowed to use the TDD unit only after approximately 9:00 pm. Thus, unlike hearing individuals incarcerated at Powhatan, deaf individuals who need to make calls during regular business hours or who have family members who are unavailable at night have restricted access to a relay service to place these calls before 9:00 pm.

151. For example, Mr. Minnis cannot contact his mother using the relay service in the Watch Office because she goes to bed before 9:00 pm.

152. Also unlike hearing individuals, deaf individuals wishing to use the TDD in the Watch Office must submit a written request in advance of using the TDD unit. If the commanding officer decides that he and his staff are too busy, he may postpone the call—sometimes for up to 24 hours.

153. Mr. Wolfsburger and Mr. Tinsley have both experienced disruption in their TDD calls because the COs continue to talk loudly while they are attempting to use the unit—even

after Mr. Wolfsburger and Mr. Tinsley have asked them to be quiet. The TDD picks up the extra noise and it results in garbled messages. If a deaf individual needs to make a call through a relay service during regular business hours, he must make a special request to have the portable TDD unit moved to his case worker's office.

154. Mr. Wolfsburger and Mr. Tinsley have been required to make special requests to use the portable TDD unit during business hours and have that unit moved to their case workers' offices. Hearing individuals do not have to make special appointments to use the telephones during business hours.

155. In addition, communications using a TDD take longer than voice communications, because each word must be typed by the relay operator or TDD user. As a result, it takes deaf individuals more time to have a conversation using the TDD and relay service than it does for hearing individuals to have the same conversation over a traditional telephone. When the TDD unit is in the Watch Office, deaf individuals are allowed to use it only for a short period of time. In January 2009, Mr. Wolfsburger was using the TDD unit in the Watch Office when COs slammed the table to tell him his time was up, well before he had the opportunity to finish his conversation.

iv. Voice Carry-Over Relay

156. Since Mr. Richardson is able to use his voice, he prefers using Voice Carry-Over relay ("VCO") when placing phone calls. VCO is for individuals who can speak clearly, yet have hearing loss significant enough to prevent them from hearing through a standard telephone.

157. VCO works like a regular relay service, but the deaf or hard of hearing caller speaks instead of types his message. When the hearing caller replies, a relay service provider types the caller's comments and transmits them to the deaf or hard of hearing caller's TDD unit.

158. Virginia Relay offers a VCO service to Virginians with hearing disabilities. A VCO caller uses the same 711 number used by traditional relay callers. All that is necessary to use the service is a TDD unit and a standard telephone.

159. VDOC has stated that, by policy, VCO service is not provided and has denied Mr. Richardson's request to use VCO.

v. Videophone

160. Videophones and free or low-cost internet-based video links such as Skype (collectively, "videophones") are replacing TDDs among deaf people because they allow deaf individuals to communicate with one another directly in ASL, without having to translate every statement into written English, a language in which it is difficult for them to communicate. When using a videophone, callers can see each other, usually over an Internet connection. As a result, many deaf households no longer have a TDD and have no way to accept a TDD call, as they rely exclusively on videophones for telecommunication.

161. Deaf individuals using videophones can also call a Video Relay Service ("VRS") to place calls to people who do not understand ASL or do not have a videophone. The mechanics of VRS are very similar to those of traditional TDD relay service — the caller is routed to an interpreter, the caller gives the interpreter the number of the party he is trying to reach, and the interpreter then interprets the conversation into spoken English. In VRS, however, the relay interpreter can see the caller and knows ASL.

162. Videophones and VRS permit deaf people to use ASL instead of having to carry out every phone call in written English. For deaf people who have difficulty with reading and writing English, this is a significant advantage over the traditional TDD telephone calls.

163. Deaf individuals in VDOC's custody have repeatedly requested videophone access, but have been denied videophone access as a matter of VDOC policy.

164. On information and belief, in January 2010 VDOC instituted a "Lifetime Video Link" program that enables individuals in custody to communicate with their friends and family members over a two-way video connection. VDOC has thus demonstrated the feasibility of providing this service to accommodate deaf individuals' disability, and shown that there are no insurmountable security or technological barriers to setting up videophones for deaf individuals.

165. However, VDOC charges \$15 per half hour or \$30 per hour – an extremely high sum for indigent individuals in VDOC custody – for the use of the Lifetime Video Link service. It is illegal under federal regulations for VDOC to charge deaf individuals a "surcharge" to provide them with necessary auxiliary aids, such as videophones. 28 C.F.R. § 35.130(f).

166. Mr. Tinsley requested access to a videophone so that he could communicate with his girlfriend. Mr. Tinsley's girlfriend is deaf and does not have consistent access to a TDD unit, so he cannot contact her using the TDD units in the cellblocks, even when the units are working.

167. Because Mr. Roman and Mr. More have used ASL nearly their entire lives, they prefer to communicate with family and friends through a videophone, instead of typing their messages on a TDD, as written communications are not effective for them.

168. Mr. Minnis needs to have access to a videophone to communicate with his brother and three of his friends, all of whom have access to videophones but not TDDs.

169. VDOC has denied Mr. Tinsley, Mr. Roman, Mr. More and Mr. Minnis' requests as a matter of VDOC policy.

170. VDOC's failure to provide adequate means of allowing deaf individuals to communicate with individuals outside of prison has resulted in harm, and may result in future

harm, to deaf individuals in VDOC's custody. It also violates their rights under the U.S. and Virginia Constitutions, the Americans with Disabilities Act, the Rehabilitation Act, and the Virginians with Disabilities Act.

vi. Hearing Aids and other Individual Auxiliary Devices

171. VDOC has consistently failed to provide prisoners with individual auxiliary aids that would enable them to hear prison alerts or participate in other aspects of prison life. Mr. More used a hearing aid before prison. With a hearing aid, he can understand some spoken language, and a hearing aid helps him modulate his voice enabling him to speak more clearly. He has been sent for hearing tests twice. There was no interpreter either time. Over a year ago, the prison doctor told him that they were waiting for funding for his hearing aid. Mr. More has still not received his hearing aid.

172. Mr. Richardson received a medical order for in-line amplifiers and special noise-reduction headphones, which are reasonable accommodations that would enable him to participate in prison life. However, when Mr. Richardson attempted to purchase the equipment, a non-physician in the Powhatan medical department informed him that the equipment would not be authorized by the medical department, and the warden denied his request on the grounds that "there is no medical indication for the use of these headphones; therefore, the medical department is not in the position to authorize this purchase." VDOC failed to provide Mr. Richardson with a reasonable accommodation when it prohibited him from obtaining these simple auxiliary devices, which a doctor had already determined were medically necessary.

D. Improper Assignment of Incarcerated Deaf Men to Powhatan

173. VDOC uses Institutional Assignment Criteria to place prisoners in correctional facilities throughout Virginia based on their treatment needs, their offenses of conviction and

their behavior while in prison. *See* Commonwealth of Virginia, Department of Corrections, Institutions by Security Levels, <http://www.vadoc.state.va.us/facilities/security-levels.shtm> (last visited Jan. 28, 2010). According to VDOC, the Institutional Assignment Criteria serve as “a general guideline for use by both Institutional and Central Classification staff in their efforts to make recommendations and final decisions when determining the most appropriate institutional assignments.” *Id.*

174. There are five institutional assignment levels, with Level 1 being the lowest security classification level and Level 5 being the highest security classification level.

175. Powhatan is a Level 3 facility. Individuals placed at Level 3 facilities generally have “single, multiple or life [plus] sentences” and have served twenty consecutive years in prison. *Id.* Non-deaf individuals incarcerated at Powhatan may be considered for transfer to a less-secure Level 1 or 2 facility if they have not engaged in any disruptive behavior for twenty-four months and meet the other criteria for placement. *Id.*

176. In contrast, Level 1 facilities are reserved for individuals who have less serious convictions, are not escape risks, and are not disruptive. *Id.* Level 1 facilities are divided into Level 1-Low and Level 1-High groups. *Id.* Individuals convicted of murder I or II, robbery, sex-related crimes, kidnapping, carjacking, felonious assault or malicious wounding are not eligible for placement in Virginia’s four Level 1-Low security facilities. *Id.* Thus, there is generally a significant difference between the offenses and behavior records of an individual in custody assigned to Level 1-Low and one assigned to Level 3.

177. VDOC does not apply its standard classification process to deaf and hard of hearing individuals in its custody. Instead, on information and belief, VDOC has a policy of

assigning deaf men under VDOC's custody to Powhatan, regardless of the nature of their conviction or their prior behavior.

178. Mr. Wolfsburger, Mr. Tinsley, Mr. Richardson, Mr. Roman, Mr. Minnis and Mr. More are all incarcerated at Powhatan.

179. On information and belief, but for his disability, Mr. Wolfsburger would be designated as Class Level 1.

180. On information and belief, but for his disability, Mr. Tinsley would be designated as Class Level 1.

181. On information and belief, but for his disability, Mr. More would be designated as Class Level 1.

182. On information and belief, but for his disability, Mr. Minnis would be designated Class Level 1.

183. VDOC's policy of assigning all male deaf individuals in its custody to Powhatan has resulted in harm, and may result in future harm, to deaf individuals in VDOC's custody. It also violates their rights under the U.S. and Virginia Constitutions, the Americans with Disabilities Act, the Rehabilitation Act, and the Virginians with Disabilities Act.

VI. CLASS ACTION ALLEGATIONS

184. Plaintiffs Wolfsburger, Tinsley, Richardson, Roman, Minnis, and More bring claims based on the ADA, the Rehabilitation Act, the Virginians with Disabilities Act, the Code of Virginia, the Religious Land Use and Institutionalized Persons Act of 2000, the Virginia Constitution, and the United States Constitution on behalf of themselves and all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

185. Plaintiffs seek to represent a class composed of all current and future deaf and hard of hearing individuals incarcerated by VDOC who primarily rely on American Sign Language for in-person communications and/or require auxiliary aids and services to hear or understand telephone communications or loudspeaker system announcements or alarms, and who have been denied effective communication due to lack of qualified sign language interpreters or other auxiliary aids and services, for any programs, services or privileges offered or available to individuals incarcerated by the Virginia Department of Corrections (hereinafter "Class"). As a result of their confinement in VDOC custody, members of the Class have been, are, and will be subjected to violations of their statutory and constitutional rights, as described in this Complaint. Plaintiffs represent a class of persons seeking declaratory and injunctive relief to eliminate Defendants' unlawful and unconstitutional policies and practices. Plaintiffs also seek compensatory damages and attorney fees, where appropriate.

186. There are currently at least fifteen to twenty deaf or hard of hearing individuals incarcerated at Powhatan who rely primarily on American Sign Language for in-person communication and/or require auxiliary aids and services to hear or understand telephone communications or loudspeaker system announcements or alarms, and an unknown number of deaf or hard of hearing individuals in other correctional centers within the Virginia correctional system. The proposed Class is so numerous, and membership so fluid, that joinder of all members is impracticable.

187. All Class members are equally subject to the conditions described in this Complaint, and numerous common questions of law and fact exist as to all Class members. These common questions include, but are not limited to: whether Defendants systemically fail to provide effective communication and adequate access to sign language interpreters and other

auxiliary aids and services to individuals who are deaf or hard of hearing; whether Defendants' conduct has resulted in harm, and may result in serious future harm, to deaf or hard of hearing individuals by denying them effective communication with medical personnel; whether Defendants VDOC, VC Education, VC Enterprises, and their named employees sued in their official capacities systematically fail to provide individuals who are deaf or hard of hearing with access to VDOC's services, programs, or privileges comparable to access provided to hearing individuals in VDOC's custody; whether Defendants VDOC and its named employees sued in their official capacities impose a substantial burden on deaf individuals' religious exercise; whether VDOC and its named employees sued in their official capacities fail to provide notification of prison announcements to deaf and hard of hearing individuals in a manner comparable to that provided to hearing individuals; whether VDOC and its named employees sued in their individual capacities provide inadequate means of allowing deaf or hard of hearing individuals to communicate with individuals outside of prison; and whether VDOC and its named employees sued in their official capacities have improperly and in a discriminatory manner assigned deaf or hard of hearing individuals to Powhatan.

188. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs are deaf or hard of hearing individuals incarcerated in a VDOC facility who primarily rely on American Sign Language for in-person communication and/or require auxiliary aids and services to hear or understand telephone communications or loudspeaker system announcements or alarms, and who have been denied effective communication due to lack of qualified sign language interpreters or other auxiliary aids and services, for any programs, services or privileges offered or available to individuals incarcerated by the Virginia Department of Corrections. The policies and practices described in this Complaint apply equally to the named Plaintiffs and to all the other members of

the Class, and the injuries suffered by the named Plaintiffs stem from the same policies and practices that affect all members of the Class.

189. Plaintiffs and Plaintiffs' counsel will fairly and adequately represent the interests of the Class. Plaintiffs' interests are consistent with, and are not antagonistic to, the interests of the Class as a whole, and Plaintiffs seek no relief other than the relief sought on behalf of the Class. Plaintiffs' counsel are experienced in the protection and enforcement of the statutory and constitutional rights of incarcerated individuals, especially deaf individuals.

190. The prosecution of separate actions by individual members of the class would create the risk of establishing incompatible standards of conduct for the party opposing the Class and/or would create the risk of substantially impairing or impeding the ability of individuals not parties to the adjudication from protecting their interests.

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

VII. CLAIMS FOR RELIEF

A. COUNT I

Discrimination on the Basis of a Disability in Violation of the Americans with Disabilities Act (42 U.S.C. § 12131 et seq.)

192. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

193. On July 12, 1990, Congress enacted the ADA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," 42 U.S.C. § 12101(b)(1). Title II of the ADA states that "no qualified individual

with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

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

195. The claims under the ADA are brought only against Gene Johnson, Fred Schilling, Robin Hulbert, G.K. Washington, Lois Fegan, Donald Guillory, Walter A. McFarlane, Sharon Trimmer, Sheldon Retchin, John Duval, Deborah Davis, Amanda Dodd, Velma Seymour, Eddie Pearson, P.C. Hunnel, Sandra Parker, Ronald Toney, K. Watson, and B. Morris (“named defendants”), and only in their official capacities.

196. As departments, agencies, or instrumentalities of the Commonwealth of Virginia, VDOC, VC Enterprises, VC Education, VCUHS, MCV, and any of their departments or agencies, including Powhatan, are “public entities” within the meaning of 42 U.S.C. § 12131(1)(B).

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

198. The U.S. Department of Justice (“DOJ”) regulation implementing Title II of the ADA clearly requires the provision of effective communication as part of its nondiscrimination mandate. 28 C.F.R. 35.160.

199. The regulation states that “[a] public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a).

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

201. Plaintiffs have been unable to communicate with medical personnel, participate in educational and mental health programs, learn of daily-life and safety alert notifications, and communicate with individuals outside of prison as effectively as hearing individuals in VDOC's custody.

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

203. Auxiliary aids include, but are not limited to, "qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments," 42 U.S.C. § 12103, such as computer-aided transcription services, assistive listening systems, closed caption decoders, open and close captioning, TDD's, videotext displays, and written materials. 28 C.F.R. § 35.104

204. In addition, "[a] public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part." 28 C.F.R. § 35.130(f).

205. Named defendants subjected Plaintiffs to discrimination solely on the basis of their disability, in violation of their rights under the ADA. They have done this by failing to provide effective communication, and by not ensuring that adequate access to qualified sign language interpreter services and other auxiliary aids and services is made available to individuals with hearing impairments in VDOC's custody. Gene Johnson, Fred Schilling, Robin Hulbert, G.K. Washington, Lois Fegan, Donald Guillory, Walter A. McFarlane, Sharon Trimmer, Eddie Pearson, P.C. Hunnel, Sandra Parker, Ronald Toney, K. Watson, and B. Morris ("VDOC named defendants") have also done this by imposing a heavy surcharge for the use of videophones, which are an auxiliary aid required to provide deaf individuals with the nondiscriminatory treatment required under the ADA.

206. In determining what type of auxiliary aid and service is necessary, "a public entity shall give primary consideration to the requests of the individual with disabilities." 28 C.F.R. § 160(b)(2).

207. VDOC named defendants have failed to give consideration to Plaintiffs' requests, denying them their requests for an alternative notification system and use of VCO and videophones to communicate with individuals outside of prison.

208. On information and belief, the failure to provide effective communication and the failure to provide comparable access to services, benefits, activities, programs, or privileges are policies, regular practices, and/or customs of named defendants. These failures are ongoing and continue to this date.

209. Named defendants' failure to provide sign language interpreters and/or appropriate auxiliary aids and services has subjected Plaintiffs to discrimination on the basis of

their disability in violation of their rights under the ADA, in ways that include, but are not limited to, the following:

- a. inadequate access to sign language interpreters;
- b. inadequate access to prison alerts;
- c. inadequate access to communication devices; and
- d. improper assignment of deaf men under VDOC's custody to Powhatan.

210. Further, VDOC named defendants discriminate against Plaintiffs, solely on the basis of their disability, by refusing to apply VDOC's standard classification process to deaf and hard of hearing men in its custody and instead, assigning all deaf men in VDOC custody to Powhatan, regardless of the nature of their conviction or their prior behavior while incarcerated.

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

212. Named defendants' failure to comply with the ADA has resulted, and will continue to result, in harm to Plaintiffs, as Plaintiffs will continue to be in the custody or under the supervision of VDOC and will continue to attempt to use or avail themselves of the services, benefits, activities, programs, and privileges of the named defendants' state agency employers. This harm will continue unless and until the named defendants are ordered by this Court to make modifications to the policies, practices, and procedures of their respective state agencies pursuant to the ADA.

B. COUNT II

**Discrimination on the Basis of a Disability in Violation of the Rehabilitation Act
(29 U.S.C. § 794 et seq.)**

213. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

214. The purpose of the Rehabilitation Act is to ensure that no “qualified individual with a disability in the United States . . . shall, solely by reason of [] disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a).

215. Plaintiffs are qualified individuals with a disability within the meaning of the Rehabilitation Act, 29 U.S.C. § 705(20).

216. Defendants and State Agency Defendants receive Federal financial assistance within the meaning of 29 U.S.C. § 794(a).

217. The operations of VDOC, VC Enterprises, VE Education VCUHS, MCV, and their departments, agencies, and instrumentalities, including Powhatan, are “program[s] or activit[ies]” within the meaning of 29 U.S.C. § 794(b)(1)(A)-(B) and/or (b)(2)(B).

218. At all times relevant to this action, the Rehabilitation Act was in full force and effect in the United States and Plaintiffs had a right not to be subjected to discrimination on the basis of their disability by Defendants. 29 U.S.C. § 794(a).

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

220. Appropriate auxiliary aids include, but are not limited to, “brailled and taped material, qualified interpreters, readers, and telephonic devices.” 28 C.F.R. § 42.503(f).

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

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

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

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

- a. inadequate access to sign language interpreters;
- b. inadequate access to prison alerts;
- c. inadequate access to communication devices; and
- d. improper assignment of deaf men under VDOC’s custody to Powhatan.

225. Further, VDOC named defendants discriminate against Plaintiffs, solely on the basis of their disability, by refusing to apply VDOC's standard classification process to deaf and hard of hearing men in its custody and instead, assigning all deaf men in its custody to Powhatan, regardless of the nature of their conviction or their prior behavior while incarcerated.

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

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

C. COUNT III

**Violation of the Virginians with Disabilities Act
(Code of Virginia § 51.5-40)**

228. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

229. The Virginians with Disabilities Act requires that no “qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state financial assistance or under any program or activity conducted by or on behalf of any state agency.” Code of Virginia. § 51.5-40.

230. Plaintiffs are qualified individuals with a disability within the meaning of the Code of Virginia § 51.5-40.

231. VDOC, VC Enterprises, VC Education, VCUHS, MCV, and Powhatan receive state financial assistance within the meaning of the Code of Virginia, § 51.5-40.

232. The operations of Defendants and their departments, agencies, and instrumentalities are “program[s] or activit[ies]” within the meaning of Code of Virginia. § 51.5-40.

233. At all times relevant to this action, the Virginians with Disabilities Act was in full force and effect in the United States and Plaintiffs had a right not to be subjected to discrimination on the basis of their disability by Defendants. Code of Virginia § 51.5-40.

234. Defendants, acting under color of Virginia law, subjected Plaintiffs to discrimination solely on the basis of their disability, in violation of their rights under the Virginians with Disabilities Act. They have done this by failing to provide effective communication and adequate access to qualified sign language interpreters and other auxiliary aids and services.

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

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

237. Defendants' failure to provide effective communication and appropriate auxiliary aids and services has subjected Plaintiffs to discrimination on the basis of their disabilities in violation of their rights under the Virginians with Disabilities Act, in ways that include, but are not limited to, the following:

- e. inadequate access to sign language interpreters;
- a. inadequate access to prison alerts;
- b. inadequate access to communication devices; and
- c. improper assignment of deaf men under VDOC's custody to Powhatan.

238. Further, VDOC discriminates against Plaintiffs, solely on the basis of their disability, by refusing to apply its standard classification process to deaf and hard of hearing men in its custody and instead, assigning all deaf men in its custody to Powhatan, regardless of the nature of their conviction or their prior behavior while incarcerated.

239. As a proximate result of Defendants' violations of Plaintiffs' rights under the Virginians with Disabilities Act, Plaintiffs have suffered and continue to suffer from discrimination, unequal treatment, exclusion (including exclusion from Defendants' services, benefits, activities, programs, and requirements), violations of their rights under the laws of the Commonwealth of Virginia, financial loss, loss of dignity, frustration, humiliation, emotional

pain and suffering, anxiety, trauma, embarrassment, unnecessary loss of rights and privileges, including unnecessary disciplinary measures, and injury to their health.

240. Defendants' failure to comply with the Virginians with Disabilities Act has resulted in harm to Plaintiffs, and Defendants are liable to Plaintiffs for harms suffered. Defendants' failure to comply with the Virginians with Disabilities Act will continue to result in harm to Plaintiffs, as Plaintiffs will continue to be in the custody or supervision of VDOC and will continue to attempt to use or avail themselves of the services, benefits, activities, programs and privileges of Defendants. This harm will continue unless and until Defendants are ordered by this Court to make modifications to their policies, practices and procedures pursuant to the Virginians with Disabilities Act.

D. COUNT IV

Violation of Code of Virginia § 2.2-3401

241. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

242. The Code of Virginia requires that "[w]henver a deaf person applies for or receives any license, service, assistance or other right or benefit provided by a[] [state] agency, the agency shall either request the Virginia Department for the Deaf and Hard-of-Hearing to appoint a qualified interpreter for the deaf or appoint such an interpreter from the list of qualified interpreters maintained by the Department to assist the deaf person in communicating with agency personnel." Code of Virginia, § 2.2-3401(B).

243. VDOC, VC Enterprises, VC Education, VCUHS, MCV and Powhatan are state agencies that provide services, assistance, and benefits to the Plaintiffs within the meaning of Code of Virginia § 2.2-3400. These services, assistance, and benefits including but not limited

to classes and programs offered by VDOC, VC Education and VC Enterprises, medical services offered by VDOC, VCUHS and MCV, religious services, means of external communications, and communication with agency personnel.

244. Plaintiffs have requested services, assistance, and benefits from Defendants, including but not limited to, the services, assistance, and benefits alleged above and have requested that interpreters be provided.

245. Defendants, through their policies and practices, consistently fail to provide adequate access to sign language interpreters for deaf individuals in VDOC's custody and control, in violation of Code of Virginia § 2.2-3401.

246. Defendants' failure to comply with the Code of Virginia has resulted in harm to Plaintiffs, and Defendants are liable to Plaintiffs for harms suffered. Defendants' failure to comply with the Code of Virginia will continue to result in harm to Plaintiffs, as Plaintiffs will continue to be in the custody or supervision of VDOC and will continue to attempt to use or avail themselves of the services, benefits, activities, programs, and privileges of Defendants. This harm will continue unless and until Defendants are ordered by this Court to make modifications to their policies, practices, and procedures pursuant to the Code of Virginia.

E. COUNT V

**Violation of the Religious Land Use and Institutionalized Persons Act of 2000
"Substantial Burden on Religious Exercise"
(42 U.S.C. § 2000cc et seq.)**

247. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

248. Governments may not impose substantial burdens on the religious exercises of institutionalized persons even if the burden results from a rule of general applicability. 42 U.S.C. § 2000cc-1(a).

249. Plaintiffs are “institutionalized persons” within the meaning of The Religious Land Use and Institutionalized Persons Act of 2000. 42 U.S.C. § 2000cc-1.

250. As a department, agency, or instrumentality of the Commonwealth of Virginia, VDOC is a government within the meaning of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). 42 U.S.C. § 2000cc-5(4).

251. The claims under RLUIPA are brought only against Gene Johnson, G.K. Washington, and B. Morris (“VDOC RLUIPA defendants”), and only in their official capacities as employees of VDOC.

252. The VDOC RLUIPA defendants have deprived and continues to deprive Plaintiffs of their right to the free exercise of religion, as secured by RLUIPA, by unlawfully imposing a substantial burden on Plaintiff’s religious exercise. They have done this by failing to provide interpreters or other means for enabling plaintiff’s to effectively communicate at weekly worship services. The substantial burden VDOC RLUIPA defendants have imposed on Plaintiff’s religious exercise affects programs or activities that receive Federal financial assistance.

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

F. COUNT VI

**Violation of the United States Constitution
Freedom of Speech and Free Exercise of Religion: First and Fourteenth Amendments
(42 U.S.C. § 1983)**

254. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

255. Under the First and Fourteenth Amendments of the United States Constitution, States “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I.

256. VDOC named defendants have, in their individual capacities, deprived and continue to deprive Plaintiffs of their free exercise of religion and freedom of speech, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by discriminating against Plaintiffs because of their mode of speech and by substantially burdening their religious exercise.

257. VDOC named defendants’ failure to comply with the First and Fourteenth Amendments of the United States Constitution has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of VDOC and continue to attempt to participate in weekly worship services unless and until VDOC is ordered by this Court to make modifications to its policies, practices, and procedures pursuant to the First and Fourteenth Amendments of the United States Constitution.

G. COUNT VII

**Violation of the Constitution of Virginia
Free Exercise of Religion: Constitution of Virginia Article I, Section 16**

258. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

259. Under the Article I, Section 16 of the constitution of Virginia, “all men are equally entitled to the free exercise of religion” and “no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief.” Va. Const. art. I § 16.

260. VDOC named defendants have failed to provide interpreters or other means for the Plaintiffs to participate in weekly religious services at Powhatan. Plaintiffs must rely on volunteer interpreters who come once or twice a month to participate in these services.

261. VDOC named defendants have deprived and continue to deprive Plaintiffs of their rights to free exercise of religion, as secured by Article I, Section 16 of the Constitution of Virginia, by discriminating against Plaintiffs because of their speech and by substantially burdening their religious exercise.

262. VDOC named defendants’ failure to comply with Article I, Section 16 of the Constitution of Virginia has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of VDOC and continue to attempt to participate in weekly worship services unless and until VDOC named defendants are ordered by this Court to make modifications to their policies, practices, and procedures pursuant to Article I, Section 16 of the Constitution of Virginia.

H. COUNT VIII

Violation of the Constitution of Virginia Freedom of Speech: Constitution of Virginia Article I, Section 12

263. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

264. Under the Article I, Section 12 of the constitution of Virginia, “any citizen may freely speak, write, and publish his sentiments on all subjects.” Va. Const. art. I § 12.

265. Defendants have deprived and continue to deprive Plaintiffs of their rights to freedom of speech, as secured by Article I, Section 12 of the Constitution of Virginia. They have done this by failing to provide the plaintiffs with a means to effectively communicate.

266. Defendants’ failure to comply with Article I, Section 12 of the Constitution of Virginia has resulted in harm to Plaintiffs, and Defendants are liable to Plaintiff’s for harms suffered. Defendants’ failure to comply with Article I, Section 12 of the Constitution of Virginia will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of VDOC and continue to attempt to effectively communicate and avail themselves of medical treatment and other services unless and until Defendants are ordered by this Court to make modifications to their policies, practices, and procedures pursuant to Article I, Section 12 of the Constitution of Virginia.

I. COUNT IX

Violation of the United States Constitution Freedom from Cruel and Unusual Punishment: Eighth and Fourteenth Amendments (42 U.S.C. § 1983)

267. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

268. Under the Eighth and Fourteenth Amendments of the United States Constitution, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII.

269. VDOC named defendants have, in their individual capacities, deprived and continue to deprive Plaintiffs of their right to be free from cruel and unusual punishment as

secured by the Eighth Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment.

270. VDOC named defendants have systematically denied Plaintiffs access to basic human services and vital information during their incarceration in Powhatan. VDOC named defendants have failed to notify Plaintiffs of prison alerts, announcements, and safety instructions. Moreover, VDOC named defendants have not provided effective communication between Plaintiffs and prison officials and the medical staff at VDOC and MCV. VDOC named defendants' actions place Plaintiffs at a substantial risk of serious future harm.

271. VDOC named defendants have actual knowledge of the unconstitutional conditions to which Plaintiffs were, and continue to be, subject, as Plaintiffs have submitted numerous written complaints to VDOC staff requesting that sign language interpreters and other auxiliary aids and services be made available to them and that an alternative notification system be installed.

272. Despite VDOC named defendants' actual knowledge of the substantial medical and safety risks Plaintiffs face while in their custody, they continue to disregard Plaintiffs' medical and other needs in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

273. VDOC named defendants' failure to comply with the Eighth and Fourteenth Amendments of the United States Constitution has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of VDOC and continue to attempt to avail themselves of medical treatment and other services unless and until VDOC named defendants are ordered by this Court to make modifications to their policies,

practices and procedures pursuant to Eighth and Fourteenth Amendments of the United States Constitution.

J. COUNT X

**Violation of the United States Constitution
Equal Protection: Fourteenth Amendment
(42 U.S.C. § 1983)**

274. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

275. Under the Fourteenth Amendment of the United States Constitution, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

276. VDOC named defendants have, in their individual capacities, deprived and continue to deprive Plaintiffs of their rights to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against Plaintiff in their application of the laws of the Commonwealth of Virginia.

277. VDOC named defendants’ failure to comply with the Fourteenth Amendment of the United States Constitution has resulted in harm to Plaintiffs, and VDOC named defendants are liable to Plaintiffs for harms suffered. Defendants’ failure to comply with the Fourteenth Amendment of the United States Constitution will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of VDOC and continue to attempt to avail themselves of religious services, medical treatment, educational courses, and other services and programs that are available to other incarcerated people unless and until Defendants are ordered by this Court

to make modifications to their policies, practices and procedures pursuant Fourteenth Amendment of the United States Constitution.

K. COUNT XI

**Violation of the Constitution of Virginia
Equal Protection: Article I, Section 11**

278. Plaintiffs reallege and incorporate by reference each and every allegation above as if fully set forth herein.

279. Under Article I, Section 11 of the Constitution of Virginia, citizens have “the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.” Va. Const. art. I § 11.

280. VDOC named defendants have deprived and continue to deprive Plaintiffs of their rights to equal protection of the laws, as secured by Article I, Section 11 of the Constitution of Virginia, by discriminating against Plaintiff in their application of the laws of the Commonwealth of Virginia.

281. VDOC named defendants’ failure to comply with Article I, Section 11 of the Constitution of Virginia has resulted in harm to Plaintiffs, and will continue to result in harm to Plaintiffs, as Plaintiffs will remain in the custody of VDOC and continue to attempt to avail themselves of religious services, medical treatment, educational courses, and other services and programs that are available to other incarcerated people unless and until VDOC named defendants are ordered by this Court to make modifications to their policies, practices and procedures pursuant to Article I, Section 12 of the Constitution of Virginia.

VIII. PRAYER FOR RELIEF

282. WHEREFORE, Plaintiffs respectfully request that:

283. The Court determine that this action may proceed as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3);

284. The Court appoint the undersigned as class counsel pursuant to Federal Rule of Civil Procedure 23(g);

285. The Court adjudge and decree that Defendants, by the organizations, systems, policies, practices, and conditions described above, have violated and continue to violate Title II of the ADA, Section 504 of the Rehabilitation Act, the Virginians with Disabilities Act, section 2.2-3401 of the Code of Virginia, the Religious Land Use and Institutionalized Persons Act, and the Constitutions of the United States and the Commonwealth of Virginia;

286. The Court enter such declaratory and injunctive relief against Defendants and in favor of Plaintiffs and the Class as it deems appropriate to remedy past violations of the laws of the United States and the Commonwealth of Virginia and to prevent future violations of the same;

287. Judgment be entered against Defendant in favor of Plaintiffs and the Class for such compensatory damages as suffered by Plaintiffs under Section 504 of the Rehabilitation Act and Code of Va. § 51.5-40 and -46 and 42 U.S.C. § 1983 in an amount to be determined at trial;

288. Judgment be entered against Defendant in favor of Plaintiffs and the Class for the costs of litigation including reasonable attorneys' fees under Code of Va. § 51.5-46,

289. The Court retain jurisdiction of this matter until Defendants demonstrate that they have fully complied with the orders of this Court, and that there is a reasonable assurance that Defendants will continue to comply in the future absent continuing jurisdiction; and

290. The Court award Plaintiffs and the Class any further relief the Court deems appropriate.

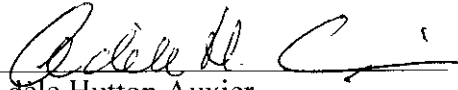
IX. JURY TRIAL DEMAND

291. Plaintiffs, by their counsel and pursuant to Federal Rule of Civil Procedure 38(b), hereby demands a trial by jury on all claims so triable in this action.

DATED this 29th day of January, 2010.

Plaintiffs,

By their attorneys,


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