

 COPY

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

DAVID D. VANVALKENBURG,

Plaintiff,

v.

OREGON DEPARTMENT OF  
CORRECTIONS, a state agency,

Defendant.

Case No. **140505831**

**COMPLAINT**

**Disability Discrimination**  
**(42 USC § 12112; ORS 659A.142)**

**Unjust Enrichment/Quantum Meruit**

**Amount of Claim: \$460,000**  
**Fee Authority: Or Laws 2012, ch. 48,**  
**sec. 2; ORS 21.160(1)(c)**

**Claim More Than \$50,000; Not Subject**  
**To Mandatory Arbitration**

**JURY TRIAL DEMANDED**

Plaintiff alleges:

INTRODUCTION

1.

Plaintiff David D. VanValkenburg is a deaf individual who has been an inmate incarcerated at correctional institutions managed by defendant Oregon Department of Corrections since 2000. During Mr. VanValkenburg's fourteen years within the Oregon correctional system, defendant has continually and systematically failed to provide Mr. VanValkenburg with an interpreter of any kind and did not engage in effective communication with Mr. Van Valkenburg. Specifically, defendant failed to provide effective communication

1 during intake interviews and new inmate orientations, educational classes and training, other  
 2 classes and programs offered, and in confidential settings such as medical, dental, religious  
 3 services and counseling meetings. Instead, defendant required Mr. VanValkenburg to train  
 4 inmates to act as interpreters for him, who were unqualified and failed to keep Mr.  
 5 VanValkenburg's information confidential. Defendant's ongoing conduct violates the Americans  
 6 with Disabilities Act as Amended and Oregon disability discrimination law and constitutes a  
 7 pattern and practice of discrimination and a disability-based environment of hostility that started  
 8 in 2000 and continues to this day.

#### 9 PARTIES

10 2.

11 At all times mentioned herein, plaintiff David VanValkenburg, an individual, was an  
 12 inmate within the Oregon Department of Corrections correctional system, and was housed at the  
 13 the following facilities: Oregon State Penitentiary ("OSP"), Oregon State Correctional  
 14 Institution ("OSCI"), Snake River Correctional Institution ("SRCI"), Santiam Correctional  
 15 Institution ("SCI") and Columbia River Correctional Institution ("CRCI").

16 3.

17 At all times mentioned herein, defendant Oregon Department of Corrections  
 18 ("Defendant") was and is a state agency charged with managing the correctional institutions  
 19 within the State of Oregon, including OSP, OSCI, SRCI, SCI and CRCI. Defendant is  
 20 responsible for ensuring that all of its facilities and systems, including its correctional facilities  
 21 and the employees and agents of those correctional facilities, comply with state and federal  
 22 disability laws.

#### 23 VENUE

24 4.

25 Defendant has an office for the transaction of business in Multnomah County and  
 26 conducts regular, sustained business activity in Multnomah County. Defendant operates a prison

1 in Multnomah County, CRCI, where Plaintiff currently resides.

2 FACTS

3 **Mr. VanValkenburg**

4 5.

5 At all material times, Mr. VanValkenburg is deaf.

6 6.

7 Mr. VanValkenburg's deafness substantially limits one or more of his major life  
8 activities, including but not limited to his ability to hear and to effectively communicate with  
9 hearing individuals.

10 7.

11 Mr. VanValkenburg's primary form of language and communication is American Sign  
12 Language ("ASL").

13 8.

14 Mr. VanValkenburg also has some limited communication skills with the English  
15 language through written notes. When Mr. VanValkenburg communicates in writing, it is  
16 significantly slower and less effective than ASL.

17 **Oregon State Penitentiary (OSP)**

18 9.

19 On or about November 2000 through December 2000, Mr. VanValkenburg was housed at  
20 OSP for processing.

21 10.

22 Defendant's personnel at OSP knew that Mr. VanValkenburg was deaf and did not  
23 inquire what auxiliary aids would assist Mr. VanValkenburg while at OSP.

24 11.

25 Defendant did not provide an interpreter for Mr. VanValkenburg during intake,  
26 orientation or processing while Mr. VanValkenburg was at OSP.

12.

Mr. VanValkenburg was not able to understand any part of the orientation or effectively communicate with defendant while at OSP.

13.

Mr. VanValkenburg requested interpretive services at OSP, and defendant denied the requests.

14.

All inmates must have a counselor assessment upon intake and processing when they first come into defendant's custody.

15.

Mr. VanValkenburg requested qualified interpretive services for his counselor assessment at OSP; however, his request was denied.

16.

Mr. VanValkenburg did not understand defendant's counselor and defendant's counselor was not able to properly assess Mr. VanValkenburg in the same manner as non-disabled inmates.

17.

Defendant conducts an initial medical exam on all inmates when they first come into defendant's custody.

18.

Mr. VanValkenburg again asked for qualified interpretive services for his medical exam at OSP; however, none were provided.

19.

Mr. VanValkenburg did not understand defendant's medical personnel and defendant's medical personnel were not able to properly assess Mr. VanValkenburg in the same manner as non-disabled inmates.

1 20.

2 At no time while at OSP did Mr. VanValkenburg receive an interpreter of any kind. Any  
3 and all of Mr. VanValkenburg's requests for an interpreter at OSP were denied.

4 **Oregon State Correctional Institution (OSCI)**

5 21.

6 From on or about December 2000 through on or about July 2001, Mr. VanValkenburg  
7 was housed at OSCI.

8 22.

9 Program counselors at OSCI conduct intake interviews and conduct an orientation for all  
10 new inmates at OSCI.

11 23.

12 Despite Mr. VanValkenburg's requests for interpretive services, defendant failed to  
13 provide Mr. VanValkenburg an interpreter of any kind and did not engage in effective  
14 communication with Mr. VanValkenburg during the intake interviews or new inmate orientation  
15 at OSCI.

16 24.

17 At all material times, defendant offered medical services, dental services, and religious  
18 services for all inmates at OSCI.

19 25.

20 Despite the confidential nature of those services and despite requests from Mr.  
21 VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind  
22 for those services and did not engage in effective communication with Mr. VanValkenburg.

23 26.

24 At all material times, defendant offered inmates at OSCI program counseling as part of  
25 its offender management and rehabilitation program. Part of the purpose of that program is to  
26 reduce recidivism and assist inmates' rehabilitation.

1 27.

2 Despite the confidential nature of program counseling services and despite requests from  
3 Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any  
4 kind for those services and did not engage in effective communication with Mr. VanValkenburg  
5 during any meetings with his program counselor.

6 28.

7 At all material times, defendant offered inmates at OSCI education, training, classes, and  
8 other programs, including the opportunity to work. Part of the purpose of those programs is to  
9 prepare inmates to successfully re-enter society with practical skills and viable work ethic.

10 29.

11 Defendant failed to provide Mr. VanValkenburg with an interpreter of any kind for the  
12 education, training, classes, and other programs offered at OSCI and did not engage in effective  
13 communication with Mr. VanValkenburg as part of offering these programs or services.

14 30.

15 Despite requests from Mr. VanValkenburg, defendant did not provide Mr.  
16 VanValkenburg with an interpreter of any kind while at OSCI and did not engage in effective  
17 communication with Mr. VanValkenburg. At no time while at OSCI did defendant provide Mr.  
18 VanValkenburg with an interpreter of any kind. Any and all of Mr. VanValkenburg's requests  
19 for an interpreter at OSCI were denied.

20 **Snake River Correctional Institution (SRCI)**

21 31.

22 From on or about July 2001 through May 2012, Mr. VanValkenburg was housed at  
23 SRCI.

24 32.

25 At all material times, program counselors at SRCI conducted intake interviews and  
26 orientations for all new inmates.

1 33.

2 Defendant failed to provide Mr. VanValkenburg an interpreter of any kind and did not  
3 engage in effective communication with Mr. VanValkenburg during the intake interviews or new  
4 inmate orientation at SRCI.

5 34.

6 At all material times, defendant offered inmates medical services, dental services, and  
7 religious services at SRCI.

8 35.

9 Despite the confidential nature of those services and despite requests from Mr.  
10 VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind  
11 for those services and did not engage in effective communication with Mr. VanValkenburg while  
12 at SRCI.

13 36.

14 At all material times, defendant offered inmates at SRCI program counseling as part of its  
15 offender management and rehabilitation program. Part of the purpose of that program is to  
16 reduce recidivism and assist inmates' rehabilitation.

17 37.

18 Despite the confidential nature of those counseling services and despite requests from  
19 Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any  
20 kind for those services and did not engage in effective communication with Mr. VanValkenburg.

21 38.

22 At SRCI, defendant offered inmates education and training, including the opportunity to  
23 work, as well as the opportunity to attend other classes and programs. Part of the purpose of  
24 these programs is to prepare inmates to successfully re-enter society with practical skills and  
25 viable work ethic.

26 :::

39.

Defendant failed to provide Mr. VanValkenburg with an interpreter of any kind for the education, training, classes, and other programs offered at OSCJ and did not engage in effective communication with Mr. VanValkenburg as part of offering these programs or services.

40.

Despite requests from Mr. VanValkenburg, at no time while at SRCJ did defendant provide Mr. VanValkenburg with a qualified interpreter.

41.

If Mr. VanValkenburg and defendant needed to communicate while at SRCJ, defendant required Mr. VanValkenburg to use non-confidential, untrained and primarily unqualified inmates as interpreters, including known gang members. If no available inmates knew ASL, defendant required Mr. VanValkenburg to teach inmates ASL so that defendant and Mr. VanValkenburg could communicate. However, when an inmate interpreter was transferred, discharged or disciplined, (e.g., sent to "the hole,") Mr. VanValkenburg had to start training a new inmate so that he could have a chance at even limited communication with defendant.

42.

Defendant's failure to provide qualified interpreter and, specifically, Defendant's practice of using inmate interpreters, caused Mr. VanValkenburg to be disciplined. When Mr. VanValkenburg challenged his discipline, and objected to defendant's use of the inmate interpreter as part of the discipline process, defendant still used the unqualified inmate interpreter as part of the discipline process. Ultimately, Mr. VanValkenburg was sent to solitary confinement. Had qualified, confidential interpreters been provided during the discipline process, and during the occurrences giving rise to the discipline process, Mr. VanValkenburg would not have been disciplined.

...

...

1 43.

2 After nearly ten years of working to train his own interpreters at SRCI for free, defendant  
3 paid Mr. VanValkenburg to train his own unqualified, inmate interpreters so that Mr.  
4 VanValkenburg and defendant could communicate from on or about 2011 through on or about  
5 May 2012.

6 **Santiam Correctional Institution (SCI)**

7 44.

8 From on or about May 2012 through on or about January 2014, Mr. VanValkenburg was  
9 housed at SCI. Program counselors at SCI conducted intake interviews and orientations for all  
10 new inmates.

11 45.

12 Defendant failed to provide Mr. VanValkenburg an interpreter of any kind and did not  
13 engage in effective communication with Mr. VanValkenburg during the intake interviews or new  
14 inmate orientation at SCI.

15 46.

16 At all material times, defendant offered medical services, dental services and religious  
17 services at SCI.

18 47.

19 Despite the confidential nature of those services and despite requests from Mr.  
20 VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any kind  
21 for those services and did not engage in effective communication with Mr. VanValkenburg while  
22 at SCI.

23 48.

24 At all material times, defendant offered inmates at SCI program counseling as part of its  
25 offender management and rehabilitation program. Part of the purpose of that program is to  
26 reduce recidivism and assist inmates' rehabilitation.

1 49.

2 Despite the confidential nature of those counseling services and despite requests from  
3 Mr. VanValkenburg, defendant did not provide Mr. VanValkenburg with an interpreter of any  
4 kind for those services and did not engage in effective communication with Mr. VanValkenburg.

5 50.

6 At SCI, defendant offered inmates education and training, including the opportunity to  
7 work, as well as the opportunity to attend other classes and programs. Part of the purpose of  
8 those programs is to prepare inmates to successfully re-enter society with practical skills and  
9 viable work ethic.

10 51.

11 Despite requests from Mr. VanValkenburg, at no time while at SCI did defendant provide  
12 Mr. VanValkenburg with a qualified interpreter.

13 52.

14 Defendant told Mr. VanValkenburg that, if he wanted to communicate with defendant via  
15 ASL, Mr. VanValkenburg had to teach another inmate ASL.

16 53.

17 Mr. VanValkenburg taught several inmates limited ASL while at SCI, but none could  
18 provide effective communication.

19 54.

20 Furthermore, although defendant required Mr. VanValkenburg to train other inmates to  
21 act as his interpreter, unlike at SRCI, defendant would not pay Mr. VanValkenburg for his time  
22 in training those interpreters because, according to defendant, there was not "a documented need"  
23 for such communication.

24 55.

25 Frustrated with defendant's continued refusal to make any attempt whatsoever to  
26 accommodate him for over twelve years, on June 3, 2013, Mr. VanValkenburg filed an inmate

1 discrimination complaint with defendant.

2 56.

3 The June 3, 2013 complaint referenced that the ADA law required that he be provided a  
4 qualified ADA interpreter and defendant was violating the law. Defendant claimed that it did not  
5 receive Mr. VanValkenburg's June 3, 2013, complaint until January 29, 2014, and denied the  
6 complaint.

7 **Columbia River Correctional Institution (CRCI)**

8 57.

9 On or about January 2014, defendant transferred Mr. VanValkenburg to CRCI in  
10 Portland, Oregon.

11 58.

12 From on or about January 2014 to the present, Mr. VanValkenburg has been housed at  
13 CRCI.

14 59.

15 When he arrived at CRCI in Portland defendant finally provided Mr. VanValkenburg  
16 with a qualified, non-inmate interpreter. He had not, for fourteen (14) years previously  
17 communicated in ASL with any of defendant's employees or agents. However, even at CRCI  
18 defendant continued to fail to accommodate him in pre-scheduled medical appointments in  
19 February or March 2014. Even at CRCI, defendant fails to follow its own policy of not relying  
20 on inmate interpreters.

21 **Allegations Relevant to Defendant's Ongoing and**  
22 **Continuous Failure to Accommodate**

23 60.

24 Defendant has both previously housed and currently houses inmates who are deaf or  
25 hearing impaired, including plaintiff. Defendant has consistently failed to provide those inmates  
26 with equal access to its programs or services and has failed to provide them with effective

1 communication or auxiliary aids.

2 61.

3 By systematically denying deaf or hearing impaired inmates with effective  
4 communication, auxiliary aids and equal access to its programs and services, defendant's  
5 practices alleged herein constitute an ongoing and longstanding pattern and practice of  
6 discrimination and constitute an unlawful disability-based hostile environment. This includes  
7 denying deaf or hearing impaired inmates effective communication, auxiliary aids and equal  
8 access to programs and services, including but not limited to, medical and dental appointments,  
9 counseling sessions, educational programs, religious services, orientation and intake sessions,  
10 opportunities to communicate with family and friends, employment opportunities and other  
11 classes and programs. These practices have harmed Mr. VanValkenburg on a continuing and  
12 ongoing basis from the time of his intake at OSP to the present.

13 62.

14 All but one of the inmate interpreters used by Mr. VanValkenburg were not qualified and  
15 could not provide effective communication and none of the inmate interpreters were bound by  
16 any confidentiality whatsoever. Because the inmate interpreters were not bound by  
17 confidentiality, Mr. VanValkenburg's safety was placed at risk by having to use the inmate  
18 interpreters for confidential settings.

19 63.

20 Defendant allows religious groups to hold services at its facilities for the benefit of any  
21 inmate who wishes to attend, and to make pastors available to inmates. At all times, prior to  
22 January 2014, Mr. VanValkenburg has been excluded from meaningful participation in these  
23 religious services. Mr. VanValkenburg has never benefited from these services as non-disabled  
24 inmates do and has never been able to meet, confidentially, with any pastors or other clergy  
25 persons since at no point prior to January 2014 has defendant ever provided confidential  
26 interpreters for such meetings.

1 64.

2 Defendant provides educational classes at its facilities for the benefit of any inmate who  
3 wishes to attend. At all times, prior to January 2014, Mr. VanValkenburg has been excluded  
4 from meaningful participation in these classes. Mr. VanValkenburg has never benefited from  
5 these educational classes as non-disabled inmates do.

6 65.

7 Defendant offers other classes and programs at its facilities for the benefit of any inmate  
8 who wishes to attend. At all times, prior to January 2014, Mr. VanValkenburg has been excluded  
9 from meaningful participation in these other classes and programs. Mr. VanValkenburg has  
10 never benefited from these classes and programs as non-disabled inmates do.

11 66.

12 Defendant has failed to use any method of communication that Mr. VanValkenburg can  
13 fully understand. Mostly, personnel orally communicate with Mr. VanValkenburg and he cannot  
14 hear their words. As a result of his inability to hear and understand, Mr. VanValkenburg has  
15 been disciplined by defendant.

16 67.

17 For many years while housed at correctional facilities managed by defendant, defendant  
18 made no telephone access available to Mr. VanValkenburg. From the time he was at SRCI  
19 forward, defendant has made available TTY machines for deaf or hearing impaired inmates who  
20 wish to use the telephone. However, TTY machines are no longer a practical method for deaf or  
21 hearing impaired inmates to make telephone calls. Nearly all deaf or hearing impaired people in  
22 the United States now use video telephones so that each participant can see the ASL  
23 communication. As a result, TTY technology is effectively obsolete as a means of  
24 communication with other deaf persons, and is highly inefficient when communication with  
25 hearing persons. As a result, Mr. VanValkenburg has been unable to have the same opportunity  
26 to communicate via telephone with his family and others as is provided to non-disabled inmates.

1 Furthermore, Mr. VanValkenburg was provided with limited access to the TTY machines unlike  
2 hearing inmates who had have virtually unlimited access to telephones. For an extended period  
3 of time, the TTYs provided did not work properly. Even when they did work, they took  
4 substantially more time to use than regular telephone communication. Despite numerous  
5 requests from Mr. VanValkenburg, for many years defendant refused to provide Mr.  
6 VanValkenburg's requests to extend the amount of time to use TTY to account for the sluggish  
7 technology and to accommodate his disability.

8 68.

9 At CRCI, Mr. VanValkenburg has access to a TTY and a video phone. However, unlike  
10 the regular telephone, which is in the main area of CRCI and may be accessed by non-disabled  
11 inmates at any time, the TTY machine and video phone are locked away in a room which is of  
12 limited access to Mr. VanValkenburg. Mr. VanValkenburg often must wait for hours at a time  
13 in order to make phone calls to friends, family, or his attorneys. Defendant's placement of the  
14 videophone in a locked room used by inmates for other purposes denies him equivalent access to  
15 telephone services.

16 69.

17 Defendant provides inmates work opportunities during their incarceration. Inmates earn  
18 "points" that they can use like money to purchase goods from the prison store. Defendant has  
19 passed Mr. VanValkenburg up for work opportunities because he is deaf and failed to make  
20 reasonable accommodations to allow Mr. VanValkenburg, a deaf individual, to work in these  
21 positions. As a result, Mr. VanValkenburg has been denied an opportunity to work and earn  
22 points during his incarceration equal to the opportunity that non-disabled inmates have.

### 23 Injury

24 70.

25 Defendant's maintenance of a disability-based environment of hostility, evidenced by the  
26 actions referenced herein have injured Mr. VanValkenburg and denied him an equal opportunity

1 to take advantage of services that would aid in his ongoing process of rehabilitation. Mr.  
2 VanValkenburg has been denied effective communication with his doctors, counselors, and  
3 family. He has been subjected to punishment as a result of miscommunication that would not  
4 have occurred if a qualified interpreter had been present. He has been denied an opportunity to  
5 participate in the same educational, religious, employment, and other classes and programs as  
6 non-hearing impaired individuals. As a result of this discrimination, Mr. VanValkenburg has  
7 suffered emotional distress including, but not limited to, fear, stress, aggravation, loss of self-  
8 worth, humiliation, frustration, anxiety, depression, as well as physical pain. Accordingly, Mr.  
9 VanValkenburg is entitled to compensatory damages pursuant to ORS 659A.885(3) and 42  
10 U.S.C § 12133

11 71.

12 Defendant has also discriminated against Mr. VanValkenburg by denying him  
13 employment opportunities that are available to non-hearing impaired individuals. Defendant has  
14 utilized unnecessary job requirements that screen out deaf individuals such as Mr.  
15 VanValkenburg. Defendant has also refused to provide any reasonable accommodations that  
16 may be necessary to allow Mr. VanValkenburg to enjoy the same employment opportunities that  
17 are available to non-deaf inmates. As a result of this discrimination, Mr. VanValkenburg has  
18 been denied the opportunity to earn compensation and has suffered severe emotional distress  
19 including, but not limited to, fear, stress, aggravation, loss of self-worth, humiliation, frustration,  
20 anxiety, and depression. Accordingly, Mr. VanValkenburg is entitled to compensatory damages  
21 pursuant to ORS 659A.885(3) and 42 U.S.C § 12133.

22 72.

23 Unless enjoined, defendant will continue to engage in the unlawful acts and the pattern  
24 and practice of discrimination described above. Mr. VanValkenburg has no adequate remedy at  
25 law. Mr. VanValkenburg is now suffering and will continue to suffer irreparable injury from  
26 defendant's acts and the pattern or practice of discrimination unless relief is provided by this

1 Court. Accordingly, Mr. VanValkenburg is entitled to injunctive relief pursuant to ORS  
2 659A.885(1) and 42 U.S.C § 12133.

3 FIRST CLAIM FOR RELIEF

4 (Disability Discrimination – ORS 659A.142)

5 73.

6 Mr. VanValkenburg realleges paragraphs 1 through 72 as though fully set forth herein.

7 74.

8 Mr. VanValkenburg has a physical impairment that substantially limits one or more of his  
9 major life activities.

10 75.

11 Mr. VanValkenburg is an individual with a disability, as defined by ORS 659A.104 and  
12 is a qualified person with a disability under 42 U.S.C. §12131(2).

13 76.

14 Defendants actions alleged herein constitute a pattern or practice of discrimination that  
15 occurred on an ongoing and continuous basis from 2000 to the present.

16 77.

17 The term "state government," as that term is defined by ORS 659A.142(1) and ORS  
18 174.111, includes defendant.

19 78.

20 Defendant has injured Mr. VanValkenburg in violation of ORS 659A.142(5) and its  
21 accompanying regulations, including but not limited to OAR 839-006-0270 and OAR 839-006-  
22 0295, by committing the following discriminatory acts or practices:

- 23 a. Refusing to recognize that Mr. VanValkenburg is a qualified individual with a disability;
- 24 b. Maintaining a pattern and practice of discrimination against Mr. VanValkenburg and all  
25 other deaf inmates;
- 26 c. Intentionally failing to accommodate Mr. VanValkenburg's disability in refusing to

- 1 provide an interpreter or adequate auxiliary aids;
- 2 d. Failing to make reasonable modifications in policies, practices, or procedures, when such
- 3 modifications were necessary to afford Mr. VanValkenburg with access to defendant's
- 4 services, programs, or activities, and when such modifications would not be unduly
- 5 burdensome and would not fundamentally alter the nature of services provided by
- 6 defendant;
- 7 e. Intentionally refusing to provide Mr. VanValkenburg with an equally effective method of
- 8 communication as is provided to other individuals incarcerated at defendant's correctional
- 9 institutions;
- 10 f. Excluding Mr. VanValkenburg from and denying Mr. VanValkenburg participation in the
- 11 benefits of defendant's services, programs, or activities solely by reason of Mr.
- 12 VanValkenburg's disability;
- 13 g. Failing to provide qualified interpretive services during orientation and counselor
- 14 assessments and meetings, medical and dental examinations, religious services,
- 15 educational programs, rehabilitative programs and other voluntary programs and classes
- 16 offered by or through defendant;
- 17 h. Using inmates who was are not qualified in ASL to interpret conversations between Mr.
- 18 VanValkenburg and defendant's personnel, including conversations which involved the
- 19 disclosure of confidential information;
- 20 i. Requiring Mr. VanValkenburg to train his own interpreters, with or without pay;
- 21 j. Failing to provide qualified interpretive services for support group meetings, thereby
- 22 excluding Mr. VanValkenburg from participating in these services, programs, or
- 23 activities;
- 24 k. Failing to provide qualified interpretive services for religious services and inmate work
- 25 opportunities, thereby excluding Mr. VanValkenburg from participating in these services,
- 26 programs, or activities;

- 1 l. Failing to provide adequate technology that would allow Mr. VanValkenburg the same
- 2 opportunity to communicate with his family and others as is available to non-hearing
- 3 impaired inmates;
- 4 m. Refusing to make reasonable accommodations to job requirements regarding oral and
- 5 written communication skills, thereby denying Mr. VanValkenburg an equal opportunity
- 6 to work and earn points during his incarceration, and requiring Mr. VanValkenburg to
- 7 perform menial work;
- 8 n. Failing to conduct any investigation to determine what auxiliary aids are necessary and
- 9 appropriate in order for Mr. VanValkenburg to participate in equal access to its facilities'
- 10 services, programs, and activities; and
- 11 o. Failing to provide any means by which Mr. VanValkenburg can understand oral
- 12 communications and respond to Defendant's staff.
- 13 p. Maintaining a disability-based environment of hostility.

14 79.

15 Once Defendant had actual knowledge of Mr. VanValkenburg's disability on or about  
 16 2000 and thereafter, Defendant failed to take reasonable steps necessary to ensure that Mr.  
 17 VanValkenburg, an individual with a disability, would not be excluded, denied services,  
 18 segregated or otherwise treated differently from other individuals because of use of inappropriate  
 19 or ineffective auxiliary aids. At no time did defendant inquire to Mr. VanValkenburg about the  
 20 best way to communicate with him. As a result, Mr. VanValkenburg has been injured by  
 21 defendant's discriminatory activities.

22 80.

23 Mr. VanValkenburg has suffered damages, both real and intangible, as a result of  
 24 defendant's discriminatory conduct.

25 81.

26 Defendant's conduct was carried out with wanton, conscious, reckless, and outrageous

disregard for Mr. VanValkenburg's civil rights, mental health, and welfare.

82.

Mr. VanValkenburg is entitled to equitable relief, and is entitled to compensatory damages in an amount to be determined at trial, but in no event less than \$450,000, as well as attorney fees and litigation costs pursuant to ORS 659A.885(1) and ORS 20.107.

### SECOND CLAIM FOR RELIEF

(Disability Discrimination – 42 U.S.C. §12131-12165 et seq.)

83.

Mr. VanValkenburg realleges paragraphs 1 through 72 as though fully set forth herein.

84.

Defendants actions alleged herein constitute a pattern or practice of discrimination that occurred on an ongoing and continuous basis from 2000 to the present.

85.

Defendant is a "public entity" as that term is defined under 42 U.S.C. §12131(1).

86.

Defendant has injured Mr. VanValkenburg in violation of 42 U.S.C § 12132 and its accompanying regulations, including but not limited to 28 C.F.R. § 35.130 and 28 C.F.R. § 35.152, by committing the following discriminatory acts or practices:

- a. Refusing to recognize that Mr. VanValkenburg is a qualified individual with a disability;
- b. Maintaining a pattern and practice of discrimination against Mr. VanValkenburg and all other deaf inmates;
- c. Intentionally failing to accommodate Mr. VanValkenburg's disability in refusing to provide an interpreter or adequate auxiliary aids;
- d. Failing to make reasonable modifications in policies, practices, or procedures, when such modifications were necessary to afford Mr. VanValkenburg with access to defendant's services, programs, or activities, and when such modifications would not be unduly

- 1 burdensome and would not fundamentally alter the nature of services provided by  
2 defendant;
- 3 e. Intentionally refusing to provide Mr. VanValkenburg with an equally effective method of  
4 communication as is provided to other individuals incarcerated at defendant's prisons;
- 5 f. Excluding Mr. VanValkenburg from and denying Mr. VanValkenburg participation in the  
6 benefits of defendant's services, programs, or activities solely by reason of Mr.  
7 VanValkenburg's disability;
- 8 g. Failing to provide qualified interpretive services during orientation and counselor  
9 assessments and meetings, medical and dental examinations, religious services,  
10 educational programs, rehabilitative programs and other programs and classes offered by  
11 or through defendant;
- 12 h. Using inmates who was are not qualified in ASL to interpret conversations between Mr.  
13 VanValkenburg and defendant's personnel, including conversations which involved the  
14 disclosure of confidential information;
- 15 i. Requiring Mr. VanValkenburg to train his own interpreters, with or without pay;
- 16 j. Failing to provide qualified interpretive services for support group meetings, thereby  
17 excluding Mr. VanValkenburg from participating in these services, programs, or  
18 activities;
- 19 k. Failing to provide qualified interpretive services for religious services and inmate work  
20 opportunities, thereby excluding Mr. VanValkenburg from participating in these services,  
21 programs, or activities;
- 22 l. Failing to provide adequate technology that would allow Mr. VanValkenburg the same  
23 opportunity to communicate with his family and others as is available to non-hearing  
24 impaired inmates;
- 25 m. Refusing to make reasonable accommodations to job requirements regarding oral and  
26 written communication skills, thereby denying Mr. VanValkenburg an equal opportunity

1 to work and earn points during his incarceration, and requiring Mr. VanValkenburg to  
 2 perform menial work;

3 n. Failing to conduct any investigation to determine what auxiliary aids are necessary and  
 4 appropriate in order for Mr. VanValkenburg to participate in equal access to its facilities'  
 5 services, programs, and activities; and

6 o. Failing to provide any means by which Mr. VanValkenburg can understand oral  
 7 communications and respond to defendant's staff.

8 p. Maintaining a disability-based environment of hostility.

9 87.

10 Once defendant had actual knowledge of Mr. VanValkenburg's disability on or about  
 11 2000 and thereafter, defendant failed to take reasonable steps necessary to ensure that Mr.  
 12 VanValkenburg, an individual with a disability, would not be excluded, denied services,  
 13 segregated or otherwise treated differently from other individuals because of use of inappropriate  
 14 or ineffective auxiliary aids. At no time did defendant inquire to Mr. VanValkenburg about the  
 15 best way to communicate with him. As a result, Mr. VanValkenburg has been injured by  
 16 defendant's discriminatory activities.

17 88.

18 Mr. VanValkenburg has suffered damages, both real and intangible, as a result of  
 19 defendant's discriminatory conduct.

20 89.

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

23 90.

24 Mr. VanValkenburg is entitled to equitable relief, and is entitled to compensatory  
 25 damages in an amount to be determined at trial, but in no event less than \$450,000, as well as  
 26 attorney fees and litigation costs pursuant to 42 U.S.C. § 12205.

1 THIRD CLAIM FOR RELIEF

2 (Unjust Enrichment/Quantum Meruit)

3 91.

4 Mr. VanValkenburg realleges paragraphs 1 through 72 as though fully set forth herein.

5 92.

6 Mr. VanValkenburg conferred a benefit upon defendant by providing a service beneficial  
7 to defendant. By teaching defendant's inmates limited ASL and training defendant's inmates to  
8 serve as inmate interpreters on a limited basis, Mr. VanValkenburg saved defendant from the  
9 expense of paying for a qualified interpreter, training its own employees to become a qualified  
10 interpreter, or training its inmates to become qualified interpreters.

11 93.

12 Defendant knew and was aware that Mr. VanValkenburg was conferring that benefit  
13 upon defendant.

14 94.

15 It would be unjust to allow defendant to retain that benefit without requiring defendant to  
16 pay for it. Mr. VanValkenburg had a reasonable expectation of payment. Defendant paid him  
17 for his services at one point and continues to advertise for inmate interpreters as a paid position.

18 95.

19 Mr. VanValkenburg is entitled to restitution in an amount to be determined at trial, but in no  
20 event less than \$10,000.

21 PRAYER FOR RELIEF

22 WHEREFORE, Mr. VanValkenburg requests a trial by jury and requests the Court  
23 should grant judgment in favor of Mr. VanValkenburg against defendant and grant the following  
24 relief:

25 A. On plaintiff's First and Second Claims for Relief:

26 1. Compensatory damages in an amount to be determined at trial but in no

1 event less than \$450,000;

2 2. Attorneys fees, costs and disbursements, pursuant to ORS 659A.885(1),  
3 ORS 20.107 and/or 42 U.S.C. § 12205;

4 3. An Order that:

- 5 a) Requires defendant to institute a program instructing all employees  
6 on the proper and legal obligations to deaf inmates;
- 7 b) Requires defendant to develop and implement written materials for  
8 disabled inmates, which will be provided to them at the time of  
9 their arrival at defendant's facilities, providing disabled inmates  
10 notice of their rights pursuant to, and of the availability of  
11 accommodations under, ORS 659A.142;
- 12 c) Requires defendant to implement and enforce an effective  
13 communications policy that covers all services, programs, and  
14 activities offered at its prisons;
- 15 d) Requires defendant to implement a grievance procedure to resolve  
16 disability related issues and advise disabled inmates of their rights  
17 to access this grievance procedure;
- 18 e) Requires defendant to enter into a contract with one or more  
19 interpreting services to provide interpreters for deaf or hearing  
20 impaired inmates to provide equal access to programs and services,  
21 including medical and dental appointments, counseling sessions,  
22 educational programs, religious services, orientation sessions, and  
23 other classes and programs offered by defendant;
- 24 f) Requires defendant to only use qualified interpreters when  
25 interpreters are used to communicate with deaf or hearing impaired  
26 inmates;
- g) Requires that defendant not use other inmates as interpreters;
- h) Requires defendant to develop and implement a plan to conduct a  
fact-specific investigation for deaf or hearing impaired inmates as  
to what auxiliary aids are necessary and appropriate to ensure  
equal access to its facilities' services, programs, and activities,  
including but not limited to ensuring effective communication;
- i) Requires defendant to install video phones at each prison and allow  
deaf or other hearing impaired inmates the same access to the  
video phones as hearing inmates have with telephones;

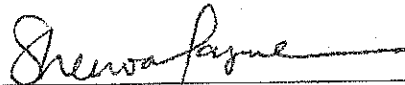
- j) Requires defendant to modify its job requirements to only require good oral and written communication skills for those positions where such skills are essential to the effective performance of the position;
- k) Requires defendant to waive the requirement of good oral and written communication skills for those positions where such skills are incidental to the performance of the position and a hearing impaired inmate applies for such a position;
- l) Requires defendant to develop and implement a system of notifying deaf or hearing impaired inmates of yard out bells, meal bells, and any other forms of simple communication to all inmates in the block or prison population;

B. On plaintiff's Third Claim for Relief, restitution in an amount to be determined at trial, but in no event less than \$10,000;

C. All such other relief as the Court deems just and equitable.

Dated this 5th day of May, 2014.

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