

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CIVIL RIGHTS COMPLAINT FORM
TO BE USED BY PRISONERS IN ACTIONS UNDER 42 U.S.C. § 1983

Felix Garcia, ET AL

Inmate # 482246
(Enter full name of Plaintiff)

vs.

CASE NO: _____
(To be assigned by Clerk)

James McDonough, Secretary

Martie Taylor, Statewide ADA Coordinator

Tommy Young, Asst. Warden

Long, N. Dr. Chief Health Officer

(Enter name and title of each Defendant.

If additional space is required, use the
blank area below and directly to the right.)

ANSWER ALL QUESTIONS ON THE FOLLOWING PAGES:

U.S. DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE, FLORIDA

2007 NOV -7 PM 1:48

KLB
FILED

I. PLAINTIFF:

State your full name, inmate number (if applicable), and full mailing address in the lines below.

Name of Plaintiff: Felix Garcia, ET AL
 Inmate Number 482246
 Prison or Jail: POLK Correctional Inst.
 Mailing address: 10800 EVANS RD.
POLK City, FL.
33868-6944

II. DEFENDANT(S):

State the name of the Defendant in the first line, official position in the second line, place of employment in the third line, and mailing address. Do the same for every Defendant:

- (1) Defendant's name: JAMES McDONOUGH, (H) LONG. N. DO
 Official position: SECRETARY, CHIEF HEALTH officer
 Employed at: DEPT. of Corrections POLK Correctional Inst.
 Mailing address: 2601 BLAIR STONE RD. 10800 EVANS RD.
TALLAHASSEE, FL. 32399 POLK City, FL. 33868
- (2) Defendant's name: MARTIE TAYLOR,
 Official position: STATEWIDE ADA COORDINATOR
 Employed at: DEPT. of Corrections
 Mailing address: 2601 BLAIR STONE RD.
TALLAHASSEE, FL. 32399
- (3) Defendant's name: TOMMY YOUNG,
 Official position: ASST/WARDEN/ADA INTAKE
 Employed at: POLK Correctional Inst.
 Mailing address: 10800 EVANS RD.
POLK City, FL. 33868

ATTACH ADDITIONAL PAGES HERE TO NAME ADDITIONAL DEFENDANTS

NOTE: THE COURT WILL NOT REVIEW THE MERITS OF THE COMPLAINT UNLESS THE FOLLOWING QUESTIONS HAVE BEEN ANSWERED REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ANY PRIOR LAWSUITS THAT HAVE BEEN FILED.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Exhaustion of administrative remedies is required prior to pursuing a civil rights action regarding conditions or events in any prison, jail, or detention center. 42 U.S.C. § 1997e(a). Plaintiff must submit copies of all grievances, appeals, and responses with this complaint to verify exhaustion. Failure to demonstrate exhaustion may be grounds for dismissal.

A. DOES YOUR COMPLAINT CONCERN EVENTS OCCURRING WITHIN THE FLORIDA DEPARTMENT OF CORRECTIONS?

Yes(☒) No(☐)

[If your answer is NO, proceed to Question B. If your answer is YES, answer all of the following questions in this subsection.]

1. Informal Grievance

a. Did you submit an informal grievance?

Yes(☒) No(☐)

❖ If so, you must attach a copy of the grievance and response; exhibit "A".

b. If not, why? N/A

2. Formal Grievance

a. Did you submit a formal grievance?

Yes(☒) No(☐)

❖ If so, you must attach a copy of the grievance and response; exhibit "B".

b. If not, why? N/A

3. Appeal to the Office of the Secretary

a. Did you submit an appeal to the Office of the Secretary?

Yes(☒) No(☐)

❖ If so, you must attach a copy of the appeal and response; exhibit "C".

b. If not, why? N/A

4. Disciplinary Actions

a. Did you have a disciplinary hearing concerning this matter?

Yes()

No(☒)

❖ If so, you must attach a copy of the disciplinary report and disciplinary hearing team's findings and decision to this form; exhibit _____.

b. Did you lose gaintime as a result of the disciplinary hearing?

Yes()

No(☒)

c. Has the gaintime since been restored? *N/A*

Yes()

No()

B. DOES YOUR COMPLAINT CONCERN EVENTS OCCURRING WITHIN A COUNTY JAIL OR DETENTION CENTER? *N/A*

Yes()

No(☒)

[If your answer is NO, proceed to Section IV of the complaint form.

If your answer is YES, answer the following questions.]

1. Is there a grievance procedure at your institution or jail?

Yes()

No()

[If your answer is NO, proceed to Section IV of the complaint form. If your answer is YES, answer all of the following questions in this subsection.]

2. Did you submit a grievance concerning the facts relating to your complaint?

Yes()

No()

3. If your answer is YES:

a. What steps did you take? _____

b. What were the results? _____

❖ If so, you must attach a copy of the grievance and response; exhibit _____.

4. If your answer is NO, explain why not: _____

NOTE: FAILURE TO DISCLOSE ALL PRIOR CIVIL CASES MAY RESULT IN THE DISMISSAL OF THIS CASE. IF YOU ARE UNSURE OF ANY PRIOR CASES YOU HAVE FILED, THAT FACT MUST BE DISCLOSED AS WELL.

IV. PREVIOUS LAWSUITS

- A. Have you initiated other actions in **state court** dealing with the same or similar facts/issues involved in this action?

Yes()

No(✓)

1. Parties to previous action:

a. Plaintiff(s): N/A

b. Defendant(s): N/A

2. Name of judge: N/A Case #: N/A

3. County and judicial circuit: N/A

4. Name of judge: N/A

5. Approximate filing date: N/A

6. If not still pending, date of dismissal: N/A

7. Reason for dismissal: N/A

8. Facts and claims of case: N/A

(Attach additional pages as necessary to list state court cases.)

- B. Have you initiated other actions in **federal court** dealing with the same or similar facts/issues involved in this action?

Yes()

No(✓)

1. Parties to previous action:

a. Plaintiff(s): N/A

b. Defendant(s): N/A

2. District and judicial division: N/A

3. Name of judge: N/A Case #: N/A

4. Approximate filing date: N/A

5. If not still pending, date of dismissal: N/A

6. Reason for dismissal: N/A

7. Facts and claims of case: N/A

(Attach additional pages as necessary to list other federal court cases.)

- C. Have you initiated other actions (*besides those listed above in Questions (A) and (B)*) in **either state or federal court** that relate to the fact or manner of your incarceration (including habeas corpus petitions) or the conditions of your confinement (including civil rights complaints about any aspect of prison life, whether it be general circumstances or a particular episode, and whether it involved excessive force or some other wrong)?

Yes()

No(☒)

If YES, describe each action in the space provided below. If more than one action, describe all additional cases on a separate piece of paper, using the same format as below.

1. Parties to previous action:
 - a. Plaintiff(s): N/A
 - b. Defendant(s): N/A
2. District and judicial division: N/A
3. Name of judge: N/A Case #: N/A
4. Approximate filing date: N/A
5. If not still pending, date of dismissal: N/A
6. Reason for dismissal: N/A
7. Facts and claims of case: N/A

(Attach additional pages as necessary to list cases.)

- D. Have you ever had any actions in **federal court** dismissed as frivolous, malicious, failing to state a claim, or prior to service? If so, identify each and every case so dismissed:

Yes()

No(☒)

1. Parties to previous action:
 - a. Plaintiff(s): N/A
 - b. Defendant(s): N/A
2. District and judicial division: N/A
3. Name of judge: N/A Case Docket # N/A
4. Approximate filing date: N/A Dismissal date: N/A
5. Reason for dismissal: N/A

(Attach additional pages as necessary to list cases.)

V. STATEMENT OF FACTS:

State briefly the FACTS of this case. Describe how each Defendant was involved and what each person did or did not do which gives rise to your claim. In describing what happened, state the names of persons involved, dates, and places. Do not make any legal arguments or cite to any cases or statutes. You must set forth separate factual allegations in separately numbered paragraphs. You may make copies of this page if necessary to supply all the facts. Barring extraordinary circumstances, no more than five (5) additional pages should be attached. (If there are facts which are not related to this same basic incident or issue, they must be addressed in a separate civil rights complaint.)

1. Felix Garcia is a State Prisoner Currently Imprisoned AT the Polk Correctional Institution (Polk C.I.), in Polk City, Florida; A Facility Located close to his Family Residences in Tampa, Florida. Garcia is A Hearing impaired American.

2. On June 26, 2007 Garcia submitted A formal Request to Defendant Young for "Reasonable modification or Accommodation" Due, in part, To his Hearing Disability and Changing Conditions in the Department of Corrections Requiring Reasonable Accommodation.

3. Garcia's Requested Accommodation was a Reasonable one inasmuch as the State prison system has authorized its institutions, in order to reduce or eliminate masking noise levels and to be able to monitor and control a gathering of prisoners in television dayrooms, to install modular audio level cut-off equipment within institution televisions (TV) so as to convert the TV audio to a boosted FM radio signal for air wave transmission. These audio decoders permit TVs to be turned down to their lowest speaker level as "maximum TV volume" thus reducing the noise pollution for effective monitoring and control, while allowing prisoners to hear, understand, and clearly enjoy the TV audio through a teen bought radio (sold with ear buds or optional headphones) at a personally selected audio level.

4. However, The RADIOS Being Sold in the STATEWIDE Canteen are insufficient Decibel Level For GARCIA's Impairment.¹ Accordingly, GARCIA's Accommodation Requested that STATE institution (POLK C.I.) Allow Him AUTHORIZATION To HAVE His family Pay A "Special vendor" for A Speakerless AM-FM RADIO With the Decibel Level High Enough To Accomodate GARCIA's "Severly Deaf" HEARING impairment AND, AS Required, that the vendor mail the Purchased RADIO Directly To the Institution for Delivery To GARCIA Thus allowing Him To HEAR RADIO And Television Decoded Audio Programming AS Afforded To other Prisoners. (See EXHIBIT "A")

5. Defendant Young Sent GARCIA's "Reasonable modification or Accommodation Request" To Defendant Long N. DO, Chief Health Officer (POLK C.I.), for verification of GARCIA's Disability And for the medical officer's Findings And opinion of the Requested Accommodation.

1. GARCIA Entered prison AS A Teenager in 1981. Since then, He HAS HAD Fourteen (14) operations To His HEARING CANALS. AS A Result, He is now Profoundly (Totally) Deaf in His Left EAR for Life, And Severly Deaf in His Right EAR, Requiring the most Powerful HEARING Aid Available Just so He CAN Barely Hear.

6. On August 2, 2007, Defendant Long N. Do provided the following Discussion of Findings to Defendant Young:

Inmate's medical Record Has Been Reviewed. Inmate Has Hearing Loss, He Has Hearing Aid. Polk C.I. Has Provided "Reasonable Accommodation": Closed Caption TV, TDYPhone, Radio (Available through Canteen). I AM NOT SURE "A HIGHER DECIBEL AM-FM RADIO" MAY PROVIDE ANY BETTER BENEFIT THAN THE RADIO AVAILABLE THROUGH THE CANTEEN.
(EMPHASIS ADDED)

(see Exhibit "B")²

7. Despite Defendant Long N. Do's "NOT Being Sure" That Garcia's Requested Accommodation would or would not provide Better Benefit than the Radio available through the Canteen,

2. Defendant Long N. Do's Finding Does NOT Reflect That the Opinion Was Reached ON BASIS OF Due Consideration To Any Record of Garcia's Tests For Severity of Hearing Loss; Nor Reflects Any Technical Ascertainment of the effectiveness or ineffectiveness of the Canteen Solo Radio. Additionally, the Finding suggests that [A] closed Caption TV would Be A "Reasonable Accommodation" To Literate-Challenged Hearing Impaired prisoners.

Defendant Young, on August 3, 2007, Denied Garcia's "Reasonable Modification or Accommodation Request." Defendant Young's Basis of Decision Reports as follows:

"
Your issue HAS been addressed on DC2-530 which you Filed on 6/26/07 and Returned to you on 7/19/07, therefore will not be Readdressed, A Copy of the DC2-530 HAS been forwarded to Ms. Taylor, ADA Coordinator, in Central office, for Her Review. "(Id. AT Exhibit "B").

8. On August 23, 2007, Defendant Martie Taylor, Statewide ADA Coordinator, Concurred with Defendant Young's Decision to Deny Garcia's Reasonable Accommodation Request. In Her Concurrence, Defendant Taylor Posits that the underlying Finding Expressed By Defendant Long N. Do (Exhibit "B") was an opinion that was Rationally Established from Facts Considered, VIZ:

"
Medical was Consulted and it was their opinion that a Higher Decibel Radio would (sic) be any more effective than those sold by the Canteen; therefore, the inmate's Request was Denied

You may inform the inmate of my Concurrence of the Decision to Deny His Request By a Copy of this memo."

(see Exhibit "C")

9. Because Defendant Taylor's Concurrence erroneously treated Defendant Long N. Do's Questionable inference as a conclusive opinion and correct presumption derived from "specialized (medical) knowledge," Garcia, on August 26, 2007, Filed "Request For Administrative Remedy" to Polk C.I. Warden Tom Tadlock. (see Exhibit "D").

10. Responding for Warden Tadlock, Defendant Young Denied Garcia's Request for Administrative Remedy. (see Response, attached hereto as Exhibit "E"). Following Administrative Rules, Garcia, on September 3, 2007, Filed Request For Administrative Appeal of the Concurrence Denying "Reasonable modification or Accommodation Request" to the Secretary, Florida Department of Corrections, Defendant James McDonough. (see Exhibit "F").

11. On September 18, 2007, Garcia's Request for Administrative Review was received by Mr. Tom Bouden, Secretary McDonough's Representative. Mr. Bouden referred the matter [again] to the statewide ADA Coordinator, Defendant Martie Taylor, who provided the following response:

"The Response that you received at the institutional level has been reviewed and is found to appropriately address the concerns that you raised at the institutional level as well as the central office level In addition, the head of the security department in the central office has deter-

mined THAT ALLOWING RADIOS OTHER THAN THOSE PROVIDED BY THE Canteen ARE A SECURITY RISK AND ARE NOT TO BE ALLOWED ON THE Compound. "

(See Exhibit "G"). In this purported Administrative Appellate Review of Defendant TAYLOR's Concurrence Decision to the office of the Secretary of Corrections, Defendant TAYLOR WAS ALLOWED TO CONCUR WITH her Previous Concurrence (NOW AS AN ADMINISTRATIVE APPELLATE Decision) which WAS RETURNED TO MR. Tom BOWDEN AS A FACTUAL BASIS TO Deny Further ADMINISTRATIVE Review of her previous Decision,

12. However, Defendant TAYLOR included AN ADDENDUM TO Her Previous Decision, VIZ:

" IN ADDITION, THE HEAD OF THE SECURITY DEPARTMENT [NOT NAMED] IN THE CENTRAL OFFICE HAS DETERMINED THAT ALLOWING RADIOS OTHER THAN THOSE PROVIDED BY THE Canteen ARE A SECURITY RISK AND ARE NOT TO BE ALLOWED ON THE Compound. "

(Id AT Exhibit "G"). This ADDENDUM in the Appellate Decision is presumed governing Policy over Reasonable ADA Accommodation By the Department of Corrections. Accordingly, the RATIONALE or Reasonableness of such governing policy, AS IT PERTAINS TO GARCIA'S CLAIMS, REQUIRES Federal Court Guidance AND Disposition By Court or Jury. This Title 42, Section 1983 ACTION Follows.

13. In this ACTION, GARCIA will show: (1) VIOLATION TO EQUAL ACCESS RIGHTS under LAW; (2) THAT FEDERAL LAW PROHIBITS such violations; (3) THAT SAID FEDERAL LAW APPLIES TO FLORIDA PRISONS AND JAILS; (4) THAT OTHER FLORIDA CORRECTIONS INSTITUTIONS HAVE ACCOMODATED SUCH REQUESTS WITH NO SECURITY RISKS; (5) THAT SUCH ACCOMODATIONS HAVE BEEN ALLOWED TO BE PURCHASED FROM OTHER VENDORS TO REASONABLY ASSIST A PRISONER TO OVERCOME OR TO AID IN HEARING LOSS WITH ILLITERACY; (6) THAT HEARING IMPAIRED PRISONERS HAVE TRANSFERRED TO POLK C.I. FROM OTHER INSTITUTIONS WITH SUCH ACCOMODATED RADIOS, THUS SHOWING THAT RADIOS, OTHER THAN THOSE SOLD BY THE STATEWIDE CANTEENS, HAVE BEEN AUTHORIZED AND ARE ALLOWED ON COMPOUNDS WITH NO SECURITY RISKS.

14. GARCIA'S ADA CLAIM IS VALID. HE SHOULD NOT BE SUBJECTED TO RETALIATORY ACTION, SUCH AS ADMINISTRATIVE OR DISCIPLINARY CONFINEMENT OR TRANSFER FROM POLK C.I., FOR SEEKING REDRESS OVER VIOLATION OF HIS RIGHT TO PROMOTE PERSONAL DIGNITY VIA A HEALTHY REHABILITATIVE EFFORT THROUGH ADA ACCOMODATION TO REASONABLY BENEFIT OVER RESIDUAL DISABILITIES, AS THOSE CREATED FROM HIS HEARING LOSS (I.E. SPEECH AND PRONOUNCIATION OF WORDS) AND NOT JUST DERIVE ABILITY TO HEAR. THE ADA ANTI-RETALIATORY PROVISION PROVIDES: "NO PERSON SHALL DISCRIMINATE AGAINST ANY INDIVIDUAL BECAUSE SUCH INDIVIDUAL HAS OPPOSED ANY ACT OR PRACTICE MADE UNLAWFUL BY THIS CHAPTER OR BECAUSE SUCH INDIVIDUAL MADE A CHARGE, TESTIFIED, ASSISTED, OR PARTICIPATED IN ANY MANNER IN AN INVESTIGATION, PROCEEDING, OR HEARING UNDER THIS CHAPTER." 42 U.S.C. § 12203 (a). GARCIA RESPECTFULLY MOVES THIS COURT, IF NECESSARY, FOR LEAVE TO FILE A MEMORANDUM OF LAW IN SUPPORT OF HIS CLAIMS AND RIGHTS.

Members of The CLASS ACTION

18. In order to avoid Repetitious Filing of Section 1983 Actions naming the same Defendants for similar Complaints, and in the interests of Judicial Economy, Garcia respectfully seeks leave of the Federal Court to include as "Party Plaintiffs" in this action, and to certify as members of the class, the following severely hearing impaired prisoners: Dennis M. Deal, DC# T20922, and Anthony Horn, DC# X21950. In support thereof, Garcia provides as follows.

A. Prisoner Deal not only is severely hearing impaired but is also reading challenged; He has extreme difficulty in following, reading, and understanding a "closed caption" decoded program from the only closed caption TV made available (one out of the four TVs in the dormitory).

Deal arrived to Polk C.I. on transfer from Tomoka C.I., and he arrived with a higher decibel radio that included TV Band (channels 2-13) accommodated to him by Tomoka C.I., ADA intake officer, Mr. Banasco, Assistant Warden Programs, for his severe hearing loss and for his below average reading handicap. (See Supplemental Exhibits No. (s) 1 and 2).

On May 10, 2007, when Deal's radio stopped working, he sought proper approval and authorization from Polk C.I. officials

To purchase a Replacement Radio from "special service" provider in Napa, California. (see supplemental Exhibit # "3"). The Request was approved and a check in the amount of \$37.93 was issued and forwarded to the California supplier. (see id).

ON MAY 29, 2007, the AM-FM Speakerless Higher Decibel Radio with Ear Bud Headphones that were specially enhanced for Higher Decibel Level, and designed small enough to be inserted into the Auditory Tubes of each Ear, was received at Polk C.I.'s Mailroom.³ However, Delivery was turned away and returned to sender because the California supplier shipped the Radio by United Parcel Service (UPS) rather than by U.S. Postal Services. Consequently, Deal's Radio was lost and he could not recover the monies paid.

As a result, Deal sought and was granted Polk C.I. official Authorization and Approval to return his Broken Radio to the vendor in California for repair or replacement (see supp. Exhibit "4"). Apparently, and for lack of Certified Deaf Interpreter Assistance, Deal was wrongly advised that he was required to request a DC 2-530 ADA Accommodation as well, in order to have the Radio repaired or replaced.

3. The AM-FM Radio was no bigger than the radios sold by the Statewide Canteen, and the Headphones Ear Buds were no larger than that which is sold by the Statewide Canteen.

After Erroneously Submitting the DCA-530 to Defendant Young (see supp. Exhibit #5), it was sent to Defendant Long N. Do, who without interviewing Deal to Ascertain His Request for Accommodation under the ADA, Reviewed the matter under Department of Corrections - "Absence of Policy" - to provide the request (see supp. Exhibit #6). Therefore, and pursuant to the rules governing the ADA Decisional process, Deal's Denial was sent to the statewide ADA Coordinator in the Central office (Defendant Martie Taylor) for Review. (see supp. Exhibit #7). Ms. Taylor Concurred with the Denial.

B. Prisoner Horn is also severely Hearing impaired. Horn also sought Polk C.I. approval to purchase a Higher Decibel Radio from California. (see supp. Exhibit #8). After authorization from Polk officials, on May 23, 2007, a check was issued in the amount of \$25.96 for the Higher Decibel Radio, and it was forwarded to the California vendor. (see supp. Exhibit #9). The vendor shipped the Radio purchased by United Parcel Services (UPS) and, like Deal's Radio, it was not accepted by Polk C.I. mailroom officer because the item was not received via U.S. Postal Service.

However, Horn contacted his family by TDY phone and explained the Polk C.I. requirement that prisoners could only receive U.S. Postal deliveries and made arrangements through his family for the vendor to reship the Radio to Polk C.I. through U.S. Postal Services. The vendor, after receiving the returned Radio, mailed it back to Polk C.I., via the required postal services.

UPON RECEIPT OF THE RADIO, POLK C.I. MAIL OFFICIALS CONTACTED PRISONER HORN AND TOLD HIM THAT THE RADIO WAS BEING RETURNED TO THE VENDOR BECAUSE HE HAD NOT PROVIDED ADA REASONABLE MODIFICATION OR ACCOMMODATION REQUEST APPROVAL. AS A RESULT THEREOF, HORN HAD TO CONTACT HIS FAMILY BY TDY PHONE AND DIRECTED THEM TO CONTACT THE VENDOR AND HAVE THE RADIO SHIPPED TO HIS FAMILY.

C. AS A RESULT OF THE EXPRESSED DECISION IN GARCIA'S ADA ACCOMMODATION REQUEST, THE PARTY PLAINTIFF'S, AS WELL AS ALL SIMILARLY SITUATED IMPAIRED PRISONERS IN FLORIDA CORRECTIONAL INSTITUTIONS, ARE ADVERSELY AFFECTED; INCLUDING THOSE PRISONERS WHO ALREADY POSSESS SUCH ACCOMMODATED RADIOS IN OTHER CORRECTIONAL INSTITUTIONS.

D. THE PARTY PLAINTIFFS NAMED HEREIN HAVE, LIKE GARCIA, VALID ADA CLAIMS AND THEY TOO SHOULD NOT BE SUBJECTED TO RETALIATORY ACTION, SUCH AS ADMINISTRATIVE OR DISCIPLINARY CONFINEMENT, OR TRANSFER FROM POLK C.I. FOR EXERCISING RIGHT TO SEEK REDRESS FOR VIOLATION OF CONSTITUTIONAL RIGHT TO EQUAL TREATMENT AND TO BE FREE OF DISCRIMINATION DUE TO THEIR HANDICAP; AND WHERE THEY MOVE THE FEDERAL COURT FOR GUIDANCE OVER INCONSISTENTLY APPLIED STATE AGENCY PRACTICES THAT AFFECT DISABLED PRISONER'S ADA "REASONABLE ACCOMMODATION REQUEST," INSTITUTED BY LAW, TO PROTECT AN IMPAIRED'S RIGHT TO PERSONAL DIGNITY; TO PROMOTE A MEANINGFUL INDIVIDUAL REHABILITATIVE EFFORT THROUGH MAXIMIZING A BENEFIT OVER RESIDUAL DISABILITIES CREATED FROM HEARING LOSS (I.E., SPEECH AND PRONOUNCIATION OF WORDS HEARD) THROUGH THE REASONABLE ACCOMMODATION REQUESTED.

VI. STATEMENT OF CLAIMS:

State what rights under the Constitution, laws, or treaties of the United States you claim have been violated. Be specific. Number each separate claim and relate it to the facts alleged in Section V. If claims are not related to the same basic incident or issue, they must be addressed in a separate civil rights complaint.

19. SECTION 504 OF THE REHABILITATION ACT OF 1973, TITLE 29 U.S.C. § 794,
GUARANTEES PERSONS WITH DISABILITIES EQUAL ACCESS TO ANY ENTITY THAT
RECEIVE[S] FEDERAL FINANCIAL ASSISTANCE, EITHER DIRECTLY OR INDIRECTLY.
TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA), 42 U.S.C.
§ 12141 ET. SEQ., EXTENDS THESE SAME RIGHTS TO PRISONERS IN ALL STATE
AND LOCAL FACILITIES. THESE STANDARDS OF ACCESSIBILITY ARE SIMILAR
UNDER THESE TWO LAWS AND, GARCIA CONTENDS, THE STATE CORRECTIONS AGENCY,
THROUGH ITS AGENTS (NAMED DEFENDANTS), HAVE VIOLATED. ADDI-
(SEE ADDITIONAL PAGES)

VII. RELIEF REQUESTED:

State briefly what relief you seek from the Court. Do not make legal arguments or cite to cases/ statutes.

GARCIA RESPECTFULLY MOVES THE COURT TO: ENTER AN ORDER DIRECTING DEFENDANTS TO GRANT
THE REQUESTED "REASONABLE ACCOMMODATION" UNDER THE ADA, OR SHOW CAUSE HOW SUCH ACCOM-
MODATION IS NOT REASONABLE NOR OF BENEFIT TO PLAINTIFFS OR TO PENALOGICAL OBJECTIVES;
ENTER ORDER CERTIFYING THE FOREGOING AS "CLASS ACTION"; ENTER ORDER TO THE SEC-
RETARY OF CORRECTIONS TO POST (AT ALL STATE PRISON INSTITUTIONS) FEDERAL COURT ORDERS
RENDERED IN DUE COURSE IN THIS ACTION; AND TO GRANT ANY EQUITABLE
RELIEF AS THE COURT MAY DEEM APPROPRIATE IN THIS CASE.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING STATEMENTS OF FACT,
INCLUDING ALL CONTINUATION PAGES, ARE TRUE AND CORRECT.

11/4/07
 (Date)

Felix Garcia
 (Signature of Plaintiff)

IF MAILED BY PRISONER:

I declare (or certify, verify, or affirm) under penalty of perjury that this complaint was (check one):

☐ delivered to prison officials for mailing or ☐ deposited in the prison's internal mail system on:
 the 4 day of November, 20 07.

Felix Garcia
 (Signature of Plaintiff)

TIONALLY, THE CORRECTIONS AGENCY, THROUGH ITS AGENTS, HAVE VIOLATED GARCIA'S (AND OF THOSE SIMILARLY SITUATED) EQUAL RIGHTS PROTECTIONS GRANTED UNDER THE 5TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. SIMILARLY, THE CORRECTIONS AGENCY, THROUGH ITS AGENTS, HAVE VIOLATED GARCIA'S RIGHTS (AND OF THOSE SIMILARLY SITUATED) GRANTED UNDER THE FLORIDA CIVIL RIGHTS ACT OF 1992, WHICH TRACKS THE FEDERAL CIVIL RIGHT LAWS. THE GENERAL PURPOSE OF THE FLORIDA CIVIL RIGHTS ACT OF 1992 ARE TO SECURE FOR

"
... ALL individuals within the STATE Freedom From Discrimination
Because of ... HANDICAP ... , AND THEREBY PROTECT THEIR INTEREST
IN PERSONAL DIGNITY, TO MAKE AVAILABLE TO THE STATE THEIR FULL
PRODUCTIVE CAPACITIES, ... AND TO PROMOTE THE INTERESTS, RIGHTS,
AND PRIVILEGES OF INDIVIDUALS WITHIN THE STATE. ³³ (EMPHASIS ADDED)

FLORIDA STATUTES 760.01(2).

20. TITLE II OF THE ADA, THE U.S. DEPARTMENT OF JUSTICE REGULATION TO TITLE II, 28 C.F.R. PART 35, AND THE ANALYSIS THERE TO, 56 FED. REG. 35694 (JULY 26, 1991) CLARIFY THE REQUIREMENTS OF SECTION 504, AND EXTEND THEM TO INSTITUTIONS WHICH DO NOT RECEIVE FEDERAL FINANCIAL ASSISTANCE. THE DEPARTMENT OF JUSTICE REGULATION TO TITLE II OF THE ADA ALSO SETS FORTH OTHER AUXILIARY AIDS AND SERVICES WHICH A STATE OR LOCAL CORRECTIONAL FACILITY MAY HAVE TO PROVIDE TO A DEAF OR HARD OF HEARING INMATE:

"[Q]ualified interpreters, notetakers, Computer-Aided Transcription services, written materials, Telephone Handset Amplifiers, Assistive Listening Devices, Assistive Listening Systems, Telephones Compatible with Hearing Aids, closed Caption Decoders, open and closed Captioning, Telecommunication Devices for Deaf persons (TDD), VideoText Displays, or other Effective methods of making Aurally Delivered materials Available to individuals with Hearing impairments."

28 C.F.R. 35.104. IT is clear that the ADA and Section 504 Require provision of these important Auxiliary Aids when other inmates have Access to Telephones and Television. Thus policies and procedures must be modified Especially when Circumstances take place in Corrections system that Result in Denial of Accessibility.

21. Garcia contends that the installation of FM systems on Televisions to Transmit sound via Radio waves, was reasonable and a valid action to Effectively monitor and Control security where a large gathering of prisoners attend for Television viewing. The Transmitter within the Television Broadcasts an FM Radio signal to any number of listeners with personal radios. The normal Television volume level is set to its lowest audio range, and the transmitter volume level Controls the FM Radio signal volume output at a fixed low level, while yet allowing normal hearing prisoners to

LISTEN AT THE VOLUME THEY WANT WITHOUT DISTURBING OTHERS. STILL, BACKGROUND NOISE, REVERBERATION OF DISTANCE BETWEEN TELEVISION AND IMPAIRED, AND CONSTANT PRISONERS TALKING, ARE ALL AMPLIFIED EQUALLY WHEN USING A HEARING AID IN THE TELEVISION DAYROOMS, LEAVING GARCIA (AND OTHERS SIMILARLY SITUATED) FRUSTRATED BY THE HEARING DIFFICULTIES. ⁴

22. The RADIOS SOLD BY THE STATEWIDE CANTEENS ARE LOW QUALITY (CHEAP) UNITS WITH NO DISTORTION FILTERING. THE EARPHONES (EAR BUDS) SOLD WITH THE RADIO ARE "mini units" THAT CANNOT SUPPORT THE INCREASED VOLUME INPUT FOR A DISTORTION-FREE OUTPUT WHEN NOT USING THE HEARING AID. ATTEMPTING TO INSERT BOTH THE HEARING AID AND THE mini EAR BUDS INTO THE AURAL TUBE IS IMPOSSIBLE. HEARING IMPAIRED PRISONERS THUS REQUIRED TO PURCHASE "OPTIONAL" OVER THE EAR HEADPHONES BELIEVING THAT THESE

4. THERE ARE FOUR (4) TELEVISIONS (ONLY 1) IS CLOSED CAPTION) IN TWO OPEN DAYROOMS THAT ALSO INCLUDE TWO GAME TABLES (ONE ON EACH FLOOR). THERE ARE NO WALLS OR BARRIERS SEPARATING EACH OF THE DAYROOMS. IN THE TV VIEWING AREAS, THE BENCH SEATING CAPACITY ACCOMMODATES TWENTY-FIVE PRISONERS PER DAYROOM VIEWING AREA. THIS TOTAL AMOUNTS TO 100 PRISONERS SITTING ON BENCHES. HOWEVER, THERE IS A TOTAL OF TWO-HUNDRED TWENTY-FOUR (224) PRISONERS ASSIGNED TO THE DORMITORY. IF THE ADDITIONAL 124 PRISONERS CHOOSE TO VIEW A TV PROGRAM RATHER THAN PLAY CARDS GAMES OR REMAIN IN THEIR ROOMS, THEY HAVE TO STAND OR SIT ON THE FLOORS AND ADDING TO THE AMPLIFIED BACKGROUND NOISE LEVEL.

Could Be placed over the Hearing Aid and thereby achieve the Amplification and Clarity for TV Listening. However, this only produced a High pitched Feed-Back From the Hearing Aid.

23. Garcia Requires a Higher Decibel Radio with a Wide Range Earphone that can be used with his Hearing Aid or as a Stand Alone unit to help combat the extreme Background noise, Distance, Feed-Back, and Echo that interferes with his understanding of clear Television Audio. His Request for the Accommodation was and is a Reasonable Request. Indeed, Garcia would be paying all costs (through family) for the purchase of this simple but necessary upgrade compelled by Department Facility Reasonable Security Modification.

24. The Department of Corrections (Central Office) Contentions of "Security Risks" to Allow a "Higher Decibel Radio" on Institution Compound ⁵ Requires Federal Court Resolution inasmuch as it is considered Governing Policy over ADA rights to reasonable Accommodation.

5. Garcia Reiterates that the higher Decibel Radio sought is a simple "speakerless" AM-FM Radio that features High Quality and Low Distortion Filtering with a Wide Range Noise Reduction Earphones; The Dimensions of which are no bigger than the Radios currently being sold by the Statewide Canteen.