

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**BRANDON COBB, MARY HILL, and  
JOSEPH NETTLES, on behalf of  
themselves and all others similarly  
situated,**

*Plaintiffs,*

v.

**GEORGIA DEPARTMENT OF  
COMMUNITY SUPERVISION, and  
MICHAEL NAIL, in his official capacity  
as Commissioner of the Georgia  
Department of Community Supervision,**

*Defendants.*

Civil Action No.  
1:19-cv-03285-WMR

**CLASS ACTION**

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' LOCAL RULE 56.1 STATEMENT**

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Pursuant to Rule 56.1(b)(2)(a) of the Local Rules of the United States District Court for the Northern District of Georgia (the “Local Rules”) and Section II.g.ii of this Court’s Standing Orders Regarding Civil Litigation (“Standing Order”), Plaintiffs Brandon Cobb, Joseph Nettles, and Mary Hill submit this response to Defendants Georgia Department of Community Supervision (“DCS”) and Michael Nail (collectively “Defendants”) Statement of Material Facts (ECF No. 200-1) (the “SOF”).

As detailed below, Defendants’ SOF in numerous places states that issues are undisputed when, in fact, they are vigorously disputed by the parties. In addition, the SOF contains many legal propositions and arguments that belong in Defendants’ summary judgment brief, not in its SOF. *See* Local Rule 56.1(B)(1) (in the statement of facts “[t]he Court will not consider any fact . . . stated as an issue or legal conclusion”). Defendants also repeatedly paraphrase testimony and documents, and it is often in a way that mischaracterizes their contents. In those paragraphs, Plaintiffs simply refer the Court to the complete contents of these sources, which speak for themselves. Plaintiffs have referred to exhibits cited in Defendants’ SOF using docket numbers to the extent possible. Finally, all additional exhibits Plaintiffs rely on in this response are attached to the Declaration of Tyler Fink, dated April 4, 2022.

1. DCS was created by the Georgia General Assembly effective July 1, 2015, and is governed by the Board of Community Supervision and the Commissioner of Community Supervision. O.C.G.A. §§ 42-3-1, et seq., 42-3-2, -4.

**Response: Plaintiffs object to this statement as immaterial and irrelevant. It is unclear how Defendants' assertion relates to Plaintiffs' claims regarding Defendants' failures to provide effective communication. The statement is otherwise undisputed.**

2. DCS supervises criminal defendants in Georgia on probation and parole. O.C.G.A. § 42-3-3.

**Response: Undisputed.**

3. Georgia state courts are responsible for communication with defendants in court proceedings. DCS is not responsible for this and has no authority to do so. Ga. Uniform Superior Ct. Rule 73; Ga. Supreme Ct. Rules, Use of Interpreters for Non-English Speaking and Hearing Impaired Persons. (Roper Dep. at 268:10-19).

**RESPONSE: These statements asserts legal propositions regarding the obligations of Georgia state courts to which no factual response is required. To the extent any response is required, Plaintiffs dispute this statement to the extent that it can be read to assert that DCS has no obligations at any point during any court proceeding. To the extent that any portion of a court proceeding is a service, program, or activity of DCS, DCS has obligations to**

**provide effective communication during that portion of the proceeding. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.160(a).**

4. All Plaintiffs were provided by their state sentencing courts with the terms of their criminal sentences and probation/parole conditions at sentencing. (Doc. 34-1 (Brandon Cobb) ¶¶ 9, 15 (Attachment 1, at 9-16 (ECF)<sup>1</sup>); Doc. 34-4 (Joseph Nettles) ¶¶ 9, 14 (Attachment 1, at 8-22); MSJ Ex. D (Adam Roper Decl.) (Mary Hill) ¶¶ 4, 5 (Attachment 1)).

**RESPONSE: Plaintiffs object to this statement as immaterial and irrelevant. It is unclear how Defendants’ assertion regarding actions by the “state sentencing courts” relates to Plaintiffs’ claims regarding Defendants’ failures to provide effective communication. Plaintiffs also object to this statement as vague because it is unclear what “provided” means in this context, such as the format or manner Defendants assert that these conditions were provided to Plaintiffs, whether they were provided to Plaintiffs in a form that they could understand, or whether Plaintiffs understood them.**

5. All Plaintiffs were provided interpreters by their state sentencing courts at sentencing. (Cobb Dep. I (03/29/2021), at 74:6-75:11; Nettles Dep. I (04/21/2021), at 10:1-11:10; Hill Dep. I (8/10/2021), at 21:14-22:9).

**RESPONSE: Undisputed.**

6. Nettles is a registered sex offender and many other deaf or hearing-

impaired offenders on probation and parole are registered sex offenders. (MSJ Ex. B (Smith Decl. 3) (the “Smith Decl.”) ¶ 10; Nettles Dep. II (05/25/2021), at 124:7-11).

**RESPONSE: It is undisputed that Plaintiff Nettles is a registered sex offender. Plaintiffs object to the statement that “many” other deaf or hard of hearing individuals under supervision are registered sex offenders as the term “many” is vague. While it is undisputed that 23 of the individuals identified by DCS as deaf or hard of hearing are registered sex offenders, MSJ Ex. B, Third Smith Decl. ¶ 10, it is disputed that this number adequately reflects the total number of deaf or hard of hearing sex offenders currently under supervision as Plaintiffs dispute the underlying assumption that DCS adequately and accurately identifies deaf and hard of hearing people under supervision. *See* Ex. E, Smith 2020 Dep. at 202:18-203:11, 205:10-12 (there were 45 people with hearing disabilities on a list that the DCS legal department gave to Mr. Smith but he does not know how that list was generated); *Id* at 206:9–208:8 (DCS relies on individual CSOs to identify which supervisees are deaf and hard of hearing); Ex. F, Smith 2021 Dep. at 109:13-110:2 (DCS had now identified 83 supervisees who are deaf or hard of hearing).**

7. DCS is the “appropriate official” responsible for communicating registration requirements and conditions of supervision to sex offenders *only* with

respect to those “sentenced to probation without any sentence of incarceration in the state prison system or who [are] sentenced [as] first offenders.” O.C.G.A. § 42-1-12(a)(2), -12(b).

**RESPONSE: This statement asserts legal propositions concerning the meaning of O.C.G.A. § 42-1-12 to which no factual response is required. Plaintiffs respectfully refer the Court to the text of O.C.G.A. § 42-1-12, which speaks for itself and makes no reference to communicating “conditions of supervision” other than requirements related to sex offender registration. See O.C.G.A. § 42-1-12(b).**

8. The Georgia Department of Corrections (DOC) is the “appropriate official” responsible for communicating registration requirements and conditions of supervision to sex offenders who are sentenced to incarceration before probation. DOC is required to communicate this information before a sex offender is released from prison or placed on probation or parole. O.C.G.A. § 42-1-12(a)(2), -12(b).

**RESPONSE: This statement asserts legal propositions concerning the meaning of O.C.G.A. § 42-1-12 to which no factual response is required. Plaintiffs respectfully refer the Court to the text of O.C.G.A. § 42-1-12, which speaks for itself and makes no reference to communicating “conditions of supervision” other than requirements related to sex offender registration. O.C.G.A. § 42-1-12(b). Plaintiffs further object to this statement as immaterial**

and irrelevant. It is unclear how Defendants' assertions regarding responsibilities of DOC relate to Plaintiffs' claims regarding Defendants' failures to provide effective communication.

9. The Georgia Board of Pardons and Paroles (BPP) is the "appropriate official" responsible for communicating registration requirements and conditions of supervision to sex offenders who are placed on parole. O.C.G.A. § 42-1-12(a)(2), -12(b).

**RESPONSE: This statement asserts legal propositions concerning the meaning of O.C.G.A. § 42-1-12 to which no factual response is required. Plaintiffs respectfully refer the Court to the text of O.C.G.A. § 42-1-12, which speaks for itself and makes no reference to communicating "conditions of supervision" other than requirements related to sex offender registration. O.C.G.A. § 42-1-12(b). Plaintiffs further object to this statement as immaterial and irrelevant. It is unclear how Defendants' assertions regarding responsibilities of BPP relate to Plaintiffs' claims regarding Defendants' failures to provide effective communication.**

10. Approximately 200,000 offenders are serving probation or parole at any one time in Georgia. (MSJ Ex. B (Smith Decl. 3) ¶ 8).

**RESPONSE: Undisputed.**

11. DCS does not maintain custody of any offender who is a named



Plaintiff in this case or generally of any other offenders whom it supervises. DCS does not provide health care to offenders and has no authority to conduct medical evaluations or hearing assessments of offenders. Also, DCS does not as a part of its operations maintain offenders' medical records, results of hearing tests, information about hearing capabilities, or information regarding hearing impairment. Accordingly, DCS generally learns that an offender is hearing impaired by: self-identification and request for hearing accommodation, doctor's statement provided by the offender, or apparent difficulty of the offender in communicating effectively. Once DCS learns that an offender is hearing impaired, the agency maintains that information in its records. (MSJ Ex. B (Smith Decl. 3) ¶ 23).

**RESPONSE: It is undisputed that DCS does not maintain custody of named Plaintiffs or other individuals under supervision and that DCS does not provide health care to individuals under supervision. Plaintiffs object to the remainder of the statement as it asserts a legal proposition concerning the agency's legal authority to which no factual response is required. To the extent a response is required, Plaintiffs object to the statement because it is vague as to what is meant by "medical evaluations," "hearing assessments," "medical records," "results of hearing tests," "information about hearing capabilities," and "information regarding hearing impairment" in this context. The**

**statement that DCS has no authority to conduct “hearing assessments” is further disputed to the extent that it conflicts with the Declaration of Darrell Smith, and Statements 17 and 18 herein (both disputed), which claim that DCS conducts such an assessment at intake. MSJ Ex. B, Third Smith Decl. ¶¶ 12-13. The statement that DCS does not “maintain” the referenced documents and information is further disputed on the basis that DCS officers have access to records from DOC, which may include such documents and information. Ex. D, Worley Dep. at 62: 10-15; Ex. II, Dowdell Dep. at 33:21-34:10, 39:15-18; Ex. E, Smith 2020 Dep. at 102:14-103:3.**

12. Approximately 88 offenders under supervision by DCS have been identified by DCS as deaf or seriously hearing-impaired. MSJ Ex. B, Third Smith Decl. ¶ 9).

**RESPONSE: While it is undisputed that DCS has identified approximately 88 individuals under supervision that it has identified as “deaf or seriously hearing impaired,” Plaintiffs dispute that this number adequately reflects the total number of deaf or hard of hearing individuals under supervision as Plaintiffs dispute the underlying assumption that DCS adequately and accurately identifies deaf and hard of hearing people under their supervision. See Response to Statement 6.**

13. An offender begins probation or parole by reporting to a DCS office

for intake. At intake, DCS creates in its Portal computer system a profile for each offender on probation and parole. (MSJ Ex. B (Smith Decl. 3) ¶ 4, 6, 11 (Attachment 1, Policy 6.340(IV)(C))).

**RESPONSE: Plaintiffs dispute the Statement in that the citations do not support the purported fact.**

14. When an offender with a disability reports for intake, a DCS Community Supervision Officer (CSO) enters information about the disability into the offender's Portal profile. This includes any reasonable accommodations needed by the offender. (MSJ Ex. B (Smith Decl. 3) ¶ 4, 6, 11 (Attachment 1, Policy 6.340(IV)(C))).

**RESPONSE: Plaintiffs dispute the statement in that the citations do not support the purported fact. Plaintiffs further dispute the statement as they dispute the underlying assumption that CSOs adequately and accurately identify individuals under supervision who have disabilities, particularly where those individuals experience communication difficulties because they are deaf or hard of hearing, or adequately and accurately identify the auxiliary aids and services, or other reasonable modifications needed by the supervisee. *Compare, e.g.,* Szotkowski Decl. Ex. K, BodyCam Video, Ashley Barnett (Mar. 8, 2018) (CSO stating Barnett can read lips well and complete some tasks in writing) *with* Ex. I, Harrelson Report at 16-17 (Plaintiffs' expert concluding Ms. Barnett**

requires ASL to communicate effectively); *see also id.* at 24-26 (Plaintiffs' expert concluding class member Gabriel Cohen needs ASL to communicate effectively despite CSO note that Cohen could communicate effectively through text and speaking); Szotkowski Decl. Ex. M, BodyCam Video, Courtney Phillips (Mar. 20, 2019) (CSO insisting Phillips can read lips even after mother stated he could not).

15. For offenders reporting at intake who appear to be deaf or hearing-impaired, a CSO engages an interpreter certified in American Sign Language (ASL). This is usually done through Video Remote Interpreting (VRI), which is explained in more detail below. DCS may engage a live ASL interpreter if VRI is unavailable or ineffective with a particular offender. DCS may also use other methods if an offender appears not to know ASL. This includes Communication Access Realtime Translation (CART) for those hearing-impaired offenders who do not know ASL. (MSJ Ex. B (Smith Decl. 3) ¶ 4, 6, 11 (Attachment 1, Policy 6.340(IV)(C, G)).

**RESPONSE: Plaintiffs dispute whether it is DCS policy or practice for CSOs to engage in the activities outlined in this paragraph when encountering an individual who may be deaf or hard of hearing at initial intake because the specific steps outlined in this sentence are not reflected in the recently revised ADA policy. That policy only states that at initial intake the CSO “will use**

auxiliary aids and services (AAS) as necessary in order to have effective communication with the individual regarding the module.” MSJ Ex. B, Third Smith Decl., Attachment 1 (“ADA Policy”) at IV.C.1. This policy makes no mention of engaging an interpreter, or the preference for using video remote interpreting (VRI). While the paragraph mentions the possibility of securing live interpreters, it does not include language from the policy about the process for securing live interpreters, which requires higher approval and the involvement of procurement. *Id.* at IV.G.9. In addition, the DCS policy specifically addresses to the initial interview process for individuals under supervision does not mention interpreters or any other process for providing effective communication. Ex. Y, Initial Interview Policy; Ex. F, Smith 2021 Dep. at 149:17-151:5. Plaintiffs also dispute that the contents of this paragraph represent regular DCS practice because DCS has not provided formal training to CSOs on the steps described, other than a training on how to access VRI. Ex. F, Smith 2021 Dep. at 181:6-182:13; Hilliard Dep. at 25:25-28:21, 30:11-31:3. Plaintiffs further dispute the statement to the extent that it implies CSOs have used CART in interactions with deaf or hard of hearing individuals under supervision as Defendants’ have not provided any evidence that CART has, in fact, been used.

16. Through the ASL interpreter, DCS learns at intake if the offender has

been deaf from birth or early childhood. (MSJ Ex. B (Smith Decl. 3) ¶ 11).

**RESPONSE: Plaintiffs dispute this statement in that the citations do not support the purported fact in that the statement states that DCS “learns at intake if the offender has been deaf from birth or early childhood,” the Declaration only states that “[d]uring this time DCS will begin to learn” this information. MSJ Ex. B, Third Smith Decl. ¶ 11. Plaintiffs further dispute the statement as such information is not required to be collected under the ADA Policy, nor is it included in the list of initial interview questions CSOs are expected to ask. Ex. SS, Initial Interview Questions (D-13318) at 4. *See also* Response to Statement 15.**

17. If the ASL interpreter engaged by DCS at intake reports difficulties in communicating with the offender, then, subject to the consent of the offender, DCS causes an offender who identifies as deaf to be assessed by an outside assessor to determine his or her communication skills. This outside assessor is an ASL interpreter who specializes in assessing communications skills. (MSJ Ex. B (Smith Decl. 3) ¶ 12).

**RESPONSE: Plaintiffs dispute this statement as there is no admissible evidence to show that such a process is in place as the only reference to such assessment appears in the Declaration of Darrell Smith submitted in support of Defendants’ Motion to Dismiss. *See also* Plaintiffs’ Opposition at 9.**

**Plaintiffs further dispute this statement as it is contrary to DCS deposition testimony describing the process for assessing communication needs which did not mention any outside assessment. *E.g.*, Ex. A, Driver Dep. at 48:10-49:9 (describing process by which CSOs assess communication needs for individuals who appear to be deaf or hard of hearing); Ex. E, Smith 2020 Dep. at 291:7-292:14 (CSOs are responsible for asking questions of individuals under supervision to determine their level of communication need); Ex. F, Smith 2021 Dep. at 228:7-230:19 (describing how CSOs determine whether a supervisee can understand what is being communicated to them).**

18. This assessment culminates in a written recommendation for auxiliary aids and services, if any, which DCS should provide to ensure effective communication. DCS provides the recommended auxiliary aids and services unless the requirements of 28 CFR § 35.164 are satisfied. (MSJ Ex. B (Smith Decl. 3) ¶¶ 13).

**RESPONSE: Plaintiffs dispute this statement as they dispute that the referenced assessment occurs during the initial intake process. *See* Response to Statement 17.**

19. The current DCS Americans with Disabilities Act Title II policy was most recently revised on June 1, 2021. (MSJ Ex. B (Smith Decl. 3) ¶¶ 4, 6 (Attachment 1, Policy 6.340).

**RESPONSE: Undisputed.**

20. The DCS ADA Title II policy provides for the use of auxiliary aids and services and reasonable accommodations for deaf or hearing-impaired supervisees. It also contains a grievance procedure. (MSJ Ex. B (Smith Decl. 3) ¶¶ 4, 6 (Attachment 1, Policy 6.340).

**RESPONSE: Disputed to the extent Defendant's characterizations of the cited documents are vague and differ from their actual contents, which speak for themselves.**

21. Plaintiffs' experts have not addressed the adequacy of the DCS ADA Title II policy, leaving the opinion of Defendants' expert that the policy is adequate uncontradicted. (Erin Moriarty Harrelson Dep. at 99:7-25; Barry Marano Dep., at 233:6-233:18, 235:7-236:11, Dep. Exhibit 130).

**RESPONSE: Plaintiffs dispute that their experts did not address the adequacy of the DCS ADA Title II policy. While Plaintiffs' experts were not asked to review the written terms of the policy (the current version of which had not been produced to Plaintiffs when their experts prepared their reports), Plaintiffs' experts' opinions, as well as the record evidence itself, address the inadequacy of DCS's policies and practices by demonstrating DCS's numerous failures to provide effective communication as required by the ADA. See, Ex. I, Harrelson Report; Ex. J, Kegl-Rowley Report. Plaintiffs also object to this**



Statement to the extent it implies that Defendants’ expert found the DCS ADA Title II policy to be adequate. Mr. Marano did not label Defendants’ ADA policy legally adequate. Ex. W, Marano Dep. at 284:3- 290:21. Indeed, in response to Plaintiff’s question asking whether Marano “fe[lt] that [he], with the information that [he] ha[d], c[ould] form an opinion as to whether or not the DCS supervising officers ha[d] received adequate training involving their responsibilities under Title II of the ADA,” Marano said “[he] believe[d] that maybe some adjustments c[ould] be made.” *Id.* at 284:3-285:2. In fact, Marano articulates his concerns with Defendants’ policy throughout his testimony. *Id.* at 236:21-237:10 (the examples of communication issues brought up by P’s experts have given him concern about whether DCS is executing its policy), 237:17-238:3 (there is dysfunction and mistakes made, but he doesn’t know the whole picture), 238:4-24 (he focused on the named plaintiffs, but seeing the other examples from the system makes him think adjustments need to be made), 242:8-244:3 (with the limited information he has, he believes that adjustments need to be made to training materials), 289:14-290:21 (he needs more information to determine “how bad a mistake” the interactions were, and “what percentage are problems.”). Furthermore, Plaintiffs’ experts’ opinion properly characterizes DCS’s policies and practices as inadequate by demonstrating DCS’s numerous failures to provide effective communication as

required by the ADA. Plaintiffs are allowed, but not required, to offer expert testimony on “an ultimate issue of fact,” but may not offer an expert’s “opinion regarding ultimate legal conclusions.” *United States v. Delatorre*, 308 F. App’x 380, 383 (11th Cir. 2009); see *Montgomery v. Aetna Cas. & Sur. Co.*, 898 F.2d 1537, 1541 (11th Cir. 1990) (“An expert may testify as to his opinion on an ultimate issue of fact. An expert may not, however, merely tell the jury what result to reach.”) (citation omitted) (emphasis added); see also *Burkhart v. Washington Metro. Area Transit Auth.*, 112 F.3d 1207, 1213-14 (D.C. Cir. 1997) (Court excluded Plaintiff’s expert witness’ testimony because it “consisted of impermissible legal conclusions,” including using language from Title II of the ADA and the implementing regulations to conclude that Defendants’ had violated Title II). Accordingly, Plaintiffs’ have exercised their option to offer expert testimony on Defendants’ policy, and the testimony sufficiently demonstrates the legal inadequacies of Defendants’ policy.

22. VRI is a service that provides a foreign language or ASL interpreter at a remote location in order to facilitate communication between or among persons who do not speak a common language. (MSJ Ex. B (Smith Decl. 3) ¶¶ 4, 6, 11 (Attachment 1, Policy 6.340(III))).

**RESPONSE: Undisputed.**

23. On September 11, 2019, DCS signed a contract with Language

Line Solution to provide VRI services to its employees and CSOs through software connections on computing devices—including cell phones, tablets, and laptops. (Doc. 67-1 (Smith Decl. 1) ¶¶ 5, 9 (Attachments 1, 2); MSJ Ex. B (Smith Decl. 3) ¶¶ 4, 15-18 (Attachment 2)).

**RESPONSE: Undisputed.**

24. DCS also has the capability of providing CART for those hearing-impaired offenders who do not know ASL. (MSJ Ex. B (Smith Decl. 3) ¶¶ 4, 15-17 (Attachment 2); Doc. 67-1 (Smith Decl. 1) ¶¶ 5, 9-11 (Attachments 1, 2)).

**RESPONSE: Plaintiffs object to this statement in that the cited portions of the Third Declaration of Darrell Smith do not support the purported fact. Defendants cite paragraphs 4 and 15-17 as support for this proposition. While ¶ 17 mentions CART, it appears to actually be discussing the provision of in-person interpreters. *See also* Statement 25. While Plaintiffs do not dispute that Defendants have the capability to provide CART, Plaintiffs dispute the statement to the extent that it implies Defendants have actually provided CART in interactions with deaf or hard of hearing individuals as there is no evidence that CART has, in fact, been used.**

25. VRI and CART services is provided through AD Astra, Interpreters Unlimited (Under State Contract), and AllWorld Language Consultants (No longer under State Contract, but available on an individual task basis). These agencies

allow DCS to be able to go from one to another agency to request an interpreter for a need. Meaning if DCS needs an in-person interpreter for a certain date and time, and one provider does not have availability, the representative from procurement will select the next entity to contact. If none of the entities under state contract has an available interpreter, then the procurement specialist contacts other entities outside of the state contract. This process has been effective and DCS has been able to schedule an interpreter when the need arises. The entities presently used to obtain interpreters are named in Attachment 2 to the declaration of DCS ADA Coordinator Darrell Smith. (MSJ Ex. B (Smith Decl. 3) ¶¶ 4, 15-17 (Attachment 2); Doc. 67-1 (Smith Decl. 1) ¶¶ 5, 9-11 (Attachments 1, 2)).

**RESPONSE: Plaintiffs do not dispute that DCS has the capability to schedule interpreters using more than one service. Plaintiffs dispute the statement to the extent Defendants imply that they schedule such an interpreter “when the need arises.” Ample record evidence shows that Defendants do not schedule these interpreters for interactions where deaf or hard of hearing people under supervision have such a need. For example, DCS does not provide in-person interpreters during home visits or other field interactions, regardless of the communication needs of the individual. Ex. A, Driver Dep. at 119:13-25; Ex. E, Smith 2020 Dep. at 55:25-56:11; Szotkowski Decl. Ex. P, Nettles Suppl. Decl. ¶ 16.**

26. Plaintiffs' experts used ASL communications remotely, which is equivalent to VRI, to communicate with Plaintiffs in order to assess their communications needs and capabilities. (Harrelson Dep. at 37:17-38:15).

**RESPONSE: Plaintiffs object to the statement to the extent that Defendant's characterization of the cited testimony does not match its actual content, which speaks for itself. Plaintiffs further object to this statement as immaterial and irrelevant. It is unclear how Defendants' assertion regarding interactions with Plaintiffs' expert relates to Plaintiffs claims regarding Defendants' failures to provide effective communication. Plaintiffs further object to the statement in that the citation does not support the purported fact. The citation is to testimony by Dr. Moriarty Harrelson, which makes no reference to communication by Plaintiffs' other experts. With respect to Dr. Moriarty Harrelson, the citation does not state that she had any communications with named Plaintiffs. Plaintiffs do not dispute that Dr. Moriarty Harrelson communicated with Hill remotely using ASL. Plaintiffs dispute that Dr. Moriarty Harrelson's interaction with Plaintiffs and class members is equivalent to VRI. Ex. T, Harrelson Dep. at 38:2–38:15; Ex. V, Shepard-Kegl 2021 Dep. at 383:2–384:11. Plaintiffs further dispute the statement as Dr. Moriarty Harrelson communicated directly with Plaintiffs for the purpose of assessing their communication needs, a process for which she**

has significant training and experience, rather than for the purpose of providing information to Plaintiffs about their supervision on probation or parole. Ex. JJ, Harrelson Report - Hill Addendum at 6; Ex I, Harrelson Report at 3-4.

27. As a result of the Covid-19 pandemic, DCS has been forced to rely more heavily on remote communications with all offenders. With respect to deaf offenders, this has taken the form of VRI. (MSJ Ex. B (Smith Decl. 3) ¶¶ 24-26; MSJ Ex. C (Nail Decl.) ¶¶ 16-19).

**RESPONSE:** Plaintiffs object to this statement as overbroad and vague as there is no time frame indicated. Plaintiffs further object to the statement as vague and ambiguous as Defendants' Motion, the Third Declaration of Mr. Smith, and the Declaration of Commissioner Nail all seem to conflate VRI (video remote interpreting), which is used for in person interactions and VRS (video relay service), which is used for telecommunications. Ex. EE, Strauss Dep. 65:4-12 (“VRI stands for video remote interpreting. . . . [I]t’s used for in person interpreting. So two people are in the same room. They pull up this video remote interpreter. And the interpreter interprets what is going on. So, it’s very different than VRS, because VRS is for telephone calls.”); Ex. J, Kegl-Rowley Report at 44-45; *c.f.* MSJ Ex. B, Third Smith Decl. ¶ 26; MSJ Ex. C, Nail Decl. Plaintiffs dispute this statement to the extent Defendant’s characterization of

**the cited testimony does not match its actual content, which speaks for itself. Plaintiffs do not dispute that at some point in time during the Covid-19 pandemic, DCS increased its use of audio and video interactions to communicate with individuals under supervision. MSJ Ex. C, Nail Decl. at ¶ 17. Plaintiffs dispute that that is still the case in that the citations do not support the purported fact. MSJ Ex. B, Third Smith Decl. at ¶ 24. Plaintiffs dispute the statement that remote communication has taken the form of VRI with respect to deaf supervisees as the citations provided do not support the purported fact.**

28. Due to the Covid-19 pandemic, DCS discontinued all in-person home visits of CSOs with offenders during peak periods of the pandemic except for arrests and other emergencies. (MSJ Ex. B (Smith Decl. 3) ¶¶ 24-26; MSJ Ex. C (Nail Decl.) ¶¶ 16-19).

**RESPONSE: Plaintiffs object to this statement as overbroad and vague in time frame. Plaintiffs further dispute the statement to the extent Defendants’ characterization of the cited testimony differs from its actual content, which speaks for itself. Plaintiffs do not dispute that during the Covid-19 pandemic, starting in March 2020, DCS for a short period of time limited home visits. MSJ Ex. B, Third Smith Decl. at ¶ 24. Plaintiffs dispute that that limitation is current. *Id.* (“But DCS has returned to regular visits”). Plaintiffs further dispute that all face-to-face field interactions were suspended during any**

portion of the COVID-19 pandemic. For example, field interactions continued with “specialized offenders” such as sex offenders. Ex. A, Driver Dep. at 147:21-148:24.

29. VRI and other accommodations are available without delay to facilitate communication between CSOs and hearing-impaired probationers and parolees. All services, including VRI, CART, and live ASL interpreters are available to CSOs without any prior administrative approval. (MSJ Ex. B (Smith Decl. 3) ¶¶ 15-19 (Attachments 1, 2)).

**RESPONSE:** Plaintiffs dispute the statement to the extent that it states auxiliary aids and services, and other accommodations, other than VRI, are available to CSOs “without delay” and “without any prior administrative approval.” The DCS ADA Policy provides for an “Interpreter/CART Service Request Process” which requires that the CSO, after receiving a request for a live interpreter or CART, “contact the Chief or Assistant Chief with the request.” ADA Policy at IV.G.9. The Chief or Assistant Chief will review and complete a service request form and e-mail the purchasing department, which will assign the request to a procurement specialist. *Id.* The policy also prescribes a reasonable accommodation request process, presumably for aids, services and accommodations other than live interpreters and CART, that is even more complex. This process requires the ADA Coordinator to review written



requests for reasonable accommodations and make a decision within 24 business days; a time period which can be extended. *Id.* at IV.G.

30. In his declaration filed July 19, 2019 in support of Plaintiffs' motion for preliminary injunction, Plaintiff Cobb said that he needed both a live hearing ASL interpreter and Certified Deaf Interpreter (CDI) in order to communicate. (Doc. 2-2 ¶¶ 5, 19).

**RESPONSE: Plaintiffs dispute the statement to the extent Defendants' characterization of the cited testimony differs from its actual content, which speaks for itself. Plaintiffs further object in that Plaintiff having said something is not a material fact. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions" and cannot be made by the district court. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *see also Graham v. State Farm Mut. Ins. Co.*, 193 F.3d 1274, 1282 (11th Cir. 1999). To the extent Defendants intend this fact to simply read that Plaintiff "needs both a live hearing ASL interpreter and a Certified Deaf Interpreter (CDI) in order to communicate," Plaintiffs dispute the statement to the extent that Defendants' characterization of the cited testimony differs from its actual content, which speaks for itself. Cobb has testified and offered undisputed expert testimony that he requires a team of a hearing and deaf interpreter to communicate with hearing people who do not**

know sign language when discussing important information. Ex J, Kegl-Rowley Report at 129-130; *see also* Szotkowski Decl. Ex O, Cobb Supp. Decl. ¶ 5.

31. Plaintiff Cobb, who is 33 years-of-age, has had a team of both hearing and deaf ASL interpreters only on the following occasions: at his trial in 2014, the hearing in this case in federal court in September 2019, in his deposition taken by defense counsel in this case, and in his meetings with Plaintiffs' counsel in this case. (Cobb Dep. I (03/29/21) at 74:24-75:11, 80:11-12; Cobb Dep. II (04/26/21) at 59:23-60:9).

**RESPONSE: Plaintiffs do not dispute that DCS has never provided Mr. Cobb a team of both hearing and deaf ASL interpreters. Plaintiffs object to the remainder of the statement as immaterial and irrelevant. It is unclear how Defendants' assertions relate to Plaintiffs' claims regarding Defendants' failures to provide effective communication.**

32. In his declaration filed July 19, 2019 in support of Plaintiffs' motion for preliminary injunction, Plaintiff Nettles said that he needed only a live ASL interpreter in order to communicate. He did not say he needed a CDI. (Doc.2-6 ¶ 10).

**RESPONSE: *See* Response to Statement 30. To the extent Defendants intend this fact to simply read "Plaintiff Nettles needs only a live ASL**

interpreter in order to communicate; he does not need a CDI,” Plaintiffs dispute the statement. Plaintiffs dispute the statement to the extent that Defendants’ characterization of the cited testimony differs from its actual content, which speaks for itself. Nettles has testified and offered undisputed expert testimony that he requires a team of a hearing and deaf interpreter to communicate with hearing people who do not know sign language when discussing important information. Ex J, Kegl-Rowley Report at 140-141; *see also* Szotkowski Decl. Ex. P, Nettles Supp. Decl. ¶¶ 3-4.

33. In the complaint as originally filed July 19, 2019, Plaintiff Nettles did not allege that he needed a CDI. (Docs. 1 ¶¶ 4, 23, 40). Only in the first amended complaint filed January 22, 2021 and second amended complaint filed July 1, 2021 did Nettles allege that he needed a CDI. (Doc. 148 ¶¶ 4, 38; Doc. 181 ¶¶ 4, 37).

**RESPONSE: See Responses to Statements 30 and 32.**

34. Plaintiff Nettles, who is 53 years-of-age, had never used a CDI until January 2020 during this litigation. (Nettles Dep. I (04/21/2021), at 42:7-9, 47:10-25-48:1-6).

**RESPONSE: Plaintiffs do not dispute that DCS has never provided Mr. Nettles a team of both hearing and deaf ASL interpreters. Plaintiffs object to the remainder of the statement as immaterial and irrelevant. It is unclear how**

**Defendants’ assertions relate to Plaintiffs’ claims regarding Defendants’ failures to provide effective communication.**

35. Plaintiff Hill, who is 41 years-of-age, had never heard of or used a CDI until she met Plaintiffs’ attorneys in 2021. (Hill Dep. I (08/10/2021), at 22:10-24:1).

**RESPONSE: Plaintiffs do not dispute that DCS has never provided Hill a team of both hearing and deaf ASL interpreters. Plaintiffs object to the remainder of the statement as immaterial and irrelevant. It is unclear how Defendants’ assertions relate to Plaintiffs’ claims regarding Defendants’ failures to provide effective communication.**

36. There are presently only four certified CDIs working in Georgia. It is very difficult to schedule these CDIs and often DCS needs to arrange for accommodations on very short notice. (MSJ Ex. B (Smith Decl. 3) ¶ 22).

**RESPONSE: Plaintiffs do not dispute that there are only four certified deaf interpreters physically present in the State of Georgia. Ex. J, Kegl-Rowley Report at 47. Plaintiffs dispute that there are only four deaf interpreters located in the State of Georgia and that there are only four CDIs available to provide interpreting services to DCS. Ex. U, Shepard-Kegl 2020 Dep. at 107:20-109:21. Defendants’ assertions that “it is very difficult to schedule CDIs” and that “DCS often needs to arrange for accommodations on a very short notice” are**

vague and there is no evidence in the record that DCS has ever attempted to schedule a CDI or other Deaf interpreter in the course of supervision. *Cf.* Ex. L, Cobb Day 2 Dep. at 56:5-7; Szotkowski Decl. Ex O, Cobb Suppl. Decl. ¶¶ 4-5, 29; Szotkowski Decl. Ex. P, Nettles Suppl. Decl. ¶¶ 4, 11-14, 17; Ex. R, Nettles Day 1 Dep. at 42:22-47:25; Ex. M, Hill Day 1 Dep. at 22:6-23:19; Ex. N, Hill Day 2 Dep. at 118:13-23; Ex. J, Kegl-Rowley Report at 145; Ex. J, Kegl-Rowley Report - Hill Assessment at 40-45. Plaintiffs further dispute the statement as there are some instances where it would be appropriate to utilize a Deaf interpreter over VRI, rather than in-person, which would not require the interpreter to be located in Georgia. Ex. J, Kegl-Rowley Report at 47 (noting there are 210 CDIs nationwide who could be available by VRI).

37. Approximately 734 home visits are made every year by Community Supervision Officers (CSO) with deaf or hearing-impaired offenders and approximately 169 DCS office visits are made every year by CSOs with deaf or hearing-impaired offenders. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 6).

**RESPONSE:** Plaintiffs dispute this statement as there is no admissible evidence to establish that Defendants' purported numbers are correct, as they are based on unsupported statements in the Declaration of Michael Nail in Support of Defendants' Motion which were not disclosed in the course of discovery. *See also* Plaintiffs' Opposition at 8. Plaintiffs further object to this

**statement as vague. It is unclear if Defendants intend this purported fact to mean that CSOs who have deaf and hard of hearing supervisees on their caseloads conduct 734 home visits every year (to hearing and deaf people alike) or if Defendants intend this purported fact to mean that CSOs conduct 734 home visits each year with deaf and hard of hearing supervisees. It is further unclear if Defendants intend this purported fact to mean that CSOs who have deaf and hard of hearing supervisees on their caseloads conduct 169 office visits each year (with hearing and deaf people alike) or if Defendant intends this purported fact to mean that CSOs conduct 169 office visits with deaf or hard of hearing people under supervision each year.**

38. Using FY 2021 (July 1, 2020-June 30, 2021) as an example and taking into account all resources available to DCS, the budget for DCS as funded by the Georgia General Assembly, contained only \$19,200 (0.0001% of the entire DCS budget) that could be used to provide auxiliary aids and services for deaf offenders. From this amount, DCS provides certified live ASL interpreters when needed, ASL interpreters over VRI as needed, and other accommodations as needed. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 7).

**RESPONSE: Plaintiffs do not dispute that in FY 2021 (July 1, 2020 – June 30, 2021) Defendants only budgeted \$19,200 (0.0001% of their total budget) to provide auxiliary aids and services for deaf individuals under**

supervision. Plaintiffs dispute that this is the only amount that “could be used to provide auxiliary aids and services for deaf offenders.” Plaintiffs further dispute: (i) that DCS provides certified live ASL interpreters when needed (Ex. R, Nettles Day 1 Dep. at 69:9-71:16; Ex. S, Nettles Day 2 Dep. at 147:2-18; ECF 2-6, Nettles Decl. ¶¶ 7-12; Ex. M, Hill Day 1 Dep. at 84:9-18; Ex. N, Hill Day 2 Dep. at 173:21-174:21; Ex. O, Roper Dep. at 207:15-209:3; Szotkowski Decl. Ex. O, Cobb Supp. Decl. ¶¶ 11, 14, 16; Ex. Z, Shields Decl. ¶¶ 16, 28, 33; Ex. A, Driver Dep. at 119:13-25; Ex. E, Smith 2020 Dep. at 55:25-56:5; Szotkowski Decl. Ex. P, Nettles Suppl. Decl. ¶ 16); (ii) that DCS provides interpreters over VRI as needed (Ex. R, Nettles Day 1 Dep. at 36:1-18, 75:9-22, 76:3-18; ECF 2-6, Nettles Decl. ¶¶ 6-9; Ex. M, Hill Day 1 Dep. at 10:10-20:20; Szotkowski Decl. Ex O, Cobb Supp. Decl. ¶ 25; Ex. G, Hilliard Dep. at 78:6-18; Ex. Z, Shields Decl. ¶¶ 15, 19, 20, 26; Szotkowski Decl. Ex. N, BodyCam video of Steven Miller dated Nov. 7, 2019; Szotkowski Decl. Ex. T, BodyCam video of Brian Boozer dated Mar. 3, 2020; Id. at 103; Id. at 55; Ex. O, Roper Dep. at 115:17-118:22, 222:4-224:23); and (iii) that DCS provides other accommodations as needed (MSJ Ex. B, Smith Decl. ¶¶ 12-13 (describing supposed auxiliary aids and services process); Ex. AA, DCS Initial Interview Questionnaire; Ex. A, Driver Dep. at 40:19-41:11, 46:19-47:9; Ex. E, Smith 2020 Dep. at 103:15-20; Szotkowski Decl. Ex. K; Ex. I, Harrelson Report at 17, 24-26; Ex. BB, Case

**Notes for Gabriel Cohen (7/25/19); Szotkowski Decl. Ex. M, BodyCam Video of Courtney Phillips (3/20/19); Ex. CC, Case Notes for Anthony Reid (4/11/18 and 5/12/19).**

39. Thus, if DCS is required to hire a live ASL interpreter or both a hearing interpreter and CDI for all meetings between CSOs and deaf or hearing-impaired offenders, approximately \$788,126 in additional funds would be needed by DCS. This analysis estimates the cost of required contact with supervisees but does not include any supplemental programming that might be additionally assigned to certain supervisees or voluntary programming. The agency's present budget is not sufficient to provide these services at this level. This increase would not be sustainable within the current agency budget and would require a cut in personnel or operating expenses to offset the cost. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 8).

**RESPONSE: Plaintiffs dispute this statement as there is no admissible evidence to establish that Defendants' purported numbers are correct, as they are based on unsupported statements and purported information in the Declaration of Michael Nail in Support of Defendants' Motion which were not disclosed in the course of discovery. *See* Plaintiffs' Opposition at 8. Plaintiffs further object to this paragraph as irrelevant and immaterial, as Plaintiffs have never suggested that a hearing interpreter and a CDI would be necessary for *every single interaction* between DCS staff and a supervisee who is deaf or hard**



of hearing. Instead, Plaintiffs stated that DCS must take steps to ensure that it can provide effective communication to supervisees based on that individual's circumstances and the type of information being communicated. *See, e.g.*, ECF 181, Second Amended Complaint ¶ 32 (“The appropriate auxiliary aids and services will vary based on the individual, but many people will need some combination of: qualified sign language interpreters, qualified Deaf interpreters, assistive listening devices, and [CART].”); *see also* Ex. J, Kegl-Rowley Report at 48-49; Ex. U, Shepard-Kegl 2020 Dep. 102:17-104:18.

40. For DCS to hire a live ASL interpreter or both a live ASL interpreter and a CDI for every meeting or encounter between a DCS employee and a deaf or hearing-impaired offender (or only for those meetings or encounters in which the offender requested or demanded a live ASL interpreter or both a live ASL interpreter and a CDI), would cause a fundamental change or alteration in the services, programs, and activities offered by DCS and undue financial and administrative burdens. (MSJ Ex. C (Nail Decl.) ¶¶ 5-9).

**RESPONSE:** Plaintiffs object to the statement that the provision of auxiliary aids and services “would cause a fundamental change or alteration in the services, programs, and activities offered by DCS and undue financial and administrative burdens,” as it asserts legal propositions to which no factual response is required. *See* Response to Statement 39. To the extent a further

**response is required, Plaintiffs dispute the statement that the inflated amount Defendants purport it would cost to provide these auxiliary aids and services, \$807,326—which only amounts to 0.0048% of the total DCS budget—could amount to an undue burden.**

41. All CSOs have law enforcement training and are certified by the Georgia Peace Officers and Standards Training Council as law enforcement officers. Home visits and other meetings between offenders and CSOs raise several security concerns. During 2019-2020, approximately 166 workers' compensation claims were filed due to on-the-job injuries of CSOs. During 2019-2020, CSOs made approximately 1,574 arrests of offenders for violations of probation and parole conditions. In 2017-2020, CSOs used force on approximately 142 occasions, including several on animals. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 10).

**RESPONSE: Plaintiffs do not dispute that all CSOs have law enforcement training and are certified by the Georgia Peace Officers and Standards Training Council as law enforcement officers. Plaintiffs dispute the remainder of the statement as there is no admissible evidence to establish that Defendants' purported numbers are correct, as they are based on unsupported statements and purported information in the Declaration of Michael Nail, which were not disclosed in the course of discovery. See Plaintiffs' Opposition at 8. Plaintiffs further object to this paragraph as irrelevant and immaterial.**

**The number of workers' compensation claims (which can occur in the course of any number of employment activities that have nothing to do with home visits), the number of arrests made (which do not necessarily occur during home visits and which do not necessarily involve the use or threat of force) provide no useful information on security risks during home visits. The number of incidents involving use of force, without more information about the circumstances and whether third parties present at the scene would have been at any risk, also provides no useful information, and in any event the number of such incidents is minuscule compared to the hundreds of thousands of home visits conducted each year. MSJ Ex. C, Nail Decl. ¶ 11.**

42. A total of approximately 720,551 home visits are made every year by CSOs for all offenders. Presently, DCS assigns only one CSO to each home visit. If interpreters without law enforcement training are to attend all home visits with deaf or hearing-impaired offenders, DCS would need to assign at least two CSOs to each of those visits. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 11).

**RESPONSE: Plaintiffs do not dispute that a total of approximately 720,551 home visits are made every year by CSOs for all people under supervision or that DCS assigns only one CSO to each home visit presently. Plaintiffs dispute the remainder of the statement as there is no admissible evidence to establish that Defendants' purported numbers are correct, as they**

are based on unsupported statements and purported information in the Declaration of Michael Nail, which were not disclosed in the course of discovery. *See also* Plaintiffs' Opposition at 8. Plaintiffs further object to this statement as irrelevant and immaterial, as Plaintiffs have never suggested that a live interpreter would be necessary for every single interaction between DCS staff and a supervisee who is deaf or hard of hearing. Instead, Plaintiffs stated that DCS must take steps to ensure that it can provide effective communication to supervisees based on that individual's circumstances and the type of information being communicated. *E.g.* ECF 118, Second Amended Complaint ¶ 32 ("The appropriate auxiliary aids and services will vary based on the individual, but many people will need some combination of: qualified sign language interpreters, qualified Deaf interpreters, assistive listening devices, and [CART]."). Accordingly, Plaintiffs dispute that DCS would have to assign at least two CSOs to every home visit.

43. If DCS is required to bring live ASL interpreters (either a single interpreter or a team of a hearing interpreter and a CDI), who do not have law enforcement training, to all home visits with probationers and parolees who are deaf or hearing-impaired, DCS will need to provide additional security for these meetings. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 13).

**RESPONSE:** *See* Response to Statement 42.

44. For DCS to hire sufficient CSOs so that at least two CSOs are present at each home visit between a DCS employee and a deaf or hearing-impaired offender would cause a fundamental change or alteration in the services, programs, and activities offered by DCS and undue financial and administrative burdens. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 11, 12).

**RESPONSE: Plaintiffs object to this statement because it asserts legal propositions concerning the obligations of DCS to provide auxiliary aids and services to which no factual response is required. See also Response to Statement 42.**

45. Using FY 2021 (July 1, 2020-June 30, 2021) as an example and taking into account all resources available to DCS, the budget for DCS as funded by the Georgia General Assembly, contained \$127,232,261 (75% of the entire DCS budget—\$169,420,352 in State funds; 82% of the Field Services State funds budget) that could be used to hire CSOs. From this amount, DCS presently employs approximately 1,175 CSOs. DCS would be required to hire 38 additional CSOs for added security at home visits with deaf or hearing-impaired offenders if DCS is required to bring live ASL interpreters (either a single interpreter or a team of a hearing interpreter and a CDI) to all home visits with probationers and parolees who are deaf or hearing-impaired. In order for DCS to hire these additional CSOs, it would need approximately \$2,368,082 in additional funds. DCS would

also need to provide bodyarmor for ASL interpreters. The agency's present budget is not sufficient to provide these funds to support this effort. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 14).

**RESPONSE: Plaintiffs do not dispute the current number of CSOs employed by DCS or amount of money that DCS and/or the state of Georgia have chosen to allocate to the hiring of CSOs. Plaintiffs further object to the remainder of the statement as irrelevant and immaterial, as budgetary allocations cannot be used as an excuse to avoid a government entity's obligations under Title II of the ADA and Section 504 of the Rehabilitation Act. See Opposition at 33-34. See also Response to Statement 42. Plaintiffs dispute the statement as there is no basis for the estimates made regarding the number of CSOs that would need to be hired by DCS and the resulting financial cost to the agency.**

46. The current DCS budget does not support the additional manpower and resources detailed above and to implement these services would alter the funding of agency operations in a detrimental manner as the agency would be required to shift funding from current statutory obligations in order to financially support these changes. As the majority of the agency's budget stems from personal services (staffing), this could result in reduced staffing levels and negatively impact the agency's ability to provide supervision at the level currently provided. (MSJ

Ex. C (Nail Decl.) ¶¶ 5, 15).

**RESPONSE: See Response to Statement 45. Plaintiffs also object to the statements in this paragraph as vague, particularly as to the nature of the “detrimental manner” in which agency funding could be affected and the ways in which funding changes would “negatively impact the agency’s ability to provide supervision at the level currently provided.” Plaintiffs further object that the statements regarding the effects that funding changes could have, particularly results that “could” occur, are speculative and, therefore, not admissible.**

47. In order to limit the spread of Covid-19 during the pandemic starting in March 2020, DCS has limited home visits with offenders to situations involving the execution of arrest or search warrants and other emergencies. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 16; MSJ Ex. B (Smith Decl. 3) ¶ 24).

**RESPONSE: See Response to Statement 28.**

48. During the pandemic, DCS has generally communicated with offenders by audio or video calls. In these calls, CSOs have reviewed offenders’ compliance with supervision conditions. (Nail Decl.) ¶¶ 5, 17; MSJ Ex. B (Smith Decl. 3) ¶ 25).

**RESPONSE: See Response to Statement 27.**

49. CSOs have relied on VRI, which is available to all CSOs, to

communicate with deaf or hearing-impaired offenders during the pandemic. If a deaf or hearing-impaired offender needs to initiate contact with a CSO, the offender has been able to send a text message to his or her CSO asking for a VRI call, or the offender has been free to use VRS. The use of VRS is free for all deafpersons. (Nail Decl.) ¶¶ 5, 18; MSJ Ex. B (Smith Decl. 3) ¶ 26).

**RESPONSE: Plaintiffs dispute whether CSOs relied on VRI to communicate with deaf or hard of hearing individuals subject to supervision as there is ample record evidence showing instances where CSOs did not use VRI, even when DCS was aware that the individual used ASL. Szotkowski Decl. Ex. U at 76, 100, 102. Plaintiffs further dispute the statement as there is ample record evidence that Plaintiffs and deaf and hard of hearing individuals subject to DCS supervision have not received effective communication due to the limitations of VRI and DCS's failure to use VRI appropriately and effectively. Ex. R, Nettles Day 1 Dep. at 36:1-18, 75:9-22, 76:3-18; Szotkowski Decl. Ex. P, Nettles Supp. Decl. ¶¶ 6-9; Ex. M, Hill Day 1 Dep. 10:10-20:20; Szotkowski Decl. Ex O, Cobb Supp. Decl. ¶¶ 18, 25; Ex. G, Hilliard Dep. at 78:6-18; Ex. Z, Shields Decl. ¶¶ 7, 11, 15, 19, 21-23, 25, 26, 30; Szotkowski Decl. Ex. N, BodyCam video of Steven Miller dated Nov. 7, 2019; Szotkowski Decl. Ex. T, BodyCam video of Brian Boozer dated Mar. 3, 2020; Ex. O, Roper Dep. at 115:17-118:22, 222:4-224:23. Plaintiffs also dispute that supervisees who are**



deaf or hard of hearing can effectively communicate with CSOs using text messages. Szotkowski Decl. Ex. U at 2, 12, 30, 33, 47, 51, 68, 76; Ex. I, Harrelson Report at 24-26 (CSO appears to believe that Cohen can communicate effectively through text and speaking, when in fact Plaintiffs' expert concluded that his primary method of communication was ASL); Szotkowski Decl. Ex. P, Nettles Supp. Decl. ¶ 10 (CSO continued to text him in English despite Nettles not understanding many words); Ex. R, Nettles Day 1 Dep. at 21:22-23:25; 30:19-31:4;(Nettles' son and daughter had to interpret and type text messages between Nettles and his CSO); Ex. M, Hill Day 1 Dep. at 79:21-81:20, 82:7-84:8 (testifying about miscommunication between Hill and probation officer using text).

50. For DCS to conduct all home visits with deaf or hearing-impaired offenders in person and bring live ASL interpreters to these visits would severely disrupt agency operations and impede its ability to limit the spread of Covid-19. This would cause a fundamental change or alteration in the services, programs, and activities offered by DCS and undue financial and administrative burdens to the agency. (MSJ Ex. C (Nail Decl.) ¶¶ 5, 19).

**RESPONSE:** Plaintiffs object to this statement because it asserts legal propositions concerning the obligations of DCS to provide auxiliary aids and services to which no factual response is required. *See also* Response to

**Statement 42. Plaintiffs further object to the statement as speculation and improper lay opinion regarding the effect of live ASL interpreters on the “ability to limit the spread of Covid-19.” Plaintiffs further dispute the statement as DCS has already returned to normal operations, lifting restrictions on in-person visits instituted during the early days of the pandemic. MSJ Ex. B, Third Smith Decl. ¶ 24. The DCS policy of refusing to utilize live interpreters for home visits predates the pandemic, and even during the height of the pandemic, DCS never justified this practice as a response to COVID-19 concerns. Ex. A, Driver Dep. at 120:2-121:2 (stating that practice has been in place since the establishment of the agency and that it is based on concerns about safety and the unannounced nature of field interactions).**

51. In addition to following its ADA Title II policy, DCS provides ADA training all CSOs and other employees. All employees are required to complete annual ADA training. Employees are also trained by vendors from Georgia Relay & LanguageLine Solutions. ADA Coordinator Smith also provides one-on-one coaching to CSOs to ensure consistent training and provide updates. (MSJ Ex. B (Smith Decl. 3) ¶ 20).

**RESPONSE: Plaintiffs do not dispute that DCS makes general ADA training available to CSOs. Plaintiffs also do not dispute that training is available from Georgia Relay and LanguageLine solutions on how to use these**

services, though not provided by DCS directly. Plaintiffs dispute that DCS provides ADA training specific to the supervision of deaf and hard of hearing supervisees. For example, CSOs receive no training on: how to identify communication needs and adequately assess the appropriate auxiliary aids and services individuals need (Ex. F, Smith 2021 Dep. at 179:20-180:9, 181:17-24); when VRI should be used (*Id.* at 78:9-79:4); how to determine whether the device screen size is appropriate for VRI (Ex. F, Smith 2021 Dep. at 40:19-42:15, 45:3-14; Ex. A, Driver Dep. at 134:3-6); how to appropriately use VRI during field interactions (*Id.* at 133:9-21); how to communicate with supervisees in the field when VRI isn't working (*Id.* at 139:17-21); how to obtain in-person interpreters under the ADA policy (Ex. F, Smith 2021 Dep. at 66:21-67:13); or how to use the "Offender Interpreter and Disability Service Refusal Form" discussed in the ADA policy (Ex. F, Smith 2021 Dep. at 102:6-23, 104:18-105:14).

52. No revocation proceedings have been initiated against Cobb or Nettles.(Doc. 34-1, Exhibit A (Mitchell Decl., re Brandon Cobb), ¶ 16; Doc. 34-4, Exhibit D (Worley Decl., re Joseph Nettles) ¶ 15).

**RESPONSE: Undisputed.**

53. It was a condition of Mary Hill's probated sentence that she "avoid injurious and vicious habits," "submit to evaluations and testing relative to

rehabilitation,” and “not use narcotics or dangerous drugs unless lawfully prescribed” or “associate with anyone” who does. (MSJ Ex. D (Roper Decl.) ¶¶ 4-5 (Attachment 1)).

**RESPONSE: Plaintiffs do not dispute the statement except to clarify that these conditions of Hill’s probate sentence remain in place.**

54. On October 26, 2020, Hill failed a drug screen. (MSJ Ex. D (Roper Decl.) ¶ 7).

**RESPONSE: Undisputed.**

55. Hill admitted that she had ingested a marijuana product before the drug screen. (MSJ Ex. D (Roper Decl.) ¶ 7).

**RESPONSE: Plaintiffs dispute this statement, as Roper’s deposition testimony is inconsistent with information he previously recorded in the case notes. According to the case notes, prior to the drug screen when asked if she had used any illegal drugs, Hill stated no. She was informed that she would need to submit to a drug screen and agreed to comply. Ex. H, Case Notes for Mary Hill (10/26/2020); Ex. O, Roper Dep. at 163:12-170:4 (admitting that the case notes were written when the events were fresh in his mind and are a more accurate recollection of the events as they occurred than his testimony at deposition). Hill signed an acknowledgment form in which she “admitted” to using THC, but did so without access to an interpreter. *Id.* at 194:12-16, 197:5-**

21.

56. As a result of the positive drug screen and Hill's admitted drug usage, Roper applied for an arrest warrant and the warrant was issued for Hill on October 27, 2020. Hill was arrested on this warrant on November 3, 2020 at the Forsyth County, Georgia Jail. (MSJ Ex. (Roper Decl.) ¶¶ 6-11; Roper Dep. at 157:6-158:9, 247:8-248:16, 249:21-252:11, 255:20-263:12, 265:21-266:3; Dep. Exhibits 115-117).

**RESPONSE: Plaintiffs dispute this statement as inconsistent with the narrative of events found in the contemporaneously recorded case notes and with Roper's deposition testimony. Roper arrested Hill on October 26, 2020, on a 48-hour hold, and only later requested a warrant for her arrest. Ex. O, Roper Dep. at 247:4-248:13. According to the case notes, Hill was taken into custody in the probation office immediately following the positive drug screen on October 26, 2020, and she was transported to the Forsyth County Jail. Ex. H, Case Notes for Mary Hill (10/26/2020). Plaintiffs also dispute the statement to the extent it suggests that the warrant and subsequent arrest were entirely or primarily due to the positive drug screen. Roper prepared the warrant on October 26, 2020, and included Hill's failure to complete her community service obligation as a violation. Ex. O, Roper Dep. at 229:19-230:16. Hill had not been permitted to come into the DCS office to perform her community**

service obligations because of the COVID-19 pandemic, and this had been previously communicated to her by Hilliard. *Id.* at 232:9-237:6; Ex. G, Hilliard Dep. at 93:3-18. Roper’s supervisor, Hilliard, told him to remove the failure to complete community service as a violation on the warrant because “as Covid has delayed the performance of hours and the def has completed more hours than are currenty [sic] posted so amount reflected is not factual.” (Exhibit 112, 10/26/2020, Mgr’s Comments); Ex. O, Roper Dep. at 230:17-232:8. Nevertheless, Roper submitted the warrant to the court with both the failure to complete community service and the positive drug screen as violations. Roper acknowledges that this was a mistake. *Id.* It is, therefore, impossible to know whether the warrant would have been granted and Ms. Hill arrested but for the inclusion of the community service violation.

57. Using a laptop computer, Roper engaged an ASL interpreter over VRI to review with Hill a proposed consent order admitting the drug violation and a community service violation. The Forsyth County Sheriff’s policies due to the Covid-19 pandemic required Roper and Hill to communicate through a window in the visitation area, and did not allow Roper and Hill to be in the same room. Roper read the proposed consent order to Hill through the ASL interpreter, but mistakenly failed to read two critical paragraphs. (MSJ Ex. (Roper Decl.) ¶¶ 6-11; Roper Dep. at 157:6-158:9, 247:8-248:16, 249:21-252:11, 255:20-263:12, 265:21-266:3; Dep.

Exhibits 115-117).

**RESPONSE** . Plaintiffs object to the references to the policies of the Forsyth County Jail as irrelevant and immaterial, since the jail’s policies cannot relieve DCS of its obligation to provide effective communication to Hill when discussing the probation violation or reading the consent order. Plaintiffs also dispute the statement to the extent that it suggests that the Forsyth County Sheriff’s policies prevented effective communication during this interaction. Roper never asked to bring an in-person interpreter to the jail, and nothing about the Sherriff’s policies prevented him from doing so. *Id.* at 269:25-270:22. Finally, Plaintiffs dispute the statement to the extent it suggests that, other than Roper’s failure to read two critical paragraphs of the consent order, Hill received effective communication through VRI during this situation. Ex. GG, Hill Decl. ¶ 10. The interpretation through VRI happened through thick glass, with Roper having to hold up the laptop to show Hill the VRI, in a situation that Roper described as “awkward.” Ex. O, Roper Dep. at 115:17-118:14.

58. Hill would have been revoked and sentenced to serve 60 days even if the communication had been perfect, since she admitted the drug violation. (MSJ Ex. D (Roper Decl.) ¶ 13; Roper Dep. at 63:4-64:9, 267:22-268:9).

**RESPONSE** Plaintiffs object to this statement because it asserts legal propositions concerning the legal repercussions of a probation violation to

**which no factual response is required. Plaintiffs also object to the statement to the extent it is based on improper lay opinion and speculative.**