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(Plaintiffs' Counsel list continued on following page)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**LUGENE McCULLOUGH, by and through his guardian ad litem Maya Klein; GINA LAMBERTON, by and through her guardian ad litem Jeffrey Taylor; JOSONIA BISHARA, by and through her guardian ad litem Samond Bishara on behalf of themselves and all others similarly situated,**  
  
Plaintiffs,  
  
v.  
  
**CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES; and NANCY BARGMANN, in her official capacity as Director of the California Department of Developmental Services,**  
  
Defendants.

3:20-cv-2958 SI  
**CLASS ACTION**  
**SETTLEMENT AGREEMENT**

1 ADDITIONAL COUNSEL (con't from previous page)

2 WILLIAM LEINER, SBN 255528  
3 [william.leiner@disabilityrightsca.org](mailto:william.leiner@disabilityrightsca.org)  
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18 Tel: (510) 665-8644  
19 Fax: (510) 665-8511  
20 *Attorneys for Plaintiffs*

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1 This settlement agreement, including all exhibits hereto, (“Settlement Agreement” or  
2 “Agreement”) fully and finally resolves all claims asserted in *McCullough, et al. v. California*  
3 *Department of Developmental Services, et al.*, U.S. District Court for the Northern District of  
4 California, Case No. 3:20-cv-02958-SI (“Federal Action”) and *McCullough, et al. v. California*  
5 *Department of Developmental Services, et al.*, Superior Court of California County of Alameda,  
6 Case No. RG20073868 (“State Action”). This Settlement Agreement is made by and among  
7 Plaintiffs Lugene McCullough, by and through his guardian ad litem Maya Klein, and Josonia  
8 Bishara, by and through her guardian ad litem Samond Bishara; and Defendants California  
9 Department of Developmental Services (“DDS”), and Nancy Bargmann, in her official capacity  
10 as Director of DDS (collectively “Parties”).<sup>1</sup>

#### 11 I. DEFINITIONS

12 For the purposes of this Settlement Agreement only, the following terms are defined as  
13 follows:

14 1. “Class Counsel” means Disability Rights California, by Melinda Bird, William  
15 Leiner, Lynn Martinez, and Emily Ikuta; and Disability Rights Advocates, by Rebecca Williford  
16 and Meredith J. Weaver.

17 2. “Class Representative(s)” means each and all of the remaining named Plaintiffs in  
18 this Action: Lugene McCullough, by and through his guardian ad litem Maya Klein; and Josonia  
19 Bishara, by and through her guardian ad litem Samond Bishara.

20 3. “Consumer” means a person eligible for services pursuant to the Lanterman  
21 Developmental Disabilities Services Act. *See* Cal. Welf. & Inst. Code § 4500 *et seq.*

22 4. “Court” means the United States District Court for the Northern District of California,  
23 the Honorable Susan Illston presiding, or any judge who succeeds her as the judge in the Federal  
24 Action.

25  
26  
27 <sup>1</sup> Plaintiffs’ operative complaint lists Gina Lamberton, by and through her guardian ad litem  
28 Jeffery Taylor, as a named plaintiff in this matter. On January 29, 2021, Plaintiffs filed their  
Notice of Death of Plaintiff Gina Lamberton. *See* ECF No. 57.

1           5.    “Date of Execution” means the date this Settlement Agreement is fully executed by  
2 all Parties.

3           6.    “Deaf” means an individual whose response to question 60 within DDS’s “Client  
4 Development Evaluation Report (CDER) Diagnostic Element” is “2-Severe hearing loss,” “3-  
5 Profound hearing loss,” or “9-Hearing loss suspected, severity undetermined;” and whose  
6 response to question 61 within DDS’s CDER Diagnostic Element is “2-Severe hearing loss,” “3-  
7 Profound hearing loss,” “8-Correction not possible,” or “9-Hearing not corrected.”

8           7.    “Defendants” means DDS and Nancy Bargmann, in her official capacity as Director  
9 of DDS.

10          8.    “Effective Date of Settlement” means the date of the Court’s issuance of a Final  
11 Approval Order.

12          9.    “Final Approval Order” means the final judgment and order entered by the Court,  
13 following the Final Fairness Hearing, which approves the Settlement Agreement.

14          10.   “Final Fairness Hearing” means the Court hearing conducted pursuant to Federal  
15 Rule of Civil Procedure 23(e)(2) where the Parties will request the Final Approval Order be  
16 entered approving the Settlement Agreement. The Final Fairness Hearing must occur at least 30  
17 days after the Objection Deadline, on such date as set by the Court.

18          11.   “Implementation Plan” means the *Plan to Enhance Services for Individuals Who Are*  
19 *Deaf*, which is Exhibit A to the Settlement Agreement and incorporated here by reference.

20          12.   “Lanterman Act” means the Lanterman Developmental Disabilities Services Act set  
21 forth in California Welfare and Institutions Code section 4500 *et seq.*

22          13.   “Notice” means the notice of the Settlement Agreement and of the Final Fairness  
23 Hearing pursuant to Federal Rule of Civil Procedure 23(c)(2)(A). The Notice will be  
24 disseminated to Settlement Class Members in accordance with the terms of the Settlement  
25 Agreement.

26          14.   “Objection” means the formal objection and any supporting documents that a  
27 Settlement Class Member or the legal representative of a Settlement Class Member may submit in  
28 order to object to the Settlement Agreement in accordance with Section VI.C.

1           15. “Objection Deadline” means the date by which a Settlement Class Member must  
2 submit an Objection to the Settlement Agreement. The Objection Deadline shall be 30 days  
3 before the Final Fairness Hearing.

4           16. “Objector” means a Settlement Class Member who submits an Objection or on whose  
5 behalf a legal representative submits an Objection.

6           17. “Party” or “Parties” means Plaintiff Lugene McCullough, by and through his  
7 guardian ad litem Maya Klein; Plaintiff Josonia Bishara, by and through her guardian ad litem  
8 Samond Bishara; Defendant DDS; and Defendant Nancy Bargmann, in her official capacity as  
9 director of DDS.

10           18. “Plaintiff(s)” means Lugene McCullough, by and through his guardian ad litem Maya  
11 Klein; and Josonia Bishara, by and through her guardian ad litem Samond Bishara.

12           19. “Preliminary Approval” means the Court’s order preliminarily approving the  
13 Settlement Agreement, preliminarily certifying the Settlement Class, and authorizing  
14 dissemination of the Notice.

15           20. “Regional Center(s)” means an entity or entities created pursuant to the Lanterman  
16 Act which contract(s) with vendors to provide services as specified in a Consumer’s individual  
17 program plan.

18           21. “Released Claims” means any and all claims, demands, actions, causes of action,  
19 lawsuits, arbitrations, liabilities under Title II of the Americans with Disabilities Act, Section 504  
20 of the Rehabilitation Act, and California Government Code sec. 11135, whether known,  
21 unknown, legal, equitable, or otherwise, that arise out of the allegations in the Complaint (ECF  
22 No. 1), the First Amended Complaint (ECF No. 11), or in the State Action, through the Effective  
23 Date of Settlement. This release does not apply to claims for damages or to any individualized  
24 claim by a non-party Settlement Class Member regarding the provision of services to the non-  
25 party Settlement Class Member, following the exhaustion of administrative remedies.

26           22. “Settlement Class” means all Consumers who are Deaf, as defined herein.

27           23. “Settlement Class Members” means the members of the Settlement Class.  
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1     **II. RECITALS**

2           24. Plaintiffs Lugene McCullough and Josonia Bishara are individuals with hearing loss  
3 and an intellectual and/or developmental disability; they are eligible for services under the  
4 Lanterman Act.

5           25. For purposes of this Settlement Agreement only, Defendants agree that Plaintiffs are  
6 adequate representatives of the Settlement Class.

7           26. Defendant DDS is the state agency that administers California's system of services  
8 for individuals with intellectual and/or developmental disabilities.

9           27. Defendant Nancy Bargmann is DDS's current Director and is a Party to this  
10 Agreement only in her official capacity.

11           28. On April 30, 2020, Plaintiffs filed their Complaint for Injunctive and Declaratory  
12 Relief in the Federal Action. (ECF No. 1.) On June 18, 2020, Plaintiffs filed a First Amended  
13 Complaint for Injunctive and Declaratory Relief (ECF No. 11), which is the operative complaint  
14 in the Federal Action.

15           29. Plaintiffs' Federal Action seeks declaratory and injunctive relief to enforce Plaintiffs'  
16 and class members' rights under Title II of the American with Disabilities Act (ADA), 42 U.S.C.  
17 section 12131 *et seq.* and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C.  
18 section 749 *et seq.*

19           30. On September 4, 2019, Plaintiffs filed their complaint in the State Action. Plaintiffs'  
20 State Action seeks declaratory and injunctive relief to enforce Plaintiffs' and class members'  
21 rights under California Government Code § 11135.

22           31. DDS is committed to facilitating services and supports for Consumers who are Deaf,  
23 as set forth in the Implementation Plan.

24           32. The Parties recognize the inherent uncertainty in litigation, and the time and resources  
25 necessary to litigate the issues raised in the Federal and State Actions. The Parties desire to fully  
26 and finally resolve and settle the Federal and State Actions.

27           33. The Parties also acknowledge the uncertainties inherent with resolving a matter in  
28 which specific milestones with target dates for complete implementation are not readily

1 ascertainable. In the Implementation Plan, DDS has attempted to identify, whenever reasonably  
2 practicable, the specific milestones for completion thereof. These stated dates are best estimates  
3 based upon information available and activities occurring and completed as of the Date of  
4 Execution.

5 34. The Parties have engaged in extensive settlement negotiations supervised by Judge  
6 Jaqueline Scott Corley, including settlement conferences held on November 20, 2020; December  
7 7, 2020; December 21, 2020; February 23, 2021; April 26, 2021; August 11, 2021; October 26,  
8 2021; March 15, 2022; June 13, 2022; and June 29, 2022.

### 9 **III. TERMS OF SETTLEMENT**

10 35. The Parties agree that, for the purposes of this Settlement, the Federal Action should  
11 be certified and proceed as a class action under Federal Rule of Civil Procedure 23(b)(2) for  
12 settlement purposes only. Class Counsel shall serve as counsel for the Settlement Class.

#### 13 **A. The Class Definition.**

14 36. The Parties agree that the class will consist of the Settlement Class, as defined herein.

#### 15 **B. Plan to Enhance Services for Individuals Who Are Deaf**

16 37. The Implementation Plan contains information about DDS's phased process for  
17 implementation of additional resources to support Settlement Class Members.

18 38. DDS agrees to execute the milestones identified in the Implementation Plan. DDS  
19 will use its best efforts to achieve the milestones identified in the Implementation Plan by the  
20 target dates provided therein. Achieving a specific milestone later than the expected date  
21 identified by DDS shall not be the sole basis of a claim of breach of this Agreement.

22 39. In addition to any specific actions called for in the Implementation Plan, DDS, in its  
23 sole discretion, will communicate with Regional Centers as it deems necessary or appropriate to  
24 effectuate the terms of this Agreement.

#### 25 **C. Discussing Implementation of Agreement**

26 40. Beginning six months after the Effective Date of Settlement, every February and  
27 August for the duration of this Settlement Agreement, DDS will (1) report to Class Counsel on  
28 the Implementation Plan milestones that have been met, and (2) provide Class Counsel with a

1 summary of the data regarding communication assessments compiled from Regional Centers  
2 pursuant to the Implementation Plan. The data summary provided pursuant to this section will  
3 consist of de-identified, aggregate data and will not contain personally identifying information  
4 related to any Consumer. DDS will report on the Implementation Plan milestones and provide a  
5 summary of data (1) for the period of January 1, through June 30, no later than the end of August  
6 of that year; and (2) for the period of July 1, through December 31, no later than the end of  
7 February of the following year.

8 41. DDS and Class Counsel will be available to meet twice per year, in person or via  
9 video conference, following DDS's report of the information in paragraph 40 above.

10 42. The Parties agree that Class Counsel may request additional meetings with DDS to  
11 raise any issues or concerns with implementation of this Settlement Agreement or to discuss the  
12 status of implementation efforts. However, any additional meetings shall be based on the mutual  
13 agreement of DDS and Class Counsel.

14 **D. Attorneys' Fees and Costs**

15 43. Plaintiffs will seek, and Defendants will not oppose, an order from the Court for one  
16 million three hundred thousand dollars (\$1,300,000) in compensation for attorneys' fees and costs  
17 incurred by Plaintiffs in bringing and prosecuting the Federal and State Actions and monitoring  
18 the implementation of the Settlement Agreement, except as provided for in paragraph 69.  
19 Plaintiffs agree that the payment of the amount ordered by the Court shall constitute full and  
20 complete satisfaction of all attorneys' fees and costs arising out of the Federal Action and the  
21 State Action, and upon receipt of this payment, Plaintiffs release Defendants from any further  
22 liability for Plaintiffs' attorneys' fees and costs in either lawsuit. Defendants agree to pay the  
23 amount ordered by the Court within sixty (60) days of the Court's order granting final approval of  
24 the Settlement Agreement as a lump sum payment to Disability Rights Advocates for distribution  
25 among Class Counsel.  
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1 heard at the Final Fairness Hearing must state this intention in their Objection. Objectors who fail  
2 to include a notice of their intention to appear in a timely filed Objection may not speak at the  
3 Final Fairness Hearing without permission of the Court.

4 59. If an Objector makes an Objection through an attorney, the Objector shall be solely  
5 responsible for the Objector's attorneys' fees and costs.

6 60. At no time shall any of the Parties or their counsel seek to solicit or otherwise  
7 encourage Settlement Class Members to submit Objections to the Settlement Agreement or  
8 encourage appeal from the Court's Final Approval Order.

9 **D. Joint Application for Final Approval & Final Fairness Hearing**

10 61. The Parties will jointly prepare an application for and seek Final Approval from the  
11 Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

12 62. The Parties will request from the Court that American Sign Language interpreters and  
13 Certified Deaf Interpreters<sup>2</sup> be present at the Final Fairness Hearing. Objectors or legal  
14 representatives thereof who intend to appear at the Final Fairness Hearing and require other  
15 accommodations may request them from the Court.

16 63. Class Counsel and DDS shall each post a copy of the Final Approved Settlement  
17 Agreement on their respective websites for at least a one-year period following the Court's Final  
18 Approval.

19 **E. Dismissal**

20 64. Within 30 days of the Effective Date of Settlement, the parties shall jointly ask the  
21 Court to dismiss this action and to retain jurisdiction over this matter for the purpose of ensuring  
22 compliance with the terms of the Settlement Agreement.

23 65. Moreover, within 30 days of the Effective Date of Settlement, the Plaintiffs shall ask  
24 the Superior Court of Alameda County to dismiss with prejudice the State Action.

25 <sup>2</sup> A Certified Deaf Interpreter (CDI) is an individual who is deaf or hard of hearing and has been  
26 certified by the Registry of Interpreters for the Deaf as an interpreter. Holders of this certification  
27 have demonstrated knowledge and understanding of interpreting, deafness, the Deaf community,  
28 and Deaf culture; have specialized training and/or experience in the use of gesture, mime, props,  
drawings and other tools to enhance communication; and possess native or near-native fluency in  
American Sign Language.

1           **F.    Dispute Resolution Process**

2           66.    If a dispute arises concerning implementation of the Settlement Agreement, including  
3 the Implementation Plan, before filing any motion to enforce the terms of this Settlement  
4 Agreement, the Party seeking relief shall first contact counsel for the opposing Party in writing to  
5 request a meeting. The meeting shall take place within 10 business days of notification, or at a  
6 further date mutually agreed to by the Parties. At the meeting, the Parties will discuss thoroughly,  
7 preferably in person or by video conference, the substance of the dispute or contemplated motion  
8 and any potential resolution.

9           67.    If, after meeting, either Party determines that the dispute cannot be resolved  
10 informally, the parties shall complete at least one conference with Judge Corley, her designee, or  
11 successor, or another mutually agreeable mediator.

12           68.    In the event that a Party fails to meet and confer within time called for under the  
13 Settlement Agreement after receiving notice, the Party raising the dispute may immediately  
14 request a conference with Judge Corley, her designee, or successor, for resolution.

15           69.    If the conference with Judge Corley, her designee, or successor is not successful, then  
16 the requesting Party may file a motion to enforce the Settlement Agreement. Any motion to  
17 enforce or other action to enforce this Settlement Agreement shall not be commenced until thirty  
18 (30) days after the conference with Judge Corley, her designee, or successor. Attorneys' fees and  
19 costs in connection with the proceedings under this step shall be recoverable under applicable  
20 law.

21           70.    Notwithstanding the above, if either party believes that irreparable harm will occur to  
22 it by pursuing the process set forth above, the Party must contact and meet with Judge Corley, her  
23 designee, or successor, before filing any motion to enforce this Settlement Agreement.

24           71.    This dispute resolution process is separate from and in addition to appeal procedures  
25 set forth in the Lanterman Act available for the resolution of individual disputes regarding the  
26 provision of services to Consumers. Pursuing the appeal procedures shall not be a condition  
27 precedent to undertaking the dispute resolution procedures provided in the Settlement Agreement.  
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1           72. Notice required by this Section VI.F shall be given by in-person delivery or U.S.  
2 certified first class mail, and via electronic mail to the Parties' counsel of record in this litigation  
3 as follows:

4           a. For Defendants Department of Developmental Services and Nancy Bargmann:

5                           Maryam Toossi Berona  
6                           ATTORNEY GENERAL'S OFFICE  
7                           455 Golden Gate Avenue, Suite 11000  
8                           San Francisco, CA 94102-7004  
9                           Attorney for Defendants  
10                           Maryam.Berona@doj.ca.gov

11                           AND

12                           Ricardo Enriquez  
13                           ATTORNEY GENERAL'S OFFICE  
14                           1300 I Street, Suite 125  
15                           Sacramento, CA 94244  
16                           Attorney for Defendants  
17                           Ricardo.Enriquez@doj.ca.gov

18           b. For Plaintiffs:

19                           Meredith J. Weaver  
20                           Disability Rights Advocates  
21                           2001 Center Street, 3rd Floor  
22                           Berkeley, CA 94704  
23                           mweaver@dralegal.org

24                           AND

25                           Melinda Bird  
26                           Disability Rights California  
27                           350 S. Bixel Street, Ste 290  
28                           Los Angeles CA 90017  
                              Melinda.Bird@disabilityrightsca.org

**G. Effect If Settlement Not Approved**

73. The Settlement Agreement is being entered into for settlement purposes only. If the Court does not grant Preliminary Approval, if the Court does not grant Final Approval, or if the Effective Date of Settlement does not occur, the Settlement Agreement will be deemed null and void *ab initio*. In that event:

a. The Preliminary Approval Order and Final Approval Order, to the extent they have been entered by the Court, will be vacated by operation of law;

- 1                   b. The Parties will be restored to their respective positions immediately  
2                   preceding the execution of the Settlement Agreement, and any intervening  
3                   Court rulings or decisions will be vacated;
- 4                   c. No term or condition of the Settlement Agreement, or any draft thereof, of  
5                   any discussion, negotiation, documentation, or other part or aspect of the  
6                   Parties' settlement discussions shall have any effect; nor shall any such  
7                   matter be admissible in evidence for any purpose in the Federal or State  
8                   Action or any other proceeding; nor shall any such matter be used in the  
9                   Federal or State Action for any purpose whatsoever; and
- 10                  d. Parties will retain all rights to object to any attempt by any Party to  
11                  reference, cite to, or rely upon, in any way, the Settlement Agreement or any  
12                  factual or legal statement or conclusion within it, including as to (i) the  
13                  sufficiency of any particular action(s) to satisfy obligations under Title II,  
14                  Section 504, or California state law; or (ii) the feasibility of the maintenance  
15                  of the Federal or State Action as a class action.

16                  **H. Modifications Suggested by the Court**

17                  74. If the Court suggests any modifications to the Settlement Agreement or conditions  
18                  either Preliminary Approval or Final Approval on modifications to the Settlement Agreement, the  
19                  Parties shall, working in good faith and consistent with the Settlement Agreement, endeavor to  
20                  cure any such deficiencies identified by the Court. However, the Parties shall not be obligated to  
21                  make any additions or modifications to the Settlement Agreement that would affect the benefits  
22                  provided to Settlement Class Members, or the cost to or burden on Defendants, the content or  
23                  extent of Notices required to Settlement Class Members, or the scope of any of the releases  
24                  contemplated in this Settlement Agreement. If the Court orders or proposes such additions or  
25                  modifications, the Parties will have the right to terminate the Settlement Agreement within 30  
26                  days from the date of the Court's order or proposal.

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1           75. If either Party elects to terminate the Settlement Agreement pursuant to this section,  
2 the Settlement Agreement will be deemed null and void *ab initio* and the provisions of Paragraph  
3 73 will apply.

4 **VII. ADDITIONAL PROVISIONS**

5           76. No Admission of Liability. This Settlement Agreement is made in compromise of a  
6 dispute. Neither the Settlement Agreement nor anything that the Parties stated or did during the  
7 negotiation of the Settlement Agreement shall be construed or used in any manner as an  
8 admission of liability or evidence of either Party's fault, liability, or wrongdoing. Defendants  
9 expressly deny any liability or wrongdoing whatsoever. This is a settlement of disputed claims,  
10 and the Parties agree that, in entering into this Settlement Agreement, neither concedes its  
11 position. Nothing in this Settlement Agreement shall be interpreted or construed by a court as an  
12 admission by any Party. This Settlement Agreement does not constitute an adjudication or  
13 finding on the merits of the claims alleged in the Plaintiffs' pleadings.

14           77. Construction and Interpretation. The following additional terms shall govern the  
15 construction and interpretation of this Agreement.

- 16           a. Knowledge and Advice of Counsel. Each party enters into the Settlement  
17 Agreement with the opportunity to seek the advice of counsel and executes  
18 the Settlement Agreement being fully informed as to its terms, content, and  
19 effect.
- 20           b. Entire Agreement. The Settlement Agreement and attached exhibits set  
21 forth all terms agreed to by the Parties and supersede all previous or  
22 contemporaneous agreements between the Parties relating to the Settlement  
23 Agreement's subject matter. It is further agreed by and between and among  
24 the Parties that this document constitutes the sole, entire, and complete  
25 agreement between the parties to resolve the claims set forth in the Federal  
26 Action and the State Action. In entering into the Settlement Agreement, no  
27 party has relied on, and no party will have any right or remedy based on, any  
28



1 statement or representation except those expressly set forth in the Settlement  
2 Agreement.

3 c. No Construction Against Any Party. The terms of the Settlement Agreement  
4 have been negotiated at arm's-length among knowledgeable parties  
5 represented by experienced counsel. The Parties agree that the normal rule  
6 of construction that any ambiguity in a document is construed against the  
7 drafting party shall not apply to the interpretation or enforcement of the  
8 Settlement Agreement, as the Parties each participated in the drafting of the  
9 Settlement Agreement.

10 d. Headings and Captions. The headings and captions of sections in the  
11 Settlement Agreement are inserted for convenience, reference, and  
12 identification purposes only, and shall not control, define, limit, or affect any  
13 provisions of the Agreement.

14 78. Severability. Should any provision of this Settlement Agreement be held invalid or  
15 illegal, such illegality shall not invalidate the whole of this Settlement Agreement, but the  
16 Settlement Agreement shall be construed as if it did not contain the illegal provision, and the  
17 rights and obligations of the parties shall be construed and enforced accordingly.

18 79. Governing Law. The interpretation and enforcement of this Settlement Agreement is  
19 governed by federal and California law.

20 80. Amendments. Any amendment must be in writing, signed by Class Counsel and  
21 Defendants' Counsel, expressly state that it is amending the Settlement Agreement, and be  
22 approved by the Court.

23 81. Execution in Counterparts. This Settlement Agreement may be executed through the  
24 use of two or more counterparts, including through electronic signatures, each of which will be  
25 deemed an original, and together shall constitute one written instrument. Photographic, digital, or  
26 facsimile copies of signed counter parts may be used in lieu of the originals for any purpose and  
27 shall have the same force and effect as an original ink signature.  
28

1           82. This Settlement Agreement shall be signed by each of the Parties and their counsel.  
2 The undersigned represent that they have the full power and authority to execute this Settlement  
3 Agreement and to bind the Parties.

4           83. The Parties represent that they had the opportunity to consult and rely upon the legal  
5 advice of their choice, and that the terms of this Settlement Agreement have been read and the  
6 consequences (including risks, complications, and costs) have been completely understood by  
7 each party and explained by their respective counsel. The parties further acknowledge that, in  
8 executing this Settlement Agreement, they have not relied on any inducements, promises, or  
9 representations other than those stated in the Settlement Agreement.

10           84. No prior versions of this Settlement Agreement, or written proposals of any party, are  
11 admissible in any courts or for any purpose, including, but not limited to, use to interpret the  
12 meaning of this Settlement Agreement.

13           85. To the extent the applicable law, legal requirements, or circumstances change, such  
14 that any settlement term is rendered void or unenforceable, the law shall control over the  
15 settlement terms.

16           86. Nothing in this Settlement Agreement shall affect the rights of Settlement Class  
17 Members with respect to other benefits to which they are entitled under the Lanterman Act.

18           87. The Court shall retain exclusive jurisdiction to enforce, interpret, and implement the  
19 Settlement Agreement, including any alleged violations, any disputes, and the terms of any order  
20 entered pursuant to this Agreement.

21

22 **IT IS SO STIPULATED AND AGREED.**

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25 Dated: 3/3/2023, 2023

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DocuSigned by:  
*Maya Klein*  
0290D22B6080431...  
Maya Klein, Guardian ad Litem for  
Plaintiff Lugene McCullough

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Dated: 3/3/2023, 2023

DocuSigned by:  
*Samond Bishara*  
BA7F1E38948C4B8...  
Samond Bishara as Guardian ad Litem for  
Plaintiff Josonia Bishara

Dated: 3/6/2023, 2023

DocuSigned by:  
*Brian Winfield*  
A34802309219477...  
Brian Winfield for  
Defendants Department of Developmental  
Services and Nancy Bargmann, Director of  
Department of Developmental Services

Approved as to Form:

Dated: 3/6/2023, 2023

DocuSigned by:  
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Melinda Bird  
Disability Rights California  
Attorneys for Plaintiffs

Dated: 3/6/2023, 2023

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Rebecca Williford  
Disability Rights Advocates  
Attorneys for Plaintiffs

Dated: 3/3/2023, 2023

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Ricardo Enriquez  
California Department of Justice  
Attorneys for Defendants

# EXHIBIT A

## **DEPARTMENT OF DEVELOPMENTAL SERVICES**

### **PLAN TO ENHANCE SERVICES FOR INDIVIDUALS WHO ARE DEAF**

#### **A. Steering Committee**

DDS will establish and facilitate a Steering Committee to engage stakeholder and subject matter experts in the development of recommendations to advance the quality and depth of services and supports to regional center consumers who are deaf.

##### **1. Membership**

- a. Membership and a meeting schedule will be established by Winter 2023.
- b. Membership will be comprised of:
  - A minimum of four individuals with Deaf and/or Deaf+ lived experience
  - Individuals or consultants with expertise in screening, assessment/evaluation, and services and supports for people who are deaf
  - Service providers with experience supporting people who are deaf
  - Regional center representatives
  - Association of Regional Center Agencies (ARCA)
  - Office of Clients Rights Advocacy (OCRA)
  - State Council on Developmental Disabilities (SCDD)
  - Disability Rights California (DRC)
  - Department of Rehabilitation (DOR)
- c. DDS will receive input regarding membership from Disability Rights California (DRC)

##### **2. Deliverables**

- a. Following a series of facilitated working meetings, by Fall 2023 the Steering Committee will provide initial recommendations to DDS regarding:
  - Data collection
  - Communication Assessment processes, tools, and materials
  - Resources for outreach to recruit potential communication assessors
- b. Ongoing recommendations regarding:
  - Resources for the DDS webpage
  - Programs and policies to increase access to appropriate services for people who are deaf
  - Initiatives to increase the availability of professionals and providers who have the skills needed to support the Deaf+ community

##### **3. Developmental Services (DS) Task Force**

Beginning Winter 2024, a representative from the Steering Committee will present recommendations to the DS Task Force.

## **B. Department of Developmental Services (DDS)**

In concert with the Steering Committee activities and other related initiatives for Services Access and Equity, DDS will review and operationalize recommended system improvements to advance the quality and depth of services and supports to regional center consumers who are deaf.

### **1. Communication Assessments**

#### **a. Materials**

Drawing from the Steering Committee recommendations, DDS will facilitate the identification of assessment tools, including guidance as to the intended use and intersection with assessments from other sources (i.e., special education).

#### **b. Outreach to potential assessors**

Drawing from the Steering Committee recommendations, DDS and regional centers will begin to inventory current resources and initiate outreach for potential assessors as needed.

#### **c. Identifying assessors**

Upon the identification of assessment tools, DDS will define the scope of work for a request for proposal to source a contractor to assist in vetting potential assessors for the required qualifications, training on the use of materials, and administrative processes for providing assessments to regional center consumers.

#### **d. Communication Assessments ("Assessments")**

Regional center consumers who are deaf will be offered Assessments using the developed materials and conducted by qualified assessors.

- By Winter 2023, DDS will identify regional centers consumers to be offered Assessments, updating as needed.
- By Winter 2024 and upon availability of qualified assessors, every regional center will initiate coordination of Assessments.
  - DDS will provide written guidance to regional centers for determining whether Assessments provided by the special education system serve the same purpose and therefore fulfill the requirement to offer a new Assessment.
- Upon completion of each Assessment, regional centers will coordinate distribution to the consumer's interdisciplinary team to be reviewed in the next individual program plan (IPP) meeting.

#### **e. Regional Center Contracts**

By Winter 2024, Communication Assessments will be incorporated into regional center contracts for Fiscal Year 2023-24, thereby

establishing monitoring for progress and requiring corrective action when needed.

## **2. Professionals and provider capacity**

### **a. DDS Equity Specialist**

Upon enactment of the State budget, DDS will recruit and hire an Equity Specialist to provide statewide leadership and expertise on the provision of services and supports for individuals who are deaf and have intellectual and developmental disabilities (I/DD). This role may include, but not be limited to, the following duties:

- Participate in the activities of the Steering Committee, DS Task Force Community Resource Workgroup, and DS Task Force.
- Oversee the development of the communication assessment processes and materials.
- Oversee the development of statewide trainings for professionals supporting deaf services.
- Oversee and provide technical assistance to coordinate efforts to establish partnerships with local agencies/partners in support of deaf services.
- Support DDS initiatives to increase access to appropriate deaf services.
- Oversee the Housemate Matching system (see B.3.d, below).
- Oversee the development and maintenance of a webpage on the DDS website dedicated to deaf services.
- Participate in the review of proposals for Service Access and Equity Grants and Community Resource Development Plans
- Collaborate with the 21 regional center Deaf Services Specialists.

### **b. Regional Center Deaf Specialists**

Upon enactment of the State budget, DDS will provide funding so that each of the 21 regional centers will recruit and hire a Deaf Services Specialist. The regional center Deaf Services Specialists will support the expansion of deaf service resources, provide training and expertise to regional center staff, and coordinate with DDS on statewide efforts. This role may include, but not be limited to, the following duties:

- Coordinate and serve as lead for activities for regional center resource development of deaf services including working with vendors and partnering with generic agencies that provide services for individuals who are deaf to expand access for regional center consumers.
- Oversee the regional center's communication assessments for individuals who are deaf and ensure review in the individual program planning meetings.

- Organize and conduct trainings developed by DDS for regional center service coordinator staff and vendors. Develop additional trainings and informational materials, as needed.
- Participate in statewide collaboration meetings with similar staff at other regional centers to identify best practices, strategies, and processes to implement at the regional center. Prepare regional center data, reports, and other materials to be presented at meetings.
- Develop and maintain systems for capturing data; analyze and report on findings.

c. Training for Regional Center Service Coordinators

Beginning Summer 2023, training will be initiated for regional center service coordinators supporting consumers who are deaf.

- Training topics will include, but not be limited to: cultural and linguistic sensitivity, implicit bias, meeting communication needs, reasonable accommodations for deaf consumers, and resources for deaf services.

d. Statewide Virtual Training

Beginning Summer 2023, online training will be developed and progressively available on the DDS website in accessible forms including American Sign Language videos. Training will be geared toward professionals and paraprofessionals who support regional center consumers who are deaf.

- Training topics will include, but not be limited to cultural and linguistic sensitivity, implicit bias, laws and rights, person-centered service and language, assistive technology, late-deafened experience, deafness in minority groups, and virtual meeting etiquette.

e. Outreach and Collaboration with Local Agencies

Undertake outreach and collaboration with local agencies with expertise related to deaf services, including but not limited to:

- Opportunities for targeted recruitment through programs for higher education;
- Partnerships with local interpreting agencies and registries;
- Community-based organizations supporting people who are deaf.

**3. Programs and policies to increase access to appropriate services**

a. Priority in Service Access & Equity grants

By *Winter 2022\**, DDS will identify services for regional center consumers who are deaf as a priority for Service Access and Equity grants for Fiscal Year 2021-22.

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\* Italicized dates represent completed items.



- DDS will consult with professionals who support regional center consumers to develop guidelines for requesting funds.
- Guidelines will support projects such as start-up of new services, modification of existing services, workforce development, and/or enhancements that increase service provider capacity.

b. Priority in CPP/CRDP funding

By *Winter 2022\**, DDS will identify services for regional center consumers who are deaf as a priority for Community Placement Plan/Community Resource Development Plans (CPP/CRDP) funds for Fiscal Year 2021-22.

- DDS will consult with professionals who support regional center consumers to develop guidelines for requesting funds.
- Guidelines will support projects such as start-up of new services, modification of existing services, workforce development, and/or enhancements that increase service provider capacity.

c. Family Home Agency (FHA) Services

By *Winter 2022\**, DDS will identify FHA services for consumers who are deaf as a priority for CPP/CRDP funds for Fiscal Year 2021-22. Guidelines will emphasize the importance of outreach and training to attract individuals from the deaf community who may be unfamiliar with the regional center system and the FHA model.

d. Housemate Matching

By Fall 2023, DDS will work with regional centers to develop a housemate profile template that may be used by consumers to specify their preferences for living options and communities.

#### **4. Collecting and sharing resources**

a. DDS webpage

By Summer 2023, DDS will establish a webpage dedicated to deaf services. Content will be added gradually, updated periodically and will include, but not be limited to:

- Links to statutory, regulatory, and ADA requirements
- Directives in ASL
- Statewide Virtual Training
- Frequently Asked Questions (FAQs)
- Links to additional resources

## 5. DDS Monitoring of Regional Centers

### a. Data collection

By Fall 2023, DDS will establish documentation and reporting requirements for regional center completion of Communication Assessments, including the following:

- The number of consumers eligible for Assessments
- The number of Assessments initiated but not completed
- The number of consumers with completed Assessments
- The number of consumers without Assessments

Additionally, DDS to review and consider additional data recommended by the Steering Committee.

### b. Regional Center Contracts

By Winter 2024, DDS will include the following expectations in regional center contracts for Fiscal Years 2023-24, and subsequent years as appropriate:

- Name and contact information for Deaf Specialists
- Communication Assessments and required reporting to DDS

### c. Reminder of ADA Obligations

By Winter 2023, DDS will send a reminder to Regional Centers of the ADA's requirements for the provision of effective communication to individuals who are Deaf. This reminder will include a reference to the U.S. Department of Justice Civil Rights Division's guidance document on effective communication, available at <https://www.ada.gov/effective-comm.htm>.

### **KEY:**

Winter 2022	December 1, 2021 through February 28, 2022
Fall 2022	September 1, 2022 through November 30, 2022
Winter 2023	December 1, 2022 through February 28, 2023
Summer 2023	June 1, 2023 through August 31, 2023
Fall 2023	September 1, 2023 through November 30, 2023
Winter 2024	December 1, 2023 through February 29, 2024

# EXHIBIT B

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**IMPORTANT NOTICE**

*Notice of Proposed Settlement of Two Class Action Lawsuits Concerning Deaf Individuals Who Receive Services from California’s Regional Centers*

**ATTENTION:** Please read this notice if you are Deaf and receive services from a Regional Center in California, or if you are Deaf and are eligible to receive services from a Regional Center in California. A Regional Center is an agency that is funded by the California Department of Developmental Services (DDS) to coordinate services for Californians with developmental disabilities.

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY A PROPOSED SETTLEMENT AGREEMENT**

**NOTICE OF CLASS ACTION**

In this notice, you will learn about two class action lawsuits, and the proposed settlement to the lawsuits, which may impact your rights.

A **class action lawsuit** is brought by one or more people (called “**class representatives**”) filing a lawsuit on behalf of people who have similar claims. All of these people are called “**class members**”. In a **class action**, one court resolves the claims for all class members at the same time.

This Notice is about a proposed settlement (which we will call the “Settlement Agreement”) that will resolve two class action lawsuits if the court approves it:

1. *McCullough, et al. v. California Department of Developmental Services, et al.*, U.S. District Court for the Northern District of California, Case No. 3:20-cv-02958-SI
2. *McCullough, et al. v. California Department of Developmental Services, et al.*, Superior Court of California County of Alameda, Case No. RG20073868

These lawsuits were filed by three deaf people who receive services through Regional Centers. They are the class representatives. They filed the lawsuits on behalf of all other deaf people who receive services from Regional Centers.

The class representatives say in the lawsuits that DDS discriminated against deaf people who receive services from Regional Centers by:

- Not making sure that Regional Centers provide deaf people with the services they need to effectively communicate with other people; and
- Not making sure that deaf people have the same access to Regional Center services and programs as people who are hearing.

DDS denies all of the claims in the lawsuit. DDS says that it always obeyed the law and that it never discriminated against deaf people who receive services from the Regional Centers.

1 However, the parties have agreed to certain things to end the lawsuit. The things are described  
2 below and are set out in detail in the Settlement Agreement. The court has to say that this  
3 agreement is okay before the lawsuit can end.

### 4 THE SETTLEMENT CLASS

5 The settlement class is a group of people who will be affected by the Settlement Agreement. You  
6 are a member of the settlement class if:

- 7 1) You receive services from a Regional Center or are eligible to receive services from a  
8 Regional Center;  
9 **and**
- 10 2) You are deaf. Deaf means you have severe or profound hearing loss, with or without  
11 corrective measures like hearing aids.

### 12 SUMMARY OF THE SETTLEMENT AGREEMENT

#### 13 Plan to Enhance Services for Individuals Who Are Deaf

14 DDS will do the following things:

- 15 • hire a **statewide deaf specialist** with knowledge about providing services and supports to  
16 deaf people;
- 17 • work with **experts** to help them make good decisions about how to support deaf people;
- 18 • provide funding to each regional center to hire a **deaf services specialist** to better serve  
19 deaf consumers;
- 20 • make services for deaf consumers a priority for **specific grant funding** during the 2022–  
21 2023 fiscal year; and
- 22 • create a **webpage** with information about deaf services; and
- 23 • send a reminder to Regional Centers of the ADA’s requirements for the provision of  
24 effective communication to individuals who are deaf.

25 DDS will also work with Regional Centers to:

- 26 • Offer **communication assessments** to deaf people;
- 27 • Hire a **deaf specialist** at each regional center to help deaf consumers;
- 28 • Offer **specialized training** to regional center staff and to professionals who serve deaf  
people;
- Conduct **outreach** and **work with local agencies** that have experience providing services  
to deaf people; and
- Develop a **housemate matching system** for deaf consumers.

DDS must make sure that these things are done, and may communicate with regional centers to  
do that.

## **Monitoring Implementation of the Agreement**

The attorneys who represent the Settlement Class are called “Class Counsel.” They will monitor whether DDS does what it has promised. Every six months after the Court approves the Settlement Agreement, DDS will give Class Counsel:

1. A report on progress towards the actions listed above under the Plan to Enhance Services for Individuals Who Are Deaf, and
2. A summary of data showing the progress in making communication assessments available.

DDS and Class Counsel will meet twice every year to discuss these reports and data.

Class Counsel may ask for additional meetings to discuss concerns about completing the actions required by the Settlement Agreement. These reports and discussions will continue for as long as the Settlement Agreement is in place.

## **Attorney Fees and Costs**

The Class was represented by attorneys from Disability Rights California and Disability Rights Advocates (“Class Counsel”). These attorneys spent years working on this case and have not yet been paid anything for their time.

The Settlement Agreement says that DDS will pay Class Counsel \$1,300,000 in attorneys’ fees and costs for their work on these lawsuits and to monitor DDS as it does the things it agreed to in the Settlement Agreement.

## **Resolution of Claims**

This Settlement Agreement resolves all claims in both of the lawsuits referenced above. This means that if the Court approves the Settlement Agreement, class members will give up the right to sue DDS based on the same problems that are described in the lawsuits.

These lawsuits did not seek monetary damages. Class representatives and class members will not receive money as part of the Settlement Agreement.

## **COURT HEARING ON SETTLEMENT**

The Honorable Susan Y. Illston of the United States District Court for the Northern District of California granted preliminary approval of the Settlement Agreement. Judge Illston has scheduled a hearing for **DATE** at **TIME** to determine if the proposed Settlement Agreement is fair and reasonable and should be finally approved. The hearing will be held in courtroom 1 on the 17<sup>th</sup> floor of the federal courthouse in San Francisco, CA, located at 450 Golden Gate Avenue, San Francisco, CA 94102.

You do not have to attend the hearing, but you are welcome to do so. You have the right to be heard at the hearing if you want to say something about the Settlement Agreement.

The Court may change the date of the hearing without further notice to you or the rest of the class. You can visit the settlement website at **[CLASS COUNSEL TO INSERT WEBSITE]** to

1 confirm that the date has not been changed. You can also check the Court's Public Access to  
2 Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> to confirm that the  
3 date has not changed.

### 4 **OBJECTIONS TO THE SETTLEMENT**

5 If you are a member of the class or if you are the legal representative of a class member, you have  
6 the right to ask the court not to approve the Settlement Agreement. This is called an objection. To  
7 object, you must send the information listed below to the court either in writing or in a video  
8 recording. Your objection should include the following:

- 9 • The name of this case: *McCullough v. DDS*, Civ. No. 3:20-cv-2958
- 10 • If you are a class member, state your name and your regional center. If you are the legal  
11 representative of a class member, state your name, the class member's name, and the  
12 class member's regional center.
- 13 • Explain why you do not like the Settlement Agreement.
- 14 • Say whether you want to speak at the hearing.
- 15 • Say whether your objection applies to everyone who is Deaf and receives services from a  
16 regional center, applies only to a specific group of people, or applies only to you (or the  
17 class member on whose behalf you are submitting the objection).

18 The Court can only approve or reject this Settlement Agreement. You cannot ask the Court to  
19 change the settlement.

20 Your objection must be submitted by **DATE** or if mailed, postmarked by **DATE**. You may, but  
21 do not have to, appear at the Final Approval Hearing, either in person or through your own  
22 attorney.

23 Do not send objections to Class Counsel or DDS. Written objections must be sent to the court at  
24 the following address:

25 Clerk of the United States District Court  
26 Northern District of California  
27 450 Golden Gate Avenue  
28 San Francisco, CA 94102  
Reference: *McCullough, et al. v. California Department of Developmental  
Services, et al.*, U.S. District Court for the Northern District of California, Case  
No. 3:20-cv-02958-SI

Video recordings of objections in ASL must be sent to the court via email to the following  
address: [sicrd@cand.uscourts.gov](mailto:sicrd@cand.uscourts.gov)

**IF YOU DO NOT SUBMIT AN OBJECTION BY THE DEADLINE, YOU WILL LOSE  
YOUR RIGHT TO OBJECT TO THE SETTLEMENT AGREEMENT**

**IF YOU AGREE WITH THE SETTLEMENT AGREEMENT, YOU DO NOT NEED TO  
APPEAR OR SEND THE COURT ANYTHING**

### **BINDING EFFECT**

If the Court approves the Settlement Agreement, the Agreement will prevent all class members  
from bringing their own lawsuits about the same problems that are being addressed by this

1 agreement. This means that you cannot later seek different or additional relief regarding the issues  
2 and time period addressed in the Settlement Agreement.

### 3 MORE INFORMATION

4 This notice summarizes the lawsuits and the proposed Settlement Agreement. It does not describe  
5 all the details. For the precise terms and conditions, please see the Settlement Agreement, which  
6 is available online at [CLASS COUNSEL TO INSERT WEBSITE]. You may also obtain a copy  
7 of the Settlement Agreement, and access other documents filed in this case, by:

- 8 – Accessing the Court docket in this case, for a fee, through the Court’s Public Access to  
9 Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>. To use  
10 PACER, you must create an account.
- 11 – Visiting the office of the Clerk of the Court for the United States District Court for the  
12 Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102,  
13 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.  
14 Please do not call the court or the court clerk’s office to ask questions about this  
15 settlement.
- 16 – Contacting Class Counsel at the address or telephone number below:

17 If you have questions about the case or settlement, you may contact either Rebecca Williford at  
18 Disability Rights Advocates or Melinda Bird at Disability Rights California for more information.

19 Here is their contact information:

20 Attn: Meredith J. Weaver  
21 Disability Rights Advocates  
22 2001 Center Street, Fourth Floor  
23 Berkeley, CA 94704  
24 Phone: (510) 665-8644

25 Attn: Melinda Bird  
26 Disability Rights California  
27 350 S. Bixel Street, Ste 290  
28 Los Angeles CA 90017  
Phone: (213) 213-8000

29 If you need this information in ASL, an ASL interpretation of this notice is available at [insert  
30 link]. To obtain copies of this Notice in another language or in alternative accessible formats,  
31 please contact:

32 Kristy Boyes  
33 Senior Staff Counsel  
34 Department of Developmental Services  
35 Telephone: (916) 323-3004  
36 Email: [Kristy.Boyes@dds.ca.gov](mailto:Kristy.Boyes@dds.ca.gov)