



August 15, 2023

Via email & USPS

Gerardo A. Argila, DDS consumer
Carl A. Argila, Conservator
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**Re: *McCullough v. California Dept. of Developmental Services*,
4:20-cv-02958-DMR**

Dear Messrs. Argila,

We write in response to your Objections filed in the above-captioned matter on July 21, 2023 (ECF No. 117) and in response to the blog post that Mr. Carl A. Argila published on August 1, 2023, in the hopes of clarifying some aspects of the proposed settlement. Plaintiffs will also file a response to your objections for the court along with our motion for final approval.

A. July 21, 2023 Objections

1. DDS's Denial of Liability

Your first objection takes issue with DDS's denial of liability, as summarized in the Class Notice on page 1 at lines 25–26, because you believe that this statement is not true. The relevant provision in the proposed Settlement Agreement is Section VII, paragraph 76, which reads:

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

Plaintiffs agree that DDS has not always obeyed the law and has discriminated against Deaf people who receive services from Regional Centers. However, deferring resolution until a judgment on liability would likely have resulted in either (1) a delay of the robust relief that will result from this class settlement, (2) less robust relief despite a finding of liability, or (3) a finding that DDS is not legally liable at all.

To avoid all that uncertainty and delay, the proposed Settlement Agreement allows both parties to maintain their legal positions but set those aside to achieve relief that will address the underlying harms without the need to undertake the time- and resource-intensive process of reaching judgment on liability.

The denial of liability provision does not modify any rights or obligations and is standard in settlement agreements that are reached before any finding of liability by the court. Furthermore, even if the settlement was silent about liability, that would not be an admission of liability by DDS.

a. 2013 Notice of Proposed Action

You attached a December 20, 2013 Notice of Proposed Action from San Gabriel/Pomona Regional Center (SGPRC) denying your request for a service coordinator who is deaf to serve your son Cavan Argila. The Notice indicates that SGPRC denied your request based on its determination that “[t]here is no provision in law that requires the regional center to provide a service coordinator who has the same impairment as the client or that is fluent in the client’s language. The use of an interpreter is an acceptable means of communicating with the client.”

We would like to explain how the proposed Settlement Agreement would impact the type of communication that a class member receives during interaction with their service coordinator. Under the Agreement, each class member will be offered a communication assessment. Upon completion of a communication assessment, the regional center will coordinate its distribution to the consumer’s interdisciplinary team to be reviewed in the next individual program plan (IPP) meeting. Thus, the results of the assessment should provide a guideline for the best form of communication for the Deaf consumer—whether in communication with their service coordinator or service providers. In addition, if the regional center denies a request for a specific auxiliary aid or service, the consumer will still be able to file an appeal and pursue the standard administrative and legal processes to address individualized discrimination. Finally, the proposed Agreement includes relief intended to promote understanding of Deaf culture and anti-discrimination obligations at the regional-center level, including new trainings, new state and regional coordinators who focus on deaf access issues, and increased communication from DDS to regional centers regarding ADA obligations. See Implementation Plan B.2, B.4.a, B.5.b-c.

2. DDS’s Ability to Fulfill its Obligations Under the Settlement Agreement

We understand that you also object to the Settlement Agreement based on your opinion that DDS and SGPRC are not capable of fulfilling the obligations set out in the Settlement Agreement. While we do not intend to negate your past experiences with DDS and SGPRC, we are not aware of any reason why DDS would be unable to fulfill

the obligations contained in the Settlement Agreement. SGPRC is not a party to the lawsuit and doesn't have any direct obligations under the Agreement.

Furthermore, if the Settlement Agreement is adopted by the court, we will have the ability to monitor DDS's implementation of the obligations and, if they do not complete those obligations, we will be able to pursue dispute resolution procedures including ultimately submitting the issue to the court so that the judge can determine whether DDS is in compliance.

3. Omission of specific accommodation or auxiliary aid and service requirements for all consumers

Your objection demands that "all persons working with Deaf clients should have an American Sign Language Proficiency Interview (ASLPI)" and suggests that the lack of such a requirement in the proposed Agreement renders it unfair or insufficient. The Settlement Agreement does not include any obligations with respect to the specific accommodations or auxiliary aids or services that must be provided to individual class members because this was not the relief sought in the lawsuit. Instead, Plaintiffs sought that DDS take system-level action to ensure that Deaf consumers receive the communication assessments and services that they need in order to receive the benefit of DDS's I/DD service program. Thus, the relief provided by the proposed Settlement Agreement will ensure that each class member receives the opportunity to have an appropriate communication assessment and that the results of that communication assessment are incorporated in the consumer's IPP. This relief better reflects the diverse individual needs of Deaf consumers than requiring an ASL certification for all persons working with Deaf consumers because not all Deaf consumers communicate in ASL. Also, nothing in the Settlement Agreement prevents an individual class member from seeking a certified interpreter in connection with their individual needs.

4. Monitoring by Class Counsel

You next object to the Settlement Agreement's monitoring provisions (which are in Section III.C of the Agreement) on the basis that the Agreement should be monitored by members of the Deaf community rather than Class Counsel.

First, members of the Deaf community in California will be intimately involved in implementation of the Settlement Agreement as members of the Steering Committee formed pursuant to Section A of the *Implementation Plan*. This Committee will meet regularly to make recommendations for DDS as to communication assessment scope and materials, developing the statewide network of service providers for Deaf consumers, developing training materials, and more.

We also must note that your allegation that DRC and DRA lack concern for individual Deaf clients is unfounded. Our concern for individual Deaf clients is the very reason we pursued this litigation, and our professional obligation is to obtain relief for the class to address the systemic violations at issue in this case. The robust proposed Settlement Agreement achieves that, and Class Counsel are prepared and qualified to monitor implementation thereof.

5. Payment of Attorneys' Fees and Costs

In objection to payment of attorneys' fees and costs, you state that DRC's work in this case was "funded by the taxpayers of the State of California." We wanted to clarify that DRC's systemic litigation (such as this case) is funded by various federal funding streams *and* by the receipt of attorneys' fees and costs for such litigation pursuant to federal anti-discrimination laws. Your blog also suggests that Disability Rights Advocates ("DRA")—a non-profit organization that is wholly separate from DRC—receives tax-payer funding from the State of California. However, DRA does not receive any tax-payer funding.

This litigation has not been funded by the State. Regardless, we note that the award of attorneys' fees in anti-discrimination cases such as this serves an additional purpose: it disincentivizes DDS to engage in future unlawful conduct.

6. Omission of Monetary Damages from Settlement

Finally, we understand that you believe class members should be awarded financial settlements in conjunction with this case. Our lawsuit did not seek monetary damages. One reason why we did not seek monetary damages is because monetary damage claims are very specific to each person's individual circumstances and would not be efficiently addressed in a class action like this.

Because our lawsuit did not bring monetary damage claims, and because those claims are so specific to each person's circumstances, the proposed Settlement Agreement also does not release any claims for monetary damages. That means that each Deaf consumer maintains the ability to seek such damages if they are available based on their individual circumstances.

B. August 1, 2023 Blog Post

We also noticed an important inaccuracy in your August 1, 2023 blog post, found at the following URL: <https://sgprc.tumblr.com/post/724579239424360448/draft>. You state at the conclusion of your post that "[c]lass members . . . have the right to withdraw from this settlement agreement but they must do so prior to August 16, 2023." That is incorrect.

Because of the nature of this class, Class Members **cannot** withdraw from the Settlement Agreement. If the Agreement is approved by the court, all Class Members will receive the benefits of the Agreement and all Class Members will be covered by the release of claims.

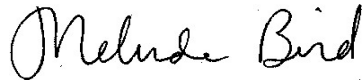
August 16, 2023 is the deadline for a Class Member to **object** to the Agreement if they feel that the court should not approve the Agreement. Objecting is different from withdrawing. At the Final Approval Hearing, the Court will consider the Parties' arguments in favor of approving the Settlement Agreement and any objections to the Settlement Agreement and then will decide whether or not to approve the Settlement Agreement based on all of the arguments.

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We hope that this information helps clarify some aspects of the proposed Settlement Agreement that appear to have been misunderstood based on your objections and blog post. As we note above, we will also be filing a response to your objections for the court. If you have any questions, you are welcome to reach out to us.

Sincerely,



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