

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES HANDWORK

Plaintiff,

v.

**THE OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION**

and

GARY C. MOHR

In his official capacity as Director of
Ohio Department of Rehabilitation and
Correction

Case No. 1:16-cv-00825

JUDGE SOLOMON OLIVER, JR

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S
FIRST MOTION FOR SUMMARY JUDGMENT**

I. Introduction

Plaintiff James Handwork is a hearing disabled man serving a 15-years-to-life prison sentence in the custody of Defendants, the Ohio Department of Rehabilitation and Correction (ODRC) and Director Gary Mohr. Mr. Handwork filed this suit to challenge Defendants' statewide policy that hearing disabled people incarcerated in Ohio's state prisons are only allowed one hearing aid, even if they have a medical need for two. Complaint ¶ 9. Mr. Handwork has challenged Defendants' policy on its face, and as applied to him, after he was denied a prescribed second hearing aid strictly on the basis of Defendants' policy. *Id.*

The crux of Defendants’ Motion for Summary Judgment is that Defendants are immune from suit, or else are not proper parties. Defendants’ First Motion for Summary Judgment at 1-2.¹ They argue that because Director Mohr is not himself a doctor, he cannot be held accountable for ODRC’s statewide policy controlling prison medical protocols. Memorandum in Support of Defendants’ Motion for Summary Judgment at 1.² Defendants also contend that because they have contracted their prison services to a private operator, the state no longer bears responsibility for what happens to the prisoners under its jurisdiction—even where state policy specifically controls what happens to the state’s prisoners, and state officials affirm the decision. *Id.* But Defendants cannot hide behind a private contract to escape their duty to follow, and provide Mr. Handwork the protections accorded by, constitutional and federal statutory law. Defendants also assert sovereign immunity, qualified immunity, and failure to exhaust the PLRA - all to no avail. As shown below, Defendants are the appropriate parties to be sued, and, under settled law, are not shielded here by any immunity doctrine. Therefore Defendants’ Motion must fail.

II. Statement of undisputed facts.

ODRC is currently housing James Handwork at the Lake Erie Correctional Institution (LaECI), which is operated by Corrections Corporation of America (CCA) pursuant to a contract between CCA and Defendants. Exhibit A., Requests for Proposals between CCA and the ODRC (referred to collectively as a “contract.”)

Mr. Handwork has consistently needed and worn hearing aids in both ears since his hearing was damaged as a U.S. Army Paratrooper in 1984. Complaint ¶ 4. Not only do hearing aids require

¹ Although Defendants’ Motion makes plain that their proposed grounds for summary judgment are immunities and joinder, in their Memorandum in Support of their Motion, they sporadically raise other issues, which this Opposition also addresses.

² Hereinafter “Def. Mem.”

regular repair and maintenance, even with maintenance, they degrade and need replacement approximately every 5-7 years. Complaint ¶ 8. After Mr. Handwork's 12-year-old hearing aids failed in 2015, a prison-contracted audiologist prescribed two new aids, based on his "severe hearing loss" in both ears and the impossibility of further maintaining his pair, which had become obsolete. Complaint ¶ 8; Exhibit B, CCA Medical Request. Mr. Handwork exhausted Ohio's three-step prisoner grievance procedure to ask for the prescribed aids, but the prison denied his request pursuant to ODRC policy, and the ODRC's Chief Inspector affirmed the denial.³ Complaint ¶ 9; Exhibits C and D, dispositions of grievances. Defendant ODRC's Assistant Chief Counsel himself later confirmed that this decision was made pursuant to Defendants' statewide "established protocol...to ensure one working hearing aid," even for prisoners with a medical need for two. Complaint ¶ 9; Exhibit E, email from ODRC Counsel Trevor Clark. As a result of Defendants' policy and denial of necessary medical care to Mr. Handwork, Mr. Handwork needlessly suffers hearing loss, disorientation, and vertigo, making him unsafe in prison and unable to fully participate in prison life. Complaint ¶ 10; Exhibit F, CCA Medical Request.

The parties agree as to the facts dispositive of this suit. Def. Mem. 3-4. Defendants, however, ask this Court to dismiss the claims against them based on their two legal theories: that Defendants are immune from suit and that Defendants are the improper parties to be sued

Mr. Handwork opposes Defendants' Motion on their propositions of law. This action asserts constitutional and statutory challenges to Defendants' statewide policy, both facially and as applied to Mr. Handwork—a policy that Defendants have promulgated and enforced. Defendants,

³ Defendants spontaneously offer that their policy of giving only one hearing aid to prisoners needing two is not based on "expense or cost." Def. Mem. at 19; Decl. of Witt. Since Mr. Handwork has never speculated as to the motivation behind this policy, Mr. Handwork is gratified to learn Defendants contention that it is non-financial. However the motive here is irrelevant because the policy itself is unconstitutional and in violation of federal statutory law.

having sole control over this policy, are the *only* appropriate parties subject to suit and are not protected by any immunity. For the reasons discussed below, this Court should deny Defendants' Motion.

III. The ODRC and Director Mohr are unshielded by immunities and this suit is not barred in any other way, so Defendants' Motion fails.

In their Motion, Defendants assert almost every conceivable immunity doctrine in an attempt to shield themselves from liability, but none is appropriate. As a threshold matter, no immunity prevents the state from providing prospective injunctive relief, which is the central relief Mr. Handwork seeks. As to damages, first, the Eleventh Amendment does not shield Defendants, since it is settled law that the statutes invoked in this case, the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq* (ADA) and Section 504(a) of the Rehabilitation Act, 29 U.S.C. Sec. 794 (Rehabilitation Act), validly abrogate sovereign immunity, and that both state agencies and state officials are liable under the statutes. Second, Defendants may not invoke qualified immunity, because Mr. Handwork's §1983 claim does not seek damages, and is brought only against Director Mohr. Finally, the Prison Litigation Reform Act does not bar Mr. Handwork's claims—in fact, the grievance dispositions which evince his exhaustion of remedies in this matter are the very basis for this lawsuit. Contrary to Defendants' Motion, Director Mohr and the ODRC are subject to suit and are liable for their actions against Mr. Handwork.

A. Defendants are not entitled to sovereign immunity as to any of Mr. Handwork's claims.

The Eleventh Amendment does not protect the state or its agents when the state acquiesces to suit; when Congress validly abrogates sovereign immunity; or when state officials are sued in their official capacities for injunctive relief.

Defendants repeatedly contend that the ODRC is “not a legal entity subject to suit” and that the Eleventh Amendment bars claims against it. Def. Mem. 8, 12, 23. But Defendants are not immune from Mr. Handwork’s statutory claims, because the government has validly abrogated Eleventh Amendment immunity as to claims under both the ADA and Rehabilitation Act. 42 U.S.C. §12202 (under Title II of the ADA, “[a] State shall not be immune under the eleventh amendment”); 42 U.S.C. §2000(d)(7)(a)(1) (“[a] State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act.”); *see also U.S. v. Georgia*, 546 U.S. 151, 159 (2006) (Title II of the ADA validly abrogates sovereign immunity for claims which independently violate Section 1 of the Fourteenth Amendment); *Mingus v. Butler*, 591 F.3d 474, 483 (6th Cir. 2010) (same); *Degrafinreid v. Ricks*, 417 F.Supp.2d 403, 410 (S.D.N.Y. 2006) (same); *Lane v. Pena*, 518 U.S. 187, 200 (1996) (recognizing that the Rehabilitation Act unambiguously abrogates sovereign immunity). Additionally, states consent to be sued under the Rehabilitation Act when they accept federal funds, as Defendants do. *Nihiser v. Ohio E.P.A.*, 269 F.3d 626, 628-29 (6th Cir. 2001) (recognizing that “[s]tates waive their Eleventh Amendment immunity with regard to Rehabilitation Act claims when they accept federal funds.”)

Title II of the ADA and Section 504(a) of the Rehabilitation Act were expressly drafted to provide disabled individuals a cause of action against the government and its agents. *See* 42 U.S.C. §§ 2000d-7, 12202. It is settled law that these statutes allow incarcerated individuals to vindicate their rights against state defendants, for injunctive relief and compensatory and punitive damages. *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 213 (1998). Indeed it has been recognized that in crafting these laws, Congress specifically contemplated the needs of highly vulnerable incarcerated people with disabilities. *See*, 42 U.S.C. § 12101(a)(7); *Tennessee v. Lane*, 541 U.S.

509, 536-37 (2004) (Ginsburg, J. concurring). Under established law and the plain language of the statutes, the Eleventh Amendment does not protect Defendants from suit.

Defendants also attempt to invoke Eleventh Amendment immunity from Mr. Handwork's §1983 claim. Def. Mem. at 12. But over 100 years of established law make clear that sovereign immunity does not bar constitutional claims against government officials for injunctive relief. *See Ex parte Young*, 209 U.S. 123, 160-61 (1908); *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989). Mr. Handwork has sued Director Mohr in his official capacity as a representative of the ODRC,⁴ and has asked for prospective injunctive relief as to his §1983 claim: that Defendants discontinue their unconstitutional state policy and provide Mr. Handwork with his medically necessary hearing aids. Complaint at ¶ 36-37. Under *Ex Parte Young*, the Eleventh Amendment does not shield Defendant Mohr from suit or from liability. Because sovereign immunity neither bars suit nor relief as to any of Mr. Handwork's claims, this Court should deny Defendants' Motion.

B. Qualified Immunity is not a defense, because Mr. Handwork's §1983 claim is against Director Mohr in his official capacity, and does not seek damages.

Defendants also devote several pages of their Motion to qualified immunity—an affirmative defense to damages claims made against individuals. Def. Mem. 12-13. The qualified immunity defense does not apply here because, as discussed above and as Defendants note, Mr. Handwork has sued Director Mohr in his official capacity for prospective injunctive relief. Def. Mem. 9.

“When it comes to defenses to liability, an official in a personal-capacity action may, depending on his position, be able to assert personal immunity defenses, such as objectively

⁴ *See* the caption of this case.

reasonable reliance on existing law [i.e., qualified immunity]. **In an official-capacity action, these defenses are unavailable.**” *Kentucky v. Graham*, 473 U.S. 159, 166-67 (1985) (citing *Owen v. City of Independence*, 445 U.S. 622 (1980)) (emphasis added); see also *Monell v. Department of Social Serv. Of New York City*, 436 U.S. 658, 690 (1978); *Hall v. Tollett*, 128 F.3d 418, 430 (6th Cir. 1997) (“Qualified immunity shields defendant from personal liability, but it does not shield him from the claims brought against him in his official capacity”); *United Pet Supply, Inc. v. City of Chattanooga, Tenn.*, 768 F.3d 464, 483-84 (6th Cir. 2014) *cert. denied sub nom. Animal Care Trust v. United Pet Supply, Inc.*, 135 S.Ct. 2378 (2015) (“We have always understood qualified immunity to be a defense available only to individual government officials sued in their personal capacity.”) The qualified immunity defense does nothing to shield Director Mohr from liability for the relief Mr. Handwork seeks: the provision of a functional hearing aid, and the elimination of the unlawful policy depriving him of it.

§1983 *does* hold Director Mohr, and through him the ODRC, liable for the injunctive relief sought here. Defendants correctly articulate Mr. Handwork’s “claims that Defendant, Director Mohr of ODRC, is responsible for [ODRC’s] practices and policies,” and that Defendant Mohr “while acting under color of law...violated Plaintiff’s [constitutional] rights,” to be free from cruel and unusual punishment. Def. Mem. 9. (citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)). But from these correct premises, Defendants erroneously conclude that because Director Mohr does not have a medical license, he is immune from §1983 liability for the unconstitutional policies he creates. Def. Mem. 10. Established precedent refutes Defendants’ claim that an agency director or other high-level official cannot be held liable for the state’s official policies under §1983, simply because he is not the direct overseer of individual medical determinations. See, e.g., *Grose v. Caruso*, 284 Fed.App’x 279, 282-3 (6th Cir. 2008); Cf *Taylor v. Mich. Dept. of Corrections*, 69

F.3d 76, 81-82 (6th Cir. 1995). This Court has held that Director Mohr himself is subject to suit in this context. *See Hody v. Marion Corr. Inst.*, No. 3:13 CV 1426, 2013 WL 5969654 at *5 (N.D. Ohio Nov. 8, 2013) (Mohr was a proper defendant in prisoner's §1983 request for injunctive relief for adequate medical treatment). Mr. Handwork's §1983 claim challenges Director Mohr's unconstitutional one-size-fits-all policy decreeing that members of Ohio's hearing disabled prison population, including Mr. Handwork, require only one ear to hear with.

Finally, Defendants also ask this Court to dismiss the ODRC as a Defendant in this matter because the ODRC is not a "person" under §1983. Def. Mem. 8. Mr. Handwork agrees that a state agency is clearly not subject to suit under §1983. *See Hix v. Tennessee Dep't of Corr.*, 196 F.App'x 350, 355 (6th Cir. 2006). Rather, §1983 holds state agencies accountable through their officers. *See Brandon v. Holt*, 469 U.S. 464, 472 (1985). Here, Mr. Handwork has leveled his official capacity §1983 claim against Director Mohr only, who acts, as Defendants note, "as a representative of ODRC" for purposes of accountability. Def. Mem. 9. Mr. Handwork's statutory claims, however, are against both Director Mohr and the ODRC, and are proper as discussed above. Therefore the ODRC remains a proper defendant in this lawsuit.

Because Defendants are liable and are not entitled to immunity, neither Defendant may be dismissed, and this Court should deny Defendants' Motion.

C. The Prison Litigation Reform Act does not bar this suit because Mr. Handwork has clearly exhausted the administrative remedies available to him, and has stated a claim upon which relief can be granted.

Defendants fill three pages asserting that the Prison Litigation Reform Act (PLRA) bars this lawsuit, even though there is no question that Mr. Handwork fully exhausted the grievance procedure required of him under that Act. 42 U.S.C. §1997e(a) (2013); *see also* Ohio Admin. Code 5129-9-31 (provision of state law describing Ohio's prisoner grievance procedure). The PLRA

bars prisoners from filing a §1983 action “until such administrative remedies as are available have been exhausted.” *Id.* Ohio law provides a 3-step prisoner grievance process, which Mr. Handwork completed and which culminated in the ODRC’s Chief Inspector denying his third-step appeal. Exhibits C and D. Indeed the text of that Decision itself is one of the integral documents in this lawsuit and is attached to Mr. Handwork’s Complaint. *Id.*

Because Mr. Handwork has satisfied the PLRA, and because for the reasons discussed in this Opposition has stated a claim against the appropriate Defendants, this Court should deny Defendants’ Motion.

IV. The ODRC and Director Mohr, but not Corrections Corporation of America, are appropriate and necessary parties under Fed R. Civ. P. 19.

Defendants also move this Court to dismiss Mr. Handwork’s claims for failure to join a necessary party pursuant to Fed. R. Civ. P. 12(b)(7). Def. Mem. 12. But Defendants are the only necessary parties to this suit. If Mr. Handwork were challenging the rogue act of a LaECI employee, perhaps CCA would be an appropriate defendant. Here, however, he is challenging a statewide policy that governs the prison. The policy is promulgated and monitored by the Defendants. Defendants are solely responsible for their own statewide policy. Mr. Handwork seeks the retraction of Defendants’ policy; no other party can produce the relief sought.

Even if this Court should find CCA to be an appropriate party—which it is not—the failure to join CCA would not be grounds for dismissal of Mr. Handwork’s claims under Fed. R. Civ. P. 12 and 19, because joinder would be feasible.

A. The subject of this suit is a statewide policy that Defendants promulgated and oversee, so Defendants are the appropriate decision-making entities subject to suit.

The ODRC and Director Mohr are the appropriate parties to be sued here, and CCA is not a required Defendant. Defendants promulgated the policy that Mr. Handwork has challenged, and

are responsible for the final Decision denying his request for two hearing aids. Complaint ¶ 9, Exhibit D. Defendants are therefore the appropriate decision-making entities to sue.

Under Fed. R. Civ. P. 19(a)(1):

A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if: (A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in that person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

See also Sch. Dist. of City of Pontiac v. Sec'y of U.S. Dep't of Educ., 584 F.3d 253, 301 (6th Cir. 2009). This Court can accord complete relief without joining CCA, because Mr. Handwork seeks remedies which the Defendants (and, for that matter, only the Defendants) can provide: elimination of Defendants' policy. Moreover, CCA has claimed no interest in this litigation, and its absence exposes Defendants to no inconsistent obligations, because Defendants, not CCA, have created the challenged policy and ratified it at the final stage of grievance proceedings. Fed. R. Civ. P. 19(a)(1)(B)(ii).

Nor does indemnity language in the contract between CCA and the ODRC make CCA a necessary party under Rule 19. Exhibit A at 12.5. Courts "do not consider potential indemnitors to be parties whose joinder is required if feasible," let alone necessary parties, under Rule 19. *Fisherman's Harvest, Inv. V. U.S.*, 74 Fed. Cl. 681, 686-87 (2006); *see also Pasco Int'l Ltd. V. Stenograph Corp.*, 637 F.2d 496, 503 (7th Cir. 1980). Defendants cannot contract away liability for their own policy.

Finally, even if this Court should find that CCA were a necessary party, because joinder is feasible without disrupting this Court's jurisdiction, the failure to join CCA would not be grounds for dismissal under Rule 12. Fed. R. Civ. P. 12(b)(7); *see PaineWebber, Inc. v. Cohen*, 276 F.3d

197, 200-201 (6th Cir. 2001). Because joinder of CCA is neither required nor sensible, and the ODRC and Director Mohr are the only proper Defendants, this Court should deny Defendants' Motion.

B. Contrary to Defendants' contention, the doctrine of *respondeat superior* holds Defendants liable as policymakers, when prison officials act pursuant to Defendants' policy.

Defendants misapply the doctrine of *respondeat superior* to the relationship between Defendants and CCA: when a subcontractor acts pursuant to a controlling state policy, the policymaker is liable, not the subcontractor. Def. Mem. 9-10. CCA is denying Mr. Handwork his hearing aids because Defendants' statewide policy compels it to do so—in other words, Defendants compel their private contractor to remain indifferent, despite knowledge of Mr. Handwork's medical needs. Liability for the state's policy belongs to the state. *See Ford v. County of Grand Traverse*, 535 F.3d 483, 495 (6th Cir. 2008) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978)).

The fact that ODRC has contracted the operation of LaECI to CCA does not allow ODRC to discharge its legal responsibility to protect the rights of incarcerated Ohioans. A state actor may not insulate itself from liability by contracting its services out to a private entity. *See, e.g., Milo v. Cushing Mun. Hosp.*, 861 F.2d 1194, 1197 (10th Cir. 1988) (defendant-public hospital “cannot escape liability [under §1983] by delegating responsibility to” a private medical contractor); *Cf Burton v. Wilmington Parking Authority*, 365 U.S. 715, 724 (1961). The state is accountable for incarcerated people in its care, and a contractual relationship between the government and a private party does not make this less so. *West v. Atkins*, 487 U.S. 42, 55-56 (1988) (“contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State's prisoners of the means to

vindicate their Eighth Amendment rights.”); *see also Dunn v. Dunn.*, No. 2:14-cv-601-MHT, 2016 WL 324990 at *9n.12 (M.D. Ala. Jan. 27, 2016) (“it would be profoundly unjust...if a state department of corrections could insulate itself from liability by ensuring that documentation of the medical or mental-health care provided prisoners was created by private corporations which were...not subject to suit”).

Rather, the contract between CCA and the ODRC expressly requires the prison to comply with all of ODRC’s rules and policies—which apply to *all* ODRC facilities pursuant to Ohio Rev. Code § 9.06(B)(3). Exhibit A. at 6.1. That Director Mohr does not “personally supervise” prison medical decisions has no bearing on his accountability for ODRC policies and practices. Def. Mem. at 10. Because Defendants promulgated the policy challenged here, with which CCA is contractually compelled to comply, Mr. Handwork has sued the proper Defendants, no other parties are required, and this Court should deny Defendants’ Motion.

V. Mr. Handwork prevails on each of his claims as a matter of law, given the undisputed facts.

Defendants’ immunity defenses and attempt to shift liability having failed, Mr. Handwork is entitled to all relief sought on the merits of his statutory claims. Although the core of Defendants’ Motion relies on immunities and joinder defenses, Defendants also—without actually making legal arguments to refute Mr. Handwork’s allegations—object to the substance of his claims. First, Defendants briefly assert that as to the statutory claims, Mr. Handwork fails to allege exclusion from participation in prison programs and activities under the ADA. Def. Mem. 25. However Mr. Handwork has been clear and Defendants’ evidence confirms that his untreated hearing disability excludes him from living his full life in the prison, as the ADA requires. Complaint ¶ 10; Exhibit F; *Pennsylvania Dep’t of Corr. V. Yeskey*, 524 U.S. 206, 210 (1998); 42 U.S.C. §§12102(2)(A),

12131. Similarly, as to Mr. Handwork's constitutional claim, Defendants repeat a conclusory assertion that Mr. Handwork has not alleged deliberate indifference under the Eighth Amendment. Def. Mem. 14. But Defendants' blanket policy mandates that despite a known medical need, and regardless of how serious it is, prisons will only offer partial treatment. This kind of mandate is "the very definition of deliberate indifference." *Colwell v. Bannister*, 763 F.3d 1060, 1063 (9th Cir. 2014); *see also De'Lonta v. Angelone*, 330 F.3d 630, 635 (4th Cir. 2003).

Director Mohr and ODRC are the very types of defendants that ADA Title II, the Rehabilitation Act, and 42 U.S.C. §1983 were designed to hold accountable. 42 U.S.C. §§ 12202; 2000(d)(7)(a)(1); 1983. Not only do these statutes explicitly establish liability for state agencies and their executive officers, they establish claims for damages,⁵ fees, and injunctive relief, each of which Mr. Handwork is entitled to here. *Id.*

VI. Conclusion.

Acting pursuant to their own policy, Defendants refuse to allow treatment of Mr. Handwork's known medical need for two hearing aids, to his continuing harm. Mr. Handwork has a clearly established right to individualized medical treatment; the medical determinations are that he needs two hearing aids; and it is solely due to Defendants' policy that only one has been provided.

⁵ Defendants also confusingly devote two pages of their Motion to refuting an Equal Protection claim (which Mr. Handwork has never raised) Def. Mem. 24, and then, based on this (but without citing authority), conclude that Mr. Handwork is therefore not entitled to damages under the ADA. If Defendants mean to argue that the ADA bars damage claims which also challenge conduct that independently violates constitutional rights, the U.S. Supreme Court has held the opposite is true. *U.S. v. Georgia*, 546 U.S. 151, 158-9 (2006). Instead, as this Court has held, "the ADA does allow for monetary damages if officials, acting in their official capacity, deny the disabled access to services." *Kacmarik v. Mitchell*, No. 1:15-cv-2062, 2016 WL 4393988 at *1 (N.D. Ohio Aug. 18, 2016). Defendants similarly assert that Mr. Handwork is not entitled to Rehabilitation Act damages, claiming that statute requires a showing of deliberate indifference to recover damages. Def. Mem. 25. But Mr. Handwork is not required to make any such showing. *R.K. ex rel J.K v. Bd. Of Educ. Of Scott Cty., Ky*, No. 5:09-cv-344jmh, 2014 WL 4277482 at *10 (E.D.Ky. Aug. 28, 2014) *aff'd* 637 F.App'x 922 (6th Cir. 2016). Even if this Court should apply such a standard, Mr. Handwork has satisfied it via his Eighth Amendment claim.

Contrary to Defendants' contentions, Mr. Handwork is entitled to the relief he seeks: this Court should enjoin Defendants to eliminate their unlawful policy and give Mr. Handwork the two functioning hearing aids he needs.

Based on the foregoing, Mr. Handwork requests that this Court deny Defendants' First Motion for Summary Judgment because Defendants are not entitled to judgment as a matter of law.

Respectfully submitted,

s/ Freda J. Levenson
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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2016 the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated this 19th day of September, 2016

s/ Freda J. Levenson
Freda J. Levenson (0045916)