

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO.
2016-0969

MASSACHUSETTS ASSOCIATION OF :
COURT INTERPRETERS, INC., MOUSSA :
ABBOUD, SOLEDADE GOMES :
DEBARROS, ANAHIT FLANAGAN, :
NORMA V. MANN, and MICHAEL R. :
LENZ, individually, and on behalf of all :
other persons similarly situated, :

Plaintiffs :

v. :

SECOND SUBSTITUTED
AMENDED COMPLAINT

EXECUTIVE OFFICE OF THE TRIAL :
COURT, :

Defendant :

I. INTRODUCTION

Massachusetts Association of Court Interpreters (“MACI”) is a non-profit corporation organized in November 2014 under the provisions of Chapter 180 of the Massachusetts General Laws to advocate for meaningful language access and equal justice for people of limited English proficiency (“LEP”) and improved interpreting services available to courts of the Commonwealth. Its purposes include advocating for fair and just pay and working conditions for all judicial interpreters, e.g., fair budgets, rate reviews, recognition, merit, seniority, and grievance procedures, as well as other conditions related to employment by Massachusetts courts.

Each *per-diem* court interpreter is required to sign a declaration that s/he will abide by the provisions of the Trial Court's Standards and Procedures ("S & P"),¹ which does not permit the court interpreter to work unless s/he abides by its terms and conditions.² In addition to providing rules that the court interpreters must follow, the S & P provides provisions governing payment, time frames when invoices must be provided and dates by when they will be paid, provisions for travel reimbursement, full-day/half-day service, lunch-hour guarantees, and other provisions, the totality of which Plaintiffs claim constitutes a binding contract. Plaintiffs claim that this contract has been violated by Defendants in ways described in greater detail below.

The methods for compensating Plaintiffs that Defendant is using violate the S & P. Examples of such violations include, e.g.: although the S & P calls for a minimum *per diem* certified court interpreter payments of \$200 for a half-day (e.g. 9am to 1 pm) or less, and \$300 for a full-day (over four hours of work),³ *per diem* court interpreters are not being paid according to this standard. For example, a *per diem* court interpreter who has made her/himself available on a given day, but is called to serve on a case starting at 11 am and going to 1 pm is only paid for two hours of work, not the half-day minimum payment required by the S&P's. Moreover, when paid on an hourly basis, interpreters are not paid at the regular hourly rate. *Per diem* court interpreters necessarily give up alternative work opportunities to make themselves available to the Trial Court. As the above example illustrates, they are not being paid in accordance with the S&P's

¹ The current version of the "S & P" is Exhibit A, attached hereto. Until paragraph 63 and the Second Cause of Action, all references to the S&P refer to the version adopted in 2009, Exhibit A, several provisions of which are referred to in paragraphs 1-62 as being violated in Plaintiffs' First Cause of Action.

² See sample declaration, attached hereto as Exhibit G.

³ For Screened court interpreters, the payment is \$125 for a half-day and \$200 for a full-day.

minimum standards. Moreover, as illustrated in Plaintiffs' affidavits included with this

Complaint:

- a) Wide variations are common with respect to how plaintiff class members are, in fact, being paid for work they are required by OCIS to submit by voucher,
- b) Payments made by OCIS to plaintiff class members frequently do not conform to S & P requirements, and
- c) Pay records that OCIS is providing to members of the plaintiff class fail to document how the calculation of deductions were made, leaving the recipients at a loss to understand the accounting.

Many of the *per diem* court interpreters are qualified in more than one language and many are scheduled to interpret in more than one language on a given day. If, however, the interpreter is only used in one language and not in two languages as was scheduled, the interpreter is not paid for two languages, contrary to the requirements of the S & P.

In addition, *per diem* court interpreters find that they are not being paid for going to an assignment, if for some reason they are not used, e.g. the court continues the assigned matter, or the party or witness is not present.

As part of the relief sought, named Plaintiffs and the class they represent are seeking a declaration that they are entitled to the compensation, benefits and working conditions specified by the S & P.

II. PARTIES

A. PLAINTIFFS

1. MACI is a non-profit corporation organized under Chapter 180 of the General Laws of Massachusetts in November 2014. As set out in its Articles of Incorporation, MACI includes, as one of its purposes, advocating for competent and fair language access and equal justice opportunity for LEP people. Of particular importance here is a

desire to see sustained improvement of the courts' interpreting services throughout Massachusetts. MACI also advocates for just pay and just working conditions for judicial interpreters, including, advocating for appropriate budgets, regular rate reviews, merit and seniority recognition, fair grievance procedures and other conditions of employment.

2. Moussa Abboud, a member of MACI and citizen of the United States and the Commonwealth of Massachusetts, is a certified court interpreter in French and Arabic who has served in Massachusetts' courts since 2010, as more fully set forth in his affidavit, Exhibit B hereto. Mr. Abboud makes himself available to interpret for the courts in a manner equal and comparable to OCIS staff court interpreters. He has fulfilled all duties for which he has been retained, but his rights under the S & P have been violated by Defendant.

3. Soledade Gomes DeBarros, a member of MACI and citizen of the United States and the Commonwealth of Massachusetts. She is certified as a court interpreter in Portuguese, and has worked in that language since at least 2004, as more fully set forth in her affidavit, Exhibit C hereto. She has made herself available to interpret on OCIS court assignments in a manner equal and comparable to the work being done by OCIS staff court interpreters and has fulfilled all duties for which she has been retained by OCIS, but her rights under the S & P have been violated by Defendant.

4. Anahit Flanagan, a member of MACI and citizen of the United States and the Commonwealth of Massachusetts, is a certified court interpreter in Armenian and has been so serving in the Massachusetts court system, since 2004. She is also certified as a Russian court interpreter and has so served in our courts since 2010, as more fully set forth in her affidavit, Exhibit D hereto. She has made herself available to interpret

throughout the Commonwealth, equal and comparable to staff court interpreters employed by OCIS. She has performed all of the assignments on which OCIS has retained her, but her rights under the S & P have been violated by Defendant.

5. Norma V. Rosen-Mann, a member of MACI and citizen of the United States and the Commonwealth of Massachusetts, is certified as a court interpreter in Spanish and has so served in Massachusetts' courts since 1995, as her affidavit, Exhibit E hereto sets forth. Ms. Rosen-Mann has made herself available to interpret, throughout the Commonwealth, equal and comparable to staff court interpreters employed by OCIS. She has performed all of the assignments on which OCIS has retained her, but her rights under the S & P have been violated by Defendant.

6. Michael R. Lenz, a member of MACI and citizen of the United States and the Commonwealth of Massachusetts, is certified as a Russian court interpreter and so served in Massachusetts' courts, beginning in 1993, up to when, in June 2014, Defendant retaliated by effectively forcing him out, as more fully set forth in his affidavit, Exhibit F hereto. He was available to interpret throughout the Commonwealth, equal and comparable to OCIS staff court interpreters. Although he fulfilled all duties assigned, but his rights under the S & P were violated by Defendant.

CLASS ACTION ALLEGATIONS

7. This action is brought on behalf of all MACI members, and those eligible for membership in MACI now and in the future. Named Plaintiffs bring this action on behalf of themselves and all others who are or will be similarly situated.

8. The class consists of both certified and screened⁴ court interpreters whose rights

⁴ The qualifications of screened and certified court interpreters are set forth in Sections 5.03 and 5.04 of the S & P, Exhibit A, hereto.

under the S & P have been violated by Defendants.

9. Named Plaintiffs' claims are typical of the plaintiff class. Class members are ascertainable from OCIS records, and are sufficiently numerous to make resolution of this action most efficacious as a class action.

10. Named Plaintiffs fairly and adequately represent all class members and do not have antagonistic interests.

11. Named Plaintiffs' interests are antagonistic to Defendant's positions and they will rigorously pursue class claims.

12. Plaintiffs' counsel is experienced and competent in class action litigation.

13. Common questions of law and fact affect the rights of the class members, and a common remedy is appropriate.

14. Prosecution of separate actions would incur risks of inconsistent and varying adjudications.

15. A question of law and fact are common to the class and predominate over individual issues, including, without limitation, whether the S & P constitutes a contract between the class of Plaintiffs and Defendant and whether Defendant violated provisions of that contract.

16. A class action is superior to other methods to adjudicate this controversy.

17. The class is so numerous that resolution of individual claims relating to these claims as part of a single action lawsuit, rather than as numerous individual lawsuits, will benefit all parties and greatly reduce judicial resources called upon.

18. Plaintiffs know of no difficulty likely to be encountered in managing the litigation, which would preclude its proceeding as a class action.

19. Plaintiffs' claims are applicable to the class, making injunctive and corresponding declaratory relief appropriate for the class as a whole.

20. If this action were not approved, Defendant will likely retain the benefits of wrongdoing and continue in the same courses of action, resulting in further damages to Plaintiffs and the class.

B. DEFENDANT

21. The Executive Office of the Trial Court, the Defendant, supports judicial policy, judicial education, general counsel, research and planning, intergovernmental relations, specialty court administration, grants management, general administration, and communications. The Office of Court Management reports to the Court Administrator and supports Trial Court operations for the seven Trial Court departments (District Court, Boston Municipal Court, Housing Court, Juvenile Court, Land Court, Probate & Family Court, and Superior Court), Probation, and the Jury Commissioner, in the areas of capital projects, facilities management, fiscal operations, human resources, security, support services, and information services. The Hon. Paula M. Carey and John A. Bello oversee the Executive Office of the Trial Court.

III. JURISDICTION AND VENUE

22. Jurisdiction is proper under G.L. c. 223A, §3 because the facts and practices alleged which give rise to this action have taken place in the Commonwealth of Massachusetts, because Plaintiffs' employment-related activities occurred here, because the matter is governed solely by Massachusetts law, and because the amounts in controversy far exceed the minimum \$25,000 required. The Court has jurisdiction to

decide Plaintiffs' Second Cause of Action pursuant to 42 U.S.C. §1983. See Martinez v. California, 444 U.S. 277 (1980) (state courts have concurrent jurisdiction with federal courts in §1983 actions) and Santana v. Registrars of Voters, 384 Mass. 487,492, 425 N.E. 2d 745, 749 (1981) (court accepts concurrent jurisdiction of §1983 claims). The Court has jurisdiction to decide Plaintiffs' Second Cause of Action that the January 2021 S&P violates Plaintiffs' rights under Article XIX of the Declaration of Rights under the Massachusetts Constitution and Chapter 12, Section I of the General Statutes of the Commonwealth of Massachusetts.

23. Under G.L. c. 223, §1, venue is proper, as OCIS is transacting business throughout Massachusetts and, because a state agency is involved, Suffolk County is a proper venue.

IV. FACTS

24. Massachusetts has promulgated statutory and regulatory standards to assure that LEP persons have fair access to court proceedings. To that end, G. L. c. 221 C mandates that LEP individuals must be afforded qualified interpreter assistance in court. St. 1986, c. 627, §2. A high quality of interpretation is required because there is a direct correlation between accurate foreign language interpretation and the fairness of the legal process for LEP parties or witnesses in court proceedings. As examples: the law requires courts to "provide the broadest possible protection for the rights of LEP persons to understand and to be understood" and requires, under the S & P, that OCIS must provide guidelines assuring that LEP individuals have meaningful access to all Trial Court proceedings. OCIS is specifically directed to provide interpreters for all criminal and civil matters coming before the courts whenever a LEP individual is participating -

whether as a victim, a witness, a parent, a juvenile's guardian, or otherwise; and at no cost to LEP individuals.

25. Court Liaisons, at the request of judges, are charged with facilitating needed linguistic services. OCIS, as the sole accredited authority, maintains a list of interpreters to provide such services for the courts. OCIS is also charged with providing access to interpreter services by publicizing a list of interpreters to attorneys and other law-related entities seeking their assistance. The list can be used for non-court proceedings as well, and is available on-line.

26. Pursuant to a Federal mandate, as well as its own mandate, the Massachusetts Trial Court developed a Language Access Plan ("LAP"), the most recent version of which is dated December 2014 and describes its purpose as follows:

"to provide comprehensive services to LEP (limited English proficient) individuals in compliance with Massachusetts and federal law prohibiting discrimination based on national origin, which includes language. It is designed to respond to Title VI of the Civil Rights Act of 1964 and to the ancillary requirements imposed by Executive Order 13166 as it relates to recipients of federal funds, and incorporates compliance with state law and court rules."

27. The LAP states that "Massachusetts is ranked as one of the top ten states with the largest LEP population" ... "the number of individuals identified as LEP has grown [*as of 2012*] from 523,000 in 2006-2008 to over 559,000 in 2012." LEPs served in that year include: 217,495 Spanish, 78,728 Portuguese, 61,072 Chinese, 33,396 Haitian Creole, 23,371 Vietnamese, and 145,061 other foreign-language speakers.

The LAP also reports that for FY 2012: 90,730 in-court events received in-court interpreter services, and the foreign languages most frequently in use in courts were: Spanish (72.8%), Portuguese, (14%), Cape Verdean, (2.2%), Haitian Creole, (1.9%),

Vietnamese, (1.4%), Khmer, (1.2%), Mandarin, (0.92%), Russian, (0.91%), Arabic, 0.69%, Cantonese, 0.55%, and lower percentages for other languages.

28. According to records maintained by the court system, from 2009 - 2013, the total number of court events receiving interpreting services declined from 93,803 in 2009 to 84,465 in 2013. Yet we know that the number of LEP Massachusetts' residents participating in court matters have dramatically increased since 2009.

29. Court records also show that of approximately 87,000 court events utilizing court interpreters for LEPs in FY 2014, 73% were Spanish-speakers and 11.9% were Portuguese-speakers.⁵

30. The 2014 LAP indicates that in 2012 OCIS employed 22 staff court interpreters and presently employs 27 staff court interpreters, including 19 certified in Spanish, 5 in Portuguese and one each for the Khmer, Haitian Creole, and Vietnamese languages.⁶

31. The roster of OCIS staff court interpreters is grossly undersized, given the volume of language-mandated obligations OCIS must meet with regard to all the courts in this system. So short is OCIS's staff capabilities that, were it not for the interpreters OCIS deploys as *per diem* temporary staff, there would be serious violations of both statutory provisions, i.e., G.L. c. 221C, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d. In short, OCIS is relying, currently, on approximately 180 *per diem* court interpreters to fill a glaring gap in its in-house interpreter capabilities.

32. Over time, the Commonwealth has approached the challenge of providing its trial courts with competent foreign-language assistance where interpreters are required in

⁵ The balance consisted of the following: Haitian Creole: 2.8%, Cape Verdean: 2.3%, Vietnamese: 1.9%, Khmer: 1.4%, Mandarin: 1.2%, Arabic: 1%, Russian: 1%, and Cantonese: .8%.

⁶ The 3 most recent staff court interpreters were working for specific courts before being transferred to the OCIS budget.

ways that have varied over time. Initially, it relied on simply *ad hoc* assignments that left the individual judges fending for themselves to seek these needed services. In time, courts – or more accurately some of the courts -- began to hire in-house interpreters. It appears that only in or around 1980 were efforts made to provide a centralized structure to address these needs. The first step occurred in the Suffolk Superior Court, where Blanca Batteau, then a court interpreter, was hired to engage interpreters for Suffolk Superior Court business -- and, though only on occasion, in other courts. Her efforts were expanded and her organization came to be called the Judicial Language Center (“JLC”). The JLC was not granted formal authority, but did begin to enlist interpreters to serve more of the Massachusetts trial courts. Then G.L. c. 221C created OCIS, first as a pilot program for Essex County; it eventually replaced the JLC at some point prior to 2001 and became a statewide entity.

33. Having determined, in 2006, that manifest shortcomings were impeding the court system’s ability to serve the needs of trial courts with competent interpreters, OCIS began to hire more *per diem* court interpreters to its existing staff. Currently the in-house interpreter staff stands at approximately 27 interpreters -- nowhere near what is needed by the court system it is charged to serve. In an effort to fill the gaping shortfalls in needed interpreter capacity, OCIS has enlisted and relied on approximately 180 interpreters, who work on what they call a *per diem* basis. The so-called *per diem* court interpreters do the same work that staff court interpreters are doing, and do so in the very same courts. Each group must be similarly qualified, i.e., either as “certified” or “screened” to serve in a given language (or languages), and all, from both groups, must meet the very same qualifying requirements.

34. Indeed, all *per diem* court interpreters are state employees under G.L. c. 268A, §1(q). All must comply with the Commonwealth's Conflict of Interest Statute; all must complete online training administered by the State Ethics Commission, and all are being assigned by the OCIS to the very same judges, and in the same manner – that is, without distinction as to their classification.

35. Every *per diem* court interpreter is qualified to interpret in a least one language and approximately 56, at present, are also qualified as court interpreters in more than one language. A roster of the current court interpreters, in order of the most frequent language requirements for in-court translation is as follows:

<u>Language</u>	<u>Total</u>	<u># Certified</u>	<u># Screened</u>
Spanish	67	55	12
Portuguese	21	12	9
Mandarin	10	6	4
Cape Verdean	9	4	5
Vietnamese	6	5	1
Arabic	4	2	2
Russian ⁷	8	7	

In addition, the *per diem* interpreter roster includes interpreters for many other languages needed with lesser frequency in court proceedings, e.g., those listed in Note 8.⁸

36. *Per diem* court interpreters are required to submit to OCIS a monthly or bi-monthly schedule, indicating when they are available to take on court assignments.

Indicating their availability does not, however, ensure that work will be assigned to them.

⁷ Of the seven certified Russian court interpreters, two are also certified in Polish, two in Armenian, two in Ukrainian, and one in Georgian.

⁸ Albanian, Amharic, Aramaic, Armenian, Bengali, Bosnian, Bulgarian, Cantonese, Croatian, Czech, Dari, Dinka, Edo, Ethiopian, Ewe, Fante, Farsi/Persian, French, Fujianese, Georgian, Greek, Gujarati, Haitian Creole, Hebrew, Hindi, Hmong, Hungarian, Ibo, Indonesian, Italian, Jamaican Creole, Japanese, Khmer, Kikongo/Kongo, Kinyarwanda, Kirundi, Korean, Laotian, Lingala, Mizo Chin, Nepali, Nzima, Patois, Pidgin English, Punjabi, Quechua, Quiche, Romanian, Serbian, Slovak, Somali, Swahili, Tagalog, Tajiki, Thai, Tibetan, Tigrinya, Toisanese, Turkish, Twi, and Urdu.

They do not know until OCIS calls them, often only a day or even hours before a hearing is scheduled.

37. For many in the plaintiff class, over 90% of their work as language interpreters is court-related business. Due to the uncertainty of receiving assignments on some of those days for which they have indicated their availability, *per diem* interpreters are forced to accept other work to ensure adequate income, and have to cancel or report their unavailability if OCIS had assigned them work. Some interpreters schedule the majority of their outside work after 4:30 pm to give OCIS priority should they be called to work on that day or afternoon.⁹

38. In addition, sometimes court interpreters find that they are no longer needed, e.g. if the matter they were called for is cancelled or completed early. If that occurs before their half-day, or full-day commitment is completed, OCIS nonetheless required them to stand by or else be penalized and paid by the hour, that is, only receiving compensation for time interpreting in court, not the time *committed to* OCIS on that day. Moreover, if OCIS cancels with more than 24 hours notice in advance, a *per-diem* interpreter receives no compensation whatsoever, despite the fact that, for the most part, by then it is unrealistic for the interpreter to find alternative work that day. Though the S&P says they should be paid if a case is cancelled, sometimes they are not.

39. The S&P provision for payment of *per diem* interpreters on a full-day or half-day basis is not an innovation that began when the S&P was created, but goes back to Memo 10, signed by Chief Justice for Administration and Management Irwin in 1998. The payment of full-day and half-day rates is an established practice in Massachusetts, the Federal Court, and in many other states. Nevertheless, the Trial Court administration has

⁹ If they cancel too frequently, in OCIS's view, it will jeopardize future assignments.

disregarded this cornerstone of professional court interpreting and now attempts to revert to an hourly payment system, reducing any payments that it deems appropriate, using any pretext. If work is scheduled at 10:00 am instead of 9:00 am, then the hourly system is used. If an interpreter is used only in the afternoon, then the hourly pay system may be used.¹⁰ Interpreters no longer know what they will be paid, and they either seek assurance in advance that they will be properly paid, or they refuse to take assignments for which regular payment will be withheld. Due to these reductions, interpreters are much less willing to work and service to the court system and the population it serves is dramatically reduced. As interpreters find other work that will allow them to survive, they are replaced by the less-qualified, and agency interpreters. Defendant is systematically disregarding the S&P with regard to payment of full- and half-days, a cornerstone of *professional* court interpreting. This is the crux of the problem: Does the Trial Court recognize that the interpreters it relies on need to make a living, and is court interpreting a profession that requires years of practice to perfect.

40. Multilingual Interpreters:

Section 7.03 of the S & P provides, in part:

“Court interpreters who are assigned by OCIS to provide court interpreter services in more than one language on the same day shall be compensated at a rate 25% greater than the standard rate set by the Committee and the CJAM,”

OCIS saves money when it is able to send one interpreter to do the work of two. That is why extra pay is warranted. But if for some reason the second language is not needed,

¹⁰ Because the rate for a half-day is \$200 and the half-day is four hours, the regular hourly rate is \$50 ($\$200 \div 4 = \50.00). Yet, Defendant has paid at an hourly rate of \$40, made deductions of \$20.00 for half-hours, and, as more particularly described in paragraph 48, *infra*, have paid for travel time at a rate of \$10.00 since 2009, when the rate paid was reduced from \$40/hr.

the Executive Office of the Trial Court has interpreted this provision as in effect a supplement due only “so long as they actually provide interpreting services in *both* languages on said day.”

41. Staff court interpreters receive regular pay increases, under a union contract, and, as members of OPEIU Local 6, have contractual rights to raises every three years.

Indeed, the current union contract, negotiated in 2014, now provides them with semi-annual raises -- at rates of 1.5% every six-month interval.

42. *Per diem* certified court interpreters receive no such benefits, and indeed their financial picture is much bleaker. Their last pay increase came only in 2007;¹¹ they have had no increase or adjustment in fourteen years.

43. Sign-language interpreters’ pay and terms and conditions of employment are more favorable than those of *per diem* court interpreters.

44. *Per diem* court interpreters are not receiving fair compensation for travel time, nor are adequate accommodations being made for *per diem* court interpreters assigned by OCIS to go to, e.g., Nantucket or Martha’s Vineyard for a court hearing -- trips often taking what amounts to a full day in itself.

45. Section 7.06 of the S&P provides that travel time is calculated as follows:

In the event that a court interpreter is required to travel to and from an assignment, and such travel in either direction exceeds 25 miles, such travel time in excess of 25 miles either going to or coming from an assignment shall be billed at the rate of one hour’s time for each 25 miles traveled in excess of the first 25 miles in each direction.

¹¹ Prior to that, their rates had been \$160 per half-day, \$250 per full-day, with inflation since then obviously reducing the spending power of their actual pay.

Prior to February 2009, the hourly rate was \$40.00, which meant that, after subtracting 25 miles from the total traveled in either direction (50 miles round-trip), that mileage was divided by 25 and then multiplied by \$40 to yield the amount paid for travel time. Not only was the wrong hourly rate used, but the hourly rate actually paid as there are innumerable courts traveled to by *per diem* court interpreters in densely populated areas that took far in excess of an hour to travel far less a distance. Such a formula is arbitrary and denied *per diem* court interpreters their actual hourly rate, in violation of federal law. In February 2009, the \$40.00 hourly rate was reduced to \$10.00 and has not changed since then, even though the S&P hourly rate has not changed from the \$40.00 hourly rate – which should be \$50.00 as explained in Note 10, *supra*. Staff court interpreters are paid the state reimbursement rate, which is much higher, as per their union contract.

46. Moreover, the *per diem* court interpreters face additional shortfalls regarding such essentials as gasoline reimbursement, car maintenance reimbursement, mileage reimbursement, and other incidentals of the work they are performing in courts throughout the Commonwealth – which are all below what staff court interpreters -- as staff employees receiving the same benefits as all state employees for travel and other expenses -- receive. Nor have *per diem* court interpreters seen any increase for many years, even as periodic increases have been provided to all other state employees.

47. *Per diem* court interpreters often cannot take a one-half hour lunch break as is provided by Massachusetts law, as they are often still working or traveling to a second court. Nor are they paid for their “untaken” lunch break time. When working past the time for a half-day, they are not compensated at the full-day rate.

48. Plaintiffs and staff employee court interpreters both perform all interpretation services, serving the same courts, at the direction of and under the control of OCIS and

the courts they serve. At present, *per diem* court interpreters are providing more than half of all the court interpreter work, yet the 27 staff court interpreters on OCIS payroll are being compensated far better (approximately twice as much) than what *per diem* court interpreters, with their pay rates increasing and guaranteed by union agreement. Often, when a staff interpreter is absent, due to illness, vacation, being sent to another court, etc., *per diem* court interpreters are asked to cover the courthouse for them, performing all the duties of the regular staff interpreter, including coordinating cases of all *per diem* court interpreters in that courthouse (or court complex), liaising with the court personnel, and staying in touch with OCIS personnel regarding whatever questions or new requests that might arise.

49. The last pay increase given to Plaintiffs by the Trial Court was in 2006, when the pay rate for certified *per-diem* court interpreters was set at \$300 for a full-day and \$200 for a half-day; for screened *per-diem* court interpreters \$200 for a full-day, and \$100 for a half-day. According to the Bureau of Labor Statistics, the purchasing power of the dollar in 2021 has lost 32% of the value it had in 2006.

50. Nor has OCIS made payments due for Plaintiffs' invoices in a consistently timely manner, in violation of the S & P, Section 11 and G.L. 29, §29C. Indeed, it is not uncommon for delays of six to eight weeks to occur between a *per diem* invoice submission and the invoice being paid and delays can frequently run into months. Delays of this magnitude can and have caused Plaintiffs significant problems, examples (without limitation) being that incomes, for tax purposes, are artificially inflated by virtue of payments made only outside of years when the income was earned, and tardy payments can interfere with the ability to pay mortgages and other bills on time.

51. Section 9.01 of the S&P requires that OCIS schedule and assign spoken language court interpreters based upon requests from Court Liaisons. It also requires that,

Generally, court interpreters will be assigned in the following sequence: first, Qualified Interpreters or Certified Interpreters, and second, Screened Interpreters. If there are no Qualified, Certified or Screened Interpreters available to meet the needs of the requesting court, OCIS may, in such extraordinary circumstances, schedule and assign a court interpreter to provide the needed service or contract with a private agency, including the Language Line, to provide the court interpreter service.

52. OCIS does not follow Section 9.01 of the S&P and often, screened interpreters are assigned prior to available certified interpreters. Since screened interpreters are paid at a lower rate, OCIS saves money, and certified *per diem* court interpreters lose money. OCIS is also encouraging courts to use Language Line telephonic interpreting when *per diem* court interpreters are available.

53. In contrast to how named Plaintiffs and members of their class are treated, staff court interpreters, in addition to receiving salaries, receive many other employment benefits not afforded class members. Examples would include paid vacation and sick day allotments; personal days; paid holidays; unemployment coverage; workers' compensation coverage; retirement benefits; health benefits; and dental plan benefits. Moreover, staff court interpreters are paid regardless of whether they are called to interpret for a case assigned to them, regardless of whether the case is continued or cancelled. In addition, exceptions have been made for some staff court interpreters to work for OCIS part-time. Other than choosing when they are available to work, no such employment benefits described here are available to members of the plaintiff class, other than their determining their availability.

54. The Trial Court's FY 2014 budget was \$607,485,598. The precise cost of

interpreter services is not clear. According to an Executive Office Transmittal¹² signed by the Honorable Paula Carey and former Administrator Spence, “The Trial Court now invests approximately \$5.7 million annually for interpreter services.” This figure was less than one percent of the total court budget for that fiscal year. The same document listed a variety of interpreter categories. However, the money paid to *per diem* court interpreters alone in 2014 was a little above \$4 million, according to Commonwealth Open Checkbook. Another significant cost is the salaries of the (then) 24 staff court interpreters, which average approximately \$83,372 annually. This cost alone is over \$1.9 million (not counting fringe benefits). However, an approximate \$1 million was spent on administration costs and non-interpreter services. Therefore, total interpreter costs are probably closer to \$7 million. Despite the ever-increasing numbers of LEPs needing court interpretation, the amount allocated for *per diem* court interpreters has decreased in the last two fiscal years, at least relative to the increasing need.

55. Some staff court interpreters receive an annual wage of about \$85,000, while *per diem* interpreters working in the same courts and performing like court interpreter services receive far less.

56. The OCIS practice of providing such benefits only to those staff court interpreters it deems staff employees, and not the many others who do the same work (i.e., plaintiff class members) violates Massachusetts and federal statutory requirements and, in addition, is fundamentally unconscionable.

57. In addition, as Plaintiffs’ affidavits attached to this complaint attest, they have

¹² Executive Office Transmittal 14-12, Update on Court Interpreter Services, dated August 19, 2014.

complained to OCIS about not being called when the courts need them. In recent years the need for interpreting services has grown and is not being met by OCIS.

58. Language Line, a telephonic interpreting agency, was contracted by OCIS to do interpreting on the telephone. Although OCIS stated that this service would only be used only at the counter, or for “exotic” languages, and after all other resources were considered, Language Line is, in fact, being used more frequently for all languages, even in the courtroom. Not only is it being used for high-frequency languages, it is also used in matters where telephonic interpreting is not recommended. The use of Language Line and other remote alternatives is contrary to the provisions of G.L. c. 221C, §§1 and 2 regarding the availability of qualified interpreters. When judges are not provided with qualified interpreters by OCIS, they turn to Language Line, and Language Line interpreters are not qualified nor trained, as are *per diem* court interpreters.

59. OCIS provides staff court interpreters with interpreting support equipment, such as wireless microphones and headsets, but does not provide this equipment to *per diem* court interpreters, nor does it place this equipment in courtrooms for the use of all court interpreters, to the detriment of LEP individuals who are served by *per diem* court interpreters and judges.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

The “Standards And Procedures” Constitutes A Contract

60. Paragraphs 1 through 59 are incorporated herein as if restated.

61. OCIS Standards and Procedures govern *per diem* court interpreters as to performance requirements, pay rates, and other terms and conditions of employment. *Per*

diem court interpreters are required to sign a form agreeing to be bound by its terms and requirements before being permitted to work as court interpreters.

62. OCIS Standards and Procedures are parts of a contract, and all members of the plaintiff class are entitled to benefit from it.

63. OCIS is violating the rights of the plaintiff class in many ways, including, without limitation, by virtue of underpaying of wages, for tardiness of payments and reimbursements for work done, assignments, and many other required benefits for state employees under the afore-mentioned S & P.

SECOND CAUSE OF ACTION
January 2021 S&P Constitutes Retaliation
For Exercising First Amendment Rights

64. Paragraphs 1 through 63 incorporated herein as if restated.

65. In January 2021 Defendant issued a “revised” S&P, attached hereto as Exhibit H.

66. The January 2021 S&P strips Plaintiffs of rights in the 2009 S&P they claimed were violated by Defendant. Exhibit I consists of selected pages of the comparable sections Plaintiffs complained were violated in the 2009 S & P, Exhibit A. Comparing the two versions, it is clear that whatever rights Plaintiffs may have had in the 2009 version that they complained about and which is the subject of this litigation, they have disappeared in the 2021 version. Examples of such changes include the following:

67. Section 4.02 of the 2009 S & P required each interpreter to sign a form indicating their compliance with the S & P. Because the provisions of this S & P under which they claimed contractual rights that were violated is what is before this Court for proof, the first part being the determination class status. This form is missing from the 2021 S & P. See the last two sentences of Section 4.02 on page 8 of the 2009 S & P. There is now a

separate document that Defendant requires them to sign, but it is not referred to in the new S & P, and thus, at least arguably, does not make the 2021 S & P a contract.

68. Moreover, a comparison of specific provisions of the 2009 S & P that spoke to compensation is missing from the comparable section of the 2021 S & P.

- a. Section 7.02. Under the 2009 S & P, a *per-diem* court interpreter would work and be paid based on a half-day or full-day. The last time rates were set was in 2006 or 2007; those rates were \$300 for a full-day and \$200 for a half-day for a certified court interpreter and \$200 for a full-day and \$125 for a half-day for screened interpreters. In the new S & P, there is no indication as to what payment will be based on.
- b. In Section 7.03 of the 2009 S & P, *per-diem* court interpreters who are assigned to interpret in more than one language are paid at a rate 25% greater than the standard rate. One of the complaints in this litigation is that when *per-diem* court interpreters were “*assigned*” to interpret in more than one language (usually one language in the morning and the other in the afternoon) and they adjusted their schedules accordingly and gave up other potential work, and for whatever reason the second language interpreting was cancelled (e.g. case continued or settled) they were not paid for the second language, even though it was “*assigned*.” This provision is eliminated from the 2021 S & P.
- c. Section 7.04 of the 2009 S & P provided for paying *per-diem* court interpreters at an hourly rate for work after 8 hours in a day. This section is omitted in the 2021 S & P.

- d. Section 7.05 of the 2009 S & P addressed the issue of compensating waiting time, one of the issues addressed in this litigation, but this provision is eliminated in the 2021 S & P.
- e. Section 7.06 of the 2009 S & P provides for compensation for travel time. This is an issue raised in the litigation: not being compensated according to its provisions. There is no mention of compensation for travel time in the 2021 S & P.
- f. Section 7.09 of the 2009 S & P provides for payment for one-half day if the assignment is cancelled within 24 hours of the time it is to be performed. This is one of the elements of the Plaintiffs' Substituted Amended Complaint. Compare this language with the language in the 2021 S & P, Section 7.05, which leaves compensation for such cancellations in the discretion of management.
- g. Section 9.01 of the 2009 S & P addressed the issue of priority of assignments. The 2021 S & P does not address priority of assignments.
- h. There is no provision in the 2009 S & P for docking pay for late arrival. There are many reasons beyond the control of *per-diem* court interpreters for arriving late, such as severe weather conditions, traffic accidents, etc. Section 7.03 of the 2021 S & P provides for docking pay for late arrival with no standards provided for the exercise of discretion for docking pay.
- i. Section 11.08 of the 2009 S & P provided that per-diem court interpreters be given a summary sheet of what was approved and processed for payment. This provision was removed from the 2021 S & P.

69. In sum, a) the Plaintiffs engaged in a constitutionally protected activity; b) the Defendant's adverse action caused the Plaintiffs to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that activity; and c) the adverse action was motivated at least in part as a response to the exercise of the Plaintiffs' Constitutional rights.

70. The actions of Defendant in retaliating against Plaintiffs for their exercise of their Federal and State Constitutional rights violate the First Amendment to the Constitution of the United States through 42 U.S.C. §1983, Article XVI of the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts and G.L. c. 12, §11I.

WHEREFORE, Plaintiffs request that this Court:

- a. Declare that this action is maintainable in this Court as a class action.
- b. Declare that the Standards and Procedures constitute a contract between Defendants and the class of Plaintiffs described herein and, following trial, that Defendants have violated Plaintiffs' rights under the S & P.
- c. Declare that the promulgation of the January 2021 S&P constitutes retaliation against the Plaintiffs, and the class they represent for filing this action in violation of the First Amendment to the United States Constitution, through 42 U.S.C. §1983, and the Declaration of Rights of the Massachusetts Constitution and G.L. c. 12, §11I.
- d. Award damages for wages, and all other forms of restitution rightfully due members of the class, which are attributable to Defendant's wrongful conduct, including retaliation for their exercise of their Constitutional rights.
- e. Award multiple damages as authorized by law.
- f. Award counsel fees, costs, pre-judgment interest as the court may deem equitable


in connection with this action.

- g. Award any further relief the Court may deem just, proper, or equitable.

Respectfully submitted,

MASSACHUSETTS ASSOCIATION OF COURT
INTERPRETERS, INC., MOUSSA ABOUD,
SOLEDADE GOMES DEBARROS, ANAHIT
FLANAGAN, NORMA V. MANN, and MICHAEL
R. LENZ, Plaintiffs

By Their Attorney



Dated: August 12, 2021

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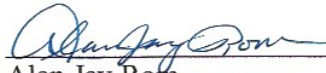
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CERTIFICATE OF SERVICE

I, Alan Jay Rom, hereby certify that a copy of the above-referenced Second Substituted Amended Complaint, in conformity with the ruling of the Court, was served on Defendant by sending an electronic copy to Assistant Attorney General Katherine B. Dirks, Esq. at Katherine.Dirks@state.ma.us this 13th day of August 2021.



Alan Jay Rom