

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO. 1684CV00969A

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

Plaintiffs,

v.

EXECUTIVE OFFICE OF THE TRIAL
COURT,

Defendant.

THE TRIAL COURT’S OPPOSITION TO PLAINTIFFS’ MOTION TO COMPEL

The defendant, the Trial Court, opposes the motion of plaintiffs Massachusetts Association of Court Interpreters, Inc.’s (“MACI”), Moussa Abboud, Soledade Gomes Debarros, Anahit Flanagan and Norma Rosen-Mann (collectively, “Plaintiffs”) to compel the production of documents. Although Plaintiffs’ motion raises a wide range of procedural history in this action, the discovery dispute at issue in this motion is narrow: whether the Trial Court is obligated to produce every Daily Service Record of every per diem court interpreter from October 15, 2012 to the present. By the Trial Court’s estimate, this request signifies a request for more than a *million pages of documents*, most of them stored in hard copy only in remote storage locations.

Plaintiffs’ request is breathtakingly broad, and the requested materials are not necessary for Plaintiffs to complete discovery on matters pertaining to Rule 23 class certification. The Trial Court has agreed to produce a number of materials responsive to Plaintiffs’ requests in an

effort to complete discovery pertaining to class certification. Plaintiffs also had the opportunity to obtain discovery in a more targeted fashion, including by serving interrogatories or by conducting depositions of the Trial Court or fact witnesses—which Plaintiffs have declined to do. Instead, Plaintiffs have demanded that the Trial Court engage in an exhaustive collection of every document relating to every court assignment by every per diem court interpreter over a eight-year period. Plaintiffs’ request is unreasonable and unduly burdensome, and Plaintiffs’ motion to compel should be denied.

PROCEDURAL BACKGROUND

A. Operative Complaint

After the filing of the original complaint, amended complaints, and the Court’s order allowing in part and denying in part the Trial Court’s motion to dismiss, Plaintiffs filed a Substituted Amended Complaint on November 27, 2018. Docket #18. The only remaining cause of action is a breach of contract claim against the Trial Court for purported violations of the Standards and Procedures (“S&P”) for court interpreters providing services to the Trial Court.

Specifically, Plaintiffs claim that the Trial Court has breached the terms of the S&P in the following ways: (1) by occasionally not paying per diem court interpreters when court assignments were canceled within 24 hours of the scheduled proceeding (Subst. Am. Compl. ¶ 37); (2) under certain circumstances, by paying per diem court interpreters on an hourly basis, rather on a half-day basis, such as when work is scheduled to begin at 10:00 instead of 9:00 (*id.* ¶ 38); (3) by failing to pay per diem court interpreters at a rate of 25% greater than the standard rate, when they are given assignments to interpret in more than one language but do not in fact interpret in more than one language (*id.* ¶ 39); (4) by not paying full-day compensation when per

diem court interpreters work during the lunch break (*id.* ¶ 46); (5) by occasionally failing to pay invoices in a timely manner (*id.* ¶ 48); (6) by occasionally assigning Screened Interpreters to court assignments before offering those assignments to a Certified Interpreter (*id.* ¶ 50); and (7) by encouraging courts to use Language Line telephonic interpreting when per diem court interpreters are available (*id.* ¶ 56). The Complaint also claims that “OCIS is violating rights of the plaintiff class in many ways, including, without limitations, 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 ... S&P.” *Id.* ¶ 61.

Plaintiffs seek relief on behalf of themselves and on all others similarly situated pursuant to Rule 23 of the Rules of Civil Procedure. To date, however, Plaintiffs have not moved for class certification pursuant to Rule 23.

B. The Trial Court’s Motion for Partial Summary Judgment on the Complaint’s Class Claims

The Trial Court moved for partial summary judgment on August 29, 2019, seeking dismissal of (1) plaintiff MACI for lack of standing, and (2) the Rule 23 class allegations for failure to satisfy the requirement of Rule 23. Docket #21. On February 10, 2020, the Court denied without prejudice the motion as it pertains to MACI’s standing. The Court took no action on the Trial Court’s motion as to Plaintiffs’ satisfaction of the Rule 23 requirements for class certification, and required that Plaintiffs were to propose discovery *pertaining to class certification* to the Court within 30 days of the order, *i.e.*, by March 10, 2020, and that discovery

pertaining to class certification was to be completed within 120 days of the submissions to the Court. *See* Docket #22 (Feb. 10, 2020 Order) at 2.

C. Discovery Relating to Class Certification

Notwithstanding the Court's order, Plaintiffs did not propose to the Court discovery pertaining to class certification by March 10, 2020. Plaintiffs submitted a proposal to the Court on August 10, 2020, and the Court ordered the parties to complete discovery on class certification by December 1, 2020. On February 3, 2021, the parties jointly requested a status conference regarding further extension of the deadlines for discovery pertaining to class certification. Docket #25. A status conference has not been scheduled to date.

On February 15, 2020, Plaintiffs served discovery requests purportedly pertaining to class certification, to which the Trial Court served timely responses and objections. *See* Exs. 1 (Pls.' Requests) and 2 (Def.'s Resp. and Obj.), attached hereto. The Trial Court expressly objected to the production of every Daily Service Record ("DSR") for per diem court interpreters. *See* Ex. 2 at 7. Daily Service Records are documents prepared by per diem court interpreters identifying the work performed for the Trial Court on a particular date. Until the end of 2019, these records were maintained in hard copy only and are not available in electronic form, and because the date range here spans from 2012, many such documents are maintained in remote storage locations.

The Trial Court has produced those documents over which there is no objection and which are not confidential, and also made clear that the production of confidential records for court interpreters who are not yet parties to this litigation—as a class is not yet certified—requires a court order. *See* Ex. 2 attached hereto. On February 3, 2021, the parties filed a joint motion for a protective order that would allow the Trial Court to produce such confidential records. Docket #24. On February 17, 2021, the Court allowed the motion. Docket #26. The

Trial Court is now preparing a production of documents pursuant to the terms of the February 17, 2021 Protective Order, including signed acknowledgement forms of the S&P, contact information for per diem court interpreters, and email communications regarding the claims in the Substituted Amended Complaint.

Plaintiffs have not served interrogatories or notices of deposition in this action.

ARGUMENT

Plaintiffs' motion to compel should be denied because the requests are overbroad and unduly burdensome, unnecessary in light of the Court's recent allowance of the parties' joint motion for a protective order, and reflect a choice by Plaintiffs not to pursue alternative methods of discovery that would allow them to resolve the issue of class certification in a more efficient and rational way.

Plaintiffs' motion seeks to compel the production of every Daily Service Record submitted by per diem court interpreters from October 15, 2012 to the present. A separate Daily Service Record is submitted for each day on which a per diem interpreter provides interpreter services to a court. Each Daily Service Record might have several pages, including for separate court locations, attachments such as travel details, and an accompanying payment approval form. The vast majority of these records are maintained in hard copy only and are not available in electronic form, and are maintained in remote storage locations. Assuming 180 court interpreters per year, working 180 days per year, submitting Daily Service Records of 4 pages each, with a request spanning 8.5 years, this request would signify a *collection of 1,101,600 pages of documents*.

Plaintiffs' breathtakingly broad request of documents is made more absurd by Plaintiffs' limited ability to obtain relevant, material information from them. In order to glean from these

million pages of documents whether they would support a motion for class certification, Plaintiffs would require a team of forensic investigators to comb through the pages and identify potential compensation practices that are challenged in the litigation. Plaintiffs have identified no experts in this action, and have not identified how they would use the Daily Service Records to support a Rule 23 motion. Plaintiffs have identified no specific per diem court interpreters that they believe experienced breaches of contract by the Trial Court, other than their allegations regarding the named plaintiffs.

Plaintiffs could have served interrogatories or deposition notices to obtain discovery relating to class certification. Plaintiffs could wait until it receives the discovery that the Trial Court has already agreed to produce pursuant to the now-entered Protective Order. Instead, Plaintiffs have insisted on the most extreme and least fruitful avenue of discovery, and the Trial Court objects to a request that amounts to a fishing expedition.

CONCLUSION

For the foregoing reasons, the Trial Court requests that the Court deny Plaintiffs' motion to compel the production of documents.

Respectfully submitted,

Defendant THE TRIAL COURT

By its Attorneys,

MAURA HEALEY,
ATTORNEY GENERAL

/s/ Katherine B. Dirks
Katherine B. Dirks, BBO #673674
Assistant Attorney General
Government Bureau/Trial Division
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katherine.dirks@mass.gov

Date: March 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have this day, March 1, 2021, served the foregoing document upon all parties, by emailing a copy to:

Alan Jay Rom, Esq.
Rom Law P.C.
alan@romlawoffice.com.

/s/ Katherine B. Dirks
Katherine B. Dirks

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO. 2016-00969

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

Plaintiffs

v.

EXECUTIVE OFFICE OF THE TRIAL :
COURT, :

Defendant

RESTATED REQUEST FOR
PRODUCTION OF DOCUMENTS

Notice to Defendant:

Pursuant to Mass.R.Civ.P. 34, your response to this Restated Request for Production of Documents must be received by the plaintiff's attorney not later than thirty (30) days after your receipt of this Restated Request for Production of Documents;

For the purposes of this Restated Request for Production of Documents, the term "document" or "record" includes relevant past, contemporary, and on-going writings, drawings, graphs, charts, photographs, recordings, data compilations (translated, if necessary by the respondent through dictation devices into reasonably usable form), contracts, agreements, correspondence, memoranda,

reports, notes, requests, bills, orders, notices, writs, declarations, complaints, answers, and other court pleadings, schedules, tabulations, checks, diary entries, telegrams, diagrams, films, newspaper clippings, and all other writings and recordings of whatever nature, whether signed or unsigned, transcribed or not, is asserted, and whether or not any privilege is asserted.

If no documents exist satisfying any numbered request, please so indicate.

For the purposes of this Restated Request for Production of Documents, the following definitions apply:

(a) The term "defendant" includes the defendant, its agents, counsel, employees, officers, trustees, partners, or other persons acting for or on behalf of the defendant, or any of them.

(b) The term "plaintiffs" refers to the plaintiffs, agents, counsel, employees, officers, trustees, partners, or other persons acting for or on behalf of the plaintiffs or any of them.

(c) "Identify" means to state the name, title if applicable, and current address if different from address at time of the incident referred to.

(d) The term "MACI" means Plaintiff, Massachusetts Association of Court Interpreters, its members, including the individually named plaintiffs, and those who are members of the class as defined in the Substituted Amended Complaint and/or who Defendant considers to be *per diem* independent contractor court interpreters who worked as court interpreters from 15 October 2012 to date.

(e) The term "Trial Court" means the named defendant in the Complaint and all those responsible to it, including, but not limited to the Office of Court Interpreter

Services ("OCIS").

The plaintiff requests the defendant to produce at the office of the plaintiff's attorney, Alan Jay Rom, Esq. P.O. Box 585, Chelmsford, Massachusetts 01824, each of the following documents/records:

1. Please identify name, address, telephone number and position of the person(s) providing the information in each request;
2. For each court interpreter considered by defendant to be a *per-diem* independent contractor in the span of the following years: from 15 October 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020 or from the first year such each per diem contractor was hired at any time after 15 October 2012, and up to and including the date of production of the documents requested, all documents including, but not limited to the Massachusetts Management Accounting Reporting System ("MMARS"), detailing or showing:
 - a) whether each said interpreter is certified or screened, the date each such interpreter was hired by OCIS, and the date each certified and/or screened interpreter received his/her certification;
 - b) monthly, bi-monthly, or quarterly schedules of availability submitted to OCIS by each court interpreter considered by defendants and OCIS to be a *per-diem* independent contractor;
 - c) dates each such *per-diem* court interpreter was assigned to work for any and each court, for any district attorney (e.g. grand jury), for any probation department, or any other specific entity served by OCIS;

- d) number of Limited English Proficient (“LEP”) persons served in each court by each *per-diem* court interpreter for each day that each *per-diem* court interpreter was assigned to work in each of the above said years;
- e) total hours each *per-diem* court interpreter worked in each of the above said years;
- f) total hours each Spanish and Portuguese *per-diem* court interpreter worked in each month, and each of the above said years;
- g) total actual interpreting hours each court *per-diem* court interpreter spent each half day and/or full day when multiple LEP cases, long hearings, and on-going trials were involved;
- h) records of whether such long working hours by the *per-diem* court interpreter was supported or not supported by a working partner that is often a standard requirement for an on-going trial including a full-day trial;
- i) records of all the instances when court had requested two or three court interpreters for a case while OCIS sent only one interpreter;
- j) records of the differences, on daily basis, between the number of requests from each courthouse and the number of court interpreters assigned to the said court in the above said years;
- k) records of all telephonic interpreting being assigned to Language Line instead of assign a in-person court interpreter to each of the courthouse on each day when Language Line was being utilized;

- l) all records including but not limited to case name, docket number, language needed, charge(s), and the type of court procedure for which all such Language Line services were utilized;
- m) E-mails to and from each *per-diem* court interpreter communicating, after receiving a weekly schedule and/or a last-minute assignment, as to whether he/she "has a problem with it."
- n) records of those Spanish and/or Portuguese *per-diem* court interpreters who were routinely assigned either by OCIS or requested through the court to multiple cases ranging from 6 to +20 and/or records of routine "All Morning Coverage" assignment to the same *per-diem* court interpreter without any limitation on the number of the cases per morning;
- o) records of all "All Morning Coverage" assignments which resulted in "Full Day Coverage";
- p) records of each day that each *per-diem* court interpreter worked between 1:00 p.m. and 2:00 p.m., and the amount of payment, if any, such *per-diem* court interpreter received, with a full explanation to such amount, or non-payment, for each such *per-diem* court interpreter working between 1:00 p.m. and 2:00 p.m.;
- q) records reflected on all *per-diem* court interpreters' Daily Service Records (hereinafter referred to as "DSRs") showing travel time spent by each *per-diem* court interpreter between 1:00 p.m. and 2:00 p.m. in

an effort to arrive on time for the afternoon session at the next court location;

- r) records of each *per-diem* court interpreter who ended up working for a full-day per court's request but was not paid for the full-day because OCIS had assigned such *per-diem* court interpreter to work for half-day only;
- s) copies of all invoices, digital and hard copy, submitted by each *per-diem* court interpreter and the date each such invoice was received by OCIS; and
- t) records of payments along with payment vouchers from the OCIS computer system of each such invoice submitted by *per-diem* court interpreters, including, but not limited to, the date each such payment was issued, deductions made for any reason and each such reason, if any, for each such deduction, payment for mileage, payment for travel time, payment for time spent in transit from court to court, including, but not limited to, traveling from court to home and to the newly assigned court when each *per diem* court interpreter was called upon, and any and all other records from the data base of the OCIS Fiscal Department.

3. Records showing a break-down list of payments based on each payment voucher for each and all payment vouchers that the OCIS Fiscal Department issued to each *per-diem* court interpreter for each year beginning with 2012 (15 October), such break-down of payments

showing the amount of each payment for each half-day/full-day that each *per diem* court interpreter worked.

4. All documents reflecting the budget allocated for *per-diem* court interpreters, and the budget allocated for interpreters for the deaf and hard of hearing from 2012 (starting on 15 October), 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and up to the date of the production of said documents;
5. All documents or records regarding the annual expenditure for court interpreter services, of which how much was paid in total to *per-diem* court interpreters starting in 2012 (15 October), 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 up to the date of the production of said documents, including but not limited to:
 - a) all records of total annual payments to all *per-diem* court interpreters in 2012 (beginning on 15 October), 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020, up until the date of the production of said documents, with a breakdown payment to each individual *per-diem* court interpreter;
 - b) all records of expenditure on other interpreter related services including but not limited to the installation of video remote devices in each courthouse since 15 October 2012, the cost of the system for Language Line telephonic interpreting, any office related expenses that was part of the interpreters' budget, as well as any interpretation and/or translation agencies hired to provide additional over-the-

phone or on-site language services including but not limited to Baystate Interpreters, Benoit Language Services, Global Link Translations, International Translation Company, Language Bridge, Language Connections, Language Line Services, Optimal Phone Interpreters, Transfluenci, Translations Interamerica, and other such contractors such as out-of-state interpreters directly hired by OCIS to interpret for trials, and all related expenditures which was part of the total expenditure for the Trial Court Interpreter Services in each said year since 15 October 2012; and

- c) all records for other costs of running interpreter services, including, but not limited to, legal services for the administrative staff of OCIS, extra costs, if any, for OCIS Fiscal Department that processes *per-diem* court interpreters' invoices, office furniture, office supplies, office warehouse storage for records of past and current DSR's, digital record system, and any other costs which was part of the total expenditure for the Trial Court Interpreter Services in each said year since 15 October 2012.
6. All documents reflecting the number of *per-diem* court interpreters in each of the languages served leaving OCIS each year, and the number of *per-diem* court interpreters in each language hired/contracted by OCIS in each year from 15 October 2012 to the present.
 7. The total and itemized breakdown of payments paid to each interpreter from outside of Massachusetts for criminal trials, including but not

limited to the murder case of at Essex Superior Court in February, April, and May 2016.

8. A list of the names of each such out-of-state court interpreter, including but not limited to, Waw P. Moy, Melissa Lo, and Stephanie Liu, for any criminal trials between 15 October 2012 and 2016.
9. All documents reflecting all *per-diem* court interpreters removed from the list of available court interpreters pursuant to Section 12.01 of the S & P, regardless of whether they were removed for cause or no cause.
10. All documents reflecting details of the types of expenses in the annual OCIS budget for things other than *per-diem* court interpreter services.
11. All documents reflecting the types of expenses that are non-reimbursable for *per-diem* court interpreters, including, but not limited to, interpreting equipment, car rentals, parking, travel time, overtime rates, and hotel accommodations, while traveling to assignments in courts in Nantucket and/or Martha's Vinyard, etc.
12. All documents reflecting the total expenses paid to each *per-diem* court interpreters for each of the years 2012 (beginning on 15 October) through the present.
13. All documents showing the total number of requests for court interpreter services, including, but not limited to, requests for interpreting services by district attorneys for grand jury proceedings and the probation department, and the total number of court events that received

interpretation services for each of the years: 15 October 2012 through the present that were performed by *per-diem* court interpreters.

14. The contract, or other relevant documents, reflecting the business relationship between the Trial Court and Language Line for telephonic interpretation services, including, but not limited to, the rate per minute fee, the minimum per call fee, and:
 - a) All entries/documents from the Trial Court database showing the rate and total amounts paid to Language Line for its telephonic interpretation services since the month and year of its use.
 - b) All entries/documents that show each court event using Language Line since 15 October 2012, including, but not limited to, case name, docket number, court location, language, and type of court proceeding (such as restraining order hearing, child custody hearing), case name, docket number, bench trial or jury trial.
 - c) All entries/documents that show each court event using VRI since its implementation, including, but not limited to, case name, docket number, court locations, languages, types of court proceedings, and whether such services in each said case were rendered by staff court interpreters and/or *per-diem* court interpreters through OCIS, or from interpreters who performed the services from outside of Massachusetts.
15. All OCIS memos and internal emails generated by Sybil A. Martin, the current Senior Manager of Support Services, the former OCIS director,

Maria Fournier, OCIS managers (including Gaye Gentes, Leonor Figueroa-Feher, and Sybil A. Martin), and the head of OCIS Accounting Department (including Bruce J. Sawayer) on any proposed or about-to-be implemented policies, absent from the S&P, including but not limited to hourly rate, new hourly rate for travel time and over-time, two-hour minimum rate, change of travel rate and formula, lunch time compensation rate, deductions and penalties for signing "late" upon interpreters' arrival since 15 October 2012;

16. Specific memos and internal communications generated and received by Gaye Gentes on major 75% travel time reduction for *per-diem* court interpreters;
17. Specific memos and internal communications for the months leading to June and July 2014, generated and received by Maria Fournier on major rate change for *per-diem* interpreters, namely from that of the half-day/full-day to that of the two-hour minimum;
18. Records reflect such policy being implemented, i.e. *per-diem* court interpreters either being paid at such rate starting in January or February 2014 and ending in July 2014 or being forced to hang around the courthouse till 1:00 p.m. in order to avoid being paid at two-hour minimum rate;
19. Records on whether such short-lived two-hour rate for *per-diem* interpreters were productive or counter-productive, i.e. if the *per-diem* interpreters were travelling to the next court as posted on the White

Board, rather than waiting at the current courthouse for 1 p.m. to clock-in.

20. Specific memoranda on the source of the decisions and the decisions by either the court administration or the Security Department on stopping renewing of interpreters' badges, and/or not issuing badges to *per-diem* court interpreters, and/or issuing badges entitled "Temporary Services Providers" which still requires them to go through security and removes their designation as "Officers of the Court," including but not limited to:
 - (a) When such policy declining to renew badges and/or issuing badges called "Temporary Service Providers" was implemented;
 - (b) When OCIS started not to issue badges to *per-diem* court interpreters and/or began issuing badges called "Temporary Services Providers; and
 - (c) Specific memos or internal communications of the new policy which resulted in requiring *per-diem* court interpreters stand in line with other litigants and go through security in order to gain access to the courthouses, and all reasons for such new policy.
22. All documents and internal memos reflecting changes to the Standards and Procedures (hereinafter, "S & P") affecting *per-diem* court interpreters including but not limited to:
 - (a) Two-hour minimum compensation when assignment is scheduled for later than 9:00 a.m., at 1:00 p.m., or at 3:00 p.m.;

- (b) reduction in payment in the amount of \$13/\$20, \$26/\$40, or \$39/\$60 when *per-diem* court interpreters sign in after 9:15 a.m. and before 11:00 a.m., when car accidents on the road cause significant delays, and ALL policy changes in penalty amounts before and after this lawsuit was filed;
 - (c) when only scheduled for the afternoon session (2:00 p.m. to 4:30 p.m.), compensation being a two-hour minimum, and if not a two-hour minimum, but at an hourly rate, those documents;
 - (d) rate of payment for working between 1:00 p.m. and 2:00 p.m.;
 - (e) rate of payment for working at second court between 1:00 p.m. and 2:00 p.m.;
 - (f) rate of payment, if any, for traveling from one court to another during the *per-diem* court interpreter's lunch hour;
 - (g) hourly rate payment when *per-diem* court interpreters took the assignment on short notice; and
 - (h) any non-payment to any *per-diem* interpreters when any assignments was on short notice via telephone by OCIS but the cases got a continuance or were heard without waiting for the arrival of the *per-diem* court interpreters.
21. All documents reflecting the total of federal funds received by the Trial Court and the allocation of those funds to OCIS and other departments or divisions of the Trial Court for language services for each year beginning

15 October 2012 through the present, how much of said funds were used in each year, and the use of those funds in each said year.

22. All documents that demonstrate the information alleged by plaintiffs in their Substituted Amended Complaint for which Defendants' response was the documents or records referred to "speak for themselves."
23. All documents that reflect acceptance of the terms and conditions of the S & P by *per-diem* court interpreters, including their signatures.
24. All documents that reflect any proposed revisions to the S & P from the version *per-diem* court interpreters are currently bound by, including any documents that describe reasons for any proposed changes.

Respectfully submitted,

MASSACHUSETTS ASSOCIATION OF
COURT INTERPRETERS ("MACI"), ET AL.
PLAINTIFFS
By Their Attorney



Alan Jay Rom, BBO# 25960

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Dated: 15 February 2020

Certificate of Service

I, Alan Jay Rom, hereby certify that the above Request for Production of Documents was served on Defendants by mailing a copy, first class, postage prepaid to Katherine Dirks, Assistant Attorney General, Trial Department/Government Bureau, Office of the Attorney General, One Ashburton Place, Boston, Massachusetts 02108 this 15th day of February, 2020.



Alan Jay Rom

EXHIBIT 2

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
C.A. NO. 1684CV00969

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

Plaintiffs,

v.

EXECUTIVE OFFICE OF THE TRIAL
COURT,

Defendant.

**DEFENDANT THE TRIAL COURT’S RESPONSES AND OBJECTIONS TO
PLAINTIFFS’ RESTATED REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Massachusetts Rules of Civil Procedure and Superior Court Rule 30A, Defendant the Trial Court (“Defendant”) serves these responses and objections to the Plaintiffs’ Restated Request for Production of Documents, dated February 15, 2020.

GENERAL OBJECTIONS

1. Defendant objects to these Requests to the extent that they are vague and ambiguous, overly broad, unduly burdensome, are not reasonably calculated to lead to the discovery of admissible evidence, or seek documents and information that are not relevant to the claims or defenses of any part to this action.

2. Defendant objects to these Requests to the extent that they seek discovery of the mental impressions, conclusions, or opinions of counsel; documents subject to the attorney-client

privilege, or any other privilege; documents subject to the qualified protection for litigation work product; or documents that are personal, confidential or proprietary and protected from disclosure by others laws or agreements. Any inadvertent production of such documents shall not be deemed a waiver of any privilege or work-product protection for such documents.

3. Defendant objects to the Requests to the extent that the material requested is protected from disclosure by the Fair Information Practices Act, G.L. c. 66A.

4. Defendant objects to the Requests to the extent that the information requested is protected from disclosure by Rule IX of the Trial Court Rules.

5. Defendant will produce documents pursuant to the Requests without waiver of or prejudice to Defendant's right to raise later objections to the relevance, materiality, or admissibility of the produced documents.

6. Defendant objects to these Request to the extent they seek documents and information that are equally available to Plaintiffs, are publicly available, and/or are already within Plaintiffs' possession, custody and control.

7. Defendant objects to these Requests to the extent they seek documents that pertain solely to claims that were dismissed by the Superior Court in its Memorandum of Decision and Order on Defendants' Motion to Dismiss Plaintiffs' Amended Complaint, dated November 3, 2016 ("November 3, 2016 Order"). Defendant will respond only to the extent that the Requests seek documents that are relevant to Plaintiffs' surviving claims pursuant to the November 3, 2016 Order.

8. Defendant objects to these Requests to the extent they seek documents that pertain to causes of action that are barred by the statute of limitations. Defendant will respond only to

the extent that the Requests seek documents that pertain to causes of action that arose on or after October 15, 2012 (“Relevant Time Period”).

9. Defendant objects to these Requests to the extent they seek documents that pertain to the individually named Plaintiffs in this action, Moussa Abboud, Soledade Gomes Debarros, Anahit Flanagan, Norma V. Rosen-Mann, and Michael R. Lenz (collectively, “Individual Plaintiffs”) and that have already been produced in response to Plaintiffs’ First Request for Production of Documents, dated October 26, 2018 (“Plaintiffs’ First Requests”). Defendant objects to these Requests to the extent that they are duplicative of Plaintiffs’ First Requests, and therefore are unduly burdensome and not reasonably calculated to lead to the production of relevant evidence pertaining to class certification.

10. Any undertaking by Defendant to produce documents within the scope of any specific Request is not intended as, and should not be construed as, a representation that there exist documents within the scope of such a Request that are within Defendant’s possession, custody or control. Such a response is instead intended only as, and should be construed only as, a representation that, subject to any objections, Defendant has conducted or will conduct a reasonably diligent search for documents within the scope of such Request, and will produce non-privileged documents in accordance with Defendant’s response that are identified, if any.

11. Defendant objects to the definitions of the terms “document,” “records,” “defendants,” “plaintiffs,” “identify,” “MACI,” and “Trial Court” to the extent that they purport to impose obligations inconsistent with and broader than those set forth in paragraph 1(c) of Superior Court Rule 30A. Defendant further objects to the definition of the term “MACI” to the extent that it is premised on an assertion that a class has been certified in this action.

12. Defendant objects to these Requests to the extent that Plaintiffs purport them to constitute the proposal for discovery pertaining to class certification that was ordered by the Court on February 10, 2020.

13. Defendant objects to these Requests to the extent that they seek material not relevant to class certification pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, including material for which the deadline for discovery has passed.

14. Defendant objects to these Requests to the extent they seek material relevant to liability on behalf of the putative class. Pursuant to the parties' Joint Submission dated August 6, 2020, discovery regarding liability on behalf of the class will be bifurcated from and follow discovery pertaining to class certification.

15. Defendant responds on behalf of the Trial Court, and not on behalf of any other agency, division, or part of the Commonwealth of Massachusetts. In order to locate documents in connection with Defendant's responses to Plaintiffs' requests, and subject to and without waiving the General and Specific Objections, Defendant has searched or will search hard copy and electronic storage locations in Defendant's possession, custody or control.

16. In Defendant's responses, the term "Per Diem Court Interpreters" shall mean independent contractor court interpreters who have provided court interpreters services to the Massachusetts Trial Court on a day-to-day basis in one or more languages at some time between October 15, 2012 and the present.

SPECIFIC RESPONSES AND OBJECTIONS

Subject to these objections, Defendant responds to the individual requests as follows:

REQUEST NO. 1

Please identify name, address, telephone number and position of the person(s) providing the information in each request.

RESPONSE NO. 1

Defendant objects to this Request on the grounds that it falls outside the scope of Mass. R. Civ. P. 34, as it requests information rather than the production or inspection of any documents or other tangible things. Defendant will respond, subject to objections, to interrogatories requesting this information properly and timely served pursuant to Mass. R. Civ. P. 33.

REQUEST NO. 2

For each court interpreter considered by defendant to be a per-diem independent contractor in the span of the following years: from 15 October 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020 or from the first year such each per diem contractor was hired at any time after 15 October 2012, and up to and including the date of production of the documents requested, all documents including, but not limited to the Massachusetts Management Accounting Reporting System ("MMARS"), detailing or showing:

- a. whether each said interpreter is certified or screened, the date each such interpreter was hired by OCIS, and the date each certified and/or screened interpreter received his/her certification;
- b. monthly, bi-monthly, or quarterly schedules of availability submitted to OCIS by each court interpreter considered by defendants and OCIS to be a per-diem independent contractor;
- c. dates each such per-diem court interpreter was assigned to work for any and each court, for any district attorney (e.g. grand jury), for any probation department, or any other specific entity served by OCIS;
- d. number of Limited English Proficient ("LEP") persons served in each court by each per-diem court interpreter for each day that each per-diem court interpreter was assigned to work in each of the above said years;
- e. total hours each per-diem court interpreter worked in each of the above said years;
- f. total hours each Spanish and Portuguese per-diem court interpreter worked in each month, and each of the above said years;
- g. total actual interpreting hours each court per-diem court interpreter spent each half day and/or full day when multiple LEP cases, long hearings, and on-going trials were involved;
- h. records of whether such long working hours by the per-diem court interpreter was supported or not supported by a working partner that is often a standard requirement for an on-going trial including a full-day trial;
- i. records of all the instances when court had requested two or three court interpreters for a case while OCIS sent only one interpreter;
- j. records of the differences, on daily basis, between the number of requests from each courthouse and the number of court interpreters assigned to the said court in the above said years;
- k. records of all telephonic interpreting being assigned to Language Line instead of assign a in-person court interpreter to each of the courthouse on each day when Language Line

- was being utilized;
- l. all records including but not limited to case name, docket number, language needed, charge(s), and the type of court procedure for which all such Language Line services were utilized;
 - m. E-mails to and from each per-diem court interpreter communicating, after receiving a weekly schedule and/or a last-minute assignment, as to whether he/she "has a problem with it."
 - n. records of those Spanish and/or Portuguese per-diem court interpreters who were routinely assigned either by OCIS or requested through the court to multiple cases ranging from 6 to +20 and/or records of routine "All Morning Coverage" assignment to the same per-diem court interpreter without any limitation on the number of the cases per morning;
 - o. records of all "All Morning Coverage" assignments which resulted in "Full Day Coverage";
 - p. records of each day that each per-diem court interpreter worked between 1:00 p.m. and 2:00 p.m., and the amount of payment, if any, such per-diem court interpreter received, with a full explanation to such amount, or non-payment, for each such per-diem court interpreter working between 1:00 p.m. and 2:00 p.m.;
 - q. records reflected on all per-diem court interpreters' Daily Service Records (hereinafter referred to as "DSRs") showing travel time spent by each per-diem court interpreter between 1:00 p.m. and 2:00 p.m. in an effort to arrive on time for the afternoon session at the next court location;
 - r. records of each per-diem court interpreter who ended up working for a full-day per court's request but was not paid for the full-day because OCIS had assigned such per-diem court interpreter to work for half-day only;
 - s. copies of all invoices, digital and hard copy, submitted by each per-diem court interpreter and the date each such invoice was received by OCIS; and
 - t. records of payments along with payment vouchers from the OCIS computer system of each such invoice submitted by per-diem court interpreters, including, but not limited to, the date each such payment was issued, deductions made for any reason and each such reason, if any, for each such deduction, payment for mileage, payment for travel time, payment for time spent in transit from court to court, including, but not limited to, traveling from court to home and to the newly assigned court when each per diem court interpreter was called upon, and any and all other records from the data base of the OCIS Fiscal Department.

RESPONSE NO. 2

Defendant objects on the grounds that the Request is overly broad and unduly burdensome and seeks documents that are not relevant to the claims or defenses of any party to this action, including documents that do not pertain to the Individual Plaintiffs in this action. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms "considered by defendants," "hired," "worked," "multiple LEP cases," "long hearings," "on-going trials," "such long working hours," "supported," "last assignment," "whether he/she has a problem with it," "routinely assigned," "Automatic Morning Coverage," "Full Day Coverage," "full explanation," "full-day," "half-day," and "newly assigned court."

Defendant further objects on the grounds that the Request is argumentative and premised on legal and factual conclusions regarding the employment status and practices of Per Diem Court Interpreters. Defendant further objects on the grounds that the Request seeks documents that are not within Defendant's possession, custody or control. Defendant further objects on the grounds that paragraphs (g), (n) and (t) of the Request are unintelligible. Defendant further objects on the grounds that the Request seeks documents protected from disclosure by Rule IX of the Trial Court Rules. Defendant further objects on the grounds that the Request is duplicative of Request No. 2 in Plaintiffs' First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 2 in Plaintiffs' First Requests. Further answering with respect to discovery pertaining to class certification, Defendant responds as follows:

With respect to paragraph (a), Defendant has produced records in its possession, custody or control indicating the certification status of each of the Individual Plaintiffs, the dates on which the Individual Plaintiffs first provided court interpreter services to OCIS, and the dates on which the Individual Plaintiffs became certified to provide services to OCIS. With respect to Per Diem Court Interpreters, Defendant has produced or will produce records in its possession, custody or control indicating the status of Per Diem Court Interpreters as Certified or Screened from October 15, 2012 to the present, to the extent they exist and can be located after a reasonable search.

With respect to paragraph (b), Defendant has produced schedules of availability maintained by OCIS regarding the Individual Plaintiffs during the Relevant Time Period that could be located after a reasonable search. Defendant will produce schedules of availability maintained by OCIS regarding per diem court interpreters from October 15, 2012 to the present, to the extent they exist and can be located after a reasonable search, and to the extent permitted by Trial Court Rule IX. To the extent such disclosure is not permitted by Trial Court Rule IX, Defendant will confer with Plaintiff in an effort to resolve the areas of dispute.

With respect to paragraph (c), Defendant has produced Daily Service Records ("DSRs") for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant will produce centrally maintained records of court assignments for Per Diem Court Interpreters, if any such documents exist and can be located after a reasonable search, and to the extent permitted by Trial Court Rule IX. To the extent such disclosure is not permitted by Trial Court Rule IX, Defendant will confer with Plaintiff in an effort to resolve the areas of dispute.

With respect to paragraph (d), Defendant is not aware of documents in its possession, custody or control that are responsive to this Request.

With respect to paragraph (e), Defendant has produced DSRs for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not

produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant will produce centrally maintained records of total hours of service for the Trial Court by Per Diem Court Interpreters, if any such documents can be located after a reasonable search, and to the extent permitted by Trial Court Rule IX. To the extent such disclosure is not permitted by Trial Court Rule IX, Defendant will confer with Plaintiff in an effort to resolve the areas of dispute.

With respect to paragraph (f), Defendant objects on the grounds that it is duplicative of paragraph (e). Defendant incorporates by reference its response to paragraph (e).

With respect to paragraph (g), Defendant has produced DSRs for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant is not aware of other documents in its possession, custody or control that are responsive to this Request.

Defendant objects without further response to paragraph (h).

With respect to paragraph (i), Defendant is not aware of documents in its possession, custody or control that are responsive to this Request.

With respect to paragraph (j), Defendant is not aware of documents in its possession, custody or control that are responsive to this Request.

With respect to paragraph (k), Defendant is not aware of documents in its possession, custody or control that are responsive to this Request, as the requests for Language Line services are not assigned in place of per diem interpreters; rather, requests are made by the respective courts directly to Language Line.

With respect to paragraph (l), Defendant is not aware of documents in its possession, custody or control that are responsive to this Request, as the requests for Language Line services are made directly by the respective courts to Language Line.

Defendant objects without further response to paragraph (m).

Defendant objects without further response to paragraph (n).

With respect to paragraph (o), Defendant has produced DSRs for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant is not aware of other documents in its possession, custody or control that are responsive to this Request.

With respect to paragraph (p), Defendant has produced DSRs for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant is not aware of other documents in its possession, custody or control that are responsive to this Request.

With respect to paragraph (q), Defendant has produced DSRs for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant is not aware of other documents in its possession, custody or control that are responsive to this Request.

With respect to paragraph (r), Defendant has produced DSRs for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant is not aware of other documents in its possession, custody or control that are responsive to this Request.

With respect to paragraph (s), Defendant has produced DSRs for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant is not aware of other documents in its possession, custody or control that are responsive to this Request.

With respect to paragraph (t), Defendant has produced DSRs and payment request commodity forms for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs and payment request commodity forms for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant is not aware of other documents in its possession, custody or control that are responsive to this Request.

REQUEST NO. 3

Records showing a break-down list of payments based on each payment voucher for each and all payment vouchers that the OCIS Fiscal Department issued to each per-diem court interpreter for each year beginning with 2012 (15 October), such break-down of payments showing the amount of each payment for each half-day/full-day that each per diem court

interpreter worked.

RESPONSE NO. 3

Defendant objects to this Request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and seeks documents that are not relevant to the claims or defenses of any party to this action. Defendant further objects on the grounds that the Request is argumentative and premised on factual conclusions regarding the payment records of the Trial Court. Defendant further objects on the grounds that the Request is unintelligible. Defendant further objects to the extent that the Request falls outside the scope of Mass. R. Civ. P. 34, as it requests information rather than the production or inspection of any documents or other tangible things. Defendant further objects on the grounds that the Request is duplicative of Request No. 3 in Plaintiffs' First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 3 in Plaintiffs' First Requests. Further answering with respect to discovery pertaining to class certification, Defendant responds as follows: Defendant has produced DSRs and payment request commodity forms for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Defendant is not aware of other documents in its possession, custody or control that are responsive to this Request.

REQUEST NO. 4

All documents reflecting the budget allocated for per-diem court interpreters, and the budget allocated for interpreters for the deaf and hard of hearing from 2012 (starting on 15 October), 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and up to the date of the production of said documents.

RESPONSE NO. 4

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms "budget" and "allocated." Defendant further object on the grounds that the budget for the Trial Court is a public record, and equally accessible to Plaintiffs. Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 4 in Plaintiffs' First Requests.

REQUEST NO. 5

All documents or records regarding the annual expenditure for court interpreter services, of which how much was paid in total to per-diem court interpreters starting in 2012 (15 October), 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 up to the date of the production of said documents, including but not limited to:

- a. all records of total annual payments to all per-diem court interpreters in 2012 (beginning on 15 October), 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020, up until the date of the production of said documents, with a breakdown payment to each individual per-diem court interpreter;
- b. all records of expenditure on other interpreter related services including but not limited to the installation of video remote devices in each courthouse since 15 October 2012, the cost of the system for Language Line telephonic interpreting, any office related expenses that was part of the interpreters' budget, as well as any interpretation and/or translation agencies hired to provide additional over-the phone or on-site language services including but not limited to Baystate Interpreters, Benoit Language Services, Global Link Translations, International Translation Company, Language Bridge, Language Connections, Language Line Services, Optimal Phone Interpreters, Transfluenci, Translations Interamerica, and other such contractors such as out-of-state interpreters directly hired by OCIS to interpret for trials, and all related expenditures which was part of the total expenditure for the Trial Court Interpreter Services in each said year since 15 October 2012; and
- c. all records for other costs of running interpreter services, including, but not limited to, legal services for the administrative staff of OCIS, extra costs, if any, for OCIS Fiscal Department that processes per-diem court interpreters' invoices, office furniture, office supplies, office warehouse storage for records of past and current DSR's, digital record system, and any other costs which was part of the total expenditure for the Trial Court Interpreter Services in each said year since 15 October 2012.

RESPONSE NO. 5

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “court interpreter services,” “other interpreter related services,” “video remote devices,” “office related expenses,” “language services,” “running interpreter services,” “legal services,” and “extra costs.” Defendant further objects on the grounds that the Request seeks documents that are not within Defendant’s possession, custody or control. Defendant further objects on the grounds that the budget for the Trial Court is a public record, and equally accessible to Plaintiffs. Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 6 in Plaintiffs’ First Requests.

REQUEST NO. 6

All documents reflecting the number of per-diem court interpreters in each of the languages served leaving OCIS each year, and the number of per-diem court interpreters in each language hired/contracted by OCIS in each year from 15 October 2012 to the present.

RESPONSE NO. 6

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “languages served,” “leaving OCIS,” and “hired/contracted.” Defendant further object on the grounds that the Request is argumentative and premised on legal and factual conclusions regarding the employment status of Per Diem Court Interpreters. Defendant further objects on the grounds that the Request is duplicative of Request No. 7 in Plaintiffs’ First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 7 in Plaintiffs’ First Requests. Further answering with respect to discovery pertaining to class certification, Defendant responds as follows: Defendant has produced or will produce documents reflecting the identity and number of Per Diem Court Interpreters from October 15, 2012 to the present and the languages in which they are Certified or Screened, to the extent such documents can be located after a reasonable search.

REQUEST NO. 7

The total and itemized breakdown of payments paid to each interpreter from outside of Massachusetts for criminal trials, including but not limited to the murder case of at Essex Superior Court in February, April, and May 2016.

RESPONSE NO. 7

Defendant objects on the grounds that the Request seeks documents or information not relevant to the claims or defenses of any party to this action. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the term “each interpreter from outside Massachusetts.” Defendant further objects on the grounds that the Request falls outside the scope of Mass. R. Civ. P. 34, as it requests information rather than the production or inspection of any documents or other tangible things. Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 8 in Plaintiffs’ First Requests.

REQUEST NO. 8

A list of the names of each such out-of-state court interpreter, including but not limited to, Waw P. Moy, Melissa Lo, and Stephanie Liu, for any criminal trials between 15 October 2012 and 2016.

RESPONSE NO. 8

Defendant objects on the grounds that the Request seeks documents or information that is not relevant to the claims or defenses of any party to this action. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the term “out-of-state interpreter.” Defendant further objects on the grounds that the Request falls outside the scope of Mass. R. Civ. P. 34, as it requests information rather than the production or inspection of any documents or other tangible things. Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 9 in Plaintiffs’ First Requests.

REQUEST NO. 9

All documents reflecting all per-diem court interpreters removed from the list of available court interpreters pursuant to Section 12.01 of the S & P, regardless of whether they were removed for cause or no cause.

RESPONSE NO. 9

Defendant objects on the grounds that the Request is overly broad and unduly burdensome and seeks documents that are not relevant to the claims or defenses of any party to this action. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “removed from the list” and “cause.” Defendant further objects on the grounds that the Request seeks information protected from disclosure by Rule IX of the Trial Court Rules. Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 10 in Plaintiffs’ First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 10 in Plaintiffs’ First Requests.

REQUEST NO. 10

All documents reflecting details of the types of expenses in the annual OCIS budget for things other than per-diem court interpreter services.

RESPONSE NO. 10

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this

action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “details” and “types of expenses.” Defendant further objects on the grounds that the budget for the Trial Court is a public record, and equally accessible to Plaintiffs. Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 11 in Plaintiffs’ First Requests.

REQUEST NO. 11

All documents reflecting the types of expenses that are non-reimbursable for per-diem court interpreters, including, but not limited to, interpreting equipment, car rentals, parking, travel time, overtime rates, and hotel accommodations, while traveling to assignments in courts in Nantucket and/or Martha’s Vinyard, etc.

RESPONSE NO. 11

Defendant objects on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action, and that the Request pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 12 in Plaintiffs’ First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 12 in Plaintiffs’ First Requests.

REQUEST NO. 12

All documents reflecting the total expenses paid to each per-diem court interpreters for each of the years 2012 (beginning on 15 October) through the present.

RESPONSE NO. 12

Defendant objects on the grounds that the Request is vague and ambiguous, including but not limited to the term “expenses.” Defendant further objects on the grounds that the Request is overly broad and unduly burdensome. Defendant further objects on the grounds that the Request does not seek material relevant to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 13 in Plaintiffs’ First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 13 in Plaintiffs’ First Requests. Further answering with respect to discovery pertaining to class certification, Defendant responds as follows: Defendant has produced DSRs for the Individual Plaintiffs for the Relevant Time Period that could be located after a reasonable search. Defendant will not produce DSRs for all Per Diem Court Interpreters as such records pertain to liability on behalf of a class, should a class be certified, and on the grounds that such a search is unduly burdensome and not reasonably

calculated to lead to the discovery of admissible evidence. Defendant is not aware of other documents in its possession, custody or control that are responsive to this Request.

REQUEST NO. 13

All documents showing the total number of requests for court interpreter services, including, but not limited to, requests for interpreting services by district attorneys for grand jury proceedings and the probation department, and the total number of court events that received interpretation services for each of the years: 15 October 2012 through the present that were performed by per-diem court interpreters.

RESPONSE NO. 13

Defendant objects on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action, and that the Request pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “requests,” “court interpreter services,” and “court events.” Defendant further objects on the grounds that the Request is overly broad and unduly burdensome. Defendant further objects on the grounds that the Request is duplicative of Request No. 14 in Plaintiffs’ First Requests.

REQUEST NO. 14

The contract, or other relevant documents, reflecting the business relationship between the Trial Court and Language Line for telephonic interpretation services, including, but not limited to, the rate per minute fee, the minimum per call fee, and:

- a. All entries/documents from the Trial Court database showing the rate and total amounts paid to Language Line for its telephonic interpretation services since the month and year of its use.
- b. All entries/documents that show each court event using Language Line since 15 October 2012, including, but not limited to, case name, docket number, court location, language, and type of court proceeding (such as restraining order hearing, child custody hearing), case name, docket number; bench trial or jury trial.
- c. All entries/documents that show each court event using VRI since its implementation, including, but not limited to, case name, docket number, court locations, languages, types of court proceedings, and whether such services in each said case were rendered by staff court interpreters and/or per-diem court interpreters through OCIS, or from interpreters who performed the services from outside of Massachusetts.

RESPONSE NO. 14

Defendant objects on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “business relationship,” “Trial Court database,” “court event,” and “VRI.” Defendant further objects to the extent that the Request seeks documents that are protected by the attorney-client privilege and

work product doctrine. Defendant further objects on the grounds that the Request is duplicative of Request No. 15 in Plaintiffs' First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 15 in Plaintiffs' First Requests.

REQUEST NO. 15

All OCIS memos and internal emails generated by Sybil A. Martin, the current Senior Manager of Support Services, the former OCIS director, Maria Fournier, OCIS managers (including Gaye Gentes, Leonor Figueroa-Feher, and Sybil A. Martin], and the head of OCIS Accounting Department (including Bruce J. Sawayer] on any proposed or about-to-be implemented policies, absent from the S&P, including but not limited to hourly rate, new hourly rate for travel time and over-time, two-hour minimum rate, change of travel rate and formula, lunch time compensation rate, deductions and penalties for signing "late" upon interpreters' arrival since 15 October 2012.

RESPONSE NO. 15

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms "about-to-be" and "signing 'late.'" Defendant further objects to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is duplicative of Request No. 16 in Plaintiffs' First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 16 in Plaintiffs' First Requests. Further answering with respect to discovery pertaining to class certification, Defendant responds as follows: Defendant has produced documents constituting or reflecting the policies of the Trial Court adopted or in effect during the Relevant Time Period regarding compensation for Per Diem Court Interpreters.

REQUEST NO. 16

Specific memos and internal communications generated and received by Gaye Gentes on major 75% travel time reduction for per-diem court Interpreters.

RESPONSE NO. 16

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited

to the terms “specific” and “major 75% travel time reduction.” Defendant further objects to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is duplicative of Request No. 17 in Plaintiffs’ First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 17 in Plaintiffs’ First Requests. Further answering with respect to discovery pertaining to class certification, Defendant responds as follows: Defendant has produced documents sufficient to identify the policies of the Trial Court adopted or in effect during the Relevant Time Period regarding compensation for Per Diem Court Interpreters.

REQUEST NO. 17

Specific memos and internal communications for the months leading to June and July 2014, generated and received by Maria Fournier on major rate change for per-diem interpreters, namely from that of the half-day/full-day to that of the two-hour minimum.

RESPONSE NO. 17

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “specific,” “months leading to,” “major rate change,” “half-day/full-day,” and “two-hour minimum.” Defendant further objects to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is duplicative of Request No. 18 in Plaintiffs’ First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 18 in Plaintiffs’ First Requests. Further answering with respect to discovery pertaining to class certification, Defendant responds as follows: Defendant has produced documents sufficient to identify the policies of the Trial Court adopted or in effect during the Relevant Time Period regarding compensation for Per Diem Court Interpreters. Defendant will produce documents concerning the implementation of policies in June 2014 or July 2014 regarding compensation for Per Diem Court Interpreters.

REQUEST NO. 18

Records reflect such policy being implemented, i.e. per-diem court interpreters either being paid at such rate starting in January or February 2014 and ending in July 2014 or being forced to hang around the courthouse till 1:00 p.m. in order to avoid being paid at two-hour minimum rate.

RESPONSE NO. 18

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “such policy,” “such rate,” “forced to hang around,” and “two-hour minimum rate.” Defendant further objects to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine. Defendant further objects to the extent the Request asserts that any such policy was in effect in January or February 2014. Defendant further objects on the grounds that the Request is duplicative of Request No. 19 in Plaintiffs’ First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 19 in Plaintiffs’ First Requests. Further answering with respect to discovery pertaining to class certification, and to the extent the Request seeks documents concerning the implementation of policies in June 2014 or July 2014 regarding compensation for Per Diem Court Interpreters, Defendant responds as follows: Defendant has produced DSRs and payment request commodity forms for the Individual Plaintiffs. Defendant will produce documents concerning the implementation of policies in June 2014 or July 2014 regarding compensation for Per Diem Court Interpreters, to the extent they exist and can be located after a reasonable search.

REQUEST NO. 19

Records on whether such short-lived two-hour rate for per-diem interpreters were productive or counter-productive, i.e. if the per-diem interpreters were travelling to the next court as posted on the White Board, rather than waiting at the current courthouse for 1 p.m. to clock-in.

RESPONSE NO. 19

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, seeks documents that are not relevant to the claims or defenses of any party to this action, and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “such short-lived two-hour rate,” “productive or counter productive,” “White Board,” “hanging around,” and “clock-in.” Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 20 in Plaintiffs’ First Requests.

REQUEST NO. 20

Specific memoranda on the source of the decisions and the decisions by either the court administration or the Security Department on stopping renewing of interpreters’ badges, and/or not issuing badges to per-diem court interpreters, and/or issuing badges entitled "Temporary

Services Providers" which still requires them to go through security and removes their designation as "Officers of the Court," including but not limited to:

- a. When such policy declining to renew badges and/or issuing badges called "Temporary Service Providers" was implemented;
- b. When OCIS started not to issue badges to per-diem court interpreters and/or began issuing badges called "Temporary Services Providers; and
- c. Specific memos or internal communications of the new policy which resulted in requiring per-diem court interpreters stand in line with other litigants and go through security in order to gain access to the courthouses, and all reasons for such new policy.

RESPONSE NO. 20

Defendant objects on the grounds that the Request is overly broad and unduly burdensome, and seeks documents that are not relevant to the claims or defenses of any party to this action and pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms "specific," "source," "Security Department," and "badges." Defendant further objects to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is duplicative of Request No. 21 in Plaintiffs' First Requests.

REQUEST NO. 21

All documents reflecting the total of federal funds received by the Trial Court and the allocation of those funds to OCIS and other departments or divisions of the Trial Court for language services for each year beginning 15 October 2012 through the present, how much of said funds were used in each year, and the use of those funds in each said year.

RESPONSE NO. 21

Defendant objects on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms "federal funds," "language services," and "the use." Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 22 (#2) in Plaintiffs' First Requests.

REQUEST NO. 22(A)¹

All documents and internal memos reflecting changes to the Standards and Procedures (hereinafter, "S & P") affecting per-diem court interpreters including but not limited to:

¹ Plaintiff's Restated Requests for the Production of Documents included two separate requests designated as Request No. 22. Defendant refers to the first Request No. 22 as "Request No. 22(A)" and the second Request No. 22 as "Request No. 22(B)." Also, Plaintiff's Request No. 22(A) was listed before Request No. 21.

- a. Two-hour minimum compensation when assignment is scheduled for later than 9:00 a.m., at 1:00 p.m., or at 3:00 p.m.;
- b. reduction in payment in the amount of \$13/\$20, \$26/\$40, or \$39/\$60 when per-diem court interpreters sign in after 9:15 a.m. and before 11:00 a.m., when car accidents on the road cause significant delays, and ALL policy changes in penalty amounts before and after this lawsuit was filed;
- c. when only scheduled for the afternoon session (2:00 p.m. to 4:30 p.m.), compensation being a two-hour minimum, and if not a two-hour minimum, but at an hourly rate, those documents;
- d. rate of payment for working between 1:00 p.m. and 2:00 p.m.;
- e. rate of payment for working at second court between 1:00 p.m. and 2:00 p.m.;
- f. rate of payment, if any, for traveling from one court to another during the per-diem court interpreter's lunch hour;
- g. hourly rate payment when per-diem court interpreters took the assignment on short notice; and
- h. any non-payment to any per-diem interpreters when any assignments was on short notice via telephone by OCIS but the cases got a continuance or were heard without waiting for the arrival of the per-diem court interpreters.

RESPONSE NO. 22(A)

Defendant objects on the grounds that the Request is overly broad and unduly burdensome. Defendant further objects on the grounds that the Request is argumentative and is premised on legal or factual conclusions. Defendant further objects on the grounds that the Request is vague and ambiguous, including but not limited to the terms “two hour minimum compensation,” “second court,” and “short notice.” Defendant further objects to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the Request is unintelligible. Defendant further objects to the extent that the Request is duplicative of Request Nos. 15 and 22 (#1) in Plaintiffs’ First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request Nos. 15 and 22 (#1) in Plaintiffs’ First Requests. Further answering with respect to discovery pertaining to class certification, Defendant responds as follows: Defendant has produced the *Standards and Procedures* of the Office of Court Interpreter Services that have been in effect during the Relevant Time Period. Defendant has produced documents sufficient to identify the policies of the Trial Court adopted or in effect during the Relevant Time Period regarding compensation for Per Diem Court Interpreters. Defendant also incorporates by reference its response to Request No. 15.

REQUEST NO. 22(B)²

All documents that demonstrate the information alleged by plaintiffs in their Substituted Amended Complaint for which Defendants’ response was the documents or records referred to

² See *supra* note 1.

"speak for themselves."

RESPONSE NO. 22(B)

Defendant objects to the extent that the Request seeks documents that are publicly available, in Plaintiffs' possession, custody or control, or otherwise equally available to Plaintiffs. Defendant further objects on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action, and that the Request pertains to claims that were dismissed in the November 3, 2016 Order. Defendant further objects to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine. Defendant further objects on the grounds that the requested documents are equally accessible to Plaintiffs. Defendant further objects on the grounds that the Request does not seek discovery pertaining to class certification. Defendant further objects on the grounds that the Request is duplicative of Request No. 23 in Plaintiffs' First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 23 in Plaintiffs' First Requests.

REQUEST NO. 23

All documents that reflect acceptance of the terms and conditions of the S & P by per-diem court interpreters, including their signatures.

RESPONSE NO. 23

Defendant objects to the extent that the Request is premised on legal or factual conclusions. Defendant further objects to the extent that Request seeks materials protected from disclosure by Rule IX of the Trial Court Rules. Defendant further objects to the extent that the Request is duplicative of Request No. 24 in Plaintiffs' First Requests.

Subject to and without waiving the foregoing General and Specific Objections, Defendant incorporates by reference its response to Request No. 24 in Plaintiffs' First Requests. Further answering with respect to discovery pertaining to class certification, Defendant responds as follows: Defendant will produce documents sufficient to reflect the acceptance, agreement or acknowledgment by Per Diem Court Interpreters of the *Standards and Procedures* of the Office of Court Interpreter Services to the extent they can be located after a reasonable search, and to the extent permitted by Trial Court Rule IX. To the extent such disclosure is not permitted by Trial Court Rule IX, Defendant will confer with Plaintiff in an effort to resolve the areas of dispute.

REQUEST NO. 24

All documents that reflect any proposed revisions to the S & P from the version per-diem court interpreters are currently bound by, including any documents that describe reasons for any proposed changes.

RESPONSE NO. 24

Defendant objects to the extent that the Request is premised on legal or factual conclusions. Defendant further objects on the grounds that the Request seeks documents that are not relevant to the claims or defenses of any party to this action. Defendant further objects to the extent that the Request seeks documents that are protected by the attorney-client privilege and work product doctrine. Defendant further objects to the extent that the Request is duplicative of Request No. 25 in Plaintiffs' First Requests.

Defendant
THE MASSACHUSETTS TRIAL COURT,

By its Attorneys,

MAURA HEALEY
ATTORNEY GENERAL

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Date: August 17, 2020

CERTIFICATE OF SERVICE

I, Katherine B. Dirks, hereby certify that on August 17, 2020, I served a copy of the above document upon counsel of record for the plaintiffs by email to:

Alan Jay Rom, Esq.
Rom Law P.C.
alan@romlawoffice.com

/s/ Katherine B. Dirks
Katherine B. Dirks
Assistant Attorney General