

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO.
1684-CV-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. :

REPLACEMENT
SECOND SUBSTITUTED
AMENDED COMPLAINT

EXECUTIVE OFFICE OF THE TRIAL :
COURT, COMMITTEE FOR THE :
ADMINISTRATION OF INTERPRETERS :
FOR THE TRIAL COURT, CHIEF :
JUSTICE PAULA M. CAREY, in her :
official position as Chair of the Committee :
for the Administration of Interpreters for the :
Trial Court, and Chief Justice PAUL C. :
DAWLEY, Judge CESAR A. ARCHILLA, :
Judge ELIZABETH M. FAHEY, Clerk :
Magistrate DONALD HART (Ret.), :
Deputy Court Administrator ELAINA :
QUINN, Judge ANGELA ORDOÑEZ, and :
Judge HELEN A. BROWN-BRYANT, in :
their official capacities as members of the :
Committee for the Administration of :
Interpreters for the Trial Court, JOHN :
BELLO, in his capacity as Chief Adminis- :
trator for the Trial Court, and SYBIL A. :
MARTIN, in her official capacity as Director :
Of Language Access and Court Records :
Department, but as Acting Co-Director of :
Support Services of the Office of Court :
Management when the 2021 S&P was :
adopted, and their successors in office, :

Defendants :

I. INTRODUCTION

The 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 2009 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 2009 S & P, Exhibit A. Examples of such violations include, e.g.: although the 2009 S & P calls for a minimum *per-diem* certified court interpreter payments of \$200 for a half-day

¹ The current version of the “S & P” is Exhibit H, attached hereto. Until paragraph 67 and the Second Cause of Action, all references to the S&P refer to the version adopted in 2009, Exhibit A. The violations referred to in paragraphs 1-66 relate to Plaintiffs’ First Cause of Action.

² See sample declaration, attached hereto as Exhibit G.

(e.g. 9 am 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 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 for which they are required by OCIS⁴ to submit a Daily Service Record ("DSR"),
- 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, there have been interpreters who were not paid for two languages, contrary to the requirements of the 2009 S & P.

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

⁴ "OCIS," stood for Office of Court Interpreter Services. Under the 2021 S&P it is called Office of Language Access, or OLA. For convenience, this Complaint will refer to the OCIS office as OLA unless it was referred to as OCIS in a quotation.

In addition, *per-diem* court interpreters find that they are not being paid accurately for going to an assignment, if for some reason they are not used, if, e.g. the court continues the assigned matter, or the party or witness is not present. They are often paid by the hour instead of the half-day rate.

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 2009 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 OLA staff court interpreters. He has fulfilled all duties for which he has been retained, but his rights under the 2009 S & P have been violated by Defendants.

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 OLA court assignments in a manner equal and comparable to the work being done by OLA staff court interpreters and has fulfilled all duties for which she has been retained by OLA, but her rights under the 2009 S & P have been violated by Defendants.

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 OLA. She has performed all of the assignments for which OLA has retained her, but her rights under the 2009 S & P have been violated by Defendants.

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 OLA. She has performed all of the assignments for which OLA has retained her, but her rights under the 2009 S & P have been violated by Defendants.

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 OLA staff court interpreters. Although he fulfilled all duties assigned, but his rights under the 2009 S & P were violated by Defendants.

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 screened⁵ court interpreters whose rights under the 2009 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 Defendants' 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

⁵ 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.

adjudications.

15. Questions of law and fact are common to the class and predominate over individual issues, including, without limitation, whether the 2009 S & P constitutes a contract between the class of Plaintiffs and Defendants and whether Defendants 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 the judicial resources being 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, Defendants will likely retain the benefits of wrong-doing and continue in the same courses of action, resulting in further damages to Plaintiffs and the class.

B. DEFENDANTS

21. The Executive Office of the Trial Court, 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.

22. The Committee for the Administration of Interpreters for the Trial Court (hereinafter referred to as the “Committee”) is the official entity established pursuant to G.L. c. 221C to oversee court interpreters, among other functions, and as such, was responsible for the establishment of the January 2021 Standards and Procedures (hereinafter referred to as the “2021 S & P”). Then-Chief Justice Paula Carey was Chair of the Committee, and Chief Justice Paul C. Dawley, Judge Cesar A. Archilla, Judge Elizabeth M. Fahey, Clerk Magistrate Donald Hart (Ret.), Deputy Court Administrator Elaina Quinn, Judge Angela Ordoñez, and Judge Helen A. Brown-Bryant were/are members of the Committee responsible for producing the 2021 S & P. They and their successors in office are sued in their official capacities as members of the Committee that produced the 2021 S & P.

23. Defendant John Bello is the current Chief Administrator of the Trial Court and served as an Advisor to the Committee that developed the 2021 S & P. He and his successors in office are sued in their official capacity.

24. Defendant Sybil A. Martin is the Director of Language Access and Court Records Department, but was the Acting Co-Director of Support Services and an Advisor to the Committee when the 2021 S&P developed. As Director of Language Access and Court Records Department, she oversees the Office of Language Access (“OLA”). She and her successors in office are sued in their official capacity.

III. JURISDICTION AND VENUE

25. 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.

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

IV. FACTS

27. 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 2009 S & P, that OLA must

provide guidelines assuring that LEP individuals have meaningful access to all Trial Court proceedings. OLA 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.

28. Court Liaisons, at the request of judges, are charged with facilitating needed linguistic services. OLA, as the sole accredited authority, maintains a list of interpreters to provide such services for the courts. OLA 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.

29. 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."

30. 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.

31. 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.

32. 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.⁶

33. The 2014 LAP indicates that in 2012 OLA 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.⁷

34. The roster of OLA staff court interpreters is grossly undersized, given the volume of language-mandated obligations OLA must meet with regard to all the courts in this system. So short is OLA's staff capabilities that, were it not for the interpreters OLA 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.

⁶ 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%.

⁷ The 3 most recent staff court interpreters were working for specific courts before being transferred to the OCIS budget. The number of staff court interpreters has changed since 2014; there are more today than in 2014.

§2000d. In short, OLA is relying, currently, on approximately 160-180 *per-diem* court interpreters to fill a glaring gap in its in-house interpreter capabilities.

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

36. Having determined, in 2006, that manifest shortcomings were impeding the court system’s ability to serve the needs of trial courts with competent interpreters, OLA began to hire more *per-diem* court interpreters to its existing staff. In 2015, the in-house interpreter staff was 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, over the years OLA enlisted and relied on approximately 150-180 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. Under the 2009 S & P, 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.

37. 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 OLA to the very same judges, and in the same manner – that is, without distinction as to their classification.

38. 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 2015 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 ⁸	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 8.⁹

⁸ Of the seven certified Russian court interpreters, two are also certified in Polish, two in Armenian, two in Ukrainian, and one in Georgian.

⁹ 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.

39. *Per-diem* court interpreters are required to submit to OLA 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. They do not know until OLA calls them, often only a day or even hours before a hearing is scheduled.

40. 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 OLA had assigned them work. Some interpreters schedule the majority of their outside work after 4:30 pm to give OLA priority should they be called to work on that day or afternoon.¹⁰

41. 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, OLA 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* OLA on that day. Moreover, if OLA cancels with more than 24 hours notice in advance, under the 2009 S & P, 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 2009 S & P says they should be paid if a case is cancelled, sometimes they are not.

42. The 2009 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

¹⁰ If they cancel too frequently, in OCIS's view, it will jeopardize future assignments.

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 disregarded this cornerstone of professional court interpreting and for a period of time, relevant herein, reverted 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 was used. If an interpreter is used only in the afternoon, then the hourly pay system was used.¹¹ Interpreters no longer knew what they would be paid, and they either sought assurance in advance that they would be properly paid, or they refuse to take assignments for which regular payment would 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, newly-hired or agency interpreters. Defendants systematically disregarded the 2009 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 that court interpreting is a profession that requires years of practice to perfect?

43. 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."OLA saves money when it is able to

¹¹ Because the rate for a half-day is \$200 and the half-day is four hours, the regular hourly rate is \$50 (\$200 ÷ 4 = \$50.00). Yet, Defendants have 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.

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, Defendants interpreted this provision as in effect a supplement due only “so long as they actually provide interpreting services in *both* languages on said day.”

44. 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.

45. *Per-diem* certified court interpreters receive no such benefits, and indeed their financial picture is much bleaker. Their last pay increase came only in 2006;¹² they have had no increase or adjustment in sixteen years.

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

47. *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 OLA 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.

48. 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.

¹² 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 was less than it should have been under the inaccurate rate used, 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 what should be their actual hourly rate, in violation of applicable law. In February 2009, the \$40.00 hourly rate was reduced to \$10.00 and has not changed since then, even though the 2009 S & P hourly rate has not changed from the \$40.00 hourly rate – which should be \$50.00 as explained in Note 11, *supra*. Staff court interpreters are paid the state reimbursement rate, which is much higher, as per their union contract.

49. 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.

50. *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. When working past the time for a half-day, they are not compensated at the full-day rate.

51. *Per-diem* and staff employee court interpreters both perform all interpretation

services, serving the same courts, at the direction of and under the control of OLA and the courts they serve. At present, *per-diem* court interpreters are providing more than half of all the court interpreter work, yet the then-27 staff court interpreters on OLA 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, or 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, liaising with the court personnel, and staying in touch with OLA personnel regarding whatever questions or new requests that might arise.

52. The last pay increase given to *per-diem* court interpreters by the Defendants 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 2022 has lost 41% of the value it had in 2006. The prices of gas, food, rent, and other necessities have risen sharply, but their pay remains at 2006 levels.

53. Nor has OLA made payments due for *per-diem* court interpreters' invoices in a consistently timely manner, in violation of the 2009 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 *per-diem* court interpreters 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.

54. Section 9.01 of the 2009 S&P requires that OLA 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.

55. OLA does not follow Section 9.01 of the 2009 S&P and often, screened interpreters are assigned prior to available certified interpreters. Since screened interpreters are paid at a lower rate, Defendants save money, and certified *per-diem* court interpreters lose money. Defendants are also encouraging courts to use Language Line telephonic interpreting when *per diem* court interpreters are available.

56. 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 on a salary basis 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 OLA 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.

57. The Trial Court's FY 2014 budget was \$607,485,598. The precise cost of interpreter services is not clearly stated. According to an Executive Office Transmittal¹³ 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.

58. 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.

59. The OLA 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.

60. In addition, as Plaintiffs' affidavits attached to this complaint attest, they have

¹³ Executive Office Transmittal 14-12, Update on Court Interpreter Services, dated August 19, 2014.

complained to OLA 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 OLA.

61. Language Line, a telephonic interpreting agency, was contracted by OLA to do interpreting on the telephone. Although OLA 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 OLA, they turn to Language Line, and Language Line interpreters are not qualified nor trained, as are *per-diem* court interpreters.

62. OLA 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, not 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 “2009 Standards And Procedures” Constitutes A Contract

63. Paragraphs 1 through 62 are incorporated herein as if restated.

64. The 2009 S & P governed *per-diem* court interpreters as to performance requirements, pay rates, and other terms and conditions of employment until the 2021 S & P was adopted in January 2021. Under the 2009 S & P, *per-diem* court interpreters

were required to sign a form agreeing to be bound by its terms and requirements before being permitted to work as court interpreters, Exhibit G.

65. The 2009 S&P constitutes a contract, and all members of the plaintiff class are entitled to benefit from it.

66. Defendants violating the rights of the plaintiff class under the 2009 S&P 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 2009 S & P.

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

67. Paragraphs 1 through 66 incorporated herein as if restated.

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

69. The January 2021 S & P strips *per-diem* court interpreters of rights in the 2009 S&P they claimed were violated by Defendants. Comparing the two versions, Exhibits A and H, it is clear that whatever rights Plaintiffs may have had in the 2009 version, Exhibit A, that they complained about and which is the subject of this litigation, they have disappeared in the 2021 version, Exhibit H. Examples of such changes include the following:

70. Section 4.02 of the 2009 S & P required each interpreter to sign a form indicating their compliance with the S & P, Exhibit G. 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

2021 S & P, and thus, at least Defendants may argue that the 2021 S & P is not a contract.

71. The first stage of the trial of this case is determining whether there is a class action. If a class action is certified, then all of the wage records and other discovery will be needed to determine the extent of damages.

72. 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; 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 2021 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 this 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.

73. 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.

74. 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 2009 S & P constitutes a contract between Defendants and the class of Plaintiffs described herein and, following trial, that Defendants have violated Plaintiffs' rights under the 2009 S & P, Exhibit A.
- c. Declare that the promulgation of the January 2021 S&P, Exhibit H, constitutes retaliation against the Plaintiffs, and the class of *per-diem* court interpreters 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 all forms of restitution rightfully due members of the class, which are attributable to Defendants' wrongful conduct in violating their rights under the 2009 S &

P, and including retaliation for their exercise of their Constitutional rights.

e. Enjoin Defendants from continuing its retaliation against the Plaintiffs' class, as found by the Court to exist, in its implementation of the 2021 S & P.


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: April 20, 2022

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CERTIFICATE OF SERVICE

I, Alan Jay Rom, attorney for plaintiffs, hereby certify that a copy of the above-referenced Replacement Second Substituted Amended Complaint, was served on Defendant by sending an electronic copy to Assistant Attorney General Katherine B. Dirks, Esq. at Katherine.Dirks@state.ma.us this 20th day of April 2022.



Alan Jay Rom