

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NATIONAL ASSOCIATION OF THE DEAF,
on behalf of its members, C. WAYNE DORE,
CHRISTY SMITH, LEE NETTLES, on behalf
of themselves and a proposed class of similarly
situated persons defined below,

Plaintiffs,

v.

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Defendant.

Civil Action No. 15-30024-KAR

**PLAINTIFFS' ASSENTED-TO MOTION TO CERTIFY THE CLASS FOR
SETTLEMENT PURPOSES AND FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

After years of vigorous advocacy and negotiation, Plaintiffs National Association of the Deaf (“NAD”), C. Wayne Dore, Christy Smith, and Lee Nettles (collectively, “Plaintiffs”) and Defendant Massachusetts Institute of Technology (“MIT”) have resolved the instant action. Now, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs hereby move the Court for an order conditionally certifying a class for settlement purposes, preliminarily approving the settlement, approving the proposed Notice and Notice Plan, and setting dates for the submission of any objections to the proposed Consent Decree and a fairness hearing. MIT assents to this Motion. In further support of the Motion, Plaintiffs state as follows:

1. In February 2015, Plaintiffs initiated this action for declaratory and injunctive relief against MIT concerning the lack of closed captioning or unintelligible captioning of videos and audio tracks publicly available online for free to anyone with an Internet

connection, on broad-ranging topics of educational or general interest, including Massive Open Online Courses (“MOOCs”). Plaintiffs alleged that MIT violated two longstanding civil rights statutes, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Rehabilitation Act”), and Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12181 *et seq.* (“Title III”).

2. MIT filed a motion to dismiss the action, which the Court denied in an order by Magistrate Judge Robertson that was adopted, following MIT’s objections, by Judge Mastroianni. *See* ECF 51 (denying MIT’s motion for the reasons set forth in *Nat’l Ass’n of the Deaf v. Harvard Univ.*, No. 15-30023-MGM, 2016 WL 3561622 (D. Mass. Feb. 9, 2016)).
3. In August 2018, MIT filed a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). On March 28, 2019, Judge Robertson issued an order granting the motion in part and denying it in part. The Court did not agree with MIT’s arguments that: 1) its websites are not places of public accommodation, and that Plaintiffs fail to allege a sufficient nexus with a good or service provided at a physical location; and 2) Plaintiffs failed to state a claim under Section 504. The Court did, however, dismiss claims seeking captioning of content originating exclusively by third parties unaffiliated with MIT, based on the immunity provisions in the Communications Decency Act of 1996, 47 U.S.C. § 230. *Nat’l Ass’n of the Deaf v. Mass. Inst. of Tech.*, 2019 WL 1409301 (D. Mass. March 28, 2019) (incorporating by reference *Nat’l Ass’n of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49, 61-63 (D. Mass. 2019)).
4. After engaging in good faith negotiations and mediations, on February 6, 2020, the Parties reached a settlement and executed the proposed Consent Decree. *See* Ex. 1 to the

corresponding Memorandum. The proposed Consent Decree resolves this action and defines the settlement class as follows:

[A]ll persons (other than students of MIT) who, at any time between February 11, 2012 and the date of preliminary approval of this settlement, have claimed or could have claimed to assert a claim under Title III of the ADA, the Rehabilitation Act, and/or other federal, state or local statutes or regulations that set forth standards or obligations coterminous with or equivalent to Title III of the Americans with Disabilities Act and the rules or regulations promulgated thereunder, alleging that they are deaf or hard of hearing and that MIT has failed to make accessible to persons who are deaf or hard of hearing online content posted and available for the general public that is produced, created, hosted, linked to, or embedded by MIT.

5. Under the terms of the proposed Consent Decree,¹ MIT agrees:
- to caption new video or audio content posted to Covered MIT Webpages on or after a date 60 days after the Effective Date;
 - to caption existing video or audio content posted to Covered MIT Webpages on or after January 1, 2019, within one year after the Effective Date;
 - to provide captions for existing video or audio content posted to Covered MIT Webpages prior to January 1, 2019, upon request within seven business days;
 - to provide industry-standard live captioning for events that are live-streamed publicly online by MIT Institute Events, and to add captions to any such video or audio content or “breaking news” that is later posted on a Covered MIT Webpage as soon as possible, but no later than seven business days after its posting;
 - to provide appropriate training regarding the captioning of audio and video content; and
 - to make periodic reports to Plaintiff NAD.
6. The Parties have agreed to issue written notice to the settlement class through electronic information technology. As the settlement and Notice will be most important to consumers of MIT’s public-facing web content, MIT will post links to the Notice on key

¹ The primary terms of the proposed Consent Decree are explained more fully in the corresponding Memorandum at Section III.

webpages. In addition, Plaintiffs' Counsel will create a case website on which they will post the Notice and Consent Decree, and the four nonprofit organizations serving among Plaintiffs' Counsel will post a link to the case website on their respective websites and distribute it to their mailing lists. Plaintiffs' Counsel will make the online Notice available in English and American Sign Language. Plaintiffs' Counsel will also send a copy of the Notice to relevant nonprofit organizations and agencies whose members or constituents include and/or whose work is relevant to people who are deaf or hard of hearing.

7. In light of the substantial relief obtained and in consideration of the inherent risks of continued litigation, the settlement is fair, reasonable, and adequate. It was reached after counsel participated in two separate days of mediation with Magistrate Judge Judith Dein and extensively negotiated the settlement terms at arm's length. Further, the settlement came after years of motion practice, extensive factual investigation by Plaintiffs, and the Parties' exchange of substantial fact discovery; as a result of these efforts, Plaintiffs assessed the strengths of their positions and negotiated the proposed Consent Decree based on that assessment.

WHEREFORE, Plaintiffs respectfully request that the Court:

- (a) certify the class for settlement purposes, appointing Lee Nettles, C. Wayne Dore, and Christy Smith as class representatives and Plaintiffs' Counsel as Class Counsel;
- (b) preliminarily approve the settlement as set forth in the proposed Consent Decree;
- (c) approve the Notice and Notice Plan;

- (d) set a date six (6) weeks after the Court grants preliminary approval as the deadline for submission of any objections to the proposed Consent Decree; and
- (e) schedule a fairness hearing for four weeks after the deadline for class members to object to the proposed Consent Decree, or such time thereafter as is convenient for the Court.

Respectfully submitted,

/s/ Joseph M. Sellers

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Dated: February 18, 2020

CERTIFICATE OF SERVICE

I, Shaylyn Cochran, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies shall be served by first class mail postage prepaid on all counsel who are not served through the CM/ECF system on February 18, 2020.

/s/ Shaylyn Cochran

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I. INTRODUCTION

Plaintiffs National Association of the Deaf (“NAD”), C. Wayne Dore, Christy Smith, and Lee Nettles (collectively, “Plaintiffs”) submit this Memorandum in Support of Their Assented-To Motion to Certify the Class for Settlement Purposes and for Preliminary Approval of the Class Action Settlement. The proposed Consent Decree, attached as Exhibit 1, resolves the instant action against the Massachusetts Institute of Technology (“MIT” or “Defendant”). The proposed Consent Decree is the product of arm’s-length, serious, informed, and non-collusive negotiations between experienced and knowledgeable counsel who have actively prosecuted and defended this litigation; those negotiations were facilitated by an experienced mediator, the Honorable Judith Dein. Moreover, the proposed Consent Decree is fair, reasonable, and provides substantial benefits to the entire class now, while avoiding the delay, risk, and expense inherent in the continued litigation of this nearly five-year-old action. Additionally, the schedule for issuance of Notice and the fairness hearing as proposed by the Parties will allow an adequate opportunity for the class to review and comment on the proposed Consent Decree and is consistent with the Parties’ desire for prompt implementation of the terms of the proposed Consent Decree. Accordingly, Plaintiffs respectfully request that the Court grant their Motion.

II. HISTORY OF THE LITIGATION

In February 2015, Plaintiffs initiated this action for declaratory and injunctive relief against MIT concerning the lack of closed captioning or unintelligible captioning of videos and audio tracks publicly available online for free to anyone with an Internet connection, on broad-ranging topics of educational or general interest, including Massive Open Online Courses (“MOOCs”). Plaintiffs alleged that MIT violated two longstanding civil rights statutes, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Rehabilitation Act”) and Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12181 *et seq.* (“Title III”). The

Rehabilitation Act is applicable because MIT receives hundreds of millions of dollars each year in federal money. MIT falls under Title III because, as a university, it is a public accommodation. 42 U.S.C. § 12181(7)(J). Both the Rehabilitation Act and Title III ensure that colleges and universities provide people with disabilities equal access to their programs and activities.

MIT filed a motion to dismiss the Plaintiffs' complaint or, in the alternative, to stay based on the doctrine of primary jurisdiction. On February 9, 2016, this Court issued a report and recommendation denying the motion, holding "Plaintiffs' allegations that much of [MIT's] online video content is inaccessible to millions of deaf and hard of hearing individuals, and their identification of captioning as a reasonable accommodation that would afford them the meaningful access millions of non-hearing impaired individuals already enjoy, are sufficient to state a claim under Section 504," as well as Title III. *See* ECF 51 (denying MIT's motion for the reasons set forth in *Nat'l Ass'n of the Deaf v. Harvard Univ.*, No 15-30023-MGM, 2016 WL 3561622 (D. Mass. Feb. 9, 2016)). On November 4, 2016, the Honorable Mark G. Mastroianni adopted the report and recommendation. *Nat'l Ass'n of the Deaf v. Mass. Inst. of Tech.*, No. 15-30024-MGM, 2016 WL 6652471 (D. Mass. Nov. 4, 2016).

Thereafter, the Parties attempted to mediate with the assistance of Linda Singer, Esq. over a period of one year, at which point the parties resumed litigation in June 2018. Plaintiffs and MIT then engaged in discovery. The parties exchanged written discovery: MIT produced comprehensive electronic policies, procedures, processes, webpages, and additional information that Plaintiffs' Counsel reviewed and analyzed; Plaintiffs also produced hundreds of pages of documents in response to MIT's discovery requests.

In August 2018, MIT filed a motion for a judgment on the pleadings under Fed. R. Civ. P. 12(c), which this Court granted in part and denied in part. This Court did not agree with MIT's

arguments that: 1) its websites are not places of public accommodation, and that Plaintiffs fail to allege a sufficient nexus with a good or service provided at a physical location; and 2) Plaintiffs failed to state a claim under Section 504. But the Court did dismiss Plaintiffs' claims seeking captioning of content originating exclusively by third parties unaffiliated with MIT, based on the immunity provisions in the Communications Decency Act of 1996, 47 U.S.C. § 230. *Nat'l Ass'n of the Deaf v. Mass. Inst. of Tech.*, 2019 WL 1409301 (D. Mass. March 28, 2019) (incorporating by reference *Nat'l Ass'n of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49, 61-63 (D. Mass. 2019)).

Following this Court's determination, the Parties jointly sought, and this Court granted, a stay of the litigation to permit settlement discussions entailing dozens, if not hundreds, of hours of conferences or correspondence with the parties, between April and July 2019. The Parties ultimately engaged in mediation before Magistrate Judge Judith G. Dein over the course of two days and agreed to resolve the case as set forth in the proposed Consent Decree.

III. SUMMARY OF THE PROPOSED CONSENT DECREE

Plaintiffs brought this action to ensure that deaf and hard of hearing individuals have equal access, through accurate captioning, to online audio and video content made publicly available by MIT. The relief afforded by the proposed Consent Decree achieves that goal. A description of the key provisions follows.

A. Key Terms Used in the Proposed Consent Decree

The proposed Consent Decree defines "Captioning" with reference to the Web Content Accessibility Guidelines ("WCAG") 2.1 Level AA, to the extent that it incorporates the captioning requirements of WCAG 2.0, which together establish a widely used set of standards for web content accessibility. *See* Ex. 1 Section 2(a)(i). WCAG standards are based on four general principles – that content be perceivable, operable, understandable and robust. In the case

of video files, the standard set forth in the proposed Consent Decree will ensure the accuracy of captions, as well as key attributes such as synchronicity, completeness, and proper placement; and with respect to audio-only files, the proposed Consent Decree requires MIT to prepare and provide a text-only transcript of the audio content. *Id.* Section 2(a)(ii).

The proposed Consent Decree defines “MIT Content” as audio or video content that appears on Covered MIT Webpages and: a) is created or developed in whole or in part by any faculty or employee of MIT acting within the scope of his or her employment; b) is created by any MIT Sponsored Student Group (as defined by MIT’s Association of Student Activities) acting within the scope of its organizational mission; or c) is created for one of the exempted webpages and is subsequently reposted to a Covered MIT Webpage by any faculty or employee of MIT acting within the scope of his or her employment. *Id.* Section 2(f). “Covered MIT Webpages” is defined broadly, encompassing any public webpages within the MIT.edu domain, and corresponding public platforms such as YouTube, Vimeo, and Soundcloud channels operated by MIT, with certain specific exceptions. “Covered MIT Webpages” also includes all MIT MOOCs posted going forward through MITx and MIT OpenCourseWare. *Id.* Section 2(d).

B. Content Covered by the Proposed Consent Decree

The proposed Consent Decree requires that captioning of all new MIT Content begin as soon as possible, but no later than 60 days after the Effective Date. In addition, certain “Legacy Content,” meaning MIT Content posted between January 1, 2019 and 60 days after the Effective Date, will be captioned (or removed from public view) as soon as practicable but no later than one year from the effective date, or within seven business days of a request made through the Public Request or Cure Request procedures as defined in the Consent Decree. MIT Content posted at any time prior to January 1, 2019 will be captioned (or removed from public view) within seven business days, upon request by an individual member of the public. MIT will

engage in a good faith effort to caption MIT content before removing it. *Id.* Section 4(a). The Consent Decree also delineates certain webpages and channels as exempted from the definition of Covered MIT Webpages. *Id.* Section 4(d).

MIT must also implement a Public Request Process as soon as practicable, but no later than 90 days after the Effective Date, to manage requests for captioning that are made pursuant to the previously-described terms of the proposed Consent Decree. *Id.* Section 5. NAD agrees not to instruct or encourage any group or individual to submit requests for captioning of content that they are not personally interested in viewing. *Id.* Section 4(b).

In addition to the captioning obligations described above, the proposed Consent Decree requires MIT to provide industry-standard live captioning for events that are live-streamed publicly online by MIT Institute Events, and to add captions to any such video or audio content or “breaking news” that is later posted on a covered MIT Webpage as soon as possible, but no later than seven business days after its posting. MIT will also give due consideration to requests for live captioning of other publicly live-streamed events. *Id.* Section 4(e).

C. Additional Obligations of the Parties

(i) Commitment and Training

Per the proposed Consent Decree, MIT will announce its commitment to caption MIT Content. *Id.* Section 4(g). MIT will also provide training on captioning audio and video content as necessary and appropriate consistent with its good-faith effort to comply with the terms of the Consent Decree, and will encourage its students, faculty and employees to caption all videos at the time they are created, caption all videos posted on third-party platforms, and post content only on accessible third-party platforms. *Id.* Sections 14(a) and (b).

(ii) Cure Process

The proposed Consent Decree sets forth a Cure Process for uncaptioned or inaccurately captioned content. MIT will implement a process as soon as practicable, but no later than 90 days after the Effective Date, whereby any member of the public, including any Plaintiff, may inform the Institute of any of the above deficiencies. MIT will not be liable for a violation of the proposed Consent Decree if it resolves the issue within seven business days. MIT commits not to use this process to circumvent the requirements of the proposed Consent Decree. *Id.* Section 5(b).

(iii) Links to MIT Accessibility Webpage

As soon as possible, but no later than 90 days after the Effective Date, MIT will ensure that there are links to the MIT Accessibility Webpage on all Covered MIT Webpages. The Accessibility Webpage will include the announcement of MIT's commitment to captioning MIT Content; an online method by which a member of the public may report that a Covered MIT Webpage does not contain the proper link as described above; and an online method by which members of the public may submit Public Requests, including requests for captioning of live-streamed content. *Id.* Section 4(f).

(iv) Reporting

The proposed Consent Decree requires periodic reporting by MIT to NAD, with the first report due on June 1, 2020. *Id.* Section 14(c). The report is required to contain a description of the steps taken by MIT to comply with the terms of the proposed Consent Decree and a description of captioning training provided. *Id.*

Every six months beginning June 1, 2020, the proposed Consent Decree requires MIT to submit a report describing the number of requests for captioning received; the number of minutes of content captioned as a result of requests received; and a summary report of records MIT

agrees to maintain as part of the Public Request Process and the Cure Process, which records shall include documentation of the steps taken in response to such requests and the response provided to the individual making the request. *Id.*

(v) Enforcement and Dispute Resolution

The Parties respectfully request that the Court retain jurisdiction for the term of the proposed Consent Decree, three and a half years, for the purpose of ensuring compliance and enforcing the provisions of the Agreement. *Id.* Section 8. Before approaching the Court to assert a violation, the parties will engage in Dispute Resolution. *Id.* Section 9. First, the Parties will exchange written correspondence regarding the dispute, and then will meet and confer in good faith to attempt to resolve the issue informally. If the parties are unable to resolve the dispute, they will engage in a telephonic conference for no longer than two hours with Magistrate Judge Judith A. Dein, or another mutually agreeable mediator. *Id.* If a resolution by the Court is necessary following such steps, the attorneys' fees and costs standard set forth in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422 (1978) shall apply. *Id.* Section 9(b).

The Consent Decree also calls for informal dispute resolution in the event MIT has reason to believe that a Cure Request or Public Request has been made in bad faith. In the event the parties are unable to resolve the disputed Request after meeting and conferring, the parties shall engage in a telephonic conference with Judge Dein, as described above, and then may, if necessary, seek further relief from the Court. *Id.* Section 5(d).

D. Attorneys' Fees and Costs

The proposed Consent Decree obliges MIT not to oppose Plaintiffs' Counsel's motion for attorneys' fees and costs in the amount of \$1,050,000. *Id.* Section 10. The forthcoming fee petition will provide an overview of Plaintiffs' fees expended and costs incurred in the litigation of this action since 2015.

IV. ARGUMENT

Under Rule 23(e), the claims of a class proposed to be certified for settlement purposes may only be settled with the Court's approval. Fed. R. Civ. P. 23(e). Before approving a class settlement where the putative class has not yet been certified, the Court must determine whether: (A) the class should be certified for settlement purposes; (B) the settlement is "fair, reasonable, and adequate"; and (C) the proposed notice and notice plan satisfy due process requirements. *Id.*

As described more fully below, the instant settlement satisfies all of these requirements. As such, Plaintiffs' request for certification of the settlement class, preliminary approval of the settlement, the issuance of notice, and the scheduling of a fairness hearing should be granted. *See generally Nat'l Ass'n of the Deaf v. Harvard Univ.*, No. 3:15-CV-30023-KAR, 2019 WL 6699449 (D. Mass. Dec. 9, 2019) (certifying settlement class and granting preliminary approval to similar consent decree in similar case against Harvard University).

A. The Class Should be Certified for Settlement Purposes.

"To be certified for purposes of settlement, the proposed class must meet the requirements of both Rule 23(a) and Rule 23(b)(2)." *Hawkins ex rel. Hawkins v. Comm'r of N.H. Dep't of Health & Human Servs.*, No. 99-CV-143, 2004 WL 166722, at *2 (D.N.H. Jan. 23, 2004) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997)). Here, Plaintiffs seek the certification of the following settlement class:

[A]ll persons (other than students of MIT) who, at any time between February 11, 2012 and the date of preliminary approval of this settlement, have claimed or could have claimed to assert a claim under Title III of the ADA, the Rehabilitation Act, and/or other federal, state or local statutes or regulations that set forth standards or obligations coterminous with or equivalent to Title III of the Americans with Disabilities Act and the rules or regulations promulgated thereunder, alleging that they are deaf or hard of hearing and that MIT has failed to make accessible to persons who are deaf or hard of hearing online content posted and available for the general public that is produced, created, hosted, linked to, or embedded by MIT.

See Proposed Consent Decree, Section 2(i). As defined, this settlement class meets the conditions set forth in Rule 23(a) and Rule 23(b)(2).

(i) Plaintiffs Satisfy the Requirements of Rule 23(a).

First, the proposed settlement class is sufficiently large that joinder is impracticable, meeting Rule 23's numerosity requirement. See *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, No. 05-CV-11148-PBS, 2009 WL 10703302, at *2 (D. Mass. Mar. 30, 2009). The online content at issue in this litigation is publicly-available on MIT's domain and/or MIT's pages on certain third-party platforms. Therefore, at any given time, any number of the 48 million members of the public in the United States who are deaf or hard of hearing¹ may seek access to MIT's online material. As yet another illustration of Plaintiffs' satisfaction of this requirement, and as established during discovery, Plaintiff NAD is aware of many members who have sought access to MIT's online web materials before and during the course of this litigation; joinder would be impracticable for this population, which is dispersed across the country. Thus, there can be no question that Plaintiffs satisfy numerosity.

Second, there are common questions of law and fact at issue, thus meeting the commonality requirement. The gravamen of this lawsuit is that MIT has failed to caption audio and video content on its domains and third-party web platforms, allegedly in violation of Title III and the Rehabilitation Act. This is a common contention for each class member, and it can be satisfied using evidence common to the class. See *First Databank, Inc.*, 2009 WL 10703302 at *2-3 (granting a motion to certify a class for settlement purposes and describing common legal and factual contentions suitable for resolution on a class-wide basis).

¹ See, e.g., Frank R. Lin, MD, PhD, *et al.*, *Hearing Loss Prevalence in the United States*, 171 ARCH. INTERNAL MED. 1851 (Nov. 14, 2011), available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1106004> (last visited Feb. 17, 2020).

Third, typicality is satisfied as well. Plaintiffs' claims arise out of the same conduct—MIT's alleged failure to make accessible to people who are deaf or hard of hearing the countless speeches, talks, lectures, courses, and other important material published on its websites and third-party web platforms. Thus, Plaintiffs allege that each member of the class was denied access to the same material pursuant to the same general policy or practice by MIT. *See id.* at *3.

Fourth, the requirement for fair and adequate representation is satisfied. The individually Named Plaintiffs Lee Nettles, C. Wayne Dore, and Christy Smith have faithfully participated in this litigation for nearly five years, and if appointed as representatives of the settlement class, they will continue to fairly and adequately protect the interests of the class. The settlement class also is fairly and adequately represented by competent attorneys with specialized expertise in litigating disability rights class actions. Plaintiffs are represented by the Civil Rights Education and Enforcement Center ("CREEC"), a nationwide civil rights organization based in Denver, CO; the Disability Law Center ("DLC"), the Protection and Advocacy System for the state of Massachusetts; the Disability Rights Education and Defense Fund ("DREDF"), a nationwide disability rights organization based in Berkeley, CA; NAD, the nation's premier civil rights organization of, by, and for deaf and hard of hearing individuals; and the law firm of Cohen Milstein Sellers & Toll PLLC ("CMST"), one of the leading firms in the country handling major complex plaintiff-side litigation, based in Washington, DC.²

(ii) Plaintiffs Satisfy the Requirements of Rule 23(b)(2).

Finally, Plaintiffs also satisfy the requirements of Rule 23(b)(2). A class may be certified under Rule 23(b)(2) if the prerequisites of Rule 23(a) are satisfied and "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making

² *See also infra* at n. 3 (collecting citations of Plaintiffs' Counsel's successful litigation and/or settlement of notable class actions brought on behalf of people with disabilities).

appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Fed. R. Civ. P. 23(b)(2). Classes certified under Rule 23(b)(2) “frequently serve as the vehicle for civil rights actions and other institutional reform cases.” *Hawkins*, 2004 WL 166722, at *4. Such is the case here.

As detailed above, Plaintiffs have advanced a common contention in this litigation: that MIT has failed to provide equal, effective, and timely access to its online content for people who are deaf or hard of hearing. Put differently, Plaintiffs allege that MIT, by failing to provide captioning for its video and audio content, has acted or refused to act on grounds generally applicable to the class. Accordingly, the settlement class should be certified pursuant to Rule 23(b)(2).

In consideration of the foregoing, Plaintiffs respectfully request that the Court certify the class, as defined above and in the proposed Consent Decree, for settlement purposes and appoint Plaintiffs Nettles, Dore, and Smith as class representatives and Plaintiffs’ Counsel as Class Counsel.

B. The Proposed Consent Decree Is Fair, Reasonable, and Adequate and Should Be Preliminarily Approved.

A court may only approve a class settlement after finding that it is “fair, reasonable, and adequate,” which requires consideration of whether: (i) the class representatives and class counsel adequately represented the class; (ii) the proposed settlement was negotiated at arm’s length; (iii) the relief provided for the class was adequate; and (iv) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

The fairness of the settlement should be considered with an appreciation of the strong judicial policy favoring the resolution of class actions. *See, e.g., Nat’l Ass’n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009).

For the reasons described below, the proposed Consent Decree is fair, reasonable, and adequate, and should therefore be preliminarily approved by the Court.

(i) Plaintiffs' Class was Adequately Represented by the Proposed Class Representatives and Plaintiffs' Counsel.

Employing a two-step analysis, the Court must initially be satisfied that the settlement class was adequately represented during the litigation and settlement. *See Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985); *see also In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 36 n.12 (1st Cir. 2009) (stating that “[t]he duty of adequate representation requires counsel to represent the class competently and vigorously and without conflicts of interest with the class.”). First, the Court must determine whether the interests of the class representatives “conflict with the interests of any of the class members.” *Andrews*, 780 F.2d at 130. Second, the Court must be satisfied that Plaintiffs' Counsel are qualified and experienced and were vigorously pursuing the interests of class before the settlement was reached. *Id.* As Rule 23(g) requires of counsel appointed to represent a class at the outset of litigation, the Court must also consider at settlement whether counsel have “experience in handling class actions, other complex litigation, and the types of claims asserted in the action; counsel’s knowledge of the applicable law” and the resources that counsel committed to the prosecution of the case before settlement was reached. *See Fed. R. Civ. P. 23(g)(1)(A)(i) – (iv)*; *accord Lapan v. Dick’s Sporting Goods, Inc.*, No. 1:13-CV-11390-R, 2015 WL 8664204, at *3 (D. Mass. Dec. 11, 2015) (considering the guidance from Rule 23(g) in evaluating the adequacy of counsel).

There is no conflict between the class representatives and absent class members because both groups share an interest in receiving the relief provided by the terms of the proposed Consent Decree. The proposed class representatives and members of the proposed class are people who are deaf or hard of hearing, all of whom sought, and will be obtaining by the terms

of the proposed Consent Decree, access to online content covered by the Decree. Accordingly, the proposed class representatives seek “the same remedy . . . based on an identical theory” as the rest of the class, rendering the interests of the class representatives “coextensive with the class.” *Reid v. Donelan*, 297 F.R.D. 185, 191 (D. Mass. 2014).

Moreover, Plaintiffs have retained experienced and competent counsel who fairly and adequately protected the interests of the proposed class throughout the litigation and during the negotiation of the proposed Consent Decree. Plaintiffs’ Counsel have substantial experience litigating and negotiating settlements in class actions on behalf of people with disabilities.³ Plaintiffs’ Counsel invested substantial time and resources in litigating this case and in negotiating the proposed Consent Decree. During the course of litigation, Plaintiffs’ Counsel twice briefed and argued fundamental legal issues bearing on the viability of the claims and then, as the litigation progressed, propounded and responded to a number of discovery requests, reviewed documents produced by MIT and other material generated by counsel’s investigation, created a database of over 1,600 videos from MIT’s website (of which comprehensive review was in progress when settlement negotiations began last year), and consulted extensively with numerous testifying and consulting experts about various matters at issue in the litigation. Moreover, Counsel undertook the representation on terms by which their compensation was fully

³ See *supra* at 2 (identifying and describing the work of Plaintiffs’ Counsel); see also, e.g., *Kurlander v. Kroenke Arena Co. LLC*, 276 F. Supp. 3d 1077 (D. Colo. 2017) (CREEC: settlement on behalf of class of Deaf patrons of professional hockey/basketball arena requiring open captioning on LED boards); *Hill v. Donahoe, United States Postal Service*, EEOC No. 110-2004-00311X, Agency No. 4H310009014, 2014 WL 2206508 (2014) (CMST: disability discrimination class action settled for approximately \$9.85 million and injunctive relief); *Disability Law Ctr. v. Mass. Dep’t of Corr.*, 960 F. Supp. 2d 271, 280-81 (D. Mass. 2012) (DLC: settlement on behalf of class of Massachusetts prisoners with mental illness the creation of secure treatment units for class members who would otherwise be subjected to prolonged solitary confinement); *Nat’l Assoc. of the Deaf v. Netflix, Inc.*, No. 11-30168-MAP (D. Mass. Oct. 9, 2012) (DREDF: settlement on behalf of class of Deaf individuals who sought captioning on the Netflix streaming service).

contingent on the outcome and the costs of litigation were advanced. Accordingly, there is ample evidence that undersigned counsel vigorously and fully represented the interests of the class in the litigation leading to its settlement. *See Connor B. ex rel. Vigurs v. Patrick*, 272 F.R.D. 288, 297 (D. Mass. 2011).

(ii) The Proposed Consent Decree was the Product of Arm's-Length Negotiation.

A settlement is entitled to a presumption of reasonableness when it is achieved through an arm's-length negotiation by experienced counsel. *See In re Pharm. Indus.*, 588 F.3d at 33. When determining whether an agreement was the product of an arm's-length negotiation, courts often consider the complexity and duration of the litigation, whether meaningful discovery was completed prior to settlement, whether the parties utilized a formal mediation process to negotiate the agreement, and whether the agreement was conditioned on an award of attorneys' fees and costs. *See, e.g., Bacchi v. Massachusetts Mut. Life Ins. Co.*, No. 12-11280-DJC, 2017 WL 5177610, at * 2 (D. Mass. Nov. 8, 2017); *Hill*, 2015 WL 127728, at *7; *Disability Law Ctr.*, 960 F. Supp. 2d at 280-81; *M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 824 (D. Mass. 1987).

Plaintiffs' Counsel attempted to resolve this litigation before its filing, litigated two rounds of dispositive motions, and participated in mediation efforts with a private mediator, directly with MIT, and finally – and successfully – with the valuable assistance of Magistrate Judge Dein. Throughout this period, Plaintiffs participated in extensive discovery and conducted their own extensive investigation into the captioning of MIT's web content. In addition to counsel experienced in litigating civil rights class actions, and especially class actions on behalf of people with disabilities, Plaintiffs' Counsel included lawyers from NAD, who brought an extensive familiarity with the needs of people who are deaf and hard of hearing and state-of-the-

art technologies that can serve their needs in the formulation of the litigation strategy and the terms of settlement.

After settlement negotiations that extended over three years, conducted in three different time periods separated by vigorous litigation, the Parties settled all contested issues in the litigation, the terms of which are memorialized in the proposed Consent Decree. Negotiation of the terms of the proposed Consent Decree, moreover, was conducted without regard to the payment of Plaintiffs' attorneys' fees and costs, which was the last term that was negotiated.

(iii) The Proposed Consent Decree Provides Class Members with More than Adequate Relief.

When determining whether a class settlement provides the class with adequate relief, a Court must take into account several factors, including “the costs, risks, and delay of trial and appeal.” Fed. R. Civ. P. 23(e)(2)(C). To determine how the costs, risks, and delay of trial and appeal would impact the relief the class would be entitled to receive absent the settlement, courts often consider the likelihood of the class achieving a favorable result through litigation, the time it would take to achieve such a result, and the certainty that such a result would provide the class with more ample relief than the settlement. *See, e.g., Bacchi*, 2017 WL 5177610, at * 2; *Roberts v. TJX Cos., Inc.*, No. 13-cv-13142-ADB, 2016 WL 8677312, at * 6-7 (D. Mass. Sept. 30, 2016).

The proposed Consent Decree provides class members with immediate, tangible benefits. First, MIT will caption new video or audio content posted to a Covered MIT Webpage on or after 60 days from final Court approval of this Consent Decree and will provide captions for existing video or audio content posted to a Covered MIT Webpage prior to December 1, 2019 upon request within seven business days. Covered MIT Webpages are defined to include both “public webpages with in the MIT.edu domain and corresponding public platforms such as YouTube, Vimeo, and Soundcloud channels operated by MIT.” In addition, as described in

greater detail above, under the proposed Consent Decree, MIT has agreed: (1) to provide industry-standard live captioning for events that are live-streamed by MIT Institute Events and to add captions to any such video or audio content that is later posted to a Covered MIT Webpage and available to the public; (2) to provide appropriate training on captioning audio and video content; and (3) to caption certain content posted between January 1, 2019 and the date 60 days after the effective date, without request, over the course of a one-year period.

By contrast, although Plaintiffs are confident they would have been successful were the underlying litigation adjudicated, the number of novel legal issues it would raise would have required extensive additional briefing and argument, as well as additional discovery, and likely would have been followed by appellate practice. Were the litigation to proceed rather than be resolved at this time, members of the class might be deprived of the substantial reforms to MIT's web content provided by the proposed Consent Decree that will ensure it is fully accessible to people who are deaf and hard of hearing.

(iv) The Proposed Consent Decree Treats Class Members Equitably.

The settlement agreement must also treat class members equitably by providing that the relief available to individual class members "is determined in accordance with objective criteria and...is neither limited nor enhanced by" the relief afforded to other class members. *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 75 (D. Mass. 1999). Here, all terms of the proposed Consent Decree apply equally, without qualification or reservation, to each class member, ensuring that all members of the class benefit in the same manner and to the same extent from the settlement agreement.

C. The Proposed Notice and Notice Plan Satisfy Rule 23(e) and the Requirements of Due Process.

The proposed Consent Decree requires Plaintiffs to move for approval of a Joint Notice Plan. Proposed Consent Decree, Section 13(a)(iii). The Parties have met and conferred and agreed on a proposed notice (“Notice”) (attached as Exhibit 2) and proposed Joint Notice Plan (attached as Exhibit 3).

The proposed Notice is reasonably calculated to apprise class members of the pendency of this action and their rights to object. The Notice sets forth the background of the case, recites the proposed class definition, outlines the main terms of the proposed Consent Decree, explains to class members how to object and the deadline for doing so, and informs class members how they can obtain more information about the proposed Decree. Because Plaintiffs request that this case be certified as a class action pursuant to Rule 23(b)(2), the proposed Consent Decree does not provide for – and the Notice does not include – an opt-out provision. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 363 (2011) (holding that Rule 23(b)(2) “does not require that class members be given notice and opt out rights”), *quoted in LeClair v. Massachusetts Bay Transp. Auth.*, 300 F. Supp. 3d 318, 324 (D. Mass. 2018).

The proposed Joint Notice Plan would rely on electronic information technology to distribute the notice. Crucially, given that the settlement and Notice will be most important to consumers of MIT’s public-facing web content, MIT will post links to the Notice on key webpages for six weeks, by no later than 14 days after the Court grants preliminary approval of the Assented-to Motion filed herewith. In addition, Plaintiffs’ Counsel will create a case website on which they will post the Notice and Consent Decree, and the four nonprofit organizations among Plaintiffs’ Counsel (CREEC, DLC, DREDF, and NAD) will post a link to the case website on their respective websites and distribute it to their mailing lists or listservs. Plaintiffs’

Counsel will make the online Notice available in English and American Sign Language.

Plaintiffs' Counsel will also send a copy of the Notice to relevant nonprofit organizations and agencies whose members or constituents include and/or whose work is relevant to people who are deaf or hard of hearing.

Rule 23(e)(1)(B) requires that the Court “direct notice in a reasonable manner to all class members who would be bound by the proposal” in the event it grants preliminary approval of the settlement and certifies a settlement class. Notice must be “reasonably calculated to reach the absent class members.” *Reppert v. Marvin Lumber & Cedar Co., Inc.*, 359 F.3d 53, 56 (1st Cir. 2004) (internal quotation omitted). As the proposed class is defined to include persons who are deaf or hard of hearing who may claim to be denied access to covered MIT websites, there is no practical way to enumerate the membership of the proposed class. In such circumstances, notice by publication is sufficient to satisfy the due process interests of absent class members. *See, e.g., Sollenbarger v. Mountain States Tel. & Tel. Co.*, 121 F.R.D. 417, 437 (D.N.M. 1988) (holding that notice by publication is appropriate where the task of assembling a list of class members would be “gargantuan”). In other class actions brought under Title III of the ADA – including the companion case against Harvard University pending before this Court – courts have approved notice programs similar to the one proposed here. *See, e.g., Nat’l Ass’n of the Deaf*, 2019 WL 6699449, at *4 (“Online publication of the notice is particularly appropriate here because the class, by definition, consists of individuals who access online content and have at least some familiarity with the Internet”); *Civil Rights Educ. & Enf’t Ctr. v. RLJ Lodging Tr.*, No. 15-CV-0224-YGR, 2016 WL 314400, at *12 (N.D. Cal. Jan. 25, 2016) (holding that, because list of hotel transportation patrons who use wheelchairs cannot be “obtained by

reasonable efforts,” notice by posting and emailing to disability advocacy groups satisfied Rule 23(e)(1)).

For these reasons, Plaintiffs respectfully request that this Court approve the Notice and Joint Notice Plan and hold that this settlement preliminarily satisfies the requirements of Rule 23(e).

V. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court: (1) certify the class for settlement purposes, appointing Lee Nettles, C. Wayne Dore, and Christy Smith as class representatives and Plaintiffs’ Counsel as Class Counsel; (2) preliminarily approve the settlement as set forth in the proposed Consent Decree; (3) approve the Notice and Notice Plan; (4) set a date six weeks after the Court grants preliminary approval as the deadline for submission of any objections to the proposed Consent Decree; and (5) schedule a fairness hearing for four weeks after the deadline for class members to object to the proposed Consent Decree, or such time thereafter as is convenient for the Court.

Respectfully submitted,

/s/ Joseph M. Sellers

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Dated: February 18, 2020

CERTIFICATE OF SERVICE

I, Shaylyn Cochran, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies shall be served by first class mail postage prepaid on all counsel who are not served through the CM/ECF system on February 18, 2020.

/s/ Shaylyn Cochran

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NATIONAL ASSOCIATION OF THE DEAF,
on behalf of its members, C. WAYNE DORE,
CHRISTY SMITH, LEE NETTLES, on behalf
of themselves and a proposed class of similarly
situated persons defined below,

Plaintiffs,

v.

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Defendants.

Civil Action No. 15-30024-KAR

CONSENT DECREE

This action arose out of a complaint seeking injunctive relief filed by Plaintiffs National Association of the Deaf (“NAD”), C. Wayne Dore, Christy Smith, and Lee Nettles (“Plaintiffs”) alleging that Defendant Massachusetts Institute of Technology (“MIT” or “Defendant”) violated Title III of the Americans with Disabilities Act (“ADA”) and section 504 of the Rehabilitation Act of 1973 (“Section 504”) by failing to provide captioning for all online audio and video content on MIT domains and third-party web platforms.

MIT denies these allegations.

Plaintiffs and Defendant (the “Parties”) have determined that there is no further need to litigate this action. With the mutual intent of increasing access to MIT’s online audio and video content for deaf and hard of hearing people, the Parties have jointly agreed to the final disposition of this action in its entirety by Consent Decree, the terms of which are as follows:

1. Jurisdiction and Venue

This Court has jurisdiction over the above-captioned action pursuant to 28 U.S.C. §§ 1331 and 1343. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391 because MIT is located in the District of Massachusetts and because the alleged events, acts, and omissions giving rise to Plaintiffs’ claims occurred in the District of Massachusetts.

EXHIBIT 1

2. Definitions

- a. “Caption” or “Captioning” means:
 - i. in the case of video files, in conformance with WCAG 2.1 AA, to the extent it incorporates the captioning requirements of WCAG 2.0, to overlay or externally embed synchronized visual text for speech and provide non-dialogue audio information needed to understand the program content, including speaker identification, sound effects, and music description, on a digital media file at an accuracy rate equal to that offered by a vendor captioning service such as 3PlayMedia and in a manner consistent with industry standards regarding synchronicity, completeness, and proper placement; and
 - ii. in the case of “audio-only” files or video files for which overlaid or externally embedded captioning is not technically feasible (including Content for which MIT lacks the access required to add captions, or Content that falls within section 4(c)), to prepare and provide a text-only transcript or link to such transcript.
- b. “Class Counsel” means the Civil Rights Education and Enforcement Center (“CREEC”), Cohen Milstein Sellers & Toll PLLC, the Disability Law Center (“DLC”), the Disability Rights Education and Defense Fund (“DREDF”), and the National Association of the Deaf Law and Advocacy Center (“NAD”).
- c. “Content” means audio or video files that are posted online for general public access.
- d. “Covered MIT Webpages” means public webpages within the MIT.edu domain and corresponding public platforms such as YouTube, Vimeo, and Soundcloud channels operated by MIT, with the exception of websites described in Section 4.d. This also includes all MIT Massive Online Open Courses that are posted going forward through MITx and MIT OpenCourseWare (“OCW”).
- e. “Cure Process” means the process described in Section 5.a.i of this Consent Decree.
- f. “MIT Content” means audio or video content that appears on Covered MIT Webpages and:

- i. is created or developed in whole or in part by any faculty or employee of MIT acting within the scope of his or her employment;
 - ii. is created by any MIT Sponsored Student Group (as defined by MIT's Association of Student Activities) acting within the scope of its organizational mission; or
 - iii. is created for one of the webpages listed in Section 4.d and is subsequently reposted to a Covered MIT Webpage by any faculty or employee of MIT acting within the scope of his or her employment.
- g. "Effective Date" means the date on which the Court completes all actions listed in Section 3 of this Consent Decree.
- h. "Lawsuit" means *National Association of the Deaf v. Massachusetts Institute of Technology*, Civil Action No. 15-30024-KAR (D. Mass.).
- i. "Settlement Class" means all persons (other than students of MIT) who, at any time between February 11, 2012, and the date of preliminary approval of this settlement, have claimed or could have claimed to assert a claim under Title III of the ADA, the Rehabilitation Act, and/or other federal, state or local statutes or regulations that set forth standards or obligations coterminous with or equivalent to Title III of the Americans with Disabilities Act and the rules and regulations promulgated thereunder, alleging that they are deaf or hard of hearing and that MIT has failed to make accessible to persons who are deaf or hard of hearing online content posted and available for the general public that is produced, created, hosted, linked to or embedded by MIT.
- j. "Public Request Process" means the process described in Section 5.a.ii of this Consent Decree.

3. Conditions Precedent of this Consent Decree

This Consent Decree is conditioned upon, and will be effective only upon the occurrence of all of the following events:

- a. **Motion for Preliminary Approval.** Plaintiffs move for, and the Court grants, an order approving this Consent Decree and provisional certification of the Settlement Class for settlement purposes only.
- b. **Fairness Hearing.** A Fairness Hearing is held in accordance with Section 13 of this Consent Decree.

- c. **Court Approval.** The Court grants final approval of the Consent Decree, certification of the Settlement Class for settlement purposes only, and entry of judgment in accordance with the terms set forth herein following a Fairness Hearing. The Judgment will resolve finally all issues raised in this proceeding.

4. Agreement to Caption

- a. Subject to Sections 4.b, 4.c, and 4.d, captioning of MIT Content will begin as soon as possible but no later than the following schedule:
 - i. 60 days after the Effective Date, all MIT Content will include Captioning when posted.
 - ii. For content that was posted on or after January 1, 2019, but before 60 days after the Effective Date, MIT shall ensure that such MIT Content is Captioned (or removed from public view) as soon as practicable, but no later than one year from the Effective Date or, for content that is the subject of a Cure Request consistent with Section 5.a.i or a Public Request consistent with Section 5.a.ii, within 7 business days of receiving the Cure Request or Public Request.
 - iii. MIT Content posted before January 1, 2019 will be Captioned (or removed from public view) within 7 business days upon request by an individual member of the public who submits a Public Request consistent with Section 5.a.ii.
- b. NAD commits that the organization, its agents, and attorneys will not engage with, instruct, or encourage any group or individual to submit requests for captioning of content that they are not personally interested in viewing.
- c. MIT shall have no obligation to Caption any MIT Content for which Captioning is not technically feasible. The Captioning is not “technically feasible” if captions cannot be prepared by a third-party captioning vendor using services generally available to commercial customers.
- d. The following webpages and channels will not be considered Covered MIT Webpages:
 - i. Webpages or channels of students on an individual and personal basis;
 - ii. Webpages or channels of fraternities, sororities, and independent living groups;
 - iii. Webpages or channels of residence halls and any sub-groups;
 - iv. Webpages or channels of cultural Houses;

- v. Webpages of MIT student groups that are not MIT Sponsored Student Groups;
 - vi. Webpages or channels of alumni on a personal or group basis except for the MIT Alumni Association;
 - vii. Webpages of religious organizations; and
 - viii. Webpages for classes in which MIT students are enrolled, which are handled separately through the student accommodation process.
- e. Live captioning:
- i. MIT will provide industry-standard live captioning for events that are live-streamed publicly by MIT Institute Events.
 - ii. MIT will give due consideration to requests to provide live captioning on Covered MIT Webpages for publicly live-streamed events that do not fall within Section 4.e.i.
 - iii. If MIT posts live-streamed events or “breaking news” on a Covered MIT Webpage in a form that can be viewed by the public after the event is over, then it will Caption the Content as soon as possible, but no later than 7 business days after its posting.
- f. Beginning as soon as possible but no later than 90 days after the Effective Date, MIT will ensure that there are links to the MIT Accessibility webpage (<https://web.mit.edu/accessibility/> or equivalent) on all Covered MIT Webpages.
- The Accessibility page shall include links to:
- i. the announcement referred to in Section 4.g;
 - ii. an online method by which a member of the public may report a Covered MIT Webpage that does not comply with Section 4.f;
 - iii. an online method by which members of the public may submit Public Requests under Section 5.a.ii. (and may indicate whether the request is for the captioning of live-streamed content, as governed by Section 4.e);
 - iv. If practicable, the same method may be used for items (ii) and (iii) above.
- g. Within 30 days of the Effective Date, MIT will announce its commitment to caption MIT Content in the same manner that it announces other university commitments, policies, and procedures that are of high importance to the Institute.

5. Cure Process and Public Request Process

- a. As soon as practicable, but no later than 90 days after the Effective Date, MIT will establish, implement, and make available to the public processes by which:
 - i. any individual member of the public, including any individual Plaintiff, may inform MIT in writing that MIT Content covered by Sections 4.a.i, 4.a.ii, 4.e.i, or 4.e.iii has not been Captioned or that any Captioning of such MIT Content contains material errors (“Cure Request”).
 - ii. any deaf or hard-of-hearing individual member of the public, including any individual Plaintiff, may request that MIT Caption MIT Content covered by Section 4.a.iii. either in writing or via a form designed by MIT (and shared with Plaintiffs prior to launch) through which users may electronically complete and submit such requests or other accessibility concerns about MIT Content (“Public Request”). MIT shall place a link to the form on the Accessibility page.
- b. MIT will not be liable for violation of this Consent Decree if, within 7 business days of receiving a Cure Request identifying specific MIT Content, MIT either Captions, corrects errors in the Captioning of, or removes from public view the specified MIT Content. MIT will not rely on the Cure Process to circumvent the requirements of Section 4 of this Consent Decree. MIT will not be liable for violation of this Consent Decree if, within 7 business days of receiving a Public Request identifying specific MIT Content, MIT either Captions or removes from public view the specified MIT Content. In response to either a Cure Request or a Public Request, MIT will engage in a good-faith effort to Caption the MIT Content before removing it.

If a member of the public reports that a Covered MIT Webpage is non-compliant with Section 4.f of this Agreement, MIT will not be liable for a violation of this Consent Decree if, within 20 business days of receiving a request pursuant to Section 4.f.ii, MIT brings the Covered MIT Webpage into compliance with the requirements of Section 4.f or removes the Covered MIT Webpage from public access.

- c. MIT will maintain records of all requests it receives as part of either the Cure Process or the Public Request Process, and will document the steps it takes to respond to those requests, including the MIT Content and the Covered MIT Webpages at issue, the steps taken to resolve requests made as part of the Cure Process, and the dates on which the request was received, Captioning or other measures were taken, and a response was provided to the individual making the request.
- d. If MIT has reason to believe that a Cure Request or Public Request has been made in bad faith, MIT shall first meet and confer with Plaintiffs’ Counsel as soon as

possible. If the Parties cannot informally resolve the disputed Request, the Parties shall present the dispute in accordance with Section 9.a.iv below. If the Parties are unable to reach a resolution in that manner, MIT may seek relief in accordance with Section 9.b below.

6. Denial of Liability

MIT has denied and continues to deny any liability to the named Plaintiffs, the Settlement Class, or Class Counsel. MIT has denied and continues to deny that it violated any laws relating to persons with disabilities or otherwise through posting or making available any online Content. Neither this Consent Decree, nor any actions taken by MIT in satisfaction of this Consent Decree, constitutes, or may be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any allegations of fact or law made by Plaintiffs in this action, or in any other action or proceeding. This Consent Decree, any statements, discussions, or negotiations made in connection with this Consent Decree, and any actions taken by MIT pursuant to this Consent Decree, may not be offered or be admissible as evidence or in any other fashion against MIT in any action or proceeding for any purpose, except in any action or proceeding brought to enforce the terms of this Consent Decree.

7. Release

- a. Effective on the date of Final Approval of this Consent Decree, Plaintiffs, individually and on behalf of all members of the Settlement Class, and their executors, successors, heirs, assigns, agents and representatives, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, unconditionally and forever do, to the fullest extent permitted by law, fully and finally release, acquit and discharge MIT, its affiliates and their present, former or future directors, officers, corporation members, managers, supervisors, faculty, employees, attorneys, insurers, agents, and representatives (the "Releasees") from any and all actions, causes of action, claims, charges, demands, losses, judgments, liens, indebtedness and liabilities for injunctive relief, declaratory relief, and any attendant costs and attorneys' fees (except those provided in Section 10 hereof), whether known or unknown, suspected or unsuspected, based upon Title III of the ADA, the Rehabilitation Act of 1973, and/or other federal, state, or local laws or regulations regarding accessibility, for the lack of captioning or accurate captioning of online audio or video content for the general public that is produced, created, hosted, linked to, or embedded by the Releasees, that were asserted or could have been asserted in this action.
- b. Plaintiffs hereby expressly and knowingly waive and relinquish any and all rights that they have or might have relating to the Released Claims under California Civil Code § 1542 (and under any and all other statutes or common law principles of similar effect), which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

By signing this Agreement, Plaintiffs acknowledge the following: (i) they are represented by counsel of their own choosing; (ii) they have read and fully understand the provisions of California Civil Code § 1542; and (iii) they have been specifically advised by counsel of the consequences of the above waiver and this Agreement generally.
- c. In addition, for the Term of this Consent Decree, Plaintiffs agree not to assert, and further agree not to aid or assist anyone else in asserting, any claim against MIT or the Releasees concerning the provision of Captioning of MIT Content, unless, and only to the extent that, NAD notifies MIT of an alleged breach of the Consent Decree and the Parties are unable to resolve the issue after engaging in the Dispute Resolution Process under Section 9.

8. Term

The term (“Term”) of this Consent Decree is three years and six months from the Effective Date. During that Term, this Court shall retain jurisdiction over this action for the purpose of ensuring compliance and enforcing the provisions of this Consent Decree. After the term of this Consent Decree has elapsed, this Consent Decree will automatically expire by its own terms except as expressly provided.

9. Dispute Resolution Process

a. Informal Dispute Resolution

- i. If either Party or a member of the Settlement Class believes that a dispute exists relating to the performance or interpretation of this Consent Decree, it shall notify the other Party in writing, describing the dispute and clearly identifying that they are invoking the dispute resolution process.
- ii. The other Party shall respond in writing to such notice within 10 business days of receipt of the notice.
- iii. Within 10 business days of receipt of the response described in the previous paragraph, counsel for both Parties shall meet and confer by telephone or in person and attempt to resolve the issue informally.
- iv. The Parties will engage in good faith discussions to resolve the dispute. If, after 60 days from the initial written notification, the Parties are not successful in their efforts to resolve the dispute, they will engage in a telephonic conference with the Hon. Judith A. Dein, United States Magistrate Judge, or another mediator mutually agreeable to the Parties, for no longer than two hours in an effort to resolve the dispute.

b. Resolution by the Court

- i. If, after completing the steps in Section 9.a, either Party believes that a dispute still exists relating to the performance or interpretation of this Consent Decree, either Party may seek further relief from the Court. Should any matter proceed to Court under this Section, attorneys’ fees and costs shall be awarded in accordance with 42 U.S.C. § 12205, including the fee-shifting standards in *Christiansburg Garment Co. v. Equal Employment Opportunity Comm’n*, 434 U.S. 412, 422 (1978).
- c. To the extent that any dispute related to this Consent Decree involves the Captioning of any particular content, the Parties will engage in and complete the Cure Process set forth in this Consent Decree prior to engaging in the Dispute Resolution Process set forth here.

10. Attorneys' Fees and Costs

The Parties agree that as part of this Consent Decree, and subject to approval by the Court, MIT shall not oppose Class Counsel's motion for reasonable attorneys' fees and costs in an amount not to exceed \$1,050,000 for work performed through Final Approval. The Court's reduction, if any, of the attorneys' fees and costs agreed upon by the Parties shall not be cause to rescind this Consent Decree. Class Counsel shall accept and shall not appeal the amount awarded by the Court in the Final Judgment and Order Granting Final Approval of this Consent Decree.

11. Enforcement

- a. The Court may grant declaratory and all other relief necessary to enforce this Consent Decree pursuant to 28 U.S.C. §§ 2201 and 2202.
- b. Failure by any Party to seek enforcement of this Consent Decree pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.
- c. The Parties to this action, including but not limited to members of the Settlement Class, and no one else shall have standing to seek enforcement of this Consent Decree.

12. Modification.

Any Party that wishes to propose changes to this Consent Decree after the Effective Date shall meet and confer with the other Parties before filing a motion with the Court.

13. Judgment, Final Approval, Dismissal

- a. **Initial Motions.** Within 10 days after execution of this Consent Decree, Plaintiffs will move for an Order seeking:
 - i. preliminary approval of this Consent Decree;
 - ii. certification of the Settlement Class for settlement purposes only;
 - iii. approval of a joint notice plan and establishment of a deadline to post the Class Notice as ordered ("Class Notice Deadline");
 - iv. approval of procedures and a deadline for objections; and
 - v. a date for the Final Fairness Hearing.
- b. **Consultation.** Plaintiffs shall provide MIT with a draft of the motion not less than 5 days before filing.

- c. **Motion for Attorneys' Fees and Costs.** No later than 15 days prior to the Objection Deadline, Class Counsel shall file a motion requesting an award of reasonable attorneys' fees and costs as provided in Section 10.
- d. **Judgment, Final Approval, and Dismissal.** At the Fairness Hearing, Plaintiffs will request that the Court enter a Final Judgment and Order Granting Final Approval of this Consent Decree and certifying the Settlement Class for settlement purposes only. This action shall be dismissed with prejudice, under Federal Rule of Civil Procedure 41, within 30 days after expiration of the Term of this Consent Decree as provided in Section 8 above.

14. Training and Reporting

- a. MIT shall provide training on captioning audio and video content as necessary and appropriate to support its good-faith efforts to comply in full with this Consent Decree.
- b. In addition to the announcement required by section 4.g, MIT will encourage its students, faculty, and employees to (1) caption all videos they create at the time they are produced; (2) caption all videos they post on third-party platforms; and (3) post content only on accessible third-party platforms.
- c. Throughout the Term of this Consent Decree, MIT shall submit confidential written reports to NAD, as follows:
 - i. On June 1, 2020: A report containing a description of the steps taken to comply with the provision of Captions pursuant to the Consent Decree, including but not limited to a description of training provided consistent with Section 14.a; and
 - ii. Every 6 months beginning June 1, 2020, a report including the following information, for the six-month period preceding the report:
 - 1. The number of requests for Captioning received through the Public Request Process;
 - 2. The number of minutes of video and audio content Captioned through the Public Request Process; and
 - 3. A summary report of the information required to be maintained by Section 5.c. The summary report shall not include any personally identifiable information about a requester, including, without limitation, the name of the requester.

15. Publicity

The Parties agree that they may speak with the media about the settlement of this action. The Parties and their respective counsel may report on websites and other public communications as to why they believe the terms of the settlement are fair and reasonable and in the best interests of the parties. Public communications by the Parties will recognize the cooperation of MIT in this settlement and will not make any misrepresentations of facts. The Plaintiffs and Class Counsel may make any disclosures necessary to seek Court approval of the settlement and to communicate with members of the Settlement Class.

16. Deadlines

The Parties recognize that unforeseen events, such as exigent business circumstances, high volume requests, labor disputes, natural disasters, personnel issues, and negotiations with third parties, may cause unavoidable delays. Accordingly, with regard to the provisions of this Agreement that require that certain acts be taken within specified periods, the Parties understand and agree that Court approval shall not be required for reasonable extensions of deadlines, pursuant to the Parties' agreement. In the event that any Party determines that an action required by this Agreement cannot be taken within the specified time period, that Party shall promptly notify the other Parties that it anticipates a delay, the reasons for the delay and a proposed alternative deadline. The Parties shall endeavor to cooperate in reasonably rescheduling such deadlines. However, if the other Party does not agree to the proposed delay, the Parties shall submit the matter to Dispute Resolution.

17. Miscellaneous

a. Binding Effect

This Consent Decree is final and binding on the Parties and the Settlement Class, including their principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, and assigns.

b. Integration

This Consent Decree embodies in full the terms of the agreement and understanding between the Parties related to the subject matter of this action or this Consent Decree.

c. Notices

Notices under this Consent Decree shall be effective when physically delivered by certified mail, overnight mail, or some other method of providing evidence of actual delivery, to the addresses set forth in this Consent Decree, which may be updated by the Parties from time to time without formal amendment of this Consent Decree by written notice to all Parties and the Court. Notice shall also be provided by attachment to email to outside counsel, but the notice shall not be effective until physically delivered.

If to MIT:

Mark C. DiVincenzo
Vice President and General Counsel
Office of the General Counsel
Massachusetts Institute of Technology
77 Massachusetts Avenue, 7-206
Cambridge, MA 02139-4307

Roberto M. Braceras
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210
Tel.: 617.570.1000
Fax: 617.523.1231
rbraceras@goodwinlaw.com

If to Plaintiffs:

Thomas P. Murphy
DISABILITY LAW CENTER, INC.
32 Industrial Drive East
Northampton, MA 01060
Telephone and fax: (413) 584-6524
tmurphy@dlc-ma.org

Howard Rosenblum
THE NATIONAL ASSOCIATION OF THE DEAF
LAW AND ADVOCACY CENTER
8630 Fenton Street, Suite 820
Silver Spring, MD 20910
Telephone: 301.587.1788
howard.rosenblum@nad.org

d. Severability.

If any provision or any part of this Consent Decree shall at any time be held unlawful, or inconsistent with applicable law, in whole or in part, then this Court shall have the power to modify such provision so that it will be valid, enforceable, and as close to the intent of the language of the provision as is permitted by law, and that whether or not the Court modifies such provision, the remaining provisions of this Consent Decree shall remain effective and enforceable.

e. Execution In Counterparts.

This Consent Decree may be signed in counterpart and shall be binding and effective immediately upon the execution by all Parties of one or more counterparts.

f. Duty to Support and Defend Consent Decree.

Plaintiffs and MIT, by their signatures below, each agree to abide by all of the terms of this Consent Decree in good faith and to support it fully, and shall use their best efforts to defend this Consent Decree from any legal challenge, whether by appeal or collateral attack. Nothing in this Consent Decree shall either require MIT to remove or prevent MIT from removing any Content from public view on any of its websites or web platforms.

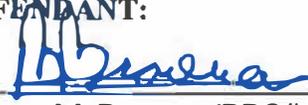
g. Entire Agreement.

This Consent Decree contains all the agreements, conditions, promises and covenants among Plaintiffs, the Settlement Class, and MIT regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of the present Consent Decree.

ACCEPTED AND AGREED:

Dated: February 6, 2020

DEFENDANT:

By: 

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PLAINTIFFS:

By: 

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Shaylyn Cochran (*pro hac vice*)
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Arlene B. Mayerson (*pro hac vice*)
Carly A. Myers (*pro hac vice*)

DISABILITY RIGHTS EDUCATION AND
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Caitlin Parton (BBO# 690970)
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Amy Farr Robertson (*pro hac vice*)
Timothy P. Fox (*pro hac vice*)
CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER
104 Broadway, Suite 400
Denver, CO 80203
Tel.: 303.757.7901
arobertson@creeclaw.org

Howard A. Rosenblum
National Association of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, MD 20910
howard.rosenblum@nad.org

SO ORDERED and DECREED.

BY THE COURT:

KATHERINE A. ROBERTSON
United States Magistrate Judge

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

**ATTENTION: ALL PEOPLE WHO ARE DEAF OR HARD OF HEARING WHO WANT
CAPTIONING OF MIT'S ONLINE CONTENT**

If you are deaf or hard of hearing and have tried to access or would like to access online video content of the Massachusetts Institute of Technology ("MIT") with captions or to access MIT's online audio content with a transcript, you may be a member of the proposed Settlement Class affected by this lawsuit. The Settlement Class in this case does not include students of MIT. This is a court-authorized notice.

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY
BE AFFECTED BY LEGAL PROCEEDINGS IN THIS CASE.**

NOTICE OF CLASS ACTION

The purpose of this notice is to inform you of a proposed settlement in a pending class action lawsuit brought by the National Association of the Deaf ("NAD") and three Deaf plaintiffs on behalf of deaf and hard of hearing individuals against MIT. The case is titled *National Association of the Deaf v. Massachusetts Institute of Technology*, No. 3:15-cv-30024-KAR, and is pending in the United States District Court for the District of Massachusetts. The proposed class action settlement ("Settlement") is set forth in a proposed Consent Decree, which must be approved by the United States District Court.

BACKGROUND

This lawsuit alleges that MIT violated the Americans with Disabilities Act and the Rehabilitation Act by failing to provide captioning for its publicly available online content. Plaintiffs and other deaf and hard of hearing individuals alleged that they attempted to access MIT's publicly available online content but were unable to do so because it did not have captions or had inaccurate captions.

This is a class action. In a class action, one or more people or organizations, called Class Representatives (in this case the National Association of the Deaf, C. Wayne Dore, Christy Smith, and Lee Nettles ("Plaintiffs")), sue on behalf of people who have similar legal claims. All of these people are a Class or Class Members. One court resolves the issues for all Class Members. United States Magistrate Judge Katherine A. Robertson is in charge of this class action.

The Court did not decide in favor of either Plaintiffs or MIT in this case. Instead, both sides agreed to a settlement. That way, they avoid the cost, delay, and uncertainty of a trial. The settlement provides benefits that go to the Class Members. The Class Representatives and Class Counsel (the attorneys appointed by the Court to represent the Class) think the proposed settlement is in the best interests of the Class Members, taking into account the benefits of the settlement, the risks of continued litigation, and the delay in obtaining relief for the Class if the litigation continues.

THE SETTLEMENT CLASS

The Settlement Class includes all persons (other than students of MIT) who, at any time between February 11, 2012 and the date of preliminary approval of this settlement, have claimed or could have claimed to assert a right under Title III of the ADA, Section 504 of the Rehabilitation Act, and/or other

EXHIBIT 2

federal, state or local statutes or regulations that set forth standards or obligations coterminous with or equivalent to Title III of the Americans with Disabilities Act or any of the rules or regulations promulgated thereunder, alleging that they are deaf or hard of hearing and that MIT has failed to make accessible to persons who are deaf or hard of hearing online content posted and available for the general public that is produced, created, hosted, linked to, or embedded by MIT.

SUMMARY OF THE PROPOSED SETTLEMENT

The following is a summary of certain provisions of the Settlement. The complete Settlement, set forth in the proposed Consent Decree, is available as set forth below.

The Settlement requires MIT to caption content on Covered MIT Webpages as follows:

- Content posted by faculty or employees acting within the scope of their employment, or any MIT Sponsored Student Group (as defined by the Association of Student Activities), on or after the date 60 days after the Effective Date will include captioning when posted.
- Content posted by faculty or employees acting within the scope of their employment, or any MIT Sponsored Student Group (as defined by the Association of Student Activities), prior to January 1, 2019 will be captioned upon request within seven business days.
- Content posted by faculty or employees acting within in the scope of their employment, or any MIT Sponsored Student Group (as defined by the Association of Student Activities), after January 1, 2019 but before the date 60 days after the Effective Date will be captioned as soon as practicable but no later than one year from the Effective Date, or upon request within seven days.

“Covered MIT Webpages” means public webpages within the MIT.edu domain and corresponding public platforms such as YouTube, Vimeo, and Soundcloud channels operated by MIT, with the exception of certain specific student, alumni, and organization pages.

MIT will also provide live captioning for certain university-wide events for which live streaming is made publicly available.

The settlement also requires MIT to report to NAD on its compliance with these terms and establishes a process by which members of the public can request that content be captioned.

RELEASE OF CLAIMS

The Settlement resolves and releases all claims for injunctive, declaratory, or other non-monetary relief and attorneys’ fees and costs that were brought or could have been brought against MIT relating to the lack of captioning or accurate captioning of free online audio or video content for the general public that is produced, created, hosted, linked to, or embedded by MIT.

REASONABLE ATTORNEYS’ FEES, COSTS AND EXPENSES

The settlement class is represented by the Civil Rights Education and Enforcement Center, the Disability Law Center, the Disability Rights Education and Defense Fund, the National Association of the Deaf, and the law firm of Cohen Milstein Sellers & Toll PLLC (“Class Counsel”). MIT has agreed not to oppose Class Counsel’s request for an award of their reasonable attorneys’ fees, expenses,

and costs in the amount of \$1,050,000. This amount is subject to the approval by the Court.

FAIRNESS OF SETTLEMENT

The Class Representatives and Class Counsel have concluded that the terms and conditions of the proposed Settlement are fair, reasonable, adequate, and in the best interests of the Settlement Class. In reaching this conclusion, the Class Representatives and Class Counsel have considered the benefits of the settlement, the possible outcomes of continued litigation of these issues, the expense and length of continued litigation, and actual and possible appeals.

THE COURT'S FINAL APPROVAL/FAIRNESS HEARING

The Court has preliminarily approved the Settlement, and has scheduled a hearing for [REDACTED] at [REDACTED] in the Hampshire Courtroom, 300 State Street, Springfield, Massachusetts 01105 to decide whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved. Although you are not required to attend, as a Settlement Class Member, you have the right to attend and be heard at this hearing, as specified in the next section below. At the hearing, the Court will consider any objections to the Settlement. Judge Robertson will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. The Court will also consider the agreed upon amount to award Class Counsel as reasonable attorneys' fees, costs and litigation expenses. We do not know how long this decision will take.

If the Court approves the Settlement, all Class members will be bound by the provisions of the Settlement with respect to claims against MIT for injunctive relief and attorneys' fees and relating to captioning of online content.

OBJECTIONS TO THE SETTLEMENT

If you wish to object to the Settlement or to speak at the hearing, you must send any objection and/or notice of your intent to appear at the hearing to the Court in writing on or before [REDACTED], and include the case number (Civil Action No. 3:15-cv-30024), to the following address: Clerk of the Court, US Courthouse, 300 State Street, Springfield, Massachusetts 01105.

You may also object by filling out this form: <https://public.mad.uscourts.gov/FairnessHearing.html>

Please note that the Court can only approve or deny the Settlement. The Court cannot change the Settlement's terms.

All objections must be submitted or postmarked on or before [REDACTED].

Any Class Member who does not object at or before the Final Approval Hearing will be deemed to have approved the Settlement and to have waived such objections and shall not be able to make any objections (by appeal or otherwise) to the Settlement.

**IF YOU DO NOT OPPOSE THIS SETTLEMENT, YOU NEED NOT
APPEAR OR FILE ANYTHING IN WRITING.**

FURTHER INFORMATION

The terms of the Settlement are only summarized in this notice. For the precise and full terms and conditions of the Settlement, please see the proposed Consent Decree available at www.MITcaptioningsettlement.com/consentdecree, by accessing the Court docket on this case through the Court's Public Access to Electronic Records (PACER) system at <https://www.pacer.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Massachusetts, 300 State Street, Springfield, Massachusetts 01105, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

You can also obtain more detailed information about the Settlement or a copy of the Settlement Agreement by calling 240-468-7109 (videophone) or 800-308-1878 (voice), by emailing MITsettlement@creeclaw.org, or by contacting Class Counsel by mail at any of the following addresses:

Thomas P. Murphy Disability Law Center, Inc. 32 Industrial Drive East Northampton, MA 01060	Amy F. Robertson Civil Rights Education and Enforcement Center 1245 E. Colfax Ave., Suite 400 Denver, CO 80218
Joseph M. Sellers Shaylyn Cochran Cohen Milstein Sellers & Toll PLLC 1100 New York Ave NW, Fifth Floor Washington DC 20005	Arlene Mayerson Carly Myers Disability Rights Education And Defense Fund, Inc. 3075 Adeline Street Suite 210 Berkeley, CA 94703
Howard Rosenblum The National Association of The Deaf Law and Advocacy Center 8630 Fenton Street, Suite 820 Silver Spring, MD 20910	

Please do not direct questions to the District Court. To obtain copies of this Notice or the Consent Decree in alternative accessible formats, please contact Class Counsel listed above.

National Association of the Deaf v. Massachusetts Institute of Technology

Notice Plan

1. Class Counsel will create a website that provides a full copy of the Notice in English and American Sign Language (“Notice Page”).
2. The Civil Rights Education and Enforcement Center (CREEC), the Disability Law Center (DLC), the Disability Rights Education and Defense Fund (DREDF), and the National Association of the Deaf (NAD) will post a link to the Notice Page on the front page of their respective websites; the linked text will read, “Notice of Settlement of Class Action Relating to Captioning of MIT’s Public Web Content.”
3. CREEC, DLC, DREDF, and NAD will email an accessible copy of the Notice to their listservs and/or members.
4. Class Counsel will email an accessible copy of the Notice to the following organizations with a request that it be posted or linked to on the organization’s website.
 - a. State-level organizations of and for deaf and hard of hearing people around the country;
 - b. Protection and Advocacy Organizations around the country;
 - c. Independent Living Centers around the country; and
 - d. Other major disability rights organizations.
5. For a period of six weeks, and no later than 14 days after the Court grants preliminary approval of Plaintiffs’ Assented-to Motion to Certify the Class for Settlement Purposes and for Preliminary Approval of Class Action Settlement, MIT will post a link to an accessible copy of the Notice within the first screen area on the following pages, the linked text will read, “Notice of Settlement of Class Action Relating to Captioning of Public Web Content.”
 - a. <http://www.mit.edu/>
 - b. <http://news.mit.edu/>
 - c. <https://web.mit.edu/accessibility/>
 - d. <https://ist.mit.edu/about/it-policies>

EXHIBIT 3