

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.

HARVARD UNIVERSITY, and PRESIDENT
AND FELLOWS OF HARVARD COLLEGE,

Defendants.

Civil Action No. 15-30023-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 Defendants Harvard University and President and Fellows of Harvard College (collectively, “Harvard”) 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. Harvard 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 Harvard 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 Harvard violated two longstanding civil rights statutes, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2012) (“Rehabilitation Act”), and Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12181 *et seq.* (2012 & Supp. 2014) (“Title III”).

2. Harvard filed a motion to dismiss the action, which the Court denied in its entirety in an order by Magistrate Judge Robertson that was adopted, following Harvard’s objections, by Judge Mastroianni. *Nat’l Ass’n of the Deaf v. Harvard Univ.* (“*Harvard Univ.*”), 2016 U.S. Dist. LEXIS 120121, at *34 (D. Mass. Feb. 9, 2016)
3. In July 2018, Harvard filed a motion for judgment on the pleadings pursuant to F.R.C.P. 12(c). On March 28, 2019, Judge Robertson issued an order rejecting Harvard’s arguments that: 1) “Plaintiffs’ ADA claim is inadequately pled because Harvard’s websites are not themselves ‘places of public accommodation,’ [under Title III] 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 dismissed claims seeking captioning of content originating exclusively by third parties unaffiliated with Harvard, based on the immunity provisions in the Communications Decency Act of 1996, 47 U.S.C. § 230 (“CDA”) but ruled that it could not determine at that stage of the case, as a matter of law, whether Harvard should be considered a content provider “as to information on its platforms that originates with students, faculty members, or other scholars.” *See NAD et al. v. Harvard Univ.*, 377 F. Supp. 3d 49, 61-63 (D. Mass. 2019).

4. On November 8, 2019, 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 Harvard University) who, at any time between February 11, 2013 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 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 Harvard 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 Harvard.

5. Under the terms of the proposed Consent Decree,¹ Harvard agrees:
- to continue its commitment, initially announced through its Digital Accessibility Policy (“Policy”) adopted during the pendency of this litigation, to caption new video or audio content created and produced at Harvard and, on or after December 1, 2019, posted on a University Website (as that term is defined in the Policy);
 - to continue its commitment, also announced through the Policy, to provide captions for existing video or audio content, created and produced at Harvard and posted on a University Website prior to December 1, 2019, upon request within five business days;
 - to caption new video or audio content of Department Sponsored Student Organizations posted to websites within a Harvard-controlled domain, MOOCs and new video or audio content on the official channel hosted by third-party platforms YouTube, Vimeo and SoundCloud for all of Harvard’s Schools, as well as the museums, libraries and other units listed in the appendix to the proposed Consent Decree;
 - to provide industry-standard live captioning for University-wide events that are live-streamed online and to add captions consistent with the standards set forth in the Consent Decree to any such video or audio content that is later posted to a University Website;

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

- to provide appropriate training to the Harvard Community on captioning 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 Harvard's public-facing web content, Harvard will post links to the Notice on key 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.

Dated: November 27, 2019

Respectfully submitted,

PLAINTIFFS:

By: /s/ Joseph M. Sellers
Joseph M. Sellers (*pro hac vice*)
Shaylyn Cochran (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL
PLLC
1100 New York Ave NW, Fifth Floor
Washington DC 20005
Tel.: 202.408.4600
jsellers@cohenmilstein.com
scochran@cohenmilstein.com

Thomas P. Murphy (BBO# 630527)
DISABILITY LAW CENTER, INC.
32 Industrial Drive East
Northampton, MA 01060
Tel.: 413.584.6337
tmurphy@dlc-ma.org

Tatum A. Pritchard, BBO No. 664502
DISABILITY LAW CENTER, INC.
11 Beacon Street, Suite 925
Boston, MA 02108
Tel.: 617.723.8455
tpritchard@dlc-ma.org

Caitlin Parton (BBO# 690970)
DISABILITY LAW CENTER, INC.
11 Beacon Street, Suite 925
Boston MA 02108
Tel.: 617.723.8455
cparton@dlc-ma.org

Amy Farr Robertson (*pro hac vice*)
CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER
104 Broadway, Suite 400
Denver, CO 80203
Tel.: 303.757.7901
arobertson@creeclaw.org

Arlene Mayerson (*pro hac vice*)
Namita Gupta (*pro hac vice*)

DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND, INC.
3075 Adeline Street Suite 210
Berkeley, CA 94703
Tel: 510.644.2555
amayerson@dredf.org
ngupta@dredf.org

Howard Rosenblum (*pro hac vice*)
NATIONAL ASSOCIATION OF THE
DEAF
8630 Fenton Street, Suite 820
Silver Spring, MD 20910
howard.rosenblum@nad.org

Attorneys for Plaintiffs

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 November 27, 2019.

/s/ Shaylyn Cochran

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THE ASSENTED-TO MOTION TO
CERTIFY THE CLASS FOR SETTLEMENT PURPOSES AND FOR PRELIMINARY
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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 Harvard University and President and Fellows of Harvard College (collectively, “Harvard” or “Defendants”). 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 Harvard 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 Harvard violated two longstanding civil rights statutes, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2012) (“Rehabilitation Act”) and

Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12181 *et seq.* (2012 & Supp. 2014) (“Title III”). The Rehabilitation Act is applicable because Harvard receives hundreds of millions of dollars each year in federal money. Harvard falls under Title III because, as a university, it is a public accommodation. Both the Rehabilitation Act and Title III ensure that colleges and universities provide people with disabilities equal access to their programs and activities.

Harvard 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 Harvard’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. *Nat’l Ass’n of the Deaf v. Harvard Univ.* (“*Harvard Univ.*”), 2016 U.S. Dist. LEXIS 120121, at *34 (D. Mass. Feb. 9, 2016). On November 3, 2016, the Honorable Mark G. Mastroianni adopted the report and recommendation. *Harvard Univ.*, 2016 U.S. Dist. LEXIS 152667, at *1 (D. Mass. Nov. 2, 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 February 2018. Plaintiffs and Harvard then engaged in discovery. In all, Plaintiffs deposed four Harvard staff working in technology or administration, two of whom were designated by Harvard as corporate witnesses pursuant to Rule 30(b)(6). Additionally, Harvard produced comprehensive electronic policies, procedures, processes, webpages, and additional information that Plaintiffs’ Counsel

reviewed and analyzed. Likewise, Plaintiffs made significant document productions in response to Harvard's discovery.

In June 2018, Harvard filed a motion for a judgment on the pleadings under Fed. R. Civ. P. 12(c). This Court rejected Harvard's arguments that: 1) "Plaintiffs' ADA claim is inadequately pled because Harvard's websites are not themselves '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 dismissed claims seeking captioning of content originating exclusively by third parties unaffiliated with Harvard, based on the immunity provisions in the Communications Decency Act of 1996, 47 U.S.C. § 230. *NAD et al. 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 Harvard. 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, the generally accepted standard for web

content accessibility. *See* Ex. 1 at Section III(A). WCAG 2.1 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, consistent with WCAG 2.1 AA, 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 Harvard to prepare and provide a text-only transcript of the audio content. *Id.*

The proposed Consent Decree defines “University Website” broadly, encompassing any public-facing website within a Harvard-controlled domain used to conduct University Business by Harvard faculty and staff. “University Business” is defined as all activities carried out under the auspices of Harvard University, except for activities organized or conducted by student or student organizations. *Id.*

B. Content Covered by the Proposed Consent Decree

During the pendency of this litigation, on April 30, 2019, Harvard adopted a university-wide Digital Accessibility Policy (“the Policy”), which has an implementation date of December 1, 2019 and includes detailed Implementation Procedures (“the Procedures”). The Policy, as interpreted by the Procedures, among other things, requires captioning consistent with WCAG 2.1 AA for any new digital content created and produced at Harvard and, on or after December 1, 2019, posted on a University Website. The proposed Consent Decree requires captioning of both content covered by the Policy and content beyond that covered by the Policy, and sets forth additional obligations of the Parties, as follows. *See* Ex. 1 at Sections III(B) and (C).

(i) *Content Covered by the Policy*

The Policy requires captioning for new video or audio content created and produced at Harvard and, on or after December 1, 2019, posted on a University Website. For existing content created and produced at Harvard and posted on a University Website prior to December 1, 2019,

the Policy provides that captions will be provided, within five business days, upon request by an individual unable to access the content. The proposed Consent Decree incorporates these requirements. *See* Ex. 1 at Section III(B).

(ii) *Content Beyond That Covered by the Policy*

The proposed Consent Decree requires the captioning of certain content that falls outside of the parameters of the Policy, including new content created and produced at Harvard by Department Sponsored Student Organizations and posted on a website within a Harvard-controlled domain, MOOCs, and new content created and produced at Harvard and posted on/after December 1, 2019 on the official channel hosted by third-party platforms YouTube, Vimeo and SoundCloud for all of Harvard's schools, as well as the museums, libraries, and other units listed in Appendix A of the proposed Consent Decree. *See* Ex. 1 at Section III(C).

In addition, certain "Legacy Content," meaning content created and produced at Harvard and posted between January 1, 2019 and December 1, 2019 on a University Website or on the official channel hosted by third-party platforms YouTube, Vimeo and SoundCloud for the entities listed in Appendix A to the proposed Consent Decree, will be captioned as soon as practicable but no later than two years after November 8, 2019 or within five business days, upon request by an individual unable to access the content. Finally, content created and produced at Harvard and posted at any time prior to December 1, 2019 on the official channel hosted by third-party platforms YouTube, Vimeo and SoundCloud for the entities listed in Appendix A to the proposed Consent Decree will be captioned within five business days, upon request by an individual unable to access the content.

(iii) *Additional Obligations of the Parties*

In addition to the captioning obligations described above, the proposed Consent Decree requires Harvard to provide industry-standard live captioning for University-wide events that are

live-streamed online, and to add captions consistent with the standards set forth in the proposed Consent Decree to any such video or audio content that is later posted to a University Website. Harvard will also consider requests for live captioning of other live-streamed events of high interest. *See* Ex. 1 at Section IV.

Per the proposed Consent Decree, Harvard shall not amend the Policy or Implementing Procedures to provide for less captioning than any prior versions of the Policy or Procedures, and will strongly urge all members of the Harvard Community, including students, 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. Harvard must also implement a Public Request Process, with links to the Process on University Websites, to manage requests for captioning that are made pursuant to the previously-described terms of the proposed Consent Decree. Finally, 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 accessing. *Id.*

C. Cure Process

The proposed Consent Decree sets forth a Cure Process for uncaptioned or inaccurately captioned content and for missing links on University Websites to the Policy or the Request Process. Harvard will implement a process whereby any member of the public, including any Plaintiff, may inform the University of any of the above deficiencies. Harvard will not be liable for a violation of the proposed Consent Decree if it resolves the issue within 10 business days. Harvard commits not to use this process to circumvent the requirements of the proposed Consent Decree. *See* Ex. 1 at Section VI.

D. Training

The proposed Consent Decree requires Harvard to provide appropriate training to the Harvard Community on captioning audio and video content appropriate to support a good faith

effort to comply with the proposed Consent Decree, the Policy and the Implementing Procedures. *See* Ex. 1 at Section VII.

E. Reporting

The proposed Consent Decree requires periodic reporting by Harvard to NAD, with the first report due on June 1, 2020. *See* Ex. 1 at Section V(B). The report is required to contain a description of the steps taken by Harvard to comply with the terms of the proposed Consent Decree and a description of captioning training provided to the Harvard Community, as well as information regarding any changes or additions to the Policy and/or Implementing Procedures. *Id.*

Every six months beginning June 1, 2020, the proposed Consent Decree requires Harvard to submit a report describing any changes to the Policy or Procedures; the number of requests for captioning received and information concerning requests that were not fulfilled, if any; the number of minutes of content captioned as a result of requests received; and records maintained (without personally identifying information) regarding the Request Process and the Cure Process, including requests received and steps taken in response to such requests. *Id.* at Section V(C).

F. 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. Ex. 1 at Section XII. Before approaching the Court to assert a violation, the parties will engage in Dispute Resolution (after invoking the Cure Process, if applicable). *Id.* at Section XII(A). First, the Parties will meet and confer in good faith and, if unable to resolve the dispute, 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.* at Section XII(B).

G. Attorneys' Fees and Costs

The proposed Consent Decree obliges Harvard not to oppose Plaintiffs' Counsel's motion for attorneys' fees and costs, to be filed with the Court no later than 15 days prior to the Objection Deadline, in the amount of \$1,575,000. Ex. 1 at Sections XI, XIII(B). 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. *See* Fed. R. Civ. P. 23(e).

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.

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 Harvard University) who, at any time between February 11, 2013 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 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 Harvard 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 Harvard

See Exhibit 1, Proposed Consent Decree, at Section III(A)(vii). 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, 2009 WL 10703302, at *2 (D. Mass. Mar. 30, 2009). The online content at issue in this litigation is publicly-available on Harvard's domain and/or Harvard'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 Harvard's online material. As yet another illustration of Plaintiffs' satisfaction of this requirement, and as established during discovery, Plaintiff NAD is aware of dozens of its members who have sought access to Harvard'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 Harvard has failed to caption audio and video content on its domains and third-party web platforms, allegedly in violation of

¹ See, e.g., https://www.hearingloss.org/wp-content/uploads/HLAA_HearingLoss_Facts_Statistics.pdf?pdf=FactStats.

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).

Third, typicality is satisfied as well. Plaintiffs' claims arise out of the same conduct—Harvard'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 Harvard. *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 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 ex rel. Hawkins*, 2004 WL 166722, at *4. Such is the case here.

As detailed above, Plaintiffs have advanced a common contention in this litigation: that Harvard 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 Harvard, 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

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).

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 Pharma. 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

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. Donohue, United States Postal Service*, EEOC Agency No. 0120140953 (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); *K.C. v. Torlakson*, No. C 05-4077 MMC, 2012 U.S. Dist. LEXIS 56061, (N.D. Cal. Apr. 20, 2012) (DREDF: settling class action complaint alleging state defendants failed to provide necessary services for students with diabetes in California public schools).

twice briefed and argued fundamental legal issues bearing on the viability of the claims and then, as the litigation progressed, conducted considerable discovery consisting of multiple depositions, served and responded to a significant number of discovery requests, reviewed nearly 1,000 pages of documents produced by Harvard and other material generated by counsel's investigation, created a database of over 7,800 videos from Harvard's website (of which comprehensive review was in progress when settlement negotiations began earlier this 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 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 Harvard, 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 Harvard'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, Harvard has agreed to continue its commitment, initially announced through its Policy, to caption new video or audio content created and produced at Harvard and, on or after December 1, 2019, posted on a University Website (as that term is defined in the Policy) and to provide captions for existing video or audio content, created and produced at Harvard and posted on a University Website prior to December 1, 2019, upon request within five business days. In addition, as described in greater detail above, under the proposed Consent Decree, Harvard has agreed: (1) to caption new video or audio content of Department Sponsored Student Organizations posted to a website within a Harvard-controlled domain, MOOCs and new video or audio content on the official channel hosted by third-party platforms YouTube, Vimeo and SoundCloud for all of Harvard's schools, as well as the museums, libraries and other units listed in the appendix to the proposed Consent Decree; (2) to provide industry-standard live captioning for University-wide events that are live-streamed online and to add captions consistent with the standards set forth in the Consent Decree to any such video or audio content that is later posted to a University Website; (3) to provide appropriate training to the Harvard Community on captioning audio and video content; and (4) to caption certain content posted between January 1 and December 1, 2019, without request, over the course of a two-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 Harvard'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. Decree ¶ XIII.A. 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 Transportation Auth.*, 300 F. Supp. 3d 318, 324 (D. Mass. 2018); *cf.* Fed. R. Civ. P. 23(e)(4) (requiring new opportunity to opt out in classes certified pursuant to Rule 23(b)(3)).

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 Harvard’s public-facing web content, Harvard will post links to the Notice on key webpages for six weeks 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 serving 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. 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 Harvard 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, courts have approved notice programs similar to the one proposed here. *See, e.g., Civil Rights Educ. & Enft 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)); *Colo. Cross-Disability Coal. v. Abercrombie & Fitch Co.*, No. 09-CV-02757-WYD-KMT, 2015 WL 5695890, at *2 (D. Colo. Sept. 29, 2015) (holding that notice to class of retail customers who use wheelchairs by email and web-posting satisfied Fed. R. Civ. P. 23(e) and due process).

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 (6) weeks after the Court grants preliminary approval as the deadline for submission of any objections to the proposed Consent Decree; and (4) 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.

Dated: November 27, 2019

Respectfully submitted,

PLAINTIFFS:

By: /s/ Joseph M. Sellers
Joseph M. Sellers (*pro hac vice*)
Shaylyn Cochran (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL
PLLC
1100 New York Ave NW, Fifth Floor
Washington DC 20005
Tel.: 202.408.4600
jsellers@cohenmilstein.com
scochran@cohenmilstein.com

Thomas P. Murphy (BBO# 630527)
DISABILITY LAW CENTER, INC.
32 Industrial Drive East
Northampton, MA 01060
Tel.: 413.584.6337
tmurphy@dlc-ma.org

Tatum A. Pritchard, BBO No. 664502
DISABILITY LAW CENTER, INC.
11 Beacon Street, Suite 925
Boston, MA 02108
Tel.: 617.723.8455
tpritchard@dlc-ma.org

Caitlin Parton (BBO# 690970)
DISABILITY LAW CENTER, INC.
11 Beacon Street, Suite 925
Boston MA 02108
Tel.: 617.723.8455
cparton@dlc-ma.org

Amy Farr Robertson (*pro hac vice*)
CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER
104 Broadway, Suite 400
Denver, CO 80203
Tel.: 303.757.7901
arobertson@creeclaw.org

Arlene Mayerson (*pro hac vice*)
Namita Gupta (*pro hac vice*)

DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND, INC.
3075 Adeline Street Suite 210
Berkeley, CA 94703
Tel: 510.644.2555
amayerson@dredf.org
ngupta@dredf.org

Howard Rosenblum (*pro hac vice*)
NATIONAL ASSOCIATION OF THE
DEAF
8630 Fenton Street, Suite 820
Silver Spring, MD 20910
howard.rosenblum@nad.org

Attorneys for Plaintiffs

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 November 27, 2019.

/s/ Shaylyn Cochran

EXHIBIT 1

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 President and Fellows of Harvard College (“Harvard” or “Defendant”) violated Title III of the Americans with Disabilities Act (“ADA”) and section 504 of the Rehabilitation Act of 1973 by failing to provide captioning for all online audio and video content on Harvard domains and third-party web platforms.

Harvard 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 Harvard’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:

I. 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 Harvard 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.

II. 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.** Plaintiffs move for, and the Court grants, an order granting approval of 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 XIII 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. The date on which the Court grants final approval is the “Effective Date.”

III. Agreement to Caption

A. Definitions

In this Agreement:

- i. “Caption” or “Captioning” means:
 - a. in the case of video files, to overlay or externally embed synchronized visual text for speech and, consistent with WCAG 2.1 AA, provide non-dialogue audio information needed to understand the program content, including sound effects, music, laughter, speaker identification, and location 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
 - b. in the case of “audio-only” files, or in the case of video files for which Harvard lacks the access required to overlay or externally embed captioning, to prepare and provide a text-only transcript and, where practicable, to place an easily identifiable link to such transcript near to or alongside the content online.
- ii. “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”).
- iii. “Content” means audio or video files that are posted online for general public access.
- iv. “Massive Open Online Course” or “MOOC” means interactive online courses that are offered by Harvard free of charge, on an open-enrollment basis, through HarvardX or any successor program to HarvardX, or directly by any of Harvard’s Schools.
- v. “Policy” means the Harvard University Digital Accessibility Policy, adopted April 30, 2019, as it may be amended from time to time by Harvard.
- vi. “Procedures” means the implementing procedures developed under the Policy, as they may be amended from time to time by Harvard.
- vii. “Settlement Class” includes all persons (other than students of Harvard University) who, at any time between February 11, 2013 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 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 Harvard 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 Harvard.

- viii. “University Website” means any public-facing website or web-based application within a Harvard-controlled domain used to conduct University Business by Harvard faculty and staff. The term “University Website” includes websites operated by all of Harvard’s Schools and Academic Departments, News Organizations, Administrative Offices, Museums and Libraries, Academic Centers, Initiatives, and Programs.
- ix. “University Business” includes activities carried out under the auspices of Harvard University but does not include activities organized or conducted by students or student organizations.

B. Content Covered by Harvard’s Digital Accessibility Policy

The parties agree that the Policy, as interpreted by the Procedures, requires captioning for — and that Harvard shall caption — the following:

- i. New video or audio content, created and produced at Harvard and, on or after December 1, 2019, posted on a University Website. The Policy’s use of the words “at Harvard” does not mean that the content must have been created and produced on Harvard’s campus. For example, a research video created by a faculty member in the field and later posted on a University Website would fall within the Policy. Similarly, content created or produced by a vendor at the direction of Harvard faculty or staff is content “created or produced at Harvard.”
- ii. Video or audio content, created and produced at Harvard and posted on a University Website prior to December 1, 2019, upon a specific request by an individual who is unable to access that specific content. Captions shall be provided within five business days of the request consistent with Section III.A.i.

C. Content Beyond That Covered by Harvard’s Digital Accessibility Policy

In addition to the content explicitly covered by the Policy, Harvard agrees to Caption:

- i. ***Department Sponsored Student Organization Content:***

New video or audio content, created and produced at Harvard by a Department Sponsored Student Organization, as defined in the *Harvard College Handbook for Students*, and posted on any public-facing website within a Harvard-controlled domain on or after December 1, 2019.

ii. ***Massive Open Online Course Content:***

To the extent not captured above, audio and video content posted online as part of a MOOC.

iii. ***Certain Content on Certain Third Party Platforms:***

New video or audio content created and produced at Harvard and posted on/after December 1, 2019 on the official YouTube channel and, if any, the official Vimeo or SoundCloud channel for each of the Harvard schools, museums, libraries, and other units listed on Appendix A. The “official YouTube channel” or “official Vimeo or SoundCloud channel” for a unit is the principal channel maintained and curated for that unit’s University Business. If the principal channel maintained and curated for a unit’s University Business is moved to a newly-developed Third Party Platform, then the new video or audio content created and produced at Harvard and posted on such channel shall be subject to the requirements of this paragraph.

iv. ***Legacy Content:***

Video or audio content created and produced at Harvard and posted between January 1, 2019 and December 1, 2019 either: (1) on a University Website; or (2) on the official YouTube channel and, if any, the official Vimeo or SoundCloud channel for the Harvard schools, museums, libraries, and other units listed on Appendix A (collectively, “Legacy Content”). Legacy Content shall be captioned as soon as practicable but no later than two years after the execution of the Agreement, or by request consistent with Section III.B.ii.

v. ***By Request:***

Video or audio content created and produced at Harvard and posted prior to December 1, 2019 on the official YouTube channel and, if any, the official Vimeo or SoundCloud channel for each of the Harvard schools, museums, libraries, and other units listed on Appendix A, upon a specific request by an individual who is unable to access that specific content. Captions shall be provided within five business days of the request consistent with Section III.A.i.

IV. Additional Obligations of the Parties

- A. Harvard shall not amend the Policy or Procedures in a manner that provides for less captioning than any prior versions of the Policy or Procedures.
- B. Harvard will provide industry-standard live captioning for University-wide events (such as Commencement, ceremonies for special honorands, and presidential installations), for which video and/or audio are live-streamed over the Internet. Any such video and/or audio of the University-wide event that are later posted to a University Website are subject to the Policy and to the obligations in section III.B.i, above. For any other live-

streamed event of high interest, Harvard will consider requests for industry-standard live captioning.

- C. By December 1, 2019, Harvard will establish, implement, and make available to the public a process (the “Public Request Process”) by which any member of the public may submit a captioning request to Harvard pursuant to Section III.B. and III.C.
- D. In its Procedures, Harvard will make clear that University Websites shall include a link to the Policy and to the Public Request Process and the Cure Process.
- E. In its Procedures, Harvard will “strongly urge” all community members, including students, 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.
- F. Harvard will continue to include the Policy on the list of key University-wide policies that is located on the website of the Office of the Provost.
- G. 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 they are not personally interested in accessing.

V. Reporting

- A. Throughout the Term of this Consent Decree, Harvard shall submit confidential written reports (the “Reports”) to NAD, as follows:
- B. On June 1, 2020:
 - i. 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 VII; and
 - ii. Any changes or additions to the Policy, the Procedures or the Policy FAQs.
- C. Every 6 months beginning June 1, 2020, each Report shall also include, for the period since the preceding Report:
 - i. Any changes or additions to the Policy, the Procedures or the Policy FAQs;
 - ii. The number of requests for Captioning received by Harvard University Information Technology’s Office of Digital Accessibility Services through the Public Request Process;
 - iii. The number of minutes of video and audio content Captioned through the Public Request Process;

- iv. For any request for Captioning received through, and compliant with, the Public Request Process that did not result in Captioning of the requested content, information concerning the request and the reason it was not fulfilled; and
- v. Copies of the records required by Section VI.B below, except that Harvard shall not produce any personally identifiable information about a requester, including without limitation the name of the requester.

VI. Cure Process

- A.** By the Effective Date, Harvard will establish, implement, and make available to the public a process (the “Cure Process”) by which any member of the public, including any Plaintiff, may inform Harvard in writing that any content required to be Captioned under this Consent Decree has not been Captioned; that any Captioning required under this Agreement contains material errors; or that any University Website does not include a link to the Policy or the Public Request Process. Harvard will not be liable for violation of this Consent Decree if, within 10 business days of receiving such a complaint, it resolves the issue. Harvard will not rely on the Cure Process to circumvent the requirements of Sections III.B and III.C of this Consent Decree. A lack of accurate captioning may be resolved by Captioning, correcting errors in the Captioning of, or removing from public view the specified content. Harvard will engage in a good-faith effort to Caption content before removing it. The Cure Process shall be integrated with the Public Request Process, to permit a member of the public to submit a request that uncaptioned content be Captioned whether or not it was required to be Captioned by this Consent Decree.
- B.** Harvard will maintain records of all requests it receives as part of the Public Request Process or the Cure Process, and will document the steps it takes to respond to those requests, including the Content at issue, the steps taken to Caption or cure the Captioning of that Content, and the dates on which: (1) the request was received; (2) Captioning or other measures were taken; and (3) a response provided to the individual making the request.

VII. Training of Harvard Community

Harvard shall provide appropriate training on captioning audio and video content necessary and appropriate to support its good-faith efforts to comply in full with the Policy, the Procedures, and this Consent Decree.

VIII. Extent of Captioning Requirement

Except as expressly provided, Harvard shall have no obligation under this Consent Decree to Caption any content.

IX. Denial of Liability

Harvard has denied and continues to deny any liability to the named Plaintiffs, the Settlement Class, or Plaintiffs' counsel. Harvard 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 Harvard 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 Harvard pursuant to this Consent Decree, may not be offered or be admissible as evidence or in any other fashion against Harvard in any action or proceeding for any purpose, except in any action or proceeding brought to enforce the terms of this Consent Decree.

X. Release

Upon final approval of this Consent Decree by the Court pursuant to Section II.C, Plaintiffs (as specifically defined herein), on behalf of themselves and all members of the Settlement Class, hereby release and forever discharge Harvard, and each of its respective past, present, and future employees and appointees; any of its affiliate corporations or other business entities; and its past, present and future members of the governing boards, officers, directors, faculty, fellows, agents, personal representatives, attorneys, and assigns (the "Releasees") from the Released Claims as defined below.

The "Released Claims" are all claims asserted or that could have been asserted by the named Plaintiffs and/or any member of the Settlement Class in the lawsuit against the Releasees, including any and all past and/or present claims, counterclaims, remedies, liabilities, debts, demands, charges, complaints, actions, causes of action, obligations, costs, expenses, attorneys' fees (except as otherwise provided herein), set-offs, and third-party actions of any kind or nature whatsoever, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued which they ever had, now have, claim to have had, or will have against any of the Releasees for injunctive, declaratory, or other non-monetary relief, however described, 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 free online audio or video content for the general public that is produced, created, hosted, linked to, or embedded by the Releasees.

The Parties agree that this Consent Decree applies to all of the named Plaintiffs' unknown and unanticipated claims, damages, and expenses as of the date of execution of this Agreement, and they waive any rights that they might have under Section 1542 of the California Civil Code or under any similar statute or legal theory.

Named Plaintiffs acknowledge having been informed by an attorney of the provisions of Section 1542 of the Civil Code of the State of California, and hereby expressly waive and relinquish all rights and benefits that they may have under that Section or similar laws from other states, including, without limitation, any similar laws in Massachusetts. Section 1542 reads:

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.

Plaintiffs realize and acknowledge that they may have sustained injury or losses, within the scope of the releases set forth above, that (or the severity and amount of which) are not now anticipated. Nevertheless, Plaintiffs acknowledge that this Consent Decree has been negotiated and agreed upon in light of this realization and, being fully aware of this situation, they nevertheless intend to release, acquit, and forever discharge the parties released from any and all such unknown claims, including damages which are unknown or unanticipated, relating to the Released Claims, occurring up until the effective date of this Consent Decree.

XI. Attorneys' Fees

Harvard shall not oppose Class Counsel's motion for attorneys' fees and costs in the amount of \$1,575,000.

XII. Enforcement

The term of this Consent Decree is three and one half years 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 automatically will expire by its own terms except as expressly provided.

The Court may grant declaratory and all other relief necessary to enforce this Consent Decree pursuant to 28 U.S.C. §§ 2201 and 2202.

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.

The Parties to this action and no one else shall have standing to seek enforcement of this Consent Decree.

A. Dispute Resolution. Before any Party approaches the Court to assert a violation of this Consent Decree, the Parties shall first engage in and complete the Dispute Resolution Process set forth in this paragraph.

For any dispute that may be addressed through the Cure Process (which may be integrated with the Public Request Process) set forth above, the Parties shall engage in and complete the Cure Process prior to engaging in further steps of the Dispute Resolution Process.

If the Parties are unable to resolve the dispute through the Cure Process, then the Parties shall meet and confer in good faith to resolve any dispute relating to the interpretation or implementation of this Consent Decree.

The Parties agree that if they cannot resolve any dispute relating to the interpretation or implementation of this Consent Decree through the Public Request Process, the Cure Process, or meeting and conferring in good faith with each other, then 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. If, after completing the steps in Section XII.A, either Party believes that a dispute still exists relating to the performance or interpretation of this Consent Decree, either Party make 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. 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.

XIII. Judgment, Final Approval, Dismissal

A. Request for Order. No later than November 27, 2019, Plaintiffs will move for an Order seeking preliminary approval of this Consent Decree and approval of a Joint Notice Plan pursuant to F.R.C.P. 23. Plaintiffs will request that a Fairness Hearing take place following preliminary approval of the Consent Decree, or as soon thereafter as the Court may set. Plaintiffs will provide to Harvard the motion seeking preliminary approval of the settlement no less than five (5) business days prior to filing.

B. 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 XI. 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.

C. 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 XII above.

XIV. 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 and 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 Harvard 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 class.

XV. 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 Harvard:

Diane E. Lopez
Harvard University Office of the General Counsel
1350 Massachusetts Avenue
Suite 980
Cambridge, MA 02138-3834

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
National Association of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, MD 20910

- 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, under any federal, state, county, municipal or other law, ruling or regulation, then 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.** Named Plaintiffs and Harvard, 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 Harvard to remove or prevent Harvard from removing any Content from public view on any of its websites.
- G. Entire Agreement.** This Consent Decree contains all the agreements, conditions, promises and covenants among Named Plaintiffs, the Class, and Harvard 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: November 8, 2019

DEFENDANT:

By: 

Roberto M. Braceras (BBO# 566816)
Timothy H. Kistner (BBO# 690534)
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
Tel.: 617.570.1000
Fax: 617.523.1231
rbraceras@goodwinlaw.com
tkistner@goodwinlaw.com

William M. Jay (*pro hac vice*)
Andrew Kim (*pro hac vice*)
901 New York Avenue NW
Washington, DC 20001
Tel.: 202.346.4000
Fax: 202.346.4444
wjay@goodwinlaw.com
andrewkim@goodwinlaw.com

Janet Grumer (*pro hac vice*)
Davis Wright Tremaine LLP
865 S. Figueroa Street, Suite 2400
Los Angeles, CA 90017
Tel.: 213.633.6866
Fax: 213.633.4231
janetgrumer@dwt.com

PLAINTIFFS:

By: _____

Joseph M. Sellers (*pro hac vice*)
Shaylyn Cochran (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL
PLLC
1100 New York Ave NW, Fifth Floor
Washington DC 20005
Tel.: 202.408.4600
jsellers@cohenmilstein.com
scochran@cohenmilstein.com

Arlene Mayerson (*pro hac vice*)
Namita Gupta (*pro hac vice*)

Dated: November 8, 2019

DEFENDANT:


By: _____

Roberto M. Braceras (BBO# 566816)
Timothy H. Kistner (BBO# 690534)
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
Tel.: 617.570.1000
Fax: 617.523.1231
rbraceras@goodwinlaw.com
tkistner@goodwinlaw.com

William M. Jay (*pro hac vice*)
Andrew Kim (*pro hac vice*)
901 New York Avenue NW
Washington, DC 20001
Tel.: 202.346.4000
Fax: 202.346.4444
wjay@goodwinlaw.com
andrewkim@goodwinlaw.com

Janet Grumer (*pro hac vice*)
Davis Wright Tremaine LLP
865 S. Figueroa Street, Suite 2400
Los Angeles, CA 90017
Tel.: 213.633.6866
Fax: 213.633.4231
janetgrumer@dwt.com

PLAINTIFFS:

By:  _____

Joseph M. Sellers (*pro hac vice*)
Shaylyn Cochran (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL
PLLC
1100 New York Ave NW, Fifth Floor
Washington DC 20005
Tel.: 202.408.4600
jsellers@cohenmilstein.com
scochran@cohenmilstein.com

Arlene Mayerson (*pro hac vice*)

Namita Gupta (*pro hac vice*)
DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND, INC.
3075 Adeline Street Suite 210
Berkeley, CA 94703
Tel: 510.644.2555
amayerson@dredf.org
ngupta@dredf.org

Thomas P. Murphy (BBO# 630527)
DISABILITY LAW CENTER, INC.
32 Industrial Drive East
Northampton, MA 01060
Tel.: 413.584.6337
tmurphy@dlc-ma.org

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

Caitlin Parton (BBO# 690970)
Tatum Pritchard (BBO # 664502)
DISABILITY LAW CENTER, INC.
11 Beacon Street, Suite 925
Boston MA 02108
Tel.: 617.723.8455
cparton@dlc-ma.org

Howard Rosenblum
National Association of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, MD 20910

IT IS SO ORDERED:

Dated: November __, 2019

KATHERINE A. ROBERTSON
United States Magistrate Judge

Appendix A

A) All of Harvard's Schools:

- Harvard Business School
- Harvard School of Dental Medicine
- Harvard Graduate School of Design
- Harvard Divinity School
- Harvard Graduate School of Education
- Harvard Faculty of Arts & Sciences
 - Harvard College
 - Harvard Graduate School of Arts & Sciences
 - Harvard John A. Paulson School of Engineering and Applied Sciences
 - Harvard Division of Continuing Education
- Harvard Kennedy School
- Harvard Law School
- Harvard Medical School
- Harvard T.H. Chan School of Public Health
- Radcliffe Institute for Advanced Study
- any School established after the Agreement

B) The following museums, libraries, and other units:

- Harvard Public Affairs and Communications
- Alumni Affairs & Development
- Harvard X
- Harvard Art Museums
- Arnold Arboretum
- Dumbarton Oaks
- Harvard Museums of Science and Culture
- Collection of Historical Scientific Instruments
- Harvard Museum of Natural History
- Peabody Museum of Archaeology and Ethnology
- Harvard Semitic Museum
- Harvard Library
- Cabot Science Library
- Harvard University Archives
- Houghton Library
- Lamont Library
- Widener Library

Exhibit 2

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

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

If you are deaf or hard of hearing and have tried to access or would like to access Harvard's online video content with captions or to access Harvard'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 Harvard University. 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 President and Fellows of Harvard College ("Harvard"). The case is titled *National Association of the Deaf v. Harvard University and the President and Fellows of Harvard College*, No. 3:15-cv-30023-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 Harvard 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 Harvard'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 Harvard 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 Harvard University) who, at any time between February 11, 2013 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 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 Harvard 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 Harvard.

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 Harvard to caption its online content as follows:

- Content created and produced at Harvard on or after December 1, 2019 and posted on a University Website will be captioned when posted.
- Content created and produced at Harvard prior to December 1, 2019 and posted on a University Website will be captioned upon request within five business days.

Content on a “University Website” means any content on a public-facing website or web-based application within a Harvard-controlled domain used to conduct University Business by Harvard faculty and staff. The term “University Website” includes websites operated by all of Harvard’s Schools and Academic Departments, News Organizations, Administrative Offices, Museums and Libraries, Academic Centers, Initiatives, and Programs. “University Business” includes activities carried out under the auspices of Harvard University but does not include activities organized or conducted by students or student organizations.

The following content will also be captioned when posted (after December 1, 2019) or upon request (if posted before that time):

- Content created and produced at Harvard by a Department Sponsored Student Organization, as defined in the *Harvard College Handbook for Students*, and posted on any public-facing website within a Harvard-controlled domain.
- Content posted as part of a Massive Open Online Course.
- Content created and produced at Harvard and on the official YouTube channel and, if any, the official Vimeo or SoundCloud channel for certain Harvard schools, museums, libraries, and other units.

Harvard will also provide live captioning for University-wide events.

The settlement also requires Harvard 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 Harvard 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 Harvard.

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"). Harvard has agreed not to oppose Class Counsel's request for an award of their reasonable attorneys' fees, expenses, and costs in the amount of \$1,575,000. 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 [REDACTED] 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 Harvard 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-30023), to the following address: Clerk of the Court, US Courthouse, 300 State Street, Springfield, Massachusetts

01105.

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 [link], 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 [REDACTED], by emailing [REDACTED], 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
104 Broadway, Suite 400
Denver, CO 80203

Joseph M. Sellers
Shaylyn Cochran
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave NW, Fifth Floor
Washington DC 20005

Arlene Mayerson
Namita Gupta
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.

Exhibit 3

NAD, et al. v. Harvard

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 Harvard’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, beginning on the date 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, Harvard 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. www.harvard.edu
 - b. <https://news.harvard.edu/gazette/>
 - c. <https://www.harvard.edu/media-relations/press-releases>
 - d. <https://harvardx.harvard.edu/>
 - e. <https://accessibility.harvard.edu/>
 - f. <https://accessibility.huit.harvard.edu/>