

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

| | | |
|---|---|------------------|
| DAVID ALVES, | : | |
| Plaintiff | : | |
| | : | |
| v. | : | C.A. No.: |
| | : | |
| CITY OF WOONSOCKET, | : | |
| by and through its Finance Director, | : | |
| CHRISTINE CHAMBERLAND, | : | |
| DAVID B. WAHL, individually and in his | : | |
| official capacity as a police officer | : | |
| employed by the City of | : | |
| Woonsocket, ANDREW GIRARD, | : | : |
| individually and in his official capacity as | : | |
| a police officer employed by the City of | : | |
| Woonsocket, JUSTIN GLODE, | : | |
| individually and in his official capacity as | : | |
| a police officer employed by the City of | : | |
| Woonsocket, and | : | |
| JOHN DOES 1 through 10, inclusive, | : | |
| individually and in their official capacities | : | |
| as employees of the City of Woonsocket, | : | |
| Defendants | : | |

COMPLAINT

I. Introductory Statement

This is an action brought by the Plaintiff, David Alves, seeking declaratory and injunctive relief, attorney’s fees and litigation expenses and other equitable relief as well as compensatory and punitive damages to remedy the unlawful discrimination the Plaintiff has suffered on account of his disability in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. §12132, *et seq.* (“ADA”), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §701, *et seq.* (“Rehabilitation Act”), and the Rhode Island Civil Rights of People with Disabilities Act, §42-87-1, *et seq.* (“CRPD”). The Plaintiff also seeks damages and other relief for violations of Plaintiff’s constitutional rights protected under the First, Fourth, and Fourteenth Amendments to

the United States Constitution, actionable pursuant to 42 U.S.C. §1983, and under Article 1, §§2, 6 and 21 of the Rhode Island Constitution, actionable directly under state law in accordance with Jones v. State of Rhode Island, 724 F.Supp. 25 (D.R.I. 1989), as well as various common law claims.

The Plaintiff, David Alves, is a deaf individual whose primary and preferred means of communication is American Sign Language. The Plaintiff is disabled as that term is defined under federal and state law. The Plaintiff was using sign language to express his outrage with the way he was treated by staff at City Side Club in Woonsocket, Rhode Island, when he was unlawfully detained and arrested by City of Woonsocket (“City”) police officers. The City police officers failed to take necessary steps to ensure effective communication with the Plaintiff prior to, during, and following his arrest. The City police officers held the Plaintiff in jail overnight without cause, and refused to attempt to procure an interpreter or provide other means for effective communication with the Plaintiff. The Plaintiff was charged with violating an unconstitutional City ordinance. The Plaintiff was eventually released, with a summons, after being held overnight. The criminal charge against the Plaintiff was subsequently dismissed. The Plaintiff alleges that the City and its employees and/or agents violated his statutory and constitutional rights by unlawfully arresting and detaining him, charging him with violating an unconstitutional City criminal ordinance, subjecting him to discrimination on account of his disability, and failing to accommodate his disability.

II. Parties

1. The Plaintiff resides in the Town of North Smithfield, County of Providence, State of Rhode Island.

2. Defendant City of Woonsocket (“City”) is a duly authorized and organized municipality pursuant to the laws of the State of Rhode Island and is sued by and through its Finance Director, Christine Chamberland, the official designated by state law, R.I.G.L. §45-15-5, to be named in a suit for relief against the City. In addition, Defendant City is a public entity and recipient of federal financial assistance, thus making it subject to the requirements of the ADA, the Rehabilitation Act, and the CRPD.

3. Defendant, David B. Wahl (“Wahl”), during the time period relevant to this Complaint, was a police officer employed by Defendant City within its Police Department.

4. Defendant, Andrew Girard (“Girard”), during the time period relevant to this Complaint, was a police officer employed by Defendant City within its Police Department.

5. Defendant, Justin Glode (“Glode”), during the time period relevant to this Complaint, was a police officer employed by Defendant City within its Police Department.

6. On information and belief, Defendant, John Does, 1 through 10 inclusive, are employees and/or agents of Defendant City, including, but not limited to police officers and clerks, employed by Defendant City within its Police Department or Municipal Court.¹

III. Jurisdiction and Venue

7. This Court has jurisdiction over the ADA claims pursuant to 42 U.S.C. §12133, jurisdiction over the claims under the Rehabilitation Act pursuant to 29 U.S.C. §794a, jurisdiction over the claims under 42 U.S.C. 1983 pursuant to 28 U.S.C. §§1331 and 1343, and supplemental jurisdiction over Plaintiff’s claims under Article 1, §§2, 6 and 21 of the Rhode Island Constitution, the CRPD, and common law pursuant to 28 U.S.C. §1367.

¹ The Plaintiffs will amend this Complaint to set forth the names and capacities of these unknown Defendants when ascertained.

8. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events that give rise to the claims herein occurred in the District of Rhode Island.

IV. Material Facts

9. The Plaintiff is profoundly deaf and speech-impaired, and communicates with American Sign Language (“ASL”).

10. As a result of his disability, the Plaintiff is substantially limited in several major life activities, including, but not limited to, hearing, speaking and communicating.

11. The Plaintiff is a qualified person with a disability within the meaning of the ADA, the Rehabilitation Act, and the CRPD.

12. As a result of his disability, the Plaintiff requires an ASL interpreter to effectively communicate with other individuals.

13. On or about July 8, 2015, the Plaintiff was a patron at the City Side Club at River Falls Restaurant (“City Side Club”), located in Woonsocket, Rhode Island, to celebrate the birthday of his friend, Tyler Hetu.

14. While at City Side Club, at approximately 1:00 a.m., Plaintiff and Mr. Hetu were approached by a City Side Club bouncer.

15. The bouncer attempted to physically grab Mr. Hetu.

16. The Plaintiff gestured to the bouncer that Mr. Hetu was fine and requested that the bouncer not touch Mr. Hetu.

17. At that time, the bouncer became visibly upset with the Plaintiff and asked the Plaintiff to leave the City Side Club.

18. Due to fear for his physical safety, the Plaintiff told the bouncer to refrain from touching him or he would contact the police.

19. Upon information and belief, the bouncer also communicated to the Plaintiff that he was contacting the police.

20. The bouncer proceeded to leave the area where the Plaintiff and Mr. Hetu had gathered.

21. A short time later, the Plaintiff was approached by two (2) Defendant City police officers, including Defendants John Does, 1 through 10 inclusive.

22. The Defendant City police officers indicated to the Plaintiff to leave the City Side Club.

23. In accordance with the police officers' instructions, the Plaintiff began to leave the City Side Club.

24. As he was leaving the City Side Club, the Plaintiff attempted to express to the Defendant City police officers, including, but not limited to, Defendants John Does, 1 through 10 inclusive, that he did nothing wrong.

25. As he was leaving the City Side Club, another City Side Club employee pointed his finger at the Plaintiff.

26. The Plaintiff then exited the City Side Club.

27. Defendant Wahl then arrived at the scene.

28. Defendant Wahl was aware that the Plaintiff was deaf.

29. Defendant Wahl questioned employees at the City Side Club about the incident with the Plaintiff.

30. Defendant Wahl never questioned or attempted to question the Plaintiff.

31. Once the Plaintiff was outside the City Side Club, the Plaintiff again attempted to explain to Defendant City police officers, including Defendants Wahl and John Does, 1 through 10 inclusive, that he did not engage in any unlawful conduct or wrongdoing.

32. The Defendant City police officers, including Defendants Wahl and John Does, 1 through 10 inclusive, refused to communicate with the Plaintiff.

33. As the Plaintiff walked away from Defendant City police officers, including Defendants Wahl and John Does, 1 through 10 inclusive, the Plaintiff observed the City Side Club bouncer laugh and stare at him.

34. The Plaintiff then gestured toward the bouncer the ASL gesture for “b*llsh*t.” This sign involved holding up the hand with the index and pinky finger out and the middle two fingers held down with the thumb.

35. That Plaintiff’s hand gesture is a form of expression that falls within the sphere of protected speech under the First Amendment of the United States Constitution and Article I, §21 of the Rhode Island Constitution.²

36. The Plaintiff’s hand gesture was not disruptive and did not, and was not likely, to cause any public danger, alarm, disorder or nuisance.

37. In fact, the Plaintiff believes that the individual who the gesture was directed towards—the City Side Club bouncer—is not familiar with ASL and did not know the meaning of the gesture.

² See City of Houston, Tex. v. Hill, 482 U.S. 451, (1987); see also Duran v. City of Douglas, Ariz., 904 F.2d 1372, 1377-78 (9th Cir. 1990).

38. Immediately after he made this gesture to the bouncer, the Plaintiff was grabbed by Defendant Wahl and/or other Defendant City police officers, including Defendants John Does, 1 through 10 inclusive, and placed in handcuffs from behind.

39. At that time, Defendant City police officers, including Defendants Wahl and/or John Does, 1 through 10 inclusive, never explained or attempted to explain to the Plaintiff the legal justification for his arrest.

40. Following his unlawful arrest, the Plaintiff was transported to the City police station by Defendant Wahl.

41. The Plaintiff was processed and criminally charged with violating City Ordinance, §14-1(k), Disorderly Conduct and Indecency, Uses Abusive or Obscene language or Makes an Obscene Gesture (the “City Ordinance”).

42. The City Ordinance states:

Disorderly conduct prohibited: A person shall be guilty of disorderly conduct if, with the purpose of causing public danger, alarm, disorder, nuisance, or if his conduct is likely to cause public danger, alarm, disorder or nuisance and he willfully (sic.) does any of the following acts in a public place:

(k) Uses abusive or obscene language or makes an obscene gesture

43. During the booking process and due to his hearing impairment, the Plaintiff was unable to understand the Defendant City police officers, including Defendants Girard, Glode, and/or John Does, 1 through 10 inclusive.

44. During the booking process, the Plaintiff requested a sign language interpreter.

45. Defendant City police officers, including Defendants Girard, Glode, and/or John Does, 1 through 10 inclusive, failed and/or refused to provide the Plaintiff a sign language interpreter.

46. During the booking process, Defendant City police officers, including Defendants Girard, Glode, and/or John Does, 1 through 10 inclusive, looked through Plaintiff's wallet and appeared to mock him because he possessed a food stamps card.

47. The Plaintiff was unlawfully detained overnight at the City police station.

48. During his incarceration, Plaintiff was frightened, anxious, and concerned that his parents did not know his whereabouts.

49. At one point while in his cell, the Plaintiff called out loudly for assistance, but Defendant City police officers, including Defendants Girard, Glode, and/or John Does, 1 through 10 inclusive, failed and/or refused to provide any assistance.

50. While detained in his cell, Defendant City police officers, including Defendants Girard, Glode, and/or John Does, 1 through 10 inclusive, approached Plaintiff's cell and used hand gestures to indicate that the Plaintiff was required to relinquish his glasses, which made it difficult for the Plaintiff to see.

51. The Plaintiff requested paper and a writing instrument to communicate with Defendant City police officers, including Defendants Girard, Glode, and/or John Does, 1 through 10 inclusive, as to the reason his glasses were taken.

52. Defendant City police officers, including Defendants Girard, Glode, and/or John Does, 1 through 10 inclusive, failed and/or refused to provide the Plaintiff with either paper or a writing instrument at that time.

53. While the Plaintiff was unlawfully detained, the Plaintiff's friend, who is deaf and speech-impaired, went to the City police station to obtain information regarding the arrest and well-being of the Plaintiff.

54. The Plaintiff's friend provided a hand-written note to a Defendant City police officer, including Defendant John Does, 1 through 10 inclusive, which stated: "I'm here to check up David Alves."

55. In response, a Defendant City police officer, including Defendant John Does, 1 through 10 inclusive, wrote:

He's in the cell for Disorderly Conduct. It's a misdemeanor too [.] [S]o he'll be ok. [H]e will be out in the morning no problem around 7:30 – 8:00[.] These things happen, he just needs to take it as a learning experience.

56. Instead of releasing the Plaintiff from custody on the night of the incident with a summons to appear at City Municipal Court, the Defendants detained the Plaintiff at the police station overnight.

57. The following morning, the Plaintiff was released from custody and issued a summons to appear at the City Municipal Court on August 5, 2015 for the charge of violating the City Ordinance.

58. On information and belief, the Plaintiff was criminally charged under the City Ordinance with making obscene gestures towards police officers, which was factually inaccurate.

59. The City Ordinance is substantially overbroad and vague and thus invalid on its face in violation of the First Amendment.

60. The City Ordinance makes unlawful a substantial amount of constitutionally protected conduct, including, but not limited to, words and gestures from individuals, and fails to limit or reach a substantial amount of constitutionally protected conduct.

61. The Defendants violated Plaintiff's fundamental right of freedom of speech by arresting him and charging him with a violation of the City Ordinance.³

³ Hill, 482 U.S. at 461; Duran, 904 F.2d 1372, 1377-78.

62. Following his release, the Plaintiff's father called the City Municipal Court to request an ASL interpreter for Plaintiff's hearing.

63. Defendants John Does, 1 through 10 inclusive, employees at the City Municipal Court, told the Plaintiff's father that the Municipal Court does not provide ASL interpreters for court.

64. Defendants John Does, 1 through 10 inclusive, employees at the City Municipal Court, failed and/or refused to grant Plaintiff's request for an ASL interpreter until after a written request was made to Defendant City by Plaintiff's attorney at the Rhode Island Disability Law Center.

65. On or about December 12, 2015, the criminal charge against the Plaintiff, under the City Ordinance, was dismissed by the Municipal Court.

66. The Plaintiff, as a resident of the Town of North Smithfield, expects to have future encounters with the City Police Department and Municipal Court, whether by choice or necessity, as he frequently visits the City and has ties to the City.

67. Due to the unlawful and discriminatory conduct the Plaintiff sustained, as described above, as well as a fear of future discrimination and unlawful conduct, the Plaintiff is deterred from seeking any aid, assistance or protection of the City Police Department and Municipal Court.

68. Due to Defendants' acts and/or omissions, the Plaintiff was unable to effectively communicate with or otherwise understand the Defendant police officers during the investigation, arrest, processing, and incarceration phases.

69. The Defendants, by failing to provide the Plaintiff with an ASL interpreter or other appropriate auxiliary communication aids, denied the Plaintiff the ability to communicate,

denied the Plaintiff his constitutional right to due process, denied the Plaintiff of the benefits of the services, programs, and/or activities of the Defendant City, failed to provide the Plaintiff a reasonable accommodation(s) as required under the law, and otherwise discriminated against the Plaintiff in violation of the ADA, the Rehabilitation Act, and the CRPD.

70. The Defendant City failed to properly select, train, instruct, supervise, and discipline officers in the City Police Department and Municipal Court, including, but not limited to, Defendants Wahl, Girard, Glode, and/or John Does, 1 through 10 inclusive, relative to the law of disability discrimination and accommodation, the law of search and seizure, and the law of freedom of speech.

71. On information and belief, during all relevant time periods, a custom or policy existed in the City Police Department and Municipal Court wherein City employees and police officers' misconduct was encouraged, ignored, acquiesced to and/or condoned, and to which Defendant City was deliberately indifferent.

72. The Defendant City is liable under the doctrine of respondeat superior for the negligent acts and/or omissions of its agents, including, but not limited to, Defendants Wahl, Girard, Glode, and/or John Does, 1 through 10 inclusive, police officers employed by the City Police Department and individuals employed by the City Municipal Court, whose acts and/or omissions were within the scope of their employment and were the proximate cause of the serious injuries suffered by the Plaintiff. R.I.G.L. §9-31-1.

73. The Defendants knew or should have known that their acts and/or omissions, as described above, were unlawful under the circumstances. Despite such knowledge, Defendant City, by and through its policy-making officials and agents, approved, ignored, acquiesced to, condoned, and/or were deliberately indifferent to the practice of routinely failing to

accommodate disabled individuals in police custody or charged with crimes, arresting and charging individuals without legal cause, and violating individuals' constitutional rights, and failed to change or eliminate such unlawful policies.

74. At all relevant times, the Defendants acted negligently, intentionally, willfully, maliciously, and/or with reckless or callous indifference to the Plaintiff's constitutionally protected rights. Furthermore, at all relevant times, the Defendants knew or should have known that their conduct would cause or contribute to the deprivation of Plaintiff's civil rights and cause the Plaintiff great harm.

75. As a proximate result of the Defendants' acts and/or omissions, including, but not limited to, those described herein, the Plaintiff has suffered, and will continue to suffer, pain and suffering, mental anguish, incur legal expenses, deprivation of his civil rights, and other great damage.

V. Claims for Relief

76. The Plaintiff incorporates in the Counts below the allegations contained in paragraphs 1 through 75 above.

Count One **42 U.S.C. §1983 (Unlawful Arrest)**

77. At all times relevant to this action, 42 U.S.C. §1983 was in full force and effect and applied to Defendants' conduct.

78. 42 U.S.C. §1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress... .”

79. The Plaintiff is a citizen of the United States and the identified Defendants to this claim are persons for purposes of 42 U.S.C. §1983.

80. The Defendants acted under color of statute, ordinance, regulation, policy, custom, and/or usage of law.

81. The Defendants subjected the Plaintiff to unreasonable seizure and deprived the Plaintiff of his liberty and property without due process of law under the Fourth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. §1983.

82. Defendant City acted with deliberate indifference in violating the constitutional and statutory rights of the Plaintiff in violation of 42 U.S.C. §1983.

83. The Plaintiff is therefore entitled to damages as described below.

Count Two
42 U.S.C. §1983 (Freedom of Speech)

84. At all times relevant to this action, 42 U.S.C. §1983 was in full force and effect and applied to Defendants’ conduct.

85. 42 U.S.C. §1983 provides: “Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress... .”

86. The Plaintiff is a citizen of the United States and the identified Defendants to this claim are persons for purposes of 42. U.S.C. §1983.

87. The Defendants acted under color of statute, ordinance, regulation, policy, custom, and/or usage of law.

88. The Defendants arrested, detained and charged the Plaintiff with a crime, under the City Ordinance, for engaging in lawfully protected speech in derogation of Plaintiff's constitutional right of freedom of speech under the First and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. §1983.

89. The City Ordinance is substantially overbroad and vague and thus invalid on its face in violation of the First Amendment.

90. The Plaintiff is therefore entitled to damages as described below.

Count Three
Americans with Disabilities Act

91. At all times relevant to this action, Title II of the ADA, 42 U.S.C. §§ 12131 *et seq.*, was in full force and effect and applied to Defendants' conduct.

92. At all times relevant to this action, the U.S. Department of Justice regulations implementing Title II of the ADA, 28 C.F.R. Part 35, were in full force and effect and applied to the Defendants' conduct.

93. At all times relevant to this action, the Plaintiff has been substantially limited in the major life activities of hearing, speaking, and communicating, and is considered an individual with a disability as defined under the ADA, 42 U.S.C. §12102(2).

94. Defendant City is a public entity as defined under Title II of the ADA, 42 U.S.C. §12131(1).

95. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the

services, programs or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

96. Federal Regulations implementing Title II of the ADA state that a public entity may not “(i) deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; [or] (iii) provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.” 28 C.F.R. §35.130(b)(1).

97. Federal Regulations implementing Title II of the ADA state that a public entity “shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.” 28 C.F.R. §35.160(a)(1).

98. Federal Regulations implementing Title II of the ADA state that “[a] public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities ... an equal opportunity to participate in and enjoy the benefits of, a service, program or activity of a public entity” and “in order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.” 28 C.F.R. §35.160(b)(1) and (b)(2).

99. Federal Regulations implementing Title II of the ADA state that “a public entity shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except – (i) [i]n an emergency involving an imminent threat to the safety or

welfare of an individual or the public where there is no interpreter available... .” 28 C.F.R. § 35.160(c)(2).

100. The Defendants discriminated against the Plaintiff on the basis of his disability by excluding him from participation in and denying him the benefits of public services, and by subjecting him to discrimination in violation of the ADA.

101. The Defendants further discriminated against the Plaintiff by failing to ensure effective communication by providing a qualified in-person ASL interpreter or other appropriate auxiliary communication aids and services.

102. Defendant City discriminated against the Plaintiff by failing to train its employees to accommodate disabled individuals and failing to modify discriminatory practices and procedures, as required by the ADA.

103. The Plaintiff is therefore entitled to damages as described below.

Count Four
Rehabilitation Act of 1973

104. At all times relevant to this action, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, was in full force and effect and applied to the Defendants’ conduct.

105. At all times relevant to this action, the Plaintiff has had substantial impairment to the major life activities of hearing, speaking and communicating within the meaning of 45 C.F.R. §84.3(j), and accordingly, he is an individual with a disability as defined under 29 U.S.C. §708 (20)(B).

106. Pursuant to Section 504 of the Rehabilitation Act, “[n]o otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance... .” 29 U.S.C. §794.

107. The Defendants discriminated against the Plaintiff on the basis of his disability by denying him meaningful access to the services, programs, and benefits the Defendant City offers to other individuals, and by refusing to provide auxiliary aids and services necessary to ensure effective communication in violation of Section 504 of the Rehabilitation Act.

108. Defendants further discriminated against the Plaintiff by failing to ensure effective communication by providing a qualified in-person ASL interpreter or other appropriate auxiliary communication aids and services.

109. Defendant City discriminated against the Plaintiff by failing to train its officers to accommodate disabled individuals and failing to modify discriminatory practices and procedures, as required by the Rehabilitation Act.

110. The Plaintiff is therefore entitled to damages as described below.

Count Five
R.I. Civil Rights of People with Disabilities Act

111. At all times relevant to this action, the Civil Rights of People with Disabilities Act, R.I.G.L. §42-87 *et seq.*, was in full force and effect and applied to Defendants' conduct.

112. At all times relevant to this action, the Plaintiff has been substantially limited in the major life activities of hearing, speaking, communicating, and is considered a person with a disability as defined under R.I.G.L. §42-87-1.

113. At all times relevant to the action, the Defendants have been both "persons" and "entities" covered by R.I.G.L. §42-87-2 and §42-87-3(5).

114. Pursuant to R.I.G.L. §42-87-2, "[n]o otherwise qualified person with a disability shall, solely by reason of his or her disability, be subject to discrimination by any person or entity doing business in the state; nor shall any otherwise qualified person with a disability be excluded from participation in or denied the benefits of any program, activity or service of, or,

by any person or entity regulated, by the state or having received financial assistance from the state or under any program or activity conducted by the state, its agents or any entity doing business with the state.” R.I.G.L. §42-87-2.

115. Pursuant to R.I.G.L. §42-87-3, “[n]o person or entity licensed or regulated by the state, or having received financial assistance from the state, or doing business within the state, shall: (i) deny an otherwise qualified person with a disability the opportunity to participate in or benefit from any aid, benefit or service; (ii) afford an otherwise qualified person with a disability an opportunity to participate in or benefit from any aid, benefit, or service that is not equal to that afforded others; (iii) provide an otherwise qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others... .”

116. The CRPD specifically incorporates the definitions and prohibitions of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, including Title II of the ADA and its implementing regulations, which prohibit discrimination on the basis of a disability by state and local governmental entities. R.I.G.L. §§42-87-1(1)(iv); 42-87-1.1(2)(i); 42-87-3(5)(ii) and 42-87-3(6).

117. The CRPD specifically incorporates the prohibitions of Section 504 of the Rehabilitation Act, 29 U.S.C. §794, *et seq.*, which prohibits discrimination on the basis of a disability by entities receiving federal financial assistance, including state and local governmental entities. R.I.G.L. §42-87-1.1(2)(i).

118. The Defendants discriminated against the Plaintiff on the basis of his disability by excluding him from participation in and denying him the benefits of Defendant City’s public services in violation of R.I.G.L. §42-87-2.

119. The Defendants further discriminated against the Plaintiff by failing to provide him proper communications means, including a qualified in-person ASL interpreter or other appropriate auxiliary aides and services.

120. Defendant City further discriminated against the Plaintiff by failing to train its employees to accommodate disabled individuals and failing to modify discriminatory practices and procedures in violation of the CRPD.

121. The Plaintiff is therefore entitled to damages as described below.

Count Six
Article I, §2 of the Rhode Island Constitution

122. At all times relevant to this action, Article I, §2 of the R.I. Constitution was in full force and effect and applied to Defendants' conduct.

123. Article I, §2 provides:

All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state. Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof.

124. The Defendants, by their individual and concerted acts and/or omissions, including, but not limited to, those described herein deprived Plaintiff of his liberty without due process of law, in violation of Article I, §2 of the R.I. Constitution.

125. The Plaintiff is therefore entitled to damages as described below.

Count Seven
Article I, §6 of the Rhode Island Constitution

126. At all times relevant to this action, Article I, §6 of the R.I. Constitution was in full force and effect and applied to Defendants' conduct.

127. Article I, §6 provides:

The right of the people to be secure in their persons, papers and possessions, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but on complaint in writing, upon probable cause, supported by oath or affirmation, and describing as nearly as may be, the place to be searched and the persons or things to be seized.

128. The Defendants, by their individual and concerted acts and/or omissions, including, but not limited to, those described herein, subjected the Plaintiff to unreasonable search and seizures in violation of Article I, §6 of the R.I. Constitution.

129. The Plaintiff is therefore entitled to damages as described below.

Count Eight
Article I, §21 of the Rhode Island Constitution

130. At all times relevant to this action, Article I, §21 of the R.I. Constitution was in full force and effect and applied to Defendants' conduct.

131. Article I, §21 provides:

The citizens have a right in a peaceable manner to assemble for their common good, and to apply to those invested with the powers of government, for redress of grievances, or for other purposes, by petition, address, or remonstrance. No law abridging the freedom of speech shall be enacted.

132. The Defendants, by their individual and concerted acts and/or omissions, including, but not limited to, those described herein, violated the Plaintiff's state constitutional right to freedom of speech in violation of Article I, §21 of the R.I. Constitution.

133. The Plaintiff is therefore entitled to damages as described below.

Count Nine
Negligence

134. Defendants, by their individual and concerted acts and/or omissions, including, but not limited to, those described herein, failed or refused to exercise reasonable care to avoid inflicting reasonably foreseeable harm to the Plaintiff.

135. The Plaintiff is therefore entitled to damages as described below.

Count Ten
False Arrest

136. Defendants, by their individual and concerted acts and/or omissions, including, but not limited to, those described herein, did unlawfully and without cause detain and falsely arrest the Plaintiff in violation of state law, causing the Plaintiff to suffer damages as aforesaid.

137. The Plaintiff is therefore entitled to damages as described below.

Count Eleven
Malicious Prosecution

138. Defendants, by their individual and concerted acts and/or omissions including, but not limited to, those described herein, maliciously instituted a criminal action against the Plaintiff without probable cause that terminated in the Plaintiff's favor, causing the Plaintiff to sustain damages as aforesaid.

139. The Plaintiff is therefore entitled to damages as described below.

VI. Prayers for Relief

WHEREFORE, the Plaintiff respectfully prays that this Court grant the following relief against the Defendants:

a. a declaratory judgment that the Defendants, in the manner described herein, unlawfully discriminated against the Plaintiff in violation of Title II of the Americans with

Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Rhode Island Civil Rights of Persons with Disabilities Act;

b. a declaratory judgment that the Defendants, in the manner described above, violated the First and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. §1983, and Article I, §21 of the Rhode Island Constitution by violating Plaintiff's fundamental right of freedom of speech;

c. a declaratory judgment that the Defendants, in the manner described herein, violated the Fourth and Fourteenth Amendments to the United States Constitution, actionable pursuant to 42 U.S.C. §1983, Article I, §2 of the Rhode Island Constitution, and Article I, §6 of the Rhode Island Constitution by subjecting the Plaintiff to unreasonable search and seizure;

d. a declaratory judgment that the City Ordinance, §14-1(k), Disorderly Conduct and Indecency, Uses Abusive or Obscene language or Makes an Obscene Gesture, is facially unconstitutional under the First Amendment to the United States Constitution and Article I, §21 of the Rhode Island Constitution;

e. enjoining and permanently restraining the Defendants from implementing or enforcing any policy, procedure, or practice that denies deaf or hard of hearing individuals meaningful access to and full and equal enjoyment of Defendant City's facilities, services or programs;

f. entering an Order directing and mandating Defendant City:

1. to develop, implement, promulgate, and comply with a policy prohibiting future discrimination against the Plaintiff and other deaf or hard of hearing individuals relative to effective communications and/or means of communications;
2. to develop, implement, promulgate, and comply with a policy requiring that, in the event a deaf or hard of hearing individual requests an on-site ASL interpreter for effective communication, one will be provided as soon as practicable in all public

services offered by Defendant City, including, but not limited to, services offered by the City Police Department and City Municipal Court;

3. to develop, implement, promulgate, and comply with a policy to ensure that Defendant City will notify individuals who are deaf or hard of hearing of their rights to effective communication and/or effective means of communication. Such notification includes, but is not limited to, posting explicit and clearly worded written notices that Defendant City will provide ASL interpreters, videophones, and other communication services to ensure effective communication with deaf or hard of hearing persons;
4. to develop, implement, promulgate, and comply with a policy to ensure, in the event Defendant City utilizes a Video Remote Interpreting System (“VRI”), that such system has a high-speed internet connection, a video screen with appropriate size, position, capture angle, focus, and proximity to the deaf individual, and appropriate audio quality. When possible, the equipment should be portable and made available to the disabled individual where the individual is located, preferably in a private room to minimize distractions and maintain confidentiality;
5. to develop, implement, promulgate, and comply with a policy to ensure that deaf or hard of hearing individuals are able to communicate through the most appropriate method under the circumstances, recognizing that the VRI is not appropriate in all situations;
6. to create and maintain a list of ASL interpreters and ensure availability of such interpreters at any time of day or night; and,
7. to train all its employees, staff, and other agents on a regular basis about the rights of individuals who are deaf or hard of hearing under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Rhode Island Civil Rights of Persons with Disabilities Act;
 - g. an award of compensatory damages;
 - h. an award of punitive damages;
 - i. an award of reasonable attorney's fees, costs of litigation to Plaintiff's attorneys, and statutory interest; and,
 - j. such other and further relief as the Court deems just and proper.

VII. Demand for Jury Trial

The Plaintiff hereby demands a trial by jury on all counts so triable.

VIII. Designation of Trial Counsel

The Plaintiff hereby designates V. Edward Formisano, Esq., Michael D. Pushee, Esq., Alyse E. Galoski, Esq., and Katherine R. Bowden, Esq. as trial counsel.

Plaintiff,
By his attorneys,

/s/ V. Edward Formisano
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