

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BRANDON COBB, et al., etc.,

Plaintiffs,

v.

GEORGIA DEPARTMENT OF COM-
MUNITY SUPERVISION, et al., etc.,

Defendants.

CIVIL ACTION NO.

1:19-cv-03285-WMR

**RESPONSE OF DEFENDANTS TO PLAINTIFFS' SECOND
SUPPLEMENTAL STATEMENT OF ADDITIONAL MATERIAL FACTS**

Defendants respond as follows to the second supplemental or amended additional material facts stated by Plaintiffs (Docs. 249, et seq.).

**PLAINTIFFS' SUPPLEMENTAL FACTS AND
DEFENDANTS' RESPONSES**

80(a). On July 26, 2022, Cobb was arrested for allegedly violating the conditions of his parole. Fink Suppl. Dec. Ex. A, Cobb Second Suppl. Dec. at ¶ 13. When he was told to report for a meeting on that date, he asked for an in-person interpreter and his CSO told him that one would be provided. However, no in-person interpreter was provided. Instead, his CSO attempted to communicate using VRI on a small cell phone screen and then on a laptop computer. Cobb had difficulty understanding what

was being communicated. Id.

80(b). On August 4, 2022, Cobb's CSO met with him in jail. No in-person interpreter was present, and no Deaf interpreter was present. Instead, his CSO attempted to communicate with using VRI on a cell phone screen. Id. at ¶ 14. The screen was too small for Cobb to see clearly, and the VRI interpreter used signs with which he was not familiar. Id. Cobb repeatedly told his CSO through the VRI interpreter that he could not understand, but his CSO kept repeating the same information and did not communicate it in a way that he could understand. Id.

80(c). Mr. Cobb's CSO brought documents to him in jail and asked him to sign them. Id. at ¶ 16. Cobb did not understand the contents of these documents. Id. He did not sign one document because he believed it would result in him returning to prison. He instead signed another document because he believed he would have a hearing before the parole board. Id. Cobb believes that his CSO may have read some of the contents of this document to him, but she did not explain it, and he does not believe the interpreter heard or interpreted all of it. Id. The meeting was very short (about 5-8 minutes) and he did not have a chance to ask questions of his CSO. He signed the document without understanding it because he believed something worse would happen to him if he did not sign it. Id.

80(d). The document that Cobb signed on August 4, 2022, waived his right to a preliminary hearing before the parole board. Id. at ¶ 17. He did not understand the contents of the document until August 8, 2022, when his lawyers met with him and communicated using in-person hearing and Deaf interpreters. Id. He would not have signed the document had he understood he was waiving his right to a hearing. Id.

80(e). The document that Cobb signed on August 4, 2022, waiving his right to a preliminary hearing listed five alleged parole violations. Id. at 10. Cobb did not understand the reasons he was alleged to have violated parole until his lawyers explained them to him on August 8, 2022. Id. at ¶ 18. His CSO had not previously communicated these reasons to him in a way that he could understand. Id. at ¶¶ 13-16.

80(f). One alleged parole violation cited by DCS related to Cobb's failure to get substance abuse treatment. However, despite his efforts, Cobb was unable to find a treatment program that would provide interpreters. Id. at ¶¶ 8-10. When he began parole in 2019, Cobb told his CSO that he wanted to get substance abuse treatment, but his CSO told him that he did not have to go to treatment because she did not think her supervisors would pay for interpreters for treatment. Id. at ¶ 5. When, on June 23, 2022, Cobb's CSO told him for the first time that he needed to go to

substance abuse treatment, he immediately tried to comply. Id. at ¶ 8. Despite multiple attempts, Cobb was unable to find a program that would agree to provide interpreters. Id. at ¶¶ 9-11. Cobb informed his CSO that he was having difficulty finding a treatment program that would provide interpreters and asked her what to do, but she did not answer him. Id. at ¶ 10.

80(g). Another parole violation DCS cited was Cobb's alleged failure to pay a "Victim's Compensation Fee," but Cobb does not understand what this fee is. Id. at ¶ 18. Cobb is paying regular monthly payments to DCS, and no one has ever told him about any additional payment obligations. Id.

RESPONSE

Objection on the grounds that Plaintiffs' statement does not comply with LR 56.1(B)(1)(2)(b), NDGa. It does not contain separately numbered facts, is not concise, and fails to include related evidence that should be considered with the cited material. Fed. R. Evid. 106, Fed. R. Civ. P. 32(a)(6). Plaintiffs' evidence is immaterial, not admissible, and does not support the purported fact. Further response is stated below.

FURTHER RESPONSE

Brandon Cobb was convicted in Clayton County Superior Court of aggravated assault and other crimes in 2014. He was sentenced to 20 years with nine to serve and the balance on probation. According to Cobb, he had both a live ASL interpreter and a Certified Deaf Interpreter at his trial in 2014. (Doc. 201-1 (Cobb Dep. I), at 74:24-75:11). The conditions of Cobb's supervision were explained to him at sentencing. (Doc. 34-1 (Mitchell Decl.) ¶¶ 9, 15 (Attachment 1, at 9-16)).

After serving five years in prison, the Georgia Board of Pardons and Paroles issued a parole certificate to Cobb on April 1, 2019. The certificate stated several standard conditions replicating the probation conditions explained to him at sentencing. These included no further violations of law, immediate notification of assigned community supervision officer if arrested, drug testing, payment of restitution, etc. (Doc. 34-1, at 6-7, 9) (ECF pagination).

Cobb tested positive for illegal drugs on multiple occasions earlier this year. DCS Case Notes show that on May 24, 2022 he tested positive for THC and admitted using it. On June 23, 2022, Cobb tested positive for THC again and also for cocaine. He once more admitted using THC. (Exhibit J (Darrell Smith Decl. 6) ¶¶ 4,5,8; Exhibit E to Smith Decl. (Case Notes)). Cobb admits drug use in his new

declaration. (Doc. 249-4 ¶¶ 5,6,7).

Moreover, Cobb was arrested on July 1, 2022 for domestic violence. Cobb did not report the arrest to his CSO or DCS, as required by his supervision conditions. (Exhibit J (Darrell Smith Decl. 6) ¶¶ 4,5,8; Exhibit E to Smith Decl. (Case Notes)).

According to Plaintiffs, ineffective communication occurred at meetings between Cobb and assigned CSO Mariah Mitchell on July 26, 2022 and August 4, 2022. (Docs. 249, et seq.). Defendants have filed a motion for leave to file under seal the bodycam videos of these meetings.

Plaintiffs have inaccurately described the meetings between Cobb and his CSO. The Case Notes show that, during April 2022 through August 4, 2022, an ASL interpreter over Video Remote Interpreting (VRI) was used to communicate with Cobb not only on July 26 and August 4 but also on April 1, May 24, June 23, 2022. (Exhibit J (Darrell Smith Decl. 6) ¶¶ 4,5,8; Exhibit E to Smith Decl. (Case Notes)). The Notes show that information was communicated to Cobb regarding his positive drug screens, the reasons for his drug usage, his arrest for domestic violence, documents regarding a hearing before the Board of Pardons and Paroles, and the procedure for him to obtain an attorney for the hearing. (Exhibit J (Darrell Smith

Decl. 6) ¶¶ 4,5,8; Exhibit E to Smith Decl. (Case Notes)).

The bodycam videos of the July 26, 2022 and August 4, 2022 meetings show that Cobb communicated freely with CSO Mariah Mitchell through an ASL interpreter over VRI. (Exhibit J (Darrell Smith Decl. 6) ¶¶ 4,5,6; Exhibits A, B to Smith Decl. (Bodycam Videos)). The videos show:

1. Cobb said (through the interpreter) “I understand” when told why he was arrested for parole violation (Exhibit A);
2. CSO Mitchell read and explained the waiver documents to him (Exhibit A);
3. Cobb said that he understood (Exhibit A);
4. Cobb refused to sign the waiver of final hearing which, as CSO Mitchell explained, would have sent him without a hearing to the custody of the Georgia Department of Corrections (GDC) for at least six months (Exhibit B) (Exhibit J (Darrell Smith Decl. 6) ¶¶ 4,5,7; Exhibit C to Smith Decl. (Waiver of Final Hearing, unsigned));
5. Cobb signed the waiver of preliminary hearing which, as CSO Mitchell explained, enabled the hearing to be scheduled sooner (Exhibit B) (Exhibit J (Darrell Smith Decl. 6) ¶¶ 4,5,7; Exhibit D to Smith Decl. (Waiver of Preliminary Hearing, signed));

6. Cobb discussed with CSO Mitchell his problems in arranging a substance abuse evaluation (Exhibit B); and
7. Cobb discussed with CSO Mitchell his questions about a past due balance on his court-ordered restitution. (Exhibit B).

The communication could of course have been better. But the Americans with Disabilities Act does not require perfect communication. It requires only effective communication. 28 C.F.R. § 35.160(a).

As Defendants have previously argued, Plaintiffs are without standing to seek an injunction or class certification. Summary judgment should be granted to Defendants and Plaintiffs' renewed motion for class certification denied. (Doc. 217, at 5-19).¹

¹This document has been prepared in Times New Roman (14 pt.) font, which has been approved by the Local Rules of this Court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed RESPONSE OF DEFENDANTS TO PLAINTIFFS' SECOND SUPPLEMENTAL STATEMENT OF ADDITIONAL MATERIAL FACTS with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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This 18th day of August, 2022.

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