

JP

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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KATHLEEN KERRIGAN, ANTHONY  
HOLIDAY, MICHAEL J. McSHEA,  
TARIQ MANGUM, RENEE CROSBY, and  
CAROLYN DAVENPORT, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

THE CITY OF PHILADELPHIA; MARGARET  
TARTAGLIONE, ANTHONY CLARK and  
JOSEPH J. DUDA, in their official capacities as  
Philadelphia City Commissioners;  
PENNSYLVANIA DEPARTMENT OF STATE  
and PEDRO A. CORTÉS, in his official capacity  
as Secretary of the Commonwealth,

Defendants.

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Civil Action No. 07-CV-687

Class Action

FILED

MAY - 1 2013

MICHAEL E. KUNZ, Clerk  
By: [Signature] Dep. Clerk

**SECOND ADDENDUM TO SETTLEMENT AGREEMENT**

**I. Introduction**

WHEREAS, Plaintiffs and class representatives, Michael McShea and Tariq Mangum, filed this lawsuit alleging, *inter alia*, that Defendants The City of Philadelphia and the Philadelphia City Commissioners (collectively, City Defendants) violated Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by failing to maximize the accessibility of Philadelphia polling places to voters with mobility disabilities;

WHEREAS, City Defendants denied such allegations;

WHEREAS, the Court certified this case to proceed as a class action on behalf of all Philadelphia voters with mobility disabilities who either became eligible to vote or developed a mobility disability after October 22, 2001 (the Class);

WHEREAS, the Court, following a notice to the Class and a fairness hearing, approved a Settlement Agreement that resolved all claims among the parties on July 14, 2009;

WHEREAS, the Plaintiffs and the City Defendants desire to extend the Settlement Agreement to cover the May 21, 2013 Primary Election on the term stated herein.

NOW, THEREFORE, Plaintiffs and the City Defendants enter into this Addendum to the Settlement Agreement.

## **II. Definitions**

"Second Addendum" means this Addendum to the Settlement Agreement.

"Agreement" means the Settlement Agreement entered into by the parties and approved by the Court on July 14, 2009.

"City Defendants" means Defendants City of Philadelphia and the City Commissioners in their official capacity.

"DOJ" means the United States Department of Justice.

"DOJ survey forms" means forms created by DOJ for each Philadelphia polling place where the City Defendants have agreed to implement temporary modifications that identify the specific types of temporary modifications that are to be implemented in each polling place.

"Election officials" means the judge of elections, majority inspector, minority inspector, machine inspector and clerk for each voting division.

"Exterior door propping modification" means a temporary modification recommendation that an exterior door be propped open.

"Settlement Agreement" means the settlement agreement that was approved by the Court by order dated July 14, 2009.

"Temporary modifications" means the temporary accessibility modifications recommended by DOJ or the Private Third Party which the City Defendants agreed to implement pursuant to the Agreement.

### **III. Terms of Addendum to Settlement Agreement**

#### **A. All Terms Of Settlement Agreement Revoked And Superseded By This Second Addendum**

This Second Addendum to The Settlement Agreement revokes and supercedes all terms of the Settlement Agreement and the first Addendum to the Settlement Agreement, which was approved by order of the Court dated October 17, 2011.

#### **B. List of Polling Places To Be Surveyed**

For the May 21, 2013 Primary Election, the City Defendants will survey Philadelphia polling places, as identified in Exhibit A, attached hereto, to determine whether the temporary modifications to which the City Defendants agreed are implemented.

i. The polling place surveys required by this Section will be conducted by staff members of the City Solicitor's Office who volunteer to conduct the survey.

- ii. The surveys required by this Section will take place prior to 10:00 a.m. Eastern Daylight Time on primary election day.
- iii. The survey teams will be provided with DOJ survey forms for each polling place they are to survey.
- iv. If a survey team determines that one or more temporary modifications have not been implemented at a polling place, the team will inform the Judge of Elections at the polling place and ask the Judge of Elections to implement the temporary modification(s). If the Judge of Elections does not implement the temporary modification(s) prior to the departure of the survey team, the survey team will immediately contact a person in the Voter Registration Division designated by the City Defendants to handle these issues and inform him or her of the failure to implement the temporary modification(s) at the polling place.
- v. When the designated person in the Voter Registration Division is contacted by a survey team and apprised that the Judge of Elections has failed to implement one or more temporary modifications, the Voter Registration Division will take necessary steps to advise that the Judge of Election promptly implement the temporary modification(s).
- vi. The survey teams will complete the relevant DOJ survey form for each polling place they survey on site, stating on the form whether or not each temporary modification was implemented when the team arrived. If one or more of the temporary modifications were not implemented when the survey team arrived, the survey team will also provide the following information on the form: (1) the time it informed the Judge of

Elections of the failure to implement the temporary modification(s); (2) whether the Judge of Election remedied the problem and implemented the temporary modification(s); and (3) if the Judge of Elections did not implemented the temporary modification(s), the time the survey team contacted the Voter Registration Office to inform them of the failure of the Judge of Elections to implement the temporary modification and the name of the person in the Voter Registration Division with whom the survey team spoke.

vi. Although the survey teams must note on the survey forms if an exterior door propping modification is not implemented, the survey team need not either advise the Judge of Elections or the Voter Registration Division if that specific type of modification is not implemented. If, however, a door buzzer has been installed, the survey teams will test the buzzer to determine if it can be heard by voting officials and, if it cannot, will so note that deficiency on the survey form.

vii. The City Defendants will provide Plaintiffs' counsel with copies of all survey forms completed by the survey teams no later than twenty-one (21) days after the May 21, 2013 primary election.

E. Termination

The Settlement Agreement, including this and this addendum to the Settlement Agreement, terminates on June 30, 2013, and any disputes, motions or appeals pending before the Magistrate Judge, the District Court, or the United States Court of Appeals for the Third Circuit will be moot as of this termination date.

F. Waiver of Attorneys' Fees, Litigation Expenses And Costs

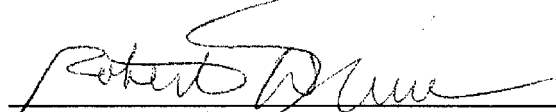
Plaintiffs' waive any and all claims for attorneys' fees, litigation expenses and costs incurred in monitoring or enforcing the Settlement Agreement, including any such fees, expenses and costs not already paid to plaintiffs or their counsel.

G. Approval and Enforcement

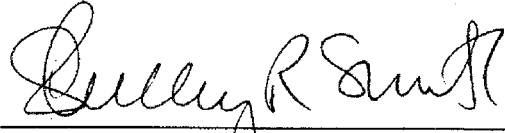
1. Plaintiffs and the City Defendants will present this Second Addendum to the Court for approval.

[Continued on Page 7]

2. If the Court approves the Addendum, it will be incorporated by reference in the Agreement as if fully set forth therein. The Court will continue to retain jurisdiction over this Litigation for purposes of interpretation and enforcement of and compliance with the Agreement and Addendum.



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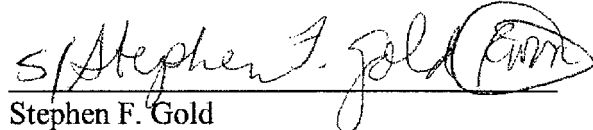


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Dated: April 24, 2013



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Counsel for Plaintiffs and the Class

Dated: April 25, 2013

APPROVED BY:



The Honorable John R. Padova  
United States District Judge

5/1/2013

**ENTERED**

**MAY - 1 2013**

**CLERK OF COURT**

# EXHIBIT A



**Results of DRN and City November 2012 Poll Monitoring:**

1. W 1 D 6; W 39 D 5, 6—Furness School, 3rd and Mifflin Sts
2. W 2 D 2—Fire Engine Co #3, 240 Washington Ave
3. W 2 D 25—Wallpaper store—707 E Passyunk Ave
4. W 6 D 17—Leidy School, Belmont Ave and Thompson St
5. W 7 D 6—Schmidt Recreation Center, Howard and Ontario Streets
6. W 9 D 1, 2, 3—Grace Epiphany Church, Ardleigh and Gowen Streets
7. W 10 D 2—Beauty Salon, 1962 Penfield Street
8. W 11 D 4—Kenderton School, 15th and Ontario Streets
9. W 12 D 2, 3—Francis Pastorious School, Cheltenham Ave & Sprague St
10. W 16 D 3, 4, 5—MH Stanton School, 16th and Cumberland Streets
11. W 19 D 19—Fire Engine Company #2, 2426 N 2nd St
12. W 21 D 1, 2—Pilgrim Orthodox Church, 3815 Terrace Street
13. W 21 D 14, 16, 35—Cook Wissahickon School, Righter and Salaignac Streets
14. W 21 D 22—Firehouse, Ridge and Cinnaminson St
15. W 24 D 9, 14—Heavenly Hall, 4015-17 Poplar Street
16. W 25 D 2, 13, 17, 23, 24—Memphis Street Academy Charter/Jones Middle School, Memphis and Ann Streets
17. W 25 D 4, 7, 10—Carroll School, 2700 E. Auburn St
18. W 25 D 9, 18, 21—Mastbaum Vocational School/High School, 3116 Frankford Ave
19. W 26 D 5, 9—Barry Rec Center, 18th and Johnston Streets
20. W 28 D 9, 10, 11, 12—Ethel Allen School, 32nd and Lehigh Ave
21. W 33 D 1—Restaurant, 901 E Cayuga St
22. W 36 D 14, 24, 25, 27, 33—Barrett Nabuurs Center, 28th and Dickinson Sts
23. W 36 D 35, 36, 40—Barratt School, 16th and Wharton Sts

24. W 37 D 21—Community Center, 3018-A N. Percy St
25. W 38 D 7, 8—E.W. Rhodes School, 29th & Clearfield Sts
26. W 41 D 22—Kiddy Kottage Daycare Center, 4343 Princeton Ave
27. W 43 D 24—Voice of Praise Church, 3949 N. Broad St
28. W 49 D 8—Oak Lane Presbyterian Church, Oakland and N 11th St
29. W 49 D 10, 15, 19—Birney Prep Academy/Prep Charter School, 9th and Lindley Sts
30. W 51 D 14—Fire Engine Company #68, 52nd and Willows Ave
31. W 52 D 20, 26, 27—Beeber Middle School, 59th and Malvern Ave
32. W 54, D 1, 2, 3, 5—Spruance Little Schoolhouse, Levick and Horrocks Streets
33. W 55 D 16, 17, 18, 19; W 64 D 12—Mayfair School, Hawthorne and Princeton Ave
34. W 58 D 8, 15, 18, 36—Washington High School, Bustleton Ave and Verree Road
35. W 58 D 20, 25, 40—Somerton Methodist Church, 13073 Bustleton Ave:
36. W 59 D 1—Martin Luther King High School, Stenton Ave and Haines Street
37. W 59 D 6, 7, 8—Morton Homes (PHA), 5920 Morton St
38. W 61 D 2, 3, 4, 7, 8—Lowell School, 5th and Nedro Ave
39. W 61 D 22—Bromley House Apartments, 6901 Old York Road
40. W 63 D 3, 13—Foxchase Library, Jeanes and Rhawn Streets
41. W 63 D 15, 20, 22, 24—Baldi School, Verree Road and Alburger Ave
42. W 64 D 2—Park Terrace Apartments Common Room, 8040 Rowland Ave
43. W 65 D 23—Fire Engine Co. #46, 9197 Frankford Ave
44. W 66 D 17—Fire Engine Company #22, Academy and Comly Roads:
45. W 66 D 25, 46—Our Lady of Calvary School, 11024 Knights Road

46. W 66 D 29—School District Offices, 4101 Chalfont Drive