

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON FIELD OFFICE**

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| JAMES CAMPBELL, |) | |
| |) | EEOC No. 570-2018-00277X |
| Class Agent, |) | (formerly EEOC No. 570-2015-00061X) |
| |) | |
| v. |) | Agency No. CRSD-2014-00665 |
| |) | |
| THOMAS VILSACK |) | October 13, 2021 |
| Secretary, U.S. Department of Agriculture, |) | |
| |) | |
| Agency. |) | |
| |) | |

NOTICE OF RESOLUTION OF CLASS ACTION

TO: Deaf and Hard of Hearing USDA (Department) Employees Who Worked at the Department in the National Capital Region Between May 9, 2014 and September 30, 2021

FROM: s
Howard Rosenblum and Brittany Shrader, National Association of the Deaf

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John A. Carriel, Zelle LLP

Dionne Shy, Stephanie Moore, and Christie Meller, Office of the General Counsel, U.S. Department of Agriculture

PLEASE READ THIS NOTICE CAREFULLY. This Notice is sent to you because your rights may be affected by a proposed settlement agreement.

OVERVIEW

Purpose of this Notice

This Notice is given pursuant to 29 C.F.R. § 1614.204(g). You are being sent this Notice because you may be a Class Member in the class action *James Campbell, et al. v. United States Department of Agriculture*, EEOC No. 570-2018-00277X (the “Class Action”). The purpose of this Notice is to advise you of a proposed settlement agreement (the “Settlement Agreement”) between the Class Agent and the United States Department of Agriculture (the “Department”), in the above-captioned Class Action before the Equal Employment Opportunity Commission (“EEOC”). This Settlement Agreement will affect the rights of all Class Members. This Notice describes the rights you may have under the Settlement Agreement and how you may assert those rights. This Notice will also be available in American Sign Language by October 23, 2021 at the website of the National Association of the Deaf, <https://www.nad.org/usda/>.

Further Information

Questions regarding the Settlement Agreement and this Notice should be directed to Class Counsel at the National Association of the Deaf (and not the Administrative Judge or Department Counsel). The National Association of the Deaf may be contacted as follows:

Howard A. Rosenblum, Esq., and Brittany Shrader, Esq.

National Association of the Deaf

8630 Fenton Street Suite 820

Silver Spring, MD 20910

Telephone numbers:

301-587-1788 (Purple/ZVRS)

301-328-1443 (Sorenson)

301-338-6380 (Convo)

TTY: 301-810-3182

Website: <https://www.nad.org/usda>

Email inquiries: usda.settlement@nad.org

BACKGROUND OF LITIGATION

On June 23, 2014, the prior Class Agent initiated contact with an EEO Counselor regarding a potential class action EEO complaint alleging discrimination by the Department. On September 4, 2014, the prior Class Agent filed a formal class action EEO complaint alleging that the Department’s 2013 decision to decentralize the provision of sign language interpreter services in the National Capital Region and subsequent implementation of that decision in May 2014 constituted discrimination on the basis of disability (hearing impairment) and a denial of reasonable accommodation.

On December 14, 2016, Administrative Judge Abigail Coleman conditionally certified the Class as:

From May 9, 2014, and continuing, all deaf and hard of hearing employees in USDA's National Capital Region who, based on their physical disability (hearing impairment), have been or will be subjected to discrimination (the denial of a reasonable accommodation, specifically, qualified sign language interpreting services) resulting from the Agency's implementation of its decision to decentralize the system for the provision and funding of such services.

After an appeal by the Agency, the EEOC Office of Federal Operations issued a decision upholding the conditional certification of the Class on November 9, 2017. In December 2017, the Department provided notice to potential Class Members of the Class Action. On June 17, 2019, Administrative Judge Kathryn Brown certified the Class. Litigation has been ongoing.

The Parties subsequently negotiated and entered into the formal Settlement Agreement on September 30, 2021. On October 8, 2021, the EEOC preliminarily approved the Settlement and authorized the dissemination of this Notice to potential Class Members.

SUMMARY OF SETTLEMENT AGREEMENT

Overview

The following terms of this Settlement Agreement were reached after negotiations between the parties. The parties are requesting that Administrative Judge Brown approve this Class Action Settlement Agreement pursuant to 29 C.F.R. §1614.204(g)(4). This Notice provides only a summary of the terms of the Settlement Agreement. While every effort has been made to ensure the accuracy of this summary, the specific terms of the Settlement Agreement shall govern. The Settlement Agreement is attached to this Notice. The Settlement Agreement and Notice will also be posted on Class Counsel's website at <https://www.nad.org/usda>. Class Counsel's website will also contain the Settlement Agreement and this Notice in American Sign Language.

Effect of the Settlement

The Settlement Agreement extinguishes all claims against the Department, of all Class Members and the Class Agents, up through September 30, 2021 (the date of the final signature of a Party affixed to the Settlement Agreement), pertaining to claims of discrimination (the denial of a reasonable accommodation, specifically, qualified sign language interpreting services) related to

the Department's decision to decentralize the provision of sign language interpreter services in the National Capital Region.

Parties to the Settlement

The parties to the Settlement include Class Agent James Campbell, on behalf of himself and all Class Members, and the Department.

Persons Included in the Settlement Class

From May 9, 2014, and continuing, all deaf and hard of hearing employees in USDA's National Capital Region who, based on their physical disability (hearing impairment), have been or will be subjected to discrimination (the denial of a reasonable accommodation, specifically, qualified sign language interpreting services) resulting from the Agency's implementation of its decision to decentralize the system for the provision and funding of such services.

Terms of Settlement

In order to fully effectuate the Settlement, the Parties agreed to the following provisions:

A. Injunctive Relief

1. The Department will centralize the provision of sign language interpreter services in the National Capital Region within USDA Departmental Management's Office of Operations and assign a point of contact to coordinate and facilitate sign language interpreter services in the National Capital Region.
2. The Department will permit a deaf and/or hard of hearing employee to serve in the selection of vendors that provide sign language interpreter services in the National Capital Region to Department employees.
3. The Department will use the Shared Cost Program to fund sign language interpreter services in the National Capital Region. The funding formula under the Shared Cost Program will be based on each subagency's number of full-time employees, not the number of deaf or hard of hearing employees employed at each subagency.
4. The Department will create a feedback system through which deaf and hard of hearing employees in the National Capital Region will have regular opportunities to provide feedback regarding the Department's provision of sign language interpreter services.

B. Individual Monetary Relief & Attorney's Fees

1. Five Hundred and Fifty Thousand Dollars (\$550,000) will be paid to Class Counsel (the National Association of the Deaf), for reasonable attorney's fees. This is the only payment to be made by the Department in resolution of this Class Action.
2. Class Counsel will transfer thirty thousand dollars (\$30,000) to a Class Fund, which will be distributed to Class Members deemed eligible to receive Individual Relief. The Department will not have any involvement in establishing, administering, or distributing Individual Relief from the Class Fund to Class Members.

C. Individual Relief. Individual relief will be provided under the following categories:

1. Subsumed-Case-Complainants. The seven Class Members who filed individual complaints that fell within the scope of the Class Complaint (i.e., the Subsumed-Case-

- Complainants) shall each receive a base Settlement Award of \$3,000 from the Class Fund in addition to a *pro rata* share of the remaining class fund distribution.
2. A Claims Administrator, to be designated by Class Counsel and paid from the Class Counsel's attorney's fees, will administer the remaining funds according to Section VI of the Settlement Agreement. The amount to be distributed to each Class Member is not known at this time because it will depend on the number of Class Members who claim relief.
 3. The Claims Administrator will have the sole authority to determine who is eligible to receive monetary relief. Anyone determined by the Claims Administrator to be an Eligible Class Member, as defined in Section II(O) of the Settlement Agreement, will receive monetary relief. All determinations made by the Claims Administrator are final and are not appealable.
 4. Class Counsel is solely responsible for all aspects of the distribution of the monetary relief, including the administration of the Class Fund and the payments made from the Settlement Fund.
 5. Except as specifically stated otherwise in the Claim Form and Release, all information provided to Class Counsel for administration and distribution of the Class Fund shall be treated as confidential.

Effective Date and Length of Settlement

The Settlement shall go into effect on the date on which the EEOC gives written, final approval for the Settlement. The terms of the Settlement shall remain in effect until September 30, 2024.

EEOC Approval of Settlement Agreement

The Settlement Agreement becomes effective upon the date that the EEOC Administrative Judge ("AJ") issues a written decision of Final Approval of the Settlement, after considering any timely submitted objections from Class Members. Once effective, the terms of the Settlement Agreement are binding on all Class Members, even those who do not seek recovery from the Settlement Fund.

Class Counsel will be responsible for notifying Class Members of the EEOC AJ's Final Approval of the Settlement Agreement and providing Class Members with the Claim Form necessary to seek monetary relief from the Settlement Fund. This Claim Form, and the Release therein, must be executed and timely submitted in order to receive monetary relief. The Department will not have any involvement in the claims distribution process. No funds shall be distributed until any administrative appeals of the EEOC AJ's Final Approval to the EEOC have been fully and finally resolved or the time for such appeal has passed.

RIGHTS OF CLASS MEMBERS

1. Pursuant to the Settlement Agreement and applicable regulations, no Class Member may opt out of the Settlement Agreement.
2. You may do nothing, and you will remain a Class Member and be both entitled to and bound by the terms of equitable and injunctive relief set out in the Settlement if it is approved under 29 C.F.R. §1614.204(g).
3. You may seek monetary relief provided you qualify for allocation under the distribution formula and timely submit the Claim Form and Release, which will be sent to you by U.S. mail and electronic mail.
4. You may elect not to receive the monetary relief afforded under this Settlement Agreement. Any monetary relief that is unclaimed or rejected will be allocated to the participating Class Members pursuant to the distribution formula, if feasible.
5. You may object to the Settlement, if you follow the instructions for Objections (Petitions to Vacate) that are set forth below.

Union Representation

If you are a member of a bargaining unit, then a copy of this Notice of Resolution of Class Action has also been provided to your union. You may seek advice from the union. The union may represent you and may make an objection on your behalf by filing a petition to vacate the Settlement Agreement and/or representing you at a fairness hearing held by the Administrative Judge.

PROCESS FOR OBJECTIONS (PETITIONS TO VACATE)

If you object to any terms within the Settlement Agreement because you believe they benefit only the Class Agents or are otherwise not fair, adequate, or reasonable to the Class as a whole, you must email your written objection(s) or petition to vacate the Settlement Agreement no later than November 17, 2021 (i.e. 35 days from the date of this Notice of Resolution). The petition to vacate or objection must be sent to:

1. Administrative Judge Kathryn Brown, Equal Employment Opportunity Commission, Washington Field Office, at kathryn.brown@eeoc.gov;
2. Class Counsel, at usda.settlement@nad.org; and
3. Department Counsel, at OGC.USDAO objections@usda.gov

Your emailed objection or petition to vacate must contain “Objection to USDA Class Settlement” in the subject line of your email.

If you do not submit your objection in a timely manner, you waive your opportunity to present such objection or otherwise appeal. Multiple submissions from the same individual will not be

entertained. Your objection must show proof that you are a Class Member, state the basis for any objection, and provide documentation to support the objection.

The Administrative Judge may determine that a Fairness Hearing is warranted to address questions concerning the fairness, adequacy, or reasonableness of the resolution. Alternatively, if the Administrative Judge, after reviewing any petitions that are filed, determines that the proposed resolution is fair, adequate, and reasonable to the class as a whole, the Administrative Judge may proceed to issue a decision to that effect, without holding a Fairness Hearing, thereby making the resolution binding on all Class Members.

A Fairness Hearing, if held, will occur remotely via video on November 22-23, 2021 (the second day, November 23, will only be utilized if necessary). Only Class Members who have submitted objections or petitions to vacate, in accordance with the above procedure and time limits, may present objections to the resolution at the Fairness Hearing (if one is held).

Class Counsel will provide the link to any Fairness Hearing to any class members who submit timely objections / petitions to vacate the resolution. Upon receipt of the link, and no later than November 18, 2021, the Class Members must advise Class Counsel of any accommodations or support that will be necessary for them to participate (including, but not limited to sign language interpreter services).

If the EEOC AJ grants final approval to this Settlement Agreement despite objections or a petition to vacate, you will only be permitted to appeal the determination of Final Approval if you filed an objection or a petition to vacate with the EEOC AJ.