

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”), deemed in effect as of the Effective Date, is entered into by Angela Fowler, Miguel Mendez, Hy Cohen, and the National Federation of the Blind (“NFB”) (collectively, “Plaintiffs”) and by and between PSI Services, LLC (“PSI”) and California Department of Insurance (“CDI”) (collectively, “Defendants”). Each of the foregoing are also referred to as a “Party” and collectively referred to as the “Parties.”

1. RECITALS

- 1.1 **WHEREAS**, on October 12, 2021, Plaintiffs, through counsel, filed a Complaint in the Superior Court for the County of Alameda entitled *Angela Fowler, et al., v. PSI Services, LLC, et al.*, Case No. 21CV000126 (“Complaint”) and which alleged disability discrimination in relation to the electronic testing services provided by PSI on behalf of CDI using PSI’s Online Testing Technology and accommodations request and medical documentation procedures;
- 1.2 **WHEREAS** Defendants deny any wrongdoing or violation of law arising out of the allegations in the Complaint;
- 1.3 **WHEREAS** the Parties wish to avoid the expense of further proceedings and desire to resolve all claims alleged or that could be alleged in the Complaint;
- 1.4 **WHEREAS** the Parties hereby fully, fairly, and finally settle all claims Plaintiffs have or may have against Defendants with respect to the accessibility of PSI’s Online Testing Technology for valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

2. DEFINITIONS

The following terms shall have the following meanings with respect to this Agreement. All other terms shall be interpreted according to their plain and ordinary meaning.

- 2.1 Electronic and Information Technology Standards (EIT Standards) shall have the same meaning as is set forth in Section 508 of the Rehabilitation Act (29 U.S.C. § 794d., subdivision (a)(2)) and its implementing regulations at 36 C.F.R. § 1194 app. D.

- 2.2 “Screen Access Software” means software and/or technology that blind or vision impaired individuals use to access electronic content that complies with the EIT Standards defined in section 2.1. For purpose of this Agreement, the Parties agree that Screen Access Software consists of the following:
- JAWS (v8 and above)
 - WindowEyes (v6.1)
 - ZoomText (v8 and above)
 - MAGic
 - Dragon NaturallySpeaking (DNS)
- 2.3 “Effective Date” refers to the date by which this Agreement is fully executed by the Parties.
- 2.4 “Online Testing Technology” refers to all electronic information that potential applicants and examinees might use to register for and take online examinations administered by PSI to obtain a license from the CDI.
- 2.5 “Plaintiffs’ Counsel” refers to TRE Legal Practice and Disability Rights Advocates.

3. REMEDIATION

- 3.1 **CDI’s Testing Accommodations and Procurement.** Within the same timeline required of PSI in section 3.2, including any extensions granted after the Effective Date, CDI shall no longer require any blind or visually impaired individual who requires the use of Screen Access Software to access PSI’s Online Testing Technology to first provide medical documentation, unless the individual has requested other individualized accommodations (such as, but not limited to, extended testing times or similar reasonable modifications). Except for those individuals who request other individualized accommodations, any blind or visually impaired individual who requires the use of Screen Access Software to access PSI’s Online Testing Technology can use such Screen Access Software after a self-certification of the need based on blindness or visual impairment, and without the requirement to submit medical documentation or delay exam scheduling.
- 3.1.1 Unless prohibited by CDI’s delegated authority from the Department of General Services and/or the California Department of Technology, any IT project which is solicited by CDI after the Effective Date and seeks to procure computer-based examination software and on-line service for self-scheduling examinations such as that currently provided by PSI, shall require potential vendors to:

- (a) certify that the technology developed and utilized by the vendor enables blind and visually impaired individuals to use Screen Access Software (as defined in section 2.2.), or equivalent screen access software used to access the technology developed and utilized by the vendor that meets EIT Standards in accordance with the contract; and
- (b) create a written plan for blind or visually impaired individuals using Screen Access Software to manually test the technology developed and utilized by the vendor to establish that it meets EIT Standards prior to public release . CDI agrees that it will perform testing in accordance with the test plan on an annual basis to confirm the Screen Access Software meets the requirements of provision “(a)” set forth in this paragraph.

3.2 PSI’s Online Testing Technology and Policies. Within one hundred eighty (180) days of the Effective Date, PSI shall:

- 3.2.1 ensure its Online Testing Technology complies with EIT Standards and that it is independently usable by blind and visually impaired users in accordance with the ADA accessibility and communication regulations, 28 C.F.R. pt. 35 *et seq.*;
- 3.2.2 develop and train proctors on a policy for online proctoring, exams, and Online Testing Technology that permits the use of Screen Access Software by individuals who are blind or visually impaired without the need of a medical certification. Said policy shall allow for PSI to include a process whereby when signing up for an online exam an individual who needs to use Screen Access Software shall identify the need by checking a box or similar feature, and complete an attestation that the individual requires Screen Access Software because the individual is blind or visually impaired; and
- 3.2.3. provide blind or other visually impaired individuals who depend on Screen Access Software the same online exam scheduling options as those offered to others without disabilities.

3.3 Exceptions.

- 3.3.1 Nothing in this agreement prevents PSI or CDI from offering users of Screen Access Software a voluntary opportunity to schedule a troubleshooting or test session before taking an exam or otherwise presenting information about supported browsers and technical information about Screen Access Software that is known to work well with the Online Testing Technology; and
- 3.3.2 Nothing in this Agreement shall prevent PSI and/or CDI from requiring medical certification or any other documentation/information when an

individual requests accommodations or modifications to exams other than the use of Screen Access Software.

4. TERM

The term of this Agreement shall be two (2) years from the Effective Date.

5. DISPUTE RESOLUTION

- 5.1 Before any Party files any claim, cause of action, litigation, lawsuit, action or proceeding against any Party related to this Agreement or the accessibility of Online Testing Technology by individuals who are blind or visually impaired, the Parties shall first engage in and complete the dispute resolution process set forth in this section.
- 5.2 **Meet and confer.** Plaintiffs agree to provide written notice of any potential non-compliance with this Agreement or the accessibility of Online Testing Technology to PSI through its counsel (Nathan V. Okelberry, Fisher & Phillips LLP, 444 S. Flower Street, Suite 1500, Los Angeles, California 90071; facsimile: (213) 330-4501; email: nokelberry@fisherphillips.com); and to CDI (Tiffani Toy, California Department of Insurance, 1901 Harrison St., 4th Floor, Oakland, CA 94612; telephone (415) 538-4171; email: Tiffani.Toy@insurance.ca.gov). PSI and/or CDI shall have sixty (60) days from receipt of the written notice to cure any alleged non-compliance. If PSI and/or CDI fails to cure within that period of time (or within an extended period of time agreed upon in writing by the Parties), then, and only then, may Plaintiffs and their counsel proceed with the further steps outlined in this Dispute Resolution process. Plaintiffs further agree that said written notice to PSI and CDI is a condition precedent to initiation or institution of any claim, cause of action, litigation, lawsuit, demand for relief, action or proceeding against them, and agrees that failure to provide said notice and reasonable opportunity to cure or remediate the alleged non-compliance shall operate as a bar and/or complete and total defense to any purported claim, cause of action, litigation, lawsuit, demand for relief, action or proceeding Plaintiffs may have related to this Agreement or the accessibility of Online Testing Technology.
- 5.3 Plaintiffs' Counsel shall send a letter to CDI and counsel for PSI (identified in paragraph 5.2) concerning any dispute regarding this Agreement, and they shall meet and confer in a good faith effort to resolve any dispute.

5.4 If the Parties are unable to resolve their dispute through such meet and confer negotiations within twenty-one days of receipt of the letter raising the dispute, Plaintiffs may pursue legal remedies available to them to enforce the Agreement.

6. DAMAGES AND ATTORNEY'S FEES

Within thirty (30) days after the Effective Date, PSI shall pay Plaintiffs a total sum of Two Hundred Six Thousand Eight Hundred Sixty-Seven Dollars and Zero Cents (\$206,867.00) ("Settlement Payment") for all attorney's fees, costs, and expenses, as well as alleged damages. The Settlement Payment shall be made as follows:

A check in the amount of One Hundred Sixty-Four Thousand Eight Hundred Sixty-Seven Dollars and Zero Cents (\$164,867.00) for attorney's fees, costs, and expenses, and made payable to TRE Legal Practice.

Three separate checks in the amount of Fourteen Thousand Dollars and Zero Cents (\$14,000.00) (for a total of Forty-Two Thousand Dollars and Zero Cents (\$42,000.00)) for alleged damages, made payable separately to Angela Fowler, Miguel Mendez, and Hy Cohen.

All checks shall be delivered to Plaintiffs' counsel at the following address: 1155 Market Street, Tenth Floor, San Francisco, CA 94103. All checks shall be sent via Federal Express, USPS Certified Mail, or other shipping method that provides tracking and delivery confirmation.

Upon delivery of the Settlement Payment, Defendants will have fully met their payment obligations under this Agreement and will not be liable in any manner for the distribution, division, or payment of any portion of the Settlement Payment to or between any counsel Plaintiffs may have retained or consulted. By execution of this agreement, Plaintiffs authorize payment to be made as set forth in this paragraph.

7. RELEASE

7.1 **Release.** In further consideration for the commitments herein, Plaintiffs, on their own individual behalf and on behalf of their respective predecessors, heirs, successors and assigns, hereby releases and forever discharge PSI, CDI, and each of their employees (former and present), shareholders, officers, directors, managers, agents, attorneys, insurance carriers, parents, subsidiaries, divisions or affiliated organizations or corporations whether previously or hereafter affiliated in any manner, and the respective predecessors, successors and assigns of all of the foregoing (collectively referred to hereinafter as "Releasees"), from any and all claims, demands, causes of action, obligations, charges, damages, liabilities, attorneys' fees, and costs of any nature whatsoever, contingent, or non-contingent, matured or unmatured, liquidated or unliquidated, whether or not known, suspected or claimed, which Plaintiffs had, now has or may claim to have had as of the Effective Date of this agreement against the Releasees (whether directly or indirectly) or any of them, by reason of any act or omission whatsoever, occurring up until the Effective Date of this Agreement related to or arising out of any claims or allegations in the Complaint or otherwise concerning whether the Online Testing Technology is inaccessible to individuals who are blind or visually impaired, including, without limiting the generality of the foregoing, any claims, demands, causes of action, obligations, charges, damages, liabilities, attorneys' fees and costs relating to or arising out of any alleged violation of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, or a tort, or any federal, state, municipal or other governmental statute, public policy, regulation or ordinance.

7.2 **Waiver of Section 1542.** The Parties hereby state that it is their intention in executing this Agreement that the same shall be effective as a bar to each and every claim, demand, cause of action, obligation, damage, liability, charge, attorney fees and costs herein above released. Accordingly, the Parties hereby expressly waive and relinquish all rights and benefits, if any, arising under the provisions of Section 1542 of the Civil Code of the State of California which provides:

"Section 1542. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

8. DISMISSAL

Within five (5) days of receipt of the Settlement Payment, Plaintiffs agree to dismiss with prejudice the Complaint by filing a request for dismissal with prejudice and any other necessary documents with the appropriate court(s). Plaintiffs further agree to dismiss any other claims, charges, or complaints Plaintiffs may have filed or has pending with any governmental or administrative agency or in any judicial or arbitration forum against Releasees (defined in Paragraph 6.1, above). Plaintiffs and their counsel agree to take all steps reasonably necessary to fulfill this portion of the Agreement.

9. MISCELLANEOUS

- 9.1 **No Admission of Wrongdoing.** This Agreement and compliance with it shall not be construed as an admission by the Parties of any liability whatsoever or as an admission by the Parties or the Releasees (as defined in paragraph 6.1) of any wrongdoing, including but not limited to, any violation common law, statute, or contract. It is understood and agreed by the Parties that this Agreement represents a compromise and settlement for various matters and that the promises and payments and consideration of this Agreement shall not be construed as an admission of any liability or obligation by either Party to the other Party or any other person.
- 9.2 **Entire Agreement.** This Agreement contains the entire agreement between the Parties. The terms of this Agreement supersede any prior discussions, understandings, or agreements between the Parties relating to this matter. No modifications or limits will be binding on the Parties unless expressly provided for in this Agreement or made by writing signed by all of the Parties.
- 9.3 **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.
- 9.4 **Interpretation.** This Agreement is deemed to have been drafted by all the Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all the Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one Party than another. The headings in this Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural.
- 9.5 **Severability.** In the event any portion of this Agreement is deemed to be unenforceable, or is in conflict with applicable law, the remainder of this Agreement will be enforced and will remain in full force and effect.

- 9.6 **Choice of Law.** This Agreement shall be governed, construed, and interpreted in accordance with the laws of California.
- 9.7 **Execution.** The Parties, having carefully read this Agreement, and having consulted or having been given an opportunity to consult legal counsel, hereby acknowledge their agreement to all of the foregoing terms and conditions by executing this Agreement. Each signatory hereto represents and warrants that it is authorized to sign this Agreement on behalf of the respective party. Facsimile and PDF signatures on this Agreement shall be treated as original signatures. A copy of this Agreement shall be treated as an original.
- 9.8 **Attorney's Fees.** The Parties agree that they will bear their own attorneys' fees and costs incurred in connection with this matter, except as otherwise provided in this Agreement.

For PSI SERVICES, LLC:

Yves Baetsle

Aug 22, 2024

By:

DATE

For CALIFORNIA DEPARTMENT OF INSURANCE:

By:

DATE

For NATIONAL FEDERATION OF THE BLIND:

Signed by:

Shad L. Bell

August 13, 2024

By: SHAD L. BELL, President

DATE:

For ANGELA FOWLER:

Signed by:

Angela Fowler

August 14, 2024

By: ANGELA FOWLER

DATE:

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For PSI SERVICES, LLC:

By:

DATE

For CALIFORNIA DEPARTMENT OF INSURANCE:



By: Heather Hoesterey, Deputy General Counsel

August 6, 2024

DATE

For NATIONAL FEDERATION OF THE BLIND:

By: Mark A. Riccobono, President

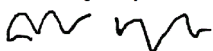
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For ANGELA FOWLER:

By:

DATE:

For MIGUEL MENDEZ:

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August 12, 2024

DATE:

For HY COHEN:

Signed by:

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August 12, 2024

DATE: