

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**THE NATIONAL FEDERATION
OF THE BLIND OF VIRGINIA, *et al.*,**

Plaintiffs,

Case No. 3:23-cv-127-HEH

v.

**VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,**

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AGAINST DEFENDANTS CHADWICK DOTSON,
BARRY MARANO, DARRELL MILLER, KEVIN MCCOY, LAKEISHA SHAW,
AND THE VIRGINIA DEPARTMENT OF CORRECTIONS**

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INTRODUCTION

Plaintiffs—five prisoners in the custody of Defendant Virginia Department of Corrections (“VDOC”), one former prisoner, and a non-profit organization that advocates for the rights of the blind—seek systemic change within VDOC due to its ongoing failure to provide blind prisoners with equal access to programs and services. One of the many reasons the Individual Plaintiffs and other blind¹ prisoners are denied equal access to VDOC’s various programs is due to VDOC’s failure to provide tools for effective communication.

Blind people are capable of independently communicating and receiving communications in print through assistive technology, such as document scanners and computers or other devices with Optical Character Recognition and text-to-speech capability. But VDOC’s computers, tablets, and electronic kiosks available for prisoner use are not equipped with assistive hardware or software to accommodate their disabilities. For the minimal assistive technology that VDOC does provide—like the lone document scanner at Deerfield—VDOC staff are often not informed that those tools exist, do not know how to use them, or do not know how to teach blind prisoners to use them, and blind prisoners are limited in how often they can use them. As a result, reading documents as part of any VDOC program—library books, textbooks, re-entry policies, personal mail, legal documents, and more—is impossible for blind prisoners. Without regular access to assistive technology, blind prisoners are forced to rely on other prisoners to read to them or write for them, which risks revealing their personal health, financial, legal, and family information to an untrustworthy person. Access to technology as a blind prisoner today is not a luxury, but a

¹ We use the terms “blind” and “blindness” in their broad sense, to include people with low-vision and other vision impairments that substantially limit their ability to see, consistent with the definition laid out in the Amended Complaint. *See* Am. Compl. ¶ 1 n.1.

necessity. And without that necessary tool, blind prisoners are systematically excluded from full participation in VDOC programs and services.

Plaintiffs now come before the Court to challenge violations of their rights under the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act (“Section 504”), and the Virginians with Disabilities Act (“VDA”). Specifically, Plaintiffs seek redress from Defendants Chadwick Dotson, Barry Marano, Darrell Miller, Kevin McCoy, Lakeisha Shaw, and VDOC, for the deprivation of basic needs, including access to the grievance process, and opportunities to better themselves during the course of their incarceration. Now that discovery has closed, the record evidence makes clear that Plaintiffs are entitled to summary judgment on their ADA, Section 504, and VDA claims due to the Department’s failure, when providing prisoner-use technology, to ensure the technology provides access for blind prisoners.

STANDARD OF REVIEW

Summary judgment is appropriate where materials in the record show “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). A genuine dispute exists “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the initial burden of showing the absence of a genuine dispute of material fact. *Celotex Corp.*, 477 U.S. at 323. Once this showing has been made, the burden shifts to the nonmoving party to establish the specific material facts that are in dispute. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). In considering a motion for summary judgment, the court views the facts in the light most favorable to the nonmoving party. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014). The court does not weigh evidence or determine credibility, but instead only

determines whether the record demonstrates a genuine dispute of material fact. *Id.*; *Anderson*, 477 U.S. at 255.

STATEMENT OF UNDISPUTED FACTS

The Individual Plaintiffs Are Qualified Individuals with Disabilities

1. VDOC is a public entity. Ex. 1, VDOC's Resps. to Pl. Nat'l Fed'n of the Blind of Va.'s First Reqs. for Admis. ¶ 1.
2. VDOC receives federal funding. Ex. 1, VDOC's Resps. to Pl. Nat'l Fed'n of the Blind of Va.'s First Reqs. for Admis. ¶ 2.
3. VDOC is an agency of a state government. Ex. 1, VDOC's Resps. to Pl. Nat'l Fed'n of the Blind of Va.'s First Reqs. for Admis. ¶ 3.
4. From November 2021 to March 2023, Plaintiff Nacarlo Antonio Courtney was incarcerated at Greensville Correctional Center ("Greensville"). Ex. 2, Courtney Dep. 13:7–10. VDOC released Mr. Courtney from custody on March 16, 2023. *Id.*
5. Mr. Courtney has a condition called keratoconus, which causes his blindness. *Id.* at 26:10–15. Ex. 3 NFBV 004656–58, 005152. He is substantially limited in the major life activity of seeing. *Id.*
6. Plaintiff William Landrum Hajacos has been incarcerated at Greensville since October 2018. Ex. 4, Hajacos Decl. ¶ 3.
7. He has a condition called Usher syndrome, which has caused his hearing impairment and his blindness. Ex. 5, NFBV 005895–96, 005900–01, 005916, 005919, 005923, 005930, 005933, 005935–36; 005942, 005996–97, 006003–04, 006007, 006013–14, 006021; Ex. 4, Hajacos Decl. ¶ 2. He is substantially limited in the major life activity of seeing. *Id.*

8. Plaintiff Michael McCann has been incarcerated at Deerfield Correctional Center (“Deerfield”) since December 2016. Ex. 6, McCann Decl. ¶ 3.
9. Mr. McCann has retinitis pigmentosa, which causes his blindness. Ex. 7, NFBV 000109; Ex. 6, McCann Decl. ¶ 2. He is substantially limited in the major life activity of seeing. *Id.*
10. Plaintiff Kevin Muhammad Shabazz has been incarcerated at Deerfield since October 2015. Ex. 8, Shabazz Dep. 45:9.
11. Mr. Shabazz suffered a gunshot wound to the face in 2004, which caused his blindness. *Id.* 62:1–2; Ex. 9, NFBV 000822–23, 000825–32. He is substantially limited in the major life activity of seeing. *Id.*
12. Plaintiff Patrick Michael Shaw has been housed at Deerfield since December 2010. Ex. 10, P. Shaw Dep. 11:7; Ex. 11, Shaw Decl. ¶ 2.
13. Mr. Shaw has a condition called uveitis, which causes his blindness. Ex. 10, P. Shaw Dep. 17:5–7; Ex. 12, NFBV 001382–85, 001401–05. He is substantially limited in the major life activity of seeing. *Id.*
14. Plaintiff William Stravitz has been housed at Deerfield since June 2019. Ex. 13, Stravitz Decl. ¶ 2.
15. In December 2021, Mr. Stravitz was diagnosed with cataracts, which caused his blindness. Ex. 14, Stravitz Dep. 42:2–4. Ex. 15, NFBV 013631, 012531, 012528, 012339, 013647; Ex. 14, Stravitz Dep. 62:3–65:4, 83:4–91:16. His cataracts substantially limited him in the major life activity of seeing. *Id.*
16. NFB-VA is a nonprofit membership organization made up of blind people, their families, and friends. Ex. 16, Soforenko Dep. 8:19–9:8; 27:14–19; 113:22–114:3.

It provides advocacy and support to blind Virginians, promotes full participation and integration of blind people in all areas of life, and advocates for change when equal access and treatment of the blind is denied. *Id.* 113:22–114:3.

17. VDOC has policies about screening, tracking, and managing prisoners with disabilities, including blind prisoners. *See generally* Ex. 17, VDOC Operating Procedure 801.3, NFBV 012669–012681; Ex. 18, L. Shaw Dep. at 50:6–51:7; 59, 63:1–64:5, 66:11–22, 138:7–39:15; Ex. 19, Talbott Depo. 63:10–22, 64:20–65:21, 67:2–15, 72:3–14; Ex. 20, Gore Dep. 68:12–19, 86:3–13, 69:11–20; Ex. 21, Geist Dep. 37:1–40:7; Ex. 22, Marano Dep. 23:2–15.

Technology Exists Which Provides Blind People Access to Printed and Digital Documents

18. Commercially available screen reader software, such as Job Access With Speech (“JAWS”) and Nonvisual Desktop Access (“NVDA”), read aloud the content visually displayed on a computer monitor so that blind users can access that content. Ex. 23, Chong Report at 4–5, 7. Screen readers also enable blind users to navigate and access online databases and electronic documents (including documents in Microsoft Word, PDF, and Excel formats). Ex. 23, Chong Report at 7, 11–12.
19. Commercially available screen magnification software magnifies content on a computer monitor so blind users can see the content. Ex. 23, Chong Report at 9–12.
20. Commercially available document scanners with Optical Character Recognition, such as Scanning and Reading Appliances (“SARA” scanners), scan printed materials and read them aloud. Ex. 23, Chong Report at 6; Ex. 21, Geist Dep. 92:4–14; Ex. 24, Delbridge Dep. 113:22–115:17.

21. When the Individual Plaintiffs have not had access to print materials, some of them have paid other prisoners to read and write for them. Ex. 4, Hajacos Decl. ¶ 7, Ex. 10, P. Shaw Dep. 37:4–25; 49:3–6, 131:21–133:12. This is particularly true for blind prisoners at Greensville because Greensville does not have paid caregiver positions (sighted prisoners who are paid by the prison to assist blind prisoners). Ex. 19, Talbott Dep. 306:14–22.

VDOC Law Libraries

22. Deerfield and Greensville each have a “law library,” where prisoners can perform legal research on computers using the LexisNexis database and access other legal materials, including books, court forms, and prison policies and procedures. Ex. 25, Phillips Dep. 69:7–71:8, 98:1–99:3; Ex. 24, Delbridge Dep. 22:6–22:19, 25:2–25:11.
23. The computers in the Deerfield and Greensville law libraries do not have commercially-available “screen reader” or screen magnification software programs installed on them. Ex. 18, L. Shaw Dep. 81:14–16; Ex. 25, Phillips Dep. 51:4–20, 52:21–53:21, 56:9–59:7, 102:2–15, 128:17–12; Ex. 21, Geist Dep. 56:1–57:19, 81:2–19, 116:1–20.
24. Besides the LexisNexis database, most legal materials in the Deerfield law library are hard-copy, standard print materials. Ex. 24, Delbridge Dep. 25:5–19, 62:13–64:20, 83:7–21. The Deerfield program support technician has never provided legal materials in Braille, as an audio file, or as an electronic document. *Id.* 98:20–99:3.

25. Similar to Deerfield, apart from the LexisNexis database, legal materials in the Greenville law library—including policies and procedures and legal books—are in hard-copy, standard print only. Ex. 25, Phillips Dep. 67:10–71:5, 98:1–99:3.
26. Furthermore, the Deerfield law library is staffed by a prisoner library aide, not a librarian. Ex. 26, Marano 30(b)(6) Dep. 92:2–5; Ex. 21, Geist Dep. 41:7–42:7. It is not the job of these aides to conduct legal research for prisoners. Ex. 26, Marano 30(b)(6) Dep. 92:2–93:4.
27. Greenville also has prisoner law library aides. They do not receive ADA training and are also not permitted to assist blind prisoners with their legal research for security reasons. Ex. 25, Phillips Dep. 93:4–97:13.
28. The Greenville law library has no technology that would scan and “read aloud” legal cases or other hard-copy legal materials to blind prisoners. Ex. 25, Phillips Dep. 109:19–111:10; Ex. 27, Butcher Dep. 102:3–103:19, Nov. 29, 2023.
29. Greenville law library staff have not been trained on how to convert hard copy standard print materials into alternate formats—such as large print, digital text, or Braille—for blind or low-vision prisoners. Ex. 25, Phillips Dep. 15:6–16:6, 33:3–21, 41:5–44:14, 83:19–84:11, 109:19–111:10, 128:6–21, 139:20–140:14.
30. After a prisoner complained, the Deerfield law library acquired one SARA machine in 2018. Ex. 21, Geist Dep. 94:6–16; Ex. 18, L. Shaw Dep. 81:2–7; Ex. 24, Delbridge Dep. 113:22–114:6.
31. Although the Deerfield law library has one SARA, prisoners can only use it when they are approved to visit the law library. Ex. 24, Delbridge Dep. 114:21–115:17; Ex. 28, Shabazz Decl. ¶¶ 6, 8–9. The Deerfield law library is open Monday

through Friday 7:00 am to 4:00 pm, with some availability on the weekend for use of the SARA only, but only if Deerfield has approved the inmate to use it on the weekend. Ex. 24, Delbridge Dep. 115:3-116:4. Blind Deerfield prisoners may not borrow the SARA from the Deerfield law library to read hard-copy print materials in their living areas. *Id.* 121:9–13.

32. Not having access to the SARA reader or another scanning device in their housing units limits blind prisoners, including the Individual Plaintiffs, in what they can do during their free time, Ex. 14, Stravitz Dep. 83:19–84:2, 108:3–13; Ex. 28, Shabazz Decl. ¶ 5, 12, and may require them to reveal personal information to others who read for them. Ex. 11, P. Shaw Decl. ¶ 7; Ex. 13, Stravitz Decl. ¶ 12.
33. Prisoners do not have access to the libraries during lockdowns, Ex. 21, Geist Dep. 111:12–17, 113:11–15, meaning that blind prisoners do not have access to the SARA scanner during that time, Ex. 28, Shabazz Decl. ¶ 9.
34. Mr. Shabazz repeatedly has asked Deerfield to install a screen reader (JAWS) on a law library computer, but Deerfield has declined to do so. Ex. 29, NFBV 014108 (Mr. Shabazz asking for JAWS in Deerfield law library); Ex. 30, NFBV 014116 (similar); Ex. 31, NFBV 014099 (Mr. Shabazz requesting a Braille typewriter in the law library).
35. Deerfield staff do not inform blind prisoners that the SARA is available to them in the law library, Ex. 32, Washington Dep. 124:17–21, or teach them how to use it, Ex. 28, Shabazz Decl. ¶ 9. Mr. Shabazz had to teach himself how to use the SARA machine. *Id.* The Deerfield law librarian has never received training on

how to use the SARA machine, nor has she even used the SARA herself. Ex. 24, Delbridge Dep. 117:4-9.

VDOC Education Libraries

36. Deerfield and Greenville also have separate “education” libraries, where prisoners can go to read and/or borrow a variety of materials for education or recreation. Ex. 21, Geist Dep. 40:19–41:18; Ex. 25, Philips Dep. 19:10-20:11.
37. The Deerfield education library has computers available for prisoners to use. Ex. 21, Geist Dep. 55:1–10, 79:11–81:19. Deerfield prisoners use these computers to perform research on Wikipedia, stay abreast of legislative changes, and learn about educational opportunities like grants and course offerings. *Id.* 64:1-68:13. Prisoners in the re-entry program at Deerfield can also use education library computers to look for job placements and draft resumes. Ex. 33, Miller Dep. 44:6–21.
38. The Deerfield educational library computers lack screen readers. Ex. 21, Geist Dep. 57:2–13, 81:10–19.
39. Most materials in the Deerfield education library are available in hard-copy, standard print only. Ex. 21, Geist Dep. 51:6. The Deerfield education library has no Braille books, no electronic books, no digital periodicals or magazines, and a “small selection” of audio books that are over ten years old. *Id.* 52:19–53:20, 120:22–121:8, 179:21–180:17. The library has 10,000 standard print books in its main collection and keeps another 150 books in living areas for prisoners. *Id.* 63:13–16, 83:14–18.
40. The Deerfield education library has no technology that would scan and “read aloud” these hard-copy materials to blind prisoners. Ex. 21, Geist Dep. at 17:13–

18:9, 39:14, 93:10-94:5. The Deerfield education librarian has received no training on assistive technology for blind prisoners, such as the SARA, or training on how the ADA specifically applies to her job in the library. *Id.* 17:13–18:16, 30:4–31:14; Ex. 24, Delbridge Dep. 116:5–117:21.

41. The Deerfield and Greenville education libraries allow prisoners to borrow reading materials to read at their leisure in their living areas. Ex. 21, Geist Dep. 83:2–13. However, those libraries do not lend out assistive technology to blind prisoners that would assist them with reading in their living spaces. *Id.* 124:22–126:1; Ex. 27, Butcher 147:10–15; Ex. 34, NFBV 015163–218; Ex. 28, Shabazz Decl. ¶ 7–9, Shabazz Dep. at 20:3–21:24.
42. Some VDOC staff have received training from the Virginia Department of the Blind and Vision Impaired on assistive technology for the blind that allows blind individuals to access print and electronic information. Ex. 35, NFBV 014659-79.
43. Mr. Shaw worked with a staff member for a brief period of time several years ago to understand how he could use a keyboard and voice-activated technology. Ex. 10, P. Shaw Dep. 24:2–24. Since that staff member left her position at Deerfield, no one has been willing to help him continue learning the program. *Id.*

JPay Tablets and Kiosks

44. Deerfield and Greenville make electronic touch-screen tablets (“JPay tablets”) available to all prisoners, including blind prisoners. Ex. 18, L. Shaw Dep. 113:19–114:20; Ex. 33, Miller Dep. 45:1–5; Ex. 21, Geist Dep. 127:11–16; Ex. 19, Talbott Dep. 148:2–149:13.
45. JPay tablets resemble iPads, and prisoners can obtain a personal tablet for free and keep it in their personal living space in prison. Ex. 18, L. Shaw Dep. 113:19–

114:20, 216:3–17; Ex. 23, Chong Report at 8. The tablets have a smooth surface, making it difficult for blind inmates to feel where the keyboard is or to navigate the tablet. Ex. 6, McCann Decl. ¶ 7.

46. Prisoners use JPay tablets to exchange emails with family members, friends, and attorneys, purchase and listen to music, purchase and play video games, access VDOC notices, and read the Bible or Quran. Ex. 18, L. Shaw Dep. 113:21–116:13; Ex. 33, Miller Dep. 45:1–14; Ex. 21, Geist Dep. 53:11–16; Ex. 19, Talbott Dep. 148:2–21, 152:16–19; Ex. 32, Washington Dep. 131:18–16; Ex. 14, Stravitz Dep. 185:25–186:6; Ex. 23, Chong Report at 8.
47. Tablets are the only way for prisoners to send and receive emails. Ex. 33, Miller Dep. 45:3–47:2.
48. Deerfield and Greenville also have wall-mounted JPay kiosks. The kiosks have a monitor and a keyboard, similar to a computer. Ex. 19, Talbott Dep. 152:8–19; Ex. 14, Stravitz Dep. 172:8–173:15. The keyboards used with the kiosks do not have raised dots on the F and J keys like a standard computer keyboard, leaving blind inmates unable to type on the keyboards. Ex. 6, McCann Decl. ¶ 12; Ex. 28, Shabazz Decl. ¶ 19.
49. Prisoners connect their tablets to the kiosk in order to send any emails they have drafted on their tablet and receive new emails or messages from VDOC. Ex. 33, Miller Dep. 47:3–6; Ex. 18, L. Shaw Dep. 116:4–14; Ex. 19, Talbott Dep. 152:8–19; Ex. 32, Washington 131:19–132:16; Ex. 14, Stravitz Dep. 185:25–186:14.
50. Prisoners also connect their tablets to the kiosk to purchase new music that is then stored on their tablet for later use. Ex. 19, Talbott Dep. 152:16–19.

51. There is no assistive technology for blind users installed on JPay kiosks. Ex. 32, Washington Dep. 132:17–22; Ex. 19, Talbott Dep. 101:7–15. Ex. 10, P. Shaw Dep. 39:17–42:6. Ex. 23, Chong Report at 7; Ex. 18, L. Shaw Dep. 116:15–19; Ex. 36, NFBV 014328–29, Ex. 37, 013164–65, Ex. 38, 013176–77, Ex. 39, NFBV 014993; Ex. 40, MCCANN 000008.
52. Software that reads aloud the content on JPay tablets and allows blind users to interact with that content is commercially available, but that software either is not installed or has been disabled on VDOC’s tablets. Ex. 22, Marano Dep. 64:4–22; Ex. 18, L. Shaw Dep. 115:6–16; Ex. 19, Talbott Dep. 150:1–9.
53. As a result, the tablets are not accessible to the blind. Ex. 32, Washington Dep. 126:4–21.
54. Blind prisoners for years have complained that the tablets and kiosks are not accessible. Ex. 18, L. Shaw Dep. 236:4–22, 240:9–15; Ex. 26, Marano (30(b)(6) Dep. 144:6–19; Ex. 41, Miller Ex. 4. NFBV 014327–29; Ex. 41, NFBV 010396; Ex. 38, NFBV 013176–77; Ex. 37, NFBV 013164–65; Ex. 42, NFBV 013206; Ex. 43, NFBV 013997-98; Ex. 44, NFBV 014192; Ex. 39 NFBV 014993; Ex. 45 NFBV 010169, Ex. 40, MCCANN 000008. VDOC is aware of those complaints.
Id.
55. In 2019, Mr. McCann requested an accessible version of the JPay tablet, and VDOC declined to provide it. Ex. 46, MCCANN 000007.
56. In 2022, Mr. Shabazz asked VDOC to make his JPay tablet accessible; VDOC, again, declined. Ex. 47, NFBV 010451–52; Ex. 41, NFBV 010395–96; Ex. 48, NFBV 010390.

57. Deerfield has one kiosk with Braille lettering on the keys that is located in the gymnasium. Ex. 28, Shabazz Decl. ¶ 20.
58. Deerfield does not offer Braille education courses. Ex. 49, Butcher 30(b)(6) Dep. at 36:2-36:6.
59. Tablet screens are no larger than a half sheet of paper. Ex. 40, MCCANN 000008; Ex. 37, NFBV 013164–65; Ex. 44, 014192, Ex. 39, NFBV 014993.
60. If prisoners need a tablet with a larger screen, they are required to pay for it. Ex. 43, NFBV 013206.
61. Because tablet and kiosk screens are inaccessible, blind prisoners, including the Individual Plaintiffs, must rely on others to read the information on those screens for them. Ex. 6, McCann Decl. ¶¶ 7, 13; Ex. 28, Shabazz Decl. ¶¶ 17, 19.

Paper-Based Processes

62. VDOC's grievance process is a paper-based program. Ex. 50, Cosby Dep. 22:11–24:14; Ex. 19, Talbott Dep. 145:4–147:17, 173:17–174:16. To submit a written complaint, formal grievance, emergency grievance, or an appeal, prisoners must file hard-copy written forms. *Id*; Ex. 18, L. Shaw Dep. 112:6–16, 171:5–174:14. All responses to grievance documents, appeal decisions, and policies about the grievance process are only available in hard-copy documents. *Id*; *see generally* Ex. 51, NFBV 012089–105 (VDOC Operating Procedure 866.1); Ex. 4, Hajacos Decl. ¶¶ 5–6.
63. VDOC's medical appointment process is a paper-based program. Ex. 18, L. Shaw Dep. 104:21–105:13; Ex. 52, Harris Dep. 44:9–20; Ex. 19, Talbott Dep. 139:11–140:12. To submit requests for medical attention, prisoners must file sick call requests, emergency medical request forms, and health-related requests using

hard-copy written forms. *Id.* All responses to these medical requests and policies about the medical request process are only available in hard-copy documents. *Id.*; *see generally* Ex. 53, NFBV 013824–33 (VDOC Operating Procedure 720.1); Ex. 4, Hajacos Decl. ¶¶ 5–6.

64. VDOC’s accommodations request process is a paper-based program. Ex. 18, L. Shaw Dep. 82:15–22; Ex. 21, Geist Dep. 60:6–61:18, 73:3–74:15. To submit a facility request form, a request for reasonable accommodation form, a commissary request form, or an appeal from a denial of a request for accommodation, prisoners must file hard-copy written documents. Ex. 18, L. Shaw Dep. 58:3–59:2, 106:12–19; Ex. 25, Phillips Dep, 71:18–73:22. All responses to accommodation requests, appeal decisions, and policies about the grievance process are only available in hard-copy documents. *Id.*; *see generally* Ex. 17, NFBV 012669–81 (VDOC Operating Procedure 801.3); Ex. 4, Hajacos Decl. ¶¶ 5–6.
65. VDOC’s disciplinary process is a paper-based program. Ex. 54, Stapleton Dep. 15:4–16:1. Disciplinary charges are handed to prisoners as standard-print, hard-copy documents, as are notices of hearing, disciplinary offense reports, appeals and appeal responses, and other documents related to the charge. *Id.* at 15:4–22:21. These documents are not available in an alternative format, including electronic or audio formats. *Id.* at 15:4–16:1; Ex. 4, Hajacos Decl. ¶¶ 5–6.
66. VDOC has not standardized large-print versions of the forms used in the grievance process, medical appointment process, accommodations request process, or disciplinary process. Documents are made into large-print versions on

a “case-by-case basis” where the inmate must request a large-print version each and every time he wants a document in that format. Ex. 19, Talbott Dep. 99:15-22, 88:1-16; Ex. 18, L. Shaw Dep. 51:22–53-20, 57:4-59-1; Ex. 13, Stravitz Decl. ¶¶ 4, 11; Ex. 4, Hajacos Decl. ¶¶ 5–6.

ARGUMENT

I. The ADA, Section 504, and the VDA mandate that VDOC take affirmative steps to provide auxiliary aids and services to allow blind prisoners to communicate effectively.

Plaintiffs bring claims against VDOC under the ADA, Section 504, and the VDA in part for failing to ensure equally effective communications for blind prisoners participating in VDOC programs. To establish a claim under Title II of the ADA, plaintiffs must demonstrate that: “(1) they have a disability; (2) they are otherwise qualified to receive the benefits of a public service, program, or activity; and (3) they were denied the benefits of such service, program, or activity, or otherwise discriminated against, on the basis of their disability.” *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 502–03 (4th Cir. 2016). As a public entity, Statement of Undisputed Facts (“SUF”) ¶ 1, VDOC is covered by the ADA.

Similarly, Section 504 dictates: “No 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.A. § 794 (West). As a recipient of federal funding, SUF ¶ 2, VDOC is covered by Section 504.

Finally, the VDA prohibits state agencies from discriminating on the basis of disability and provides:

No person with a disability who is otherwise qualified shall on the basis of his disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving state financial

assistance or under any program or activity conducted by or on behalf of any state agency.

Va. Code Ann. § 51.5-40 (West). As an agency of the state, SUF ¶ 3, VDOC is covered by the VDA.

Plaintiffs' claims under the ADA and Section 504 "can be combined for analytical purposes because the analysis is 'substantially the same.'" *Seremeth v. Bd. of Cty. Comm'rs Frederick Cty.*, 673 F.3d 333, 336 n.1 (4th Cir. 2012) (quotations and citations omitted). Both statutes "share the same definitions of disability." *Rogers v. Dep't of Health & Env't Control*, 174 F.3d 431, 433 (4th Cir. 1999). The VDA also is interpreted consistently with the ADA. *See, e.g., Semenova v. Md. Transit Admin.*, 845 F.3d 564, 567 (4th Cir. 2017) (holding that the VDA is an "exact state law counterpart to the Rehabilitation Act because it tracks the language of the federal law, requires regulations promulgated pursuant to state law to be consistent with the federal law, and affords the same remedies as the federal law" (internal quotation marks omitted) (quoting *Wolsky v. Med. Coll. of Hampton Rds.*, 1 F.3d 222, 222–24 (4th Cir. 1993))); *Tyndall v. Nat'l Educ. Ctrs., Inc. of Cal.*, 31 F.3d 209, 216 (4th Cir. 1994) ("The VDA standards for liability follow the standards established in the federal Rehabilitation Act of 1973 and adopted in the ADA."); *Winborne v. Va. Lottery*, 278 Va. 142, 148–50 (2009) (using Rehabilitation Act provisions, which are adopted in the ADA, to interpret the VDA). As such, Plaintiffs' motion proceeds under the analysis of VDOC's ADA violations, which apply to their liability under Section 504 and the VDA as well.

Covered entities like VDOC are required to take "appropriate steps to ensure that communications with [persons] with disabilities are as effective as communications with others." 28 C.F.R. § 35.160(a)(1). A public entity must "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." 28 C.F.R. § 35.160(b)(1). "In

determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. 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)(2). The ADA regulations provide that auxiliary aids and services include “[q]ualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; . . . large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision” 28 C.F.R. § 35.104.

Prison programming is among the services, programs, and activities to which these mandates apply. *See* 28 C.F.R. § 35.152 & app. A. As the U.S. Department of Justice has explained:

The regulation . . . provides specific prohibitions. In the correctional setting, these include, but are not limited to, the following:

- The outright denial of the benefits of a prison’s programs, services, and activities, 28 C.F.R. § 35.130[(a)],
- Providing an unequal, different, or separate opportunity to participate in programs, services, and activities, 28 C.F.R. § 35.130(b)[(2)],
- Failing to make reasonable modifications (sometimes referred to as reasonable accommodations) in rules, policies, practices, or procedures, 28 C.F.R. § 35.130(b)(7)[(i)],
- Failing to provide auxiliary aids and services necessary to achieve effective communication with individuals with disabilities, 28 C.F.R. §§ 35.160[(a)(1) –(b)(2)], such as refusing to provide written materials in large print for an inmate with low vision to participate in a GED program

Ultimately, these provisions work together to prohibit all disability discrimination in all of the programs, services, and activities of public entities.

Miller v. Smith, United States’ Memorandum of Law as Amicus Curiae on Issues Under the Americans with Disabilities Act and Rehabilitation Act that are Likely to Arise on Summary Judgment or at Trial at 7–8, No. 6:98-CV-109-JEG (S.D. Ga. 2010), https://archive.ada.gov/briefs/miller_amicus.pdf.

The Title II regulations thus require prisons to ensure that communications with prisoners with disabilities are equally effective to communications with nondisabled prisoners. In addition, the Department of Justice

emphasize[s] that detention and correctional facilities are unique facilities under title II. Inmates cannot leave the facilities and must have their needs met by the corrections system, including needs relating to a disability. If the detention and correctional facilities fail to accommodate prisoners with disabilities, these individuals have little recourse, particularly when the need is great

28 C.F.R. app. A § 35 at 653 (discussion of 28 C.F.R. § 35.152).

Prisons, therefore, have greater responsibility than other Title II entities to ensure the equal access of prisoners with disabilities. *See, e.g., Pierce v. D.C.*, 128 F. Supp. 3d 250, 271–72 (D.D.C. 2015) (“[T]his Court holds that prison officials have an affirmative duty to assess the potential accommodation needs of inmates with known disabilities who are taken into custody and to provide the accommodations that are necessary for those inmates to access the prison’s programs and services, without regard to whether or not the disabled individual has made a specific request for accommodation and without relying solely on the assumptions of prison officials regarding that individual’s needs.”); *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 488 (4th Cir. 2005) (stating that Title II “imposes an affirmative obligation to make ‘reasonable modifications to rules, policies, or practices, . . . or the provision of auxiliary aids and service’ to enable disabled persons to receive services or participate in programs or activities”).

Claims under Title II, Section 504, and the VDA may be pursued under three distinct grounds: “(1) intentional discrimination or disparate treatment; (2) disparate impact; and (3) failure to make reasonable accommodations.”² *A Helping Hand, LLC v. Balt. Cnty.*, 515 F.3d 356, 362 (4th Cir. 2008). Here, the Plaintiffs pursue their claims under the third theory. VDOC has not met its obligation to ensure communications with them are equally effective to communications with sighted prisoners. VDOC has also failed to make modifications to its services, programs, and activities so that blind prisoners have an equal opportunity to participate in them, and enjoy their benefits. VDOC’s failures to comply with the ADA, Section 504, and the VDA are, at bottom, partly due to VDOC’s refusal to provide blind prisoners with assistive technology.

A plaintiff under the ADA need not show that they are “completely prevented from enjoying a service, program, or activity to establish discrimination under Section 504 or Title II [of the ADA]”; *see also Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1267 (D.C. Cir. 2008) (“Where the plaintiffs identify an obstacle that impedes their access to a government program or benefit, they likely have established that they lack meaningful access to the program or benefit.”). Ensuring equal access requires that VDOC provide blind prisoners with assistive technology so they can use the tablets and kiosks privately and independently, because “auxiliary aids and services must be provided ‘in a timely manner, and in such a way to protect the privacy and independence of the individual with a disability.’” *Nat’l Fed’n of the Blind, Inc. v. Lamone*, No. RDB-14-1631, 2014 WL 4388342, at *10 (D. Md. Sept. 4, 2014) (quoting 28 C.F.R. § 35.160(b)(2)), *aff’d sub nom. Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494; *see also Disabled*

² Courts use the terms “reasonable modification” and “reasonable accommodation” interchangeably. *See Seremeth v. Bd. of Cnty. Comm’rs. of Frederick Cnty.*, 673 F.3d 333, 338 (4th Cir. 2012) (citing *Paulone v. City of Frederick*, 787 F. Supp.2d 360, 372 (D. Md. 2011)) (“discussing the equivalence of ‘reasonable accommodations’ and ‘reasonable modifications’”).

in Action, 752 F.3d at 200 (holding that blind plaintiffs stated an ADA claim because the proposed voting accommodations denied them the chance to vote privately).

Plaintiffs seek partial summary judgment on their claims that VDOC's failure to provide accessible library, tablet, and kiosk technologies violates the ADA, Section 504, and the VDA.

II. VDOC has violated, and continues to violate, the ADA, Section 504, and the VDA by failing to provide blind prisoners, including the Individual Plaintiffs, with assistive technology.

A. VDOC knows the Individual Plaintiffs and other blind prisoners have disabilities.

A person has a disability if he is substantially limited in one or more major life activities. 28 C.F.R. § 35.108. As blind people, Individual Plaintiffs are substantially limited in the major life activity of seeing. SUF ¶¶ 5, 7, 9, 11, 13, 15, *supra*. As prisoners in the custody of Defendants, *id.* ¶¶ 4, 6, 8, 10, 12, 14, *supra*, they are qualified to participate in programs, services, and activities that are available to sighted prisoners, such as prisoner-use technology. *Pa. Dept. of Corr. v. Yeskey*, 326 U.S. 208, 210-11 (1998) (noting that state prisons provide many programs, services, and activities to prisoners, and that state prisoners are qualified to participate in programs, services, and activities provided by the state prison whether or not those programs are voluntary or mandated by the state prison).

VDOC is well aware of Plaintiffs' blindness and the existence of other blind prisoners in its custody. The Individual Plaintiffs' blindness is well documented throughout their medical records and requests for accommodation. *See, e.g.*, SUF ¶¶ 5, 7, 9, 11, 13, 15, 34, 52, *supra*. In addition, VDOC policy requires an institution's medical department to note a prisoner's communication disabilities in VACORIS (an online portal containing prisoner information). SUF ¶ 17, *supra*. Deerfield is where VDOC "generally assign[s] people" who are blind; it houses around 44 blind prisoners. *Id.* Greenville also houses blind prisoners, though significantly fewer of them.

Id. VDOC’s practice is that ADA Coordinators at each facility are notified (usually by Defendant Marano) when a prisoner with a disability is being transferred to their facility. *Id.* VDOC policy dictates that prisoners are assessed at each prison for any disabilities when they are brought into VDOC custody or transferred to an institution. *Id.* Once the prisoner is processed through intake, VDOC policy requires that staff receive an “appropriate notice” regarding a prisoner’s disability when it interferes with his ability to communicate, including a “vision impairment.” *Id.*

There is no genuine dispute of material fact regarding whether the Individual Plaintiffs are qualified individuals with disabilities, or whether VDOC knows they are qualified to participate in prison programs, services and activities.

B. Without assistive technology, the Individual Plaintiffs and other blind prisoners cannot access prisoner-use technology or hard-copy documents.

1. Library computers are inaccessible to blind prisoners.

Deerfield and Greenville have both a law library and an education library. SUF ¶¶ 22, 36, *supra*. Ensuring private and independent access to legal materials in the law library is critical to maintaining a blind prisoner’s constitutional rights and avoiding sharing sensitive information with other prisoners. SUF ¶ 27, *supra*. Additionally, blind prisoners need equal access to education library computers in order to have equal access to the vocational and educational opportunities they provide, from researching legislative changes, to finding post-incarceration jobs. SUF ¶ 37, *supra*.

The computers in Deerfield’s law and education libraries do not have screen reader or magnification software installed on them. SUF ¶ 23, *supra*. Blind prisoners could, in theory, ask for help using the computers, but they would need another person to tell them what was on the screen. SUF ¶¶ 23, 25, *supra*. Furthermore, the Deerfield law library is staffed by a prisoner library aide, not a librarian, who is not supposed to assist with substantive legal research, because that is

the job of a librarian—they can only print cases from LexisNexis that prisoners request. SUF ¶ 26, *supra*. But because the computers in the law library are not equipped with assistive technology so that blind prisoners can conduct their own legal research, SUF ¶ 23, *supra*, they would not know which cases to ask for without assistance with their legal research in the first place. Providing a screen reader- and screen magnifier-equipped computer, along with a document scanner that can read printed documents and transform them into digital text on that computer, would allow blind prisoners to privately and independently conduct legal research and use the resources made available to their peers in the law library.

Greenville’s law library computers similarly lack any assistive technology, including screen reader and screen magnification software. SUF ¶ 23, *supra*. At least one computer has a Microsoft Narrator program, which is a type of screen reader software, but the law librarian does not know how to operate it and has never witnessed anyone else operating it. SUF ¶¶ 23, 28, *supra*. In addition, a training VDOC staff received from DBVI on assistive technology notes that Narrator is “[a] good support feature, not quite ready to go big time yet,” and also discusses a different, free screen reader, NVDA, that is “used extensively worldwide.” SUF ¶ 42, *supra*. So even though VDOC is aware that high-quality screen reader technology is widely available for free, neither Greenville nor Deerfield have this software installed on their law library computers. At the same time, Greenville’s library staff are not trained on how to create large print versions of LexisNexis documents—or any other documents—and the library has no system in place to create documents in accessible formats, whether electronic, Braille, or otherwise. SUF ¶ 29, *supra*. And critically, Greenville’s library aides are not permitted to assist blind prisoners with their work due to security risks. SUF ¶ 27, *supra*.

Without assistive technology on library computers or accessible electronic documents in these settings, VDOC denies blind prisoners at Deerfield and Greenville equally effective communications in their library programs. *See Perez v. Arnone*, 600 F. App'x 20, 22 (2d Cir. 2015) (reversing district court's grant of summary judgment to prison officials on inmate's ADA claim that he lacked meaningful access to prison library where he was denied "a computer, word processing programs for the visually impaired, adequate writing tools, envelopes for the blind, and an electronic magnifier"); *Bone v. Univ. of N.C. Health Care Sys.*, No. 1:18CV994, 2022 WL 138644, at *56 (M.D.N.C. Jan. 14, 2022) (magistrate's report and recommendation) (recommending the court find an ADA violation where a blind plaintiff received paper medical bills and correspondence he could not read after informing the hospital about his difficulties). As such, Plaintiffs are entitled to partial summary judgment on VDOC's violations of the ADA, Section 504, and the VDA regarding its inaccessible library computers.

2. Deerfield has one document scanning device located in the law library for prisoner use upon request, while Greenville does not have a scanning device at all.

The Deerfield law library is equipped with a document scanning machine, SUF ¶¶ 30–31, *supra*, a device that scans typed, print documents and reads the text on the page aloud, SUF ¶ 20, *supra*. However, VDOC does not tell prisoners (neither via memorandum, nor a notice at orientation, or otherwise) that the SARA machine exists. SUF ¶ 35, *supra*. VDOC also does provide prisoners with training on how to use the SARA machine. *Id.* Even if they did request that training, Deerfield staff members are not trained on how to train prisoners on its usage. *Id.* In addition, prisoners must submit a written request to use the SARA machine, and are only permitted to use it for certain hours on certain days. SUF ¶¶ 31–32, *supra*. Therefore, blind prisoners at Deerfield, such as Mr. Shabazz, do not have the ability to read printed documents equal to that of sighted prisoners. SUF ¶¶ 31–33, 35, *supra*.

Even worse, Greenville does not have a SARA machine or any other document scanning device. SUF ¶ 28, *supra*. This means that blind prisoners at Greenville must rely on other prisoners or staff to read documents for them, assistance some of them are unwilling or unable to give. SUF ¶ 21, *supra*. As a result, some blind prisoners have been forced to pay other prisoners in commissary items to get them to read documents to them. *Id.* As a matter of law, “making [an inmate] solicit gratuitous assistance from other inmates does not satisfy the prison’s duty to accommodate [the inmate’s] disability.” *Jett v. Brookhart*, No. 3:17-CV-517-MAB, 2020 WL 5602822, at *8 (S.D. Ill. Sept. 18, 2020) (citing 28 C.F.R. § 35.160(c)(1)). VDOC’s failures to provide adequate access to document scanners—or failure to provide scanners at all—merit partial summary judgment that VDOC has violated Plaintiffs’ rights under the ADA, Section 504, and the VDA.

3. Because VDOC’s tablets and kiosks are not equipped with assistive technology, blind prisoners, including the Individual Plaintiffs, are unable to privately and independently communicate with friends and family like sighted prisoners can.

VDOC provides prisoners with tablets that they keep for themselves as part of their personal property and kiosks for prisoner use in housing units and other common areas, such as the gymnasium. SUF ¶¶ 44–45, *supra*. Prisoners use the tablets to send and receive emails via JPay, listen to music, play games, read books, and engage in other recreational activities. SUF ¶¶ 46–47, 49–50, *supra*. Prisoners use the kiosks to send and receive emails via JPay and can plug their tablets into the kiosks to “synchronize” the emails on their tablet with the emails on the kiosk. SUF ¶¶ 48–49, *supra*. VDOC also uses the tablets to share information about the prison disciplinary process, including changes and updates to the process. *Id.* at 49.

Because VDOC provides the tablets and kiosks to prisoners, they constitute a program, service or activity of VDOC and it has an affirmative obligation under Title II of the ADA to

ensure that blind prisoners, including the Individual Plaintiffs, can use these items in a manner equal to that of sighted prisoners. *Pierce*, 128 F. Supp. 3d at 271-72; *Constantine*, 411 F.3d at 488. In fact, state law reinforces this requirement to ensure VDOC's technology is accessible to blind prisoners. *See generally* Va. Code Ann. § 2.2-2012; Va. Code Ann. 2.2-3500 *et seq.*

The tablets and kiosks are inaccessible due to their physical properties. For example, the tablets have a smooth touchscreen surface, so blind prisoners are unable to feel where the keys are to type messages or navigate the tablet's functionalities. SUF ¶ 45, *supra*. Similarly, the keyboards on the kiosk are smooth, with no markings to aid blind prisoners in typing. SUF ¶ 48, *supra*. Deerfield has one kiosk with Braille markings on the keys, but the kiosks do not have screen reader software installed on them, so blind prisoners have no way of knowing what they have typed and no way of knowing what is on the screen. SUF ¶¶ 48, 51, 61, *supra*. Furthermore, the Braille kiosk is in the gymnasium, rather than a housing unit, limiting the time that prisoners can use an accessible kiosk in a manner that sighted prisoners are not limited. SUF ¶ 57, *supra*. Even if blind prisoners have some sight, actually discerning the information on the screen is difficult because the tablet screen is no larger than a half sheet of paper. SUF ¶ 59, *supra*. If prisoners request to be accommodated by having a tablet with a larger screen, they are required to pay for it. SUF ¶ 60, *supra*.

These tablets and kiosks are not equipped with assistive technology, such as text-to-speech software, such as JAWS or NVDA. SUF ¶ 51-53, *supra*. Text-to-speech software is critical for blind prisoners' access to digital materials. For example, another prisoner put bubbled stickers on the surface of Mr. Shaw's tablet to indicate where certain buttons were located on the screen, but because the tablet has no screen-reader functionality, Mr. Shaw does not know what those buttons do. SUF ¶ 51, *supra*. Blind prisoners are unable to magnify the text on the screen or adjust the

color contrast or font size to be able to read independently. *Id.* In order to read the messages they have received, draft messages, or read the messages they have drafted, they often are forced to ask another prisoner or staff member to read the message for them. SUF ¶ 61, *supra*.

Because VDOC's tablets and kiosks constitute a VDOC program, service, or activity, VDOC is required to provide assistive technology to ensure that blind prisoners, including Individual Plaintiffs, have equal access to them. Because there is no genuine dispute of material fact that VDOC's tablets and kiosks are inaccessible to blind prisoners, Plaintiffs are entitled to partial summary judgment on this issue.

4. Staff lack knowledge, training, and resources to obtain or create accessible formats of VDOC's documents.

Even if VDOC wanted to use the minimal assistive technology it has available in its facilities right now, its staff are not appropriately trained to know what assistive technology is available, how to use the technology, or how to train others, including blind prisoners, in how to use it. For example, Deerfield's educational librarian testified that she has received no training about how the ADA applies to libraries, let alone training to use the SARA machine or other technology for the blind. SUF ¶ 40, *supra*. Similarly, the Greenville Law Library Assistant testified that she did not understand how the ADA's effective-communication mandate applies to the law library. SUF ¶ 29, *supra*. She further testified that she had not received any training on technology that's available to assist blind individuals with reading print materials. *Id.* Nor had she received any training on creating large-print documents for visually impaired prisoners blind or on how blind people use computers. *Id.* Deerfield's law librarian did not know who trains prisoners on how to use the SARA machine; she assumed prisoners were trained on how to use it. SUF ¶ 40, *supra*.

The lack of training on assistive technology is not confined to library staff. Plaintiff Patrick Shaw testified that a staff member tried to teach him to use a keyboard and voice-activated technology several years ago, but she had no training in how the program worked. SUF 43, *supra*. When that staff member left Deerfield, no one was willing to keep teaching him how to use the program. *Id.* Because VDOC's lack of staff training on assistive technologies and alternative formats, the record clearly establishes the ways VDOC has denied Plaintiffs and other blind prisoners equally effective communications in its programs and services.

C. Without assistive technology, blind prisoners are denied equally effective communication.

The undisputed evidence shows that the Individual Plaintiffs and other blind prisoners do not have equally effective means of communication to participate in VDOC programs, despite the availability of well-known, no-cost and low-cost solutions and the requirements of state and federal law. The consequences of this communication gap are both unjust and dangerous, yet preventable.

Without assistive technology, blind prisoners are limited in the time and space where they can conduct their personal business in ways that sighted prisoners are not. At Deerfield, prisoners' time in the libraries is limited. SUF ¶¶ 31–32, 41, *supra*. For the majority of the last few years, Mr. Shabazz was permitted to use the SARA machine for two hours on weekdays and one hour on Saturdays and Sundays. *Id.* Because his time is limited each day, he has to choose between completing his coursework, reading letters from family members or friends, completing his legal work, or reading for pleasure. *Id.* Sighted prisoners do not have to make that choice since they can read independently in their housing units at any time. *Id.* Furthermore, prisoners housed at Deerfield cannot access the law library during lockdowns, SUF ¶ 33, *supra*, leaving blind prisoners to rely on sighted prisoners or prison staff to read for them when they are willing, available, and

able. SUF ¶¶ 21, 61, *supra*. Blind prisoners at Greenville are even worse off because Greenville does not have a SARA machine or other equivalent scanning device. SUF ¶ 28, *supra*. Nor does Greenville have paid Caregiver positions, SUF ¶ 21, *supra*, and therefore blind prisoners there must rely on fellow sighted inmates or staff to read documents to them, *Id.* As such, blind prisoners at Greenville have no way of reading hard-copy materials—legal materials, textbooks, VDOC policies, letters, etc.—privately or independently.

Not having access to a SARA or other document scanning device in prisoner housing units is a particularly harsh failure to accommodate blind prisoners. Prisoners have free time in their housing units. SUF ¶ 32, *supra*. They might use this free time for a variety of purposes, including reading for pleasure, completing homework for their educational or vocational courses, reading and writing letters for family and friends, reviewing legal materials, filling out commissary lists, making sick call requests, or filing grievances. *Id.* But without any assistive technology, blind prisoners cannot privately and independently accomplish these tasks, requiring them to reveal personal health, financial, legal, and family information to other people. *Id.*

Just as they face barriers to completing work on paper, blind prisoners lack access to common digital prisoner resources. Because the tablets are not accessible, *see* Section II(B)(3), *supra*, blind prisoners are not able to use the tablets independently like sighted prisoners. Because the tablets lack necessary and appropriate assistive technology, Mr. McCann, Mr. Shabazz, and Mr. Shaw all must rely on other inmates to read and write their emails for them, forcing them to disclose private and confidential information to other inmates, SUF ¶¶ 32, 61, *supra*, something sighted prisoners do not have to do.

VDOC's failure to provide blind prisoners, including the Individual Plaintiffs, with appropriate assistive technology has put them at a very real risk of harm and, in some cases, actual

harm. One of Mr. Shaw's previous Caregivers learned Mr. Shaw's mother's name and contact information, and then attempted to extort money from her. SUF ¶ 32, *supra*. Mr. McCann has missed deadlines for filing grievances because his Caregiver failed to mail them on time or mailed them to the wrong address. SUF ¶ 61, *supra*.

This lack of access to computers, scanners, tablets, and kiosks is unlawful, not only because it means blind prisoners are less independent than sighted prisoners, but also because of the vulnerable position it puts them in when they need help completing basic daily tasks. Due to the record of harms that have resulted from VDOC's failures to provide equally effective communication to the Individual Plaintiffs and other blind prisoners, Plaintiffs are entitled to partial summary judgment on their claims against VDOC regarding the inaccessibility of library, tablet, and kiosk technologies.

CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court grant their Motion for Partial Summary Judgment on their ADA, Section 504, and VDA claims.

Dated: February 23, 2024

Respectfully submitted,

/s/ Eve L. Hill

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I hereby certify that on the 23rd day of February, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (“NEF”) to the following:

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