

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**PASTOR JAMES KENNEDY, *et al.*,**

**Plaintiffs,**

**v.**

**LAQUANDRA S. NESBITT, *et al.*,**

**Defendants.**

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**Civil Action No. 1:22-cv-01580-TNM**

**SETTLEMENT AGREEMENT AND RELEASE**

On June 3, 2022, Plaintiffs Pastor James Kennedy, Kathleen Gosselin, and the District of Columbia Council of the Blind filed this lawsuit against Defendants District of Columbia and then Director of the District Department of Health (DC Health), Dr. LaQuandra Nesbitt<sup>1</sup> (collectively, the Parties) alleging that the District's at-home COVID-19 testing program was not accessible to District of Columbia ("District") residents with vision impairments in violation of the Americans with Disabilities Act, the Rehabilitation Act, and the District of Columbia Human Rights Act. The Parties seek to settle, in full, all claims in *Kennedy, et.al., v. Nesbitt, et al.*, Civil Action No. 1:22-cv-01580-TNM (the "Litigation"), under the terms of this settlement agreement ("Agreement").

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<sup>1</sup> Dr. Sharon Lewis later succeeded original official capacity defendant Dr. LaQuandra Nesbitt as DC Health Interim Director of DC Health effective July 29, 2022. Interim Director Lewis is automatically substituted for Dr. Nesbitt pursuant to Rule 25(d).

## **BACKGROUND**

1. On April 29, 2021, the District began administering an at-home COVID-19 testing program known as Test Yourself DC, which, among other things, provides District residents at-home COVID-19 tests free of charge at 36 test distribution locations across the city.

2. On February 25, 2022, Plaintiffs, individuals with vision impairments and the District of Columbia Council of the Blind, wrote to Dr. Nesbitt, in her capacity as the Director of DC Health explaining that they could not access the District's Test Yourself DC program because of their disabilities, and advocating for the District to provide instructions for at-home tests in accessible format and implement a mobile testing program with providers available by request to travel to the homes of persons with disabilities to administer Polymerase Chain Reaction (commonly referred to as "PCR tests") and rapid COVID-19 tests.

3. On June 3, 2022, Plaintiffs filed the Litigation seeking that the District be ordered to 1) offer a toll-free number for residents with vision impairments to contact DC Health to schedule an appointment for a DC Health employee to come to the resident's home to administer an at-home COVID-19 test, 2) provide instructions for at-home tests in an accessible format, 3) provide immediate notice to residents with vision impairments throughout the District of Columbia of the availability of appointments for at-home COVID-19 testing by DC Health, and 4) compensate Plaintiffs for reasonable attorneys' fees and costs associated with the Litigation.

4. On July 13, 2022, the District expanded the Test Yourself DC program to include in-home testing assistance for District residents who, due to a disability, need help obtaining or administering at-home COVID-19 tests. District residents with vision impairments can now call DC Health and schedule an appointment to have a test delivered and administered in the resident's home by a healthcare professional.

5. DC Health informed the public of the in-home testing assistance in July through a press release and tweet. On September 29, 2022, DC Health conducted direct email outreach to various organizations that serve District residents with vision impairments notifying them of the availability of in-home testing assistance appointments and how to request them.

6. The District's Coronavirus website now contains screen-reader accessible instructions for each at-home test the District offers through its test distribution locations.

## **SETTLEMENT AND RELEASE**

### **I. CONSIDERATION**

7. The District of Columbia will continue to offer in-home testing assistance to District residents who, due to a disability, need help obtaining or administering at-home COVID-19 tests and will continue to provide screen reader accessible testing instructions on the District's Coronavirus website for at least as long as the District provides at-home COVID-19 tests to District residents through its test distribution locations.

8. Plaintiffs will voluntarily dismiss the Litigation, with prejudice, within two business days of full execution of this Agreement.

9. The District of Columbia will pay twenty thousand dollars (\$20,000) to the Washington Lawyer's Committee for Civil Rights and Urban Affairs in full satisfaction of all attorney's fees and expenses incurred by Plaintiffs' counsel in their representation of Plaintiffs related to the Litigation. This amount will be paid within 45 days of full execution of this Agreement and receipt by the District of all documents from Plaintiffs or Plaintiffs' counsel required to process payment.

### **II. RELEASE**

10. This Agreement reflects the full and final settlement of all Plaintiffs' claims, including attorney's fees and costs incurred and invoiced by Plaintiffs' counsel, in the Litigation.

11. Plaintiffs, on behalf of themselves and their heirs, executors, administrators, and assigns, release and forever discharge the District and its current and former officers, agents, servants, employees, and attorneys from all actions, damages, claims, and demands arising out of or in any way relating to the claims in the Litigation, except for any action related to a breach of this Agreement.

### **III. SCOPE OF AGREEMENT**

12. Nothing in this Agreement is an admission of liability, duty, or wrongdoing by any Party or an admission that any policy, practice, or procedure of the District, its officers, officials, employees, attorneys, agents, and servants, at any time or in any way, violated federal or District of Columbia law. Defendants deny all liability and all factual claims asserted by Plaintiffs.

13. This Agreement creates no obligations or duties on the Parties or the District other than as stated specifically in this Agreement. This Agreement does not create any right that can be relied upon or enforced by any individual who is not a party to this Agreement. The Parties stipulate, agree, and acknowledge that this Agreement is not intended to create any third-party beneficiaries.

14. The Parties agree that this Agreement constitutes the entire agreement between the Parties regarding settlement terms and Plaintiffs' attorney's fees and costs in this Litigation and supersedes any oral or written communication regarding this Agreement. This Agreement may not be altered, amended, modified or otherwise changed except by a writing duly executed by the Parties.

15. The Parties agree that this Agreement shall not be subject to assignment.

16. This Agreement shall be governed by the laws of the District of Columbia.

17. Any lawsuit concerning this Agreement will be filed in the Superior Court of the District of Columbia, which shall have exclusive jurisdiction over any dispute concerning this Agreement including a dispute for failure to pay attorney's fees pursuant to paragraph 9 of this Agreement. Nothing in this Agreement shall be construed as precluding any party from seeking attorney's fees or costs available under applicable law in an action brought pursuant to this paragraph.

18. This Agreement shall be construed without regard to any presumption or other rule of law requiring construction against the Party who drafted it.

19. The undersigned representatives of the Parties certify that they are fully authorized to enter into and to execute the terms and conditions of this Agreement and to make the Agreement fully and legally binding upon and enforceable against every Party on whose behalf they have executed the Agreement. Plaintiffs' counsel further represent that they execute this Agreement knowingly and voluntarily, that no promise or inducement not expressed in the Agreement has been made, and that this Agreement was freely negotiated and executed without fraud, duress, or coercion, and with full knowledge of its significance, effects, and consequences. The individual signing for the District of Columbia is its official, acting within the scope of his authority. The Parties stipulate, agree and warrant that they will not challenge or contest in any way the capacity or the authority of any Party to make the agreements, covenants and stipulations.

20. Provided that all Parties execute a copy of this Agreement, the Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute the same instrument. Executed copies of this Agreement may be delivered by

electronic mail or other comparable means. This Agreement shall be deemed fully executed and entered on the date of execution by the last signatory.

For Plaintiffs:

For Defendants:

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REV. RAYMOND RAYSOR,  
President District of Columbia  
Council of the Blind

\_\_\_\_\_  
KARL A. RACINE  
Attorney General of the District of Columbia

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KATHLEEN GOSSELIN

\_\_\_\_\_  
CHAD COPELAND  
Deputy Attorney General  
Civil Litigation Division

\_\_\_\_\_  
PASTOR JAMES KENNEDY


DATE: 11/11/2022

DATE: 11/11/2022

electronic mail or other comparable means. This Agreement shall be deemed fully executed and entered on the date of execution by the last signatory.

For Plaintiffs:

\_\_\_\_\_  
REV. RAYMOND RAYSOR,  
President District of Columbia  
Council of the Blind

\_\_\_\_\_  
KATHLEEN GOSSELIN

\_\_\_\_\_  
PASTOR JAMES KENNEDY

DATE: \_\_\_\_\_

For Defendants:

\_\_\_\_\_  
KARL A. RACINE  
Attorney General of the District of Columbia

\_\_\_\_\_  
CHAD COPELAND  
Deputy Attorney General  
Civil Litigation Division

DATE: \_\_\_\_\_

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For Plaintiffs:

For Defendants:

Raymond Raysor  
REV. RAYMOND RAYSOR,  
President District of Columbia  
Council of the Blind

\_\_\_\_\_  
KARL A. RACINE  
Attorney General of the District of Columbia

\_\_\_\_\_  
KATHLEEN GOSSELIN

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CHAD COPELAND  
Deputy Attorney General  
Civil Litigation Division

\_\_\_\_\_  
PASTOR JAMES KENNEDY

DATE: 12 Nov 2022

DATE: \_\_\_\_\_



electronic mail or other comparable means. This Agreement shall be deemed fully executed and entered on the date of execution by the last signatory.

For Plaintiffs:

/s/ Steven P. Hollman

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Date: November 17, 2022

For Defendants:

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Attorney General for the District of Columbia

/s/

CHAD COPELAND  
Deputy Attorney General  
Civil Litigation Division

Date: 11/17/2022