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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK BAX, LUCIA PERSHE BAX, and
MARY BIRMINGHAM,

Plaintiffs,

v.

DOCTORS MEDICAL CENTER OF
MODESTO, INC. and TENET
HEALTHCARE CORPORATION,

Defendants.

No. 1:17-cv-01348-DAD-SAB

ORDER ENTERING JUDGMENT IN FAVOR
OF PLAINTIFF BIRMINGHAM AND
AGAINST DEFENDANT

(Doc. No. 20)

On November 12, 2018, the parties filed a notice of plaintiff Birmingham’s acceptance of Rule 68 offer and request for entry of judgment. (Doc. No. 20.)

Under Federal Rule of Civil Procedure 68(a), a defendant may serve an offer to allow judgment on specified terms to the opposing party at least two weeks before trial. Fed. R. Civ. P. 68(a). The opposing party must accept the offer through written notice. *Id.* Thereafter, “either party may then file the offer and notice of acceptance, plus proof of service.” *Id.*

Here, defendant Doctors Medical Center of Modesto, Inc. (“DMC”) served plaintiff Birmingham with a Rule 68 offer of judgment on October 3, 2018. (Doc. No. 20 at 2.) On October 19, 2018, plaintiff Birmingham accepted the offer of judgment. (*Id.*) Accordingly, the court hereby enters judgment in favor of plaintiff Birmingham and against DMC according to the following terms:

1 1. On October 6, 2017, plaintiff Birmingham filed a complaint against DMC
2 alleging, among other things, that DMC had deficient policies, procedures and training amongst
3 its staff to provide effective communication to Deaf patients and companions. In addition,
4 plaintiff Birmingham alleged that DMC did not provide functional Video Remote Interpreting
5 (“VRI”) or qualified sign language interpreters to her during her admission to DMC. Plaintiff
6 Birmingham additionally alleged that despite being aware of her deafness, DMC failed to take
7 appropriate steps to ensure the provision of appropriate auxiliary aids or services to plaintiff
8 Birmingham and, as a result, acted with deliberate indifference.

9 2. Pursuant to Rule 57 of the Federal Rules of Civil Procedure, the court adjudges
10 after reviewing the allegations in the complaint and DMC’s admission thereof, as to plaintiff
11 Birmingham, that defendant DMC failed provide plaintiff Birmingham with effective
12 communication during her visit to DMC, and did not fulfill its obligations to plaintiff
13 Birmingham pursuant to Title III of the Americans With Disabilities Act, Section 504 of the
14 Rehabilitation Act, Section 1557 of the Affordable Care Act, the Unruh Civil Rights Act, and the
15 California Disabled Persons Act.

16 3. It is further adjudged that an injunction be issued requiring DMC to do the
17 following:

- 18 a. Provide effective communication to plaintiff Birmingham and any other deaf
19 patients for any future occasions when they seek treatment at DMC;
- 20 b. Implement written policies, procedures, and practices that seek to achieve
21 effective communication with deaf and hard-of-hearing patients and
22 companions, in compliance with applicable law;
- 23 c. Provide additional training to House Supervisors, ADA Coordinators, and
24 appropriate caregivers employed at DMC concerning DMC’s written policies,
25 procedures, and practices regarding communication with deaf and hard-of-
26 hearing patients and companions;
- 27 d. To the extent that DMC continues to use VRI equipment, DMC shall make
28 best efforts to ensure that the VRI provides: (i) Real-time, full-motion video

1 and audio over a dedicated high-speed, wide-bandwidth video connection or
2 wireless connection that delivers high-quality video images that do not produce
3 lags, choppy, blurry, or grainy images, or irregular pauses in communication;
4 (ii) A sharply delineated image that is large enough to display the interpreter's
5 face, arms, hands, and fingers, and the participating individual's face, arms,
6 hands, and fingers, regardless of his or her body position; (iii) A clear, audible
7 transmission of voices; and (iv) Adequate training to users of the technology
8 and other involved individuals so that they may quickly and efficiently set up
9 and operate the VRI;

- 10 e. Maintain contracts with at least one sign language interpreting agency that
11 operates within the geographic area where DMC is located to provide
12 qualified, on-site American Sign Language ("ASL") interpreters in a timely
13 manner and DMC will seek the services of such agencies to achieve effective
14 communication with deaf and hard-of-hearing patients and companions; and
15 f. Invite plaintiff Birmingham to meet with one or more representatives of DMC,
16 along with a qualified on-site ASL interpreter provided by DMC, to discuss:
17 (i) communications issues she experienced at DMC; and (ii) how DMC can
18 improve its communications with deaf and hard-of-hearing patients and
19 companions.

20 4. It is further adjudged that judgment be entered against defendant DMC and in
21 favor of plaintiff Birmingham in the amount of \$30,000, which is inclusive of, without limitation,
22 all of her alleged damages, costs, filing fees, attorneys' fees, expert fees, prejudgment interest,
23 and any other monetary relief sought by plaintiff Birmingham in this action.

24 5. This resolves all claims of plaintiff Birmingham against all defendants in this
25 action.

26 IT IS SO ORDERED.

27 Dated: December 6, 2018

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UNITED STATES DISTRICT JUDGE

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