

SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND
HENDERSON & SONS FUNERAL HOME, INC.
UNDER THE AMERICANS WITH DISABILITIES ACT
USAO# 2017V00609

BACKGROUND

1. The parties to this Agreement are the United States of America and Henderson & Sons Funeral Home, Inc. (Henderson) (collectively, the Parties).
2. The United States Department of Justice (Department) is responsible for administering and enforcing Title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12181-12189, and its relevant implementing regulation, 28 C.F.R. Part 36, which provides that a public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, *i.e.*, significant difficulty or expense.
3. The ADA further requires public accommodations to provide auxiliary aids and services when necessary to ensure effective communication with individuals with disabilities. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.303.
4. Henderson is a public accommodation within the meaning of the ADA, 42 U.S.C. §§ 12181(7), and its implementing regulation, 28 C.F.R. § 36.104, because it owns, operates, leases or leases to a place of public accommodation, a funeral parlor. 28 C.F.R. § 36.104(5) (definition of *place of public accommodation*). It is therefore subject to Title III of the ADA, 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36.
5. Barry Henderson is the owner, operator, president and CEO of Henderson & Sons Funeral Home, Inc. located at 3002 Maple Road, Rome, Georgia (South Chapel), 2542 Shorter Avenue, Rome, Georgia (Oaknoll Chapel) and 4900 Martha Berry Hwy, Rome, Georgia (North Chapel and Crematory).
6. This matter was initiated by a complaint submitted to the United States against Henderson. The Complainant in this matter is deaf, uses American sign language as her primary means of communication, and is an individual with disabilities within the meaning of 42 U.S.C. § 12102(1)(A) and its implementing regulation. 28 C.F.R. § 36.105(d)(2)(iii)(A).

7. The Complainant alleges that Henderson violated Title III of the ADA by failing to provide her with appropriate auxiliary aids and services when she requested that a qualified sign language interpreter be provided for effective communication during the funeral service for her family member.

8. The United States has investigated this complaint under the authority granted by the ADA, 42 U.S.C. § 12188(b)(1)(A)(i), and 28 C.F.R. § 36.502. On the basis of this investigation, the United States has determined that Henderson's failure to provide a qualified sign-language interpreter violated the ADA. Henderson has cooperated in that investigation, and has voluntarily agreed to take the steps set forth in this Settlement Agreement.

9. The United States is authorized to investigate alleged violations of Title III of the ADA, to use alternative means of dispute resolution, where appropriate, including settlement negotiations to resolve disputes, and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises an issue of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.

10. The United States and Henderson agree that it is in the Parties' best interests, and the United States believes that it is in the public interest, to resolve this matter on mutually agreeable terms without litigation and without any admission of liability on the part of Henderson. The Parties have agreed to remediate the identified issues through the terms of this Agreement, and the Parties acknowledge and agree that this Settlement Agreement shall not be deemed or otherwise interpreted to be an admission of any wrongdoing or violation of the law by Henderson.

11. "Effective Date of this Settlement Agreement" means the date of the last signature on this Settlement Agreement.

ADA OBLIGATIONS AND ACTIONS TO BE TAKEN BY HENDERSON

A. Non-Discrimination

12. Henderson will not discriminate against any individual on the basis of disability in the full and equal enjoyment of any of its goods, services, facilities, privileges, advantages, or accommodations or otherwise violate any provision of Title III of the ADA, 42 U.S.C. §§ 12181 - 12189, or the Title III implementing regulation, 28 C.F.R. Part 36, including but not limited to the following:

a. Henderson will take those reasonable steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise

treated differently than other individuals because of the absence of auxiliary aids and services and shall furnish appropriate auxiliary aids and services, free of charge, when necessary to ensure effective communication with individuals with disabilities a, 42 U.S.C. § 12182(b)(2)(A)(iii) and 28 C.F.R. §§ 36.301(c), 36.303;

b. Henderson will also facilitate requests for accommodations (including requests for auxiliary aids or services) from individuals with disabilities and provide timely responses to those individuals about those requests; and

c. Henderson will not engage in retaliation, coercion, interference, intimidation, or any other action prohibited by the ADA, 42 U.S.C. § 12203 and 28 C.F.R. § 36.206.

B. Relay Calls

13. Henderson will respond to telephone calls from a telecommunications relay service in the same manner it responds to other telephone calls. 28 C.F.R. § 36.303(c)(4).

14. Within ninety (90) days of the Effective Date of this Agreement, Henderson will provide training on the use of relay services to place and receive telephone calls to all employees and contractors whose duties or responsibilities include telephone communication with the public. Such training shall include information regarding the use of each different type of relay service (TTY relay service, IP relay service, and video relay service), the procedures to be followed, and the telephone numbers to be used locally to contact each type of relay service to place a relay call.

C. Adoption and Implementation of Effective Communication Policy

15. Within thirty (30) days of the Effective Date of this Agreement, to the extent not already undertaken, Henderson shall develop an Effective Communication Policy to ensure equal communication with persons with disabilities and shall provide a written copy of the policy to the U.S. Attorney's Office to confirm compliance with this paragraph. This policy shall include a process for requesting qualified interpreters within five (5) days or less of a request, if deemed necessary to achieve effective communication.

16. Within ninety (90) days of the Effective Date of this Agreement, or as soon as reasonably practicable in light of the COVID-19 global pandemic, Henderson agrees to train all employees on Henderson's obligations under the ADA, this Agreement, and the Effective Communication Policy. Henderson agrees to provide newly hired employees who are responsible for dealing with or communicating with members of the public training regarding Henderson's duties and responsibilities under the ADA within thirty (30) days of such new employee's date of hire.

D. Effective Communication during Face-to-Face Services

17. Beginning immediately as of the Effective Date of this Agreement, Henderson shall provide individuals who are deaf, are hard of hearing, or have speech disabilities with appropriate auxiliary aids and services, including qualified sign language interpreters and oral interpreters, where necessary to ensure effective communication during face-to-face encounters consistent with existing law.

18. The determination of which auxiliary aid or service is appropriate for face-to-face encounters shall be made by Henderson with input from the person with a disability. The provided auxiliary aid or service must result in effective communication for the individual with a disability.

19. Henderson must provide an auxiliary aid or service, where necessary to ensure effective communication during face-to-face encounters, even when the individual with a disability is able or willing to communicate through a family member or companion. The auxiliary aid or service will be provided free of charge to the qualified individual.

REPORTING, ENFORCEMENT AND OTHER PROVISIONS

20. Term of Agreement. This Agreement will remain in effect for twelve (12) consecutive months from the Effective Date hereof.

21. Reporting. At the conclusion of the Term of this Agreement, Henderson will provide a written report to the United States regarding the Company's progress with respect to the completion of its responsibilities pursuant to paragraphs 12 through 19 of this Agreement. Henderson will send the report to:

Tiffany R. Johnson
Assistant United States Attorney
United States Attorney's Office
75 Ted Turner Drive SW, Suite 600
Atlanta, GA 30303
Tiffany.johnson2@usdoj.gov

The report will identify all requests for auxiliary aids and Henderson's response to such requests, and will identify all ADA-related complaints for the period and provide an explanation of how any complaint was resolved.

22. Enforcement. In consideration of the terms of this Agreement as set forth above, the Attorney General agrees to refrain from undertaking further investigation or from filing a civil suit under Title III based on the allegations in this Agreement, except as provided in paragraphs 24-25 below. Nothing contained in this Agreement is intended or may be construed as a waiver by the United States of any right to institute proceedings

against Henderson for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief for other violations of the ADA, or other federal laws.

23. Review of Compliance. The United States may review compliance with this Agreement at any time.

24. Violations. If the United States believes that Henderson has violated this Agreement or the ADA, it will notify Henderson and include reasonably specific information regarding the violation. Henderson must correct its violations and respond to the United within thirty (30) days of receipt of the United States' notice. The United States and Henderson will negotiate in good faith to resolve any dispute. If the United States and Henderson are unable to agree on a resolution within sixty (60) days of Henderson's response, the United States may seek appropriate relief including court enforcement of this Agreement or filing a complaint in federal court under the ADA.

25. Compliance in a Timely Manner. It is a violation of this Agreement for Henderson to fail to comply in a timely manner with any of the requirements in this Agreement. The Parties may mutually agree in writing to extend any applicable deadlines specified in this Agreement. The United States will not unreasonably deny requested extensions, if made in advance of any deadline, and following Henderson's due diligence to meet such a requirement.

26. This Agreement does not purport to remedy any violations or potential violations of the ADA or any other federal or state law and does not relieve Henderson of its continuing obligation to comply with all aspects of the ADA.

27. Headings. The paragraph headings in this agreement are for convenience only and will not be deemed to affect in any way the language of the provisions to which they refer.

28. Entire Agreement. This Agreement constitutes the entire agreement between the United States and Henderson on the matters raised, and no other statement, promise, or agreement, will be enforceable. This Agreement does not affect Henderson's continuing responsibility to comply with all aspects of the ADA and other federal law.

29. Non-Waiver. Failure by the United States to enforce this Agreement with regard to any deadline or any provision is not a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.

30. Severability. In the event a Court determines that any provision of this Agreement is unenforceable, that provision will be severed from this Agreement, and all other provisions will remain valid and enforceable.

31. Authorized to Sign. The person signing this Agreement for Henderson represents that he or she is authorized to bind Henderson to this Agreement.


The undersigned AGREE to this Agreement.

FOR HENDERSON & SONS
FUNERAL HOME, INC.

By: 
Barry Henderson, President/CEO

Dated: 10/09/2020

FOR THE UNITED STATES OF AMERICA
BYUNG J. PAK
United States Attorney
Northern District of Georgia

By: 
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Assistant U.S. Attorney
Northern District of Georgia
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Atlanta, Georgia 30303
Phone: 404.581.6000
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Dated: October 9, 2020