

Law Office of Lainey Feingold

DISABILITY RIGHTS LEGAL ADVOCACY

American Cancer Society Accessible Website and Alternative Formats Agreement

The ground breaking agreement posted here recognizes the growing importance of accessible health care information to people with visual impairments. Working with the American Council of the Blind (ACB) in the Structured Negotiations process, the American Cancer Society (ACS) has agreed to design and generate its website in accordance to well accepted web accessibility standards. ACS has also agreed to undertake a pilot program for making its print materials available in alternative formats including Braille, Large Print, audio and electronic formats.

- More information about the ACS accessibility initiative may be found on the [Accessibility Information Page of the ACS website](#).
- You can also read the [press release announcing the ACS accessible information initiative](#).
- You can also read a short [Simplified Summary of this Post](#), a feature of LFLegal designed to satisfy AAA Success Criteria 3.1.5 of WCAG 2.0.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the American Council of the Blind (“ACB” or “Claimant”) and the American Cancer Society (“ACS”) for the purposes and on the terms specified herein and operates in conjunction with the Confidential Addendum to this Agreement. Together ACB and ACS are referred to herein as the Parties.

RECITALS

This Agreement is based on the following facts:

A.

ACB is a non-profit corporation that provides advocacy services in the United States on behalf of individuals who are blind or visually impaired, is dedicated to promoting the full integration of persons who are blind or have visual impairments into all aspects of society, and provides information to the general public about the accomplishments, needs and contributions of persons who are blind or visually impaired. Among ACB’s members and those on whose behalf they advocate and provide services, are many individuals with visual disabilities within the meaning of state and federal law who seek to access information provided by the American Cancer Society for themselves, friends and family members. ACB is incorporated and has its place of business in Arlington, Virginia.

B.

The American Cancer Society is a non-profit nationwide community-based voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer through research, education, advocacy, and service. With more than two million volunteers nationwide, the American Cancer Society is one of the oldest and largest voluntary health agencies in the

United States. ACS is headquartered in Atlanta, Georgia, and has state divisions and more than 3,400 local offices across the United States.

C.

A dispute has arisen between Claimant and ACS concerning (i) to what extent the American Cancer Society is legally obligated to provide Persons with Visual Impairments informational materials produced and distributed by ACS, such as documents and brochures, in formats that are effective for people who are blind or visually impaired; and (ii) to what extent the American Cancer Society is legally obligated to ensure that the ACS Website is accessible to Persons with Visual Impairments (“Alternative Format and Accessible Website Dispute” or “the Dispute”).

D.

On or about February 20, 2009, Claimant notified the American Cancer Society about the Dispute and offered to engage in Structured Negotiations, in lieu of litigation, to resolve the Dispute. In May, 2009, the Parties executed a Structured Negotiations Agreement to protect the interests of all parties during those negotiations. Since executing that agreement, the Parties have engaged in good faith negotiations and shared relevant information regarding the Dispute. The Parties now enter into this Agreement in order to resolve the Dispute and to avoid the burden, expense, and risk of potential litigation.

E.

By entering into this Agreement, the American Cancer Society does not admit, and specifically denies, that it has violated or failed to comply with any provisions of the ADA, any applicable laws of any state relating to accessibility for Persons with Visual Impairments, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. Neither this Agreement, nor any of its Exhibits, terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by the American Cancer Society of any such violation or failure to comply with any applicable law, or that the ADA or any other state law referenced in this recital. This Agreement and its terms and provisions, including all Exhibits, shall not be offered or received as evidence for any purpose whatsoever against the American Cancer Society in any action or proceeding, other than a proceeding to enforce the terms of this Agreement and the Confidential Addendum executed herewith.

NOW, THEREFORE, the parties hereby agree to the following provisions:

1. Definitions.

As used in this Agreement, the following terms shall be as defined below:

1.1.

Accessible PDF refers to any PDF document that satisfies WCAG 2.0 Conformance Level AA Success Criteria.

1.2.

Alternative Formats means Braille, Large Print, Audio, and Electronic Formats as further described in Sections 1.7 and 4 of this Agreement.

1.3.

Alternative Format Pilot Project means the program as set forth in this Agreement under which ACS will provide Alternative Formats of certain ACS Information for the twelve month period beginning February 15, 2011.

1.4.

American Cancer Society (or ACS) Brochures means documents produced by ACS, and which are primarily designed to be advertising or marketing regarding the availability of ACS programs, services, and ACS Publications.

- 1.5. American Cancer Society (or ACS) Information means information produced and distributed by the American Cancer Society for the general public. For the purpose of this Agreement, ACS Information is comprised of ACS Publications and ACS Brochures.
- 1.6. American Cancer Society (or ACS) Publications means printed publications provided for free by the American Cancer Society to the general public, and does not include the following: (i) research and other technical materials that are not provided as educational materials for the general public; and (ii) ACS Brochures, as defined in this Agreement.
- 1.7. American Cancer Society (or ACS) Website means the public website owned and operated by the American Cancer Society. As of the Effective Date, the ACS Website has the url of www.cancer.org.
- 1.8. Audio Format means a (i) a live or synthesized voice recording on a compact disc that can be played in both a computer and a compact disc player (also referred to as Traditional CD Format); or (ii) live or synthesized voice recording in an MP3 file. Audio Format files have the features and functionality as further described in Section 4.4 of this Agreement.
- 1.9. Claimant's Counsel means Goldstein, Demchak, Baller, Borgen & Dardarian and Law Office of Lainey Feingold, and the attorneys practicing law therein.
- 1.10. Customer Service Telephone means the main toll-free telephone number of the American Cancer Society, which is answered by customer service agents trained to respond to inquiries by the general public about ACS' programs and services.
- 1.11. Effective Date means February 15, 2011.
- 1.12. Substantial Alteration means a modification that substantially interferes with the usability of the material for other constituents.
- 1.13. Person or Persons with a Visual Impairment means any person who has a physical or mental impairment that substantially limits him or her in the major life activity of seeing.
- 1.14. Undue Burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered, amongst others, include those set forth in 28 C.F.R. section 36.104, part III-4.3600 of the Technical Assistance Manual, and any other regulations/ interpretive guidance issued by or on behalf of the United States Department of Justice.

2. Duration of Agreement.

The terms of this Agreement shall remain in effect through February 14, 2012.

3. Accessible Website Provisions.

- 3.1. The American Cancer Society will use best efforts to ensure that the ACS Website substantially complies with the Web Content Accessibility Guidelines (WCAG) 2.0, Conformance Level AA Success Criteria. The Parties acknowledge that some WCAG Conformance Level AA Success Criteria address features or design elements that may not be used on the ACS Website, and in such circumstances compliance with those checkpoints will not be required.
- 3.2.

If the ACS Website has not achieved substantial compliance as described in Section 3.1 above, by February 15, 2011, the parties will meet and confer regarding the issues still outstanding. If the Parties fail to reach agreement on these issues by April 1, 2011, the matter will be handled as a dispute pursuant to Section 9 of this Agreement.

3.3. Accessibility Consultant.

During the term of this Agreement the American Cancer Society shall retain an outside consultant that has been agreed to by Claimant to assist ACS' principal web developer in ensuring substantial compliance with the WCAG Guidelines. At a minimum, the accessibility consultant shall perform an accessibility review and compliance validation of a specified number of web pages developed by American Cancer Society's web developer. The number of pages to be reviewed will be determined by the consultant's recommendation.

3.4. Third Party Content Exclusion.

3.4.1. The Parties recognize that there may be certain content on the ACS website that is not written or controlled by American Cancer Society ("Third-Party Content"). Section 3 of this Agreement shall not apply to any Third Party Content on the ACS Website. ACS shall provide written notice to Claimant in the event it chooses to transfer all the responsibility of providing content on its website to a third party.

3.4.2. RFPs for Third Party Content. If, on or after the Effective Date, ACS issues requests for proposals or enters into contracts for development or inclusion of new Third-Party Content on the ACS Website, ACS will make good faith efforts to locate and select contractors and vendors that are able to comply with WCAG 2.0 Level AA Success Criteria.

3.5. CAPTCHAs.

3.5.1. If any Completely Automated Public Turing Test to Tell Computers and Humans Apart or similar visual or textual Turing or reverse-Turing verification test (referred herein as "CAPTCHA") is used on the American Cancer Society Website, ACS will incorporate alternative security measures that are usable by Persons with Visual Impairments.

3.5.2. Testing of Proposed Alternatives to Visual Verifications. If ACS plans to include a CAPTCHA on the ACS Website, it will provide a method for Claimant's representatives to test the alternative security measure to ensure that it is usable by Persons with a Visual Impairment prior to the inclusion of the CAPTCHA on the ACS Website. ACS will give good faith consideration to all feedback provided by Claimant's representatives if it is provided in writing within fifteen (15) days of the testing. Any disagreements regarding this feedback will be treated as a dispute subject to the terms of Section 9 of this Agreement.

3.6. PDF Documents on the ACS Website.

3.6.1. ACS will use best efforts to ensure that all PDF documents posted on the ACS Website are Accessible PDFs.

3.6.2. Additional Versions of PDF Documents on the ACS Website. If ACS posts on the ACS website a PDF document that is not an Accessible PDF document, ACS will post an html of the information contained in the PDF document.

3.7. Enforcement of Web Provisions.

3.7.1. The procedures set forth in Sections 3.7.2 – 3.7.5 must be exhausted in the event that (i) ACB alleges that ACS has failed to meet its obligations pursuant to Section 3 of this agreement, or (ii) ACS alleges that there is a Success Criteria of WCAG 2.0 Conformance Level AA that it cannot substantially comply with. There will no breach of the Agreement in connection with such allegations until these procedures have been exhausted.

3.7.2. Claimant will notify ACS in writing if it believes there is a page or a posted document on the ACS Website that does not meet the standards set forth in Section 3 of this Agreement. ACS will notify Claimant in writing if it believes there is a Success Criteria in the Guidelines with which (i) it cannot substantially comply despite best efforts; or (ii) for which substantial compliance would be an Undue Burden or a Substantial Alteration of

the Website or the information provided in the document posted on the Website.

3.7.3. Within thirty (30) days of either Party receiving written notice as described in Section 3.7.2, the other Party will respond in writing to the Notice. Within ten (10) days of receipt of the response, the Parties will meet by telephone in an attempt to informally resolve the issue.

3.7.4. If the issue remains unresolved within 30 days of the telephone meeting, ACS will hire the mutually agreed upon accessibility consultant referred to in Section 3.3 to provide an opinion on the issue within 30 days. There will be no breach of this Agreement unless the consultant determines that:

3.7.4(i). In regards to an ACB notice, the challenged web page or posted document, or portion thereof, (a) does not substantially comply with the standards set forth in this Agreement; and (b) could substantially comply without creating an Undue Burden or a Substantial Alteration, if ACS used best efforts; and (c) ACS fails to remedy the issue within sixty days of receiving the accessibility consultant's opinion; or

3.7.4(ii). In regards to an ACS notice, ACS can substantially comply with a Success Criteria by using best efforts, and ACS fails to remedy the issue within sixty days of receiving the accessibility consultant's opinion.

3.7.5. Should the Parties have a dispute regarding an issue raised in a notice given under Section 3.7.2, the dispute shall be handled pursuant to the procedures set forth in Section 9 of this Agreement.

3.8. Accessibility Information Page on the ACS Website.

By February 15, 2011, ACS will post an Accessibility Information Page on the site, linked from an "Accessibility" link on the homepage, describing ACS' efforts to make the content on the ACS Website accessible to all individuals. The Accessibility Information Page will include a telephone and email method by which site visitors can notify ACS about web accessibility concerns. ACS will share a draft of the Accessibility Information Page with Claimant within ten days prior to posting and give good faith consideration to any feedback that Claimant provides within five days of receiving the draft from ACS.

4. Alternative Format Pilot Program.

4.1. Term of the Pilot Program.

Unless the Parties agree in writing to extend or modify the term of the Alternative Format Pilot Program, or replace it with a permanent program, the Alternative Format Pilot Program set forth herein shall remain in effect from February 15, 2011 through February 14, 2012.

4.2. Braille Format.

4.2.1. Documents Available in Braille Format. Throughout the Term of the Alternative Format Pilot Program ACS will provide the ACS Publications listed in Exhibit A in Braille to Persons with Visual Impairments, upon request as set forth in Section 5.1 herein.

4.2.2. Braille Standards. Braille materials provided pursuant to this Agreement shall comply, whenever possible, with the Braille Authority of North America's standards ("BANA Standards") for printing and binding Braille materials, currently found at www.brailleauthority.org. If, during the Term of this Agreement, Claimant notifies ACS in writing that Braille materials provided pursuant to this Agreement are not in compliance with the BANA Standards, ACS will forward the notice to its Braille vendor(s) for response. ACS will use good faith efforts to arrange a conference call with Claimant and the vendor to discuss the vendor's response to the notice. No dispute regarding this section will be initiated under Section 9 of this Agreement until at least 90 days after such notice.

4.2.3. Binding. Braille documents that are less than ten (10) sheets of paper in length will be stapled using a heavy-duty manual stapler. Braille documents that are ten (10) to twenty (20) sheets of paper in length shall be stapled using only an electronic production stapler. Braille documents that are twenty-one (21) or more sheets of paper in length

shall be bound using spiral binding. All stapled documents shall allow sufficient space on the left margin so as not to restrict reading.

4.2.4. Completeness. Each Braille document provided pursuant to this Agreement shall include all of the information that is contained in the standard print version of the same document that is made available to the general public.

4.3. Large Print Information.

4.3.1. Documents Available in Large Print Format.

4.3.1(i). ACS Publications. Throughout the Term of the Alternative Format Pilot Program, ACS will provide the ACS Publications listed in Exhibit A in Large Print to Persons with Visual Impairments upon request, as set forth in Section 5.1 herein.

4.3.1(ii). ACS Brochures. Throughout the Term of the Alternative Format Pilot Program, ACS will provide ACS Brochures in Large Print to Persons with Visual Impairment upon request, as set forth in Section 5.1 herein.

4.3.2. Large Print Standards. Large Print materials provided pursuant to this Agreement shall have the following features: (i) a font size of at least 18 points; (ii) a sans serif font, such as Arial or Verdana, in bold; (iii) limited, if any, use of ALL CAPITALS; (iv) no use of italics; (v) print on suitable non-glossy paper; (vi) block paragraphs; (vii) page numbers in the top outer corner of each page in the same font as other text on the page; (viii) emphasis provided by setting text apart with stars or lines, and not using colored text; (ix) appropriate use of white space. If, during the Term of this Agreement, Claimant notifies ACS in writing that Large Print materials provided pursuant to this Agreement do not have the features set forth in this Section, ACS will forward the notice to its Large Print vendor(s) for response. ACS will use good faith efforts to arrange a conference call with Claimant and the vendor to discuss the vendor's response to the notice. No dispute regarding this section will be initiated under Section 9 of this Agreement until at least 90 days after such notice.

4.3.3. Binding Large Print documents that are less than twenty (20) sheets of paper in length will be stapled using only an electronic production stapler. Large Print documents that are twenty-one (21) or more sheets of paper in length shall be bound using spiral binding. All stapled documents shall allow sufficient space on the left margin so as not to restrict reading.

4.3.4. Completeness. Each Large Print document provided to Persons with Visual Impairments pursuant to this Agreement shall include all of the information contained in the standard print version of the same document that is provided to the general public.

4.4. Audio Format.

4.4.1. Documents Available in Audio Format.

4.4.1(i). ACS Publications. Throughout the Term of the Alternative Format Pilot Program, all ACS Publications will be provided in the following audio formats: MP3 Format and Traditional Audio CD Format.

4.4.1(ii). ACS Brochures. Throughout the Term of the Alternative Format Pilot Program all ACS Brochures in excess of three pages will be provided in the following audio formats: MP3 Format and Traditional Audio CD Format to Persons with Visual Impairments upon request as set forth in section 5.1 herein. Upon request, ACS Customer Service staff will read ACS Brochures that are three pages long or less to Persons with Visual Impairments who call the ACS phone number as provided in Section 4.6.

4.4.2. Audio Standards.

4.4.2 Audio CDs and Audio MP3. Audio CDs and Audio MP3 files provided pursuant to this Agreement shall have the following features: (i) the document being read should be identified by name at the beginning of the audio file; (ii) a table of contents should be provided at the beginning of the audio file; (iii) when the document is divided into chapters, each chapter should be in a separate track so the user can go directly to the desired information; (iv) whether live or digital, audio information must be clearly enunciated; (v) the end of the publication should be identified; (vi) Audio CDs should be

delivered in a CD Case with the name of the document provided in both Braille and Large Print formats meeting the standards for such formats set forth in this agreement; (vii) all audio CDs must be able to be played both in a computer and in a CD player.

4.5. Electronic Format.

4.5.1. Documents Available in PDF Format.

4.5.1(i). ACS Brochures. Throughout the Term of this Agreement, ACS will provide Persons with Visual Impairments with ACS Brochures created or revised on or after the Effective Date in Accessible PDF format as email attachments upon reasonable request as set forth in Section 5.1.

4.5.1(ii). ACS Publications. Throughout the Term of this Agreement, ACS will provide ACS Publications created or revised on or after the Effective Date in Accessible PDF Format to Persons with Visual Impairments by emailing the document or sending it in Accessible PDF format on a disc by regular mail, upon reasonable request as set forth in Section 5.1, herein. If a PDF document that was created prior to the Effective Date and requested by a Person with a Visual Impairment it is not an Accessible PDF, ACS will provide an html, text or audio version of the information contained in the requested PDF document.

4.6. Information Provided by ACS Cancer Information Specialist Staff.

4.6.1. ACS will provide live assistance on a toll free telephone line 24 hours a day, 7 days a week to Persons with Visual Impairments. Upon request, Persons with Visual Impairments will be provided with direct access to Cancer Information Specialist staff who have received the training set forth in this Agreement. ACS will use best efforts to ensure that Cancer Information Specialist staff who have received the training set forth in this Agreement are available at all times. All Cancer Information Specialist staff will be trained in how and when to refer calls to staff who have received the training set forth in this agreement.

4.6.2. ACS Cancer Information personnel staffing the Cancer Information Telephone will, upon reasonable request, read ACS brochures and ACS Publications to Persons with Visual Impairments, describe available materials, and provide additional information as requested.

5. Alternative Format Policy.

5.1.

ACS will develop an Alternative Format Pilot Program policy that will be available to the public and will include the following:

5.1.1. Methods for Requesting Alternative Formats. ACS will provide methods for Persons with Visual Impairments to request the Alternative Formats set forth in this Agreement. The methods shall allow Persons with Visual Impairments to make such requests through a toll free telephone number, by email, or through an on-line form that satisfies WCAG 2.0, Conformance Level AA Success Criteria. ACS may adopt a policy limiting the number of copies of any particular document that any one Person with a Visual Impairment may request. ACS will begin accepting requests for Alternative Formats as required by this agreement from Persons with Visual Impairments no later than February 15, 2011.

5.1.2. Timeliness of Providing Requested Information. Beginning with requests received on or after February 15, 2011, ACS will provide to Persons with Visual Impairments their requested ACS Information in the requested Alternative Format within 10 business days.

5.1.3. Method for Providing Feedback. ACS will accept feedback from Persons with Visual Impairments on the Alternative Format Pilot Program policy and Alternative Formats received under the Program.

5.1.4. Description of Formats Available. The Alternative Format Pilot Program Policy shall include a description of the Alternative Formats available as part of the pilot program. The Policy shall also include information about the availability of documents on the ACS Website and the accessibility of that site.

5.1.5. No Charge for Alternative Formats. The Alternative Format Pilot Program Policy

shall state that there will be no charge for Persons with Visual Impairments to request and receive Alternative Formats pursuant to this Agreement. Nothing in this Agreement prevents the American Cancer Society from imposing charges for any documents or Alternative Formats provided to individuals who are not Persons with Visual Impairments.

5.2.

ACS has provided a draft of the Alternative Format Pilot Program Policy to Claimant. ACS will give good faith consideration to all of Claimant's comments regarding the policy that are (i) provided in writing no later than 10 days after Claimant receives the policy; and (ii) consistent with the terms of this Agreement. Any dispute concerning the terms of the Alternative Format Pilot Program Policy will be handled as a dispute pursuant to Section 9 of this Agreement.

5.3.

ACS will finalize and adopt the Alternative Format Pilot Program Policy no later than February 15, 2011. The Policy will be implemented in a timely manner so that Persons with Visual Impairments can begin to make requests for Alternative Formats no later than February 15, 2011 and receive the Formats pursuant to the time frames set forth in the policy.

5.4. Information on the ACS Website.

No later than February 15, 2011, ACS will post a copy of the Alternative Format Pilot Program Policy, or a detailed summary thereof, in an easily findable location on the ACS Website, linked from the Homepage, the Contact us Page, and the Accessibility Information Page described in Section 3.8 of this Agreement.

5.5. Requests for Documents from Persons Who Do Not Have Visual Impairments.

Nothing in this Agreement shall prevent ACS from adopting policies regarding requests for ACS Information or Alternative Formats by institutions or by individuals who are not Persons with Visual Impairments.

6. Meetings Regarding this Agreement.

6.1.

On a mutually agreed upon date each quarter during the Term of this Agreement, the Parties will meet to discuss any issue concerning implementation of this Agreement. At least ten days prior to the meeting, ACS will provide Claimant with the following information: (i) the name of each ACS Publication and ACS Brochure requested and provided in an Alternative Format during the quarter and the number of such requests by Format; (ii) whether ACS received requests for any documents in an Alternative Format not required to be produced in Alternative Formats under this Agreement, and if so which publications and how many requests were received (provided, however, that although ACS will use best efforts to collect and provide the information described in this paragraph 6.1(ii), failure to do so will not be considered a breach of this Agreement); (iii) any feedback received from Persons with Visual Impairments during the quarter, with name and identifying information redacted; and (iv) any difficulties ACS had in meeting the terms of the Agreement during the quarter.

Upon reasonable request of Claimant, ACS will invite one or more Alternative Format vendor(s), as appropriate, to participate in the meeting.

6.2. Further Negotiations.

During the meeting in the fourth quarter of 2011, the Parties shall begin negotiations in good faith to enter into a further agreement regarding whether and in what manner the Pilot Program should continue as a permanent program.

7. Training of Cancer Information Specialist Staff.

7.1.

ACS will enter into a short-term contract with an agreed upon consultant with a visual

impairment to assist it in developing training materials for appropriate ACS staff and contract employees. Topics of training will include: (i) appropriate techniques for reading documents to Persons with Visual Impairments; (ii) ways in which Persons with Visual Impairments may take notes during phone conversations; (iii) the details and purpose of the Pilot Project, and how best to communicate information about the Alternative Format Pilot Program to Persons with Visual Impairments; (iv) basic information about the ways in which Persons with Visual Impairments access the Internet, and how they find, navigate to, and read information on the ACS Website.

7.2.

ACS will train appropriate staff in a timely manner on the topics identified in Section 7.1.

8. Right to Seek Modification of Agreement

8.1.

After July 15, 2011, ACS may seek to modify the obligations set forth in Section 4 above, if:

8.1.1. ACS reasonably believes, based on information gathered during the first six months of the Alternative Format Pilot Program, that continued compliance with the terms of Section 4 above will result in an Undue Burden; or

8.1.2. Unforeseen circumstances render continued compliance with Section 4 impossible or impracticable.

8.2. Notice of Proposed Modification.

If ACS seeks to modify the Alternative Format Pilot Program set forth in Section 4, it will send Claimant a Notice of Proposed Modification that includes the following: (i) the factual basis for the modification; (ii) documentation supporting the request, such as the number of requests for a particular Alternative Format and the money spent on providing the particular Alternative Format; and (iii) a proposed modification narrowly tailored to address the reason for the modification.

8.3.

The Parties will meet and confer regarding the proposed modification as soon as practicable after receipt of the notice. If within sixty (60) days after their receipt of ACS' Notice of Proposed Modification the Parties have not reached agreement regarding the Notice, the matter will be submitted to mediation, and, if necessary arbitration, pursuant to Section 9.4 and 9.5 below.

9. Procedures in the Event of Disputes.

9.1. Notice of Non-Compliance.

If a Party believes that the other party has not complied with any provision of this Agreement, that Party shall provide the other Party with Notice of Non-Compliance containing the following information: (i) the alleged act of non-compliance; (ii) a reference to the specific provision(s) of the Settlement Agreement or Confidential Addendum that are involved; (iii) a statement of the remedial action sought by the initiating party; (iv) a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

9.2. Response.

Within thirty (30) days of receipt of a Notice provided pursuant to Section 9.1, the non initiating party shall respond to the initiating party in writing.

9.3. Meet and Confer.

Within two weeks after the response described above, the Parties shall informally meet and confer and attempt to resolve the issues raised in the Notice.

9.4. Submission to Mediation.

If the matters raised in a Notice provided pursuant to 9.1 are not resolved within forty-five (45) days of the initial meet and confer required by Section 9.3, or if the proposed

modification set forth in a Notice of Modification pursuant to Section 8.2 within 60 days of receipt of the Notice, either party may submit the unresolved matters to nonbinding mediation before a mediator affiliated with Judicial Arbitration & Mediation Services ("JAMS"), or such other mediator as the Parties may jointly designate.

9.5. Submission to Arbitration.

If mediation fails to resolve the matter, the Parties then will settle the matter finally by means of arbitration conducted by JAMS pursuant to its Streamlined Arbitration Rules and Procedures at a mutually convenient location.

10. Notice or Communication to Parties.

Any notice or communication required or permitted to be given to the Parties hereunder shall be given in writing by e-mail and by overnight express mail or United States first class mail, addressed as follows:

To Claimants:

Linda M. Dardarian
c/o Goldstein, Demchak, Baller, Borgen & Dardarian
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
[email address omitted]

Lainey Feingold
Law Office of Lainey Feingold
1524 Scenic Avenue
Berkeley, CA 94708
[email address omitted]

To ACS:

Sheffield Hale
Chief Counsel
American Cancer Society, Inc.
250 Williams St.
Atlanta, GA 30303
[email address omitted]

Michael Bruno
Gordon & Rees LLP
275 Battery St., 20th Floor
San Francisco, CA 94111
[email address omitted]

11. Publicity Regarding This Agreement and Its Terms.

The parties will issue the press release attached hereto on or around February 15, 2012.

12. Agreement Binding on Assigns and Successors; No Third Party Beneficiaries.

12.1. Assigns and Successors.

This Agreement shall bind any assigns and successors of the American Cancer Society. Within thirty (30) days of assignment or succession, the American Cancer Society shall notify Claimant in writing of the existence, name, address and telephone number of any assigns or successors relating to the subject matters addressed herein.

12.2. No Third Party Beneficiaries.

This Agreement is for the benefit of the parties hereto only and no other person or entity shall be entitled to rely hereon, receive any benefit herefrom, or enforce against either party any provision hereof. The parties specifically intend that there be no third party beneficiaries to this Agreement.

13. Force Majeure.

The performance of the American Cancer Society under this Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, strikes or lockouts, unavailability of parts, equipment or materials through normal supply sources, security threat, or any other event of force majeure. If the American Cancer Society seeks to invoke this section as the result of an event of force majeure it shall notify Claimant in writing as soon as reasonably practicable, specifying the particular action(s) that could not be performed and the specific reason for non-performance. Claimant's Counsel and the American Cancer Society will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this section, or any future action to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to Section 9 of this Agreement.

14. Exhibits.

The terms of any Exhibits attached hereto are fully incorporated into this Agreement and are an integral part thereof. The terms of this Agreement, where applicable, are fully incorporated into all Exhibits and are, where applicable, an integral part thereof. The use of the term "Agreement" herein includes all Exhibits.

15. Multiple Originals/Execution in Counterparts.

Each party and Claimant's Counsel shall sign three (3) copies of this document and each such copy shall be considered an original. This document may be executed in counterparts and facsimile and PDF signatures shall be accepted as original.

SO AGREED:

- **American Council of the Blind**
By: Melanie Brunson
Title: Executive Director
- **American Cancer Society, Inc.**

APPROVED AS TO FORM:

- **Goldstein, Demchak, Baller, Borgen & Dardarian**

By: Linda M. Dardarian

- **American Cancer Society, Inc.**

- **Law Office of Lainey Feingold**

By: Lainey Feingold

EXHIBIT A

Document Name and Publication Number

- Breast Cancer D104.00
- A Message of Hope: Coping with Cancer D6684.00
- Guide To Quitting Smoking D6696.00
- Talking with Your Doctor D6714.00
- Helping a Smoker Quit: Do's and Don'ts D6946.00
- Prostate Cancer D117.00
- Colorectal Cancer D107.00
- Lung Cancer (Non-small cell) D6976.00

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