

**SETTLEMENT AGREEMENT**  
**UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990**  
**BETWEEN**  
**THE UNITED STATES OF AMERICA**  
**AND THE LAW OFFICE OF COHEN AND JAFFE, LLC**  
**Department of Justice Complaint Number 202-52-111**

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**PARTIES:**

1. The parties to this agreement are the United States of America and the Law Office of Cohen and Jaffe, LLC (“Law Office”).
2. Stephen M. Cohen and Richard S. Jaffe are attorneys licensed to practice law in the State of New York. The Law Office is located at 2001 Marcus Avenue, Lake Success, New York 11042.

**BACKGROUND:**

3. This matter was initiated by a complaint filed by Annette Gunderson-Lucido regarding the Law Office. The complaint was received by the Department of Justice and referred to Office of the United States Attorney for the Eastern District of New York in April of 2003. The United States Attorney for the Eastern District of New York investigated the complaint pursuant to the authority granted by section 308(b) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12188.
4. The Complainant, Annette Gunderson-Lucido, is deaf and uses American Sign Language (“ASL”) as her principal means of communication.

**ALLEGATIONS:**

5. The Law Office represented Ms. Gunderson-Lucido in a personal injury matter arising out of a September, 1996 automobile accident in which Ms. Gunderson-Lucido was involved. The matter involved contested issues of fact, depositions and settlement discussions.
6. It is alleged that the Law Office failed to provide a qualified sign language interpreter both in advance of Ms. Gunderson-Lucido’s deposition and to discuss settlement strategies and legal issues with Ms. Gunderson-Lucido. Instead, the Law Office relied on Ms. Gunderson-Lucido’s mother to facilitate communication between the client and attorney. Ms. Gunderson-Lucido’s mother is not a qualified sign language interpreter. Ms. Gunderson-Lucido alleges that due to the absence of a qualified sign language interpreter, she was not prepared adequately for her deposition and did not understand the deposition process. She alleges that as a result, her deposition testimony was not compelling and affected her settlement. Ms. Gunderson-Lucido also alleges that she was unable to understand the settlement proposal, and

other legal issues.

7. It is further alleged that following repeated requests, the Law Office did obtain a qualified sign language interpreter for a subsequent deposition. The Law Office passed along the charges for the interpreter, however, to Ms. Gunderson-Lucido.

8. The Law Office asserts that it represented Ms. Gunderson-Lucido adequately and professionally and that communication between Gunderson-Lucido and the Law Office was effective.

#### **JURISDICTION/APPLICABLE LAW:**

9. Title III of the ADA and its implementing regulations prohibit discrimination on the basis of disability by public accommodations. 42 U.S.C. § 12182; 28 C.F.R. § 36.201.

10. The Law Office is a public accommodation because it is an entity whose operations affect commerce that owns, operates, leases or leases to a place of public accommodation, *i.e.*, the office of a lawyer or other service establishment. 42 U.S.C. § 12181; 28 C.F.R. § 36.104.

11. Specifically, public accommodations must 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, including qualified interpreters, 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. 42 U.S.C. § 12182(2)(A)(iii); 28 C.F.R. § 36.303 (a).

12. Public accommodations shall furnish appropriate auxiliary aids and services, including qualified interpreters, where necessary to ensure effective communication for individuals with disabilities. 28 C.F.R. § 36.303(c).

13. Appropriate auxiliary aids and services include qualified interpreters. A qualified interpreter is defined by the ADA to mean an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary. 28 C.F.R. § 104. Legal, financial and medical transactions may require the use of a qualified interpreter to ensure effective communication because of their length and complexity. See 28 C.F.R. Pt. 36, App. B at 36.303.

14. Public accommodations may not impose a surcharge on a person with a disability to cover the costs of measures, such as the provision of auxiliary aids, that are required to ensure that an individual with a disability is treated in a nondiscriminatory manner as required by the ADA. 28 C.F.R. § 36.301(c).

#### **FINDINGS:**

15. The U.S. Attorney's Office concluded that the Law Office violated the ADA when it relied upon Ms. Gunderson-Lucido's parent as a sign language interpreter in a legal matter involving a personal injury action and requiring explanations of the legal process, and a clear explanation of legal strategy. Because of the nature of the communications, and because of her mother's emotional and personal involvement with Ms. Gunderson-Lucido, Ms. Gunderson-Lucido's mother was not a qualified interpreter. Further, Ms. Gunderson-Lucido's mother has had no specialized training in interpreting legal terms.

16. The U.S. Attorney's Office has further concluded that the Law Office failed to provide Ms. Gunderson-Lucido with effective communication. The Law Office agrees to the terms set forth below as a resolution of the investigation.

**REMEDIAL ACTION:**

17. The Law Office will ensure that it provides appropriate auxiliary aids and services, including qualified interpreters, as necessary to ensure effective communication with individuals with disabilities. The Law Office will not pass along the costs of any such auxiliary aids or services to individuals with disabilities.

18. The Law Office agrees to post prominently in its offices, in locations clearly visible to the public, a notice that states, "The Law Office of Cohen and Jaffe, L.L.C. welcomes clients with disabilities. Our firm complies with the Americans with Disabilities Act. When necessary for effective communication, we will provide a qualified interpreter or other appropriate auxiliary aid or service. Individuals with disabilities shall not be charged for auxiliary aids or services, including interpreters."

19. The Law Office agrees to compensate Ms. Gunderson-Lucido \$7,000.

20. The Law Office shall make payment as follows. The Law Office shall mail to Ms. Gunderson-Lucido by certified mail, return receipt requested, a check in the amount of \$2,000, payable to Ms. Gunderson-Lucido, on July 3, 2006. The Law Office shall mail to Ms. Gunderson-Lucido by certified mail, return receipt requested, a check in the amount of \$1,000, payable to Ms. Gunderson-Lucido, on the first day of every month thereafter for the next five (5) months. Simultaneous with the mailing of the checks, The Law Office will provide to the undersigned counsel for the United States copies of the checks and transmittal letters for its records.

21. In consideration of the terms of this Agreement, the United States agrees to terminate its investigation of this matter. The United States also agrees not to file a civil lawsuit in this matter except pursuant to paragraph 23 below.

22. In consideration for the compensatory damages set forth above, the United States agrees that within ten (10) days of its receipt of the Agreement signed by an authorized representative of The Law Office, it will obtain the complainant's signature on the Waiver and Release of Claim form attached hereto as "Waiver and Release of Claims." The United States will mail the original copy of the signed Waiver and Release Claim form to The Law Office within fifteen (15) days of the United State's receipt of same.

**MISCELLANEOUS PROVISIONS:**

23. The United States may review compliance with this Agreement at any time. If the United States believes that The Law Office has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement from the United States for a modification of relevant terms, the United States will notify The Law Office in writing and will attempt to resolve the issue or issues in good faith. If the United States is unable to reach a satisfactory resolution of the issue or issues raised within thirty (30) days of the date it provides notice to The Law Office, it may institute a civil action in federal district court to enforce the terms of this Agreement or Title III and may, in such action, seek any relief available under law.

24. This Agreement shall remain in effect for two (2) years, after which time its provisions shall automatically terminate.

25. The effective date of this Agreement shall be the date of the last signature, below.

26. The undersigned counsel represent that they have been fully authorized by their clients to enter into and execute this Agreement under the terms and conditions contained herein.

27. A copy of this Agreement, or any information contained in it will be made available to any person by The Law Office or the United States upon request.

28. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

29. In the event that a Court shall determine that any provision of this Agreement is unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain valid and enforceable, provided, however, that if the severance of any such provision shall materially alter the rights or obligations of the Parties hereunder, they shall, through reasonable, good faith negotiations, agree upon such other amendments hereto as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.

The undersigned AGREE and CONSENT to the form and content of this Agreement:

For the United States:

ROSLYNN R. MAUSKOPF  
United States Attorney  
Eastern District of New York

By: \_\_\_\_\_ Date: June 30, 2006

Pamela K. Chen  
Assistant U.S. Attorney  
Civil Rights Litigation  
156 Pierrepont Street  
Brooklyn, New York 11201  
(718) 254-7575

For The Law Office of Cohen and Jaffe, LLC

By: \_\_\_\_\_ Date: July 3, 2006

Stephen M. Cohen  
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