

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES**

AND

CREATIVE INTERVENTIONS, LLC

DJ# 202-14-358

I. Background and Title III of the ADA

1. The parties to this Settlement Agreement are the United States and Creative Interventions, LLC (“Creative Interventions”).

2. Creative Interventions is a private company that provides therapeutic services for children with Autism Spectrum Disorder, including Applied Behavior Analysis (“ABA”) therapy. Creative Interventions provides its services for some children at their homes, for others in Connecticut and Massachusetts public schools, and for others still in its Achievement Clinic, a place of public accommodation located at 835 Bloomfield Avenue, Windsor, CT 06095. At the Achievement Clinic, Creative Interventions provides both group-based interventions as well as individualized services in a one-on-one setting, with embedded social opportunities through the sessions. For children at the Achievement Clinic, Creative Interventions does assist with toileting, including diapering. Children also bring their own lunch, which they eat at the Achievement Clinic, and have a midday break at the clinic, which offers a chance for them to play and interact with 3-6 of their peers in a multi-purpose room. The services provided by Creative Interventions are typically paid for by a child’s health insurance (except for the midday break, which is not billed to insurance) or the public school district. Creative Interventions also provides early intervention services as part of Connecticut’s Birth to Three Program.

3. This matter began with a complaint filed with the United States Attorney’s Office for the District of Connecticut (the “United States”) by an attorney at the Center for Children’s

Advocacy on behalf of the parents of a child with disabilities (Autism Spectrum Disorder and Type 1 Diabetes) under Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36. The complaint alleges that the child was diagnosed with Type 1 Diabetes around October 2023 and started using a Continuous Glucose Monitor (“CGM”)¹ at that time. The child’s diabetes management plan required Creative Interventions to monitor the child’s CGM and be prepared to address hypoglycemia by giving the child a fast-acting carbohydrate or glucose tab and glucagon if necessary and be prepared to address hyperglycemia with an insulin injection if needed. The complaint claims that prior to this Type 1 Diabetes diagnosis, the child had been receiving services from Creative Intervention for the child’s Autism Spectrum Disorder from 9 am to 3:30pm at the Achievement Clinic in Windsor, CT. According to the complaint, when the child’s parents asked Creative Interventions to assist with this new required diabetes-related care (including monitoring the CGM), Creative Interventions refused and required the parents to provide an adult or other caregiver to handle all diabetes care while the child was at the Achievement Clinic. It is Creative Interventions’ position that once the parents raised the child’s newly diagnosed diabetes needs, they engaged in an interactive process with the family to explore potential reasonable accommodations including providing the services in an alternative setting such as at the child’s home or at the public school. Creative Interventions believed that providing services to the child in the public school would be in the best interest of the child and it is Creative Interventions’ position that the family agreed to that accommodation. However, the complaint alleges that as a result of Creative Interventions’ refusal to provide routine diabetes care, one of the child’s

¹ A CGM uses a small sensor under the skin, which sends glucose level information to a wireless pager-like monitor worn by the patient or directly to an iPhone or other compatible device. A CGM allows for real-time monitoring of blood sugar levels, and it will sound an alarm if levels become dangerous.

parents was required to take time off work to accompany the child to Creative Interventions daily to provide his routine diabetes care at the Achievement Clinic. Ultimately, because the child's parents could not commit to attending the Achievement Clinic for the full day, the complaint claims that the parents transitioned the child to a half-day at the public preschool and a half-day at Creative Interventions, with one parent sitting in the parking lot for the time the child was at Creative Interventions to assist with the diabetes care.

4. Based on the complaint, the United States Attorney's Office for the District of Connecticut (the "United States") opened an investigation to determine whether any violations of Title III had occurred.

5. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201. Discrimination includes denying an individual or class of individuals the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations of an entity on the basis of disability. 42 U.S.C. § 12182(b)(1)(A)(i); 28 C.F.R. § 36.202(a). Discrimination also includes providing individuals or a class of individuals on the basis of disability with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afford to other individuals. 42 U.S.C. § 12182(b)(1)(A)(ii); 28 C.F.R. § 36.202(b). Discrimination also includes the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered. 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. §36.301(a).

6. Under Title III, a public accommodation must provide reasonable modifications in its policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. §§ 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

7. In addition, under Title III, “[i]t shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to any individual... because of the known disability of an individual with whom the individual... is known to have a relationship or association.” 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.

8. People with Type 1 Diabetes have a physical impairment that substantially limits one or more major life activities, including the operations of the endocrine system, which is a major bodily function. Accordingly, such individuals, like the child who was the subject of the complaint in this matter, have a disability within the meaning of the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 36.105(a)(1)(i). The parents of a child with Type 1 Diabetes are also protected from discrimination under the ADA because of their relationship with their child. 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. § 36.205.

9. The Achievement Clinic located in Windsor, CT is a place of public accommodation, because it is a facility that provides therapeutic and childcare services for children with Autism Spectrum Disorder. 42 U.S.C. § 12181(7)(F), (K); 28 C.F.R. § 36.104. As the owner and operator of the Achievement Clinic, Creative Interventions is a private entity that operates a place of public accommodation under Title III of the ADA. 42 U.S.C. § 12181(7)(F), (K); 28 C.F.R. § 36.104.

10. The United States, through the Attorney General, is responsible for enforcing Title III of the ADA, 42 U.S.C. §§ 12181-12189, and the regulation implementing Title III, 28 C.F.R. Part 36. 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. Ensuring that children with Autism Spectrum Disorder and Type 1 Diabetes have equal access to medical and therapeutic services (including ABA therapy) is an issue of general importance.

11. Through its investigation of the complaint in this matter, the United States has determined that Creative Interventions refused to provide its services to the complainant's child in its Achievement Clinic without a parent or other adult provided by the child's family present to provide routine diabetes care. Monitoring the child's CGM and being prepared to provide the child with a fast-acting carbohydrate or insulin or glucagon if needed based on blood sugar levels were reasonable modifications under the ADA. Accordingly, Creative Interventions failed to provide a reasonable modification to this child when the modification was necessary to allow the child to continue attending the Achievement Clinic. 42 U.S.C. §§ 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a). The United States also found that Creative Interventions failed to show that providing a reasonable modification for the child's diabetes care would amount to a fundamental alteration of the nature of its goods, services, facilities, privileges, advantages, and accommodations. *Id.* By requiring a parent or adult caregiver to attend its Achievement Clinic to provide routine diabetes care to the child, Creative Interventions provided the child with a service that is not equal to the service afford to others, because the child has Type 1 Diabetes. 42 U.S.C. § 12182(b)(1)(A)(ii); 28 C.F.R. § 36.202(b).

12. The United States and Creative Interventions have reached an agreement that is in the parties' best interests, and that the United States believes is in the public interest, to resolve this matter on mutually agreeable terms. The parties have, therefore, voluntarily entered in to this Settlement Agreement.

II. Actions to be Taken by Creative Interventions

13. Creative Interventions will comply with the requirements of Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation, 28 C.F.R. Part 36.

14. Creative Interventions will not discriminate against an individual on the basis of disability or on the basis of an individual's relationship with someone with a disability in the full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. §§ 12182(a), 12182(b)(1)(E); 28 C.F.R. §§ 36.201, 36.205.

15. Creative Interventions will not exclude an individual or a class of individuals or deny an opportunity for an individual or class of individuals to participate in or benefit from its goods, services, facilities, privileges, advantages or accommodations on the basis of disability. 42 U.S.C. § 12182(b)(1)(A)(i); 28 C.F.R. § 36.202(a).

16. Creative Interventions will not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered. 42 U.S.C. § 12182(b)(2)(A)(i); 28 C.F.R. §36.301(a).

17. Creative Interventions will not provide individuals or a class of individuals with an opportunity to participate in or benefit from its goods, services, facilities, privileges,

advantages, or accommodations that is not equal to that afforded to other individuals on the basis of disability. 42 U.S.C. § 12182(b)(1)(A)(ii); 28 C.F.R. § 36.202(b).

18. Creative Interventions will provide reasonable modifications in its policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless Creative Interventions can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. §§ 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

19. Creative Interventions agrees that where an individual's physician or other qualified health care professional deem it appropriate for an individual to be assisted in diabetes care by a trained layperson, that having Creative Interventions' staff (after receiving training) assist with routine diabetes care tasks, including the monitoring of a CGM and the administration of insulin or glucagon, is a reasonable modification under the ADA unless Creative Interventions can demonstrate that the individual circumstances cause a fundamental alteration to its goods, services, facilities, privileges, advantages, or accommodations. *See* 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.

20. Within 30 days of the effective date of this agreement, Creative Interventions will designate one individual who will be responsible for ensuring compliance with this Agreement and reviewing and approving requests for reasonable modifications. Creative Interventions will provide the designated individual with sufficient authority and resources to perform the tasks required by this Agreement. The e-mail address and telephone number for the designated individual will be placed in a clear and conspicuous place in the Family Handbook and on the website of Creative Interventions.

21. Creative Interventions will evaluate each request for a reasonable modification on the basis of disability on an individualized basis, relying on objective evidence and current medical standards, and in a manner consistent with the terms of this Agreement.

22. On receiving a request for a reasonable modification on behalf of an individual with a disability, Creative Interventions will engage in an interactive process and conduct an individualized assessment of the individual's needs resulting from his/her disability. This interactive process and individualized assessment shall include, where appropriate, discussions with the parents, guardians, or caregiver of the child as well as discussions with any professionals (such as health care professionals, teachers, or daycare staff) who work with the individual in other contexts to explore what reasonable modification(s) may be available and appropriate. Following the discussion, Creative Interventions may:

- a. Grant the request;
- b. Make a narrowly tailored request in writing for more information relating to the individual's necessary modifications(s); or
- c. Deny the request, in whole or in part, where, consistent with this Agreement and the ADA, Creative Interventions can demonstrate that making the requested modification will result in a fundamental alteration, as defined in the ADA, its implementing regulations, and interpreting case law and agency guidance.

23. Creative Interventions shall respond in writing to any individual making a request for a reasonable modification within 5 business days from the date the request is received, either making a decision on the request, or in extenuating circumstances, indicating the amount of additional time required to make the decision on the request. If a request for a reasonable modification is denied under paragraph 22(c), Creative Interventions shall notify the requesting

individual in writing of the specific reason(s) for the denial and advise the individual making the request that, if circumstances change, they may make a new request. Copies of all such denials, and related documents, must be maintained by Creative Interventions and provided to the United States in Creative Interventions' annual report required by paragraph 27 of this Agreement.

24. Within 60 days, Creative Interventions will submit to the United States, for review and approval, written policies and procedures and updates to the Family Handbook relating to the obligations of Creative Interventions under Title III. Creative Interventions will adopt the revised policies and procedures and updates to the Family Handbook within 15 days of written approval of them by the United States, and the new policies and procedures will be included in the Family Handbook. The new written policies and procedures and updates to the Family Handbook must include the following:

- a. A statement that Creative Interventions does not discriminate against persons with disabilities.
- b. A statement that Creative Interventions will make reasonable modifications for individuals with disabilities, upon request from the individual or his or her parent, guardian, or physician, unless Creative Interventions can demonstrate that the request amounts to a fundamental alteration of the program.
- c. An explanation of how to request a reasonable modification, including the name and contact information for the person designated under paragraph 20 to whom the request should be made and an overview of the procedures, consistent with this Agreement;
- d. A statement that if a child's physician or qualified health care provider and parent or guardian approve, Creative Interventions staff will assist children with Type 1 Diabetes with routine diabetes-related care as a reasonable

modification under the ADA (after they receive training from a child's parent, guardian, physician, nurse, or other qualified professional about the diabetes care), unless Creative Interventions demonstrates that providing the care would fundamentally alter its services;

- e. A requirement that Creative Interventions shall not require the parents, guardians, or caregivers of a child with Type 1 Diabetes to provide equipment to monitor a CGM (such as a tablet or smartphone) and that Creative Interventions will use equipment it already has or purchase new equipment for that purpose, 28 C.F.R. § 36.303(a), and that Creative Interventions will not impose a surcharge on the parents, guardians, or caregivers of a child with Type 1 Diabetes, 28 C.F.R. § 36.301(c); and
- f. Revisions to the policies and all statements in the Family Handbook relating to the administration of medication and food allergies to clearly indicate that Creative Interventions will provide reasonable modifications to children with disabilities consistent with the ADA and this Agreement.

25. Within 15 days after the Family Handbook is revised in accordance with this Agreement, Creative Interventions will send the revised version to the parents, guardians, and/or caregivers of all children currently receiving its services.

26. Within 30 days of adopting the new policies and procedures under Paragraph 24, Creative Interventions will provide a live training on Title III and the existence and content of this Agreement to all employees. The training shall be conducted by an individual or individuals with substantive knowledge of the ADA, and it shall be conducted in-person, via webinar, or via other interactive technology and include a question-and-answer session. The live training will also be provided to all new Director level employees and any employees directly involved in

evaluating and responding to requests for reasonable modifications during the term of this Agreement, within 30 days of their hire, as well as annually to all employees. For all other newly hired employees, the training required by this Agreement may be provided in a pre-recorded format, within 30 days of their hire, so long as attendees have an opportunity to ask questions after the training, and the person who provided the original live training will answer any such questions. Creative Interventions will create and maintain an attendance log that documents the name of each individual who attends the trainings required by this paragraph, his or her job title, and the date he or she attended the training.

27. For the term of this Agreement, Creative Interventions shall submit a report to the United States documenting its compliance with this Agreement every year on the anniversary of the Effective Date, except for the Final Report which shall be sixty days prior to that anniversary. All reports required pursuant to this Agreement shall be delivered to the United States via electronic mail or to another person designed in writing by the United States. The Report shall include, for the relevant time period:

- a. Attendance logs from all trainings provided under this Agreement during the previous year;
- b. A statement under penalty of perjury that paragraphs 13-26 of this Agreement have been complied with; and
- c. All documents reflecting the basis for each decision, if any, to deny a request for a reasonable modification, including all documents maintained under paragraph 23.

III. Relief for the Complainant

28. Creative Interventions agrees to allow the complainant's child to continue enrollment in its Achievement Clinic program consistent with the child's needs until the child ages out of the program (at age 6) and will continue to provide the child's routine diabetes-related care consistent with the ADA, the written plan of care from the child's medical provider, and the terms of this Agreement.

29. Creative Interventions agrees to pay \$15,000 in compensatory damages to the complainant previously identified by the United States in its investigation. Within ten (10) business days of the United States providing Creative Intervention with an executed release (*Attachment A*), Creative Interventions will provide a check to the United States in the appropriate sum and made payable to such individual in his or her full legal name, as identified to Creative Interventions by the United States.

IV. Implementation and Enforcement

30. Enforcement. As consideration for the Agreement set forth above, the United States will not institute any civil action under the ADA based on the allegations in this matter, except as provided in paragraph 31 below.

31. Compliance Review and Enforcement. The United States may review Creative Interventions' compliance with this Agreement or Title III of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with Creative Interventions in writing to Scott Levine, Chief Executive Officer at Creative Interventions, (860) 413-9538, extension 306, scott@creativeinterventions.net and Jenifer Bologna, Jackson Lewis, 44 South Broadway, 14th Flr, White Plains, NY 10601, 914-872-6869, Jenifer.Bologna@jacksonlewis.com, and the parties will attempt to resolve the concerns in good faith. If the parties are unable to reach a satisfactory resolution of the issue(s)

raised within thirty (30) days of the date that the United States provides notice to Creative Interventions, the United States may institute a civil action against Creative Interventions in the appropriate United States District Court to enforce this Agreement or Title III of the ADA.

32. Effective Date. The Effective Date of this Agreement is the date of the last signature below.

33. Term. The duration of this Agreement will be three (3) years from the Effective Date.

34. Entire Agreement. This Agreement, including *Attachment A*, constitutes the entire agreement between the United States and Creative Interventions on the matters raised herein and no other statement or promise written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including its attachments, shall be enforceable.

35. Non-Waiver. Failure by the United States to enforce any provision of this Agreement shall not be construed as a waiver of its right to enforce any provision of the Agreement.

36. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Creative Interventions shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

37. Binding Nature of Settlement Agreement. This Agreement shall be binding upon Creative Interventions, all of its facilities, agents, employees, successors, and assigns. If Creative Interventions acquires a new brand, a new business, or new facility(ies) during the term

of this Agreement, Creative Interventions shall immediately take steps to implement the requirements of this Agreement with respect to that brand, business and/or facility(ies). Specifically, Creative Interventions will train all employees in accordance with paragraph 26 within ninety (90) days of the date of the acquisition. All other terms of this Agreement also apply to a newly acquired brand, business and/or facility(ies).

38. Authority. The signatories represent that they have the authority to bind the respective parties identified below to the terms of this Agreement.

39. Other Violations. This Agreement is not intended to remedy any other potential violations of the ADA or any other law.

40. Interpretation of the ADA. Nothing in this Agreement is intended to constitute an interpretation of the legal requirements of the ADA by the United States. Rather, the parties enter into this Agreement to compromise disputed claims and avoiding the risk and expenses of litigation.

41. Notices. All notices, demands, reports, or other communication to be provided to the United States under this Agreement will be in writing and delivered by U.S. mail or electronic mail to the following:

Stewart Dearing (or the Civil Rights Coordinator)
Assistant U.S. Attorney
U.S. Attorney's Office
1000 Lafayette Boulevard, 10th Floor
Bridgeport, CT 06604
email: stewart.dearing@usdoj.gov

42. Public Document. This Agreement is a public document. A copy of this document or any information contained in it will be made available to any person on request by Creative Interventions or the United States.

43. Continuing Responsibility. This Agreement does not affect Creative Interventions' continuing responsibility to comply with all aspects of the ADA.

[SIGNATURES ON THE FOLLOWING PAGE]


Bridgeport, Connecticut
June 21, 2024

FOR THE UNITED STATES

VANESSA ROBERTS AVERY

United States Attorney for the District of
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By:



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Windsor, CT
June 19, 2024

FOR CREATIVE INTERVENTIONS, LLC



Scott Levine

Scott Levine

Chief Executive Officer