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14 UNITED STATES DISTRICT COURT  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

16	WYLENE LENA HINKLE, DENNIS	)	Case No.:
17	GASSAWAY, MYRA METZ, on behalf	)	
18	of themselves and all others similarly	)	
19	situated, and THE CALIFORNIA	)	COMPLAINT
20	COUNCIL OF THE BLIND (a California	)	
21	nonprofit corporation),	)	
22	Plaintiffs,	)	
23	v.	)	CLASS ACTION
24	JENNIFER KENT, in her capacity as	)	
25	Director of California Department of	)	
26	Health Care Services; CALIFORNIA	)	
27	DEPARTMENT OF HEALTH CARE	)	
28	SERVICES; CONTRA COSTA	)	
	COUNTY; COUNTY OF ALAMEDA;	)	
	COUNTY OF SAN DIEGO;	)	
	Defendants.	)	

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**[ADDITIONAL COUNSEL LISTED ON CAPTION PAGE]**

**INTRODUCTION**

1  
2 1. Plaintiffs Wylene Lena Hinkle, Dennis Gassaway, and Myra Metz  
3 bring this action on behalf of themselves and all others similarly situated, along  
4 with Plaintiff California Council of the Blind, an organization, against Defendants  
5 Jennifer Kent (in her capacity as Director of California Department of Health Care  
6 Services), Contra Costa County, the County of Alameda, and the County of San  
7 Diego (collectively, “Defendants”) for Defendants’ failure to provide effective  
8 communication to blind<sup>1</sup> individuals. This failure denies Plaintiffs and putative  
9 class members critically-needed and time-sensitive information about their health  
10 benefits, discriminates against them on the basis of their disabilities, and violates  
11 their due process rights under the United States Constitution.

12 2. Defendants administer the Medi-Cal program, which is a medical  
13 assistance program in California for low-income “aged, blind or disabled  
14 individuals.” 42 U.S.C. § 1396-1. Ms. Hinkle, Mr. Gassaway, Ms. Metz, and other  
15 blind individuals throughout the state rely on the Medi-Cal program for access to  
16 health care.

17 3. Defendants rely on printed materials to provide Medi-Cal applicants  
18 and recipients with critical information pertaining to the Medi-Cal program. These  
19 printed materials include general information pertaining to individuals’ rights and  
20 responsibilities with respect to the Medi-Cal program. Defendants also rely on  
21 written notices of action regarding eligibility for and changes and reductions to an  
22 individual’s benefits and services. These notices require prompt action with strict  
23 deadlines, which are explained in the written notice. Any delay in receiving, or  
24 failure to receive, such information can have serious consequences for a Medi-Cal  
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26 <sup>1</sup> For semantic convenience throughout this complaint, the term “blind” is used  
27 in its broadest sense to include all persons who, under state or federal civil  
28 rights laws, have a vision-related disability that requires alternative methods  
to access hard-copy standard print information.

1 applicant or recipient, who may be unable to contest the loss of Medi-Cal  
2 eligibility, the denial or reduction of critically needed health benefits, or the  
3 imposition of a “share of cost,” the amount that an individual must spend out of  
4 pocket on medical care before Medi-Cal will pay for any covered service. Delays in  
5 receiving such information can also result in recipients being denied the right to  
6 continue receiving treatments or services needed to stay healthy while any appeal  
7 of a denial or reduction of benefits is pending.

8 4. Ms. Hinkle, Mr. Gassaway, Ms. Metz, and others similarly situated are  
9 blind and cannot read the notices that Defendants send them. When Defendants  
10 have sent them printed correspondence in the mail, they have no way to know the  
11 content on their own, or even that the correspondence concerns their Medi-Cal  
12 benefits. As a result, each of them has repeatedly requested that all correspondence  
13 from Medi-Cal be in an “alternative format” that would make such information  
14 accessible to them.

15 5. Under federal and state law, people have the right to be free from  
16 discrimination on the basis of disability. Title II of the Americans with Disabilities  
17 Act of 1990 (“ADA”) (42 U.S.C. § 12131, *et seq.*); Section 504 of the  
18 Rehabilitation Act of 1973 (29 U.S.C. § 794); Section 1557 of the Affordable Care  
19 Act (“ACA”) (42 U.S.C. § 18116); California Disabled Persons Act (“DPA”), Cal.  
20 Civ. Code § 54, *et seq.*

21 6. For people who are blind, that includes the right to receive  
22 communication that is as effective as Defendants’ communication with others. 28  
23 C.F.R. §§ 35.160, 39.160. Entities such as DHCS must “give primary consideration  
24 to the requests of individuals with disabilities” in determining what types of  
25 auxiliary aids and services will provide effective communication. 28 C.F.R. §  
26 35.160(b)(2).

27 7. Furthermore, under the Due Process Clause of the U.S. Constitution,  
28 people are entitled to adequate notice of and opportunity for a pre-termination or

1 pre-reduction hearing regarding any termination or reduction in benefits. *Goldberg*  
2 *v. Kelly*, 397 U.S. 254 (1970).

3 8. Despite Plaintiffs' requests, Ms. Hinkle, Mr. Gassaway, and Ms. Metz  
4 continue to receive standard print Medi-Cal notices that they cannot read.  
5 Defendants have never communicated with Mr. Gassaway and Ms. Metz via the  
6 alternative format that they have requested. DHCS has only sent Brailled materials  
7 to Ms. Hinkle after significant delay, and only in response to specific requests from  
8 Ms. Hinkle's lawyers each time Ms. Hinkle received a standard print document.

9 9. The California Council for the Blind has likewise repeatedly  
10 advocated on behalf of its constituents to request that Defendants adequately  
11 identify and track people who need alternative, accessible formats and to respond  
12 appropriately to requests for alternative, accessible formats. Nonetheless,  
13 Defendants' policies and practices fail to do so, in violation of the laws requiring  
14 effective communication and due process regarding these important health care  
15 benefits.

### 16 **JURISDICTION**

17 10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§  
18 1331, 1343 and has supplemental jurisdiction over Plaintiffs' state law claims  
19 under 28 U.S.C. §1367. The Court has jurisdiction to issue declaratory and  
20 injunctive relief under 28 U.S.C. §§ 2201, 2202.

### 21 **VENUE AND INTRADISTRICT ASSIGNMENT**

22 11. Venue is proper in the Northern District of California because  
23 Plaintiffs Myra Metz and Dennis Gassaway reside within this District; Plaintiff  
24 CCB has many members who reside within this District; Defendants Jennifer Kent  
25 (in her capacity as Director of California Department of Health Care Services), the  
26 Department of Health Care Services, Contra Costa County, and the County of  
27 Alameda operate and perform official duties in this District, and a substantial part  
28 of the events, acts, and omissions giving rise to the claims occurred in the Northern

1 District of California.

2 12. Because Plaintiff Myra Metz resides in Contra Costa County and a  
3 substantial part of the events, acts, and omissions giving rise to the claims occurred  
4 in Contra Costa County, and because Plaintiff Dennis Gassaway resides in the  
5 County of Alameda and a substantial part of the events, acts, and omissions giving  
6 rise to the claims occurred in the County of Alameda, this case should be assigned  
7 to the San Francisco Division or the Oakland Division of this Court pursuant to  
8 Local Rule 3-2(d).

9 **PARTIES**

10 **Plaintiffs**

11 13. Plaintiff Wylene Lena Hinkle is blind and a recipient of Medi-Cal  
12 benefits. She is thus a “qualified person with a disability” and a person with “a  
13 disability” within the meaning of all applicable statutes and regulations, including  
14 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, 29 U.S.C. § 705(20)(B), and California  
15 Government Code § 12926. She resides in San Diego, California.

16 14. Plaintiff Dennis Gassaway is blind and a recipient of Medi-Cal  
17 benefits. He is thus a “qualified person with a disability” and a person with “a  
18 disability” within the meaning of all applicable statutes and regulations, including  
19 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, 29 U.S.C. § 705(20)(B), and California  
20 Government Code § 12926. He resides in Union City, California.

21 15. Plaintiff Myra Metz is blind and a recipient of Medi-Cal benefits. She  
22 is thus a “qualified person with a disability” and a person with “a disability” within  
23 the meaning of all applicable statutes and regulations, including 42 U.S.C. §  
24 12131(2), 28 C.F.R. § 35.104, 29 U.S.C. § 705(20)(B), and California Government  
25 Code § 12926. She resides in Antioch, California.

26 16. The California Council of the Blind is a non-profit corporation duly  
27 organized under the laws of California with chapters and affiliates throughout the  
28 state of California. It is the California affiliate of the American Council of the

1 Blind, and its membership consists of blind individuals residing in California. The  
2 California Council of the Blind’s mission is to gain full independence and equality  
3 of opportunity for all blind Californians and it is committed to promoting the rights,  
4 needs, interests, and concerns of all Californians who are blind, and to providing  
5 information and referrals, technical assistance, and advocacy. The California  
6 Council of the Blind has hundreds of members throughout the state of California.

7 **Defendants**

8 17. Defendant Department of Health Care Services (“DHCS”) is the single  
9 state agency responsible for administering California’s Medicaid program, which is  
10 called “Medi-Cal.”

11 18. Defendant Jennifer Kent is the current DHCS Director. She is sued  
12 only in her official capacity. Director Kent is responsible for directing, organizing,  
13 and administering DHCS’s programs. Her responsibilities in this role include the  
14 responsibility to ensure DHCS’s compliance with federal and state laws.

15 19. DHCS delegates some of the administration of the Medi-Cal program  
16 to local welfare offices in each county in California. These include, but are not  
17 limited to, local welfare offices operated by Defendant Contra Costa County,  
18 Defendant County of Alameda, and Defendant County of San Diego.

19 20. At all relevant times, the DHCS is and has been a public entity within  
20 the meaning of Title II of the ADA. 42 U.S.C. § 12131.

21 21. At all relevant times, DHCS has received and continues to receive  
22 federal financial assistance within the meaning of the Rehabilitation Act, 29 U.S.C.  
23 § 794.

24 22. At all relevant times, DHCS has received and continues to receive  
25 state financial assistance within the meaning of California Government Code §  
26 11135.

27 23. At all relevant times, Contra Costa County is and has been a public  
28 entity within the meaning of Title II of the ADA. 42 U.S.C. § 12131.

1           24. At all relevant times, Contra Costa County has received and continues  
2 to receive federal financial assistance within the meaning of the Rehabilitation Act,  
3 29 U.S.C. § 794.

4           25. At all relevant times, Contra Costa County has received and continues  
5 to receive state financial assistance within the meaning of California Government  
6 Code § 11135.

7           26. Along with DHCS, Contra Costa County is responsible for  
8 administering the Medi-Cal program and communicating with Medi-Cal  
9 beneficiaries and applicants within its boundaries.

10           27. At all relevant times, the County of Alameda is and has been a public  
11 entity within the meaning of Title II of the ADA. 42 U.S.C. § 12131.

12           28. At all relevant times, the County of Alameda has received and  
13 continues to receive federal financial assistance within the meaning of the  
14 Rehabilitation Act, 29 U.S.C. § 794.

15           29. At all relevant times, the County of Alameda has received and  
16 continues to receive state financial assistance within the meaning of California  
17 Government Code § 11135.

18           30. Along with DHCS, the County of Alameda is responsible for  
19 administering the Medi-Cal program and communicating with beneficiaries and  
20 applicants within its boundaries.

21           31. At all relevant times, the County of San Diego is and has been a public  
22 entity within the meaning of Title II of the ADA. 42 U.S.C. § 12131.

23           32. At all relevant times, the County of San Diego has received and  
24 continues to receive federal financial assistance within the meaning of the  
25 Rehabilitation Act, 29 U.S.C. § 794.

26           33. Along with DHCS, the County of San Diego is responsible for  
27 administering the Medi-Cal program and communicating with beneficiaries and  
28 applicants within its boundaries.



1 34. At all relevant times, the County of San Diego has received and  
2 continues to receive state financial assistance within the meaning of California  
3 Government Code § 11135.

4 **CLASS ACTION ALLEGATIONS**

5 35. Plaintiffs bring this action as a statewide class action pursuant to Fed.  
6 R. Civ. P. 23(a) and (b)(2) on behalf of:

7 Residents of the State of California who, due to a vision-related disability,  
8 need written materials in alternative formats for effective communication  
9 regarding Medi-Cal as applicants or beneficiaries (“the Class”).

10 36. The Class is so numerous that joinder of all persons is impracticable.  
11 On information and belief, at least 12,000 enrolled Medi-Cal recipients are blind.<sup>2</sup>

12 37. The actual number is likely to be far greater, since people may be  
13 deemed eligible for Medi-Cal on the basis of blindness and because people in the  
14 low-income population targeted by the Medi-Cal program are more likely than the  
15 general population to have a disability, including blindness.

16 38. Class members have limited financial resources, as Medi-Cal  
17 eligibility is limited to low-income adults, children, pregnant women, elderly  
18 adults, and people with disabilities. They are unlikely to institute individual actions.

19 39. The claims of Plaintiffs and Class members raise common questions  
20

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21 <sup>2</sup> Over 13 million people have been certified as eligible for Medi-Cal services in  
22 the State of California. Medi-Cal at a Glance, California Department of  
23 Health Care Services (May 2018),  
24 [https://www.dhcs.ca.gov/dataandstats/statistics/Documents/Medi-](https://www.dhcs.ca.gov/dataandstats/statistics/Documents/Medi-Cal_at_a_Glance_May2018_ADA.pdf)  
25 [Cal\\_at\\_a\\_Glance\\_May2018\\_ADA.pdf](https://www.dhcs.ca.gov/dataandstats/statistics/Documents/Medi-Cal_at_a_Glance_May2018_ADA.pdf) (last visited October 3, 2018). The  
26 overall national rate of blindness is .9% according to the National Eye  
27 Institute, an institute of the U.S. National Institute of Health. 2010 U.S. Age-  
28 Specific Prevalence Rates for Blindness by Age and Race/Ethnicity,  
available at <https://nei.nih.gov/eyedata/blind/tables> (last visited October 11,  
2018). Applying the .9% figure to 13 million people enrolled in Medi-Cal  
shows that a minimum of around 12,000 enrolled Medi-Cal recipients are  
blind.

1 of law and fact.

2 40. The factual questions common to the entire Class include, but are not  
3 limited to:

4 a. Whether Defendants have a system-wide process for determining  
5 whether Plaintiffs and other similarly situated individuals need information in  
6 alternative formats that are accessible to them;

7 b. Whether Defendants have adequate policies and procedures in place  
8 for consistently over time providing Plaintiffs and other similarly situated  
9 individuals with information in their requested alternative format;

10 c. Whether Defendants have failed to take the necessary steps to allocate  
11 responsibility between and among themselves and other responsible entities to  
12 coordinate the provision of information to Plaintiffs and other similarly situated  
13 individuals in their requested alternative format; and

14 d. Whether Defendants have taken adequate steps to inform Plaintiffs  
15 and other similarly situated individuals of their right to receive information in  
16 alternative formats and the process for obtaining information in alternative formats.

17 41. The legal questions common to Plaintiffs and all Class members  
18 include, but are not limited to:

19 a. Whether the failure of Defendants to ensure effective communication  
20 violates the Americans with Disabilities Act;

21 b. Whether the failure of Defendants to ensure effective communication  
22 violates Section 504 of the Rehabilitation Act of 1973;

23 c. Whether the failure of Defendants to ensure effective communication  
24 violates Section 1557 of the Affordable Care Act;

25 d. Whether the failure of Defendants to ensure effective communication  
26 violates California Government Code Section 11135;

27 e. Whether the failure of Defendants to ensure effective communication  
28 violates the California Disabled Persons Act; and

1 f. Whether the failure of Defendants to ensure effective communication  
2 violates constitutional Due Process guarantees.

3 42. The individual Plaintiffs' claims are typical of the Class members'  
4 claims. Each of the individual Plaintiffs and Class members is blind, resides in  
5 California, and needs alternative formats in order to receive effective  
6 communication regarding Medi-Cal. None of the Plaintiffs or Class members are  
7 receiving effective communication from Defendants.

8 43. The individual Plaintiffs are adequate representatives of the Class  
9 because they suffer from the same deprivations as the other Class members and  
10 have been denied the same rights that they seek to enforce on behalf of the other  
11 Class members.

12 44. Plaintiffs will fairly and adequately represent the interests of the  
13 absent Class members.

14 45. Plaintiffs' interest in obtaining injunctive relief for the violations of  
15 their rights and privileges are consistent with and not antagonistic to those of any  
16 person within the Class.

17 46. Plaintiffs' counsel are qualified, experienced, and able to conduct the  
18 proposed litigation.

19 47. Prosecution of separate actions by individual Class members would  
20 create a risk of inconsistent or varying adjudication with respect to individual Class  
21 members, which would establish incompatible standards of conduct for the party  
22 opposing the Class or could be dispositive of the interests of the other members or  
23 substantially impair or impede the ability to protect their interests.

24 48. A class action is superior to other available methods for the fair and  
25 efficient adjudication of the controversy in that:

26 (a) A multiplicity of suits with consequent burden on the courts and  
27 Defendants should be avoided; and

28 //

1 (b) It would be virtually impossible for all Class members to intervene as  
2 parties-plaintiffs in this action.

3 49. Defendants have acted or refused to act, and continue to act or refuse  
4 to act, on grounds applicable to the Class, thereby making appropriate final  
5 injunctive and declaratory relief with respect to the Class as a whole.

### 6 FACTS

7 50. The Medicaid Act, Title XIX of the Social Security Act, 42 U.S.C.  
8 §§ 1396-1396w-5, establishes a medical assistance program cooperatively funded  
9 by federal and state governments. The purpose of the Medicaid program is to  
10 enable states to furnish, as far as practicable, “medical assistance on behalf of . . .  
11 aged, blind or disabled individuals, whose income and resources are insufficient to  
12 meet the costs of necessary medical services,” and “to help such families and  
13 individuals to attain or retain capability for independence or self-care . . . .” 42  
14 U.S.C. § 1396-1.

15 51. California has elected to participate in and receive federal funding  
16 through the Medicaid program. Its Medicaid program, Medi-Cal, is codified at  
17 California Welfare & Institutions Code §§ 14000 *et seq.* with implementing  
18 regulations found in 22 California Code of Regulations §§ 51000 *et seq.*

19 52. States participating in the Medicaid program must designate a single  
20 state agency to administer or supervise the administration of the Medicaid program  
21 and ensure the program complies with all relevant laws and regulations. *See* 42  
22 U.S.C. § 1396a(a)(5); *see also* 42 C.F.R. § 431.10 (2013).

23 53. Defendant DHCS is the single state agency that administers Medi-Cal.  
24 *See* Cal. Welf. & Inst. Code § 14100.1 (providing that participating states must  
25 “provide for the establishment or designation of a single State agency to administer  
26 or to supervise the administration of the plan”); *see also* Cal. Welf. & Inst. Code  
27 § 14154(d) (the “department is responsible for the Medi-Cal program in accordance  
28 with state and federal law”).

1           54. DHCS delegates some of the administration of the Medi-Cal program  
2 to local county welfare agencies.

3           55. For example, people who are interested in receiving Medi-Cal services  
4 may contact their local county welfare agency to receive any application.

5           56. DHCS sends county welfare agencies All County Welfare Directors  
6 Letters (ACWDLs) and Medi-Cal Eligibility Division Information (MEDILs)  
7 establishing Medi-Cal policies and procedures used in determining Medi-Cal  
8 eligibility.

9           57. DHCS, as the state agency responsible for the Medi-Cal program,  
10 exercises oversight over local county welfare agencies with respect to the Medi-Cal  
11 program.

12           58. DHCS communicates directly with recipients of Medi-Cal benefits  
13 and services. It also develops state-wide materials for Medi-Cal recipients and  
14 potential applicants that are distributed by county welfare agencies. These materials  
15 include, among others, notices to recipients regarding their hearing rights and  
16 application materials distributed by county welfare agencies to persons interested in  
17 applying for Medi-Cal.

18           59. Local county welfare agencies develop additional printed materials  
19 that are distributed to Medi-Cal applicants and/or recipients pertaining to the Medi-  
20 Cal program.

21           60. In addition, DHCS and county welfare agencies have regulatory  
22 responsibility and authority to cooperate with the Board of the Covered California  
23 Health Benefit Exchange in developing and maintaining a single streamlined  
24 application that individuals can use to apply for both Medi-Cal as well as private  
25 insurance through the Exchange. The Exchange informs consumers about the  
26 Medi-Cal program, receives and sorts the single streamlined application, and works  
27 with DHCS to ensure consistent eligibility and enrollment processes and seamless  
28 transitions between coverage. Cal. Gov't. Code §§ 100502, 100503, 100503.2; Cal.

1 Code of Reg., Title 10, Ch. 12, § 6400 *et.seq.*

2 61. DHCS and local counties also disseminate information about the  
3 Medi-Cal program over the internet via their webpages.

4 62. Some of the information that Defendants disseminate in printed form  
5 includes information pertaining to eligibility for benefits, information pertaining to  
6 changes in or reductions to benefits and services as well as information pertaining  
7 to the applicants' or recipients' responsibilities with respect to the Medi-Cal  
8 program, including actions they need to take to maintain eligibility for benefits or  
9 services.

10 63. Defendants have no effective procedure, practice, or custom of  
11 providing application forms, instructions, notices, informational materials, fair-  
12 hearing related materials, or other printed materials to blind individuals in formats  
13 that are accessible to them, even if the individual is known to Defendants to be  
14 blind, and even if the individual qualifies for benefits based on blindness.

15 64. Defendants do not contact blind individuals by telephone, email, or  
16 other means when they mail written materials to them to inform them that a  
17 government agency has mailed them information about their Medi-Cal benefits.

18 65. The only notice that blind applicants and recipients possess about the  
19 existence and content of mailed Medi-Cal written materials is embodied in  
20 documents that they cannot read.

21 66. Defendants do not provide blind Medi-Cal recipients with their case  
22 numbers, the phone number for DHCS or the local county welfare office, and other  
23 basic information needed to contact the Medi-Cal program in formats that are  
24 accessible to them.

25 67. Defendants do not adequately inform blind Medi-Cal applicants or  
26 recipients that they have a right to receive information regarding the Medi-Cal  
27 program in alternative formats.

28 68. At no step in the Medi-Cal application process are individuals asked

1 whether the applicant needs information in alternative formats or the type of format  
2 needed.

3 69. Defendants have no effective system for identifying the effective  
4 communication needs of anyone who would benefit from alternative formats.

5 70. Defendants have no effective system for tracking the effective  
6 communication needs of anyone who has made a request for alternative formats.

7 71. Defendants have no effective system for communicating regarding  
8 individuals' effective communication needs, either among divisions of DHCS,  
9 between DHCS and local county welfare offices, between DHCS and the California  
10 Department of Social Services (which administers the fair hearing system and hears  
11 Medi-Cal adverse benefits determinations), between DHCS and the Covered  
12 California Health Benefit Exchange, or between private or government plans  
13 providing health care services paid for by Medi-Cal and DHCS and local county  
14 welfare offices.

15 72. Defendants have no effective system for providing alternative formats  
16 in a timely manner.

17 73. Defendants have no effective system for automatically distributing  
18 materials in alternative formats to people who have made a prior request for such  
19 communications.

20 **Wylene Lena Hinkle**

21 74. Wylene Lena Hinkle is blind and hard of hearing.

22 75. Ms. Hinkle cannot read standard print materials. She can read Brailled  
23 materials.

24 76. Ms. Hinkle receives Medi-Cal benefits.

25 77. Ms. Hinkle's local county welfare office is the San Diego County  
26 Department of Health and Human Services Agency.

27 78. Ms. Hinkle has requested to receive materials pertaining to her Medi-  
28 Cal benefits in Braille for years.

1 79. Neither the California Department of Health Care Services nor the San  
2 Diego County Department of Health and Human Services Agency have provided  
3 her automatic or timely written materials in Braille.

4 80. In June 2016, Disability Rights California (“DRC”) sent the  
5 Department of Health Care Services the first of many written requests on behalf of  
6 Ms. Hinkle to receive materials pertaining to her Medi-Cal benefits in Braille.

7 81. DHCS has promised a number of times to comply with Ms. Hinkle’s  
8 request.

9 82. In practice, however, DHCS has sent Ms. Hinkle Brailled documents  
10 only after significant delay.

11 83. DHCS has also only sent Ms. Hinkle Brailled documents in response  
12 to specific requests from DRC after Ms. Hinkle receives a standard print document.

13 84. For instance, Ms. Hinkle received a document in print on December 8,  
14 2016 certifying that she had minimum essential coverage.

15 85. She did not receive a Brailled version of the document until August  
16 15, 2017.

17 86. Fifteen days later, DHCS sent her a notice regarding her fair hearing  
18 rights – in standard print format.

19 87. DRC’s most recent request on behalf of Ms. Hinkle for a Brailled  
20 version of notices that DHCS sent to her in print was in May 2018.

21 88. DHCS made counter-proposals to send Ms. Hinkle notices via screen  
22 reader or audio files or to read them to her over the telephone. These counter-  
23 proposals ignored the fact that Ms. Hinkle is hard of hearing, and that DHCS had  
24 been repeatedly informed of this.

25 89. In correspondence with DRC, a DHCS official stated on October 6,  
26 2017 that “there is no way to ensure that every mailing automatically is converted  
27 to Braille before it is sent.” The official confirmed again on February 15, 2018 that  
28 the Department has “not been able to automatically convert general mass mailings



1 to Braille yet.”

2 **Dennis Gassaway**

3 90. Dennis Gassaway is blind.

4 91. Mr. Gassaway cannot read standard print materials. He can understand  
5 materials that are read to him.

6 92. Mr. Gassaway receives Medi-Cal benefits.

7 93. Mr. Gassaway’s local county welfare office is the Alameda County  
8 Social Services Agency.

9 94. Mr. Gassaway has requested that Defendants read materials pertaining  
10 to his Medi-Cal benefits to him instead of sending them in standard print by mail.

11 95. Neither the California Department of Health Care Services nor the  
12 Alameda County Social Services Agency have called him to read materials to him.

13 96. In July 2013, a supervisor in the Alameda County Social Services  
14 Agency agreed to contact Mr. Gassaway by phone each time that written notices  
15 were sent regarding Medi-Cal, and to read those notices to him.

16 97. The Alameda County Social Services Agency made that commitment  
17 in response to repeated requests made by an advocate at Disability Rights  
18 California on behalf of Mr. Gassaway.

19 98. In September 2016, a supervisor in the Alameda County Social  
20 Services Agency agreed to contact Mr. Gassaway by phone each time that written  
21 notices were sent regarding Medi-Cal, and to read those notices to him.

22 99. The Alameda County Social Services Agency again made that  
23 commitment in response to a request made by an advocate at DRC on behalf of Mr.  
24 Gassaway.

25 100. Despite both of those commitments, no one from either the Alameda  
26 County Social Services Office or from DHCS has called Mr. Gassaway to read him  
27 a notice regarding Medi-Cal.

28 **Myra Metz**

1 101. Myra Metz is blind and has significant hearing loss.

2 102. Ms. Metz cannot read standard print materials. She can read Brailled  
3 materials.

4 103. Ms. Metz receives Medi-Cal benefits.

5 104. Ms. Metz's local county welfare office is the Contra Costa County  
6 Employment and Human Services Department.

7 105. Ms. Metz has requested to receive materials pertaining to her Medi-  
8 Cal benefits in Braille for years.

9 106. Neither the California Department of Health Care Services nor the  
10 Contra Costa Employment and Human Services Department have provided her  
11 automatic or timely written materials in Braille.

12 **California Council of the Blind**

13 107. Plaintiff CCB is a nonprofit corporation and a membership association  
14 of blind Californians. It is the California state affiliate of the American Council of  
15 the Blind. CCB's mission is to increase the independence, security, equality of  
16 opportunity, and quality of life for all Californians who are blind or visually-  
17 impaired. CCB seeks to ensure that culture, laws, programs, and attitudes are  
18 inclusive of persons who are blind or visually-impaired. Access to fundamental  
19 healthcare benefits such as Medi-Cal is critical to CCB and its members. Securing  
20 access to Medi-Cal services advances CCB's goal to promote integration of the  
21 blind into society on a basis of equality by enabling blind individuals to have basic  
22 access to healthcare benefits in the same way that many sighted individuals do.  
23 CCB sues on behalf of itself and its members.

24 108. As a result of Defendants' actions, CCB and at least one of its  
25 members have been directly and substantially injured. For example, Defendants  
26 have never provided effective communication to CCB member Warren Cushman  
27 who has been a Medi-Cal recipient for more than thirty years. Mr. Cushman needs  
28 notices in a format that is accessible by screen-reading software or Braille.

1           109. Defendants' actions have also frustrated CCB's mission and forced it  
2 to dedicate additional resources to address harms these actions have caused CCB's  
3 constituents. For instance, for more than a decade, blind Californians have  
4 contacted CCB because they did not receive Medi-Cal materials in accessible  
5 formats. Typically, CCB's office administrator has referred those calls to the  
6 nearest CCB chapter president or another officer within the organization to educate  
7 that individual about their rights to effective communication and try to assist them  
8 in obtaining accessible materials. CCB also met with Toby Douglas, past director  
9 of DHCS, and sent a letter to the United States Department of Justice regarding the  
10 barriers that blind Californians face in trying to get effective communication from  
11 Medi-Cal.

12           110. Additionally, CCB member and past president Jeff Thom participated  
13 on a task force that DHCS convened in 2012 or 2013 regarding effective  
14 communication of Medi-Cal materials. CCB provided a memorandum to DHCS  
15 describing best practices in effective communication and contributed to some of the  
16 task force's overall recommendations. However, the task force facilitator left  
17 DHCS before the task force completed its mission and CCB is not aware of any  
18 tangible improvements that occurred as a result.

19           111. On April 13, 2014, CCB passed a resolution requesting that programs  
20 such as Medi-Cal provide accessible written communications to program applicants  
21 and recipients with visual impairments be in a format that can be read by such  
22 individuals. Though DHCS wrote CCB on December 12, seeking its assistance and  
23 expertise regarding providing effective communication to blind individuals, DHCS  
24 failed to respond after CCB affirmatively offered its services to DHCS.

25           112. Until remedied, the Defendants' unlawful, discriminatory actions will  
26 continue to injure the California Council of the Blind by:

- 27           a. Interfering with efforts and programs intended to bring about equality  
28           of access to health care and other crucial services;



1 119. The individual Plaintiffs and Class members have been and are  
2 qualified individuals with a disability within the meaning of Title II of the ADA  
3 and meet the essential eligibility requirements for the receipt of and/or application  
4 for the services, programs, or activities of Defendants. 42 U.S.C. § 12131.

5 120. Medi-Cal and all of its benefits, activities, and services are a program,  
6 service, or activity that Defendants offer within the meaning of Title II.

7 121. Public entities, including Defendants, are prohibited from excluding  
8 individuals with disabilities from participation in or denying the benefits of their  
9 services, programs, or activities on the basis of disability or otherwise subjecting  
10 them to discrimination. 28 C.F.R. § 35.130(a).

11 122. Public entities, including Defendants, are prohibited from affording a  
12 qualified individual with a disability an opportunity to participate in or benefit from  
13 the aid, benefit, or service that is not equal to that afforded others, either directly or  
14 through contractual, licensing, or other arrangements. 28 C.F.R. § 35.130(b)(ii).

15 123. Public entities, including Defendants, “may not . . . utilize criteria or  
16 methods of administration— (i) That have the effect of excluding individuals with  
17 disabilities from, denying them the benefits of, or otherwise subjecting them to  
18 discrimination; or (ii) That have the purpose or effect of defeating or substantially  
19 impairing the accomplishment of the objectives of the service, program, or activity  
20 with respect to individuals with disabilities; or (iii) That perpetuate the  
21 discrimination of another public entity if both public entities are subject to common  
22 administrative control or are agencies of the same State.” 28 C.F.R. § 35.130(b)(3).

23 124. Public entities, including Defendants, “shall make reasonable  
24 modifications in policies, practices or procedures when the modifications are  
25 necessary to avoid discrimination on the basis of disability . . . .” 28 C.F.R. §  
26 35.130(b)(7).

27 125. Public entities, including Defendants, must take “appropriate steps to  
28 ensure that communications with applicants, participants, members of the public,

1 and companions with disabilities are as effective as communications with others.”  
2 28 C.F.R. § 35.160(a).

3 126. Public entities, including Defendants, must “furnish appropriate  
4 auxiliary aids and services where necessary to afford individuals with disabilities,  
5 including applicants, participants, companions, and members of the public, an  
6 equal opportunity to participate in, and enjoy the benefits of, a service, program, or  
7 activity of a public entity.” 28 C.F.R. § 35.160(b)(1).

8 127. Federal regulations implementing Title II of the Americans with  
9 Disabilities Act provide that “[i]n determining what types of auxiliary aids and  
10 services are necessary, a public entity shall give primary consideration to the  
11 requests of individuals with disabilities.” 28 C.F.R. § 35.160(b)(2).

12 128. Federal regulations implementing Title II of the Americans with  
13 Disabilities Act further provide that “[i]n order to be effective, auxiliary aids and  
14 services must be provided in accessible formats, in a timely manner, and in such a  
15 way as to protect the privacy and independence of the individual with a disability.”  
16 28 C.F.R. § 35.160(b)(2).

17 129. Defendants’ actions and omissions discriminate against Plaintiffs on  
18 the basis of disability in violation of the ADA. Defendants’ discriminatory conduct  
19 includes, but is not limited to:

- 20 a. Maintaining discriminatory policies and practices;
- 21 b. Denying Plaintiffs and Class members the benefits of Defendants’  
22 services, programs, and activities pertaining to Medi-Cal;
- 23 c. Failing to ensure Plaintiffs and Class members an opportunity to  
24 participate in or benefit from Defendants’ aids, benefits, or services  
25 that is equal to that afforded others, and/or failing to ensure Plaintiffs  
26 and Class members an equal opportunity to obtain the same result or  
27 to gain the same benefit as that provided to others;
- 28 d. Failing to provide reasonable modifications to ensure equal access to

1 Defendants' services, programs, and activities;

- 2 e. Using criteria or methods of administration that have the effect of  
3 subjecting Plaintiffs and Class members to discrimination on the basis  
4 of disability;
- 5 f. Failing to take appropriate steps to ensure effective communication to  
6 Plaintiffs and Class members;
- 7 g. Failing to provide Plaintiffs and Class members appropriate auxiliary  
8 aids and services;
- 9 h. Failing to ensure that Plaintiffs and Class members receive accessible  
10 formats in a timely manner; and
- 11 i. Failing to provide Plaintiffs and Class members accessible formats in  
12 such a way as to protect their privacy and independence.

13 130. In committing the acts and/or omissions above, Defendants acted  
14 intentionally and with deliberate indifference to Plaintiffs' rights.

15 131. Defendants' violations of the ADA have harmed and will continue to  
16 harm Plaintiffs and Class members in the future.

17 132. Because Defendants' discriminatory conduct is ongoing, declaratory  
18 and injunctive relief are appropriate remedies.

19 133. Plaintiffs are entitled to declaratory and injunctive relief, as well as  
20 reasonable attorneys' fees and costs incurred in bringing this action.

21 134. Pursuant to the remedies, procedures, and rights set forth in 42 U.S.C.  
22 § 12188, Plaintiffs pray for relief as set forth below.

23 **SECOND CLAIM FOR RELIEF**

24 **(Against All Defendants)**

25 **Section 504 of the Rehabilitation Act**

26 **29 U.S.C. § 794 *et seq.***

27 135. Plaintiffs reallege and incorporate by reference the allegations above  
28 as if fully set forth here.

1           136. Section 504 of the Rehabilitation Act of 1973 provides in relevant  
2 part: “[N]o otherwise qualified individual with a disability . . . shall, solely by  
3 reason of her or his disability, be excluded from the participation in, be denied the  
4 benefits of, or be subjected to discrimination under any program or activity  
5 receiving federal financial assistance . . . .” 29 U.S.C. § 794; *see* 34 C.F.R. §§  
6 104.4(b), 104.21, 104.43(a).

7           137. Defendant Department of Health Care Services has been and is a  
8 recipient of federal financial assistance sufficient to invoke the coverage of Section  
9 504, and Jennifer Kent is the principal executive of that entity.

10           138. Defendant Contra Costa County has been and is a recipient of federal  
11 financial assistance sufficient to invoke the coverage of Section 504.

12           139. Defendant County of Alameda has been and is a recipient of federal  
13 financial assistance sufficient to invoke the coverage of Section 504.

14           140. Defendant County of San Diego has been and is a recipient of federal  
15 financial assistance sufficient to invoke the coverage of Section 504.

16           141. Individual Plaintiffs and Class members have been and are qualified  
17 individuals with a disability within the meaning of Section 504 and are otherwise  
18 qualified to participate in, receive benefits from, and/or apply for Defendants’  
19 programs or activities pertaining to Medi-Cal. 29 U.S.C. § 794(b).

20           142. Medi-Cal is a “program or activity receiving Federal financial  
21 assistance” as referred to in 29 U.S.C. §794(a), because it is an operation of the  
22 Department of Health Care Services, as well as counties throughout California  
23 including but not limited to Contra Costa County, the County of Alameda, and the  
24 County of San Diego, which receive Federal financial assistance for Medi-Cal and  
25 other programs.

26           143. Medi-Cal is also a “program or activity receiving Federal financial  
27 assistance” as referred to in 29 U.S.C. §794(a) because each Defendant is “a  
28 department, agency, special purpose district, or other instrumentality of a State or



1 local government” and/or “the entity of such State or local government that  
2 distributes such assistance” or a “department or agency (and each other State or  
3 local government entity) to which the assistance is extended, in the case of  
4 assistance to a State or local government” as referred to in 29 U.S.C. §794(b)(1).

5 144. Recipients of Federal financial assistance, including Defendants, are  
6 prohibited from denying a qualified person with a disability any health, welfare, or  
7 other social services or benefits on the basis of disability. 45 C.F.R. § 84.52(a)(1).

8 145. Recipients of Federal financial assistance, including Defendants, are  
9 prohibited from affording a qualified individual with a disability an opportunity to  
10 receive health, welfare, or other social services or benefits that is not equal to that  
11 afforded people without disabilities. 45 C.F.R. § 84.52(a)(2).

12 146. Recipients of Federal financial assistance, including Defendants, are  
13 prohibited from providing a qualified person with a disability health, welfare, or  
14 other social services or benefits that are not as effective as the benefits or services  
15 provided to others on the basis of disability. 45 C.F.R. § 84.52(a)(3).

16 147. Recipients of Federal financial assistance, including Defendants, are  
17 prohibited from providing a qualified person with a disability any health, welfare,  
18 or other social services or benefits in a manner that limits or has the effect of  
19 limiting the participation of qualified individuals with disabilities. 45 C.F.R. §  
20 84.52(a)(4).

21 148. Recipients of Federal financial assistance, including Defendants, must  
22 “provide appropriate auxiliary aids to persons with impaired sensory, manual, or  
23 speaking skills, where necessary to afford such persons an equal opportunity to  
24 benefit from the service in question.” 45 C.F.R. § 84.52(d)(1).

25 149. Federal regulations provide that “auxiliary aids may include brailled  
26 and taped material, interpreters, and other aids for persons with impaired hearing or  
27 vision.” 45 C.F.R. § 84.52(d)(3).

28 150. Defendants’ actions and omissions discriminate against Plaintiffs and

1 Class members solely by reason of their disability in violation of Section 504.

2 Defendants' discriminatory conduct includes but is not limited to:

- 3 a. Maintaining discriminatory policies and practices;
- 4 b. Excluding Plaintiffs and Class members from participation in and  
5 denying Plaintiffs the services and benefits of Medi-Cal programs,  
6 services, and activities;
- 7 c. Failing to ensure that Plaintiffs have an opportunity to participate in or  
8 benefit from services or benefits pertaining to Medi-Cal that is equal  
9 to and/or as effective as that afforded others;
- 10 d. Providing services and benefits in a manner that limits or has the  
11 effect of limiting the participation of Plaintiffs and Class members in  
12 Medi-Cal services and benefits; and
- 13 e. Failing to provide Plaintiffs and Class members with appropriate  
14 auxiliary aids where necessary to afford them an equal opportunity to  
15 benefit from the service in question.

16 151. In committing the acts and/or omissions above, Defendants acted  
17 intentionally and with deliberate indifference to Plaintiffs' rights.

18 152. Defendants' violations of Section 504 have harmed and will continue  
19 to harm Plaintiffs and Class members in the future.

20 153. Because Defendants' discriminatory conduct is ongoing, declaratory  
21 and injunctive relief are appropriate remedies.

22 154. Plaintiffs are entitled to declaratory and injunctive relief, as well as  
23 reasonable attorneys' fees and costs in bringing this action.

24 155. Pursuant to the remedies, procedures, and rights set forth in 29 U.S.C.  
25 § 794(a), Plaintiffs pray for relief as set forth below.

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2 **THIRD CLAIM FOR RELIEF**

3 **(Against All Defendants)**

4 **Section 1557 of the Affordable Care Act**

5 **42 U.S.C. § 18116**

6 156. Plaintiffs reallege and incorporates by reference the allegations above  
7 as if fully set forth here.

8 157. Section 1557 of the Affordable Care Act provides in relevant part that  
9 “an individual shall not, on the ground prohibited by . . . Section 504 of the  
10 Rehabilitation Act of 1973 (29 U.S.C. 794) [i.e., disability] be excluded from  
11 participation in, be denied the benefits of, or be subjected to discrimination under,  
12 any health program or activity, any part of which is receiving Federal financial  
13 assistance, including credits, subsidies, or contracts of insurance, or any program or  
14 activity that is administered by an Executive Agency or any entity established  
15 under this title (or amendments).” 42 U.S.C. § 18116(a).

16 158. Medi-Cal is a “health program or activity” as described in 42 U.S.C. §  
17 18116(a) because it receives, and continues to receive, Federal financial assistance,  
18 including credits, subsidies, or contracts of insurance.

19 159. Defendant Department of Health Care Services administers the state-  
20 wide Medi-Cal program and Defendant Jennifer Kent is the principal executive of  
21 that entity. As a result, these Defendants are prohibited from discriminating on the  
22 basis of disability as described in 42 U.S.C. § 18116.

23 160. Defendants Department of Health Care Services and Jennifer Kent  
24 have delegated a portion of the administration of the Medi-Cal program to  
25 Defendant Contra Costa County. As a result, Contra Costa County is prohibited  
26 from discriminating on the basis of disability as described in 42 U.S.C. § 18116.

27 161. Defendants Department of Health Care Services and Jennifer Kent  
28 have delegated a portion of the administration of the Medi-Cal program to

1 Defendant County of San Diego. As a result, the County of San Diego is prohibited  
2 from discriminating on the basis of disability as described in 42 U.S.C. § 18116.

3 162. Defendants Department of Health Care Services and Jennifer Kent  
4 have delegated a portion of the administration of the Medi-Cal program to  
5 Defendant County of Alameda. As a result, the County of Alameda is prohibited  
6 from discriminating on the basis of disability as described in 42 U.S.C. § 18116.

7 163. Defendants' actions and omissions discriminate against Plaintiffs and  
8 Class members solely by reason of their disability in violation of Section 1557 of  
9 the Affordable Care Act. Defendants' discriminatory conduct includes but is not  
10 limited to:

- 11 a. Maintaining discriminatory policies and practices;
- 12 b. Excluding Plaintiffs and Class members from participation in and  
13 denying Plaintiffs and Class members the benefits of the Medi-Cal  
14 program on the basis of disability; and
- 15 c. Subjecting Plaintiffs and Class members to discrimination under the  
16 Medi-Cal program by failing to provide Plaintiffs and Class members  
17 with effective communication.

18 164. In committing the acts and/or omissions above, Defendants acted  
19 intentionally and with deliberate indifference to Plaintiffs' rights.

20 165. Defendants' violations of Section 1557 of the Affordable Care Act  
21 have harmed and will continue to harm Plaintiffs and Class members in the future.

22 166. Because Defendants' discriminatory conduct is ongoing, declaratory  
23 and injunctive relief are appropriate remedies.

24 167. Plaintiffs are entitled to actual and compensatory damages, declaratory  
25 and injunctive relief, as well as reasonable attorneys' fees and costs in bringing this  
26 action.

27 168. Pursuant to the remedies, procedures, and rights referred to in 42  
28 U.S.C. § 18116(a), Plaintiffs pray for relief as set forth below.

**FOURTH CLAIM FOR RELIEF**

**(Against All Defendants)**

**California Government Code § 11135**

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4 169. Plaintiffs reallege and incorporates by reference the allegations above  
5 as if fully set forth here.

6 170. Section 11135(a) of the California Government Code provides in  
7 relevant part: “No person in the State of California shall, on the basis of . . .  
8 disability, . . . be unlawfully denied the benefits of, or be unlawfully subjected to  
9 discrimination under, any program or activity that is conducted, operated, or  
10 administered by the state or by any state agency, is funded directly by the state, or  
11 receives any financial assistance from the state.”

12 171. The Medi-Cal program is “a program or activity that is conducted,  
13 operated, or administered by the state or by any state agency, is funded directly by  
14 the state, or receives any financial assistance from the state.”

15 172. Defendant Department of Health Care Services has been and is a state  
16 agency as described in Section 11135(a), and Defendant Jennifer Kent is the  
17 principal executive of that state agency.

18 173. Defendant Contra Costa County receives direct funding by the state  
19 and/or other financial assistance from the state with respect to its administration of  
20 the Medi-Cal program sufficient to invoke the coverage of Government Code §  
21 11135 *et seq.* Contra Costa County has received such financial assistance at all  
22 times relevant to the claims asserted in this Complaint.

23 174. Defendant County of San Diego receives direct funding by the state  
24 and/or other financial assistance from the state with respect to its administration of  
25 the Medi-Cal program sufficient to invoke the coverage of Government Code §  
26 11135 *et seq.* The County of San Diego has received such financial assistance at all  
27 times relevant to the claims asserted in this Complaint.

28 175. Defendant County of Alameda receives direct funding by the state

1 and/or other financial assistance from the state with respect to its administration of  
2 the Medi-Cal program sufficient to invoke the coverage of Government Code §  
3 11135 *et seq.* The County of Alameda has received such financial assistance at all  
4 times relevant to the claims asserted in this Complaint.

5 176. California Government Code § 11135(b) incorporates the protections  
6 and prohibitions contained in the Americans with Disabilities Act (“ADA”) and its  
7 implementing regulations. Section 11135(b) states in relevant part:

8 With respect to discrimination on the basis of disability, programs and  
9 activities subject to subdivision (a) shall meet the protections and  
10 prohibitions contained in Section 202 of the federal Americans with  
11 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules  
12 and regulations adopted in implementation thereof, except that if the  
13 laws of this state prescribe stronger protections and prohibitions, the  
14 programs and activities subject to subdivision (a) shall be subject to  
15 the stronger protections and prohibitions.

16 177. For all the reasons described above, Defendants have violated and  
17 continue to violate the Americans with Disabilities Act and therefore have violated  
18 and continue to violate California Government Code § 11135(b).

19 178. Independent of any violation of the Americans with Disabilities Act,  
20 Defendants have also violated the terms of California Government Code §  
21 11135(a), which prohibits discrimination on the basis of disability.

22 179. Pursuant to California Government Code § 11139, Plaintiffs have a  
23 private right of action to enforce California Government Code § 11135(b).

24 180. Defendants and their agents and employees have and continue to  
25 violate California Government Code § 11135 by unlawfully denying Plaintiffs the  
26 benefits of, and unlawfully subjecting Plaintiffs to discrimination under,  
27 Defendants’ programs and activities for the reasons set forth above.

28 181. Defendants have refused and failed to ensure that Plaintiffs and Class  
members have full and equal access to their programs, services, and activities as  
required by California Government Code § 11135 *et seq.*

1 182. Defendants’ violations of California Government Code § 11135 have  
2 harmed and will continue to harm Plaintiffs and Class members.

3 183. Because Defendants’ discriminatory conduct is ongoing, declaratory  
4 and injunctive relief are appropriate remedies.

5 184. Plaintiffs are entitled to declaratory and injunctive relief as well as  
6 reasonable attorneys’ fees and costs incurred in bringing this action.

7 Pursuant to the rights, procedures, and remedies set forth under in California  
8 Government Code § 11135 and § 11139, and the California Code of Civil  
9 Procedure, Plaintiffs pray for relief as set forth below.

10 **FIFTH CLAIM FOR RELIEF**

11 **(Against All Defendants)**

12 **California Disabled Persons Act**

13 **California Civil Code § 54 *et seq.***

14 185. Plaintiffs reallege and incorporate by reference the allegations above  
15 as if fully set forth here.

16 186. The California Disabled Persons Act (“DPA”) provides that  
17 “[i]ndividuals with disabilities or medical conditions have the same right as the  
18 general public to the full and free use of . . . public facilities[] and other public  
19 places.” Cal. Civ. Code § 54(a); *see also* Cal. Civ. Code § 54.1 (providing that  
20 “[i]ndividuals with disabilities shall be entitled to full and equal access, as other  
21 members of the general public, to accommodations, advantages, facilities . . . [and]  
22 places to which the general public is invited . . . .”

23 187. The DPA also provides that a violation of the ADA is a violation of  
24 the DPA. Cal. Civ. Code §§ 54(c), 54.1(d).

25 188. Defendants are entities covered by the DPA.

26 189. Defendants have violated the DPA by, among other things, denying  
27 and/or interfering with Plaintiffs’ rights to full and equal access to Defendants’  
28 accommodations, advantages, or facilities.

1 190. Defendants have also violated the DPA by denying or aiding the  
2 denial of Plaintiffs' rights to equal access under California state law and the ADA.

3 191. Plaintiffs are entitled to injunctive and declaratory relief and  
4 reasonable attorneys' fees and costs incurred in bringing this action.

5 192. Pursuant to the remedies, procedures, and rights set forth in California  
6 law, Plaintiffs pray for judgment as set forth below.

7 **SIXTH CLAIM FOR RELIEF**

8 **(Against Defendants Kent, County of Alameda, County of San Diego, and**  
9 **Contra Costa County)**

10 **Due Process Clause of the Fourteenth Amendment of the United States**  
11 **Constitution**

12 193. Plaintiffs reallege and incorporates by reference the allegations above  
13 as if fully set forth here.

14 194. The Due Process Clause of the Fourteenth Amendment to the United  
15 States Constitution prohibits Defendants from depriving Plaintiffs and other  
16 similarly situated individuals of a protected property interest without adequate  
17 notice and an opportunity to be heard.

18 195. Plaintiffs and similarly situated individuals have a protected property  
19 interest in receiving Medi-Cal benefits and services. Defendants routinely issue  
20 notices of action in formats that cannot be read by Plaintiffs and Class Members.

21 196. Defendants' failure to provide information in accessible formats to  
22 Plaintiffs and other similarly situated persons in alternative formats that are  
23 effective for them denies Plaintiffs and similarly situated individuals of adequate  
24 notice and an opportunity to be timely heard regarding the deprivation of their  
25 property, in violation of the Due Process Clause of the Fourteenth Amendment to  
26 the United States Constitution.

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**PRAYER**

WHEREFORE, Plaintiffs request:

197. That this Court assume jurisdiction.

198. That this Court certify that this lawsuit may be maintained as a class action under Federal Rule of Civil Procedure 23(a) and 23(b)(2).

199. That this Court declare all Defendants to be in violation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*) and its implementing regulations, Section 1557 of the Affordable Care Act, the California Unruh Civil Rights Act, and California Government Code § 11135 and any implementing regulations that may be promulgated during the pendency of this matter.

200. That this Court declare Defendants Kent, County of Alameda, County of San Diego, and Contra Costa County to be in violation of Title II of the ADA (42 U.S.C. § 12181 *et seq.*) and its implementing relations and of the Due Process Clause of the United States Constitution.

201. That this Court issue a preliminary and permanent injunction ordering Defendants to comply with the statutes set forth in this Complaint, including but not limited to ordering Defendants to:

- a. Provide, and ensure that their agents and assigns provide, information that is provided in standard print materials to Medi-Cal applicants and recipients to Plaintiffs and other similarly situated individuals in their requested alternative format;
- b. In consultation with Plaintiffs, develop a plan that includes any policy changes necessary for a durable remedy. The plan shall ensure the following:
  - i. Identification of people who will benefit from notices and other critical documents in alternative formats, including by asking applicants about any alternative format preference and by notifying beneficiaries that alternative formats are available

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- upon request;
- ii. Tracking of people who have requested alternative formats, including their requested method of communication;
- iii. Communication among divisions of DHCS, between DHCS and county offices administering the Medi-Cal program, between DHCS and CDSS (which administers the fair hearing system and hears Medi-Cal adverse benefits determinations), between DHCS and the Covered California Health Benefit Exchange, and between DHCS and private or government plans providing health care services paid for by Medi-Cal, regarding the identity of people who have requested alternative formats and the requested method of communication;
- iv. Training of relevant staff and other steps necessary to ensure that people receive an adequate response whether they make a request for accessible documents at the state, county, or contractor level;
- v. Automatic dispatch of notices in the requested alternative format contemporaneously with the standard notices sent to others;
- vi. Availability of frequently-used notices and documents, including application documents, in commonly-requested alternative formats such as Braille;
- vii. Electronic and online forms and information readable, fillable, and savable by people using assistive technology;
- viii. Appropriate treatment of grievances regarding effective communication; and
- ix. Relevant grievance, appeal, and state fair hearing deadlines track from the time when an alternative format is provided, not

1 the date when the department, a county, or a managed care plan  
2 produces a standard print notice.

3 c. Take any other steps necessary to provide effective communication to  
4 Plaintiffs and similarly situated individuals.

5 202. That this Court award Plaintiffs reasonable attorneys' fees and costs  
6 pursuant to federal and California law.

7 203. That this Court award Plaintiffs such other and further relief as the  
8 Court deems to be just, proper, and equitable.

9

10 Dated: October 22, 2018

Respectfully submitted,

11

DISABILITY RIGHTS CALIFORNIA

12

13

/s/ Autumn M. Elliott

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AUTUMN M. ELLIOTT

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MELINDA BIRD

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ELIZABETH ZIRKER

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*Attorneys for Plaintiffs*

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DISABILITY RIGHTS ADVOCATES

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/s/ Stuart Seaborn

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STUART SEABORN

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REBECCA S. WILLIFORD

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*Attorneys for Plaintiffs*

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DISABILITY RIGHTS EDUCATION AND  
DEFENSE FUND

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/s/ Silvia Yee

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SILVIA YEE

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CARLY A. MYERS

*Attorneys for Plaintiffs*

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**ATTORNEY ATTESTATION**

I hereby attest, pursuant to Local Rule 5-1(i)(3), that I obtained the concurrence in the filing of this document from the signatories indicated by the conformed (/s/) of Stuart Seaborn and Silvia Yee.

/s/ Autumn M. Elliott  
AUTUMN M. ELLIOTT