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

CALIFORNIA COUNCIL OF THE BLIND,
NATIONAL FEDERATION OF THE BLIND
OF CALIFORNIA, CHRISTOPHER GRAY,
RUSSELL DAWSON RAWLINGS, and
VITA ZAVOLI,

Plaintiffs,

v.

SHIRLEY N. WEBER, in her official capacity
as California Secretary of State,

Defendant.

Case No. 3:24-cv-01447-SK

CLASS ACTION

**NOTICE OF MOTION AND PLAINTIFFS'
UNOPPOSED MOTION FOR CLASS
CERTIFICATION**

Hearing Date: December 1, 2025

Time: 9:30 a.m.

Location: Courtroom C – 15th Floor

Judge: Hon. Sallie Kim

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TABLE OF CONTENTS

NOTICE OF MOTION AND MOTION 1

MEMORANDUM OF POINTS AND AUTHORITIES 2

 II. FACTS SUPPORTING CLASS CERTIFICATION..... 3

 A. California’s vote-by-mail program permits electronic ballot
 return for some voters but not proposed class members who
 require it because of their print disabilities..... 3

 B. Class representatives are unable to vote by mail
 privately and independently..... 6

 C. Class members are universally unable to utilize the current
 vote-by-mail program to vote privately and independently..... 7

 D. Defendant could provide class-wide relief to remedy the
 current discriminatory vote-by-mail system. 7

 III. LEGAL STANDARD..... 8

 A. THE PROPOSED CLASS SATISFIES ALL THE RULE
 23(A) PREREQUISITES..... 9

 1. The Proposed Class is Sufficiently Numerous..... 9

 2. There are Questions of Law and Fact Common to
 the Proposed Class. 10

 3. The Proposed Class Representatives’ Claims are
 Typical of the Proposed Class Members’ Claims..... 12

 4. Proposed Class Representatives Will Fairly and
 Adequately Protect the Interests of the Proposed
 Class Members..... 13

 B. THE PROPOSED CLASS MEETS THE
 REQUIREMENTS OF RULE 23(b)(2)..... 15

CONCLUSION..... 15

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>A.B. v. Haw. State Dep't of Educ.</i> , 30 F.4th 828 (9th Cir. 2022)	2, 9, 10
<i>Am. Council of the Blind v. Astrue</i> , No. C 05-04696 WHA, 2008 WL 4279674, at *6 (N.D. Cal. Sept. 11, 2008)	14
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997)	15
<i>Armstrong v. Davis</i> , 275 F.3d 849 (9th Cir. 2001)	10, 12, 13
<i>Californians for Disability Rts., Inc. v. California Dept. of Transp.</i> , 249 F.R.D. 334 (N.D. Cal. Mar. 13, 2008)	10, 14
<i>In re Cooper Cos. Sec. Litig.</i> , 254 F.R.D. 628 (C.D. Cal. Jan. 5, 2009)	9
<i>Ellis v. Costco Wholesale Corp.</i> , 657 F.3d 970 (9th Cir. 2011)	3, 8, 13
<i>Gen. Tel. Co. of Sw. v. Falcon</i> , 457 U.S. 147 (1982)	12
<i>Gray v. Golden Gate Nat. Recreational Area</i> , 279 F.R.D. 501 (N.D. Cal. Aug. 30, 2011)	11
<i>Hernandez v. Cnty. of Monterey</i> , 305 F.R.D. 132 (N.D. Cal. Jan. 29, 2015)	10, 14
<i>Johnson v. California</i> , 543 U.S. 499 (2005)	10
<i>Just Film, Inc. v. Buono</i> , 847 F.3d 1108 (9th Cir. 2017)	12
<i>Leyva v. Medline Indus., Inc.</i> , 716 F.3d 510 (9th Cir. 2013)	8
<i>Parsons v. Ryan</i> , 754 F.3d 657 (9th Cir. 2014)	10, 11, 12, 15
<i>Payan v. Los Angeles Cmt.y College Dist.</i> , 11 F.4th 729 (9th Cir. 2021)	5

1	<i>Perez v. State Farm Mut. Auto. Ins. Co.</i> ,	
2	628 F. App'x 534 (9th Cir. 2016)	2
3	<i>Sali v. Corona Reg'l Med. Ctr.</i> ,	
4	909 F.3d 996 (9th Cir. 2018), <i>cert. dismissed</i> , 587 U.S. 981 (2019).....	13
5	<i>Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.</i> ,	
6	559 U.S. 393 (2010).....	9
7	<i>Wal-Mart Stores, Inc. v. Dukes</i> ,	
8	564 U.S. 338 (2011).....	3, 10, 11
9	Federal Statutes	
10	29 U.S.C.	
11	§ 794(a)	7, 11
12	§ 794 <i>et seq.</i>	2
13	42 U.S.C.	
14	§ 794 <i>et seq.</i>	5
15	§ 12131 <i>et seq.</i>	2, 5, 7
16	§ 12132.....	11
17	Title II of the Americans with Disabilities Act.....	<i>passim</i>
18	Help America Vote Act	7
19	Section 504 of the Rehabilitation Act of 1973.....	<i>passim</i>
20	California Statutes	
21	Cal. Elec. Code	
22	§ 10(a)	7
23	§ 3000.5.....	3, 4
24	§§ 3000.5(a), 3017(a)(1)	4
25	§ 3016.7.....	4
26	§ 3106.....	4
27	§ 3106(a)	5
28	§ 19281(a)	8
29	Cal. Gov. Code	
30	§ 11135 <i>et seq.</i>	2, 5, 7, 11
31	§§ 12172.5(a) & (d), 19283(a).....	7, 8
32	California Government Code	
33	section 11135	<i>passim</i>
34	California Regulations	
35	Cal. Code Reg. §§ 14000 <i>et seq.</i>	11

Other Authorities

Federal Rule of Civil Procedure 23 *passim*

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT on December 1, 2025, or as soon thereafter as the matter may be heard, Plaintiffs California Council of the Blind (“CCB”), National Federation of the Blind of California (“NFBCA”), Christopher Gray, Russell Dawson Rawlings, and Vita Zavoli (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, will move the Court, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, for an order (1) certifying a class consisting of all persons with print disabilities, which prevent them from reading, marking, holding, handling, and/or manipulating a paper ballot, who are registered to vote in California; (2) appointing Named Plaintiffs California Council of the Blind, National Federation of the Blind of California, Christopher Gray, Russell Dawson Rawlings, and Vita Zavoli as class representatives; and (3) appointing Disability Rights California, Disability Rights Advocates, and Brown, Goldstein & Levy LLP as Class Counsel.

This motion is made on the grounds that under Rule 23(a), (1) the proposed Class is so numerous that joinder would be impracticable; (2) members of the proposed Class share common questions of fact and law; (3) Plaintiffs’ claims are typical of those of the proposed Class; and (4) Plaintiffs and Plaintiffs’ counsel will adequately represent the proposed Class. Under Rule 23(b)(2), certification of the class is appropriate as the relief sought is exclusively declaratory and injunctive in nature.

This motion is based on this Notice, the following Memorandum of Points and Authorities, the supporting Declarations of Frederick P. Nisen (hereafter “Nisen Decl.”), Shawna L. Parks (hereafter “Parks Decl.”), and Eve Hill (hereafter “Hill Decl.”), Guillermo Robles (hereafter “CCB Decl.”), Timothy Elder (hereafter “NFBCA Decl.”), Christopher Gray (hereafter “Gray Decl.”), Russell Dawson Rawlings (hereafter “Dawson Rawlings” Decl.”), Vita Zavoli (hereafter “Zavoli Decl.”), Robert Stigile (hereafter “Stigile. Decl.”), Kathi Pugh (hereafter “Pugh Decl.”), and the exhibits attached thereto.

DATED: October 23, 2025 Respectfully submitted,

By: /s/ Frederick P. Nisen

Frederick P. Nisen

Attorneys for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs seek to represent a class of California voters with print disabilities who are, by reason of their disabilities, unable to participate in the state’s vote-by-mail program privately and independently. California’s current voting system (“Vote-by-Mail Program” or “Program”) requires proposed class members to return completed vote-by-mail ballots in paper form, which is inaccessible to them, even though it allows other vote-by-mail voters to do so electronically. Because paper-based return is inaccessible to voters with print disabilities, proposed class members must rely on third-party assistance to vote by mail, preventing them from voting by mail privately and independently as voters without disabilities are able to do. Plaintiffs thus assert claims on behalf of themselves and the proposed class members against the California Secretary of State (“SOS”) in her official capacity, for violations of Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and California Government Code section 11135. 42 U.S.C. § 12131 *et seq.*; 29 U.S.C. § 794 *et seq.*; Cal. Gov. Code § 11135 *et seq.*

Class certification pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) will provide the most efficient and manageable method for addressing the discriminatory exclusion of voters with print disabilities from full and equal participation in the Vote-by-Mail Program statewide.

The proposed class satisfies each prerequisite of Rule 23(a). The statewide class of voters with print disabilities is sufficiently numerous that joinder would be impracticable under Rule 23(a)(1). *See A.B. v. Haw. State Dep’t of Educ.*, 30 F.4th 828, 837 (9th Cir. 2022) (“[T]he question is whether joinder of all class members is ‘practicable,’ not if it is ‘a literal impossibility.’”). Plaintiffs’ claims also satisfy Rule 23(a)(2)’s commonality requirement because they involve questions of fact and law that are common to the class members’ claims that will “generate common *answers* apt to drive the resolution of the litigation.” *Perez v. State Farm Mut. Auto. Ins. Co.*, 628 F. App’x 534, 535 (9th Cir. 2016) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)) (emphasis in original). Plaintiffs’ claims are typical under

Rule 23(a)(3) because the proposed class members “have the same or similar injury [which] is based on conduct [by the SOS] which is not unique to the named plaintiffs,” and the class members “have been injured by the same course of conduct.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)) (internal quotation marks omitted). Finally, Plaintiffs have no conflicts with the proposed class members and will adequately represent their interests in satisfaction of Rule 23(a)(4).

The proposed class also satisfies Rule 23(b)(2). The SOS’s failure to comply with its obligations under Title II, Section 504, and California Government Code section 11135 applies generally to the proposed class. That failure to comply with those obligations “can be enjoined or declared unlawful only as to all of the class members or as to none of them,” and the proposed class seeks only declaratory and injunctive relief that “would provide relief to each member of the class.” *Wal-Mart*, 564 U.S. at 360 (internal quotation marks omitted).

On August 15, 2025, Plaintiffs’ Counsel sent Defense Counsel a letter requesting that Defendant agree to join or not oppose Plaintiffs’ motion to certify the proposed class identified in Plaintiffs’ Second Amended Complaint. (Nisen Decl. Exh. A). On August 19, 2025, Defendants affirmatively stated they would not oppose class certification. (Nisen Decl. Exh. B).

II. FACTS SUPPORTING CLASS CERTIFICATION

A. California’s Vote-by-Mail Program permits electronic ballot return for some voters but not proposed class members who require it because of their print disabilities.

Since June 18, 2020, California has allowed all registered voters to vote by mail. Cal. Elec. Code § 3000.5.¹ California law provides for these vote-by-mail voters to vote in one of several ways: 1) paper vote-by-mail ballot, which is mailed to all registered voters and read,

¹ The Legislature originally adopted Assembly Bill (AB) 860 in 2020 mandating vote-by-mail ballots to every active registered voter for the November 2020 election in response to health and safety concerns during the COVID-19 pandemic. This mandate was extended through 2021 with the passage of Senate Bill (SB) 29. The Legislature made sending vote-by-mail ballots to all active registered voters permanent for all elections with AB 37 (2021).

1 marked, and returned on paper, Cal. Elec. Code §§ 3000.5(a), 3017(a)(1); 2) Remote Accessible
 2 Vote-by-Mail (“RAVBM”) System, which sends ballots electronically to any registered
 3 California voter on request, which is then read and marked electronically on that voter’s device,
 4 but returned on paper, Cal. Elec. Code § 3016.7; 3) vote by mail with electronic return option for
 5 military and overseas voters only who can both receive and return their ballots electronically by
 6 fax. Cal. Elec. Code § 3106.

7 RAVBM ballots are compatible with assistive technology, allowing voters with
 8 disabilities to use, for example, a screen reader or a sip-and-puff device to read and/or mark their
 9 ballot. Because RAVBM systems allow voters to receive and mark their ballots electronically,
 10 voters with print disabilities² who comprise the proposed class can complete these initial steps
 11 privately and independently. But because the final steps of voting by RAVBM still require voters
 12 to print a paper cast vote record, place it in an envelope, sign the envelope, and return it via mail,
 13 in-person, or at a ballot drop-off location, proposed class members are not able to complete the
 14 vote-by-mail process privately or independently. Gray Decl. ¶ 2-4; Dawson Rawlings Decl. ¶ 1-
 15 3; Zavoli Decl. ¶ 2-4; CCB Decl. ¶ 3-10; NFBCA Decl. ¶ 5-8; Stigile Decl. ¶ 3-11; Pugh Decl. ¶
 16 8-10.

17 Instead, proposed class members must rely on third-party assistance to vote-by-mail,
 18 sacrificing the privacy and independence of their vote. Gray Decl. ¶ 4-6; Dawson Rawlings Decl.
 19 ¶ 2-3; Zavoli Decl. ¶ 2-4; CCB Decl. ¶ 13-15; NFBCA Decl. ¶ 9-10; Stigile Decl. ¶ 7; Pugh
 20 Decl. ¶ 9-12. Defendant’s vote-by-mail system Unlawfully denies Class Members the Right to
 21 Vote-by-Mail privately and independently guaranteed to other voters.

22 All California voters are eligible to vote by postal mail. Cal. Elec. Code § 3000.5. However, the
 23 California Elections Code permits certain qualifying military or overseas voters a second option
 24 to return their marked vote “by facsimile transmission.” Cal. Elec. Code § 3106(a). Defendant
 25

26 ² “Print disabilities” are disabilities that prevent a voter from reading, marking, holding,
 27 handling, and/or manipulating a paper ballot privately and independently, including blindness,
 28 visual impairments, and other disabilities that cause significant manual dexterity impairments
 that prevent an individual from reading, marking, holding, handling, and/or manipulating a paper
 ballot.

1 reports that approximately 116,000 California voters may qualify for this option. ECF No. 37,
2 Robinson Decl. ¶ 29. If qualified military or overseas voters so chose, they can return a ballot by
3 transmitting an electronic version of their marked selection via facsimile, including an electronic
4 facsimile service. Once faxed, the marked vote is counted by election officials through the same
5 steps as a mailed RAVBM ballot.

6 In contrast, proposed class members—registered vote-by-mail voters with print
7 disabilities—must submit their ballots in paper format, which is inaccessible to them. Gray Decl.
8 ¶ 3-6; Dawson Rawlings Decl. ¶ 2-3; Zavoli Decl. ¶ 2-4; CCB Decl. ¶ 13-15; NFBCA Decl. ¶ 9-
9 12; Stigile Decl. ¶ 10-12; Pugh Decl. ¶ 9-12. Because of their print disabilities, proposed class
10 members require sighted and/or other physical assistance to perform one or more of the required
11 paper-based ballot return steps, such as printing their ballots, verifying that their ballot selections
12 printed correctly, putting the printout in the ballot return envelope, and/or sealing, signing, and
13 returning the envelope. Gray Decl. ¶ 3-6; Dawson Rawlings Decl. ¶ 2-3; Zavoli Decl. ¶ 2-4;
14 CCB Decl. ¶ 13-15; NFBCA Decl. ¶ 9-12; Stigile Decl. ¶ 10-12; Pugh Decl. ¶ 9-12. All of this
15 prevents them from voting privately and independently using the Vote-by-Mail Program as
16 voters without print disabilities are able to do, in violation of Title II of the ADA, 42 U.S.C. §
17 12131 *et seq.* (hereinafter “Title II”), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §
18 794 *et seq.* (hereinafter “Section 504”), and California Government Code section 11135, Cal.
19 Gov. Code § 11135 *et seq.* These laws are “interpreted coextensively because there is no
20 significant difference in the analysis of rights and obligations . . .” *Payan v. Los Angeles Cmty.*
21 *College Dist.*, 11 F.4th 729, 737 (9th Cir. 2021) (internal quotation marks omitted).

22 Defendant has thereby excluded proposed class members from full participation in the
23 Vote-by-Mail Program by reason of their disabilities; denied them the full benefits of the Vote-
24 by-Mail Program and subjected them to discrimination by reason of their disabilities; not
25 afforded an equal opportunity or equally effective communications to participate in the Vote-by-
26 Mail Program afforded to voters without print disabilities; and not provided appropriate auxiliary
27 aids and services necessary to afford an equal opportunity to participate in and enjoy the benefits
28 of the Vote-by-Mail Program.

B. Class representatives are unable to vote by mail privately and independently.

Each of the current paper-based return steps for vote-by-mail ballots presents barriers that force voters with print disabilities to seek assistance from another person, thereby depriving them of their right to vote privately and independently, even though voters without print disabilities are not similarly required to relinquish this right. Gray Decl. ¶ 4-6; Dawson Rawlings Decl. ¶ 2-3; Zavoli Decl. ¶ 2-4; CCB Decl. ¶ 13-15; NFBCA Decl. ¶ 9-10.; Stigile Decl. ¶ 7; Pugh Decl. ¶ 9-12.

Proposed class representatives Christopher Gray, Russell Dawson Rawlings, and Vita Zavoli, as well as members of organizational named plaintiffs California Council of the Blind and National Federation of the Blind of California, are all qualified, registered vote-by-mail voters who because of their blindness cannot print, review, or sign their vote-by-mail ballots to complete the vote-by-mail process. Gray Decl. ¶ 2-3; Dawson Rawlings Decl. ¶ 2-3; Zavoli Decl. ¶ 2-5; CCB Decl. ¶ 8-10; NFBCA Decl. ¶ 5-13. For example, Mr. Gray can use an accessible computer to receive, read, and mark his ballot, but, the final step, printing, results in an inaccessible ballot of which he cannot confirm the accuracy independently once printed. Gray Decl. ¶ 3-4. Mr. Gray regularly uses electronic means for documents at work and would be able to vote by mail privately and independently were he allowed to do so for his ballot. Gray Decl. ¶ 4. Similarly, Ms. Zavoli cannot see printed materials. Zavoli Decl. ¶ 3. Because of this, she has required paid assistance to finalize and return a vote-by-mail ballot in past elections but has had no way of ensuring that her paid assistant correctly confirmed the accuracy of her selections on her printed ballot. Zavoli Decl. ¶ 5.

Proposed class representative Russell Dawson Rawlings has cerebral palsy which causes a print disability due to manual dexterity limitations. Dawson Rawlings Decl. ¶ 2. Mr. Dawson Rawlings cannot independently collect his ballot from a printer, place it in the envelope, and position the envelope correctly to sign it. Dawson Rawlings Decl. ¶ 3. As a result, in past elections he has required assistance from his paid caregiver to complete these paper-based steps in the vote-by-mail process. Dawson Rawlings Decl. ¶ 3.

C. Class members are universally unable to utilize the current vote-by-mail program to vote privately and independently.

Named Plaintiffs' inability to vote by mail privately and independently is not unique among voters with print disabilities. Proposed class members must also rely on third-party assistance to print, complete, and return their vote-by-mail ballots. Stigile Decl. ¶ 6-9; Pugh Decl. ¶ 4-9. For example, Kathi Pugh is a registered California voter with C5 tetraplegia from a traumatic spinal cord injury. Pugh Decl. ¶ 2-4. As a result of her injury, Ms. Pugh has limited manual dexterity from the shoulders down. Pugh Decl. ¶ 4. Ms. Pugh would have to rely on a spouse or a paid assistant preparing and casting her ballot, resulting in losing her right to independence and privacy. Pugh Decl. ¶ 10-12. Thousands of registered California voters across the state have print disabilities as a result of blindness or significant manual dexterity impairment. Meeker Decl. ¶ 33-34. All proposed class members' print disabilities similarly prevent them from reading, marking, holding, handling, and/or manipulating a paper ballot to vote by mail privately and independently.

D. Defendant could provide class-wide relief to remedy the current discriminatory vote-by-mail system.

Defendant Shirley N. Weber, the current California Secretary of State, sued in her official capacity, is the "chief elections officer of the state." Cal. Elec. Code § 10(a); Cal. Gov't. Code § 12172.5(a). Defendant is a public entity under Title II, 42 U.S.C. § 12131 *et seq.*; receives federal financial assistance for election-related activities within the meaning of Section 504, 29 U.S.C. § 794(a), including millions of dollars in federal funding to support state elections administration under the Help America Vote Act ("HAVA") and other federal programs; and conducts, operates, and/or administers key aspects of California's Vote-by-Mail Program while receiving state funding and/or state financial assistance for election-related activities within the meaning of California Government Code section 11135(a), Cal. Gov. Code § 11135.

Defendant's powers and duties are to "administer the provisions of the Elections code," "adopt regulations to ensure the uniform application and administration of state election laws," and "adopt and publish standards and regulations governing the use of remote accessible vote by

mail [RAVBM] systems,” Cal. Gov. Code §§ 12172.5(a) & (d), 19283(a). When selecting which RAVBM system to use, county elections officials must choose a system that the California Secretary of State has certified or conditionally approved. Cal. Elec. Code § 19281(a) (no RAVBM system may be used in an election in California until it has been “certified or conditionally approved” by the Secretary of State); *see also id.* § 19280 (conditioning certification and approval on fulfillment of statutory requirements and compliance with regulations promulgated by the Secretary of State).

Plaintiffs seek injunctive and declaratory relief requiring the SOS to remedy the discriminatory burdens placed on proposed class members described above by certifying a fully accessible RAVBM system with an electronic ballot return (or “e-return”) option that does not require the reading or handling of paper and that would allow proposed class members to use their own personal devices, including their own assistive technology to complete and return their ballots electronically. CCB Decl. ¶ 5-9; NFBCA Decl. ¶ 6-9; Stigile Decl. ¶ 6.

III. LEGAL STANDARD

Plaintiffs seeking class certification must satisfy the prerequisites of Federal Rule of Civil Procedure 23 by establishing: (1) joinder of all members of the proposed class is impracticable (numerosity); (2) there are one or more questions of law or fact common to the class (commonality); (3) the named parties’ claims are typical of the class (typicality); and (4) the class representatives will fairly and adequately protect the interests of other members of the class (adequacy). *See Ellis*, 657 F.3d at 980. The proposed class must also satisfy one of the subsections of Rule 23(b). *Leyva v. Medline Indus., Inc.*, 716 F.3d 510, 512 (9th Cir. 2013). Plaintiffs seek to certify a class under Rule 23(b)(2), which provides for certification where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

Plaintiffs who satisfy these prerequisites have a “categorical” right to “pursue [their] claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). As explained below, Plaintiffs have done so here.

IV. ARGUMENT

A. THE PROPOSED CLASS SATISFIES ALL THE RULE 23(A) PREREQUISITES.

Certification under Rule 23(a) is proper for the following proposed class, which as described below satisfies each of the four Rule 23(a) prerequisites:

All persons with print disabilities, which prevent them from reading, marking, holding, handling, and/or manipulating a paper ballot, who are registered to vote in California.

1. The Proposed Class is Sufficiently Numerous

Federal Rule of Civil Procedure 23(a)(1) requires that a class be so numerous that joinder of all class members is impractical. “Impracticable” under Rule 23(a)(1) does not mean joinder would be impossible, but merely that joining all class members would be difficult or inconvenient. *See A.B. v. Haw. State Dep’t of Educ.*, 30 F.4th 828, 837 (9th Cir. 2022). Although there is no specific numerical requirement, “numerosity is presumed where the plaintiff class contains forty or more members.” *In re Cooper Cos. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. Jan. 5, 2009). Additionally, where “a class’s membership changes continually over time,” for example, because a class includes future members, “that factor weights in favor of concluding that joinder of all members is impracticable.” *A.B.*, 30 F.4th at 838.

Based on his review of available data, Plaintiffs’ sociological statistics expert Dr. James W. Meeker estimates there are at least thousands of registered California voters with print disabilities. Meeker Decl. ¶ 33-34. Specifically, Dr. Meeker estimates that there are approximately 3,092 registered voters with complete blindness, 2,116 to 3,175 registered voters with a traumatic spinal cord injury that have significant manual dexterity issues, and approximately 6,441 registered voters with cerebral palsy that have significant manual dexterity issues. Meeker Decl. ¶ 23, 26, 32.

Moreover, membership in this proposed class “changes continually over time.” *A.B.*, 30 F.4th at 838. For example, new voters with print disabilities continue to become age eligible to vote, voters develop new print disabilities, and voters with print disabilities move in and out of the state. Given that there are already thousands of registered California voters with print

disabilities and that membership in the proposed class will continue to change over time, joinder is impracticable and the proposed class meets the numerosity requirement of Rule 23(a)(1).

2. There are Questions of Law and Fact Common to the Proposed Class.

“So long as there is ‘even a single common question,’ a would-be class can satisfy the commonality requirement of Rule 23(a)(2).” *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (internal quotation marks and citation omitted). Commonality exists where, as here, “the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.” *Californians for Disability Rts., Inc. v. California Dept. of Transp.*, 249 F.R.D. 334, 345 (N.D. Cal. Mar. 13, 2008) (holding that commonality was met as “[t]he question of such system-wide discriminatory practices is an issue common to all plaintiffs,” and further explaining, “[c]ases challenging an entity’s policies and practices regarding access for [] disabled [individuals] represent the mine run of disability rights class actions certified under Rule 23(b)(2).”); *Hernandez v. Cnty. of Monterey*, 305 F.R.D. 132, 153 (N.D. Cal. Jan. 29, 2015) (ADA class action for the rights of incarcerated people with disabilities); *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (holding that commonality was met because a public entity’s system-wide policy caused the same or similar harm for people with different disabilities), *overruled on other grounds by Johnson v. California*, 543 U.S. 499 (2005). This Circuit has made clear that a class action seeking to enjoin a systemic policy or practice inherently satisfies the commonality requirement because “either each of the policies and practices is unlawful as to every [class member] or it is not.” *Parsons*, 754 F.3d at 678; *see also Wal-Mart*, 564 U.S. at 350-52.

Plaintiffs have brought claims under Section 504, Title II, and California Government Code section 11135. Section 504 requires that no qualified individual with a disability “be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .” 29 U.S.C. § 794(a). Title II similarly requires that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §

1 12132. And California Government Code section 11135 and its regulations incorporate Title II
2 and its implementing regulations to prohibit disability discrimination in state-funded programs
3 and activities. Cal. Gov. Code §§ 11135 *et seq.*; Cal. Code Reg. §§ 14000 *et seq.* The common
4 question is thus whether the SOS, by failing to provide voters with print disabilities participating
5 in the Vote-by-Mail Program with an electronic return option, violated its obligations under each
6 of these statutes—as a public entity operating a public program with federal and state financial
7 assistance—not to discriminate against program participants on the basis of disability.

8 Proposed class members’ claims share a “common contention” that the SOS violated
9 each of these statutes in the same way: by failing to provide an accessible electronic ballot return
10 option to California voters whose disabilities prevent them from handling paper. *See Wal-Mart*,
11 564 U.S. at 350 (commonality exists if class members share a “common contention,” such that a
12 common employer violated the same law in the same manner).

13 Whether California voters with print disabilities are qualified individuals with
14 disabilities, whether vote-by-mail is a covered public program or activity, and whether proposed
15 class members’ inability to utilize the current paper-based system to vote-by-mail privately and
16 independently constitutes a discriminatory exclusion from or denial of the benefits of the Vote-
17 by-Mail Program, are all common questions that result in the same harm for each proposed class
18 member and can be remedied “in one stroke.” *Parsons*, 754 F.3d at 678. The fact that the
19 proposed class includes people with different print disabilities such as vision disabilities, manual
20 dexterity disabilities, and other disabilities does not change this analysis. *Gray v. Golden Gate*
21 *Nat. Recreational Area*, 279 F.R.D. 501, 515 (N.D. Cal. Aug. 30, 2011) (holding commonality
22 was met as case law does not “preclude certification of a class of individuals with differing types
23 and levels of disabilities in the context of access to public spaces”).

24 Similarly, the Court in *Parsons* rejected the notion that dissimilarities between class
25 members themselves would defeat commonality, stating that it is “a fundamental
26 misunderstanding of *Wal-Mart*” to argue this under commonality.” 754 F.3d at 676. Likewise,
27 the *Armstrong* court held that all class members “suffer[ed] similar harm from the [state prison
28 system’s] failure to accommodate their disabilities.” *Armstrong*, 275 F.3d at 868. Notably, the

1 range of disabilities among class members in *Armstrong* was even broader—all disabilities
 2 recognized and protected under the ADA—than among the proposed class here—print
 3 disabilities that specifically prevent class members from reading, holding, or manipulating paper
 4 ballots. All proposed class members have claimed the same harm, an inability to vote-by-mail
 5 privately and independently, that can be remedied by an injunction requiring the provision of an
 6 accessible electronic ballot return option, thus satisfying commonality.

7 **3. The Proposed Class Representatives’ Claims are Typical of the** 8 **Proposed Class Members’ Claims.**

9 “Under [Rule 23(a)(3)’s] permissive standards, representative claims are ‘typical’ if they
 10 are reasonably coextensive with those of absent class members; they need not be substantially
 11 identical.” *Parsons*, 754 F.3d at 685 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020
 12 (9th Cir. 1998), *overruled on other grounds by Wal-Mart*, 564 U.S. at 338). Rather, class
 13 representatives need only “possess the same interest and suffer the same injury as the class
 14 members.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982) (internal quotation marks
 15 and citation omitted). Typicality is satisfied where the class representatives “endured” the same
 16 “course of conduct directed against the class.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th
 17 Cir. 2017). Where that “challenged conduct is a policy or practice that affects all class
 18 members,” the “cause of the injury is the same,” and typicality does not require that “the named
 19 plaintiffs’ injuries be identical with those of the other class members, only that the unnamed
 20 class members have injuries similar to those of the named plaintiffs and that the injuries result
 21 from the same, injurious course of conduct.” *Armstrong*, 275 F.3d at 868-69 (citing *Hanon*, 976
 22 F.2d at 508).

23 The proposed class representatives have typical claims: they are all registered California
 24 voters with print disabilities (or organizations composed of such voters) that prevent them from
 25 completing and returning a paper ballot to vote by mail privately and independently. Gray Decl.
 26 ¶ 2-4; Dawson Rawlings Decl. ¶ 2-3; Zavoli Decl. ¶ 2-4; CCB Decl. ¶ 2-3; NFBCA Decl. ¶ 5,
 27 12. For example, Plaintiff Russell Dawson Rawling has manual dexterity issues, resulting in
 28 barriers manipulating printed ballot material. Dawson Rawlings Decl. ¶ 2-3. Plaintiffs

Christopher Gray and Vita Zavoli are blind, resulting in barriers seeing and manipulating printed ballot material. Gray Decl. ¶ 3-4; Zavoli Decl. ¶ 3-4. Similarly, proposed class members who are members of the two organizational plaintiff groups (CCB and NFBCA) are blind and cannot independently print, sign, confirm, or place a paper vote-by-mail ballot in an envelope. CCB Decl. ¶ 4; NFBCA Decl. ¶ 5, 12.

Any differences in the specific difficulties class members face in trying to vote by mail privately and independently do not defeat typicality. *See Armstrong*, 275 F.3d at 869 (finding typicality was satisfied where prisoner plaintiffs all claimed the same type of injury—discriminatory “deprivation” of parole-related services—under the ADA even where there were “minor differences in the nature of the specific injuries suffered”). The proposed class representatives’ claims are thus typical of the claims of other members of the proposed class and satisfy Rule 23(a)(3).

4. Proposed Class Representatives Will Fairly and Adequately Protect the Interests of the Proposed Class Members.

Named Plaintiffs satisfy the adequacy requirement of Rule 23(a)(4) if they and their counsel: 1) have no conflicts of interest with other class members; and 2) will “prosecute the action vigorously on behalf of the class.” *Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1007 (9th Cir. 2018), *cert. dismissed*, 587 U.S. 981 (2019). To answer these two questions, courts look at a range of factors, including “an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees.” *Ellis*, 657 F.3d at 985.

Each of the Named Plaintiffs has been informed of their responsibilities as a class representative and is able and willing to fulfil that role. Gray Decl. ¶ 9-11; Dawson Rawlings Decl. ¶ 6-8; Zavoli Decl. ¶ 7-9; CCB Decl. ¶ 17-21; NFBCA Decl. ¶ 14. And the Named Plaintiffs’ interests are aligned with the interests of the proposed class. Each of the individual Named Plaintiffs and members of the Organizational Named Plaintiffs are unable to vote privately and independently using Defendant’s current Vote-by-Mail Program, and all, including their members, want to have the option of an accessible electronic ballot return so that they can

do so. Gray Decl. ¶ 2-4; Dawson Rawlings Decl. ¶ 2-3; Zavoli Decl. ¶ 2-4; CCB Decl. ¶ 2-3; NFBCA Decl. ¶ 5, 12. Named Plaintiffs have no conflicts of interest and the risk of such conflict is minimal in cases like this one where Plaintiffs seek only injunctive and declaratory relief. *Hernandez*, 305 F.R.D. at 160 (“Class representatives have less risk of conflict with unnamed class members when they seek only declaratory and injunctive relief.”); *see Am. Council of the Blind v. Astrue*, No. C 05-04696 WHA, 2008 WL 4279674, at *6 (N.D. Cal. Sept. 11, 2008) (reasoning in class certification approval that “no monetary damages are sought. The potential for any conflict or collusion is therefore minimal.”).

Proposed Class Counsel will also adequately represent the interests of the class. In appointing class counsel, a court must consider: “(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A). The Court is also free to consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class. Fed. R. Civ. Proc. 23(g)(1)(C)(ii). Courts find class counsel adequate if they do not have “any conflicts of interest with other class members” and if they will “prosecute the action vigorously on behalf of the class.” *Hernandez*, 305 F.R.D. at 161 (internal quotation marks and citation omitted). Adequate representation of counsel is “usually presumed in the absence of contrary evidence.” *Californians for Disability Rts.*, 249 F.R.D. at 349.

The undersigned attorneys’ work and experience ensures that they will fairly and adequately protect the interests of the class. In accordance with Rule 23(g), counsel has thoroughly investigated the claims in this action. Nisen Decl. ¶ 5; Parks Decl. ¶ 4; Hill Decl. ¶ 4. Additionally, Plaintiffs’ counsel have decades of experience litigating class actions and disability rights cases, including extensive expertise in state and local program and activity access under Section 504, Title II, and California Government Code section 11135. Nisen Decl. ¶ 9-22; Parks Decl. ¶ 5-38; Hill Decl. ¶ 8-13. Plaintiffs’ counsel has and will continue to commit the time and resources necessary to vigorously prosecute this action and have no conflicts of interest. Nisen

Decl. ¶ 23; Parks Decl. ¶ 7; Hill Decl. ¶ 7. Additional information relevant to each of these criteria is set forth in the accompanying declarations of lead counsel. *See generally* Nisen Decl., Parks Decl., Hill Decl.

B. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF RULE 23(b)(2).

Class certification is proper under Rule 23(b)(2) where Defendant has “acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). The “primary role of [the rule] has always been the certification of civil rights class actions[.]” *Parsons*, 754 F.3d at 686; *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997) (noting that “[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples” of proper (b)(2) actions).

Rule 23(b)(2) is “unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole.” [Parsons, 754 F.3d at 688](#). Plaintiffs’ challenge to the SOS’s discriminatory failure to provide accessible electronic return options for voters with print disabilities in the statewide Vote-by-Mail Program is exactly this type of claim “generally applicable to the class.” *Parsons*, 754 F.3d at 688. Certification of the proposed class under Rule 23(b)(2) is thus proper.

CONCLUSION

The proposed class in this case aligns squarely with the principles underlying class certification and is unopposed. Plaintiffs respectfully request that this Court certify the proposed class, appoint Named Plaintiffs as class representatives, and appoint their attorneys as Class Counsel.

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