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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 Mental Health & Wellness Coalition, Erik X.,  
14 Tina Y., Jacob Z., Harrison Fowler, Rose A.,  
15 Sofia B.,

16 Plaintiffs,

17 v.

18 The Board of Trustees of the Leland Stanford  
19 Junior University D/B/A Stanford University,

20 Defendant.

**Case No. 5:18-cv-02895-NC**

**NOTICE OF MOTION AND MOTION  
FOR CLASS CERTIFICATION**

Date: August 29, 2018

Time: 1:00 p.m.

Place: Courtroom 5, 280 South First Street,  
San Jose, California 95113

Judge: Hon. Nathanael Cousins

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27  
28

**TABLE OF CONTENTS**

NOTICE OF MOTION AND MOTION.....1

MEMORANDUM OF POINTS AND AUTHORITIES.....3

I. INTRODUCTION ..... 3

II. FACTS RELEVANT TO CLASS CERTIFICATION ..... 4

    A. Stanford Maintains and Implements Policies that Exclude Students  
         with Mental Health Disabilities Who Are at Risk of Self-Harm ..... 4

        1. Discriminatory Written Policies ..... 4

        2. Stanford’s Exclusionary Practices ..... 5

        3. The Experiences of Named Plaintiffs and Similarly  
             Situated Students Further Demonstrate Stanford’s  
             Consistent Implementation of its Discriminatory Leave  
             Policies..... 8

            a. Individual Plaintiffs.....8

            b. Organizational Plaintiff.....8

    B. Non-discriminatory Leave Policies Can Remedy the Harms to the  
         Class..... 9

III. THE PROPOSED CLASS ..... 9

IV. LEGAL FRAMEWORK APPLICABLE TO CLASS CLAIMS ..... 10

    1. Stanford Is Required to Provide Full and Equal Enjoyment  
         of Its Programs to All Students, Regardless of Disability ..... 10

        a. Stanford May Not Exclude Students from Its Education  
             Programs and Services on the Basis of Their Mental Health  
             Disabilities.....10

        b. Stanford May Not Discriminate Against Students with Mental  
             Health Disabilities.....12

    2. Stanford Cannot Utilize Methods of Administration that  
         Screen Out Students with Disabilities..... 14

    3. Stanford Has the Burden of Demonstrating that  
         Accommodating Students at Risk of Self-Harm Would  
         Present a Fundamental Alteration..... 15

V. ARGUMENT ..... 15

    A. Legal Standards for Class Certification under Rule 23 ..... 15

1 B. The Class Meets the Requirements of Rule 23(a) ..... 16  
2 1. The Class is so Numerous that Joinder is Impracticable ..... 16  
3 2. Class Members Share Many Common Questions of Law  
4 and Fact..... 18  
5 a. Common Questions of Fact.....19  
6 b. Common Questions of Law.....20  
7 3. The Named Plaintiffs’ Claims are Typical of the Class ..... 21  
8 4. Named Plaintiffs Will Fairly and Adequately Protect the  
9 Interests of the Class ..... 23  
10 C. The Class Meets the Requirements of Rule 23(b)(2)..... 24  
11 VI. CONCLUSION..... 25  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**Cases**

*A.G. v. Paradise Valley Unified Sch. Dist. No. 69*,  
815 F.3d 1195 (9th Cir. 2016) ..... 11

*Amchem Prods., Inc. v. Windsor*,  
521 U.S. 591 (1997)..... 25

*Armstrong v. Davis*,  
275 F.3d 849 (9th Cir. 2001) ..... 18, 21, 22

*Baby Neal for and by Kanter v. Casey*,  
43 F.3d 48 (3d Cir. 1994) ..... 18

*Bates v. United Parcel Service*,  
204 F.R.D. 440 (N.D. Cal. 2001)..... 16

*Bragdon v. Abbott*,  
524 U.S. 624 (1998)..... 12

*Californians for Disability Rights v. Cal. Dep’t of Transp.*,  
249 F.R.D. 334 (N.D. Cal. 2008)..... 4, 23

*Celano v. Mariott Int’l, Inc.*,  
No. C 05-4004 PJH, 2008 WL 239306 (N.D. Cal. Jan. 28, 2008) ..... 14

*Cervantez v. Celestica Corp.*,  
253 F.R.D. 562 (C.D. Cal. 2008)..... 17

*Cnty. House, Inc. v. City of Boise*,  
490 F.3d 1041 (9th Cir. 2006) ..... 13

*Crowder v. Kitagawa*,  
81 F.3d 1480 (9th Cir. 1996) ..... 11

*Dark v. Curry Cty.*,  
451 F.3d 1078 (9th Cir. 2006) ..... 11

*Davis v. Astrue*,  
250 F.R.D. 476 (N.D. Cal. 2008)..... 18

*Dean v. Univ. at Buffalo Sch. of Med. & Biomedical Scis.*,  
804 F.3d 178 (2d Cir. 2015) ..... 15

*Ellis v. Costco Wholesale Corp.*,  
657 F.3d 970 (9th Cir. 2011) ..... 23

*Evon v. Law Offices of Sidney Mickell*,  
688 F.3d 1015 (9th Cir. 2012) ..... 18

*Gambini v. Total Renal Care*,  
486 F.3d 1087 (9th Cir. 2007) ..... 10, 11

1	<i>Gen. Tel. Co. of the Sw. v. Falcon</i> ,	
	457 U.S. 147 (1982).....	22
2		
3	<i>Gonzalez v. Sessions</i> ,	
	No. 18-cv-01869-JSC, 2018 WL 2688569 (N.D. Cal. June 5, 2018).....	16
4	<i>Gray v. Golden Gate Nat’l Recreational Area</i> ,	
	279 F.R.D. 501 (N.D. Cal. 2011).....	18, 24
5		
6	<i>Guckenberger v. Boston Univ.</i> ,	
	957 F. Supp. 306 (D. Mass. 1997) .....	19
7	<i>Hanlon v. Chrysler Corp.</i> ,	
	150 F.3d 1011 (9th Cir. 1998) .....	22, 23
8		
9	<i>Hanon v. Dataproducts Corp.</i> ,	
	976 F.2d 497 (9th Cir. 1992) .....	22
10	<i>In re Cooper Cos. Inc. Sec. Litig.</i> ,	
	254 F.R.D. 628 (C.D. Cal. 2009).....	19
11		
12	<i>In re Hyundai &amp; Kia Fuel Econ. Litig.</i> ,	
	881 F.3d 679 (9th Cir. 2018) .....	18
13	<i>In re online DVD-Rental Antitrust Litig.</i> ,	
	779 F.3d 934 (9th Cir. 2015) .....	23
14		
15	<i>Indep. Living Res. v. Or. Arena Corp.</i> ,	
	982 F. Supp. 698 (D. Or. 1997) .....	14
16	<i>Jennings v. Rodriguez</i> ,	
	138 S. Ct. 830 (2018).....	24
17		
18	<i>Just Film, Inc. v. Buono</i> ,	
	847 F.3d 1108 (9th Cir. 2017) .....	22
19	<i>Lee v. Retail Store Emp. Bldg. Corp.</i> ,	
	No. 15-CV-04768, 2017 WL 346021 (N.D. Cal. Jan. 24, 2017).....	13, 14
20		
21	<i>Mark H. v. Lemahieu</i> ,	
	513 F.3d 922 (9th Cir. 2008) .....	11
22	<i>McGary v. City of Portland</i> ,	
	386 F.3d 1259 (9th Cir. 2004) .....	14
23		
24	<i>Nunes v. Wal-Mart Stores, Inc.</i> ,	
	164 F.3d 1243 (9th Cir. 1999) .....	12
25	<i>Parsons v. Ryan</i> ,	
	754 F.3d 657 (9th Cir. 2014) .....	4, 18, 25
26		
27	<i>Riker v. Gibbons</i> ,	
	No. 3.08 CV 00115 LRH RAM, 2009 WL 910971 (D. Nev. Mar. 31, 2009).....	18
28		

1	<i>Rodriguez v. Hayes</i> ,	25
2	591 F.3d 1105 (9th Cir. 2011) .....	
3	<i>Roe v. Hous. Auth. of City of Boulder</i> ,	14
4	909 F. Supp. 814 (D. Co. 1995).....	
5	<i>Sali v. Corona Reg'l Med. Ctr.</i> ,	23, 24
6	889 F.3d 623 (9th Cir. 2018) .....	
7	<i>Soares v. Flower Foods, Inc.</i> ,	16
8	320 F.R.D. 464 (N.D. Cal. 2017).....	
9	<i>Tamara v. El Camino Hosp.</i> ,	12
10	964 F. Supp. 2d 1077 (N.D. Cal. 2013) .....	
11	<i>The Civil Rights Educ. &amp; Enft' Ctr. v. RLJ Lodging Tr.</i> ,	17
12	No. 15-CV-0224-YGR, 2016 WL 314400 (N.D. Cal. Jan. 25, 2016) .....	
13	<i>Torres v. Mercer Canyons Inc.</i> ,	22
14	835 F.3d 1125 (9th Cir. 2016) .....	
15	<i>V.S. by &amp; through Sisneros v. Oakland Unified Sch. Dist.</i> ,	11
16	No. 14-CV-05144-JST, 2015 WL 3463475, (N.D. Cal. May 28, 2015) .....	
17	<i>Wal-Mart Stores, Inc. v. Dukes</i> ,	18, 19, 20
18	564 U.S. 338 (2011).....	
19	<i>Wolin v. Jaguar Land Rover N. Am., LLC</i> ,	21, 22
20	617 F.3d 1168 (9th Cir. 2010) .....	
21	<i>Wong v. Regent of Univ. of Cal.</i> ,	11, 15
22	192 F.3d 807 (9th Cir. 1999) .....	
23	<b>Statutes</b>	
24	29 U.S.C. § 705(20) .....	10
25	29 U.S.C. § 794.....	2
26	29 U.S.C. § 794(a) .....	10
27	42 U.S.C. § 12102.....	10
28	42 U.S.C. § 12182.....	2
	42 U.S.C. § 12182(a) .....	10
	42 U.S.C. § 12182(b)(1)(D)(i) .....	14
	42 U.S.C. § 12182(b)(2)(A)(i) .....	14
	42 U.S.C. § 12182(b)(3) .....	12
	42 U.S.C. § 3601.....	2

1	42 U.S.C. § 3602(b) .....	13
2	42 U.S.C. § 3602(c) .....	13
3	42 U.S.C. § 3602(h) .....	13
4	42 U.S.C. § 3604(f)(1)–(2) .....	12
5	42 U.S.C. § 3604(f)(3)(B).....	13
6	42 U.S.C. § 3604(f)(9) .....	13, 14
7	42 U.S.C. § 3617.....	13
8	Cal Civ Code § 51.....	10
9	Cal Civ. Code § 51(b).....	2
10	Cal. Civ. Code § 51(e)(1).....	10
11	Cal. Civ. Code § 51(f).....	10
12	Cal. Gov. Code § 11135.....	2
13	Cal. Gov. Code § 11135(a).....	10
14	Cal. Gov. Code § 11135(c).....	10
15	Cal. Gov. Code § 12900.....	2
16	Cal. Gov. Code § 12926(j).....	10
17	Cal. Gov. Code § 12926.1.....	10
18	Cal. Gov. Code § 12927(c)(1).....	13
19	Cal. Gov. Code § 12927(d).....	13
20	Cal. Gov. Code § 12955(a).....	13
21	Cal. Gov. Code § 12955(d).....	13
22	Cal. Gov. Code § 12955(k).....	13
23	<b>Other Authorities</b>	
24	U.S. DEP’T OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF FAIR HOUSING	
25	AND EQUAL OPPORTUNITY, <i>Joint Statement of the Department of Housing and</i>	
26	<i>Urban Development and the Department of Justice: Reasonable</i>	
27	<i>Accommodations Under the Fair Housing Act</i>	
28	(May 17, 2004) .....	14

1	<b>Rules</b>	
2	Federal Rules of Civil Procedure 23(a) .....	1, 16
3	Federal Rules of Civil Procedure 23(a)(1).....	16
4	Federal Rules of Civil Procedure 23(a)(2).....	18
5	Federal Rules of Civil Procedure 23(a)(3).....	21
6	Federal Rules of Civil Procedure 23(a)(4).....	23
7	Federal Rules of Civil Procedure 23(b)(2).....	1, 16, 24
8	<b>Treatises</b>	
9	1 Rubenstein, <i>Newberg on Class Actions</i>	
10	(5th ed. Supp. 2018).....	23
11	7 Rubenstein, <i>Newberg on Class Actions</i>	
12	(5th ed. 2012).....	19
13	<b>Regulations</b>	
14	24 C.F.R. § 100.20 .....	12
15	24 C.F.R. § 100.201 .....	13
16	24 C.F.R. § 100.202(d) .....	13
17	24 C.F.R. § 100.60(a).....	12
18	24 C.F.R. § 100.60(b) .....	12
19	28 C.F.R. § 36.104 .....	12
20	28 C.F.R. § 36.201(a).....	10
21	28 C.F.R. § 36.204 .....	14
22	28 C.F.R. § 36.301(a).....	14
23	34 C.F.R. § 104.4 .....	10
24	34 C.F.R. § 104.4(b)(4).....	14
25	34 C.F.R. § 104.42(b)(2).....	14
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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on August 29, 2018, at 1:00 PM, or at such other date  
4 and time as may be ordered by the Court in Courtroom 5 on the Fourth Floor of the above-  
5 captioned Court, located at 280 South First Street, San Jose, California 95113, Plaintiffs Mental  
6 Health & Wellness Coalition, Erik X., Tina Y., Jacob Z., Harrison Fowler, Rose A., and Sofia B.,  
7 on behalf of themselves and all others similarly situated, will and hereby do move this Court for  
8 an order certifying the above-titled action as a class action pursuant to Federal Rules of Civil  
9 Procedure 23(a) and 23(b)(2).

10 As set forth more fully herein, Plaintiffs easily satisfy the numerosity, commonality,  
11 typicality, and adequacy of representation requirements of Rule 23(a) of the Federal Rules of  
12 Civil Procedure. This class is also appropriate for certification under Rule 23(b)(2) because  
13 Defendant has acted or refused to act with regard to the class as a whole.

14 On May 29, July 11, July 12, and July 16, 2018, counsel conferred about this motion by  
15 telephone; Defendant declined to consent to class certification. The parties have agreed to enter  
16 into settlement discussions with a mediator at JAMS. While Plaintiffs have noticed a hearing  
17 date in accordance with the Court's rules (N.D. Cal. L.R. 7-2(a), Mag. J. Cousins Civ. Standing  
18 Order: Scheduling), the parties plan on stipulating to a briefing schedule and jointly requesting a  
19 continuance of that date as well as the previously-scheduled Case Management Conference (ECF  
20 No. 22) to allow them time to engage in settlement discussions prior to dedicating additional  
21 resources to this motion. The parties have also stipulated that Defendants will have thirty days  
22 from the date of the filing of Plaintiffs' Amended Complaint to file a responsive pleading.

23 This motion is based upon this Notice and Memorandum of Points and Authorities; the  
24 accompanying declarations and exhibits; all pleadings and papers on file in this action; and any  
25 argument or evidence that may be presented at the hearing in this matter, if a hearing is deemed  
26 necessary.

1 **RELIEF SOUGHT**

2 By this motion, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2),  
3 Plaintiffs request that the Court:

- 4 1. Determine that a class action is proper as to Plaintiffs’ causes of action under (1)  
5 the Americans with Disabilities Act, 42 U.S.C. § 12182, *et seq.*; (2) Section 504  
6 of the Rehabilitation Act, 29 U.S.C. § 794, *et seq.*; (3) the Fair Housing Act, 42  
7 U.S.C. § 3601, *et seq.*; (4) the Unruh Civil Rights Act, Cal Civ. Code § 51, *et*  
8 *seq.*; (5) California Government Code § 11135; and (6) the California Fair  
9 Employment and Housing Act, Cal. Gov. Code § 12900, *et seq.*
- 10 2. Certify a class defined as: All Stanford students who have a mental health  
11 disability and have been or will be subject to Stanford’s policies and practices  
12 regarding students at risk of self-harm, including students who have been deterred  
13 from participating in the programs and services Stanford makes available to its  
14 students because they are aware of these policies and practices and fear being  
15 subjected to them.
- 16 3. Appoint Named Plaintiffs Mental Health & Wellness Coalition, Erik X., Tina Y.,  
17 Jacob Z., Harrison Fowler, Rose A., and Sofia B. as class representatives, and the  
18 law firm of Disability Rights Advocates as class counsel
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1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 This case is about ending Stanford University’s systemic discrimination against students  
5 with mental health disabilities. Stanford has a blanket practice of banning students from its  
6 programs and housing when students are at risk of self-harm due to a mental health disability.  
7 Immediately after reports of self-harm, suicidal ideation, or crisis behavior, Stanford’s practice is  
8 to mandate and/or pressure students into taking leaves of absence; requiring immediate  
9 withdrawal from all classes, programs, and housing, without any discussion of appropriate  
10 disability-based accommodations that would allow the students to remain on campus and  
11 continue to participate in Stanford’s programs. Further perpetuating this harm and the stigma  
12 related to mental health disabilities, Stanford requires students wishing to return to campus to  
13 write statements accepting blame for their disability-related behavior, submit to invasive  
14 examination of their medical records, and participate in mandated mental health treatment.

15 Stanford maintains these policies and practices in disregard of federal and state legal  
16 protections for disability-related behaviors. The leave of absence policies governing students at  
17 risk of self-harm make no reference to disability rights protections and contain no process for  
18 consideration of reasonable accommodations. Rather, as a matter of practice, Stanford excludes  
19 students who are at risk of self-harm as a direct result of their disabilities, thereby denying such  
20 students full and equal access to their programs and services on the basis of disability, in  
21 violation of federal and state disability laws.

22 The evidence indicates that the discriminatory practices at issue are widespread,  
23 impacting all Stanford students with mental health disabilities who are at risk of self-harm.  
24 Through this action, Named Plaintiffs seek one thing only: for Stanford to modify its  
25 discriminatory policies and practices so that they and similarly situated students can enjoy the  
26 same access to Stanford’s programs and services that Stanford offers students without mental  
27 health disabilities. Because it challenges only systemic policies and seeks only injunctive relief,  
28

1 this case presents a classic Rule 23(b)(2) class action. *See Parsons v. Ryan*, 754 F.3d 657, 688  
2 (9th Cir. 2014); *Californians for Disability Rights v. Cal. Dep’t of Transp.*, 249 F.R.D. 334, 345  
3 (N.D. Cal. 2008) (hereinafter “*Caltrans*”) (“Cases challenging an entity’s policies and practices  
4 regarding access for the disabled represent the mine run of disability rights class actions certified  
5 under Rule 23(b)(2)”). Class certification is the most efficient and manageable method for  
6 addressing the common legal and factual questions at issue. This Court should therefore grant  
7 Plaintiffs’ Motion for Class Certification.

## 8 **II. FACTS RELEVANT TO CLASS CERTIFICATION**

### 9 **A. Stanford Maintains and Implements Policies that Exclude Students with** 10 **Mental Health Disabilities Who Are at Risk of Self-Harm**

11 Stanford maintains written policies and engages in system-wide practices that  
12 discriminate against students with mental health disabilities who are at risk of self-harm  
13 (“Discriminatory Leave Policies”).

#### 14 **1. Discriminatory Written Policies**

15 Stanford’s “Dean’s Leave of Absence Policy” includes language subjecting students to  
16 mandatory leaves of absence—effectively excluding such students from all campus programs  
17 and activities—when Stanford perceives that their mental health disability may put that student’s  
18 own life or safety at risk. (*See* Declaration of Stuart Seaborn (“Seaborn Decl.”), Ex. 1).  
19 According to this policy, “students whose psychiatric, psychological or medical condition  
20 jeopardizes the life or safety of *self* or others, or whose actions significantly disrupt the activities  
21 of the University community may be placed on a mandatory leave.” (Seaborn Decl. Ex. 1)  
22 (emphasis added).<sup>1</sup> Tellingly, the policy contains no reference whatsoever to disability rights  
23 protections and no reference to reasonable accommodations that might allow students at risk of  
24 self-harm due to mental health disabilities to stay in campus programs.

25 Stanford has also recently codified a housing policy that mirrors the language of the  
26 Dean’s Leave of Absence Policy. This policy provides for housing “holds” that eject students

27 \_\_\_\_\_  
28 <sup>1</sup> This case does not challenge Stanford’s ability to exclude students who are individually  
evaluated under legally acceptable standards and determined to pose a direct threat to others.

1 from University housing and bar them from returning during the “hold” period where the student  
2 is at “risk of harm to self.” (Seaborn Decl. Ex. 2). Though the new written policy includes  
3 language regarding reasonable accommodations in connection with self-care obligations, it  
4 contains no such language regarding students with mental health disabilities who are at risk of  
5 self-harm. Nor does the language regarding removal from housing based on a risk of self-harm  
6 mention or acknowledge any disability rights protections.

7                   2.       Stanford’s Exclusionary Practices

8                   In practice, Stanford routinely requires students to take leaves of absence when it  
9 perceives that the students may be at risk of self-harm or experiencing suicidal ideation, even  
10 where the students are receiving treatment for those conditions. (*See* Declaration of Erik X.  
11 (“Erik X. Decl.”) ¶¶ 9–10; Declaration of Tina Y. (“Tina Y. Decl.”) ¶ 14; Declaration of Jacob Z.  
12 (“Jacob Z. Decl.”) ¶ 11, 13, 17; Declaration of Harrison Fowler (“Fowler Decl.”) ¶¶ 12–13;  
13 Declaration of Rose A. (“Rose A. Decl.”) ¶¶ 11, 18; Declaration of Erica C. (“Erica C. Decl.”) ¶¶  
14 12–14). Stanford staff also frequently coerce students who are at risk of self-harm due to a  
15 mental health disability to accept leaves of absence on a “voluntary” basis, often describing a  
16 leave of absence as the only option or threatening severe consequences such as expulsion or  
17 permanent loss of University housing if the students do not accept such “voluntary” leaves. (*See*  
18 Erik X. Decl. ¶ 10, Fowler Decl. ¶¶ 10–14, Rose A. Decl. ¶¶ 11–22, Erica C. Decl. ¶¶ 12–14).

19                   Named Plaintiffs’ and proposed class members’ declarations and supporting  
20 documentation demonstrate at least six cases where Stanford either required or coerced students  
21 at risk of self-harm due to mental health disabilities into going on leaves of absence. (*See* Erik X.  
22 Decl. ¶ 9–10; Jacob Z. Decl. ¶¶ 8, 11; Fowler Decl. ¶¶ 12–13; Rose A. Decl. ¶ 18, 22;  
23 Declaration of Sofia B. (“Sofia B. Decl.”) ¶¶ 11–13; Erica C. Decl. ¶¶ 12–14). Additionally,  
24 several students have provided testimony that they know other students who Stanford has  
25 similarly placed on leaves of absence for mental health reasons. (*See* Erik X. Decl. ¶ 21 (knows  
26 at least fifteen others in the past five years), Declaration of Alex D. (“Alex D. Decl.”) ¶ 13 (has  
27 at least four friends who have been placed on leaves for mental health reasons), Declaration of  
28

1 Ashley K. (“Ashley K. Decl.”) ¶ 19 (members of the Mental Health & Wellness Coalition)). The  
2 evidence also documents several situations where Residence Deans and other staff contacted  
3 such students while they were receiving inpatient treatment and pushed them to accept leaves of  
4 absence. (See Erik X. Decl. ¶¶ 9–10, Ex. 1; Jacob Z. Decl. ¶¶ 8, 11; Fowler Decl. ¶¶ 10–13; Rose  
5 A. Decl. ¶¶ 11–18; Sofia B. Decl. ¶¶ 11–13; Erica C. Decl. ¶¶ 12–14). Students who resist taking  
6 a leave of absence “voluntarily” are routinely placed on mandated leaves of absence. (See Jacob  
7 Z. Decl. ¶¶ 21–24; Declaration of Lark Trumbly (“Trumbly Decl.”) ¶¶ 12–14).

8 Further, the correspondence from Stanford’s administrators include repeated examples of  
9 Stanford implementing leaves of absence without engaging in an interactive process to assess  
10 possible reasonable accommodations that might allow such students to remain on campus. (See  
11 Jacob Z. Decl. Ex. 2; Fowler Decl. Ex. 1; Rose A. Decl. Ex. 1). Indeed, when students and their  
12 doctors made such reasonable accommodation requests, the requests were uniformly denied. (See  
13 Jacob Z. Decl. ¶¶ 21–24, Ex. 4; Rose A. Decl. ¶¶ 14–16; Alex D. Decl. ¶¶ 7–9).<sup>2</sup> In none of these  
14 cases did Stanford conduct an analysis of whether the students posed a direct threat to the health  
15 and safety of others. Rather, Stanford consistently blamed students for the purported “impact”  
16 the perceived threat that they might hurt *themselves* had on the community. (See Erik X. Decl. ¶  
17 12, Ex. 2; Tina Y. Decl. ¶¶ 6, 21; Jacob Z. Decl. ¶¶ 8, 16; Rose A. Decl. ¶¶ 20, 28, Ex. 3; Sofia  
18 B. Decl. ¶ 11; Erica C. Decl. ¶ 13; Trumbly Decl. ¶ 8, 16).

19 Once Stanford coerces or requires such students to take leaves of absences based on a  
20 risk of self-harm due to mental health disabilities, its practices are remarkably consistent.  
21 Stanford immediately bans such students from University housing programs and all academic  
22 programs. (See Erik X. Decl. ¶ 12, Ex. 2; Tina Y. Decl. ¶ 14; Jacob Z. Decl. ¶¶ 11, 13–14, 17,  
23 24, Exs. 1–2, 5; Fowler Decl. Ex. 1; Rose A. Decl. ¶ 11, 15–16 Ex. 1; Sofia B. Decl. ¶¶ 11–13;  
24 Erica C. Decl. ¶¶ 12–14; Trumbly Decl. ¶¶ 7–8, 10, 20–22). Stanford requires these students to  
25

26 <sup>2</sup> In a number of cases, students specifically appealed to Stanford administrators to not put them  
27 on a leave of absence because the home to which they would have to return was not healthy or  
28 safe to them and may further negatively impact their mental health. (See Jacob Z. Decl. ¶ 21,  
Fowler Decl. ¶ 10, Sofia B. Decl. ¶ 11). Stanford placed all of these students on leaves of  
absence anyway.

1 fully vacate the university community within two or three days, in some instances not even  
2 allowing such students to return to campus to retrieve belongings or to say goodbye to friends  
3 without supervision. (*See* Rose A. Decl. ¶¶ 16, 25; Trumbly Decl. ¶¶ 8, 23–24).

4 Stanford also places strict, punitive requirements on those students who seek to return to  
5 campus after being placed on leaves of absence. Stanford requires such students to write  
6 “personal statements” demonstrating the students’ “understanding of why [their] behaviors are of  
7 concern,” and “...insight into the impact of [their] behavior on others.” (*See* Erik X. Decl. ¶¶ 16,  
8 Ex. 2; Jacob Z. Decl. ¶ 25, Ex. 2; Fowler Decl. ¶ 20, Ex. 1; Rose A. Decl. ¶ 27, Ex. 1; Sofia B.  
9 Decl. ¶ 18; Erica C. Decl. ¶ 19; Trumbly Decl. ¶¶ 16, 25). None of the correspondence from  
10 Stanford related to these punitive conditions mentions any disability-rights protections or even  
11 the possibility of reasonable accommodations. (*See* Erik X. Decl. ¶¶ 12, 17, Exs. 2–3; Jacob Z.  
12 Decl. ¶¶ 14, 25, Exs. 1–2, 5; Fowler Decl. ¶ 20, Ex. 1; Rose A. Decl. Exs. 1–5; Sofia B. Decl. ¶¶  
13 12, 18; Erica C. Decl. ¶ 13, 18; Trumbly Decl. ¶¶ 17, 23).

14 Students who have been subject to these readmission conditions felt as if Stanford was  
15 requiring them to accept blame for their disability-related behavior and for having a negative  
16 impact on the community. (*See* Erik X. Decl. ¶ 18; Tina Y. Decl. ¶ 25; Jacob Z. Decl. ¶ 26;  
17 Fowler Decl. ¶ 20; Rose A. Decl. ¶ 33; Sofia B. Decl. ¶ 22; Erica C. Decl. ¶ 19; Trumbly Decl.  
18 ¶¶ 29–30). Yet none of these students had engaged in behaviors that posed a direct threat to  
19 others. Indeed, multiple Named Plaintiffs and proposed class members provided evidence that  
20 they had the support of friends, roommates, and the student community. (*See* Tina Y. Decl. ¶ 22,  
21 Ex. 1; Jacob Z. Decl. ¶ 18, Ex. 3).

22 As a result of these practices, students with mental health disabilities live in a culture of  
23 fear, worried that if they reach out to Stanford for help or Stanford perceives them to be at risk of  
24 self-harm, Stanford will subject them to punitive leaves and exclusion from Stanford programs.  
25 (*See* Ashley K. Decl. ¶¶ 10–12, 15, 20; Alex D. Decl. ¶ 14; Declaration of Grace E. (“Grace E.  
26 Decl.”) ¶ 15). Many students have provided testimony indicating that they are deterred from  
27 seeking help from any campus-based assistance program for fear of being subject to these  
28

1 policies and practices. (*See* Tina Y. Decl. ¶ 27; Jacob Z. Decl. ¶ 28; Fowler Decl. ¶ 23; Rose A.  
2 Decl. ¶ 33; Sofia B. Decl. ¶ 24; Erica C. Decl. ¶ 22; Alex D. Decl. ¶ 19; Grace E. Decl. ¶ 15).  
3 Students have also provided testimony that their friends, classmates, and fellow group members  
4 are similarly deterred. (*See* Jacob Z. Decl. ¶ 29; Ashley K. Decl. ¶ 20; Alex D. Decl. ¶¶ 13, 15).

5 3. The Experiences of Named Plaintiffs and Similarly Situated Students  
6 Further Demonstrate Stanford’s Consistent Implementation of its  
7 Discriminatory Leave Policies

8 *a. Individual Plaintiffs*

9 Named Plaintiffs and proposed class representatives Erik X., Tina Y., Jacob Z., Harrison  
10 Fowler, Rose A., and Sofia B. have all been subject to the Discriminatory Leave Policies. (Erik  
11 X. Decl. ¶¶ 9–18, Exs. 1–3; Tina Y. Decl. ¶¶ 14–23; Jacob Z. Decl. ¶¶ 2, 11–25, Exs. 1–2, 4–5;  
12 Fowler Decl. ¶¶ 2, 10–21, Ex. 1; Rose A. Decl. ¶¶ 2, 11–30, Exs. 1–5; Sofia B. Decl. ¶¶ 11–18).  
13 None received any interactive process to consider possible accommodations that would allow  
14 them to stay on campus. (Erik X. Decl. ¶ 15; Tina Y. Decl. ¶ 19; Jacob Z. ¶ 19; Fowler Decl. ¶  
15 14; Rose A. Decl. ¶ 13; Sofia B. Decl. ¶ 12). All had burdensome conditions placed on their  
16 return—without any reference to their behavior being related to a disability or discussion of  
17 possible reasonable accommodations. (Erik X. Decl. ¶¶ 16–17, Exs. 2–3; Tina Y. Decl. ¶ 23;  
18 Jacob Z. Decl. ¶ 25, Exs. 1–2; Fowler Decl. ¶¶ 19–20, Ex. 1; Rose A. Decl. ¶¶ 27–30, Exs. 1–5;  
19 Sofia B. Decl. ¶ 18). All have been deterred from utilizing campus services due to their fear of  
20 being subjected to the Discriminatory Leave Policies. (Erik X. Decl. ¶ 20; Tina Y. Decl. ¶ 27;  
21 Jacob Z. Decl. ¶ 28; Fowler Decl. ¶ 23; Rose A. Decl. ¶¶ 33–34; Sofia B. Decl. ¶ 24). Witness  
22 declarations from a class member and from a former student confirm similar experiences. (Erica  
23 C. Decl. ¶¶ 12–22; Trumbly Decl. ¶¶ 7–28).

24 *b. Organizational Plaintiff*

25 The Mental Health and Wellness Coalition (“Coalition”) has been and continues to be  
26 harmed by the Discriminatory Leave Policies, directly and through its members. (Ashley K.  
27 Decl. ¶¶ 10–20). Numerous members of the Coalition and the Coalition’s organizational  
28 members, including Erik X., Tina Y., and Alex D., are students with mental health disabilities



1 who have been excluded from Stanford’s programs and services through Stanford’s  
2 Discriminatory Leave Policies and risk being excluded in the future and/or are deterred from  
3 further utilizing Stanford’s programs and services as a result of Stanford’s Discriminatory Leave  
4 Policies. (*Id.* ¶¶ 19–20).

5  
6 **B. Non-discriminatory Leave Policies Can Remedy the Harms to the Class**

7 Stanford can address this problem on a class-wide basis by overhauling its policies to  
8 support, rather than punish, students with mental health disabilities. Recognizing that self-harm  
9 that results from mental health disabilities is disability-related behavior, Stanford can work with  
10 experts in the field of mental health in higher education to develop and implement University-  
11 wide policies that require individual evaluation of students at risk of self-harm; including  
12 analysis of whether behavior is disability-related, and engaging in an interactive consideration of  
13 possible reasonable accommodations prior to placing such students on a leave of absence.

14 **III. THE PROPOSED CLASS**

15 Plaintiffs respectfully request the Court certify a class under Federal Rules of Civil  
16 Procedure 23(a) and 23(b)(2) consisting of: all Stanford students who have a mental health  
17 disability and have been or will be subject to Stanford’s policies and practices regarding students  
18 at risk of self-harm, including students who have been deterred from participating in the  
19 programs and services Stanford makes available to its students because they are aware of these  
20 policies and practices and fear being subjected to them.

21 Plaintiffs seek only injunctive and declaratory relief on behalf of the class. There is no  
22 claim for damages, so class-wide relief does not require an individualized analysis of each class  
23 member’s injuries or damages.

1 **IV. LEGAL FRAMEWORK APPLICABLE TO CLASS CLAIMS**

2 1. Stanford Is Required to Provide Full and Equal Enjoyment of Its Programs  
3 to All Students, Regardless of Disability

4 *a. Stanford May Not Exclude Students from Its Education*  
5 *Programs and Services on the Basis of Their Mental Health*  
6 *Disabilities*

7 As an institution of higher education, Stanford is a place of public accommodation  
8 subject to Title III of the Americans with Disabilities Act (“ADA”) and its implementing  
9 regulations. As such, it must provide individuals with disabilities full and equal enjoyment of its  
10 goods, services, facilities, privileges, advantages, or accommodations. *See* 42 U.S.C. § 12182(a);  
11 28 C.F.R. § 36.201(a). Stanford is subject to similar requirements under California laws. *See* Cal.  
12 Civ. Code §§ 51(b), (f); Cal. Gov. Code § 11135(a). Finally, because Stanford receives Federal  
13 financial assistance it must comply with Section 504 of the Rehabilitation Act of 1973 (“Section  
14 504”). It therefore cannot exclude or discriminate against qualified individuals with disabilities  
15 by reason of their disability, offer them unequal or less effective services, or limit their  
16 enjoyment of those services. *See* 29 U.S.C. § 794(a); 34 C.F.R. § 104.4.

17 The policies and practices at issue target a class of students who are otherwise qualified  
18 to participate in Stanford’s programs and services, but are at risk of self-harm due to mental  
19 health disabilities. Such students are, by definition, people with disabilities within the meaning of  
20 the law. *See* 29 U.S.C. §§ 705(20), 794(a); 42 U.S.C. § 12102; Cal. Civ. Code § 51(e)(1); Cal.  
21 Gov. Code §§ 11135(c), 12926(j), 12926.1. The behavior that Stanford’s Discriminatory Leave  
22 Policies target (e.g., suicidal ideation and/or self-harm) is unquestionably a result of students’  
23 mental health disabilities—a reality Stanford acknowledges by requiring students subject to their  
24 policies to demonstrate proof of mental health treatment as a condition of readmission after a  
25 leave of absence. *See, e.g., Gambini v. Total Renal Care*, 486 F.3d 1087, 1093 (9th Cir. 2007)  
26 (discrimination on the basis of disability-related behavior is disability discrimination within the  
27 meaning of the ADA).

28 Thus, by maintaining and implementing Discriminatory Leave Policies that exclude  
students at risk of self-harm due to mental health disabilities from full and equal access to its

1 programs and services, Stanford is discriminating on the basis of disability, in violation of the  
2 federal and state disability rights laws. *See Gambini*, 486 F.3d at 1093 (noting that “[c]onduct  
3 resulting from a disability is part of the disability” and not a separate basis for an adverse action  
4 in case involving a plaintiff with bipolar disorder who engaged in disruptive behavior and  
5 expressed suicidal thoughts); *see also Dark v. Curry Cty.*, 451 F.3d 1078, 1084 (9th Cir. 2006)  
6 (citing *Humphrey v. Mem’l Hosps. Ass’n*, 239 F.3d 1128, 1139–40 (9th Cir. 2001)); *V.S. by &*  
7 *through Sisneros v. Oakland Unified Sch. Dist.*, No. 14-CV-05144-JST, 2015 WL 3463475, at \*5  
8 (N.D. Cal. May 28, 2015) (school’s failure to protect child from bullying for disability-related  
9 behavior violated ADA and Section 504).

10         Discrimination on the basis of disability also includes a covered entity’s failure to  
11 provide reasonable modifications to its policies and procedures where doing so would allow  
12 persons with disabilities access to its programs and services. *See Mark H. v. Lemahieu*, 513 F.3d  
13 922, 937 (9th Cir. 2008); *see also Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996);  
14 *and, e.g., A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1207 (9th Cir. 2016)  
15 (citations omitted) (Under Section 504, a covered entity must work to identify accommodations  
16 that would allow a student with a disability to “remain in her regular educational environment.”);  
17 *Wong v. Regent of Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999) (quoting *Buckingham v.*  
18 *United States*, 998 F.2d 735, 740 (9th Cir.1993) (additional citations omitted). (Higher education  
19 institutions must “gather sufficient information from the [disabled individual] and qualified  
20 experts as needed to determine what accommodations are necessary.”). Stanford consistently  
21 implements its Discriminatory Leave Policies targeting students who are at risk of self-harm due  
22 to mental health disabilities without considering any reasonable accommodations to allow such  
23 students to participate in its programs and services—further violating federal and state disability  
24 rights laws.

25         Stanford may attempt to argue that its exclusion of Named Plaintiffs and members of the  
26 class from its programs and services is justified under a “direct threat” defense. However, under  
27 Title III of the ADA and the Rehabilitation Act, risk to the student herself is not a basis to find  
28

1 "direct threat." 42 U.S.C. § 12182(b)(3); 28 C.F.R. § 36.104. The ADA defines "direct threat" as  
2 "a significant risk to the health or safety of others that cannot be eliminated by a modification of  
3 policies, practices, or procedures or by the provision of auxiliary aids or services." 42 U.S.C.  
4 § 12182(b)(3) (emphasis added). If the risk is only to the student herself, the decision about how  
5 to weigh that risk is in the hands of the student and her doctors; it is not a legal basis for program  
6 exclusion. Plaintiffs allege that defendants violate this requirement with a policy that—on its  
7 face as well as in application—excludes students for being a threat to themselves alone.

8       Moreover, regardless of whether the direct threat exception applies to a risk of self-harm,  
9 Stanford's standard practice violates the requirement that the risk assessment be based on  
10 "medical or other objective evidence." *Bragdon v. Abbott*, 524 U.S. 624, 649 (1998) (citing *Sch.*  
11 *Bd. of Nassau Cty. v. Arline*, 480 U.S. 273, 288 (1987)); 28 C.F.R. § 36.208(b) (1997)  
12 (additional citation omitted). In addition, a covered entity may only exclude persons with  
13 disabilities on the basis of direct threat after assessing whether there are any reasonable  
14 accommodations to policies or procedures that would mitigate the potential threat to allow such  
15 persons to participate in the entity's programs or services. 42 U.S.C. § 12182(b)(3) (defining  
16 "direct threat" as a risk that "cannot be eliminated by a modification of policies..."); see *Tamara*  
17 *v. El Camino Hosp.*, 964 F. Supp. 2d 1077, 1083–86, 1088 (N.D. Cal. 2013) (hospital's policy  
18 barring service animals from behavioral health units violated ADA where hospital failed to  
19 conduct an individualized assessment of whether a threat existed and to consider reasonable  
20 accommodations); see also *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1248 (9th Cir. 1999)  
21 (reasonable accommodation that would mitigate risk defeats direct threat defense under ADA  
22 Title I).

23                                   ***b. Stanford May Not Discriminate Against Students with Mental***  
24                                   ***Health Disabilities in its Housing Programs***

25       Housing law has similar antidiscrimination requirements. The Fair Housing Act prohibits  
26 discrimination in the terms, conditions, sale, or rental of a dwelling, on the basis of disability.  
27 See 42 U.S.C. § 3604(f)(1)–(2). See also 24 C.F.R. §§ 100.20, 100.60(a), (b). As persons with  
28 mental health disabilities, Named Plaintiffs and members of the proposed class are protected

1 from discrimination under the Fair Housing Act. *See* 42 U.S.C. § 3602(h). *See also* 24 C.F.R.  
2 § 100.201. Stanford’s residence halls are covered “dwellings” under the Fair Housing Act. *See*  
3 42 U.S.C. § 3602(b), (c). *See also* 24 C.F.R. § 100.201. Stanford’s residence halls are also  
4 covered under state housing laws. *See* Cal. Gov. Code §§ 12927(d), 12955(d).

5 Under the Fair Housing Act, it is unlawful to coerce, intimidate, threaten, or interfere  
6 with any person in the exercise or enjoyment of any right granted or protected by section 3604 of  
7 the Fair Housing Act. *See* 42 U.S.C. § 3617. California’s Fair Employment and Housing Act  
8 (“FEHA”) also prohibits housing accommodations from discriminating against individuals on the  
9 basis of disability. *See* Cal. Gov. Code § 12955(a). This state law prohibits terminating a rental  
10 agreement, otherwise making unavailable a dwelling, or harassing tenants, based on disability.  
11 *See* Cal. Gov. Code §§ 12927(c)(1), 12955(k). Under these laws, the policies that Named  
12 Plaintiffs allege exclude students from Stanford’s housing programs on the basis of disability-  
13 related behaviors constitute illegal discrimination against students with disabilities. *See Lee v.*  
14 *Retail Store Emp. Bldg. Corp.*, No. 15-CV-04768, 2017 WL 346021, at \*13 (N.D. Cal. Jan. 24,  
15 2017) (denying landlord’s motion to dismiss plaintiffs’ Fair Housing Act claim where plaintiff  
16 sufficiently alleged that she was evicted based on disability-related behavior); *Cnty. House, Inc.*  
17 *v. City of Boise*, 490 F.3d 1041, 1050 (9th Cir. 2006).

18 The Fair Housing Act also prohibits discrimination in the form of refusing to make  
19 reasonable accommodations in rules, policies, practices, or services, when such may be  
20 necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.  
21 *See* 42 U.S.C. § 3604(f)(3)(B). FEHA similarly defines discrimination to include refusal to make  
22 reasonable accommodations in rules, policies, practices, or services when those accommodations  
23 may be necessary to afford a person with a disability equal opportunity to use and enjoy a  
24 dwelling. *See* Cal. Gov. Code § 12927(c)(1).

25 Similar to the ADA and Section 504, the fair housing laws have a narrow affirmative  
26 defense for persons with disabilities who present “a direct threat to the health or safety of *other*  
27 individuals.” *See* 42 U.S.C. § 3604(f)(9); 24 C.F.R. § 100.202(d) (emphasis added). This  
28

1 affirmative defense does not apply to behaviors or conduct by persons with disabilities that  
2 present a threat to themselves. *See* 42 U.S.C. § 3604(f)(9). Moreover, a covered entity may only  
3 exclude a person with a disability on the basis of direct threat after conducting an individualized  
4 assessment and considering reasonable accommodations to policies or procedures that would  
5 mitigate the potential threat to allow such persons to participate in the entities’ programs or  
6 services. *See Lee*, 2017 WL 346021, at \*13. *See also Roe v. Hous. Auth. of City of Boulder*, 909  
7 F. Supp. 814, 822 (D. Co. 1995) (“requiring accommodation before denial of housing is ‘entirely  
8 consistent with Congress’ goal of eliminating housing discrimination based upon stereotypes,  
9 prejudice, or irrational fear of [persons with disabilities]”) (quoting *Roe v. Sugar River Mills*  
10 *Assocs.*, 820 F. Supp. 636, 640 (D.N.H. 1993)).<sup>3</sup> Here, Stanford maintains and implements its  
11 discriminatory policies without any assessment of possible reasonable accommodations  
12 whatsoever, thereby violating federal and state fair housing laws.

13 2. Stanford Cannot Utilize Methods of Administration that Screen Out  
14 Students with Disabilities

15 Even “neutral” policies or methods of administration that screen out students for  
16 disability-related behavior can be illegal under Title III and Section 504. *See* 42 U.S.C.  
17 §§ 12182(b)(1)(D)(i), 12182(b)(2)(A)(i); 28 C.F.R. § 36.301(a); 34 C.F.R. §§ 104.4(b)(4),  
18 104.42(b)(2). *See, e.g., McGary v. City of Portland*, 386 F.3d 1259, 1265, 1268 (9th Cir. 2004).  
19 Covered entities must not “utilize standards or criteria or methods of administration that have the  
20 effect of discriminating on the basis of disability, or that perpetuate the discrimination of others  
21 who are subject to common administrative control.” 28 C.F.R. § 36.204; *Celano v. Mariott Int’l,*  
22 *Inc.*, No. C 05-4004 PJH, 2008 WL 239306, at \*13 (N.D. Cal. Jan. 28, 2008); *see also Indep.*  
23 *Living Res. v. Or. Arena Corp.*, 982 F. Supp. 698, 733 (D. Or.1997) (“the ADA requires more  
24 than merely refraining from active discrimination ... a public accommodation may also be  
25 required to take affirmative steps to ensure that the ‘opportunity’ to patronize the facility is a

26  
27 <sup>3</sup> *See also, e.g.* U.S. DEP’T OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF FAIR HOUSING  
28 AND EQUAL OPPORTUNITY, *Joint Statement of the Department of Housing and Urban  
Development and the Department of Justice: Reasonable Accommodations Under the Fair  
Housing Act* (May 17, 2004).

1 meaningful one”). Here, Stanford’s leave policies, which effectively screen out students with  
2 mental health disabilities who are at risk of self-harm, are just such a method of administration.

3 3. Stanford Has the Burden of Demonstrating that Accommodating Students  
4 at Risk of Self-Harm Would Present a Fundamental Alteration

5 Stanford may refuse to accommodate students with mental health disabilities if it can  
6 demonstrate that doing so would fundamentally alter its programs. *Wong*, 192 F.3d at 818 (citing  
7 *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 413 (1979)). However, such defenses cannot be applied  
8 in a blanket or across the board manner. *Dean v. Univ. at Buffalo Sch. of Med. & Biomedical*  
9 *Scis.*, 804 F.3d 178, 191 (2d Cir. 2015) (no deference to university’s claims that provision of  
10 additional study time would fundamentally alter its rigorous academic standards where the  
11 university made no showing that such a determination was made individually). Indeed, the Ninth  
12 Circuit has noted,

13 As we have observed in the employment context, mere[ ] speculation that a  
14 suggested accommodation is not feasible falls short of the reasonable  
15 accommodation requirement; the [ADA and Section 504] create a duty to gather  
16 sufficient information from the [disabled individual] and qualified experts as  
17 needed to determine what accommodations are *necessary* to enable [the individual  
18 to meet the standards in question].

19 *Wong*, 192 F. 3d at 818 (quoting *Buckingham v. United States*, 998 F.2d 735, 740 (9th Cir. 1993)  
20 (additional citation omitted) (internal quotation marks omitted)).

21 Here, Named Plaintiffs allege and the evidence demonstrates that Stanford fails to  
22 conduct the required assessments of possible accommodations that may allow students with  
23 mental health disabilities at risk of self-harm to avoid leaves of absence, including the relative  
24 cost and impact of such accommodations on Stanford’s programs, as a matter of practice. In light  
25 of this failure, Stanford cannot assert that accommodating such students would present a  
26 fundamental alteration.

27 **V. ARGUMENT**

28 **A. Legal Standards for Class Certification under Rule 23**

Class certification is proper here because: (1) the class is so numerous that joinder of all  
members is impracticable; (2) there are questions of law or fact common to the class; (3) the

1 claims or defenses of the representative parties are typical of the claims or defenses of the class;  
2 and (4) the representative parties will fairly and adequately protect the interests of the class. Fed.  
3 R. Civ. P. 23(a). In addition, the class is certifiable under Rule 23(b)(2) because “the party  
4 opposing the class has acted or refused to act on grounds that apply generally to the class,  
5 [thereby making appropriate] final injunctive relief or corresponding declaratory relief [with  
6 respect to] the class as a whole.” Fed. R. Civ. P. 23(b)(2).  
7

8 As set forth below, Named Plaintiffs’ allegations of Stanford’s systemic Discriminatory  
9 Leave Policies satisfy this evidentiary standard for each of the Rule 23 requirements.

10 **B. The Class Meets the Requirements of Rule 23(a)**

11 The proposed class meets all of the requirements of Rule 23(a), and is the most efficient  
12 and manageable method for addressing the system-wide discrimination resulting from Stanford’s  
13 Discriminatory Leave Policies.

14 1. **The Class is so Numerous that Joinder is Impracticable**

15 The proposed class consists of hundreds of students, with substantial turnover as students  
16 matriculate and graduate. Thus, the class is “so numerous that joinder of all members is  
17 impracticable.” Fed. R. Civ. P. 23(a)(1). “Impracticability is not impossibility, and instead refers  
18 only to the ‘difficulty or inconvenience of joining all members of the class.’” *Soares v. Flower*  
19 *Foods, Inc.*, 320 F.R.D. 464, 474 (N.D. Cal. 2017) (citing *Harris v. Palm Springs Alpine Ests.*,  
20 *Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964)). Plaintiffs need not meet any specific number, as  
21 “whether joinder is impracticable depends on the facts and circumstances of each case.” *Bates v.*  
22 *United Parcel Service*, 204 F.R.D. 440, 444 (N.D. Cal. 2001). There is no “precise threshold,”  
23 but courts routinely hold that the numerosity requirement is met when the proposed class  
24 contains forty or more members. *See Gonzalez v. Sessions*, No. 18-cv-01869-JSC, 2018 WL  
25 2688569, at \*3 (N.D. Cal. June 5, 2018) (finding a class of forty-three proposed members will  
26 typically easily satisfy the numerosity requirement); *The Civil Rights Educ. & Enf’t Ctr. v. RLJ*  
27  
28



1 *Lodging Tr.*, No. 15-CV-0224-YGR, 2016 WL 314400, at \*6 (N.D. Cal. Jan. 25, 2016)  
2 (“Numerosity does not require a plaintiff to establish the exact number of persons in the class.”).  
3 Typically, numerosity is satisfied when general knowledge and common sense indicate that the  
4 class is large. *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 569 (C.D. Cal. 2008).

5  
6 Here, while the exact number of class members is unknown to Plaintiffs at this time, the  
7 proposed class far exceeds forty members. Stanford has an undergraduate population of more  
8 than 7,000 students. (*See* Seaborn Decl., Ex. 3) There are even more graduate students at the  
9 university, more than 9,000. (*See id.*). A recent national study found that thirty-five percent of  
10 students could be diagnosed with a mental health disability and that twenty percent of college  
11 students had considered suicide during their college career. (*See* Seaborn Decl., Ex. 4). Persons  
12 with mental health disabilities are at increased risk of self-harm and suicidality. (*See* Seaborn  
13 Decl., Ex. 5).

14 Campus surveys confirm these national figures apply at Stanford. A 2014 Stanford Daily  
15 survey found that, from more than 500 Stanford student respondents, thirty-one percent had  
16 experienced depression while at Stanford and fifty-one percent spent most of their time at a  
17 stress level of seven or eight out of ten. (*See* Seaborn Decl., Ex. 6). Additionally, a 2015  
18 Associated Students of Stanford University (“ASSU”) Mental Health Survey found that, of 1,687  
19 Stanford student respondents, eighty-three percent desired more resources to deal with stress, and  
20 seventy-nine percent desired more resources to deal with depression/anxiety. (*See* Seaborn Decl.,  
21 Ex. 7). These figures demonstrate that, at a minimum, hundreds of Stanford students will  
22 experience or be at risk of experiencing self-harm related to a mental health disability, thereby  
23 triggering Stanford’s Discriminatory Leave Policies.

24  
25 In addition to these estimates, eleven students have explicitly stepped forward to submit  
26 declarations, and several say that they personally know of other affected students. This is an  
27  
28

1 extraordinary number in light of the stigmatizing nature of the experience. Thus, there is more  
2 than sufficient evidence to show numerosity for class certification purposes.

3 2. Class Members Share Many Common Questions of Law and Fact

4 This case presents several “questions of law or fact common to the class.” Fed. R. Civ. P.  
5 23(a)(2). Named Plaintiffs’ claims “‘depend upon a common contention’ that is ‘of such a nature  
6 that it is capable of classwide resolution—which means that determination of its truth or falsity  
7 will resolve an issue that is central to the validity of each one of the claims in one stroke.’” *In re*  
8 *Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679, 690 (9th Cir. 2018) (quoting *Wal-Mart Stores,*  
9 *Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). For the purposes of Rule 23(a)(2), “even a single  
10 common question” satisfies the commonality requirement. *Dukes*, 564 U.S. at 359.

11 In a civil rights class action such as this one, “the commonality requirement can be  
12 satisfied by proof of the existence of systemic policies and practices that allegedly expose [class  
13 members] to a substantial risk of harm.” *Parsons v. Ryan*, 754 F.3d 657, 681 (9th Cir. 2014); *see*  
14 *also Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012); *Armstrong v.*  
15 *Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*,  
16 543 U.S. 499 (2005); *Gray v. Golden Gate Nat’l Recreational Area*, 279 F.R.D. 501, 512 (N.D.  
17 Cal. 2011) (commonality satisfied where plaintiffs allege “uniform policies and practices of  
18 failing to ensure” program access). This is especially true in actions for injunctive relief, which  
19 “by their very nature often present common questions satisfying Rule 23(a)(2).” *Baby Neal for*  
20 *and by Kanter v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994); *Davis v. Astrue*, 250 F.R.D. 476, 486–88  
21 (N.D. Cal. 2008) (individual determinations on plaintiffs’ varying disabilities were not required  
22 for facial challenge to Social Security Administration’s policies and procedures); *Riker v.*  
23 *Gibbons*, No. 3.08 CV 00115 LRH RAM, 2009 WL 910971, at \*1, \*3 (D. Nev. Mar. 31, 2009)  
24 (commonality found in suit for injunction to reform prison health care).

25 The instant case is a quintessential civil rights class action alleging systemic  
26 discrimination: Named Plaintiffs’ claims rest upon a core set of discriminatory policies and  
27 procedures that result in systemic exclusion of students with mental health disabilities. These  
28

1 allegations raise legal and factual questions that affect all Stanford students with mental health  
2 disabilities at risk of self-harm in the same way. Here, there is a well-defined community of  
3 interest in the questions of law and fact affecting proposed class members in that they are  
4 Stanford students with mental health disabilities who have been harmed and excluded from  
5 Stanford’s programs, through its policies and practices regarding students at risk of self-harm.  
6

7 Thus, determination of liability in this case will not turn on any single class member’s  
8 experience, but on whether Defendants’ systemic policies and practices fail to satisfy their legal  
9 obligations. *See In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009) (“In  
10 general, a few factual variations among the class grievances will not defeat commonality so long  
11 as class members’ claims arise from ‘shared legal issues’ or ‘a common core of salient facts.’”) (citing  
12 *Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003)); *Guckenberger v. Boston Univ.*,  
13 957 F. Supp. 306, 325–26 (D. Mass. 1997) (holding that certification of a class of disabled  
14 students challenging a university’s accommodations policy was appropriate; individual  
15 evaluation of reasonable accommodation need did not defeat commonality or typicality).  
16

17 *a. Common Questions of Fact*

18 “[B]ecause only one core issue need be common across the class, the presence of more  
19 individualized issues among class members will not preclude a finding of commonality.” 7  
20 Rubenstein, *Newberg on Class Actions* § 23:19 (5th ed. 2012) (citation omitted). The allegations  
21 here raise questions of fact common to the class. Resolution of each question “will resolve an  
22 issue that is central to the validity of each one of the claims in one stroke.” *Dukes*, 564 U.S. at  
23 350. Such common questions of fact include:  
24

25 1. Whether Stanford maintains and implements policies and practices that exclude  
26 students at risk of self-harm due to mental health disabilities from participating in its programs  
27 and services?  
28

1           2.       Whether, as a matter of policy and practice, Stanford imposes punitive  
2 readmission conditions on students placed on leaves of absence due to having a mental health  
3 disability that puts them at risk of self-harm?

4           3.       Whether, as a matter of policy and practice, Stanford excludes students at risk of  
5 self-harm due to mental health disabilities from its programs and services without engaging in an  
6 interactive process to discuss reasonable accommodations that might allow such students to stay  
7 on campus and access the benefits of Stanford’s programs and services?

8           4.       Whether, as a matter of policy and practice, Stanford removes or otherwise denies  
9 students at risk of self-harm due to mental health disabilities access to its residential housing  
10 programs?

11          5.       Whether, as a matter of policy and practice, Stanford fails to consider reasonable  
12 accommodations that would allow students at risk of self-harm due to mental health disabilities  
13 to stay in its residential housing programs?

14          6.       Whether Stanford can demonstrate that, in light of the size of its programs and the  
15 resources available to it, implementing a process to reasonably accommodate the needs of  
16 students at risk of self-harm due to mental health disabilities would fundamentally alter  
17 Stanford’s programs?

18                                   ***b.       Common Questions of Law***

19           Many common questions of law exist for the class as a whole, which will generate  
20 common answers apt to drive the resolution of the litigation. *See Dukes*, 564 U.S. at 350. Such  
21 common questions of law include:

22           1.       Whether Stanford’s policy and practice of imposing leaves of absence on students  
23 at risk of self-harm due to mental health disabilities discriminates on the basis of disability in  
24 violation federal and state disability laws?

25           2.       Whether the readmission conditions Stanford imposes on students placed on  
26 leaves of absence due to having a mental health disability that puts them at risk of self-harm  
27 discriminate on the basis of disability in violation of federal and state disability laws?  
28

1           3.       Whether Stanford’s policy and practice of excluding students at risk of self-harm  
2 due to mental health disabilities from its programs and services—without considering reasonable  
3 accommodations that could allow such students to stay on campus and access the benefits of  
4 those programs and services—discriminates on the basis of disability in violation of federal and  
5 state disability laws?

6           4.       Whether Stanford’s policy and practice of removing or otherwise denying  
7 students at risk of self-harm due to mental health disabilities access to its residential housing  
8 programs constitutes discrimination in the terms and conditions of housing in violation of federal  
9 and state fair housing laws?

10          5.       Whether Stanford’s policy and practice of failing to engage in an interactive  
11 process to consider reasonable accommodations that would allow students at risk of self-harm  
12 due to mental health disabilities to stay in its residential housing programs violates federal and  
13 state fair housing laws?

14          6.       Whether Stanford’s Discriminatory Leave Policies constitute a method of  
15 administration that tends to screen out students with mental health disabilities, in violation of  
16 federal and state disability laws?

17               These common issues easily satisfy the commonality requirement. *See, e.g., Wolin v.*  
18 *Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (“Commonality exists  
19 where class members’ ‘situations share a common issue of law or fact, and are sufficiently  
20 parallel to insure a vigorous and full presentation of all claims for relief.’” (quoting *Cal. Rural*  
21 *Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990)); *Armstrong*,  
22 275 F.3d at 868 (commonality in a civil rights suit “is satisfied where the lawsuit challenges a  
23 system-wide practice or policy that affects all of the putative class members.”).

24  
25           3.       The Named Plaintiffs’ Claims are Typical of the Class

26               Similarly, class certification is proper here because “the claims or defenses of the  
27 representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3);  
28

1 *see Armstrong*, 275 F.3d at 868; *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.  
2 1992) (“Typicality refers to the nature of the claim or defense of the class representative, and not  
3 to the specific facts from which it arose or the relief sought.”) (citation omitted). Because  
4 typicality overlaps with commonality, a finding of commonality usually supports a finding of  
5 typicality. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) (noting that  
6 commonality and typicality requirements frequently “merge”).

7 Typicality is met when plaintiffs’ claims are “reasonably co-extensive with those of  
8 absent class members; they need not be substantially identical.” *Hanlon v. Chrysler Corp.*, 150  
9 F.3d 1011, 1020 (9th Cir. 1998); *see also Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir.  
10 2017) (“it is sufficient for typicality if the plaintiff endured a course of conduct directed against  
11 the class.”); *Wolin*, 617 F.3d at 1175; *Armstrong*, 275 F.3d at 869.

12 Plaintiffs meet all of the elements of typicality when: (1) the named plaintiffs and other  
13 class members have the same or similar injury, (2) the action is based on conduct which is not  
14 unique to the named plaintiffs, and (3) other class members have been injured by the same  
15 course of conduct as the named plaintiffs. *See Torres v. Mercer Canyons Inc.*, 835 F.3d 1125,  
16 1141 (9th Cir. 2016).

17 Here, the individual Named Plaintiffs and members of the organizational Named Plaintiff  
18 have experienced the same harm. All have mental health disabilities and have been subject to  
19 Stanford’s policies regarding students at risk of self-harm. (*See Ashley K. Decl.* ¶¶ 18–20; Erik  
20 X. Decl. ¶¶ 9–20; Tina Y. Decl. ¶¶ 14–23, 26–27; Jacob Z. Decl. ¶¶ 2, 11–25, 27–28; Fowler  
21 Decl. ¶¶ 2, 10–23; Rose A. Decl. ¶¶ 2, 11–34; Sofia B. Decl. ¶¶ 11–18, 22–24). To redress this  
22 harm, Named Plaintiffs rely on the same legal theories and seek the same declaratory and  
23 injunctive relief as all members of the Proposed Class. (*See Ashley K. Decl.* ¶ 22; Erik X. Decl. ¶  
24 23; Tina Y. Decl. ¶ 29; Jacob Z. Decl. ¶ 31; Fowler Decl. ¶ 25; Rose A. Decl. ¶ 37; Sofia B.  
25 Decl. ¶ 26). Named Plaintiffs’ claims are thus typical of the class.  
26  
27  
28

1                   4.     Named Plaintiffs Will Fairly and Adequately Protect the Interests of the  
2                                    Class

3                   Finally, Named Plaintiffs have brought this case with one goal: systemic, injunctive  
4 relief. As such, “the representative parties will fairly and adequately protect the interests of the  
5 class.” Fed. R. Civ. P. 23(a)(4). The Court can resolve the two requisite questions in Named  
6 Plaintiffs’ favor: “(a) do the named plaintiffs and their counsel have any conflicts of interest with  
7 other class members and (b) will the named plaintiffs and their counsel prosecute the action  
8 vigorously on behalf of the class?” *Sali v. Corona Reg’l Med. Ctr.*, 889 F.3d 623, 634 (9th Cir.  
9 2018) (citation omitted); *Hanlon*, 150 F.3d at 1020.

10                   To answer these questions, courts look at a range of factors, including “an absence of  
11 antagonism between representatives and absentees, and a sharing of interest between  
12 representatives and absentees.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir.  
13 2011); *see In re online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 942 (9th Cir. 2015) (““Only  
14 conflicts that are fundamental to the suit and that go to the heart of the litigation prevent a  
15 plaintiff from meeting the Rule 23(a)(4) adequacy requirement.’ A conflict is fundamental when  
16 it goes to the specific issues in controversy.”) (internal citations omitted). Adequate  
17 representation of counsel is generally presumed in the absence of contrary evidence. *Caltrans*,  
18 249 F.R.D. at 349. *See* 1 Rubenstein, *Newberg on Class Actions* § 3:55 (5th ed. Supp. 2018).

19                   Here, the Named Plaintiffs are adequate class representatives because they have been and  
20 remain at risk of being directly affected by Stanford’s Discriminatory Leave Policies; and their  
21 interests are not antagonistic to, nor in conflict with, the interests of the class as a whole. Named  
22 Plaintiffs seek the same relief as other class members—e.g., a declaration that Stanford’s existing  
23 Discriminatory Leave Policies violate disability rights and fair housing laws, and modifications  
24 to those policies and practices to ensure that Stanford does not remove/exclude students with  
25 mental health disabilities it perceives as being at risk of self-harm. Named Plaintiffs have  
26  
27  
28

1 committed to pursuing such relief on behalf of the class. (*See* Ashley K. Decl. ¶¶ 21–22, Erik X.  
2 Decl. ¶¶ 22–23, Tina Y. Decl. ¶¶ 28–29, Jacob Z. Decl. ¶¶ 30–31, Fowler Decl. ¶¶ 24–25, Rose  
3 A. Decl. ¶¶ 36–37, Sofia B. Decl. ¶¶ 25–26).

4           Additionally, Disability Rights Advocates, the proposed class counsel, is a nonprofit that  
5 has been specializing in disability law and in class action institutional reform litigation for  
6 twenty-five years, and has served as class counsel in dozens of disability rights class actions.  
7 (*Seaborn* Decl. ¶¶ 5–6). Named Plaintiffs’ counsel are thus well-qualified to litigate the class-  
8 wide claims of the Complaint and ably meet the adequacy standards of Rule 23(g). *See Sali*, 889  
9 F.3d at 634 (citing *Jordan v. L.A. Cty.*, 669 F.2d 1311, 1323 (9th Cir. 1982) (*vacated on other*  
10 *grounds by Cty. of L.A. v. Jordan*, 459 U.S. 810 (1982))). Counsel have done extensive work  
11 investigating the claims in this action and have more-than sufficient resources to vigorously  
12 litigate this case. In addition, counsel does not have any conflicts of interest with class members.  
13 (*Seaborn* Decl. ¶ 17). Thus, the adequacy requirement of Rule 23(a) is satisfied as to both Named  
14 Plaintiffs and Plaintiffs’ Counsel.

15  
16  
17           **C.     The Class Meets the Requirements of Rule 23(b)(2)**

18           For this injunctive relief class, certification is warranted because Named Plaintiffs allege  
19 that Stanford “has acted or refused to act on grounds [generally applicable] to the class, [thereby  
20 making appropriate] final injunctive relief or corresponding declaratory relief [with respect to]  
21 the class as a whole.” Fed. R. Civ. P. 23(b)(2). Thus, “a single injunction or declaratory  
22 judgment would provide relief to each member of the class.” *See Jennings v. Rodriguez*, 138 S.  
23 Ct. 830, 851–52 (2018). The “Rule 23(b)(2) requirements are ‘almost automatically satisfied in  
24 actions primarily seeking injunctive relief.’” *Gray*, 279 F.R.D. at 520 (N.D. Cal. 2011) (quoting  
25 *Baby Neal*, 43 F.3d at 58). In this inquiry, courts do not “examine the viability or bases of class  
26 members’ claims for declaratory and injunctive relief, but only to look at whether class members  
27  
28



1 seek uniform relief from a practice applicable to all of them.” *Rodriguez v. Hayes*, 591 F.3d  
2 1105, 1125 (9th Cir. 2011).

3 The claims raised by Plaintiffs in this action are precisely the sort that Rule  
4 23(b)(2) was designed to facilitate. Rule 23(b)(2)’s primary role “has always been the  
5 certification of civil rights class actions.” *Parsons*, 754 F.3d at 686; *see also Amchem Prods.,*  
6 *Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Plaintiffs seek broad declaratory and injunctive  
7 relief—system wide improvements to Stanford’s Discriminatory Leave Policies—on behalf of a  
8 large class of all Stanford students who have a mental health disability and have been or fear  
9 being subjected to Stanford’s Discriminatory Leave Policies.

10 Additionally, Plaintiffs seek only class-wide injunctive relief to address the alleged  
11 deficiencies, and do not seek any damages. Therefore, certification of the proposed class under  
12 Rule 23(b)(2) is proper. Further, in light of the fact that the claims of all class members are tied  
13 to Stanford’s affirmative, program-wide obligations to provide programs and services in a  
14 nondiscriminatory fashion, a failure to certify the class could result in duplicative claims and  
15 attendant risk of inconsistent judgments. Because Stanford has acted and/or failed to act on  
16 grounds generally applicable to the class as a whole, final declaratory and injunctive relief with  
17 respect to the class as a whole is appropriate.

18  
19  
20 **VI. CONCLUSION**

21 For the foregoing reasons, Plaintiffs respectfully request that the Court certify the class,  
22 appoint Named Plaintiffs as the class representatives, and appoint Disability Rights Advocates as  
23 class counsel.

24 DATED: July 16, 2018

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES

26  
27 

28 Maia Goodell, Attorneys for Plaintiffs