

1 DISABILITY RIGHTS ADVOCATES
 2 STUART SEABORN (Bar No. 198590)
 3 REBECCA J SOBIE (Bar No. 179562)
 4 SEAN BETOULIERE (Bar No. 308645)
 5 2001 Center Street, Fourth Floor
 6 Berkeley, California 94704-1204
 7 Telephone: (510) 665-8644
 8 Facsimile: (510) 665-8511
 9 rsobie@dralegal.org
 10 sbetouliere@dralegal.org
 11 sseaborn@dralegal.org

12 Attorneys for Plaintiffs

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 14 **COUNTY OF LOS ANGELES**

15 JANE DOE and MARY ROE, individuals,

16 Plaintiffs,

17 v.

18 COUNTY OF LOS ANGELES, a public
19 entity; and DOES 1-10

20 Defendants.

21 **Case No. 21STCV27868**

22 **PLAINTIFFS' COMPLAINT FOR
23 DAMAGES AND INJUNCTIVE RELIEF**

- 24 1. Disability Discrimination in Violation of FEHA
- 25 2. Unlawful Psychological Inquiry in Violation of FEHA
- 26 3. Unlawful Withdrawal of Offer in Violation of FEHA
- 27 4. Failure to Engage in the Interactive Process in Violation of FEHA
- 28 5. Failure to Provide Reasonable Accommodations in Violation of FEHA

[Jury Trial Demanded]

DISABILITY RIGHTS ADVOCATES
 2001 CENTER STREET, FOURTH FLOOR
 BERKELEY, CALIFORNIA 94704-1204
 (510) 665-8644

1 Plaintiffs Jane Doe and Mary Roe¹ (“Plaintiffs”) allege as follows:

2 **INTRODUCTION**

3 1. This action challenges the Los Angeles County (“County”) Department of Children
4 and Family Services’ (“DCFS”) discrimination against Plaintiffs based on false assumptions
5 about their mental health, as well as the County’s discriminatory policies and practices relating
6 to its employment application and hiring process for social work trainees, which discriminate
7 against qualified applicants with mental health disabilities in violation of California law.

8 2. Plaintiffs Jane Doe and Mary Roe are graduates of the Master of Social Work
9 (“MSW”) program at the University of Southern California (“USC”).

10 3. As MSW students at USC, Plaintiffs were selected to participate in the County DCFS’
11 federally funded Master of Social Work Trainee Program (“Trainee Program”), which provides
12 MSW students with an \$18,500 educational stipend for each year of their studies, a supervised
13 DCFS field internship assignment, and employment in the Children’s Social Worker II position
14 with DCFS upon graduation.

15 4. Plaintiffs Jane Doe and Mary Roe were high achieving and diligent students (both
16 graduated with high honors from their undergraduate institutions and at the top of their graduate
17 class), who are devoted to the field of social work and were committed to bringing their talents
18 and hard work to DCFS, its clients, and the community.

19 5. Plaintiff Jane Doe has worked with Los Angeles area parents and youth for years, has
20 extensive experience as a counselor and case manager, and graduated from USC’s MSW
21 program with a 3.93 GPA.

22 6. Plaintiff Mary Roe, a DACA recipient and the first in her family to attend college, also
23 has years of experience as a counselor and case manager for Los Angeles area youth; she
24 graduated from USC’s MSW program with a GPA of 4.0.

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26 _____
27 ¹ Because this case involves the sensitive and highly personal matter of Plaintiffs’ mental health,
28 they have filed this action under pseudonyms to preserve their privacy. A motion to proceed
pseudonymously will follow.

1 7. In early 2020, mid-way through their first year of graduate school, Plaintiffs
2 successfully interviewed with the County’s DCFS, and were offered supervised internship
3 placements with DCFS, to be followed by permanent Children’s Social Worker-II positions on
4 completion of their internship hours.

5 8. However, before either Plaintiff could begin work, they were each required to undergo
6 a mandatory psychological evaluation, during which the County asked them about previous
7 mental health diagnoses, medications, and treatment; their past experiences of sexual abuse; and
8 other topics with no bearing on Plaintiffs’ ability to perform their future jobs.

9 9. On the basis of these unnecessary and unlawful evaluations, the County rescinded
10 Plaintiffs’ offers for the internship placements and the Children’s Social Worker-II jobs they had
11 spent years working toward.

12 10. This decision seems to have stemmed entirely from the County’s stigma-based
13 assumptions about what people with a history of mental health diagnoses are like, and what they
14 can do: when asked to identify a single specific job duty that Plaintiffs supposedly could not
15 perform, or what sort of safety risk it believed Plaintiffs posed, the County repeatedly refused to
16 offer any response.

17 11. After making the decision to rescind Plaintiffs’ offers, the County failed to engage in
18 a good faith “interactive process” dialogue to explore possible accommodations, as the law
19 requires. As a matter of policy, the County refused to provide Plaintiffs with copies of their
20 psychological assessments, refused to give Plaintiffs any information about the job duties the
21 County believed they could not perform or the risk they supposedly posed, and refused to
22 consider or discuss any potential accommodations, thus making any genuine and good faith
23 dialogue about potential ways to address the County’s unspecified concerns impossible.

24 12. Both Plaintiffs pursued the County’s two-step internal process to appeal the decision
25 to rescind their offers. Following the first-level appeals, whereby both Jane Doe and Mary Roe
26 presented reports from an independent psychologist confirming their ability to safely and
27 effectively perform the duties of the Children’s Social Worker-II position, the County modified
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1 their work restrictions to be even *more* restrictive, without explanation or rationale. The County
2 further denied both Plaintiffs’ second-level appeal requests, continued to deny Plaintiffs the
3 opportunity to review or discuss the rationale for the restrictions, refused to consider any
4 possible accommodations, and upheld the rescission of their job offers without explanation.

5 13. Plaintiffs Jane Doe and Mary Roe bring this action to compel the County to change
6 its policies and practices that discriminate against Training Program participants with mental
7 health disabilities, and for compensation for harms caused by the County’s discriminatory acts
8 and omissions.

9 14. Plaintiffs seek declaratory relief, compensatory damages, lost wages and other
10 compensation, lost employment benefits, reinstatement, front pay, emotional distress damages,
11 attorneys’ fees and costs, as well as other appropriate relief as determined by this Court.

12 **PARTIES AND JURISDICTION**

13 15. Plaintiff Jane Doe is an individual, and at all relevant times mentioned herein was a
14 resident of California.

15 16. Plaintiff Mary Roe is an individual, and at all relevant times mentioned herein was a
16 resident of California.

17 17. Plaintiff Jane Doe has an actual “disability” and a record of a “disability” and/or is
18 regarded as having a “disability” within the meaning of the Fair Employment and Housing Act
19 (FEHA).

20 18. Plaintiff Mary Roe has an actual “disability” and a record of a “disability” and/or is
21 regarded as having a “disability” within the meaning of the FEHA.

22 19. Plaintiffs Jane Doe and Mary Roe were and are qualified to perform all the essential
23 duties of the DCFS Trainee Program field placement position, and the Children’s Social Worker
24 II position.

25 20. Defendant County of Los Angeles is a public entity with its central offices located in
26 the City of Los Angeles. The Department of Children and Family Services is a division of the
27 County.

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1 21. The County is a covered entity or employer within the meaning of the FEHA, as is
2 the County DCFS.

3 22. The true names and capacities of the defendants named herein as Does One through
4 Ten, inclusive, are unknown to Plaintiffs, who therefore sue such defendants by fictitious names
5 pursuant to California Code of Civil Procedure § 474.

6 23. Plaintiffs are informed and believe, and on this basis allege, that each Defendant was
7 the agent of every other Defendant and was at all times relevant to this Complaint acting within
8 the scope of such agency.

9 **ADMINISTRATIVE EXHAUSTION**

10 24. On April 30, 2021, Plaintiffs filed Charges of Discrimination with the United States
11 Equal Employment Opportunities Commission (“EEOC”) and the Department of Fair
12 Employment and Housing (“DFEH”) against Defendant.

13 25. Plaintiffs received “Right to Sue” letters from the DFEH dated May 3, 2021.

14 26. Plaintiffs received “Right to Sue” letters from the EEOC dated May 13, 2021.

15 27. Defendants at all times herein mentioned were the agents and employees of their co-
16 Defendants and in doing the things herein alleged were acting within the course and scope of
17 such agency and with the permission and consent of their co-Defendants.

18 28. This complaint was filed within 87 days of Plaintiffs’ receipt of the Right to Sue
19 letters from the DFEH, and within 77 days of Plaintiffs’ receipt of the Right to Sue letters from
20 the EEOC.

21 **GENERAL FACTUAL ALLEGATIONS**

22 **Background on the DCFS Trainee Program**

23 29. The County operates a Master of Social Work Trainee Program in order to recruit
24 qualified candidates for Children’s Social Worker II positions with DCFS—and to address a
25 critical shortage of qualified professionals in the field. The Trainee Program provides
26 professional, educational, and monetary support to social work students intending to pursue a
27 career in the field of public child welfare. The Trainee Program provides qualified student
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1 interns with an \$18,500 per-year school scholarship, a DCFS field placement internship for
2 second year graduate social work students in a “Master Social Worker Trainee” position, and
3 placement in a Children’s Social Worker II position upon graduation. The program is funded
4 through Title IV-E of the Social Security Act.

5 **Jane Doe’s and Mary Roe’s Participation in the DCFS Trainee Program**

6 30. In the fall semester of 2019, Plaintiffs Jane Doe and Mary Roe commenced the MSW
7 program at the USC, one of the leading graduate social work programs in the United States.

8 31. USC’s two-year curriculum provides both educational training and fully-supervised
9 field internship placements to prepare students for careers in social work.

10 32. Prior to the beginning of the fall semester of 2019, both Plaintiffs were selected to
11 participate in DCFS’ competitive Trainee Program. They were both thrilled, given that the
12 Trainee Program was a great fit for their interests, past experience, and career goals.

13 33. In or about August 2019, Plaintiffs entered into contracts with the County, entitled
14 “Title IV-E Master of Social Work Trainee Agreement,” outlining the following, *inter alia*:

- 15 a. The County’s commitment to provide each Plaintiff with an annual stipend of
16 \$18,500 for each year of participation in the Trainee Program;
17 b. The County’s agreement to interview each Plaintiff for field placement
18 assignments during their second year in the MSW program; and
19 c. An offer of employment in a Children’s Social Worker II position with DCFS
20 within 120 days of receiving notice that Jane Doe and Mary Roe had received
21 their MSW degrees.

22 34. In exchange and consideration, each Plaintiff agreed to, *inter alia*:

- 23 a. Maintain good academic standing and satisfactory performance in their field
24 placement assignments;
25 b. Be interviewed and pre-screened for field placement with DCFS and for
26 employment qualification for the Children’s Social Worker II position, which
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- 1 may include an interview, criminal background clearance, and psychological
2 and medical evaluation;
- 3 c. Accept DCFS’s offer of employment and report to work on the date issued;
4 and
- 5 d. Perform continuous and satisfactory full-time work as a DCFS Children’s
6 Social Worker II for a minimum length of time corresponding to each year of
7 participating in the Trainee Program.

8 35. Until the time that DCFS unilaterally rescinded Plaintiffs’ internship and employment
9 offers, each of them fulfilled *all* of their obligations pursuant to their contracts with the County.

10 36. From September 2019 to May 2020, as part of the Trainee Program, Plaintiff Jane
11 Doe focused her coursework on preparing herself for the Children’s Social Worker II position,
12 maintained a 3.93 GPA, and successfully participated in a 450 hour field internship at a
13 counseling center—which entailed conducting one-on-one psychotherapy with DCFS-involved
14 mothers and caregivers. Plaintiff Doe received positive feedback and performance evaluations
15 from supervisors throughout her time in this internship position.

16 37. Plaintiff Jane Doe is able to perform the essential duties of the Trainee Program
17 internship and the CHILDREN’S SOCIAL WORKER-II position, and has in fact successfully
18 performed the essential functions of these positions already, as demonstrated by her history of
19 working with an overlapping and similar population of clients for many years without incident.

20 38. From September 2019 to May 2020, as part of the Trainee Program, Mary Roe
21 focused her coursework on preparing herself for the Children’s Social Worker II position,
22 maintained a 4.0 GPA, and successfully participated in and received positive feedback and
23 performance evaluations during her 450-hour field internship at a pediatric dental clinic—which
24 involved interacting with children and their parents, including a population similar to that served
25 by DCFS. Between April 2020 and July 2021, Mary Roe also continued to provide case
26 management and counseling services for Los Angeles area youth and their families at a local
27 nonprofit that she had worked with in various capacities since 2018.

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1 39. Like Jane Doe, Plaintiff Mary Roe is able to perform the essential duties of the
2 Trainee Program Children’s Social Worker II position, and has successfully performed such
3 duties while working with an overlapping and similar population of clients for many years
4 without incident.

5 **Defendants’ Discrimination Against Plaintiffs on the Basis of Mental Disability**

6 40. Jane Doe and Mary Roe both fulfilled all the obligations and requirements for the
7 Trainee Program during their first year of graduate school, and in April 2020 both received
8 conditional job offers from DCFS for their second-year field placement internships, following
9 successful interviews with DCFS.

10 41. Following the job offers, the County required each Plaintiff to undergo an invasive
11 and unwarranted psychological evaluation, which entailed the administration of psychological
12 assessments and an interview by a psychologist. This process included questions about Plaintiffs’
13 past mental health diagnoses, medications, and treatment; their experience of childhood abuse;
14 their family history, including their relationships to their parents; their experiences at school;
15 their sexual history and behavior; their past exposure to physical or sexual trauma; and whether
16 they have ever had suicidal thoughts.

17 42. The County’s psychological evaluation also included the administration of two
18 psychological assessment instruments, the Detailed Assessment of Posttraumatic Stress
19 (“DAPS”), and the Minnesota Multiphasic Personality Inventory-2 (“MMPI-2”).

20 43. Neither the DAPS nor the MMPI-2 were designed to assess an applicant’s ability to
21 perform the essential duties of the DCFS Trainee Program internship, or of the County’s
22 Children’s Social Worker II position.

23 44. Indeed, the DAPS and MMPI-2 were not designed or intended to assess any
24 applicant’s ability to perform any job. Rather, they were designed to be used (in combination
25 with other diagnostic tools and methods) to diagnose post-traumatic stress disorder and other
26 mental health conditions.

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1 45. These tests, and the other invasive questions asked as part of DCFS’ psychological
2 assessment process, have no bearing on a Trainee Program participant’s ability to perform the
3 essential duties of the DCFS internship or the Children’s Social Worker II job.

4 46. Such tests and questions are also not consistent with business necessity: on
5 information and belief, Los Angeles County is the only county in California that requires Trainee
6 Program participants and applicants for Children’s Social Worker positions to undergo
7 psychological evaluations of this sort before beginning work.

8 **Discriminatory Rescission of Job Offers**

9 47. After forcing Plaintiffs to submit to its intrusive and unnecessary interview and
10 “assessment” process, in August 2020 the County withdrew its conditional job offers for each of
11 the Plaintiffs, based solely on the DCFS-contracted psychologists’ unsupported and concealed
12 conclusions from the evaluations.

13 48. The County refused to provide either Plaintiff with any factual support or information
14 whatsoever describing the rationale for its conclusions and decisions following the psychological
15 evaluations, refused to provide copies of the evaluations, and refused to engage in any dialogue
16 about possible reasonable accommodations.

17 49. Both Jane Doe and Mary Roe requested reviews of the County’s withdrawals of their
18 job offers, first filing internal appeals that separately presented supportive reports from an
19 independent psychologist, confirming they do not exhibit behavioral dysfunctions, and
20 recommending that they be considered for reevaluation. However, the County denied their
21 appeals, upholding its decisions to rescind their conditional job offers, again without providing
22 any information about the factual basis for the denials.

23 50. In October 2020, the County held so-called “Interactive Process Meetings” for each
24 of the Plaintiffs, wherein it continued its refusal to provide information regarding the bases for its
25 decisions, would not provide copies of their psychological assessments, and would not identify
26 any job duties that Plaintiffs allegedly could not perform or the sort of safety risks they
27 supposedly posed.
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1 51. Although Plaintiffs are able to work successfully without accommodation, they both
2 requested consideration of potential accommodations during the County’s “Interactive Process
3 Meetings” in an attempt to address the County’s unspecified concerns, but the County again
4 declined to discuss any potential job accommodations.

5 52. In November 2020, Plaintiffs both submitted second level appeals to the County
6 regarding its decision to withdraw their internship and employment offers. The County denied
7 both those appeals in January 2021.

8 53. Plaintiffs received letters from DCFS dated June 23, 2021, demanding repayment of
9 the \$18,500 Trainee Program stipends advanced to each of them, plus interest if not repaid in full
10 by July 31, 2021.

11 54. Because they were contractually committed to pursue their second-year internships
12 with DCFS, Plaintiffs were not able to apply for other internship opportunities.

13 55. The MSW program requires participation in field internships each semester. Due to
14 the County’s withdrawal of their job offers and the lengthy review and appeal process that
15 followed, Plaintiffs were foreclosed from selecting other internship opportunities and instead
16 ended up in the only placements that were available late in the process, to their detriment.

17 56. Because they were forced to begin these replacement internships over two months
18 late, each Plaintiff had to make up lost time by working extra hours once they started, which also
19 caused stress and emotional distress for them both.

20 57. Further, in order to participate in the Trainee Program, Plaintiffs had to commit to
21 eight units of DCFS coursework during both years of the MSW program, in addition to various
22 DCFS orientation and training sessions and a child welfare focused first-year internship/field
23 placement, all to the detriment of taking other elective courses and pursuing other opportunities
24 in preparation for their new careers.

25 58. By choosing to pursue the Trainee Program, Jane Doe and Mary Roe were forced to
26 forego other available stipends or scholarships and other tracks of study, and other elective
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1 courses at USC, and they were foreclosed from numerous other educational and employment
2 opportunities.

3 59. The County’s discriminatory rescission of Jane Doe’s and Mary Roe’s job offers,
4 which led to the devastation of their educational and professional plans among other long-term
5 damages, has resulted in significant and ongoing emotional distress for them both, including
6 heightened stress and anxiety, harm to their confidence, fear that their future careers would be
7 derailed before they even began, continuing fear that their careers will be negatively impacted
8 currently and in the future, and the intrinsic harm of being discriminated against on the basis of
9 their protected status as people with disabilities.

10 60. In addition, Jane Doe and Mary Roe were both forced to expend countless hours
11 advocating in attempts to restore their internships, trying to obtain information from the County
12 and DCFS related to the rationale for the work restrictions, seeking details regarding the
13 County’s rescission of their job offers and how that related to their psychological evaluations, and
14 pursuing the County’s multiple levels of appeal, which ultimately resulted in a continual and
15 unwarranted refusal of the County to provide information or to change course. The frustration
16 and length of the process led to a high level of emotional distress for each of the Plaintiffs, led to
17 monetary expense, and greatly detracted from their second year MSW studies.

18 61. By engaging in the acts and omissions described herein, the County has discriminated
19 against Plaintiffs in violation of FEHA, as more specifically set out below.

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21 **FIRST CAUSE OF ACTION**

22 **Disability Discrimination in Violation of California’s Fair Employment and Housing Act**
23 **(Gov. Code §§ 12940(a), (c))**

24 62. Plaintiffs incorporate the preceding and subsequent paragraphs of this
25 Complaint as though fully set forth herein.

26 63. Under California’s Fair Employment and Housing Act (FEHA), an employer may not
27 “refuse to hire or employ [a] person,” “refuse to select [a] person for a training program leading
28 to employment,” “bar or discharge [a] person from employment or from a training program

1 leading to employment,” or otherwise “discriminate [. . .] in terms, conditions, or privileges of
2 employment” because of a person’s mental disability. Gov. Code § 12940(a).

3 64. FEHA also prohibits employers and others from “discriminat[ing] against any person
4 in the selection, termination, training, or other terms or treatment of that person in any
5 apprenticeship training program, [or] any other training program leading to employment”
6 because of the “mental disability . . . of the person discriminated against.” Gov. Code § 12940(c).

7 65. These prohibitions against discrimination because of mental disability protect not
8 only the people who have mental disabilities that “limit[] a major life activity,” but also people
9 who “have a record or history” of mental disability that is known to the employer, or who are
10 “regarded or treated” by an employer as having such a disability. Gov. Code. §§ 12926(j)(1), (3),
11 (4). They also protect people who are “regarded or treated by the employer . . . as having, or
12 having had, a mental or psychological disorder or condition that has no present disabling effect,
13 but that may become a mental disability.” Gov. Code § 12926(j)(5).

14 66. Defendant County of Los Angeles and its subsidiary Department of Children and
15 Family Services are covered entities and employers under FEHA. See Gov. Code. § 12926(d).

16 67. Plaintiff Jane Doe is a person with a mental disability under FEHA, because she has
17 and/or is perceived to have a “mental or psychological disorder or condition” that limits a major
18 life activity and/or has a “record or history” of such a disorder or condition that is known to
19 Defendant County of Los Angeles. *See* Gov. Code §§ 12926(j)(1), (3).

20 68. Plaintiff Jane Doe is also a person with a mental disability under FEHA because she
21 is “regarded or treated” by LAC as “having, or having had” a “mental condition that makes
22 achievement of a major life activity difficult,” and/or a “psychological disorder or condition that
23 has no present disabling effect, but that may become a mental disability.” Gov. Code §§
24 12926(j)(4), (5); see also Gov. Code § 12926(o) (defining protected “mental disability” to
25 include “a perception that the person has” that characteristic).

26 69. Plaintiff Mary Roe is a person with a mental disability under FEHA, because she has
27 a “mental or psychological disorder or condition” that limits a major life activity and/or has a
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1 “record or history” of such a disorder or condition that is known to Defendant. See Gov. Code §§
2 12926(j)(1), (3).

3 70. Plaintiff Mary Roe is also a person with a mental disability under FEHA because she
4 is “regarded or treated” by LAC as “having, or having had” a “mental condition that makes
5 achievement of a major life activity difficult,” and/or a “psychological disorder or condition that
6 has no present disabling effect, but that may become a mental disability.” Gov. Code §§
7 12926(j)(4), (5); see also Cal. Gov. Code § 12926(o).

8 71. Plaintiffs Jane Doe and Mary Roe are able to perform all essential functions and
9 duties expected of participants in Defendant’s Title IV Master of Social Work Trainee Program,
10 including all essential functions and duties associated with the DCFS’ field placement position
11 internship and its “Children’s Social Worker II” position—as evinced by (among other things)
12 their past and current performance of similar work, excellent evaluations and recommendations,
13 and successful completion of the University of Southern California’s competitive and prestigious
14 Master of Social Work program. Gov. Code § 12926(f) (defining “essential functions”).

15 72. By withdrawing Plaintiffs’ conditional field placement offers and discharging them
16 from its Title IV Master of Social Work Trainee Program because of their mental health
17 disabilities, their history or record of such disabilities, or Defendant’s perception that they have,
18 had, or will have such disabilities, Defendant discriminated against Plaintiffs in violation of
19 FEHA. See Cal. Gov. Code §§ 12940(a), (c).

20 73. This discrimination against Plaintiffs was intentional, willful, malicious, or done with
21 reckless disregard for the rights, obligations, and prohibitions imposed by that law. See e.g., Gov.
22 Code §§ 12940(a), (c).

23 74. Plaintiffs are informed and believe that Defendant’s discrimination against them is
24 part of a longstanding policy or practice of discrimination against prospective employees who
25 have mental disabilities, who have had such disabilities, or who are regarded by Defendants as
26 having such disabilities.

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1 80. To be consistent with “business necessity,” a psychological examination must be
2 “vital to the business.” 2 Cal. Code. Regs. § 11065(b).

3 81. The broad post-offer examinations that Defendant imposes on its Master of Social
4 Work Trainee Program participants – which require them to answer questions about an array of
5 highly-sensitive and irrelevant matters, including (among other things) their past mental health
6 diagnoses, medications, and treatment; their experience of childhood abuse; their family history,
7 including their relationships to their parents; their experiences at school; their sexual history and
8 behavior; their past exposure to physical or sexual trauma; and whether they have ever had
9 suicidal thoughts – are not “tailored to assess” any aspect of a participant’s ability to carry out
10 the essential functions of their field program placements or their future jobs with the County of
11 Los Angeles. Such questions also have no conceivable bearing on whether Trainee Program
12 participants would pose a danger to themselves or others in the workplace, and are not “vital” to
13 any aspect of Defendant’s business.

14 82. By requiring Plaintiffs to submit to such overbroad, irrelevant, and invasive
15 questions as a condition of employment, Defendant subjected them to an unlawful psychological
16 inquiry in violation of FEHA. Gov. Code § 12940(e); see also 2 Cal. Code. Regs. § 11071(b).

17 83. This discrimination against Plaintiffs was intentional, willful, malicious, or done with
18 reckless disregard for the rights, obligations, and prohibitions imposed by that law. See *id.*

19 84. Plaintiffs are informed and believe that Defendant has a longstanding policy or
20 practice of subjecting its Master of Social Work Trainee Program participants to unlawful
21 psychological inquiries, as described above.

22 85. As a direct result of Defendant’s discriminatory conduct, Plaintiffs have suffered and
23 continue to suffer general and special damages (including but not limited to emotional distress
24 damages, medical expenses, lost wages and benefits, front pay, and other economic losses) in an
25 amount to be proven at trial.

26 86. As a remedy for Defendant’s discriminatory conduct, Plaintiffs are entitled to
27 injunctive and declaratory relief, damages as set forth above, and reasonable attorneys’ fees and
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1 costs.

2 WHEREFORE, Plaintiffs pray for relief as set forth below.

3 **THIRD CAUSE OF ACTION**

4 **Unlawful Withdrawal of Offer in Violation of**
5 **California’s Fair Employment and Housing Act**
6 **(Gov. Code §§ 12940(a)(1); 2 Cal. Code. Regs. § 11071(c))**

7 87. Plaintiffs incorporate the preceding and subsequent paragraphs of this Complaint as
8 though fully set forth herein.

9 88. Under California’s Fair Employment and Housing Act, an offer of employment may
10 only be withdrawn based on the results of a psychological inquiry if the employer determines
11 that “the applicant is unable to perform the essential duties of the job with or without reasonable
12 accommodation, or that the applicant with or without reasonable accommodation would
13 endanger the health or safety of the applicant or of others.” Cal. Code. Regs. § 11071(c); see also
14 Gov. Code § 12940(a)(1) (criteria for refusing to hire); Gov. Code § 12926(f) (considerations for
15 whether a job duty is essential); 2 Cal. Code. Regs. § 11065(e) (same).

16 89. Whether an applicant poses an “imminent and substantial degree of risk” to
17 themselves or others that cannot be mitigated and is sufficient to justify rescission of a job offer
18 is an affirmative defense, on which the employer bears the burden of proof. 2 Cal. Code. Regs.
19 §§ 11067(b), (c).

20 90. An employer’s determination on this issue must be based on “a reasonable medical
21 judgment that relies on the most current medical knowledge and/or on the best available
22 objective evidence,” and must consider “the duration of the risk,” “the nature and severity of the
23 potential harm,” the likelihood that the harm will occur, the imminence of the harm, and
24 “relevant information about an employee’s past work history.” 2 Cal. Code. Regs. § 11067(e).

25 91. Defendant’s vague, pro forma suggestions that Plaintiffs would not be able to perform
26 unspecified essential functions of their supervised field program placements or their future jobs,
27 and that no accommodation was possible—described in more detail above—are wholly
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1 insufficient to justify rescission of their job offers. See Cal. Code. Regs. § 11071(c); see also
2 Gov. Code § 12940(a)(1) (criteria for refusing to hire).

3 92. Similarly, Defendant’s apparent conclusion that Plaintiffs posed an unmitigable risk
4 of harm to themselves or others—made without any consideration of the relevant factors, and in
5 the face of substantial conflicting evidence (including favorable evaluations from an independent
6 psychologist, stellar academic records, letters of support from other employers, and a history of
7 successfully performing similar work)—falls far short of the evidence required to establish that
8 affirmative defense. See 2 Cal. Code. Regs. § 11067(e).

9 93. By withdrawing Plaintiffs’ job offers without any indication that they would be
10 unable to perform essential job functions and without any evidence to support a finding of
11 imminent and substantial risk of harm, Defendant discriminated against Plaintiffs in violation of
12 FEHA.

13 94. This discrimination against Plaintiffs was intentional, willful, malicious, or done with
14 reckless disregard for the rights, obligations, and prohibitions imposed by that law.

15 95. Plaintiffs are informed and believe that Defendant has a longstanding policy or
16 practice of unlawfully withdrawing job offers from Master of Social Work Trainee Program
17 participants on the basis of psychological inquiries.

18 96. As a direct result of Defendant’s discriminatory conduct, Plaintiffs have suffered and
19 continue to suffer general and special damages (including but not limited to emotional distress
20 damages, medical expenses, lost wages and benefits, front pay, and other economic losses) in an
21 amount to be proven at trial.

22 97. As a remedy for Defendant’s discriminatory conduct, Plaintiffs are entitled to
23 injunctive and declaratory relief, damages as set forth above, and reasonable attorneys’ fees and
24 costs.

25 WHEREFORE, Plaintiffs pray for relief as set forth below.

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Engage in the Interactive Process in Violation of**
3 **California’s Fair Employment and Housing Act**
4 **(Gov. Code § 12940(n); 2 Cal. Code. Regs. § 11069(a))**

5 98. Plaintiffs incorporate the preceding and subsequent paragraphs of this Complaint as
6 though fully set forth herein.

7 99. Under California’s Fair Employment and Housing Act, an employer must engage in a
8 “timely, good faith[] interactive process” in response to a request for reasonable accommodation
9 by an employee or applicant with a disability. Gov. Code § 12940(n); 2 Cal. Code. Regs. §
10 11069(a). Failure to abide by this requirement “provides an independent basis for liability.”
11 *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 61.

12 100. Once Defendant made the (incorrect) determination that Plaintiffs’ actual or
13 perceived mental disabilities would prevent them from performing some essential duty or pose
14 an “imminent and substantial degree of risk” to themselves or others, it had a duty to engage in a
15 genuine interactive process with Plaintiffs to explore possible accommodations. Plaintiffs
16 participated in this process in good faith. Defendant, however, did not.

17 101. As the Court of Appeal for the Second District has held, “the interactive process is
18 at the heart of the FEHA’s process and essential to accomplishing its goals. It is the primary
19 vehicle for identifying and achieving effective adjustments which allow disabled employees to
20 continue working without placing an undue burden on employers.” *Gelfo*, 140 Cal.App.4th at 61
(citation and punctuation marks omitted).

21 102. To comply with FEHA’s requirement of “good faith” participation in the interactive
22 process, each party must “undertake reasonable efforts to communicate its concerns, and make
23 available to the other information which is available, or more accessible, to one party.” *Id.* at 62
24 fn. 22; see also *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 261-67 (holding that
25 FEHA’s interactive process mandate requires both sides to “communicate directly and
26 “exchange essential information,” and applying standard).

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DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, FOURTH FLOOR
BERKELEY, CALIFORNIA 94704-1204
(510) 665-8644

1 103. Defendant’s perfunctory “interactive process” here – in which it failed to identify
2 any essential job duties that Plaintiffs allegedly could not perform, refused to consider or explain
3 the ways in which Plaintiffs supposedly posed a substantial risk of harm to themselves or others,
4 refused to turn over any of the information it relied on in reaching these conclusions, and stated
5 flatly that no accommodations would be discussed because none were available – did not even
6 come close to meeting its obligation to engage in the interactive process in “good faith.” See
7 *Gelfo*, 140 Cal.App.4th 62, fn. 22.

8 104. Plaintiffs dispute that their past or present mental health diagnoses have any bearing
9 on their ability to carry out the essential functions of their field program placements or their
10 contemplated future jobs with Defendant, and deny that their employment would pose any risk of
11 harm to themselves or others (let alone an “imminent and significant” one). However, because
12 Defendant believed otherwise, it had an obligation to explore possible accommodations in good
13 faith once Plaintiffs requested that it do so.

14 105. By failing to engage in a good faith interactive process that included clear
15 communication of its concerns, the provision of essential information, and a genuine effort to
16 identify effective accommodations, Defendant discriminated against Plaintiffs in violation of
17 FEHA. See Gov. Code § 12940(n); 2 Cal. Code. Regs. § 11069(a).

18 106. This discrimination against Plaintiffs was intentional, willful, malicious, or done
19 with reckless disregard for the rights, obligations, and prohibitions imposed by that law. See *id.*

20 107. Plaintiffs are informed and believe that Defendant has a longstanding policy or
21 practice of failing to engage in a good faith interactive process in response to requests for
22 reasonable accommodation of an actual or perceived mental disability.

23 108. As a direct result of Defendant’s discriminatory conduct, Plaintiffs have suffered
24 and continue to suffer general and special damages (including but not limited to emotional
25 distress damages, medical expenses, lost wages and benefits, front pay, and other economic
26 losses) in an amount to be proven at trial.

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1 109. As a remedy for Defendant’s discriminatory conduct, Plaintiffs are entitled to
2 injunctive and declaratory relief, damages as set forth above, and reasonable attorneys’ fees and
3 costs.

4 WHEREFORE, Plaintiffs pray for relief as set forth below.

5 **FIFTH CAUSE OF ACTION**

6 **Failure to Provide Reasonable Accommodations in Violation of**
7 **California’s Fair Employment and Housing Act**
8 **(Gov. Code § 12940(m); 2 Cal. Code. Regs. § 11068(a))**

9 110. Plaintiffs incorporate the preceding and subsequent paragraphs of this Complaint as
10 though fully set forth herein.

11 111. Under California’s Fair Employment and Housing Act, employers have an
12 “affirmative duty” to make reasonable accommodations. 2 Cal. Code. Regs. § 11068(a). The
13 failure to “make reasonable accommodation for the known physical or mental disability of an
14 applicant or employee” is an independently-actionable form of discrimination. Gov. Code §
15 12940(m); see *Gelfo*, 140 Cal.App.4th at 55 (independent cause of action).

16 112. Plaintiffs dispute that their past or present mental health diagnoses have any bearing
17 on their ability to carry out the essential duties of their field program placements or their
18 contemplated future jobs with Defendant, and deny that their employment would pose an
19 imminent and significant risk of harm to themselves or others.

20 113. However, because Defendant believed otherwise, it had an obligation to provide
21 reasonable accommodations that would enable Plaintiffs to perform the essential duties of their
22 jobs, and to mitigate whatever unspecified risk it was that Defendant perceived.

23 114. For example, if Defendant was worried about Plaintiffs’ capacity to work with
24 clients, it could have imposed a “probationary” period of more intensive oversight to evaluate
25 these concerns – oversight that Defendant was obliged to provide anyway, as part of Plaintiffs’
26 supervised field placement internships.

27 115. Plaintiffs attempted to explore possible accommodations with Defendant, though
28 their ability to do so effectively was hampered by Defendant’s refusal to reveal what essential

1 job duties it believed Plaintiffs could not perform, or what sort of risk it believed they posed.
2 However, Defendant refused to discuss or provide any possible accommodations.

3 116. By failing to reasonably accommodate whatever disability-related limitations or
4 risks Defendant believed applied to Plaintiffs, Defendant discriminated them in violation of
5 FEHA. See Gov. Code § 12940(m); 2 Cal. Code. Regs. § 11068(a).

6 117. This discrimination against Plaintiffs was intentional, willful, malicious, or done
7 with reckless disregard for the rights, obligations, and prohibitions imposed by that law. See *id.*

8 118. Plaintiffs are informed and believe that Defendant has a longstanding policy or
9 practice of failing or refusing to provide reasonable accommodations to its Master of Social
10 Work Trainee Program participants, even when Defendant believes that a participant's mental
11 disability makes some accommodation necessary.

12 119. As a direct result of Defendant's discriminatory conduct, Plaintiffs have suffered
13 and continue to suffer general and special damages (including but not limited to emotional
14 distress damages, medical expenses, lost wages and benefits, front pay, and other economic
15 losses) in an amount to be proven at trial.

16 120. As a remedy for Defendant's discriminatory conduct, Plaintiffs are entitled to
17 injunctive and declaratory relief, damages as set forth above, and reasonable attorneys' fees and
18 costs.

19 WHEREFORE, Plaintiffs pray for relief as set forth below.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for relief as follows:

22 1. For an order enjoining Defendant from engaging in the unlawful policies and
23 practices alleged herein, and such other injunctive relief as may be appropriate (including but not
24 limited to reinstatement);

25 2. For damages to compensate Plaintiffs for medical expenses, lost wages and
26 benefits, front pay, and other economic losses, in an amount to be proven at trial;

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- 3. For damages to compensate Plaintiffs for emotional distress, pain and suffering, damage to reputation, and other noneconomic harms, in an amount to be proven at trial;
- 4. For a declaration that the policies, practices, actions, and failures to act complained of herein are unlawful;
- 5. For reasonable attorneys' fees and costs;
- 6. For pre- and post-judgment interest as provided by law; and
- 7. For such other and further relief as the Court deems is just and proper.

JURY DEMAND

Plaintiffs demand trial by jury of all claims and causes of action so triable.

DATED: July 29, 2021

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES



Rebecca J Sobie
Sean Betouliere
Stuart Seaborn
Attorneys for Plaintiffs