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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**
14

15 **ANGELA FOWLER and MIGUEL**
16 **MENDEZ,**

17 Plaintiffs

18 vs.

19 **PSI SERVICES, LLC, and CALIFORNIA**
20 **DEPARTMENT OF INSURANCE,**

21 Defendant.
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Case No. 21CV000126

**COMPLAINT FOR DISABILITY
DISCRIMINATION IN VIOLATION OF
GOV'T CODE § 11135 ET SEQ.; THE
UNRUH CIVIL RIGHTS ACT, CIV.
CODE § 51 ET SEQ.; THE DISABLED
PERSONS ACT, CIV. CODE § 54 ET
SEQ.; AND FOR DECLARATORY
RELIEF**

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

10/12/2021 at 02:45:05 PM

By: Andrel Gospel, Deputy Clerk

1 Plaintiffs Angela Fowler and Miguel Mendez are informed and believe and allege as follows:

2 **I. INTRODUCTION**

3 1. This disability civil rights action is brought by two blind individuals, Angela Fowler and Miguel
4 Mendez (“Plaintiffs”) to challenge the failure of the California Department of Insurance (“CDI”) and
5 PSI Services, LLC (“PSI”), the private entity CDI contracts with, to ensure the accessibility of
6 California’s insurance agent licensing exam for blind applicants, in violation of California’s disability
7 access laws.

8 2. Plaintiff Angela Fowler was provisionally hired by an insurance carrier to become a sales agent,
9 pending her obtaining a California insurance license. She registered online to take an online CDI
10 licensing exam that is administered by PSI and was able to do so independently using the screen reading
11 software- Job Access with Speech (“JAWS”). However, when she attempted to take the licensing exam,
12 she was unable to because the online exam system is not accessible to blind persons who use screen
13 reading software.

14 3. In response to Ms. Fowler’s complaints, PSI initially told Ms. Fowler she could only take the
15 exam using a human reader as an accommodation. After she followed up with a demand letter from her
16 legal counsel, PSI stated she could take the exam with JAWS but only if she went through a
17 burdensome, lengthy accommodations process requiring her to secure additional paperwork from a
18 physician. As a result, because of Defendants’ failure to ensure the accessibility of the exam and the
19 delays she incurred in attempting to take the licensing exam, Ms. Fowler was unable to retain her
20 employment with the insurance carrier.

21 4. Similarly, Mr. Mendez would like to take the licensing exam but is deterred from doing so
22 because of Defendants’ failure to provide him and other blind applicants full and equal access to their
23 online exam.

24 5. California law requires Defendants to affirmatively make their online exams accessible to
25 persons with disabilities, including blind applicants who use screen-reading software, without forcing
26 such persons to engage in lengthy and burdensome accommodations processes. Because Defendants
27 have refused to do so, Plaintiffs are left with no choice but to file this lawsuit.

28

II. PARTIES

6. Plaintiff Angela Fowler resides in Yuba City in the State of California.

7. Ms. Fowler is blind, and thus has a disability as defined by Gov't Code § 12926, as incorporated by Civ. Code §§ 51(e)(1) and 54(b)(1).

8. Plaintiff Miguel Mendez resides in Alameda County in the State of California.

9. Mr. Mendez is blind, and thus has a disability as defined by Gov't Code § 12926, as incorporated by Civ. Code §§ 51(e)(1) and 54(b)(1).

10. Defendant CDI is a Department of the State of California and a state governmental entity with offices at 1901 Harrison Street, 6th Floor in Oakland.

11. PSI is a California business entity headquartered at 611 North Brand Boulevard, Tenth Floor in Glendale.

III. JURISDICTION AND VENUE

12. This court has subject matter jurisdiction pursuant to the Unruh Civil Rights Act, Civ. Code § 52(a) ("Unruh Act"); the Disabled Persons Act, Civ. Code § 54.3(a) ("DPA"); Government Code section 11139; and Code of Civil Procedure section 1060.

13. This Court has jurisdiction over Defendants because they are a branch of the state of California and a California business entity doing business in and with California.

14. Venue is proper in Alameda County because liability arises in part in Alameda County where Plaintiff- Mendez resides, because Defendant PSI does business in Alameda County, and because CDI and the California Attorney General have offices in Alameda County.

IV. FACTUAL ALLEGATIONS

A. CDI and PSI

15. CDI, which regulates insurance sales agents in California, hired PSI through a government contract that requires PSI to schedule and administer the regulatory licensing exam for insurance sales agents who wish to sell insurance in California.

16. PSI receives funds from CDI under the contract in exchange for PSI's scheduling and administration services.

17. PSI's administration and scheduling services include providing licensing exams over the Internet and communicating through websites and other online technology.

1 18. PSI offers administration of the online CDI licensing exam both at its own physical testing
2 centers and at applicants' own private locations via remote proctoring.

3 19. PSI's California state government contract triggers obligations that require PSI to ensure that any
4 electronic or information technology developed, procured, maintained, or used by a state governmental
5 entity—whether indirectly or through the use of state funds by other entities—complies with specific
6 technical accessibility requirements set under Government Code sections 11135(b) and 7405(a).

7 20. Invoking Government Code section 11135, the contract explicitly requires PSI's technology to
8 “comply with State and federal disability accessibility laws and standards, specifically Section 508 of the
9 Rehabilitation Act.”

10 21. PSI's government contract further triggers an obligation for PSI, as an entity that contracts to
11 provide electronic or information technology or related services under Gov't Code § 7405(b), to “resolve
12 any complaint regarding accessibility of its products or services that is brought to [its] attention.”

13 22. PSI's provision of a website to administer CDI's licensing exam over the Internet or use
14 technology within its testing facilities is the provision of electronic or information technology or related
15 services to a state entity.

16 **B. Ms. Fowler**

17 23. In October 2020, Ms. Fowler was recruited, interviewed, trained, and provisionally hired by an
18 insurance carrier to become a sales agent, pending her obtaining a California insurance license.

19 24. Subsequently, Ms. Fowler registered online through a website to take the CDI licensing exam on
20 November 9, 2020.

21 25. Ms. Fowler was able to independently register to take the CDI licensing exam using JAWS
22 screen reading software.

23 26. JAWS is a screen reading software that many blind persons, including Plaintiffs, use to convert
24 text and other visual information on a computer screen into synthesized speech read aloud or displayed
25 on a refreshable Braille device, such that a totally blind user can non-visually interact with computer
26 applications and electronic information on the Internet.

27 27. Ms. Fowler expected to take the exam using JAWS, just as she was able to independently register
28 for and schedule the exam using JAWS on a website.

1 28. However, when she attempted to start her exam on November 9, 2020, she was unable to do so
2 because the online exam system used by PSI does not comply with technical accessibility design
3 standards that would make the screen elements of the exam system compatible with screen readers
4 communicating the information on the screen in non-visual means.

5 29. For example, when she tried to accept PSI's terms and conditions, the buttons to accept or
6 decline presented identical "submit" labels to JAWS, making them indistinguishable.

7 30. During the registration process and commencement of the actual exam, Ms. Fowler was not
8 required to disable JAWS from running, as she was required to disable other running applications on her
9 computer.

10 31. Later that day, Ms. Fowler spoke with a PSI representative, and explained that she was
11 attempting to take the CDI licensing exam using the JAWS screen reader and was unable to do so
12 because of PSI's technical design of the system.

13 32. The representative then told Ms. Fowler that using a screen reader, including JAWS, was not an
14 available accommodation, and that she would have to take the exam using the accommodation of a
15 human assistant who would have to read the questions aloud to Ms. Fowler and then transcribe her oral
16 answers.

17 33. On November 24, 2020, Ms. Fowler corresponded by email with a PSI representative regarding
18 her taking the CDI licensing exam.

19 34. During that conversation, the PSI representative confirmed that PSI's online exam system is
20 inaccessible to persons using screen reading software, that Ms. Fowler could therefore not take the exam
21 using JAWS, and that she would have to request the accommodation of a human assistant to read and
22 transcribe answers to the exam for her.

23 35. Such a requirement put Ms. Fowler at considerable risk to her health, due to the ongoing
24 pandemic, while non-blind applicants had no such risk because they could take the exam privately in
25 their homes.

26 36. In addition, Ms. Fowler: (1) has prepared for the CDI licensing exam using JAWS, including
27 taking practice exams; (2) does not have experience taking exams using a human reader; and (3) has
28 hearing loss such that using a human reader would negatively impact her ability to take the exam

1 because a human reader does not afford her JAWS's precise control over vocal pitch, intonation, and
2 speaking rate.

3 37. Ms. Fowler also does not require any test accommodations— such as extra time or breaks—to take
4 electronic exams. With JAWS she is able to take the exam fully independently.

5 38. Because she was unable to take the CDI licensing exam, Ms. Fowler was unable to begin work
6 for the insurance carrier that had hired her.

7 39. Through counsel, Ms. Fowler wrote to PSI and CDI on January 25, 2021, demanding that they
8 make the CDI licensing exam accessible for her and other blind applicants by allowing exam takers to
9 use screen reading technology such as JAWS.

10 40. Instead, on February 4, 2021, Defendants offered to have a PSI proctor remote-control her
11 computer, have her read the questions using JAWS through a file that would be transferred to her
12 computer by the proctor, and have her verbally provide her answers to the remote proctor for
13 transcription.

14 41. Ms. Fowler has never taken an exam using a transcriptionist/amanuensis.

15 42. Ms. Fowler has also never let another person control her computer, remotely or otherwise, due to
16 concerns about privacy and the security of sensitive information stored on her computer.

17 43. On February 17, 2021, Ms. Fowler rejected that proposal because it did not offer equal access on
18 the same terms as that enjoyed by non-disabled applicants for Ms. Fowler or other blind examinees.

19 44. On March 10, 2021, Defendants explained that they were migrating the CDI licensing exam to a
20 platform that would allow Ms. Fowler to independently take it using JAWS.

21 45. Ms. Fowler was told that this proposal was an accommodation only for her, and that other blind
22 applicants would not be afforded the same opportunity to take an accessible exam with JAWS unless
23 they affirmatively requested and were approved for it as an accommodation in advance of the testing
24 date.

25 46. In addition, Ms. Fowler was told that she would have to go through an accommodations-request
26 process before she would have access to an accessible exam platform, requiring her and a treating
27 physician to complete additional paperwork, and that she would not be able to choose her exam schedule
28 as others do, thereby subjecting her to additional delays and unequal treatment.

1 47. No such extra time and cost burdens are placed on non-disabled applicants desiring to take the
2 CDI licensing exam.

3 48. Concerned that, like her, other blind applicants would have to go through a similar process of
4 successfully and accessibly scheduling their exam, only to discover on the scheduled day that the exam
5 itself was not accessible via screen-reading platforms, Ms. Fowler refused this proposal as well, insisting
6 that Defendants use the accessible exam platform and ensure applicants can automatically take the exam
7 with screen-reading platforms such as JAWS without requiring blind applicants to request it as an
8 accommodation.

9 49. On June 10, 2021, Defendants refused that demand.

10 50. On June 18, 2021, Ms. Fowler attempted to log in to the exam scheduling system to find out how
11 soon she might be able to take the exam if she decided to do so, only to discover that Defendants had
12 deactivated her account.

13 51. Ms. Fowler has suffered lost income because she was unable to start the job she was hired for by
14 the insurance carrier.

15 52. Ms. Fowler has also suffered humiliation, frustration, degradation, and emotional distress due to
16 Defendants' unequal treatment based on her disability.

17 **C. Mr. Mendez**

18 53. Ms. Fowler has been aware of at least one other blind person who was interested in the job
19 opportunities afforded by a CDI license, as she had told Miguel Mendez about the opportunity she had
20 been recruited for, and he had expressed his interest in a similar opportunity.

21 54. However, like Ms. Fowler, Mr. Mendez has never taken an electronic exam using a
22 transcriptionist/amanuensis and would demand to take the exam independently using JAWS.

23 55. Mr. Mendez has visited CDI's website to obtain information regarding licensing exam
24 scheduling and testing information.

25 56. Mr. Mendez followed the instructions on the CDI website to visit the PSI website for information
26 regarding licensing exam scheduling and testing information.

27 57. Mr. Mendez created an account with the PSI website and has reviewed the special arrangements
28 that require him to complete forms and obtain medical records before scheduling an exam.

1 58. Mr. Mendez does not want to go through the hassle, time, and cost of an accommodations-
2 request process and medical review to take the exam under the same time and break constraints as
3 everyone else, when other non-blind applicants need not go through that process.

4 59. To take advantage of the accessible exam platform, Mr. Mendez and his treating physician would
5 be required to complete and submit additional paperwork, and he would not be able to choose his exam
6 schedule as others do.

7 60. No such extra time and cost burdens are placed on non-disabled applicants desiring to take the
8 CDI licensing exam.

9 61. Mr. Mendez would schedule and take the CDI licensing exam if he was able to do so
10 independently and accessibly using JAWS, just as non-blind applicants do.

11 62. Mr. Mendez has been deterred from attempting to take the exam for fear of experiencing the
12 inaccessible technology encountered by Ms. Fowler.

13 **V. FIRST CAUSE OF ACTION**

14 **Gov't Code § 11135 *et seq.* (All Defendants)**

15 63. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

16 64. Government Code section 11135(a) states that “[n]o person in the State of California shall, on the
17 basis of ... disability ... be unlawfully denied full and equal access to the benefits of, or be unlawfully
18 subjected to discrimination under, any program or activity that is conducted, operated, or administered
19 by the state or by any state agency, is funded directly by the state, or receives any financial assistance
20 from the state.”

21 65. It incorporates the requirements of Title II of the Americans with Disabilities Act (ADA) and its
22 implementing regulations, “except that if the laws of this state prescribe stronger protections and
23 prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger
24 protections and prohibitions.” Gov’t Code § 11135(b).

25 66. Government Code section 7405(a) contains such stronger protections and prohibitions, requiring
26 technology procured or used by the government to comply with Section 508 of the Rehabilitation Act, 29
27 U.S.C. § 794d.

28

1 67. Section 508 requires all electronic content, which includes online content such as CDI's online
2 licensing exam, to be fully accessible for persons with disabilities, including blind persons. 29 U.S.C. §
3 794d(a)(1)(A); 36 C.F.R. § 1194 app. A § E205.

4 68. By failing to ensure that its online licensing exam complies with the requirements of Section 508,
5 as incorporated by Section 7405 of the government code, CDI is in violation of Government Code
6 Sections 11135 and 7405.

7 69. As a contractor with CDI, PSI is liable for its violations of Government Code section 11135.
8 Gov't Code § 11136.

9 70. It also must "respond to, and resolve any complaint regarding accessibility of, its products or
10 services that is brought to [its] attention." Gov't Code § 7405(b).

11 71. By refusing to ensure that CDI's online licensing exam complies with Section 508 requirements,
12 PSI has violated Government Code sections 11135 and 7405.

13 72. Defendants are and were aware of the requirements of Government Code sections 11135 and
14 7405.

15 73. Legal remedies being insufficient, equitable remedies are necessary to stop Defendants' current
16 and future violations.

17 VI. SECOND CAUSE OF ACTION

18 Unruh Civil Rights Act, Civ. Code § 51 *et seq.* (All Defendants)

19 74. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

20 75. All persons in California, regardless of disability, are entitled to the full and equal
21 accommodations, advantages, facilities, privileges, or services in all business establishments of every
22 kind whatsoever. Civ. Code § 51(b).

23 76. CDI and PSI conduct business with applicants seeking California insurance licensure.

24 77. CDI is a business establishment within the jurisdiction of the state of California, and as such is
25 obligated to comply with the provisions of the Unruh Act. Cal. Civ. Code § 51 *et seq.*

26 78. PSI is a business establishment within the jurisdiction of the state of California, and as such is
27 obligated to comply with the provisions of the Unruh Act. Cal. Civ. Code § 51 *et seq.*

28 79. A violation of the right of any individual under the ADA also constitutes a violation of the Unruh
Civil Rights Act. Civ. Code § 51(f).

1 80. Title II of the ADA states that “no qualified individual with a disability shall, by reason of such
2 disability, be excluded from participation in or be denied the benefits of the services, programs, or
3 activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

4 81. As a “department, agency, ... or other instrumentality of a state,” CDI is a public entity subject to
5 the requirements of Title II of the ADA. 42 U.S.C. § 12131(1)(B).

6 82. CDI must therefore “take appropriate steps to ensure that communications with
7 applicants . . . with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a)(1).

8 83. It must “furnish appropriate auxiliary aids and services where necessary to afford individuals
9 with disabilities, including applicants, ... an equal opportunity to participate in, and enjoy the benefits
10 of,” its services, programs, and activities. 28 C.F.R. § 35.160(b)(1).

11 84. “Auxiliary aids and services includes ... accessible electronic and information technology or
12 other effective methods of making visually delivered materials available to individuals who are blind or
13 have low vision.” 28 C.F.R. § 35.104.

14 85. “In determining what types of auxiliary aids and services are necessary,” CDI must “give
15 primary consideration to the requests of individuals with disabilities.” 28 C.F.R. § 35.160(b)(2).

16 86. “In order to be effective, auxiliary aids and services must be provided in accessible formats, in a
17 timely manner, and in such a way as to protect the privacy and independence of [an] individual with a
18 disability.” 28 C.F.R. § 35.160(b)(2).

19 87. By offering less timely scheduling for accessible online exams, requiring privacy-invasive
20 documentation of a disability to have access to an accessible online exam, and failing to ensure that its
21 online exam is accessible for blind persons, CDI has failed to provide necessary and effective auxiliary
22 aids and services for blind applicants.

23 88. CDI also may not, directly or through contractual, licensing, or other arrangements, discriminate
24 against qualified individuals with disabilities by:

- 25 a. Denying them the opportunity to participate in or benefit from its aids, benefits, and services
26 (28 C.F.R. § 35.130(b)(1)(i));
- 27 b. Affording them opportunities to participate in or benefit from its aids, benefits, or services
28 that are not equal to those afforded others (28 C.F.R. § 35.130(b)(1)(ii));

- c. Providing them with aids, benefits, or services that are not as effective in affording equal opportunity to obtain the same results, to gain the same benefits, or to reach the same level of achievement as those provided to others (28 C.F.R. § 35.130(b)(1)(iii));
- d. Providing them with different or separate aids, benefits, or services than are provided to others (28 C.F.R. § 35.130(b)(1)(iv));
- e. providing significant assistance to an entity that discriminates against them on the basis of disability (28 C.F.R. § 35.130(b)(1)(v)); or
- f. Otherwise limiting them in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving its aids, benefits, or services (28 C.F.R. § 35.130(b)(1)(vii)).

89. By contracting with PSI to schedule and administer licensing exams that are not accessible to blind applicants, CDI denies those applicants the opportunity to benefit from the online licensing exam and schedule; affords them unequal opportunities to participate in the licensing program; provides them with different or separate benefits and services that are also not as effective as those provided others; provides significant monetary assistance to PSI despite PSI's discrimination against blind persons in the scheduling and administration of the licensing exam; and otherwise limits blind applicants in their enjoyment of the rights, privileges, advantages, and opportunities afforded others such as being able to independently take the licensing exam on an equally convenient schedule to others.

90. CDI also "may not, directly or through contractual or other arrangements, utilize criteria or methods of administration ... [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(3).

91. By contracting with PSI to schedule and administer licensing exams that are not accessible to blind applicants, CDI utilizes a vision criterion for its online licensing exam and administers its licensing program in a manner that has the effect of subjecting blind applicants to discrimination because of their blindness.

92. CDI must "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(7)(i).

93. CDI has not modified its policies, practices, or procedures to ensure that blind applicants may independently schedule and take the same licensing exam under the same circumstances, documentation

1 requirements, and scheduling constraints as other applicants, despite the necessity of those reasonable
2 modifications to ensure that blind applicants do not suffer disability-based discrimination.

3 94. CDI also may not impose or apply eligibility criteria that screen out or tend to screen out
4 individuals with disabilities from fully and equally enjoying any of its services, programs, or activities.
5 28 C.F.R. § 35.130(b)(8).

6 95. By offering an online licensing exam that is not accessible to blind applicants and imposing a
7 restricted schedule and unnecessary documentation requirements for blind applicants to take its licensing
8 exam, CDI imposes a vision criterion that screens out blind applicants from fully and equally enjoying
9 its scheduling and administration of its licensing exam.

10 96. CDI also “may not administer a licensing or certification program in a manner that subjects
11 qualified individuals with disabilities to discrimination on the basis of disability.” 28 C.F.R. §
12 35.130(b)(6).

13 97. By restricting licensing-exam scheduling and imposing extra documentation requirements for
14 applicants with disabilities, offering an online exam that is not accessible to blind applicants, and for all
15 the other reasons stated above, CDI administers its licensing program in a manner that subjects blind
16 applicants to discrimination based on their blindness.

17 98. By violating Title II of the ADA as alleged in this complaint, and by denying blind applicants the
18 full and equal accommodations, advantages, privileges, or services of its licensing program, CDI has
19 violated the Unruh Act.

20 99. Title V of the ADA states that it “shall be unlawful to ... interfere with any individual in the
21 exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or
22 her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or
23 protected by [the ADA].” 42 U.S.C. § 12203(b).

24 100. PSI, as a private entity, may not interfere with individuals in the exercise or enjoyment of any
25 right granted or protected by Title II of the ADA or its implementing regulations. 28 C.F.R. § 35.134(b).

26 101. By developing and continuing to use an online examination platform for the CDI licensing exam
27 that is not accessible to blind applicants, PSI interfered and continues to interfere with blind applicants’
28 rights under Title II of the ADA, as alleged herein.

1 102. PSI's interference with those rights was either intentional, or knowing and deliberately
2 indifferent.

3 103. By violating Title V of the ADA as alleged in this complaint, and by denying blind applicants the
4 full and equal accommodations, advantages, privileges, or services of the online CDI licensing exam it
5 administers, PSI has violated the Unruh Act.

6 104. "Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to
7 Section 51 [or] 51.5 ... is liable for each and every offense" for actual and exemplary damages, attorney
8 fees and costs, and preventive relief. Civ. Code §§ 52(a) and (c)(3).

9 105. By administering CDI's licensing exam in a manner that discriminates against blind applicants,
10 as alleged herein, PSI has aided or incited CDI's denials, discriminations, or distinctions contrary to
11 Civil Code section 51, in violation of the Unruh Act.

12 106. Title III of the ADA requires that any private entity "that offers examinations . . . related to
13 applications, licensing, certification, or credentialing for ... professional, or trade purposes shall offer
14 such examinations in a place and manner accessible to persons with disabilities or offer alternative
15 accessible arrangements for such individuals." 42 U.S.C. § 12189; 28 C.F.R. § 36.309(a).

16 107. CDI's licensing exam is an examination related to licensing, certification, or credentialing for
17 professional or trade purposes.

18 108. As an entity that is not a public entity and that is offering CDI's licensing exam, PSI is subject to
19 the above Title III requirements. 28 C.F.R. § 36.104.

20 109. In administering the CDI licensing exam, PSI must assure that examinations designed for blind
21 applicants are "offered at equally convenient locations, as often, and in as timely a manner as are other
22 examinations." 28 C.F.R. § 36.309(b)(1)(ii).

23 110. By limiting the times that a blind applicant may schedule the CDI licensing exams relative to the
24 times that other applicants may schedule the CDI licensing exam, PSI has failed to assure that
25 examinations for blind applicants are offered as often and in as timely a manner as for others.

26 III. PSI must also assure that "[a]ny request for documentation, if such documentation is required, is
27 reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service
28 requested" by a blind applicant. 28 C.F.R. § 36.309(b)(1)(iv).

1 112. By requiring extensive medical documentation where a disability such as blindness is obvious;
2 where the need for an auxiliary aid or service such as an accessible version of an electronic examination
3 is also obvious; and where no other modification such as extra time or breaks are requested; PSI has
4 failed to assure that its request for documentation is reasonable and limited to the need for an accessible
5 online examination.

6 113. By violating Title III of the ADA as described herein, and by denying blind applicants the full
7 and equal accommodations, advantages, privileges, or services of the online CDI licensing exam it
8 administers, PSI has violated the Unruh Act.

9 114. Furthermore, by denying blind applicants the full and equal accommodations, advantages,
10 privileges, or services of the online CDI licensing exam, Defendants have violated the Unruh Act, above
11 and beyond their violations of Title III of the ADA.

12 115. Defendants' actions constitute willful and unlawfully motivated misconduct.

13 116. As a result of Defendants' violations, Plaintiffs have suffered damages, including emotional
14 distress and lost income opportunities.

15 117. Legal remedies being insufficient, equitable remedies are necessary to stop Defendants' current
16 and future violations.

17 **VII. THIRD CAUSE OF ACTION**

18 **Disabled Persons Act, Civ. Code § 54 *et seq.* (Defendant PSI only)**

19 118. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

20 119. Individuals with disabilities have the same right as the general public to the full and free use of
21 all public places. Civ. Code § 54(a).

22 120. They are also "entitled to full and equal access, as other members of the general public, to
23 accommodations, advantages, ... and privileges of all ... places of public accommodation, amusement,
24 or resort, and other places to which the general public is invited, subject only to the conditions and
25 limitations established by law, or state or federal regulation, and applicable alike to all persons." Civ.
26 Code § 54.1(a)(1).

27 121. CDI and PSI operate a public place, place of public accommodation, or place to which the
28 general public is invited within the meaning of Civil Code sections 54-54.3.

1 122. Through its actions herein, PSI has denied blind applicants full and equal access to the
2 accommodations, advantages and privileges that it offers other members of the general public, in
3 violation of Civ. Code section 54.1(a)(1).

4 123. A violation of the right of any individual under the ADA also constitutes a violation of the
5 Disabled Persons Act. Civ. Code § 54(c).

6 124. “Any person or persons, firm or corporation who denies or interferes with the rights of an
7 individual with a disability under Sections 54 [or] 54.1 ... is liable for each offense” for actual and
8 exemplary damages, as well as attorneys’ fees and costs. Civ. Code § 54.3(a).

9 125. Both CDI’s violations of Title II of the ADA as described herein, as well as its denial to blind
10 applicants of full and equal access to its online licensing exam, constitute violations of the DPA.

11 126. By violating Title V of the ADA as alleged herein, by denying blind applicants full and equal
12 access to the CDI licensing exam, and by interfering with Plaintiffs’ rights to be free from discrimination
13 by CDI as alleged herein, PSI has violated the DPA.

14 127. As a result of these violations, Plaintiffs have suffered damages, including emotional distress and
15 lost income opportunities.

16 128. Plaintiffs seek no relief under, nor make any claim pursuant to Civil Code section 55.

17 **VIII. FOURTH CAUSE OF ACTION**

18 **Code of Civil Procedure § 1060 (All Defendants)**

19 129. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

20 130. Plaintiffs allege that CDI and PSI have violated Government Code sections 11135 and 7405 and
21 the Unruh Civil Rights Act, Civ. Code § 51 *et seq.*

22 131. Defendants dispute Plaintiffs’ allegations.

23 132. A declaratory judgment is necessary to clarify the respective rights of the parties.

24 133. Plaintiffs do not seek declaratory relief under the Disabled Persons Act.

25 **IX. RELIEF REQUESTED**

26 Wherefore, Plaintiffs respectfully request that the court:

- 27 a. Declare that Defendants have violated Government Code sections 11135 and 7405 and the
28 Unruh Act, Civ. Code § 51 *et seq.*;

- 1 b. Order Defendants to ensure that the CDI online licensing exam that is available for all
2 applicants complies with Section 508 technical accessibility requirements;
3 c. Order CDI to withhold any state funds from PSI until it is in full compliance with
4 Government Code section 11135;
5 d. Order PSI to pay damages to Plaintiffs for each and every violation of the Unruh Act, or in
6 the alternative for each and every violation of the DPA;
7 e. Order Defendants to pay Plaintiffs' reasonable attorneys' fees and costs pursuant to Civil
8 Code sections 52 and 54.3 and Code of Civil Procedure section 1021.5; and
9 f. Order any other relief the court deems necessary and proper.

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11 **X. JURY DEMAND**

12 Plaintiffs demand a trial by jury.

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16 October 12, 2021

Respectfully submitted,

TRE LEGAL PRACTICE

/s/ Timothy Elder

Timothy Elder

Attorneys for Plaintiffs