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

13 RENA FISHER, KATHI PUGH, and HELEN  
14 WALSH

15 Plaintiffs,

16 v.

17 CITY OF BERKELEY,

18 Defendant.

Case No. 4:23-cv-4280

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF FOR  
VIOLATIONS OF:**

Title II of the Americans with Disabilities Act  
of 1990 (42 U.S.C. § 12131, *et seq.*)

Section 504 of the Rehabilitation Act of 1973  
(29 U.S.C. § 794, *et seq.*)

**INTRODUCTION**

19 1. Plaintiffs Rena Fischer<sup>1</sup>, Kathi Pugh, and Helen Walsh bring this action  
20 challenging the City of Berkeley’s discrimination against members of its Commission on  
21 Disability whose disabilities require that they participate in Commission meetings remotely.  
22 Rather than grant these federally required accommodations, the City forces Plaintiffs to open up  
23 their private homes to the public as additional Commission meeting locations, despite the  
24 dangers to them and aggravations to their health that can result from doing so.

25 2. The Berkeley Commission on Disability is one of thirty-two boards and  
26 commissions that advise the Berkeley City Council on key policy issues. The Commission on  
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<sup>1</sup> Although her legal last name is Fisher, she goes by Fischer.

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1 Disability (“Commission”) is “charged with actively promoting the total integration and  
2 participation of persons with disabilities into all areas of economic, political, and community life.  
3 Membership must be made up primarily of persons who have disabilities.” It is particularly  
4 ironic that a Commission with this charter to advocate for disabled Berkeley residents, and be  
5 composed primarily of disabled people itself, is in fact preventing disabled members from  
6 participating in the Commission unless they subject themselves to burdensome, dangerous, and  
7 invasive requirements.

9 3. Defendant’s refusal to modify their policy to allow Plaintiffs to remotely attend  
10 Commission meetings without burdensome restrictions not required of Commissioners who are  
11 able to attend meetings in person violates the City’s obligation under the Americans with  
12 Disabilities Act and Section 504 of the Rehabilitation Act to make reasonable modifications to  
13 policies, practices, or procedures to avoid discrimination based on disability.

15 4. In addition to violating federal law, Defendant’s requirements are dangerous.  
16 Plaintiff Walsh is immunocompromised and needs remote attendance in part to limit her  
17 exposure to others. Requiring her to allow the public into her home places her in the exact danger  
18 she seeks to avoid, exposing her to unpredictable and unknown additional risk of infection. Both  
19 Plaintiffs Fischer and Pugh at times must attend Commission meetings remotely from bed—  
20 requiring them to allow strangers into their homes, and potentially even bedrooms, during these  
21 evening Commission meetings is both dangerous and intrusive and invades their privacy in a  
22 manner not required of non-disabled people. Because of their disabilities, this places them in an  
23 unreasonably vulnerable position simply to participate in the Commission. Opening Commission  
24 members’ homes to the public may be dangerous for the public as well, as private homes may  
25 not be safe for or accessible to members of the public with disabilities in the same way a public  
26 City meeting location is.



1 disability” within the meaning of all applicable statutes and regulations including 42 U.S.C. §  
2 12131(2), 28 C.F.R. § 35.104 and 29 U.S.C. § 705(20)(B).

3 12. Plaintiff Kathi Pugh is a resident of Berkeley who uses an electric wheelchair for  
4 mobility. Plaintiff Pugh is a “qualified person with a disability” and a person with “a disability”  
5 within the meaning of all applicable statutes and regulations including 42 U.S.C. § 12131(2), 28  
6 C.F.R. § 35.104 and 29 U.S.C. § 705(20)(B).  
7

8 13. Plaintiff Helen Walsh is a resident of Berkeley who is visually impaired, has  
9 multiple sclerosis and is immunocompromised. Plaintiff Walsh is a “qualified person with a  
10 disability” and a person with “a disability” within the meaning of all applicable statutes and  
11 regulations including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104 and 29 U.S.C. § 705(20)(B).  
12

13 14. Presently, and at all times relevant to this Complaint, Defendant City of Berkeley  
14 is a public entity under Title II of the ADA, 42 U.S.C. § 12131, *et seq.*

15 15. Because Defendant City of Berkeley receives federal financial assistance in many  
16 forms, it is required to comply with Section 504.

17 **STATEMENT OF FACTS**

18 16. Defendant City of Berkeley has a wide variety of boards and commissions that  
19 advise and make recommendations on key policy issues ranging from civic arts to disaster and  
20 fire safety. One such commission is the Commission on Disability. In establishing the Berkeley  
21 Commission on Disability, Defendant made the following findings: “It is the policy of the City  
22 of Berkeley to promote the full integration and participation of persons with disabilities into all  
23 areas of economic, political and community life” and “The City of Berkeley is committed to  
24 utilizing all available resources and to coordinating efforts towards removing barriers to full  
25 integration and participation of persons with disabilities.” Berkeley Municipal Code Chapter  
26 3.66.010.  
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1           17.       The Commission’s charter provides that “The City shall provide accommodations  
2 for the known physical, sensory or mental disabilities of commission members and other  
3 participants in commission activities, including, but not limited to, assistance with reading,  
4 writing, communicating and aids such as tape-recorded, Braille or large print materials.”

5 Berkeley Municipal Code Chapter 3.66.040(C).

6  
7           18.       On March 4, 2020, Governor Gavin Newsom announced a statewide emergency  
8 due to the COVID-19 pandemic and issued executive orders that suspended many of the  
9 teleconferencing requirements of the Ralph M. Brown Act including that the teleconference  
10 location of each member participating remotely be published and that the teleconference location  
11 be accessible to the public. In March 2020, pursuant to the executive orders, the meetings of the  
12 Berkeley City Council and all board and commission meetings were conducted remotely.

13  
14           19.       In January 2023, California enacted Assembly Bill (AB) 2449 which provides for  
15 “just cause” and “emergency circumstances” exceptions to the Brown Act’s teleconferencing  
16 requirements of publishing the remote location and opening that location up to the public. In  
17 enacting AB 2449, the Legislature determined that remote participation by a commission  
18 member in various circumstances is compatible with their service on the commission.

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20           20.       For boards or commissions that meet monthly, such as the Commission on  
21 Disability, the exceptions in AB 2449 can only be used a total of two times during the calendar  
22 year.

23           21.       AB 2449 also requires a commission to implement a procedure for receiving and  
24 swiftly resolving requests for reasonable accommodations for individuals with a disability,  
25 consistent with the ADA, and to resolve any doubt in favor of accessibility.

26           22.       In enacting AB 2449, the California Legislature determined that remote  
27 participation by a commission member with a disability would not fundamentally alter the role of  
28 that commission member.

1           23.     Governor Newsom ended the statewide COVID-19 emergency on February 28,  
2 2023. On March 1, 2023, Defendant announced that City Council meetings, all Council  
3 committees and the Zoning Adjustments Board would continue to be hybrid but that nearly all  
4 board and commission meetings, including the monthly Commission on Disability meetings,  
5 would return to only being held in-person.  
6

7 **Plaintiff Rena Fischer**

8           24.     Ms. Fischer is a member of the Berkeley Commission on Disability. She was  
9 appointed in April of 2023 by Councilmember Rashi Kesarwani. Ms. Fischer was motivated to  
10 serve on the Commission because of her interest in advocating for improved City infrastructure  
11 and sidewalks, particularly regarding safety of the pedestrian right of way for wheelchair and  
12 mobility device users and the elderly. She chose to serve on the Commission with the  
13 understanding that the Commission would provide any reasonable modifications necessary for  
14 her to have access in order to participate equally to Commission members who do not have a  
15 disability.  
16

17           25.     Ms. Fischer first requested accommodations to attend the Commission on  
18 Disability meetings remotely on or about April 24, 2023. She requested remote attendance  
19 because she occasionally must limit the time she spends in her wheelchair due to a pressure sore.  
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21           26.     On April 24, 2023, the Deputy Public Works Director approved Ms. Fischer's  
22 request, but required that her personal home address be published on the public Commission  
23 meeting agenda and that the Commission agenda be posted at her home. Defendant also required  
24 that she allow members of the public into her home so that the public could participate in the  
25 meeting and give public comment there, with communication technology provided by Ms.  
26 Fischer.  
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1 27. Ms. Fischer requested clarification about these limitations, and the requirement  
2 that her one-bedroom apartment become a “remote location” open to the public while she attends  
3 Commission meetings from bed.

4 28. The Deputy Public Works Director explained to Ms. Fischer that this was  
5 required in order to approve her remote attendance, and Defendant could not waive these  
6 requirements even as an accommodation for a person with a disability.  
7

8 29. Ms. Fischer must at times attend Commission meetings remotely from bed due to  
9 her disability—requiring she allow people she does not know into her home, and even into her  
10 bedroom, during these evening Commission meetings is both dangerous and intrusive and  
11 invades her privacy in a way not required of non-disabled Commission members.  
12

13 30. The City recognized Ms. Fischer’s need to attend Commission meetings remotely  
14 because of her disability, and Defendant informed her they would pay for a personal attendant to  
15 facilitate remote participation from her apartment for the May 3, 2023 Commission meeting.  
16 This did not diminish the intrusion to her privacy, nor the potential danger to Ms. Fischer as she  
17 is unable to independently transfer from her bed.  
18

19 **Plaintiff Kathi Pugh**

20 31. Ms. Pugh is a retired attorney and served as firmwide pro bono counsel for a large  
21 international law firm for 23 years. Ms. Pugh is a member of the Berkeley Commission on  
22 Disability who was appointed in April of 2023 by Councilmember Kate Harrison. She was  
23 motivated to serve on the Commission in order to help make the City of Berkeley more  
24 accessible for all. She chose to serve on the Commission with the understanding that the  
25 Commission would provide any reasonable modifications necessary for her to have access in  
26 order to participate equally to Commission members who do not have a disability.  
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28 32. Ms. Pugh first requested accommodations to attend the Commission on Disability  
meetings remotely in or around April 2023.

1 33. Ms. Pugh requested remote attendance because she was bedridden at the time due  
2 to an ongoing pressure sore because of her mobility disability. Defendant approved her request  
3 but required that her personal home address be published on the public Commission meeting  
4 agenda and that the Commission agenda be posted at her home. Defendant also required that she  
5 allow members of the public into her home so that the public could participate in the meeting and  
6 give public comment there, with communication technology provided by Ms. Pugh.

8 34. Since Ms. Pugh would be participating in the meeting from her bed in her  
9 bedroom, members of the public would need to join her there in order to participate in the  
10 meeting on her device. Requiring that she allow any member of the public who wished to enter  
11 into her home during those evenings when she needs to stay in bed is both dangerous and  
12 intrusive, and invades her privacy in a way not required of non-disabled Commission members.

14 35. On July 9, 2023, Ms. Pugh notified the ADA Program Coordinator and  
15 Commission on Disability Secretary that she would need to attend the July 12, 2023,  
16 Commission meeting remotely due to the pressure sore that required she limit her time sitting.

17 36. The ADA Program Coordinator and Commission on Disability Secretary, Thomas  
18 Gregory, said it was not possible to accommodate Ms. Pugh's request because it was too late for  
19 the meeting agenda to be modified to publicize her address. In the future, she needed to notify  
20 him at least 72 hours in advance not including the weekend hours. Mr. Gregory did not allow  
21 Ms. Pugh to remotely attend the July 2023 meeting even though remote access had already been  
22 arranged to allow a member of the public to participate.

24 **Plaintiff Helen Walsh**

25 37. Ms. Walsh is a longtime disability activist, particularly in the areas of media and  
26 broadcasting. Ms. Walsh first decided to join the Berkeley Commission on Disability to  
27 represent disability community perspectives in City planning, particularly on issues of parking  
28 and bike infrastructure. She also hoped to provide representation on the Commission of people



1 with multiple and hidden disabilities. Ms. Walsh was appointed to the Commission in November  
2 2013 by Councilmember Darryl Moore. Ms. Walsh is visually impaired, has multiple sclerosis  
3 and is immunocompromised. She chose to serve on the Commission with the understanding that  
4 the Commission would provide any reasonable modifications necessary for her to have access in  
5 order to participate equally to Commission members who do not have a disability.

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7 38. Ms. Walsh first requested accommodations to attend the Commission on  
8 Disability meetings remotely on February 1, 2023.

9 39. Ms. Walsh requested remote attendance because both her multiple sclerosis  
10 diagnosis and the medication she takes for her disability cause her to be immunocompromised  
11 and vulnerable to severe COVID outcomes.

12 40. Defendant's Deputy Director of Public Works approved Ms. Walsh's request on  
13 February 23, 2023, but required that her personal home address be published on the public  
14 Commission meeting agenda and that the Commission agenda be posted at her home. Defendant  
15 also required that she allow members of the public into her home so that the public could  
16 participate in the meeting and give public comment there, with communication technology  
17 provided by Ms. Walsh.

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19 41. Ms. Walsh's request to attend the Commission meeting remotely is meant to limit  
20 her exposure to the public—requiring members of the public be allowed into Ms. Walsh's home  
21 defeats its very purpose.

22  
23 42. Defendant offered to hire a personal attendant to assist with letting people into her  
24 home and facilitating their remote participation from inside her house. This would not work to  
25 limit Ms. Walsh's exposure to the public and would in fact result in more people being present  
26 inside her home, exposing her to risks of infection of both COVID and other airborne,  
27 contagious illnesses it is imperative she avoid.  
28

1 43. Ms. Walsh was the Acting Chair of the Commission and was not permitted to  
2 attend its meetings by using her approved modification of remote attendance.

3 44. On June 16, 2023, Ms. Walsh submitted a grievance to Defendant about the  
4 reasonable modification needed to participate in the Commission on Disability.

5 45. On July 3, 2023, Defendant's ADA Program Coordinator and Commission on  
6 Disability Secretary Thomas Gregory informed Ms. Walsh that based on her medical needs,  
7 Defendant would grant an accommodation and disregard the requirements that her address be  
8 posted publicly, and the public allowed into her home, in order for her to attend Commission  
9 meetings remotely. However, Defendant treated this as a separate and additional accommodation  
10 from the one that had already been granted, and required that Ms. Walsh provide additional  
11 medical documentation, despite it being unnecessary, intrusive and burdensome for Ms. Walsh to  
12 do so.

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15 46. Ms. Walsh has thus been unable to attend Commission meetings remotely. She  
16 has been forced to functionally give up serving as Commission Vice-Chair as a result and is at  
17 risk of exceeding the permitted number of absences, putting her at risk of losing her seat on the  
18 Commission altogether.

19  
20 **FIRST CLAIM FOR RELIEF**

21 **Violation of Title II of the Americans with Disabilities Act**  
22 **42 U.S.C. § 12131, et seq.**

23 47. Plaintiffs allege and incorporate by reference the allegations in the preceding  
24 paragraphs.

25 48. Title II of the ADA provides that individuals with disabilities may not be  
26 "excluded from participation in or be denied the benefits of the services, programs, or activities  
27 of a public entity" nor may they be "subjected to discrimination by any such entity." 42 U.S.C. §  
28 12132.

1           49.     In addition, a public entity may not, on the basis of disability, “[d]eny a qualified  
2 individual with a disability the opportunity to participate as a member of planning or advisory  
3 boards[.]” 28 C.F.R. § 35.130(b)(1)(vi).

4           50.     Public entities are required to “make reasonable modifications in policies,  
5 practices, or procedures when the modifications are necessary to avoid discrimination on the  
6 basis of disability, unless the public entity can demonstrate that making the modifications would  
7 fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7).

8           51.     In addition, public entities have a duty to ensure that communications with  
9 persons with disabilities are “as effective as communications with others.” *Id.* § 35.160(a)(1).

10           52.     Such public entities “shall furnish appropriate auxiliary aids and services where  
11 necessary to afford individuals with disabilities, including applicants, participants, companions,  
12 and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a  
13 service, program, or activity of a public entity.” *Id.* § 35.160(b)(1).

14           53.     Further, it is unlawful for public entities to discriminate against any individual  
15 because that individual has opposed any act or practice of discrimination under Title II. *Id.* §  
16 35.134(a). It is unlawful for any public entity to “coerce, intimidate, threaten, or interfere with”  
17 an individual on the basis of her exercise of any right granted under Title II, including the rights  
18 to reasonable accommodations and effective communication. *Id.* § 35.134(b).

19           54.     Defendant is a public entity under Title II of the ADA.

20           55.     Commission membership and Commission meetings are services, programs, or  
21 activities of Defendant.

22           56.     Ms. Fischer, Ms. Pugh, and Ms. Walsh are individuals with disabilities under the  
23 ADA. Their disabilities substantially interfere with major life activities.  
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1           57. Ms. Fischer, Ms. Pugh, and Ms. Walsh were appointed by their City Council  
2 member to serve as members of the Commission and thus are qualified individuals entitled to the  
3 protections of the ADA.

4           58. Defendant has failed and continues to fail to meet their obligations to provide Ms.  
5 Fischer, Ms. Pugh, and Ms. Walsh with opportunities that are equal to those provided to  
6 Commission members without disabilities. Defendant has excluded them from participation in  
7 and denied them the benefits of their services, programs, or activities and have denied them the  
8 opportunity to participate as a member of the Commission.

9           59. Defendant has failed to reasonably modify their policies, practices, and  
10 procedures as necessary to accommodate Ms. Fischer, Ms. Pugh, and Ms. Walsh.

11           60. Defendant's actions constitute discrimination on the basis of disability in violation  
12 of the ADA, in that they have:

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- 14           a. failed to maintain policies and procedures to ensure compliance with Title II,  
15 specifically policies that provide equal access to individuals with disabilities;
  - 16           b. failed to provide reasonable modifications of policies, practices, and procedures to  
17 prevent discrimination; and
  - 18           c. denied Plaintiffs access to information given to other Commission members.
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20           61. Defendant's failure to meet their obligations to Ms. Fischer, Ms. Pugh, and Ms.  
21 Walsh constitutes an ongoing and continuous violation of the ADA and its supporting  
22 regulations. Unless restrained from doing so, Defendant will continue to violate the ADA. Unless  
23 enjoined, Defendant will continue to inflict injuries for which Ms. Fischer, Ms. Pugh, and Ms.  
24 Walsh have no adequate remedy at law.

25           62. Unless the requested relief is granted, Ms. Fischer, Ms. Pugh, and Ms. Walsh will  
26 suffer irreparable harm in that Defendant's discrimination deters them from continuing to fully  
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1 participate as members of the Commission, despite their long histories as disability advocates  
2 and desire of the disability community for them to serve on the Commission.

3 63. The ADA authorizes injunctive relief as appropriate to remedy acts of  
4 discrimination against persons with disabilities. 42 U.S.C. § 12188(a)(1).

5 64. Ms. Fischer, Ms. Pugh, and Ms. Walsh are entitled to injunctive relief, as well as  
6 reasonable attorneys' fees and costs.  
7

8 **SECOND CLAIM FOR RELIEF**

9 **Violations of § 504 of the Rehabilitation Act of 1973**  
10 **29 U.S.C. § 794**

11 65. Plaintiffs allege and incorporate by reference the allegations in the preceding  
12 paragraphs.

13 66. Section 504 of the Rehabilitation Act mandates that “[n]o otherwise qualified  
14 individual with a disability . . . shall, solely by reason of her or his disability, be excluded from  
15 the participation in, be denied the benefits of, or be subjected to discrimination under any  
16 program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

17 67. Section 504 defines “program or activity,” in pertinent part, as “all of the  
18 operations of a department, agency, special purpose district, or other instrumentality of a State or  
19 of a local government; or the entity of such State or local government that distributes such  
20 assistance and each such department or agency (and each other State or local government entity)  
21 to which the assistance is extended, in the case of assistance to a State or local government . . . .”  
22 *Id.* § 794(b)(1).

23 68. Such federally funded programs and activities must provide aids and services that  
24 “afford handicapped persons equal opportunity to obtain the same result, to gain the same  
25 benefit, or to reach the same level of achievement, in the most integrated setting appropriate to  
26 the person’s needs.” 34 C.F.R. § 104.4(b)(2).  
27  
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1 69. Furthermore, recipients of federal funds must provide individuals with disabilities  
2 aids, benefits, and services that are as effective as those provided to persons without disabilities.

3 *Id.* § 104.4(b)(1)(iii).

4 70. Defendant receives federal grants, contracts, and other financial assistance,  
5 thereby subjecting themselves to the requirements of Section 504.

6  
7 71. Ms. Fischer, Ms. Pugh, and Ms. Walsh all have disabilities and were appointed by  
8 their City Councilors to serve on the Commission. They are therefore qualified individuals with a  
9 disability under Section 504.

10 72. Defendant has, solely by reason of their disabilities, excluded Ms. Fischer, Ms.  
11 Pugh, and Ms. Walsh from participation in and denied them the benefits of or otherwise  
12 discriminated and retaliated against them in their facilities, services, programs, or activities.  
13 Defendant's violation of Section 504 and its regulations has denied and continues to deny Ms.  
14 Fischer, Ms. Pugh, and Ms. Walsh an equal opportunity to participate in membership on the  
15 Commission.  
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17 73. Defendant's actions constitute discrimination on the basis of a disability in  
18 violation of Section 504, in that Defendant has:

- 19
- 20 a. failed to maintain policies and procedures to ensure compliance with Section 504,  
21 specifically policies that provide equal access to individuals with disabilities;
  - 22 b. failed to provide reasonable modifications of policies, practices, and procedures;
  - 23 c. denied Plaintiffs access to information given to other Commission members.

24 74. By failing to meet their obligations to provide persons with disabilities with  
25 opportunities to participate and serve that are equal to those provided to members of the  
26 Commission without disabilities, Defendant has and is excluding Ms. Fischer, Ms. Pugh, and  
27 Ms. Walsh from fully participating in and enjoying the benefits of the services, programs, or  
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1 activities offered by the Commission. Ms. Fischer, Ms. Pugh, and Ms. Walsh are entitled to  
2 injunctive relief, as well as reasonable attorneys' fees, costs and expenses.

3 75. Plaintiffs incorporate the allegations in the preceding paragraphs, as if alleged  
4 herein.

5 **DECLARATORY RELIEF**

6  
7 76. Plaintiffs allege and incorporate by reference the allegations in the preceding  
8 paragraphs.

9 77. A present and actual controversy exists between Plaintiffs and Defendant  
10 concerning their rights and respective duties. Plaintiffs contend that Defendant violated their  
11 rights under Title II of the Americans with Disabilities Act. Plaintiffs are informed and believe,  
12 and thereon allege, that Defendant denies these allegations. Declaratory relief is therefore  
13 necessary and appropriate.

14  
15 78. Plaintiffs seek a judicial declaration of the rights and duties of the respective  
16 parties.

17 **INJUNCTIVE RELIEF**

18 79. Plaintiffs allege and incorporate by reference the allegations in the preceding  
19 paragraphs.

20 80. No plain, adequate, or complete remedy at law is available to Plaintiff to redress  
21 the wrongs addressed herein.

22 **PRAYER FOR RELIEF**

23  
24 81. WHEREFORE, Plaintiffs Rena Fischer, Kathi Pugh, and Helen Walsh  
25 respectfully request that this Court:

- 26 a. Grant declaratory relief;
- 27 b. Enjoin Defendant from engaging in the unlawful discrimination complained of
- 28 herein;

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- c. Compel Defendant to provide reasonable modifications to Plaintiffs for Commission on Disability meetings and to permit remote attendance as needed for Commission meetings;
- d. Grant all injunctive relief necessary to bring Defendant into compliance with the ADA and Section 504;
- e. Order Defendant to pay Plaintiffs’ reasonable attorneys’ fees, costs and litigation expenses; and
- f. Grant such other and further relief as the Court may deem just and proper.



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DATED: August 22, 2023

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES

*/s/ Jinny Kim*

\_\_\_\_\_  
Jinny Kim  
Attorney for Plaintiffs

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