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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

14

15 THE CALIFORNIA COUNCIL OF THE
 BLIND, a California nonprofit corporation,
 16 LYNDA JOHNSON, and JAMES GUMP,

17 Plaintiffs,

18 v.

19 COUNTY OF SAN MATEO; MARK
 CHURCH, in his official capacity as Chief
 20 Elections Officer and Assessor-County
 Clerk-Recorder for the County of San
 21 Mateo; THE STATE OF CALIFORNIA;
 EDMUND G. BROWN, in his official
 22 capacity as Governor of California; and
 ALEX PADILLA, in his official capacity
 23 as Secretary of State of California,

24 Defendants.

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Case No. _____

**COMPLAINT FOR VIOLATIONS OF
 THE AMERICANS WITH
 DISABILITIES ACT, 42 U.S.C. § 12101,
 et. seq., SECTION 504 OF THE
 REHABILITATION ACT, 29 U.S.C.
 § 794, AND CALIFORNIA
 GOVERNMENT CODE § 11135, et seq.**

INTRODUCTION

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1. Plaintiffs THE CALIFORNIA COUNCIL OF THE BLIND (“CCB”), LYNDA JOHNSON, and JAMES GUMP challenge Defendants’ unlawful and discriminatory exclusion of blind and visually impaired voters from the County of San Mateo’s absentee voting program. Defendant County of San Mateo (“the County”) administers an absentee voting program to which blind and visually impaired voters are denied equal access. Despite the availability of reliable and secure technologies that would enable blind and visually impaired voters to cast absentee ballots in a private and independent manner, the County has failed to provide any alternative to paper ballots for absentee voting. As a result, blind and visually impaired voters must rely on the assistance of others to read and mark their absentee ballots, thereby sacrificing the confidentiality of their vote, or forego their right to vote by absentee ballot altogether.

2. In 2014, the County erected additional barriers to electoral participation among blind and visually impaired voters by enacting an All-Mailed Ballot Election Pilot Program. The program dramatically expands absentee voting while authorizing vast reductions in the number of physical polling sites in the County. The County touts the expanded absentee voting program as beneficial to its voters, and champions substantial cost savings and increased electoral participation associated with the pilot program. But it has utterly failed to extend the benefits of this program to blind and visually impaired voters. In spite of its increasing reliance on absentee voting, the County has taken no actions to ensure that blind and visually impaired voters can privately and independently read and mark absentee ballots, as they can in several other states.

3. Defendants State of California, California Secretary of State Alex Padilla (“the Secretary”), and Governor Edmund G. Brown (“Governor Brown”) have approved, enacted, and/or participated in the County’s discriminatory absentee voting program. The State of California extended absentee voting rights to all registered voters in California, but failed to address the exclusion of blind and visually impaired voters from the program. Governor Brown exacerbated this discrimination by signing legislation

1 approving the County's All-Mailed Ballot Election Pilot Program in 2014. The Secretary,
2 who serves as the State of California's chief elections officer and oversees elections across
3 the state, has failed to certify an accessible absentee ballot marking system for use in the
4 County, thereby impeding the implementation of a feasible remedy to this ongoing
5 discrimination. The Secretary also has aided and perpetuated discrimination against blind
6 and visually impaired voters in San Mateo County by facilitating and substantially
7 assisting in the administration of County elections.

8 4. By excluding blind and visually impaired voters from the County's absentee
9 voting program, Defendants discriminate on the basis of disability in violation of Title II of
10 the Americans with Disabilities Act ("ADA") and its accompanying regulations, Section
11 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act") and its accompanying
12 regulations, and California Government Code § 11135, *et seq.* and its accompany
13 regulations.

14 5. Plaintiffs attempted to resolve this matter without a lawsuit, but were unable
15 to secure a commitment from Defendants to modify their policies, procedures, and
16 practices in a manner sufficient to ensure that blind and visually impaired voters will have
17 full and equal access to the County's absentee voting program.

18 JURISDICTION AND VENUE

19 6. This is an action for declaratory and injunctive relief pursuant to Title II of
20 the ADA, 42 U.S.C. §§ 12101-12213, and Section 504 of the Rehabilitation Act, 29 U.S.C.
21 § 794, as well as California Government Code § 11135, *et seq.*

22 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
23 and 1343 for the federal law claims, and it has supplemental jurisdiction over the state law
24 claim pursuant to 28 U.S.C. § 1367. This Court has jurisdiction to issue a declaratory
25 judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

26 8. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
27 § 1391(b) because: (i) Defendants County of San Mateo and Mark Church, Chief Elections
28 Officer and Assessor-County Clerk-Recorder for San Mateo County, are located within the

1 District and (ii) the acts and omissions giving rise to this claim have occurred within the
2 District.

3 **THE PARTIES**

4 9. Plaintiff CCB is a nonprofit organization incorporated in California whose
5 membership consists of blind and visually impaired individuals residing in California. It is
6 the California affiliate of the American Council of the Blind. CCB's mission is to gain full
7 independence and equality of opportunity for all blind and visually impaired Californians.
8 CCB is committed to promoting the rights, needs, interests, and concerns of all
9 Californians who are blind or visually impaired, and to providing information and
10 referrals, technical assistance, and advocacy. For years, CCB has advocated before the
11 California legislature, the Secretary of State, local elections officials, and in court for
12 improved access to voting, including absentee voting, for blind and visually impaired
13 voters in California. CCB has hundreds of members in Northern California, including in
14 San Mateo County. CCB sues on behalf of its members in San Mateo County, including
15 Lynda Johnson, who are unable to read and mark absentee ballots privately and
16 independently.

17 10. Plaintiff LYNDA JOHNSON is an individual residing in San Mateo,
18 California and a member of CCB. Ms. Johnson is legally blind and registered to vote in
19 San Mateo County. Ms. Johnson is concerned about the privacy of her vote and wishes to
20 vote independently. Ms. Johnson often uses taxis and ride services to get around the
21 County. She prefers to vote absentee in order to avoid the expense of traveling to a
22 physical polling site and the anxiety associated with navigating new and unfamiliar places.
23 Like other voters, Ms. Johnson values the convenience of voting absentee. Ms. Johnson
24 would prefer to cast an absentee ballot using her screen reading technology, JAWS for
25 Windows, which she uses on a daily basis. Although Ms. Johnson hires a reader to assist
26 with certain tasks, she values the privacy of her vote and does not want to disclose the
27 nature of her vote to a third party or rely on others to read and mark her ballot for her.

28 11. Plaintiff JAMES GUMP is an individual residing in Menlo Park, California.

1 Mr. Gump is legally blind and is registered to vote in San Mateo County. Mr. Gump has a
2 guide dog, and he travels using public transportation, demand-responsive transportation
3 services such as Lyft, and other options. In the November 3, 2015 election, Mr. Gump cast
4 an absentee ballot with the assistance of another person, who read the text of the ballot to
5 him and filled out the ballot for him. Mr. Gump prefers to vote absentee to avoid the extra
6 time, cost, and inconvenience of traveling to and voting at a poll site on election day.
7 Mr. Gump would prefer to cast a ballot using ZoomText, the combination screen reading
8 and screen magnification software that he regularly uses to operate his computer.

9 12. Defendant COUNTY OF SAN MATEO is a political subdivision of the State
10 of California. Under California law, counties administer public elections within their
11 jurisdictions, subject to oversight by the Secretary of State. Counties design and provide
12 their own ballots for elections within their jurisdictions.

13 13. Defendant MARK CHURCH is the Chief Elections Officer and Assessor-
14 County Clerk-Recorder for the County of San Mateo (“the Chief Elections Officer”), and
15 is sued herein in his official capacity. In that role, Mr. Church bears legal responsibility
16 for conducting all public elections in San Mateo County, including administering the
17 County’s absentee voting program and establishing and providing places for voting within
18 the County.

19 14. Defendant STATE OF CALIFORNIA is a governmental entity. The State of
20 California holds elections for the selection of public officials. The State of California
21 offers absentee voting as an option for all registered voters in the state.

22 15. Defendant EDMUND G. BROWN, JR. is the Governor of the State of
23 California, and is sued herein in his official capacity. On August 15, 2014, Governor
24 Brown signed into law Assembly Bill 2028, which revised the California Elections Code to
25 authorize the All-Mailed Ballot Election Pilot Program in San Mateo County. The
26 legislation expanded absentee voting in the County without addressing the systemic
27 exclusion of blind and visually impaired voters from the program. The Governor is the
28 supreme executive power of the State and bears legal responsibility for executing the law.

1 16. Defendant ALEX PADILLA is the Secretary of State for the State of
2 California, and is sued herein in his official capacity. The Secretary of State is the chief
3 elections officer for the State of California and is charged with overseeing elections
4 throughout the state. The California Elections Code requires the Secretary to certify or
5 conditionally approve any voting systems and ballot marking systems prior to use
6 anywhere in the State of California. The Secretary also bears legal responsibility for
7 certifying and inspecting all ballot card printers and manufacturers contracted by counties
8 and other jurisdictions. The Secretary significantly assists the County in planning,
9 designing, and conducting its public elections.

10 **FACTUAL ALLEGATIONS**

11 17. Any voter in California may choose to vote by casting an absentee ballot
12 (also known as “Vote by Mail”). Any California voter also may register to become a
13 permanent absentee voter, whereby a paper absentee ballot is automatically sent to them
14 each election for voting.

15 18. Absentee voting is growing significantly in California. According to the
16 Secretary, 60.52% of the ballots cast in the 2014 general election were cast by absentee
17 ballot – a dramatic increase since 2000, when only 24.53% of ballots were cast absentee.¹

18 19. In San Mateo County, as in other California jurisdictions, voters who wish to
19 cast absentee ballots must fill out and submit paper ballots.

20 20. Paper ballots are not accessible to individuals who are blind or visually
21 impaired. Blind voters cannot read or mark printed ballots, so they must rely on the
22 assistance of others if they wish to participate in the absentee voting program. Similarly,
23 many voters with low vision cannot read or mark absentee ballots independently because
24 the ballots are printed with small text. In some cases, blind and visually impaired voters
25 pay money to hire individuals to read and mark their absentee ballots for them, which
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27 ¹ <http://www.sos.ca.gov/elections/historical-absentee/>

1 means that they must disclose their voting selections and must trust the sighted individual
2 not to alter their choices. Due to the exclusive use of paper ballots for absentee voting,
3 blind and visually impaired voters in the County lack the opportunity to cast their absentee
4 ballots privately and independently, or to independently verify the accuracy of their
5 absentee ballots.

6 21. However, Plaintiffs and other blind and visually impaired individuals
7 routinely use text-to-speech software to read electronic documents and webpages, and to
8 fill out forms independently. Text-to-speech software, sometimes referred to as screen
9 reading technology, enables blind and visually impaired persons to access information and
10 to operate computers by translating visual information and on-screen text into audible
11 synthesized speech, or into Braille on a portable electronic refreshable braille display.
12 Plaintiff Gump and other visually impaired individuals operate computers using
13 accessibility computer software that incorporates both text-to-speech software and screen
14 magnification features.

15 22. Jurisdictions across the country have implemented accessible absentee voting
16 programs that enable blind and visually impaired voters to cast absentee ballots privately
17 and independently using text-to-speech software. For example, voters in Alaska, Arizona,
18 Delaware, Maryland, Oregon, and Utah, as well as certain jurisdictions in Washington and
19 Hawaii, can elect to mark and submit absentee ballots online, often using computerized
20 systems that are compatible with text-to-speech software used by blind or visually
21 impaired people. These jurisdictions have extended the benefit of their absentee voting
22 programs to blind and visually impaired voters using reliable and established technologies.

23 23. For example, the Oregon-based company Five Cedars Group, Inc. has
24 developed a ballot marking system that is accessible to blind and visually impaired voters
25 who use computers with text-to-speech software or combination screen reading and screen
26 magnification software, and it does not require voters to go to a physical polling site in
27 order to cast their ballots. Five Cedars Group produces an Alternate Format Ballot
28 (“AFB”) that blind and visually impaired voters can access at home or anywhere they

1 choose using their preferred assistive technologies. Voters receive their ballots over the
2 internet and can read and mark them using their own text-to-speech software, refreshable
3 braille displays, or other assistive technologies. Five Cedars Group’s Alternate Format
4 Ballot is compatible with the text-to-speech software that Plaintiff Johnson uses, and is
5 compatible with the text-to-speech and screen magnification software that Plaintiff Gump
6 uses. The AFB also includes a Ballot Summary page that allows voters to review and
7 confirm their votes. Voters mark and cast their votes without transmitting their vote
8 choices or any other election data over the Internet or any other third party network.

9 24. Oregon, where all voting is absentee only, has used the Five Cedars Group’s
10 AFB since May 2008 without security breaches or other privacy concerns.

11 25. Nonetheless, despite the availability of technology that would remedy the
12 County’s ongoing violations of federal and state disability law, Defendants have failed to
13 extend absentee voting to blind and visually impaired voters in the County.

14 26. In fact, the County exacerbated the discriminatory denial of access to its
15 absentee voting program in 2014 by adopting an All-Mailed Ballot Election Pilot Program.
16 The program greatly expands absentee voting for certain elections and authorizes the
17 county to conduct elections “wholly by mail,” subject to certain limitations.²

18 27. The County’s All-Mailed Ballot Election Pilot Program imposes additional
19 barriers to democratic participation for blind and visually impaired voters by authorizing
20 vast reductions in the number of physical polling sites, to as few as one per city.

21 28. Reducing the number of physical polling sites in a jurisdiction
22 disproportionately impacts blind and visually impaired voters, who consequently face
23 longer travel times to reach polling sites equipped with accessible voting systems. With
24 fewer available physical polling sites in the County, blind voters like Ms. Johnson must
25 travel longer distances to vote via the only accessible method offered by using expensive

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27 ² Cal. Elec. Code § 4001(a).

1 ride services or relying on assistance from friends and family.

2 29. Blind and visually impaired voters face unique challenges at physical poll
3 sites. Blind and visually impaired voters must devote extra time to travel to and become
4 oriented to unfamiliar polling places. In addition, access to private and independent voting
5 for blind voters is often unreliable even at polling places. As exemplified in a recent
6 lawsuit brought by the California Council of the Blind against the County of Alameda, No.
7 13-cv-03443-JCS (N.D. Cal.), CCB members across California often find that accessible
8 voting machines at poll sites are malfunctioning or missing components necessary to use
9 the machines, or that poll workers do not know how to set up or operate the machines. As
10 a result, blind voters face significant delays as they wait for poll workers to resolve issues
11 with accessible voting machines, or they must dictate their voting choices to third parties
12 who mark ballots for them even at physical polling sites.

13 30. Mr. Church, on behalf of the County, publicly has touted substantial cost
14 savings attributable to the All-Mailed Ballot Election program. A message from
15 Mr. Church on the County's election website predicts cost savings of approximately 43%,
16 due to "major reductions in the hiring, training, and support of poll workers, and the testing
17 and deployment of voting equipment and supplies."³

18 31. Mr. Church has described the absentee voting program as a "unique
19 opportunity" and "benefit" to San Mateo County voters.⁴

20 32. Governor Brown has endorsed the use of absentee voting, including by
21 approving revisions to the California Elections Code designed to expand absentee voting
22 throughout the State. In particular, Governor Brown signed AB 2028 into law on
23 August 15, 2014.

24 _____
25 ³ "Frequently Asked Questions on November 3, 2015 Consolidated Municipal, School and
26 Special District All-Mailed Ballot Election," Shape the Future! Vote: Official Election Site
of San Mateo County, <https://www.shapethefuture.org/ab2028/faq>.

27 ⁴ "Message from Mark Church, Chief Elections Officer & Assessor-County Recorder-
28 Clerk," <https://www.shapethefuture.org>.

1 33. Previously, former Governor Arnold Schwarzenegger twice vetoed bills that
2 would have implemented all-mail ballot election pilot programs, in part on the grounds that
3 such programs would limit access to voters with disabilities.⁵

4 34. The Secretary of State is legally responsible for overseeing elections in the
5 State of California. California law charges the Secretary with responsibility for designing
6 and administering the application process for the certification of voting systems and ballot
7 marking systems. Certification is a process set forth in the California Elections Code by
8 which the Secretary of State approves voting systems and ballot marking systems for use
9 in public elections. By law, a county cannot use a voting system or ballot marking system
10 until and unless it is certified or conditionally approved by the Secretary. The Secretary
11 bears legal responsibility for reviewing and deciding applications for certification, issuing
12 public reports regarding its certification decisions, and promulgating regulations governing
13 the use of approved systems. The Secretary adopts and publishes testing standards for
14 voting and ballot marking systems and also evaluates and certifies ballot card finishers and
15 ballot card manufacturers. In selecting voting systems and ballot marking systems for use
16 in their jurisdictions, California counties are restricted to systems that the Secretary has
17 certified or conditionally approved. Counties may purchase ballot cards only from vendors
18 and manufacturers that have been certified by the Secretary of State, and only in quantities
19 expressly approved by the Secretary of State.

20 35. The Secretary's involvement with the administration of public elections in
21 California is pervasive. For example, the Secretary prints and distributes posters setting
22 forth voters' rights for use by county election officials. The Secretary determines the
23

24 ⁵ See Governor's Veto Message, Assembly Bill 1681, Sept. 30, 2010,
25 ftp://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1651-1700/ab_1681_vt_20100930.html
26 (“While I appreciate the author's inclusion of additional polling places in this year's
27 measure, I remain concerned that with limited options to vote in-person citizens—
28 especially poor, elderly, and disabled voters—would not have sufficient opportunity to
vote.”).

1 languages in which election materials should be posted at polling places in the counties.
2 The Secretary trains county elections officials regarding their voter registration duties and
3 possesses authority to make grants to local elections officials in order to enhance voter
4 outreach and education. The Secretary of State assesses the proposed designations of
5 candidates on ballot cards, including absentee ballot cards, for all public elections in
6 California. The Secretary directs the printing of ballot pamphlets and their distribution to
7 county elections officials.

8 36. The County relies on assistance from the Secretary in administering public
9 elections. Since 2011, the Secretary directly has funded the County's election programs
10 through annual grants intended to expand voting access for individuals with disabilities.
11 Between 2011 and 2014, the Secretary of State granted San Mateo County over \$300,000
12 for efforts to improve the accessibility of elections in the County.

13 37. The County relies on significant assistance, involvement, oversight, and
14 direction of the Secretary in administering public elections. Consequently, the Secretary
15 has aided and perpetuated discrimination against blind and visually impaired voters by
16 facilitating, directing, funding, and assisting in the administration of elections in the
17 County.

18 38. Moreover, the Secretary is critical to the implementation of a remedy to the
19 systemic discrimination at issue in this case, as the Secretary must certify a ballot marking
20 system, such as the one adopted in Oregon, before it can be used by any California county.
21 Therefore, in addition to bearing direct liability, the Secretary is a required party in this
22 action pursuant to Federal Rule of Civil Procedure 19(a)(1) because in his absence, the
23 court cannot accord complete relief.

24
25 **FIRST CLAIM FOR RELIEF**
(Violation of Title II of the Americans with Disabilities Act 42 U.S.C. § 12132 et seq.)

26 39. Plaintiffs reallege and incorporate herein by reference each and every
27 allegation set forth in paragraphs 1-39.

28 40. The Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, guarantees

1 equal access for qualified individuals to the benefits of the services, programs, and
2 activities of public entities. 42 U.S.C. § 12132.

3 41. Title II of the ADA mandates that no qualified individual with a disability
4 shall, by reason of such disability, be excluded from participation in or be denied the
5 benefits of the services, programs, or activities of a public entity, or be subject to
6 discrimination by any such entity. 42 U.S.C. § 12132.

7 42. In providing aids, benefits, or services, public entities may not provide a
8 qualified individual with a disability an opportunity to participate in or benefit from the
9 aid, benefit, or service that is not equal to that afforded others. 28 C.F.R.
10 § 35.130(b)(1)(ii).

11 43. In addition, in providing aids, benefits, or services, public entities may not
12 provide a qualified individual with a disability “an aid, benefit, or service that is not as
13 effective in affording equal opportunity” to gain the same result or benefit as provided to
14 others. 28 C.F.R. § 35.130(b)(1)(iii).

15 44. Furthermore, when providing an aid, benefit, or service, a public entity shall
16 not aid or perpetuate discrimination against a qualified individual with a disability by
17 providing significant assistance to an agency, organization, or person that discriminates on
18 the basis of disability in providing any aid, benefit, or service to beneficiaries of the public
19 entity’s program. 28 C.F.R. § 35.130(b)(1)(v).

20 45. Public entities must also ensure that communications with individuals with
21 disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a). To
22 satisfy this requirement, public entities must “furnish appropriate auxiliary aids and
23 services where necessary to afford individuals with disabilities, including applicants,
24 participants, companions, and members of the public, an equal opportunity to participate in
25 and enjoy the benefits of, a service, program, or activity of a public entity.” 28 C.F.R.
26 § 35.160(b)(1).

27 46. Public entities may not use methods of administration that have the effect of
28 subjecting qualified individuals with disabilities to discrimination on the basis of disability.

1 28 C.F.R. § 35.130(b)(3)(i). Additionally, public entities may not utilize methods of
2 administration that have the purpose or effect of defeating or substantially impairing
3 accomplishment of the objectives of the public entity’s program with respect to individuals
4 with disabilities. 28 C.F.R. § 35.130(b)(3)(ii).

5 47. Furthermore, a public entity may not use criteria or methods of
6 administration that perpetuate the discrimination of another public entity if both public
7 entities are agencies of the same state. 28 C.F.R. § 35.130(b)(3)(iii).

8 48. Public entities must “make reasonable modifications in policies, practices, or
9 procedures when the modifications are necessary to avoid discrimination on the basis of
10 disability, unless the public entity can demonstrate that making the modifications would
11 fundamentally alter the nature of the service, program, or activity.” 28 C.F.R.
12 § 35.130(b)(7).

13 49. Each and every Defendant is a public entity within the meaning of Title II of
14 the ADA.

15 50. Absentee voting is a program, service, or activity provided by Defendants
16 within the meaning of the ADA and its implementing regulations.

17 51. Lynda Johnson and James Gump are individuals with disabilities under the
18 ADA. CCB’s blind and visually impaired members are individuals with disabilities under
19 the ADA.

20 52. Ms. Johnson and other CCB members in San Mateo County are registered to
21 vote and are therefore qualified individuals with disabilities entitled to the protections of
22 the ADA. Mr. Gump is registered to vote in San Mateo County and is therefore a qualified
23 individual with a disability entitled to the protections of the ADA.

24 53. CCB sues on behalf of its members in San Mateo County who are denied full
25 and equal access to the program, service, or activity of absentee voting.

26 54. Defendants have failed and continue to fail to meet their obligations to
27 provide voters who are blind or visually impaired with an opportunity to vote that is equal
28 to the opportunity provided to other voters. Although methods exist elsewhere that would

1 enable blind voters to privately and independently mark and cast absentee ballots,
2 Defendants have refused to provide any such voting methods to blind voters in San Mateo
3 County. In refusing to provide such accessible absentee voting options, Defendants have
4 refused to provide an auxiliary aid or service that would allow Ms. Johnson, Mr. Gump,
5 and CCB's membership to vote equally. Defendants have thus failed to take appropriate
6 steps to ensure that communications with Plaintiffs are as effective as communications
7 with others in violation of 28 C.F.R. § 35.160(a).

8 55. Because Defendants have failed to provide Plaintiffs and other blind voters
9 with a method to privately and independently read and mark absentee ballots, Defendants
10 have also violated 28 C.F.R. § 35.130(b)(1)(ii) by failing to provide Plaintiffs and other
11 voters with vision disabilities with an equal opportunity to benefit from the aid, benefit, or
12 service of absentee voting. They also have violated 28 C.F.R. § 35.130(b)(1)(iii) by failing
13 to provide Plaintiffs with an equal opportunity to achieve the same result or benefit in the
14 aid, benefit, or service of absentee voting.

15 56. In addition, the Secretary provides significant financial assistance and other
16 support with administering elections to the County and its Chief Elections Officer while
17 the Secretary has failed to certify a voting method that enables blind and visually impaired
18 voters to read and mark absentee ballots privately and independently. In providing the
19 program, service, or activity of elections, the Secretary consequently has and continues to
20 aid and perpetuate the County and its Chief Elections Officer's discrimination against
21 Plaintiffs and other blind and visually impaired voters in violation of 28 C.F.R.
22 § 35.130(b)(1)(v) by providing significant assistance to the County and its Chief Elections
23 Officer, which discriminate on the basis of disability in the provision of absentee voting.

24 57. Furthermore, the Governor and the State of California authorized the County
25 to conduct all-mailed ballot elections, authorized the County to reduce the number of poll
26 sites available during elections, and provide other assistance in administering the County's
27 elections, but the Governor and the State have failed to authorize a method by which blind
28 voters can read and mark absentee ballots privately and independently. Thus, in providing

1 the program, service, or activity of absentee voting, the Governor and the State of
2 California have and continue to aid and perpetuate discrimination against qualified
3 individuals with disabilities in violation of 28 C.F.R. § 35.130(b)(1)(v) by providing
4 significant assistance to the County and its Chief Elections Officer, which discriminate
5 against Plaintiffs on the basis of disability in their provision of absentee voting.

6 58. Moreover, by administering absentee voting using exclusively printed paper
7 ballots and by failing to provide available methods of voting that would enable blind and
8 visually impaired voters to read and mark absentee ballots privately and independently,
9 Defendants are utilizing methods of administration that have the effect of subjecting
10 Plaintiffs and other voters with vision disabilities to discrimination in violation of 28
11 C.F.R. § 35.130(b)(3)(i), and that have the effect of defeating or substantially impairing
12 accomplishment of the objectives of Defendants' voting program with respect to Plaintiffs
13 and other voters with vision disabilities in violation of 28 C.F.R. § 35.130(b)(3)(ii).

14 59. By refusing to certify or otherwise authorize a voting method that would
15 enable blind voters to read and mark absentee ballots privately and independently, the
16 Secretary, the Governor, and the State of California are also using methods of
17 administering elections that perpetuate the discrimination committed by the County and its
18 Chief Elections Officer against Plaintiffs and other voters with vision disabilities in
19 violation of 28 C.F.R. § 35.130(b)(3)(iii).

20 60. Defendants have also failed to make reasonable modifications in their
21 program, service, or activity of absentee voting in violation of 28 C.F.R. § 35.130(b)(7) by
22 failing to provide Plaintiffs and other blind voters with a method to read and mark absentee
23 ballots privately and independently.

24 Accordingly, Defendants have excluded and continue to exclude Ms. Johnson, Mr. Gump,
25 and CCB's membership from participation in, and denied them the benefits of or otherwise
26 discriminated against them in, Defendants' service, program, or activity of absentee voting
27 in violation of the ADA.

28 WHEREFORE, Plaintiffs seek relief as set forth below.

SECOND CLAIM FOR RELIEF
(violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794)
(Against All Defendants)

61. Plaintiffs reallege and incorporate herein by reference each and every allegation set forth in paragraphs 1-60.

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

63. Section 504 defines “program or activity,” in relevant part, as “all of the operations of a department, agency, special purpose district, or other instrumentality of a State or of a local government; or the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government.” 29 U.S.C. § 794(b)(1).

64. Federally funded programs and activities may not, in providing aids, benefits, or services, “afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,” nor may such programs and activities provide qualified handicapped persons with “an aid, benefit, or service that is not as effective as that provided to others.” 45 C.F.R. § 84.4(b)(1)(ii)-(iii).

65. In addition, federally funded programs and activities may not, in providing aids, benefits, or services, aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity. 45 C.F.R. § 84.4(b)(1)(v).

66. The County is a public entity. The Chief Elections Officer is an elected agent of the County who is responsible for administering elections in the County. The Secretary of State is the elected executive of the Secretary of State’s office, which is a

1 public entity. The Governor is an elected agent of the State of California. The State of
2 California is a government entity.

3 67. Defendants receive federal financial assistance, including financial assistance
4 from the U.S. Department of Health and Human Services.

5 68. Absentee voting is a program or activity provided by Defendants.

6 69. Ms. Johnson, Mr. Gump, and CCB's blind and visually impaired members
7 are individuals with disabilities under Section 504.

8 70. Ms. Johnson, Mr. Gump, and other blind and visually impaired members of
9 CCB are registered to vote in the County and are therefore qualified individuals with
10 disabilities entitled to the protections of Section 504.

11 71. Defendants have failed and are failing to meet their obligations to provide
12 voters who are blind or visually impaired with an opportunity to vote that is equal to the
13 opportunity provided to other voters. By failing to provide a method of voting that allows
14 blind and visually impaired voters to read and mark absentee ballots privately and
15 independently, Defendants have refused to provide an auxiliary aid or service that would
16 allow Ms. Johnson, Mr. Gump, and CCB's membership to vote absentee equally.
17 Defendants have thus excluded and continued to exclude Ms. Johnson, Mr. Gump, and
18 CCB's membership from participation in, and denied them the benefits of or otherwise
19 discriminated against them in, their program or activity of voting.

20 72. In addition, the Secretary has provided the County with financial and other
21 assistance with administration of its elections, but has failed to certify a method of voting
22 that would allow Plaintiffs and other blind and visually impaired voters to cast absentee
23 ballots privately and independently. In providing the aid, benefit, or service of elections,
24 the Secretary has thus aided and perpetuated discrimination against qualified individuals
25 with disabilities by providing significant assistance to the County, which discriminates
26 against Plaintiffs on the basis of disability in its provision of the aid, benefit, or service of
27 absentee voting.

28 73. Furthermore, the Governor and the State of California authorized the County

1 to conduct all vote by mail elections, authorized the County to reduce the number of poll
2 sites available during elections, and provided other assistance administering the County's
3 elections while failing to authorize a method by which blind and visually impaired voters
4 can read and mark absentee ballots privately and independently. In providing the aid,
5 benefit, or service of absentee voting, the Governor and the State of California have thus
6 aided and perpetuated discrimination against qualified individuals with disabilities by
7 providing significant assistance to the County, which discriminates against Plaintiffs on the
8 basis of disability in its provision of the aid, benefit, or service of absentee voting.
9 Defendants have thus excluded and continue to exclude Ms. Johnson, Mr. Gump, and
10 CCB's membership from participation in, and denied them the benefits of or otherwise
11 discriminated against them in, Defendants' program or activity of absentee voting in
12 violation of Section 504 of the Rehabilitation Act.

13 WHEREFORE, Plaintiffs seek relief as set forth below.

14 **THIRD CLAIM FOR RELIEF**
15 **(violation of California Government Code § 11135, *Et. Seq.* against Mark Church in**
16 **his official capacity as Chief Elections Officer and Assessor-County Clerk-Recorder**
17 **for the County of San Mateo, the County of San Mateo, and Alex Padilla in his**
18 **official capacity as Secretary of State of California)**

17 74. Plaintiffs reallege and incorporate herein by reference each and every
18 allegation set forth in paragraphs 1-73.

19 75. California Government Code § 11135 and the regulations promulgated
20 thereunder prohibit discrimination against persons with disabilities by any program or
21 activity that receives financial assistance from the state.

22 76. The Secretary, the County, and the Chief Elections Officer receive financial
23 assistance from the State of California to support the program and activity of absentee
24 voting in San Mateo County.

25 77. By denying Plaintiffs full and equal access to the program and activity of
26 absentee voting in San Mateo County, the Secretary, the County, and the Chief Elections
27 Officer have denied Plaintiffs the benefits of, or unlawfully subjected them to
28 discrimination in, the program and activity of absentee voting solely because of their

1 disabilities in violation of Government Code section 11135 and the regulations
2 promulgated thereunder.

3 WHEREFORE, Plaintiffs seek relief as set forth below.

4 NEED FOR EQUITABLE RELIEF

5 78. Defendants' failure to provide voters who are blind or visually impaired with
6 an equal opportunity to vote constitutes an ongoing and continuous violation of the ADA
7 and its implementing regulations, as well as Section 504 of the Rehabilitation Act and its
8 implementing regulations. The County, the Chief Elections Officer, and the Secretary's
9 failure to provide voters who are blind or visually impaired with an equal opportunity to
10 vote also constitutes an ongoing and continuous violation of California Government Code
11 section 11135. Defendants will continue to violate the ADA, Section 504 of the
12 Rehabilitation Act, and Government Code section 11135 in this manner unless restrained
13 from doing so. Unless enjoined, Defendants' conduct will continue to inflict injuries for
14 which Plaintiffs have no adequate remedy at law.

15 79. As a proximate result of Defendants' violations of the ADA, the
16 Rehabilitation Act, and Government Code section 11135, Ms. Johnson, other CCB
17 members, and Mr. Gump have suffered and will continue to suffer irreparable harm. They
18 have suffered and continue to suffer from discrimination and unequal access to
19 Defendants' program, service, or activity of absentee voting. If there is no change in the
20 status quo, Ms. Johnson, Mr. Gump, and CCB's membership in San Mateo County will be
21 denied their right to vote privately, independently, and as effectively as others in the June
22 7, 2016 election and in future elections.

23 80. Plaintiffs have no adequate remedy at law. Unless the requested relief is
24 granted, Ms. Johnson, Mr. Gump, and CCB's membership will suffer irreparable harm in
25 that they will be discriminated against and denied equal access to the fundamental right to
26 vote.

27 81. The ADA, the Rehabilitation Act, and the California Government Code
28 authorize injunctive relief to remedy acts of discrimination against persons with

1 disabilities. 42 U.S.C. § 12188(a)(1); 29 U.S.C. § 794a; Cal. Gov't Code § 11139.

2 WHEREFORE, Plaintiffs seek relief as set forth below.

3 **PRAYER FOR RELIEF**

4 WHEREFORE Plaintiffs THE CALIFORNIA COUNCIL OF THE BLIND,
5 LYNDA JOHNSON, and JAMES GUMP pray for judgment against Defendants
6 COUNTY OF SAN MATEO, MARK CHURCH in his official capacity as Chief Elections
7 Officer and Assessor-County Clerk-Recorder for San Mateo County, the STATE OF
8 CALIFORNIA, EDMUND G. BROWN JR. in his official capacity as Governor of
9 California, and ALEX PADILLA in his official capacity as Secretary of State of
10 California, as follows:

11 1. A declaration that Defendants' failure to ensure that blind and visually
12 impaired voters in the County of San Mateo have access to a method to read and mark
13 absentee ballots privately and independently violates the Americans with Disabilities Act,
14 Section 504 of the Rehabilitation Act of 1973, and California Government Code section
15 11135.

16 2. An order and judgment enjoining Defendants from violating the Americans
17 with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and California
18 Government Code section 11135, and requiring Defendants to take all steps necessary to
19 ensure that blind and visually impaired voters have access to a method to read and mark
20 absentee ballots privately and independently in San Mateo County.

21 3. Plaintiffs' costs of suit and reasonable attorneys' fees under the Americans
22 with Disabilities Act, 42 U.S.C. § 12205, the Rehabilitation Act of 1973, 29 U.S.C. § 794a,
23 California Code of Civil Procedure § 1021.5, and other applicable law.

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1 4. Such other and further relief as this Court may deem just and proper.

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3 DATED: December 17, 2015

Respectfully submitted,

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ROSEN BIEN GALVAN & GRUNFELD LLP

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By: /s/ Lisa Ells

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Lisa Ells

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Attorneys for Plaintiffs

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