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Blind, Julian Vargas, Anne West, and the
Proposed Class*

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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JULIAN VARGAS, ANNE WEST, and
AMERICAN COUNCIL OF THE
BLIND, individually and on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

QUEST DIAGNOSTICS CLINICAL
LABORATORIES, INC., QUEST
DIAGNOSTICS HOLDINGS, INC.,
QUEST DIAGNOSTICS
INCORPORATED; and DOES 1-10,
inclusive,

Defendants.

CASE NO.: 2:19-cv-8108

**FIRST AMENDED CLASS
ACTION COMPLAINT**

1. Violation of Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*)
2. Violation of California's Unruh Civil Rights Act (Cal. Civil Code § 51 *et seq.*)
3. Violation of Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794(a).
4. Violation of California Disabled Persons Act (Cal. Civil Code § 54-54.3)

JURY TRIAL DEMANDED

Plaintiffs Julian Vargas and Anne West (hereinafter the "Individual Plaintiffs"), individually and on behalf of all others similarly situated, and Plaintiff American Council of the Blind (hereinafter "ACB," and together with the "Individual Plaintiffs," the "Plaintiffs"), by their attorneys, assert the following upon information and belief, except for those allegations pertaining to Plaintiffs, which are based on

1 their personal knowledge:

2 **NATURE OF THE ACTION**

3 1. Plaintiffs Julian Vargas and Anne West are visually impaired individuals
4 who rely upon auxiliary aids and services such as screen reading software, accessible
5 electronic and information technologies, and other effective methods of making
6 visually delivered materials available to persons who are blind or have low vision.
7 Plaintiff ACB is a nationwide membership organization of blind and visually
8 impaired persons. ACB’s mission is to increase the independence, security, equality
9 of opportunity, and quality of life for all blind and visually impaired people.

10 2. Defendants Quest Diagnostics Clinical Laboratories, Inc., Quest
11 Diagnostics Holdings, Inc., Quest Diagnostics Incorporated, and Does 1 through 10
12 (collectively “Defendants” and/or “Quest Diagnostics”) discriminated against
13 Plaintiffs by refusing and failing to provide auxiliary aids and services to Plaintiffs,
14 and by requiring Plaintiffs to rely upon other means of communication that are
15 inadequate to provide equal opportunity to participate in and benefit from Defendants’
16 health care services free from discrimination. Specifically, all Quest Diagnostics
17 patient service centers make use of an exclusively visual, touch-screen interface that
18 is inaccessible to the blind.

19 3. The Individual Plaintiffs bring this action individually and on behalf of
20 all others similarly situated to compel Defendants to cease unlawful discriminatory
21 practices and implement policies and procedures that will ensure Plaintiffs effective
22 communication, full and equal enjoyment, and a meaningful opportunity to participate
23 in and benefit from Defendants’ services. Plaintiffs seek declaratory, injunctive, and
24 equitable relief and attorneys’ fees and costs to redress Defendants’ unlawful
25 discrimination on the basis of disability in violation of Title III of the Americans with
26 Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the “ADA”), and its implementing
27 regulations. Additionally, Plaintiff Vargas bring this action individually and on behalf
28 of all other similarly situated California residents and seeks declaratory, injunctive,

1 and equitable relief and attorneys’ fees and costs to redress Defendant’s unlawful
2 discrimination on the basis of disability in violation of California’s Unruh Civil Rights
3 Act, California Civil Code § 51 *et seq.* (“Unruh Act”), Section 504 of the
4 Rehabilitation Act, 29 U.S.C. § 794(a) (“The Rehabilitation Act”) and California’s
5 Disabled Persons Act, California Civil Code § 54, *et seq.* (“Disabled Persons Act”),
6 and for statutory damages in accordance with California Civil Code §§ 52(a) and 54.3.

7 4. The Individual Plaintiffs have visited Defendants’ facilities in California
8 and Connecticut, and were denied full and equal access as a result of Defendants’
9 inaccessible Check-in System, which includes e-Check-in touchscreen kiosks for self-
10 service check-in. Similar denials of full and equal access to Defendants’ services have
11 been faced around the country by members of Plaintiff ACB. Defendants require all
12 patients use the inaccessible e-Check-in touchscreen kiosks to announce their arrival,
13 sign in and/or register for appointments.

14 5. Defendants’ e-Check-in touchscreen kiosks for self-service check-in do
15 not contain the necessary technology that would enable a person with a visual
16 impairment to a) enter any personal information necessary to process a transaction in
17 a manner that ensures the same degree of personal privacy afforded to those without
18 visual impairments; or b) use the device independently and without the assistance of
19 others in the same manner afforded to those without visual impairments. As a result,
20 the Individual Plaintiffs, members of Plaintiff ACB and all other visually impaired
21 individuals are forced to seek the assistance of a sighted person, and thereafter divulge
22 their personal medical information to that sighted person in a nonconfidential setting
23 in order to register.

24 6. By failing to make their Check-in system accessible to visually impaired
25 persons, Defendants, public accommodations subject to Title III of the ADA, the
26 Disabled Persons Act, the Rehabilitation Act and the Unruh Act, deprive blind and
27 visually-impaired individuals the full benefits of Defendants’ health care services—
28 all benefits they afford nondisabled individuals—thereby increasing the sense of

1 isolation and stigma among these Americans that Title III of the ADA, the Disabled
2 Persons Act, the Rehabilitation Act and the Unruh Act were meant to redress.

3 7. Defendants have demonstrated through their interactions with the
4 Individual Plaintiffs and members of ACB that they have adopted a policy and/or
5 pattern and practice of refusing to provide an accessible Check-in system for their
6 visually impaired patients, and that this decision, on information and belief, is based
7 purely on financial considerations, that resulted in the violation of Plaintiffs' civil
8 rights, in order for Defendants to realize a three per cent (3%) quarterly cost savings
9 through its "Invigorate" program while reporting \$236,000,000 of net income in the
10 quarter ending June 30, 2019.

11 8. Defendants have further demonstrated through their interactions with the
12 Individual Plaintiffs and members of ACB that Defendants' employees are not
13 properly trained regarding the civil rights, communication needs, privacy
14 considerations, or how to interact with visually impaired individuals.

15 9. Defendants' discrimination sends a message that it is acceptable for
16 medical providers to adopt policies, procedures and practices that deprive blind and
17 visually impaired individuals of the opportunity to be full partners in their receipt of
18 health care services in exchange for a 3% cost savings.

19 10. The ADA and the Unruh Act expressly contemplate injunctive relief
20 aimed at modification of a policy or practice that Plaintiffs seek in this action. In
21 relevant part, the ADA states:

22 Where appropriate, injunctive relief shall also include requiring the
23 provision of an auxiliary aid or service, modification of a policy, or
24 provision of alternative methods...

24 42 U.S.C. § 12188(a)(2); Cal. Civ. Code, § 52(c)(1).

25 11. Consistent with 42 U.S.C. § 12188(a)(2) and the Unruh Act, Plaintiffs
26 seek a permanent injunction requiring that:

27 a. Defendants take all steps necessary to bring their Check-in System into
28 full compliance with the requirements set forth in the ADA, and its

1 implementing regulations, so that blind and visually impaired patients of
2 Quest may check in independently, including ensuring that the arrival of
3 a blind or visually impaired patient is promptly recognized by Quest and
4 that Quest’s e-Check-in touchscreen kiosks are fully accessible to, and
5 independently usable by individuals with visual disabilities, through the
6 implementation of necessary technology that would enable persons with
7 a visual impairment to enter any personal information necessary to
8 process a transaction in a manner that ensures the same degree of
9 personal privacy afforded to those without visual impairments and use
10 the device independently and without the assistance of others in the same
11 manner afforded to those without visual impairments;

- 12 b. Defendants change their policies and practices so that these barriers to
13 accessibility do not reoccur; and
- 14 c. Plaintiffs’ representatives monitor Defendants’ facilities to ensure the
15 injunctive relief ordered pursuant to Paragraph 11.a. and 11.b. has been
16 implemented and will remain in place.

17 12. Plaintiffs’ claims for permanent injunctive relief are asserted as a
18 nationwide class claim pursuant to Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) was
19 specifically intended to be utilized in civil rights cases where the plaintiffs seek
20 injunctive relief for their own benefit and the benefit of a class of similarly situated
21 individuals. To that end, the note to the 1996 amendment to Rule 23 states:

22 Subdivision(b)(2). This subdivision is intended to reach situations where
23 a party has taken action or refused to take action with respect to a class,
24 and final relief of an injunctive nature or a corresponding declaratory
25 nature, settling the legality of the behavior with respect to the class as a
26 whole, is appropriate . . . Illustrative are various actions in the civil
rights field where a party is charged with discriminating unlawfully
against a class, usually one whose members are incapable of specific
enumeration.

27 13. In addition, Plaintiff Vargas’ claims for statutory damages pursuant to
28 California Civil Code §§ 52(a) and 54.3 are asserted as a California statewide class

1 claim pursuant to Fed. R. Civ. P. 23(b)(3).

2 **PARTIES**

3
4 14. Plaintiff American Council of the Blind was founded in 1961, and is a
5 national membership organization of approximately 20,000 blind and visually
6 impaired persons, organized as a non-profit corporation under the laws of the District
7 of Columbia. ACB has members in all 50 states and the District of Columbia, and
8 seeks to increase the independence, security, equality of opportunity, and quality of
9 life for all blind and visually impaired people. ACB brings this action in an
10 associational capacity on behalf of its blind and visually impaired members who have
11 been and will continue to be denied the full and equal enjoyment of Defendants’ goods
12 and services. ACB exists to ensure that governments, businesses, employers and other
13 individuals comply with the laws that protect the rights of people who are blind or
14 visually impaired to participate fully in all aspects of American society. ACB’s
15 members around the nation are current and/or potential customers of Defendants and
16 seek access to Defendants’ goods and services on a private and equal basis. However,
17 ACB members have encountered persistent barriers to accessibility during the
18 registration process at Defendants’ clinics.

19 15. Plaintiff Julian Vargas has at all material times to this Complaint resided
20 in Los Angeles, California. Plaintiff was born with a genetic eye disorder called Leber
21 congenital amaurosis (“LCA”), and as a result is legally blind. Plaintiff is
22 independent, and owns a business teaching individuals with disabilities how to use
23 mobile assistive technology.

24 16. Plaintiff Anne West has at all material times to this Complaint resided in
25 Hartford County, Connecticut. Plaintiff West is legally blind. Plaintiff West’s mother
26 had rubella during pregnancy, and as a result Plaintiff West was born totally blind.
27 She has been a business owner for several years and every day relies upon auxiliary
28 aids and services such as screen reading software, accessible electronic and

1 information technologies, and other methods of making visually delivered materials
2 available to persons who are blind or have low vision in her personal and professional
3 life.

4 17. The Individual Plaintiffs and members of ACB are therefore members
5 of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations
6 implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*, the Unruh Act, Cal.
7 Civ. Code, § 51 *et seq.*, and the Disabled Persons Act, Cal. Civ. Code § 54, *et seq.*

8 18. Quest Diagnostics Clinical Laboratories, Inc., is a Delaware corporation,
9 doing business in California since 1976. Quest Diagnostics Clinical Laboratories,
10 Inc., is a wholly owned (100%) subsidiary of Quest Diagnostics Holdings
11 Incorporated.

12 19. Quest Diagnostics Holdings Incorporated is a Delaware corporation and
13 is a wholly owned (100%) subsidiary of Quest Diagnostics Incorporated.

14 20. Quest Diagnostics Incorporated is a Delaware Corporation, and has been
15 doing business in California since 2004. Each of the Quest Defendants has its
16 principal place of business in Secaucus, New Jersey.

17 21. Defendants own and operate laboratories, patient service centers, offices,
18 and other facilities throughout the United States. Defendants are “the world’s leading
19 provider of diagnostic testing, information and services that patients and doctors need
20 to make better healthcare decisions. [Its] services range from routine blood tests –
21 such as total cholesterol, Pap testing and white blood cell count – to complex, gene-
22 based and molecular testing.” See, “Our Products & Services,” at
23 <https://www.questdiagnostics.com/home/about/products-services.html> (last accessed
24 July 26, 2019). Defendant Quest Diagnostic Incorporated “annually serves one in
25 three adult Americans and half the physicians and hospitals in the United States...”
26 See, “Fact Sheet,” at <http://newsroom.questdiagnostics.com/index.php?s=30664> (last
27 accessed July 26, 2019).

28 22. The Quest Diagnostics location which Plaintiff Vargas encountered was

1 at 4849 Van Nuys Boulevard, Sherman Oaks, California. The Quest Diagnostics
2 locations which Plaintiff West encountered were at 365 Queen Street, Unit C,
3 Southington, Connecticut, and 183 North Mountain Road, New Britain, Connecticut.
4 Members of ACB have visited Quest locations around the country and encountered
5 similar barriers to accessibility as those encountered by the individual Plaintiffs.

6 23. Defendants' facilities are places of public accommodation as defined in
7 42 U.S.C. §12181(7)(G) and Defendants are subject to the requirements of the ADA,
8 the Unruh Act, the Rehabilitation Act and the Disabled Persons Act.

9 24. The true names and capacities, whether individual, corporate, associate,
10 or otherwise of the Defendants named herein as Does 1 through 10, are unknown to
11 Plaintiffs at this time. Plaintiffs will amend this Complaint to allege their true names
12 and capacities when known. Plaintiffs are informed and believe and thereon allege
13 that each of the fictitiously-named Defendants is responsible in some manner for the
14 occurrences alleged in this Complaint.

15 25. Plaintiffs allege that Defendants, including Doe Defendants, and each of
16 them at all times mentioned in this Complaint, were the alter egos, agents and/or
17 employees and/or employers of their Co-Defendants and in doing the things alleged
18 in this Complaint were acting within the course of such agency and/or employment
19 and with the permission and consent of their Co-Defendants.

20 FACTUAL BACKGROUND

21 **The Individual Plaintiffs and Members of ACB Have Been Denied Full and** 22 **Equal Access to Defendants' Facilities**

23 26. Plaintiff Vargas visited Defendant's patient service center located at
24 4849 Van Nuys Boulevard, Sherman Oaks, California, on June 25, 2019. In order to
25 sign in at the Quest location, Plaintiff Vargas was required to use an inaccessible
26 touchscreen kiosk, such that Plaintiff Vargas was denied the benefits of Defendants'
27 health care services, facilities, privileges, and advantages, and was segregated and
28 otherwise treated differently than sighted individuals. Defendants maintain e-Check-

1 in touchscreen kiosks for patients to sign in and register, but for visually impaired
2 persons there is no way to navigate the system and indicate to Defendants' staff that
3 they are there for an appointment. It was by chance that an employee appeared to call
4 another patient back that Plaintiff Vargas was able to ask that person for help,
5 informing the employee he was there for routine bloodwork. Plaintiff Vargas had to
6 provide this private information in a nonconfidential setting, causing him significant
7 distress and embarrassment.

8 27. Plaintiff West visited Defendants' patient service centers located at 365
9 Queen Street, Unit C, Southington, Connecticut, and 183 North Mountain Road, New
10 Britain, Connecticut. Like Plaintiff Vargas, in order to sign in, Plaintiff West was
11 required to use an inaccessible touchscreen kiosk, such that Plaintiff West was denied
12 the benefits of Defendants' health care services, facilities, privileges, and advantages,
13 and was segregated and otherwise treated differently than sighted individuals.
14 Defendants maintain e-Check-in touchscreen kiosks for patients to sign in and
15 register, but for visually impaired persons there is no way to navigate the system and
16 indicate to Defendants' staff that they are there for an appointment.

17 28. Members of ACB have had similar experiences to the Individual
18 Plaintiffs.

19 29. ACB member Robin Rehder is a resident of Henderson, Nevada and is
20 blind. She has been a Quest Diagnostics customer for approximately five years.
21 Specifically, she has had her blood drawn at the Quest Diagnostics location at 210
22 North Boulder Highway, Henderson, Nevada 89015 for several years, usually twice
23 a year. Ms. Rehder is a Medicare beneficiary. Last year, she went to Quest Diagnostics
24 for her lab work and there was no one at the front desk to check her in. Since she is
25 blind, she had no way of knowing she needed to use the tablet to check-in. No one
26 came to the front desk to help her and she waited, confused. Eventually, another
27 patient arrived and used the tablet to check-in for her. Ms. Rehder was embarrassed
28 to have to give her personal information to a stranger in order to check-in as a patient

1 at Quest Diagnostics.

2 30. ACB member Mary Haroyan lives in Worcester, Massachusetts and is
3 blind. She is an active computer and smart phone user and a Braille reader. She has
4 been a Quest Diagnostics customer for approximately five years and is a Medicare
5 beneficiary. She uses the Quest Diagnostics location at 1 West Boylston Worcester,
6 Massachusetts 01606. Given that Ms. Haroyan is an active technology user, she
7 attempted to use Quest Diagnostics' tablet to check-in the first time she went to the
8 lab after the addition of the tablets. But the tablet was not accessible to her. There was
9 no audio function that would allow Ms. Haroyan to independently use the tablet. Ms.
10 Haroyan regularly uses the text-to-voice feature on her phone and would have been
11 able to read the tablet if it had been made accessible. She was forced to ask the person
12 who drove her to the appointment to fill out the tablet for her. During another visit,
13 she had to have a fellow patient fill out the tablet for her. She felt embarrassed for
14 having to ask for this type of assistance with personal information.

15 31. ACB member Nona Haroyan lives in Worcester, Massachusetts with her
16 sister, Mary. Ms. Haroyan is legally blind and is an active computer and smart phone
17 user. She has been a Quest Diagnostics customer for approximately five years. She is
18 a recipient of Mass Health, which is the Medicaid program in her state. She uses the
19 Quest Diagnostics location at 1 West Boylston, Worcester, MA 01606. Like her sister,
20 Nona is an active technology user and she attempted to use Quest Diagnostic's tablet
21 to check-in the first time she went to the lab after the addition of the tablets. But the
22 tablet was not accessible to her. There was no audio function that would allow Ms.
23 Haroyan to independently fill out the tablet. Ms. Haroyan regularly uses the text-to-
24 voice feature on her phone and would have been to read the tablet if it had been made
25 accessible. But Quest Diagnostics did not offer a way for Ms. Haroyan to check-in
26 independently.

27 32. In an attempt to correct this problem, Ms. Haroyan tried to schedule an
28 appointment on Quest Diagnostic's website. She thought that maybe if she made an

1 appointment in advance, it would prevent the need to check-in once she arrived.
2 Unfortunately, she ran into several problems when she tried to make the
3 appointment on the website. The website was also not accessible to her screen
4 reader technology. She was unable to select an appointment time from the drop-
5 down menu with her screen-reader because the website was not programmed to
6 work correctly with a screen-reader. Eventually, Ms. Haroyan was able to make an
7 appointment for her lab work, but she quickly learned it did nothing to help the
8 check-in process. She was still unable to check-in independently and had to have
9 another patient help her.

10 33. ACB member Kathy Lyons is a resident of Buffalo, New York and is
11 blind. She has been a Quest Diagnostics customer for approximately five years.
12 Specifically, she has had her blood drawn at the Quest Diagnostics at 2609 Delaware
13 Avenue, Buffalo, NY 14216. Ms. Lyons has always had to ask someone else to check
14 her in since Quest implemented the tablet check-in system. She has either relied on
15 her driver to assist her or had to rely on another patient. She goes to Quest Diagnostics
16 for her lab work once a year, and her last visit was in December 2019. She would like
17 to be able to check-in independently and not rely on strangers to assist her. She finds
18 asking for this type of personal assistance to be embarrassing and an invasion of her
19 privacy.

20 34. As a result of Defendants' failure to ensure effective communications
21 with the Individual Plaintiffs and members of ACB, and denial of auxiliary aid
22 services, the Individual Plaintiffs and members of ACB received services that were
23 objectively substandard, inaccessible, and inferior to those provided to sighted
24 patients, and were subjected to discriminatory treatment because of their disability.

25 35. Despite this difficulty, frustration, and unequal treatment, the Individual
26 Plaintiffs and members of ACB will seek Defendants' health care services in the
27 future, as Defendants partner with nearly every major medical institution for lab
28

1 work,¹ and further, because of the proximity of Defendant’s facilities to their homes
2 and their insurance coverage. Specifically, both Individual Plaintiffs and members of
3 ACB will have to return to Defendants’ facilities and anticipate being required to do
4 so in order to have additional testing completed, but are deterred from doing so due
5 to the discrimination they have faced and expect to face in the future. Furthermore,
6 the Individual Plaintiffs and members of ACB intend to return to Defendants’
7 facilities to ascertain whether those facilities remain in violation of accessibility
8 standards.

9 **Defendants Repeatedly Deny Individuals With Disabilities Full and Equal**
10 **Access to Defendants’ Facilities**

11 36. As the owner and manager of their properties, Defendants employ
12 centralized policies, practices, and procedures with regard to their company-wide
13 policy of electronic check-in at their patient service centers. Defendants’ SEC filings
14 indicate they rolled out the e-check-in touchscreen kiosks in 60% of their locations
15 by 2017, and they were in every location by the first quarter of 2018.

16 37. Though Defendants may have centralized policies regarding the roll-out
17 of company-wide e-Check-in touchscreen kiosks, and the maintenance and operation
18 of its e-Check-in touchscreen kiosks, Defendants have never had a plan or policy that
19 is reasonably calculated to make their e-Check-in touchscreen kiosks fully accessible
20 to, and independently usable by, individuals with vision related disabilities.

21 38. As a result of Defendants’ non-compliance with the ADA, Disabled
22 Persons Act, and Unruh Act, the Individual Plaintiffs and members of ACB have been
23 denied the benefit of full and equal enjoyment of Defendants’ goods, services,
24 facilities, privileges, advantages, or accommodations, have been denied participation
25 in and have been treated unequally by Defendants, and Defendants have failed to

26 _____
27 ¹ See, <http://newsroom.questdiagnostics.com/index.php?s=30664> (last accessed
28 Sept. 15, 2019) (Quest “[s]erves about half of the physicians and hospitals in the
U.S.”)

1 provide effective and accessible auxiliary aids or services that protect the Individual
2 Plaintiffs’ and ACB members’ privacy and independence.

3 39. If Defendants’ Check-in System was accessible, i.e. if Defendants
4 removed and remediated the access barriers described above, the Individual Plaintiffs
5 and members of ACB could independently and privately utilize Defendants’ products
6 and services.

7 40. Unfortunately, Defendants deny approximately 8.1 million² Americans
8 who have difficulty seeing access to their goods, products, and services because the
9 Check-in System is not accessible, which includes the lack of accessible and usable
10 e-Check-in touchscreen kiosks by persons with visual impairments.

11 **JURISDICTION AND VENUE**

12 41. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331
13 and 42 U.S.C. § 12188. This Court has subject matter jurisdiction over this action
14 pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and
15 the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest, fees,
16 and costs, and at least one Class member is a citizen of a state different from
17 Defendant. This Court has supplemental jurisdiction over state law claims pursuant
18 to 28 U.S.C. § 1367.

19 42. This Court has personal jurisdiction over Defendants because
20 Defendants maintain their headquarters in California, have sufficient minimum
21 contact with California, or have otherwise purposely availed themselves of the
22 markets in California through the promotion, marketing, and sale of their products
23

24 _____
25 ² Press Release, United States Census Bureau, Nearly 1 in 5 People Have a
26 Disability in the U.S., Census Bureau Reports *Report Released to Coincide with 22nd*
27 *Anniversary of the ADA* (Jul. 25, 2012), available at
28 <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html>
(last accessed April 25, 2019) (“About 8.1 million people had difficulty seeing,
including 2.0 million who were blind or unable to see.”).

1 and services in California to render the exercise of jurisdiction by this Court
2 permissible under traditional notions of fair play and substantial justice. Specifically,
3 Defendants are registered to do business in California and have been doing business
4 in California, including the Central District of California. Quest has 6,600 patient
5 access points, and 2,250 of Quest’s own patient service centers.³ Defendants do
6 substantial business in this judicial district, operating a Quest Diagnostics Nichols
7 Institute in San Juan Capistrano, clinical trial laboratories in San Juan Capistrano and
8 Northridge, and major laboratory facilities in West Hills,⁴ in addition to over 120
9 Quest Diagnostics patient service centers in the District.⁵

10 43. Venue is proper under 28 U.S.C. § 1391(a) and (b)(2) because
11 Defendants do substantial business in this District, and a substantial part of the events
12 or omissions giving rise to these claims occurred in this District. Defendants engaged
13 in the extensive promotion, marketing, distribution, and sales of the services at issue
14 in this District.

15 **CLASS ALLEGATIONS**

16 44. Plaintiffs Julian Vargas and Anne West (the “Individual Plaintiffs”)
17 bring this matter on behalf of themselves and those similarly situated.

18 45. The Individual Plaintiffs seek certification of the following Nationwide
19 Class: “all legally blind individuals who visited a Quest Diagnostics patient service
20 center in the United States and were denied full and equal enjoyment of the goods,
21 services, facilities, privileges, advantages, or accommodations due to Quest
22 Diagnostic’s failure to comply with the ADA’s and Rehabilitation Act’s auxiliary aids
23

24
25 ³ See, <http://newsroom.questdiagnostics.com/index.php?s=30664> (last accessed Sept.
15, 2019).

26 ⁴ See, [https://www.questdiagnostics.com/home/about/locations/regional-
27 contact.html](https://www.questdiagnostics.com/home/about/locations/regional-contact.html) (last accessed September 15, 2019).

28 ⁵ See, <https://appointment.questdiagnostics.com/patient/findlocation> (last accessed
September 15, 2019).

1 and services requirements during the Class Period.” (the “Nationwide Injunctive
2 Class”). The Individual Plaintiffs reserve the right to amend or modify the Class
3 definition in connection with a motion for Class certification and/or the result of
4 discovery.

5 46. Plaintiff Vargas also seeks certification of the following California sub-
6 class: “all legally blind individuals who visited a Quest Diagnostics patient service
7 center in California and were denied full and equal enjoyment of the goods, services,
8 facilities, privileges, advantages, or accommodations due to Quest’s use of
9 touchscreen check-in kiosks.” Plaintiff Vargas reserves the right to amend or modify
10 the sub-Class definition in connection with a motion for Class certification and/or the
11 result of discovery.

12 47. The California sub-class seeks class-wide damages pursuant to
13 California Civil Code § 52(a) in the amount of \$4,000 per violation and, pursuant to
14 California Civil Code § 54.3 in the amount of \$1,000 per violation, based on
15 Defendants’ wrongful policy and practice of failing to provide full and equal access
16 to visually impaired Californians as alleged herein. This action does not seek class
17 recovery for actual damages, personal injuries, or emotional distress that may have
18 been caused by Defendants’ conduct alleged herein.

19 48. This action should be certified as a class action under Federal Rule of
20 Civil Procedure 23(a) and (b)(2) for the Nationwide Injunctive Class. It satisfies the
21 class action prerequisites of numerosity, commonality, typicality, and adequacy
22 because:

- 23 A. Numerosity: Class Members are so numerous that joinder of all members
24 is impracticable. Plaintiffs anticipate there are tens of thousands of
25 legally blind individuals who are Class Members who have been harmed
26 and suffered discrimination due to Defendants’ failure to comply with
27 the ADA’s auxiliary aids and services requirements.
- 28 B. Commonality: There is a well-defined community of interest and

1 common questions of fact and law affecting members of the class in that
2 they all have been and/or are denied their civil rights to full and equal
3 access to, and use and enjoyment of Defendants' facilities and/or
4 services due to Defendants' failure to make their facilities fully
5 accessible and independently usable as described above.

6 C. Typicality: The Individual Plaintiffs' claims are typical of the claims of
7 the members of the proposed Nationwide Injunctive Class. The claims
8 of the Individual Plaintiffs and members of the class are based on the
9 same legal theories and arise from the same unlawful conduct.

10 D. Adequacy: The Individual Plaintiffs are all adequate Class
11 representatives. None of their interests conflict with the interests of the
12 Class Members they seek to represent; the Individual Plaintiffs will
13 fairly, adequately, and vigorously represent and protect the interests of
14 the members of the class, all of whom are similarly situated individuals
15 with visual impairments, and they have a strong interest in vindicating
16 their own and others civil rights; and, they have retained counsel
17 competent and experienced in complex class action litigation, generally,
18 and who possess specific expertise in the context of class litigation under
19 the ADA and Unruh Act.

20 49. Class certification of the Nationwide Injunctive Class is appropriate
21 under Fed. R. Civ. P. 23(b)(2) because Defendants have acted on or refused to act on
22 grounds generally applicable to the Class, making appropriate declaratory, injunctive,
23 and equitable relief with respect to the Individual Plaintiffs and the Class as a whole.

24 50. This action should be further certified as a class action under Federal
25 Rule of Civil Procedure 23(a) and (b)(3) for the California Unruh and Disabled
26 Persons Damages Sub-Class. Plaintiff Vargas asserts the subclass, limited to class
27 members who are, or during the relevant time were, residents of California, satisfies
28 the class action prerequisites of numerosity, commonality, typicality, and adequacy

1 for the same reasons set forth in preceding paragraph. In addition:

2 A. Predominance: Pursuant to Rule 23(b)(3), the common issues of law and
3 fact identified above predominate over any other questions affecting only
4 individual members of the California Unruh and Disabled Persons
5 Damages Sub-Class. The Class issues fully predominate over any
6 individual issue because no inquiry into individual conduct is necessary;
7 all that is required is a narrow focus on Defendants’ encounters with
8 legally blind California residents in its facilities.

9 B. Superiority: A class action is superior to the other available methods for
10 the fair and efficient adjudication of this controversy because:

- 11 i. The joinder of thousands of individual Class Members is
12 impracticable, cumbersome, unduly burdensome, and a waste of
13 judicial and/or litigation resources;
- 14 ii. The individual claims of the Class Members are relatively
15 modest compared with the expense of litigating the claims,
16 thereby making it impracticable, unduly burdensome, and
17 expensive—if not totally impossible—to justify individual
18 actions;
- 19 iii. When Defendants’ liability has been adjudicated, all Class
20 Members’ claims can be determined by the Court and
21 administered efficiently in a manner far less burdensome and
22 expensive than if it were attempted through filing, discovery, and
23 trial of all individual cases;
- 24 iv. This class action will promote orderly, efficient, expeditious,
25 and appropriate adjudication and administration of Class claims;
- 26 v. Plaintiffs know of no difficulties to be encountered in the
27 management of this action that would preclude its maintenance
28 as a class action;

- 1 vi. A class action will assure uniformity of decisions among Class
- 2 Members;
- 3 v. The Class is readily identifiable from Defendants’ own records
- 4 and prosecution of this action as a class action will eliminate the
- 5 possibility of repetitious litigation; and,
- 6 vi. Class Members’ interests in individually controlling the
- 7 prosecution of separate actions is outweighed by their interest in
- 8 efficient resolution by single class action.

9 51. 43. Accordingly, this case should be maintained as a class
10 action under Rule 23(b)(3) because questions of law or fact common to Class
11 Members predominate over any questions affecting only individual members, and
12 because a class action is superior to other available methods for fairly and efficiently
13 adjudicating this controversy.

FIRST CAUSE OF ACTION
VIOLATION OF THE ADA, TITLE III
[42 U.S.C. §§ 12101 *et seq.*]
(Against all Defendants)

18 52. Plaintiffs restate each and every allegation set forth in the foregoing
19 paragraphs of this Complaint with the same force and effect as if more fully set forth
20 herein.

21 53. At all times relevant to this action, Title III of the Americans with
22 Disabilities Act (ADA), 42 U.S.C. §§ 12181, *et seq.* was in full force and effect and
23 applied to Defendant’s conduct.

24 54. At all times relevant to this action, the United States Department of
25 Justice regulations implementing Title III of the ADA, 28 C.F.R. Part 36, were in full
26 force and effect and applied to the Defendants’ conduct.

27 55. At all times relevant to this action, the Individual Plaintiffs and members
28 of Plaintiff ACB have been substantially limited in the major life activities of seeing.

1 Accordingly, they are considered individuals with a disability as defined under the
2 ADA, 42 U.S.C. § 12102(2).

3 56. Defendants own, lease, and/or operate patient service centers that are
4 places of public accommodation as defined under Title III of the ADA, 42 U.S.C. §
5 12181(7)(F).

6 57. Title III of the ADA prohibits discrimination on the basis of disability
7 “in the full and equal enjoyment of the goods, services, facilities, privileges,
8 advantages, or accommodations of any place of public accommodations.” 42 U.S.C.
9 § 12182(a).

10 58. Pursuant to Title III of the ADA and its implementing regulations, a
11 public accommodation cannot deny participation or offer unequal or separate benefits
12 to individuals with disabilities. 42 U.S.C. § 12182(b)(1)(A); 28 C.F.R. §§ 36.202.

13 59. Pursuant to Title III of the ADA and its implementing regulations it
14 “shall be discriminatory to exclude or otherwise deny equal goods, services, facilities,
15 privileges, advantages, accommodations, or other opportunities to an individual or
16 entity because of the known disability of an individual with whom the individual or
17 entity is known to have a relationship or association.” 42 U.S.C. § 12182(b)(1)(E).

18 60. Pursuant to Title III of the ADA and its implementing regulations, a
19 public accommodation shall furnish appropriate auxiliary aids and services to ensure
20 effective communication with individual with disabilities. 42 U.S.C. §
21 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(b)(1).

22 61. Pursuant to Title III of the ADA and its implementing regulations, a
23 public accommodation, in choosing the type of auxiliary aid or service to ensure
24 effective communication, must consider the “method of communication used by the
25 individual; the nature, length, and complexity of the communication involved; and the
26 context in which the communication is taking place.” 28 C.F.R. § 36.303(c)(1)(ii).

27 62. Pursuant to Title III of the ADA and its implementing regulations, in
28 order to be effective, the type of auxiliary aid or service provided by the public

1 accommodations “must be provided in accessible formats, in a timely manner, and in
2 such a way as to protect the privacy and independence of the individual with a
3 disability.” 28 C.F.R. § 36.303(c)(1)(ii). To this end, the Ninth Circuit has explained,
4 “assistive technology is not frozen in time: as technology advances, []
5 accommodations should advance as well.” *Enyart v. Nat’l Conference of Bar*
6 *Examiners, Inc.*, 630 F.3d 1153, 1163 (9th Cir. 2011)

7 63. Auxiliary aids and services include, but are not limited to, audio
8 recordings, screen reader software, magnification software, optical readers, secondary
9 auditory programs, large print materials, accessible electronic and information
10 technology, other effective methods of making visually delivered materials available
11 to individuals who are blind or have low vision, and other similar services and actions.
12 28 C.F.R. §§ 36.303(b)(2), (4).

13 64. Defendants discriminated against the Individual Plaintiffs and members
14 of Plaintiff ACB on the basis of their disability by denying access to full and equal
15 enjoyment of the goods, services, facilities, privileges, advantages, and/or
16 accommodations of their places of public accommodation, and equal opportunity to
17 participate in and benefit from Defendants’ health care services, in violation of the
18 ADA.

19 65. Defendants further discriminated against the Individual Plaintiffs and
20 members of Plaintiff ACB by failing to ensure effective communication through the
21 specific provision of accessible and effective auxiliary aids and services.

22 66. Defendants violated Title III by, without limitation, failing to take the
23 steps necessary to make their Check-in System readily accessible and usable by
24 persons with visual impairments, including failing to make their e-Check-in
25 touchscreen kiosks readily accessible and usable by persons with visual impairments,
26 thereby denying individuals with visual disabilities the benefits of the e-Check-in
27 touchscreen kiosks and electronic check-in, providing them with benefits that are not
28 equal to those they provide others, and denying them effective communication.

1 67. Defendants further violated Title III by, without limitation, utilizing
2 administrative methods, practices, and policies that allow their e-Check-in
3 touchscreen kiosks to be made available without consideration of consumers who can
4 only participate in and benefit from Defendants' health care services with screen
5 reader programs.

6 68. Making their Check-in System accessible and usable by persons with
7 visual impairments, including making their e-Check-in touchscreen kiosks readily
8 accessible and usable by persons with visual impairments, does not change the content
9 of Defendants' electronic check-in procedure or result in making the electronic check-
10 in procedure different, but rather enables individuals with visual disabilities to
11 independently check-in, including independently accessing e-Check-in touchscreen
12 kiosks that Defendants already provide to sighted individuals.

13 69. As set out above, absent injunctive relief there is a clear risk that
14 Defendants' actions will recur with Plaintiffs and/or other visually impaired persons
15 seeking Defendants' laboratory services.

16 70. Plaintiffs are therefore entitled to injunctive relief, as well as an award
17 of attorneys' fees, costs, and disbursements pursuant to the ADA, 42 U.S.C. §
18 12188(a)(1) and/or common law.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

21 **[Cal. Civil Code § 51, *et seq.*]**

22 **(Against all Defendants)**

23 71. Plaintiffs restate each and every allegation set forth in the foregoing
24 paragraphs of this Complaint with the same force and effect as if more fully set forth
25 herein.

26 72. The Unruh Civil Rights Act, California Civil Code § 51 provides that:

27 All persons within the jurisdiction of this state are free and equal, and no
28 matter what their sex, race, color, religion, ancestry, national origin,
disability, medical condition, marital status, or sexual orientation are

1 entitled to the full and equal accommodations, advantages, facilities,
2 privileges, or services in all business establishments of every kind
3 whatsoever.

4 Cal. Civ. Code § 51(b).

5 73. Defendants are a business establishment within the meaning of the
6 Unruh Act. Defendants are the owners and operators of business establishments.

7 74. Defendants violated the Unruh Act by their acts and omissions, as set
8 forth herein. Specifically, Quest’s system for offering to the public touchscreen check-
9 in kiosks at thousands of locations throughout California is a business establishment
10 within the meaning of Civil Code § 51, *et seq.* Quest generates hundreds of millions
11 of dollars in revenue from the appointments for which patients check-in through the
12 use of e-Check-in touchscreen kiosks. The Quest kiosks are an accommodation,
13 advantage, facility, privilege, and service provided by Quest, which is inaccessible to
14 blind patrons. This inaccessibility denies blind patients full and equal access to the
15 accommodations, advantages, facilities, privileges, and services that Defendants
16 make available to the non-disabled public, in violation of the Unruh Civil Rights Act,
17 California Civil Code § 51, *et seq.* These violations are ongoing.

18 75. Defendants’ actions constitute intentional discrimination against the
19 class on the basis of a disability in violation of California Civil Code §§51, *et seq.*
20 Defendants are aware of the complete lack of access of the touchscreen check-in
21 kiosks to blind persons yet have deliberately chosen to provide a benefit and service
22 that is inaccessible to the blind.

23 76. Defendants are additionally violating California Civil Code § 51, in that
24 the conduct alleged herein constitutes a violation of various provisions of the
25 Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, as set forth above.
26 California Civil Code § 51(f) provides that a violation of the right of any individual
27 under the ADA shall also constitute a violation of the Unruh Civil Rights Act.

28 77. The actions of Defendants were and are in violation of the Unruh Civil
Rights Act, California Civil Code §§ 51, *et seq.*, and therefore Plaintiffs are entitled

1 to injunctive relief remedying the discrimination. Unless the Court enjoins
2 Defendants from continuing to engage in these unlawful practices, Plaintiffs and
3 members of the class will continue to suffer irreparable harm.

4 78. Plaintiffs are further entitled to statutory minimum damages pursuant to
5 California Civil Code § 52 for every individual violation; *i.e.*, each time a legally blind
6 individual had to try to check-in using the inaccessible touchscreen kiosk.

7 **THIRD CAUSE OF ACTION**

8 **VIOLATION OF THE DISABLED PERSONS ACT**

9 **[Cal. Civil Code §§ 54-54.3.]**

10 **(Against all Defendants)**

11 79. Plaintiffs restate each and every allegation set forth in the foregoing
12 paragraphs of this Complaint with the same force and effect as if more fully set forth
13 herein.

14 80. California Civil Code §§ 54-54.3 guarantee full and equal access for
15 people with disabilities to all accommodations, advantages, facilities, and privileges
16 of “all places of public accommodation” and “other places to which the general
17 public is invited.” Quest’s thousands of patient service center locations throughout
18 California featuring the inaccessible e-Check-in touchscreen kiosks constitute
19 “places of public accommodation” or “other places where the public is invited”
20 within the meaning of California Civil Code §§ 54-54.3.

21 81. Quest’s patient services locations constitute accommodations,
22 advantages, facilities, and privileges provided by Defendants to members of the
23 public in California and are, therefore, subject to the access requirements of
24 California Civil Code § 54.1 applicable to “all places of public accommodation” and
25 “other places to which the general public is invited.”

26 82. Defendants are violating the rights of blind and visually impaired
27 persons to full and equal access to public places by denying full and equal access to
28 Quest’s e-Check-in touchscreen kiosks in violation of California Civil Code §§ 54-

1 54.3.

2 83. Defendants are also violating California Civil Code §§ 54-54.3, in that
3 their actions are a violation of the ADA. Any violation of the ADA is also a
4 violation of California Civil Code § 54.1.

5 84. As a result of Defendants’ wrongful conduct, the individually-named
6 Plaintiff Vargas and the California sub-class are entitled to statutory minimum
7 damages under California Civil Code § 54.3 for each offense.

8 **FOURTH CAUSE OF ACT**

9 **VIOLATION OF SECTION 504 OF THE REHABILITATION ACT**

10 **[29 U.S.C. § 794]**

11 **(Against all Defendants)**

12 85. Plaintiffs incorporate the allegations in the preceding paragraphs, as if
13 alleged herein.

14 86. The Individual Plaintiffs and ACB members are individuals with a
15 disability protected by Section 504 of the Rehabilitation Act and qualified to receive
16 health services from Quest. *See* 29 U.S.C. § 794(a); 45 C.F.R. § 84.3(j).

17 87. Quest is a recipient of federal financial assistance from The Centers for
18 Medicare & Medicaid Services (“CMS”) and is therefore subject to Section 504 of
19 the Rehabilitation Act and its implementing regulations. *See* 29 U.S.C. § 794; 45
20 C.F.R. § 84.3(h).

21 88. Section 504 of the Rehabilitation Act provides that no qualified
22 individual with a disability shall be subjected to disability-based discrimination
23 under any program or activity receiving federal financial assistance. 29 U.S.C. §
24 794(a).62. Discrimination includes failing to “[a]fford a qualified handicapped
25 person an opportunity to participate in or benefit from the aid, benefit, or service
26 that is not equal to that afforded others,” or providing qualified handicapped persons
27 with “an aid, benefit, or service that is not as effective as that provided to others.” 45
28 C.F.R. § 84.4(b)(1)(ii)-(iii); *see* 45 C.F.R. § 84.52(a)(2)-(3).

1 89. Section 504 requires health programs or activities that receive federal
2 financial assistance and that have at least fifteen employees to provide auxiliary aids
3 and services to individuals who are blind. 45 C.F.R. § 84.52(b), (d).

4 90. A recipient may not directly or through contractual, licensing, or other
5 arrangements, discriminate on the basis of disability. 45 C.F.R. § 84.4(b)(1).

6 91. Quest's provision of health care constitutes a program or activity
7 receiving federal financial assistance and, as recipients, they are required to ensure
8 that both they and their contractors comply with Section 504 of the Rehabilitation
9 Act.

10 92. Quest has failed and is failing to meet their obligation to provide blind
11 individuals an equal opportunity to use and benefit from their health care programs
12 and activities. In failing to provide blind patients with an accessible Check-in
13 System, Quest has refused to provide the auxiliary aids and services necessary to
14 communicate with blind patients in an equally effective and timely manner that
15 protects their privacy and independence.

16 93. As a result of Quest's actions and omissions, the Individual Plaintiffs
17 and ACB members have suffered and will continue to suffer irreparable harm: they
18 have suffered and continue to suffer from discrimination and unequal access to
19 Quest's health care services. If there is no change in the status quo, the Individual
20 Plaintiffs and other ACB members will be denied their right to access and engage
21 fully in the provision of their health care.

22 94. Plaintiffs are entitled to injunctive relief, as well as reasonable
23 attorneys' fees and costs. Further, each Individual Plaintiff and the class are entitled
24 to compensatory damages.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiffs, on behalf of themselves and the members of the
27 Class, pray for:

28 ///

- 1 a. A Declaratory Judgment that at the commencement of this action
2 Defendants were in violation of the specific requirements of Title III of
3 the ADA and the Rehabilitation Act described above, and their relevant
4 implementing regulations, in that Defendants took no action that was
5 reasonably calculated to ensure that their Check-in system is fully
6 accessible to, and independently usable by, individuals with visual
7 disabilities;
- 8 b. A permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and 28 CFR
9 § 36.504(a), 29 U.S.C. § 794, and California Civil Code, § 51 *et seq.*,
10 which directs Defendants to take all steps necessary to bring their Check-
11 in system into full compliance with the requirements set forth in the ADA
12 and the Rehabilitation Act, and their implementing regulations, so that
13 their Check-in system is fully accessible to, and independently usable by
14 individuals with visual disabilities, and which further directs that the
15 Court shall retain jurisdiction for a period to be determined to ensure that
16 Defendants have adopted and is following an institutional policy that will
17 in fact cause it to remain fully in compliance with the law—the specific
18 injunctive relief requested by Plaintiffs are described more fully in
19 paragraph 11 above.
- 20 c. A permanent injunction enjoining Defendants from continuing their
21 discriminatory conduct;
- 22 d. An Order certifying the classes proposed by the Individual Plaintiffs,
23 naming the Individual Plaintiffs as class representatives, and appointing
24 their counsel as class counsel;
- 25 e. Payment of statutory damages, in accordance with California Civil Code
26 §§ 52(a) and 54.3 to the California sub-class;
- 27 f. Payment of compensatory damages to the Individual Plaintiffs and the
28 class;

- 1 f. Payment of costs of suit;
- 2 g. Payment of reasonable attorneys’ fees, pursuant to 42 U.S.C. § 12205,
- 3 28 CFR § 36.505, Cal. Civil Code §52, and Civ. Proc. Code § 1021.5,
- 4 including costs of monitoring Defendants’ compliance with the
- 5 judgment (*see Gniewkowski v. Lettuce Entertain You Enterprises, Inc.*,
- 6 Case No. 2:16-cv-01898-AJS (W.D. Pa. Jan. 11, 2018) (ECF 191)
- 7 (“Plaintiffs, as the prevailing party, may file a fee petition before the
- 8 Court surrenders jurisdiction. Pursuant to *Pennsylvania v. Delaware*
- 9 *Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 559 (1986),
- 10 *supplemented*, 483 U.S. 711 (1987), the fee petition may include costs to
- 11 monitor Defendant’s compliance with the permanent injunction.”); *see*
- 12 *also Access Now, Inc. v. Lax World, LLC*, No. 1:17-cv-10976-DJC (D.
- 13 Mass. Apr. 17, 2018) (ECF 11) (same);
- 14 h. Award of prejudgment interest pursuant to California Civil Code § 3291;
- 15 i. An Order retaining jurisdiction over this case until Defendants have
- 16 complied with the Court’s Orders; and,
- 17 j. The provision of whatever other relief the Court deems just, equitable
- 18 and appropriate.

19 Dated: March 4, 2020

NYE, STIRLING, HALE & MILLER, LLP

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DEMAND FOR JURY TRIAL

Plaintiffs AMERICAN COUNCIL OF THE BLIND, JULIAN VARGAS and ANNE WEST hereby demand a trial by jury of all claims so triable in the above-referenced matter.

Dated: March 4, 2020

NYE, STIRLING, HALE & MILLER, LLP

By: /s/ Jonathan D. Miller
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