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 12 *Kara Gordon, Isabel Callejo-Brighton*  
 13 *and John Doe*

14 **THE UNITED STATES DISTRICT COURT**  
 15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 KARA GORDON, ISABEL CALLEJO-  
 18 BRIGHTON and JOHN DOE,

19 Plaintiffs,

20 v.

21 STATE BAR OF CALIFORNIA and  
 22 NATIONAL CONFERENCE OF BOARD  
 EXAMINERS,

23 Defendants.  
 24  
 25  
 26

) Case No. : 3:20-cv-06442  
 )  
 ) COMPLAINT OF DISABILITY DISCRIMINATION IN  
 ) VIOLATION OF THE AMERICANS WITH  
 ) DISABILITIES ACT AND THE CALIFORNIA  
 ) UNRUH ACT  
 )  
 )  
 )  
 )  
 )

1 Plaintiffs ISABEL CALLEJO-BRIGHTON, KARA GORDON, and JOHN DOE bring  
2 these claims for relief against Defendants STATE BAR OF CALIFORNIA and NATIONAL  
3 CONFERENCE OF BOARD EXAMINERS, and allege:

4 **NATURE OF THIS ACTION**

5 1. Plaintiffs KARA GORDON, ISABEL CALLEJO-BRIGHTON, and JOHN DOE  
6 (together “Plaintiffs”) bring this action against Defendants STATE BAR OF CALIFORNIA  
7 (“STATE BAR”) and NATIONAL CONFERENCE OF BOARD EXAMINERS (“NCBE”).  
8 Plaintiffs allege violations of Titles II and III of the Americans with Disabilities Act, 42 U.S.C. §  
9 12101, *et seq.* and California’s Unruh Act, Cal. Civ. Code § 51, *et seq.*

10 2. To practice law in California, applicants including Plaintiffs must pass the  
11 California bar exam. Offered twice a year in July and February, the bar exam typically consists of  
12 two major components: a 200-item multiple-choice test called the Multistate Bar Examination  
13 (“MBE”) administered on the first day of the exam, and a five-item essay test and one-item  
14 performance test disseminated by the STATE BAR on the second day.

15 3. This year, because of the deadly COVID-19 pandemic, the California Supreme  
16 Court directed the STATE BAR to reschedule the July 2020 bar exam as a remote administration  
17 on October 5 and 6, 2020.

18 4. In response to the directive of the California Supreme Court, the STATE BAR  
19 designed a remote administration of the bar exam for virtually all test-takers. Plaintiffs are  
20 informed and believe, and thereupon allege, that as many as 11,000 test takers will take the bar  
21 exam through the STATE BAR’s remote administration.

22 5. In planning and designing this remote administration, the STATE BAR  
23 disregarded the needs and rights of a small number of test takers with disabilities like Plaintiffs.  
24 Instead of implementing common sense solutions to allow these test takers to participate in the  
25 remote administration of the bar exam, the STATE BAR is requiring these disabled test takers to  
26 travel to and participate in an in-person administration of the bar exam. The two-tiered system  
27 adopted by the STATE BAR is unfair and dangerous to the Plaintiffs and other disabled test  
28 takers who are being forced to test in person and endure risks to their health and test performance

1 that are not being imposed on their nondisabled peers.

2 6. Plaintiffs are law school graduates with disabilities who require and who have  
3 been approved by the STATE BAR for certain testing accommodations to demonstrate their  
4 knowledge and skills during the administration of the bar exam. Plaintiffs are also individuals  
5 who, because of their underlying medical conditions, and/or those of members of their  
6 households, are at higher risk of severe complications should they or their household member  
7 contract COVID-19. Thus, to maintain their health and safety during the pandemic, Plaintiffs  
8 must stay within their homes as much as possible, and must avoid being in close proximity with  
9 other individuals who may be positive for COVID-19 or surfaces contaminated with the virus.  
10 Related, should Plaintiffs be required to take the bar exam through an in-person administration,  
11 they would be faced with the risk of disruptive fear and anxiety associated with the risk of  
12 COVID-19 exposure during the exam, interfering with their ability to perform at their true  
13 ability. These risks are imposed on the basis of Plaintiffs' disabilities, and are not imposed on  
14 Plaintiffs' nondisabled peers.

15 7. As the STATE BAR has detailed in a series of changing FAQs,<sup>1</sup> the following  
16 disabled test takers are excluded from the remote administration of the bar exam:

- 17 • test takers with disabilities who cannot stay in front of the web camera for the entirety  
18 of each test section, such as Plaintiff Isabel Callejo-Brighton who needs unscheduled  
19 bathroom breaks during test sections due to her irritable bowel syndrome;
- 20 • test takers with disabilities who need a paper iteration of the exam, such as Plaintiff  
21 Kara Gordon who cannot use a computer screen for long periods due to her CSF leak  
22 and Plaintiff John Doe who requires a paper copy due to his ADHD and other  
23 disabilities;
- 24 • test takers with disabilities who need paper scratch paper throughout the exam, such  
25 as Plaintiff Kara Gordon who cannot use the digital scratch paper due to her CSF  
26 leak;

27 <sup>1</sup> OCTOBER 2020 BAR EXAM FAQs (Sept. 10, 2020),  
28 <https://www.calbar.ca.gov/Portals/0/documents/admissions/Examinations/October-2020-Bar-Exam-FAQs.pdf>.

- 1 • test takers with disabilities who need different amounts of extra time per test section;
- 2 and
- 3 • test takers with disabilities who use Dragon Speech Recognition or screen reading
- 4 software such as JAWS.

5 8. Plaintiffs have requested that the STATE BAR permit them to participate in the  
6 remote administration of the bar exam with their necessary testing accommodations. However,  
7 according to the STATE BAR, unless Plaintiffs waive their rights to their necessary and  
8 approved testing accommodations, they will be required to sit for the bar exam in person. They  
9 will not be permitted to take the bar exam in the safety of their homes, an option available to all  
10 test takers without disabilities.

11 9. Plaintiffs seek all appropriate relief to compel Defendants to permit them to take  
12 the bar exam remotely with the reasonable accommodations to which they are entitled in place,  
13 and to provide additional remedies.

14 **JURISDICTION AND VENUE**

15 10. This Court has jurisdiction over the subject matter and the parties pursuant to 28  
16 U.S.C. §§ 1331, 2201, and 2202. Plaintiffs bring this suit under Titles II and III of the Americans  
17 with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101, *et seq.*

18 11. This Court has supplemental jurisdiction over the related state law claims  
19 pursuant to 28 U.S.C. § 1367(a). Plaintiffs’ claims pursuant to California’s Unruh Civil Rights  
20 Act, Cal. Civil Code § 51, *et seq.* are related, as all of Plaintiffs’ claims share common operative  
21 facts. Resolving all state and federal claims in a single action serves the interests of judicial  
22 economy, convenience and fairness to the parties.

23 12. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(c).  
24 Defendants conducts discriminatory professional licensing activities within the Northern District  
25 of California, and the events giving rise to Plaintiffs’ claims have occurred and are occurring in  
26 the Northern District of California.

27 **PARTIES**

28 13. Plaintiff KARA GORDON is a 2020 graduate of the University of California,

1 Berkeley School of Law, and a resident of Berkeley, California. Plaintiff GORDON is diagnosed  
2 with a dural tear leading to a cerebral spinal fluid leak and cranial hypotension. Because of their  
3 condition, Plaintiff GORDON experiences migraines, eye pain, blurred and double vision,  
4 nausea, photophobia, and periodic cognition issues while sitting upright. GORDON is  
5 substantially limited in several major life activities and major bodily functions, as described, and  
6 is a person with a disability as defined by the Americans with Disabilities Act and corresponding  
7 California antidiscrimination laws. GORDON is qualified to take the California bar exam.

8 14. Plaintiff ISABEL CALLEJO-BRIGHTON is a 2020 graduate of the University of  
9 San Francisco School of Law and a resident of Berkeley, California. Ms. CALLEJO-BRIGHTON  
10 is diagnosed with Stage 4 endometriosis, irritable bowel syndrome, small intestinal bacterial  
11 overgrowth, a neurodevelopment disorder, and an anxiety disorder related to her medical  
12 conditions. As a result of her disabilities, Ms. CALLEJO-BRIGHTON has constant abdominal  
13 and pelvic pain and, due to treatment complications, compromised bladder and bowel function.  
14 She experiences bowel urgency, irregularity, pain, and urgency to use the restroom. She also has  
15 asthma. She is substantially limited in several major life activities and major bodily functions,  
16 including respiratory, digestive, genitourinary, bowel, and bladder, *see* 28 C.F.R. §  
17 35.108(c)(1)(ii), and is a person with disabilities as defined by the Americans with Disabilities  
18 Act and corresponding California antidiscrimination laws. She is qualified to take the California  
19 bar exam.

20 15. Plaintiff JOHN DOE is a 2020 graduate of an ABA-accredited law school, and a  
21 resident of Los Angeles, California. Plaintiff DOE is diagnosed with ADHD, generalized anxiety  
22 disorder, trichotillomania, and dysthymic disorder (persistent depressive disorder). He is  
23 substantially limited in several major life activities and major bodily functions, including  
24 concentrating and brain function and is a person with a disability as defined by the Americans  
25 with Disabilities Act and corresponding California antidiscrimination laws. He is qualified to  
26 take the California bar exam.

27 16. Defendant STATE BAR OF CALIFORNIA is a “public entity” for purposes of  
28 Title II of the ADA, 42 U.S.C. § 12131(1). Defendant STATE BAR establishes eligibility criteria

1 for becoming licensed to practice law in California. One requirement for licensing is passage of  
 2 the California State Bar Exam, which the STATE BAR develops, administers, and scores each  
 3 year. The STATE BAR also evaluates requests for reasonable accommodations by test takers  
 4 with disabilities and decides whether to grant or deny those requests. The STATE BAR conducts  
 5 business throughout the state of California, and one of its two primary offices is located in San  
 6 Francisco.

7 17. Defendant NATIONAL CONFERENCE OF BAR EXAMINERS (NCBE) is a  
 8 corporation headquartered in Madison, Wisconsin, which develops and controls various tests  
 9 relating to the licensing of law school graduates seeking admission to the bar. The NCBE  
 10 disseminates the Multistate Bar Examination (MBE) to jurisdictions like California that use the  
 11 examinations as a component of their bar examinations, and it determines and controls the  
 12 formats in which the MBE is offered and administered. Defendant NCBE is a “public  
 13 accommodation” for purposes of Title III of the ADA, 42 U.S.C. § 12181(7).

14 **FACTS COMMON TO ALL CAUSES OF ACTION**

15 18. The novel coronavirus nCOV-2019 (“COVID-19”) is a highly contagious  
 16 respiratory illness. The first confirmed case of COVID-19 in the United States was reported on  
 17 January 21, 2020<sup>2</sup>, and only five days later, the first two cases were confirmed in California.<sup>3</sup> The  
 18 World Health organization declared COVID-19 a pandemic on March 11, 2020.<sup>4</sup> On March 4,  
 19 2020, Governor Gavin Newsom declared a state of emergency in California because of the  
 20 COVID-19 pandemic, and on March 19, 2020, the governor issued an executive order<sup>5</sup>, requiring  
 21 “all individuals living in the state of California to stay home or at their place of residence” in  
 22 order to “protect public health.”<sup>6</sup> As recently as August 28, 2020, the California Department of  
 23

24 <sup>2</sup> *Timeline of WHO’s response to COVID-19 (“WHO Timeline”)*, WORLD HEALTH ORGANIZATION  
 (June 29, 2020), <https://www.who.int/news-room/detail/29-06-2020-covidtimeline> (last visited  
 25 Sept. 14, 2020).

26 <sup>3</sup> “Two Confirmed Cases of Novel Coronavirus in California,” CALIFORNIA DEPARTMENT OF  
 PUBLIC HEALTH, OFFICE OF PUBLIC AFFAIRS (Jan. 26, 2020),  
 27 <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-001.aspx> (last visited Sept. 14, 2020).

28 <sup>4</sup> *WHO Timeline*, *supra* note 2.

<sup>5</sup> Cal. Executive Order N-33-20 (Mar. 19, 2020), . <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

<sup>6</sup> *Id.*

1 Public Health has stated that “[c]ommunity spread of infection remains a significant concern  
 2 across the state.”<sup>7</sup> To date, over 750,000 Californians have been infected with COVID-19, and at  
 3 least 14,000 have died because of the virus.<sup>8</sup> Individuals with underlying medical conditions are  
 4 at a particular high risk of developing severe, and often life-threatening, complications from  
 5 contracting COVID-19. As the Department of Public Health explained, “Higher levels of  
 6 community spread ... increase the likelihood of infection among individuals at higher risk of  
 7 serious outcomes from COVID-19, including ... those with underlying health conditions who  
 8 might live or otherwise interact with an infected individual.” The Center for Disease Control has  
 9 confirmed that people with underlying health conditions are six times more likely to be  
 10 hospitalized, and twelve times more likely to die, from contracting COVID-19.<sup>9</sup>

11 19. On April 27, 2020, in response to the pandemic, the California Supreme Court  
 12 postponed the July bar exam to September 2020, and directed the California State Bar to “make  
 13 every effort possible to administer that examination online with remote and/or electronic  
 14 proctoring.”<sup>10</sup>

15 20. On July 16, 2020, the California Supreme Court rescheduled the Bar Exam for  
 16 October 5-6, 2020, and reiterated its direction that the California State Bar implement a remote  
 17 administration of the bar exam.<sup>11</sup>

18 21. On August 3-4, 2020, the American Bar Association approved a resolution urging

19 <sup>7</sup> *Statewide Public Health Officer Order*, CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (Aug.  
 20 28, 2020),

21 [https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/August/GovernorOrders/8-28-  
 22 20\\_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf?ver=2020-08-31-  
 23 102913-927&timestam=1598894957501](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/August/GovernorOrders/8-28-20_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf?ver=2020-08-31-102913-927&timestam=1598894957501) (last visited Sept. 14, 2020).

24 <sup>8</sup> *California COVID-19 By the Numbers: Numbers as of September 12, 2020*, CALIFORNIA  
 25 DEPARTMENT OF PUBLIC HEALTH, Sept. 13, 2020,  
 26 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx> (last visited  
 27 Sept. 14, 2020).

28 <sup>9</sup> “Coronavirus Disease 2019 Case Surveillance – United States, January 22 – May 30, 2020,”  
*Morbidity and Mortality Weekly Report (MMWR)*, CENTERS FOR DISEASE CONTROL AND  
 PREVENTION, [https://www.cdc.gov/mmwr/volumes/69/wr/mm6924e2.htm?s\\_cid=mm6924e2\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6924e2.htm?s_cid=mm6924e2_w)  
 (last visited Sept. 14, 2020).

<sup>10</sup> Letter from California Supreme Court to California State Bar (Apr. 27, 2020),  
[https://newsroom.courts.ca.gov/internal\\_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/  
 20203/Supreme%20Court%20Bar%20Exam.pdf](https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20203/Supreme%20Court%20Bar%20Exam.pdf).

<sup>11</sup> Letter from California Supreme Court to California State Bar (July 16, 2020),  
[https://newsroom.courts.ca.gov/internal\\_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/  
 20206/SB\\_BOT\\_7162020\\_FINAL.pdf](https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20206/SB_BOT_7162020_FINAL.pdf).



1 “the highest court or bar admission authority of each jurisdiction to cancel and to not administer  
2 any in-person bar examination during the COVID-19 pandemic until and unless public health  
3 authorities determine that the examination can be administered in a manner that ensures the  
4 health and safety of bar applicants, proctors, other staff, and local communities.”<sup>12</sup> The report  
5 supporting the resolution reasoned as follows:

6 No one should have to choose between their long-term health—or life—and a licensing  
7 examination. However, bar applicants in jurisdictions scheduled to administer an in-  
8 person bar examination are being required to do so. And given the state of the legal  
9 employment market combined with the need to repay student loans and otherwise earn a  
10 living, many bar applicants feel they truly have no choice at all.<sup>13</sup>

11 22. In response to the directive of the California Supreme Court, the STATE BAR  
12 designed a remote administration of the bar exam for virtually all test-takers. Plaintiffs are  
13 informed and believe, and thereupon allege, that as many as 11,000 test takers will take the bar  
14 exam through the STATE BAR’s remote administration.

15 23. In planning and designing this remote administration, the STATE BAR  
16 disregarded the needs and rights of a small number of test takers with disabilities like Plaintiffs.  
17 Unlike all nondisabled test takers, the STATE BAR is requiring these disabled test takers to  
18 travel to and participate in an in-person administration of the bar exam during which they will be  
19 subject to additional risks of COVID-19 and the related fear and anxiety of this experience. The  
20 two-tiered system adopted by the STATE BAR is unfair and dangerous to the Plaintiffs and other  
21 disabled test takers who are being forced to test in person and endure risks to their health and test  
22 performance that are not being imposed on their nondisabled peers.

23 24. The STATE BAR has posted on its website a Frequently Asked Questions  
24 document, “2020 Bar Exam FAQs” (“FAQs”), with information regarding how the remote exam  
25 will be administered, a document which has been updated at least seven times.<sup>14</sup> The FAQs set  
26 out policies that require disabled test takers with certain testing accommodations to take the test

27 <sup>12</sup> American Bar Association, Resolution 10G (adopted by The House of Delegates, Aug. 3-4,  
28 2020), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/10g-annual-2020.pdf>.

<sup>13</sup> *Id.* at 4

<sup>14</sup> *See* n.1, *supra*.



1 in person. Relevant to the Plaintiffs here:

2 a. “Other than scheduled breaks, you are not permitted to leave the view of the web  
3 camera, unless you finish the session early and proceed to upload your answers.”<sup>15</sup> The FAQs  
4 explain that “[f]or an applicant who has been granted double testing time on any portion of the  
5 exam, that means staying in view of the web camera for up to three hours, or until the applicant  
6 submits their answer file.”<sup>16</sup> A person who cannot stay in front of the web camera for the entirety  
7 of each test section – including a test taker like Plaintiff CALLEJO-BRIGHTON who needs  
8 disability-related breaks during test sections to use the bathroom – is required to test in person.

9 b. “In order to be provided with paper exam materials, you must test in-person at a  
10 test center assigned by the State Bar.”<sup>17</sup> This means that Plaintiff GORDON who cannot test on  
11 their computer due to their CSF leak, and Plaintiff DOE who needs a paper exam due to his  
12 ADHD, are required to test in person to access those testing accommodations.

13 c. “You are prohibited from bringing in and using physical scratch paper during the  
14 exam for the essay questions on day one and the multiple-choice questions on day two.”<sup>18</sup> As a  
15 result, test takers with disabilities who need physical scratch paper throughout the exam are  
16 required to test in person. This includes Plaintiff GORDON who cannot use digital scratch paper  
17 on their computer screen due to their CSF leak.

18 25. The FAQs acknowledge that the only way that a disabled test taker who needs  
19 these testing accommodations (unscheduled breaks, a paper exam, and paper scratch paper) can  
20 test remotely is to *wave* the necessary testing accommodations:

21 If I have been granted a testing accommodation which would require that I take the exam  
22 in person, but would rather waive that accommodation to test remotely, is that allowed?

23 Applicants can choose to waive their accommodations and take the online remote exam  
24 without the accommodations.<sup>19</sup>

25 <sup>15</sup> FAQs at 4.

26 <sup>16</sup> FAQs at 16.

27 <sup>17</sup> FAQs at 18.

28 <sup>18</sup> FAQs at 7.

<sup>19</sup> FAQs at 14; *see also id.* at 16 (“If you have been granted extra testing time and you have a different amount of extra testing time for different sessions of the exam and/or you feel you will NOT be able to stay in view of the web camera for the duration of each question session, you may elect to waive or reduce your extra testing time or test in-person with your accommodations

1           26.     The NCBE’s Memorandum of Understanding (“MOU”) for the Use of  
2 Abbreviated NCBE Test Materials for October 5–6, 2020, Remote Administration, similarly  
3 states that test takers who require nonstandard test materials, including paper iterations of the  
4 MBE, cannot test remotely and must test at an in-person administration. On information and  
5 belief, the NCBE is waiving this requirement when requested by state bars.

6           27.     Common sense solutions exist to allow test takers with disabilities to participate  
7 in the remote administration of the bar exam:

8           a.     Test takers with disabilities who need an alternative format of the exam such as a  
9 paper exam can be provided files through a secure file transfer for printing, or can be mailed or  
10 couriered a sealed exam to be open before the web camera. Remote proctoring can be done using  
11 Zoom or a proctoring vendor. Such solutions have been implemented by the DC Bar and the Law  
12 School Admissions Council through its LSAT-Flex program.<sup>20</sup>

13           b.     Test takers with disabilities who need an unscheduled break to use the restroom  
14 can state their reason for the unscheduled break into the video before leaving. This solution has  
15

16 as granted.”). The FAQs also include the following statement: “If the State Bar at any time  
17 determines in its sole discretion that any of your granted testing accommodation(s) cannot be  
18 administered remotely, the State Bar may require that you test in-person in order to utilize any  
19 such accommodations.” *Id.* at 18.

20 <sup>20</sup> Law School Admissions Council, The LSAT, Introduction LSAT-Flex (“In light of the  
21 COVID-19 public health emergency, we are offering an online, remotely proctored version of the  
22 LSAT — called the LSAT-Flex. ... In May, June, and July, we delivered the first LSAT-Flex  
23 administrations. Nearly 33,000 candidates successfully completed the LSAT-Flex to continue  
24 their law school journeys. ... What if I was approved for testing accommodations for the in-  
25 person LSAT? Will I still have my accommodations with LSAT-Flex? Yes. LSAC is committed  
26 to working with LSAT-Flex test takers with disabilities to see that their accommodation needs  
27 are met under the circumstances. All test takers who were approved to receive accommodations  
28 for an in-person LSAT test date will receive the same or equivalent accommodations for the  
test’s associated LSAT-Flex test. LSAC will communicate directly with each registrant with  
approved accommodations who is scheduled to take an LSAT-Flex exam, regarding their  
approved accommodations in the context of LSAT-Flex.”), [https://www.lsac.org/update-  
coronavirus-and-lsat/lSAT-flex](https://www.lsac.org/update-coronavirus-and-lsat/lSAT-flex); Law School Admissions Council, Law School Admission in the  
Time of COVID-19: Top 10 Questions About the LSAT-Flex (Apr. 15, 2020) (“10. I have an  
LSAC-approved vision accommodation to use alternative materials, such as a braille test or a  
large-print paper test; can I still receive this accommodation when the LSAT-Flex test is given in  
May? Yes. For test takers who have been approved for a braille test or a large-print paper test,  
LSAC will work directly with them on a case-by-case basis to see that they receive their  
approved accommodation and appropriate remote proctoring in these circumstances. LSAC will  
communicate directly with candidates who require braille or large-print paper test materials to  
coordinate how they will receive their test materials and remote proctoring.”),  
<https://www.lsac.org/blog/law-school-admission-time-covid-19-top-10-questions-about-lsat-flex>.

1 been implemented by the DC bar for all test takers.<sup>21</sup> Test takers who believe they need to have  
 2 an unscheduled bathroom break may scan the bathroom with their web camera before the test  
 3 administration and before each use.

4 c. Test takers with disabilities who need paper scratch paper throughout the exam  
 5 can scan the front and back of their scratch paper, as is being done by all test takers for the  
 6 performance test.<sup>22</sup>

7 28. Plaintiffs GORDON, CALLEJO-BRIGHTON, and DOE are individuals with  
 8 disabilities who require testing accommodation for the bar exam that trigger the Defendants'  
 9 requirement that they take the exam in person. As well, Plaintiffs' disabilities and/or those of  
 10 their household members place them and their loved ones at high risk for serious, possibly life-  
 11 threatening complications should they contract the COVID-19 virus. The risks of contracting  
 12 COVID-19 during an in-person administration of the bar exam is not being imposed on  
 13 Plaintiffs' nondisabled peers.

14 29. Plaintiffs are experiencing fear and anxiety about testing in person and potentially  
 15 contracting COVID-19 during the proposed two-day in-person administration of the exam. They  
 16 are further experiencing fear and anxiety that they will not be able to perform to their ability  
 17 during the bar exam – either because they are testing in-person while experiencing fear and  
 18 anxiety related to contracting COVID, or because they are testing remotely by waiving necessary  
 19 testing accommodations. These risks and harms are not imposed on Plaintiffs' nondisabled peers.

20 <sup>21</sup> Memorandum to Applicants to the October 2020 Remote Exam for Bar Admission from  
 21 District of Columbia Committee on Admissions (COA) (Aug. 14, 2020) 3 (“Applicants are to  
 22 remain in the frame of the camera for the duration of the exam. If an applicant must take a  
 23 restroom break, or move out of the frame of the camera for any purpose, the applicant is to  
 24 briefly state the reason on the video.”); Letter from District of Columbia Court of Appeals  
 25 Committee on Admissions to Tara Roslin (Sept. 1, 2020) (“Applicants granted off the clock  
 26 breaks are required to take those breaks in view of the camera for remote proctoring purposes. If  
 27 an applicant must take a restroom break, or leave for a break in connection with an  
 28 accommodation, the applicant should state in the video the reason for leaving the view of the  
 camera.”) (emphasis in original),  
<https://www.dccourts.gov/sites/default/files/divisionspdfs/committee%20on%20admissions%20pdf/Exam%20informational%20email%208-14-2020-Memo%201.pdf>.

<sup>22</sup> FAQs at 7 (“You will be allowed to have eight pages of physical scratch paper (both sides must be blank) for the Performance Test on the afternoon of day two of the exam. You will be required to hold up to the camera the front and back of each piece of scratch paper you are using for the PT session.”).

1                    Kara Gordon

2                    30. Plaintiff KARA GORDON is a 2020 graduate of the University of California,  
3 Berkeley School of Law. Plaintiff GORDON has a cerebrospinal fluid (CSF) leak, a disability  
4 caused by a tear in their dura mater, the outermost layer of connective tissue that surrounds the  
5 brain and spinal cord. When Plaintiff GORDON is upright for too long, CSF leaks through this  
6 dural tear, causing the fluid volume and pressure within their skull to drop, a condition known as  
7 intracranial hypotension. This causes Plaintiff GORDON to experience, among other things,  
8 chronic migraines, light sensitivity, vision changes and eye pain, difficulty with memory and  
9 recall and decreased cognition.

10                  31. Being upright or looking at a computer for more than two hours exacerbates  
11 Plaintiff GORDON's dural tear and can trigger a migraine. When this happens, Plaintiff  
12 GORDON needs time to manage their symptoms by lying flat for at least half an hour, eating,  
13 drinking and closing their eyes and not looking at a computer screen.

14                  32. Plaintiff GORDON has secured an Associate Attorney position with an Oakland  
15 law firm, and needs to become a member of the California State Bar. GORDON is registered to  
16 sit for the October 2020 BAR EXAM and has been granted testing accommodations from  
17 Defendant, a paper iteration of the exam and paper scratch paper, formats which do not trigger  
18 Plaintiff GORDON's migraines, eye pain, and related vision and nausea problems.

19                  33. Because of Plaintiff GORDON's CSF leak, Plaintiff GORDON is at increased  
20 risk of developing serious and life-threatening complications should they contract the COVID-19  
21 virus. But Defendant STATE BAR has informed GORDON that, in order to access their  
22 necessary testing accommodations, GORDON will be required to take the bar exam in person.

23                  34. Plaintiff GORDON is experiencing intense anxiety about taking the exam in  
24 person and putting their health at serious risk. Plaintiff GORDON further fears that they will not  
25 perform to their abilities during the test due to anxiety of contracting COVID-19 and becoming  
26 seriously ill. Such anxiety may also trigger a migraine during the test.

27                  35. Due to their disability, Plaintiff GORDON is at increased risk of serious illness  
28 from a COVID-19 infection. Moreover, the week following the bar exam, Plaintiff GORDON is

1 scheduled for surgery related to the painful effects of their disability. In order to undergo the  
2 surgery, Plaintiff GORDON must take a COVID-19 test and limit their exposure to other people.  
3 If they take the bar exam in person, the status of their surgery may be in jeopardy. Only few  
4 doctors in the U.S. specialize in Plaintiff GORDON's disability, and if the surgery is postponed  
5 Plaintiff GORDON does not know when it can be rescheduled.

6 36. Plaintiff GORDON faces irreparable harm because of Defendants' ongoing failure  
7 to offer the bar exam in a manner that is accessible to Plaintiff GORDON's disabilities, and that  
8 provides an equal opportunity relative to their nondisabled peers.

9 *Isabel Callejo-Brighton*

10 37. Plaintiff ISABEL CALLEJO-BRIGHTON is a 2020 graduate of the University of  
11 San Francisco School of Law. She has secured a two-year fellowship with the Animal Legal  
12 Defense Fund, which begins in November 2020. Her taking the bar exam in October 2020 is a  
13 condition of her fellowship.

14 38. CALLEJO-BRIGHTON is diagnosed with Stage 4 endometriosis, irritable bowel  
15 syndrome, small intestinal bacterial overgrowth, a neurodevelopment disorder, and an anxiety  
16 disorder related to her medical conditions. As a result of her disabilities, CALLEJO-BRIGHTON  
17 has constant abdominal and pelvic pain and, due to treatment complications, compromised  
18 bladder and bowel function. She experiences bowel urgency, irregularity, pain, and urgency to  
19 use the restroom. She cannot sit for extended periods of time without using the restroom.  
20 CALLEJO-BRIGHTON requires and has been granted unscheduled restroom breaks for her law  
21 school exams and for the bar exam. Plaintiff CALLEJO-BRIGHTON cannot remain in front of  
22 her webcam for the entirety of each testing period due to her need for consistent bathroom access.  
23 Plaintiff CALLEJO-BRIGHTON also has asthma.

24 39. These medical conditions also place Ms. CALLEJO-BRIGHTON at increased risk  
25 of developing serious complications should she be hospitalized with COVID-19 virus. During  
26 the pandemic, she has not left the house; her husband does the household shopping, and she  
27 utilizes online conferencing for her medical appointments.

28 40. Ms. CALLEJO-BRIGHTON has registered to take the October 2020 bar exam

1 and has been granted bathroom breaks (and related extra time) as a testing accommodation from  
2 Defendant STATE BAR. But Defendant STATE BAR has informed Ms. CALLEJO-  
3 BRIGHTON that, that in order to access her necessary accommodations, she will be required to  
4 take the bar exam in person. Via an August 11, 2020 email, the STATE BAR Office of  
5 Admissions informed Plaintiff CALLEJO-BRIGHTON, “Due to the accommodations that  
6 you’ve been granted and/or the logistics of administering this examination, you are required to  
7 take this examination in person at a Testing Accommodation Center.” The email further  
8 explained that because “test center locations have not been finalized, confirmation regarding your  
9 testing center cannot be provided at this time.”

10 41. Plaintiff CALLEJO-BRIGHTON fears contracting COVID-19 during an in person  
11 administration of the bar exam. She further fears that the stress she will experience while taking  
12 the test in person and potentially contracting COVID-19 will cause her to perform poorly. These  
13 risks to health and performance are not imposed on nondisabled test takers.

14 42. Ms. CALLEJO-BRIGHTON faces irreparable harm because of Defendants’  
15 ongoing failure to offer the bar exam in a manner that is accessible to her disabilities, and that  
16 provides an equal opportunity relative to her nondisabled peers.

17 John Doe

18 43. Plaintiff DOE is a 2020 graduate of an ABA-accredited law school. Plaintiff DOE  
19 has ADHD, generalized anxiety disorder, trichotillomania, and dysthymic disorder (persistent  
20 depressive disorder). Plaintiff DOE’s trichotillomania prevents him from following COVID  
21 safety protocols, putting him at increased risk of transmission; he rarely leaves the house.  
22 Plaintiff DOE lives with his wife, who is pregnant with twins and is diagnosed with severe  
23 asthma. These conditions place her at increased risk of developing serious complications should  
24 she contract the COVID-19 virus.

25 44. Plaintiff DOE is registered to sit for the October 2020 bar exam, and has been  
26 granted necessary testing accommodations for his disabilities including a paper iteration of the  
27 exam. But Defendant STATE BAR has informed DOE that, that in order to access his necessary  
28 accommodations, he will be required to take the bar exam in person, causing him intense fear and



1 anxiety about the prospect of testing in person and putting both his and his wife’s health at  
2 serious risk.

3 45. Due to his anxiety disorder, Plaintiff DOE has fear of contagion. He is concerned  
4 that the stress he will experience of contracting COVID-19 if forced to take the Bar Exam in  
5 person will cause him to perform poorly. This concern proved true when Plaintiff DOE took the  
6 MPRE in-person in August 2020 and experienced significant panic and distractibility.

7 46. Plaintiff DOE feels forced to forego his testing accommodation of a paper exam  
8 because he cannot face the risks of testing in person. At the same time, he needs the paper exam  
9 and will not be able to test to his ability without it. Plaintiff DOE faces irreparable harm because  
10 of Defendants’ ongoing failure to offer the bar exam in a manner that is accessible to his  
11 disabilities, and that provides an equal opportunity relative to his nondisabled peers.

12 **FIRST CLAIM FOR RELIEF**

13 **Violation of Title II of the Americans with Disabilities Act of 1990**

14 **42 U.S.C. § 12131, *et seq.***

15 **against Defendant State Bar of California**

16 47. Plaintiffs allege and incorporate by reference the allegations in the preceding  
17 paragraphs.

18 48. Plaintiffs are qualified individuals with disabilities within the meaning of 42  
19 U.S.C. §§ 12102(2) and 12132.

20 49. As a public entity, Defendant STATE BAR is governed by Title II of the  
21 Americans with Disabilities Act (ADA) which provides that individuals with disabilities may not  
22 be “excluded from participation in or be denied the benefits of the services, programs or  
23 activities of a public entity,” nor may they be “subjected to discrimination by any such entity.” 42  
24 U.S.C. § 12132.

25 50. A public entity must also provide necessary reasonable modifications, 28 C.F.R. §  
26 35.130(b)(7), and appropriate auxiliary aids and services, 28 C.F.R. § 35.160(b). “A public entity  
27 may not administer a licensing or certification program in a manner that subjects qualified  
28 individuals with disabilities to discrimination on the basis of disability” and “shall not impose or  
apply eligibility criteria that screen out or tend to screen out an individual with a disability or any



1 class of individuals with disabilities from fully and equally enjoying any service, program, or  
2 activity, unless such criteria can be shown to be necessary for the provision of the service,  
3 program, or activity being offered.” 28 C.F.R. § 35.130(b)(6), (b)(8).

4 51. The obligation to ensure disability nondiscrimination includes an obligation to  
5 ensure equal safety. *California School for the Blind v. Honig*, 736 F.2d 538, 545-46 (9th Cir.  
6 1984), *vacated on other grounds*, 471 U.S. 148 (1985); *Putnam v. Oakland Unified Sch. Dist.*,  
7 No. C-93-3772 CW, 1995 U.S. Dist. LEXIS 22122, at \*\*31-32 (N.D. Cal. June 9, 1995).

8 52. Plaintiffs are qualified individuals who are entitled to participate in a fair, full and  
9 equal basis in the remote administration of the bar exam, with their necessary testing  
10 modifications.

11 53. Allowing Plaintiffs to test remotely with their testing modifications would not  
12 impose a fundamental alteration, but would even the playing field and allow Plaintiffs’ aptitudes  
13 and cognitive abilities to be fairly and accurately measured in an equally safe environment to  
14 their nondisabled peers.

15 54. In violation of Plaintiffs’ right to be free from disability-based discrimination,  
16 Defendant STATE BAR has denied Plaintiffs the opportunity to take the bar exam on an equal  
17 basis with nondisabled test takers.

18 55. Under Defendant’s unlawful two-tiered system, Plaintiffs are required to take the  
19 bar exam in person to access the testing accommodations that all parties acknowledge they need,  
20 thereby risking their health and subjecting themselves to anxiety related to COVID-19, while  
21 their non-disabled peers are safely testing from home. Plaintiffs may test remotely only if they  
22 agree to forgo their necessary testing accommodations. Either outcome is untenable.

23 56. As a proximate result of the unlawful acts described herein, Plaintiffs have  
24 suffered and continue to suffer injury.

25 57. Defendant’s unlawful actions were and are intentional, willful, malicious and/or  
26 done with reckless disregard to Plaintiffs’ right to be free from discrimination based on their  
27 disabilities.

28 58. Plaintiffs are entitled to injunctive and declaratory relief, including emergency

1 relief, compensatory damages, and attorneys' fees and costs. Plaintiffs need and are entitled to  
2 extraordinary relief in order to take the October 2020 California State Bar Examination remotely  
3 with their testing accommodations.

4 **SECOND CLAIM FOR RELIEF**

5 **Violation of Title III of the Americans with Disabilities Act of 1990**  
6 **42 U.S.C. § 12181, *et seq.***  
7 **against Defendant NCBE**

8 59. Plaintiffs allege and incorporate by reference the allegations in the preceding  
9 paragraphs.

10 60. As a public accommodation which administers professional licensing  
11 examinations including the MBE, the NCBE is obligated to adhere to Title III of the ADA, which  
12 prohibits discrimination against individuals "on the basis of disability in the full and equal  
13 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any  
14 place of public accommodation." 42 U.S.C. § 12182(a).

15 61. Title III specifies that unlawful discrimination includes "a failure to make  
16 reasonable modifications in policies, practices, or procedures, when such modifications are  
17 necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to  
18 individuals with disabilities, unless the entity can demonstrate that making such modifications  
19 would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or  
20 accommodations." 42 U.S.C. § 12182(b)(2)(A)(ii).

21 62. Title III further requires "any person that offers examinations or courses related to  
22 applications, licensing, certification, or credentialing for secondary or post-secondary education,  
23 professional, or trade purposes" to "offer such examinations or courses in a place and manner  
24 accessible to persons with disabilities or offer alternative accessible arrangements for such  
25 individuals." 42 U.S.C. § 12189.

26 63. To ensure that "the key gateways to education and employment are open to  
27 individuals with disabilities," 28 C.F.R. part 36 app. B, examinations like the Bar Exam must be  
28 administered to an individual with a disability so that "the examination results accurately reflect  
the individual's aptitude or achievement level or whatever other factor the examination purports

1 to measure, rather than reflecting the individual’s impaired sensory, manual, or speaking skills.”  
2 *Id.* at § 36.309(b)(1)(i).

3 64. The obligation to ensure disability nondiscrimination in testing includes an  
4 obligation to ensure equal safety.

5 65. Plaintiffs are qualified individuals who are entitled to participate in a fair, full and  
6 equal basis in the remote administration of the bar exam, with their necessary testing  
7 modifications.

8 66. Allowing Plaintiffs to test remotely with their testing modifications would not  
9 impose a fundamental alteration, but would even the playing field and allow Plaintiffs’ aptitudes  
10 and cognitive abilities to be fairly and accurately measured in an equally safe environment to  
11 their nondisabled peers.

12 67. In violation of Plaintiffs’ right to be free from disability-based discrimination,  
13 Defendant NCBE has adopted a policy of not permitting the use of alternative formats including  
14 paper versions of the MBE for remote administrations.

15 68. Under Defendant’s policy, Plaintiffs are required to take the bar exam in person to  
16 access the testing accommodations that all parties acknowledge they need, thereby risking their  
17 health and subjecting themselves to anxiety related to COVID-19, while their non-disabled peers  
18 are safely testing from home. Plaintiffs may test remotely only if they agree to forgo their  
19 necessary testing accommodations. Either outcome is untenable.

20 69. As a proximate result of the unlawful acts described herein, Plaintiffs have  
21 suffered and continue to suffer injury.

22 70. Defendant’s unlawful actions were and are intentional, willful, malicious and/or  
23 done with reckless disregard to Plaintiffs’ right to be free from discrimination based on their  
24 disabilities.

25 71. Plaintiffs are entitled to injunctive and declaratory relief, including emergency  
26 relief, compensatory damages, and attorneys’ fees and costs. Plaintiffs need and are entitled to  
27 extraordinary relief in order to take the October 2020 California State Bar Examination remotely  
28 with their testing accommodations.

**THIRD CLAIM FOR RELIEF**  
**Violation of the Unruh Civil Rights Act**  
**California Civil Code § 51, *et seq.***  
**against Defendant NCBE**

1  
2  
3  
4           72.     Plaintiffs allege and incorporate by reference the allegations in the preceding  
5 paragraphs.

6           73.     The Unruh Civil Rights Act requires that people with disabilities be provided  
7 equal access to the accommodations, advantages, facilities, privileges, and services of all  
8 business establishes of any kind whatsoever. Cal. Civ. Code §§ 51, *et seq.* Further, “[a] violation  
9 of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law  
10 101-336) ... also constitute[s] a violation of [the Act].” Cal. Civ. Code § 51(f).

11           74.     Plaintiffs are persons with disabilities under California Government Code § 12926  
12 and California Civil Code § 51, *et seq.*

13           75.     Defendant NCBE is a business establishment as that term is used in California  
14 Civil Code § 51(b), and the administration, development, dissemination, and control of the MBE  
15 is an accommodation, advantage, facility, privilege, and service of Defendant NCBE in  
16 California.

17           76.     Defendant NCBE has and continues to violate the Unruh Civil Rights Act by  
18 denying Plaintiffs full and equal access to the Bar Exam.

19           77.     As a proximate result of the unlawful acts described herein, Plaintiffs have  
20 suffered and continue to suffer injury.

21           78.     Defendant’s unlawful actions were and are intentional, willful, malicious and/or  
22 done with reckless disregard to Plaintiffs’ right to be free from discrimination based on their  
23 disabilities.

24           79.     Plaintiffs are entitled to injunctive and declaratory relief, including emergency  
25 relief, compensatory damages, and attorneys’ fees and costs. Plaintiffs need and are entitled to  
26 extraordinary relief in order to take the October 2020 California State Bar Examination remotely  
27 with their testing accommodations.

28 ///

**DECLARATORY RELIEF**

80. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

81. A present and actual controversy exists between Plaintiffs and Defendants concerning their rights and respective duties. Plaintiffs contend that Defendant STATE BAR violated their rights under Title II of the Americans with Disabilities Act. Plaintiffs further contend that Defendant NCBE violated their rights under Title III of the Americans with Disabilities Act and under California’s Unruh Civil Rights Act. Plaintiffs are informed and believe, and thereon allege, that Defendants deny these allegations. Declaratory relief is therefore necessary and appropriate.

82. Plaintiffs seek a judicial declaration of the rights and duties of the respective parties.

**INJUNCTIVE RELIEF**

83. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

84. No plain adequate, or complete, remedy at law is available to Plaintiffs to redress the wrongs addressed herein.

85. By moving papers to be filed shortly, Plaintiffs seek emergency injunctive relief. If this court does not grant the injunctive relief sought below, Plaintiffs will be irreparably harmed.

**PRAAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this court:

1. Issue emergency injunctive relief compelling Defendants to provide effective reasonable accommodations to Plaintiffs for the October 2020 Bar Exam, and to permit Plaintiffs to take the exam remotely with those reasonable accommodations in place;

2. Enjoin Defendants from engaging in the unlawful discrimination complained of herein;

3. Grant all injunctive relief necessary to bring Defendants into compliance with the

- 1 ADA and California law;
- 2 4. Grant declaratory relief;
- 3 5. Award compensatory damages for Plaintiffs’ emotional pain and suffering, in an
- 4 amount to be proven at trial;
- 5 6. Award treble damages;
- 6 7. Award statutory minimum damages;
- 7 8. Award punitive damages;
- 8 9. Order Defendants to pay Plaintiffs’ reasonable attorneys’ fees, reasonable expert
- 9 witness fees, and other costs of this action;
- 10 10. Award interest on damages, including pre- and post-judgment interest and an
- 11 upward adjustment for inflation; and
- 12 11. Grant such other and further relief as the court deems just and proper.

**JURY DEMAND**

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

15 Dated: September 14, 2020

LEGAL AID AT WORK

17  
18  
19 By: /s/ Jinny Kim  
Jinny Kim  
Attorneys for Plaintiff

22  
23  
24 DISABILITY RIGHTS EDUCATION AND  
DEFENSE FUND

25 By: /s/ Claudia Center  
26 Claudia Center  
Attorneys for Plaintiff