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20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA**

22 GAMALIEL DATUGAN, an
 23 individual,
 24
 25 Plaintiffs,
 26
 27 vs.
 28
 29 BOARD OF TRUSTEES OF THE
 30 CALIFORNIA STATE
 31 UNIVERSITY, a public entity; and
 32 DOES 1-10, inclusive,
 33
 34 Defendants.

35 **CASE NO.:**
 36 **COMPLAINT FOR**
 37 **DECLARATORY AND**
 38 **INJUNCTIVE RELIEF AND**
 39 **DAMAGES FOR VIOLATIONS OF:**

- 40 1. Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*;
- 41 2. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*;
- 42 3. California Unruh Act, Cal. Civ. Code § 51, *et seq.*;
- 43 4. Cal. Govt. Code § 11135;
- 44 5. Negligence

45 **JURY TRIAL DEMANDED**

INTRODUCTION

1
2 Plaintiff Gamaliel Datugan (“Plaintiff”) hereby alleges the following facts and
3 submits the following causes of action against the BOARD OF TRUSTEES OF THE
4 CALIFORNIA STATE UNIVERSITY (“Board of Trustees”), and DOE Defendants 1
5 through 10 (“Does”) (collectively, “Defendants”):

6 1. Plaintiff Gamaliel Datugan was a graduate student enrolled in the Charter
7 College of Education, Division of Special Education and Counseling program at
8 California State University, Los Angeles (“CSULA”), operated by Defendant Board
9 of Trustees of the California State University.

10 2. Plaintiff is deaf; his primary language is American Sign Language
11 (“ASL”). He requires ASL interpretation to communicate with others and to access
12 educational curriculum. When no ASL interpreter is present, Plaintiff needs
13 Communication Access Real-time Translation (“CART”) to follow classroom
14 dialogue. Additionally, he needs closed captioning to access the dialogue of any video
15 presentations.

16 3. During the Fall 2018 semester at CSULA, Plaintiff repeatedly
17 experienced discrimination based on his disability by the professors and staff at
18 CSULA. For instance, one professor refused to permit closed captioning of the video
19 recordings of in-class mock counseling sessions. The professor required students to
20 review and provide written evaluations of these video-recorded sessions. Plaintiff,
21 however, was unable to complete his written assignments, because he could not
22 understand the dialogue in these videos without captioning. Another professor
23 prevented CART captioners from accessing the course material in advance of lectures
24 so that they could provide captioning for the complex medical terminology used in
25 that class. As a result, Plaintiff was unable to access the content of these lectures,
26 because the captioning was riddled with inaccuracies and errors. Such discriminatory
27 actions denied Plaintiff effective communication and full and equal access to
28 CSULA’s educational program.

1 4. Plaintiff is a passionate advocate for promoting postsecondary education
2 opportunities for deaf individuals and serves as a co-chair of the Deaf/Hard of Hearing
3 Interest Group of the California Association for Postsecondary and Education
4 Disability (CAPED). He applied to CSULA's Special Education and Counseling
5 program with the goal of becoming a college counselor, who would help deaf students
6 navigate around obstacles they encounter during their college experience. Instead of
7 being able to work toward this goal, Plaintiff himself faced obstacles created entirely
8 by Defendants, who denied him full and equal access to CSULA's educational
9 program, activities and services. Since Defendants placed him on an unequal footing
10 with his hearing classmates, Plaintiff predictably struggled to keep pace with his
11 coursework and ultimately was unable to complete his desired degree.

12 5. Defendants' failure to provide reasonable accommodations and effective
13 communication have marred Plaintiff's educational record and violated his rights
14 under state and federal law, resulting in substantial emotional and financial harm.
15 Following Defendants' denial of his timely tort claim, Plaintiff now brings this action
16 for damages and declaratory and injunctive relief under the Americans with
17 Disabilities Act (42 U.S.C. § 12131 *et seq.*) ("ADA"), Section 504 of the
18 Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*) ("Section 504" or "Rehabilitation
19 Act"), Unruh Civil Rights Act (Cal. Civil Code §§ 51 *et seq.*) ("Unruh"), Cal. Govt.
20 Code § 11135 and the California common law claim of negligence.

21 **JURISDICTION AND VENUE**

22 6. This action arises, in part, under the ADA and Section 504, which are
23 federal statutes.

24 7. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and
25 1343 for the federal law claims. Through the same events and omissions that form the
26 basis of Plaintiff's federal claims Defendants have also violated Plaintiff's rights
27 under state law, over which this Court has pendent and supplemental jurisdiction
28 pursuant to 28 U.S.C. § 1367. This Court has jurisdiction over Plaintiff's claims for

1 declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 65
2 of the Federal Rules of Civil Procedure.

3 8. Venue over Plaintiff's claims is proper in the Central District of
4 California, because Defendants are located in the Central District of California within
5 the meaning of 28 U.S.C. § 1391(b), and because all of the events, acts and/or
6 omissions giving rise to these claims occurred within the Central District of
7 California. In addition, Plaintiff resides in the County of Los Angeles within the
8 Central District of California.

9 **PARTIES**

10 **Plaintiff**

11 ***Gamaliel Datugan***

12 9. At all relevant times, Plaintiff Gamaliel Datugan has resided in the
13 County of Los Angeles in the State of California.

14 10. Plaintiff is a person who has been deaf since he was born.

15 11. At all times applicable to this action, Plaintiff has been a qualified
16 individual with a disability as defined by the laws relevant to this Complaint.

17 12. Because of his disability, Plaintiff is significantly limited in his ability to
18 communicate with others.

19 **Defendants**

20 ***Board of Trustees of the California State University***

21 13. At all relevant times, Defendant Board of Trustees has been a public
22 entity that operates CSULA, a university campus located in Los Angeles County,
23 California.

24 14. Defendant Board of Trustees is a governmental entity organized as a
25 system of public universities under the laws of the State of California, with the
26 capacity to sue and be sued. Defendant Board of Trustees is also a "business
27 establishment" within the meaning of the Unruh Civil Rights Act (Civ. Code § 51 et
28

1 seq.). Defendant Board of Trustees is sued in its own right and on the basis of the acts
2 of its officials, agents, and employees.

3 15. At all relevant times, Defendant was responsible for ensuring that its
4 officials, agents, and employees obeyed the U.S. Constitution and the laws of the
5 United States and of California.

6 16. At all times relevant to this complaint, Defendant Board of Trustees was
7 and is a public entity within the meaning of Title II of the ADA.

8 17. Upon information and belief, presently, and at all times relevant to this
9 complaint, Defendant Board of Trustees receives federal funding within the meaning
10 of Section 504.

11 ***Doe Defendants***

12 18. Defendant Does 1 through 10 are individuals and/or entities who at all
13 relevant times were employees, officers, contractors, parent entities, alter egos, and/or
14 agents of the Board of Trustees, who bear some responsibility for the actions alleged
15 in this complaint. Their identities are not yet known such that Plaintiff will amend this
16 Complaint upon learning their identities.

17 19. At all relevant times, Plaintiff is informed and believes that all
18 Defendants and each of them were acting in concert with each other and were the
19 agent, principal, subsidiary, representative, alter ego, officer, employer, employee,
20 manager, director, shareholder, partner, co-conspirator, aider and abettor, and
21 fiduciary in proximately causing the injuries and damages alleged herein.

22 20. At all relevant times, all Defendants and each of them were legally
23 responsible to Plaintiff for each of their co-Defendants' wrongs, acts, and omissions
24 alleged herein as though they had each committed each act themselves, and at all
25 times authorized, directed, and ratified the acts and omissions of each remaining
26 defendant.

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FACTS COMMON TO ALL CLAIMS

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2 21. In the Fall of 2018, Plaintiff enrolled at CSULA as a graduate student in
3 the Charter College of Education to work towards a Master of Science degree in
4 Counseling, Option in Rehabilitation Counseling. In December 2017 -- several
5 months prior to the start of his classes at CSULA -- Plaintiff contacted Ms. Delmis
6 Sosa ("Ms. Sosa"), who worked at the university's Office for Students with
7 Disabilities (OSD), to discuss reasonable accommodations, including ASL
8 interpretation. Plaintiff submitted verification of his disability to OSD in or around
9 March 2018. In July 2018, OSD confirmed that Plaintiff was eligible for several
10 accommodations, including ASL interpretation, closed captioning and real time
11 captioning.

12 22. While Plaintiff diligently took all the requisite steps to request his
13 reasonable accommodations, Defendants failed to provide appropriate
14 accommodations from the very first week of classes. For instance, Plaintiff's
15 Introduction to Rehabilitation Counseling Course, COUN 5140, ("Rehabilitation
16 Counseling Course") included a clinical component with mock counseling sessions.
17 During these mock counseling sessions, students took turns role-playing as counselor
18 and patient. These sessions were videotaped in order for the students to review these
19 sessions afterwards. The course requires students to closely review and submit written
20 critiques of these recorded sessions. Professor Cailine Kim ("Professor Kim"), who
21 taught the course, refused to permit the captioning of the mock counseling sessions.
22 Professor Kim cited confidentiality concerns even though the sessions were merely
23 students role-playing. Plaintiff was unable to complete his written assignments,
24 because he could not follow the dialogue in the videotaped mock counseling sessions
25 due to the absence of closed captioning.

26 23. Plaintiff's ASL interpreters were present during these mock sessions, but
27 they were often out of the frame in the video recordings. Determined to succeed in his
28 class, Plaintiff spent hours reviewing each videotaped session, painstakingly trying to

1 reconstruct and decipher the dialogue through the sparse ASL signs he could discern.
2 Ultimately, he could only piece together fragments of conversations. So while his
3 hearing classmates had repeated access to the content of the videos, Plaintiff could not
4 effectively access the same information.

5 24. Despite Plaintiff's repeated requests, Professor Kim continued to refuse
6 to allow captioning for these recorded sessions throughout the semester, and Plaintiff
7 struggled to complete the written assignments associated with these sessions.

8 25. On or about September 11, 2018, Professor Kim also presented a video
9 without captions. Even after fellow classmates alerted Professor Kim of the absence of
10 captioning on the video, highlighting that Plaintiff would not be able to access the
11 video's dialogue, she continued to present the video to the class anyway. Plaintiff
12 complained to OSD Director Gonzalo Centeno ("Mr. Centeno") about the incident. In
13 response, Mr. Centeno indicated that he would reach out to faculty about providing
14 Plaintiff with captioned video. Professor Kim eventually emailed Plaintiff a link to a
15 captioned version of the video over a week later. This belated gesture, however, did
16 not make up for denying Plaintiff any opportunity to participate in the class discussion
17 among his hearing peers that immediately followed the presentation of the video.

18 26. Professor David Peterson, who taught Plaintiff's Diagnosis and Treatment
19 in Counseling, COUN 5111 course ("Diagnosis and Treatment course"), prevented
20 CART captioners from accessing course material in advance of classes so that they
21 could prepare to accurately caption the complex medical terminology used in lectures.
22 Without access to this material prior to class lectures, the captioners - who were
23 unfamiliar with the medical terminology - were unable to provide accurate real-time
24 captioning of the lecture content. During lectures, all of Plaintiff's energy and
25 attention had to focus on deciphering captioning that was riddled with errors and
26 inaccuracies. He would receive corrected transcripts of the lectures about a day after
27 class, but these did not help at all to timely allow him to fully and equally access the
28 lecture and participate during in-class discussions for this course.

1 27. Throughout the Fall 2018 semester, OSD often assigned to Plaintiff an
2 unqualified ASL interpreter, who lacked the requisite skill to effectively, accurately,
3 and clearly interpret the complex subject matter and medical terminology used in
4 Plaintiff's graduate-level coursework. In fact, Plaintiff's classmates informed him that
5 the interpreter's articulation of his comments during class discussion was choppy and
6 difficult to understand. Since Plaintiff primarily uses ASL to communicate, the
7 ineffectiveness of his assigned ASL interpreter had significant adverse implications to
8 his ability to effectively communicate in the classroom setting. In September 2018,
9 Plaintiff expressed his concerns about the ASL interpreter to Ms. Sosa. CSULA staff,
10 however, disregarded his concerns and their legal obligations to provide effective
11 communication and continued to assign the same unqualified interpreter to Plaintiff
12 during the Fall 2018 semester.

13 28. Throughout the Fall 2018 semester, Plaintiff attempted to work with
14 OSD staff to resolve the problems he had been encountering with accessing his
15 accommodations. For their part, OSD staff were dismissive, and even condescending
16 at times, regarding his concerns about the lack of access to the course materials and
17 content due to his professors' denial of reasonable accommodations and OSD's refusal
18 to provide him with an adequate ASL interpreter. Although aware of the problems,
19 OSD did not address these issues and ultimately failed to provide Plaintiff with
20 reasonable accommodations and effective communication.

21 29. Plaintiff spent substantial amount of time and energy into trying to
22 overcome the obstacles that Defendants had placed on his ability to access his course
23 materials that he rapidly fell behind coursework, and his grades suffered as a result.
24 Around October 2018, Plaintiff dropped two courses in an effort to catch up with his
25 coursework. CSULA's continued denial of effective communication and reasonable
26 accommodations, however, posed insurmountable barriers to his academic goals.

27 30. Apart from his struggles with accessing course material, Plaintiff put
28 much of his time and energy into his struggles with OSD staff and professors over

1 reasonable accommodations. Plaintiff's physical and mental health deteriorated as a
2 direct result of the stress over these struggles and his poor grades.

3 31. Plaintiff sought the counseling services of Yadira Anguiano ("Ms.
4 Anguiano"), a Psychologist at CSULA, for the emotional distress and trauma he
5 experienced from the discrimination he encountered from his professors and CSULA
6 staff. Ms. Anguiano advised Plaintiff to take a medical leave of absence from his
7 graduate program. She later supported his application to withdraw from the program
8 based on anxiety and depression concerns stemming from the discrimination that
9 Plaintiff experienced at CSULA.

10 32. On or around November 2018, Plaintiff shared his experiences of
11 discrimination and his intent to apply for a medical leave of absence with Mr. Centeno
12 and Dr. Jennifer Miller ("Dr. Miller"), CSULA's Dean of Students. In November
13 2018, Plaintiff also contacted Dr. Diane Fazzi ("Dr. Fazzi"), Associate Dean of
14 CSULA's Charter College of Education, and asked for her support of his medical
15 leave of absence. In response, Dr. Fazzi expressed support of his plan to apply for a
16 medical leave of absence.

17 33. On or about November 16, 2018, Plaintiff attempted to submit his leave
18 of absence to CSULA's Registrar Office. CSULA ultimately prevented him from
19 taking a leave of absence, because he had not completed a semester in good standing.
20 However, by denying Plaintiff necessary reasonable accommodations, it was the
21 university that placed him in a position where he could not successfully complete a
22 semester in good standing. In the end, Plaintiff was forced to completely withdraw
23 from his graduate program on or around December 8, 2018.

24 34. Defendants' failure to properly accommodate and provide effective
25 communication to Plaintiff as required under state and federal law has directly
26 obstructed his plans to attain a graduate degree. Plaintiff's decision to withdraw due to
27 the continuing discrimination he faced at CSULA has adversely affected his academic
28

1 record and future job prospects. Plaintiff has also incurred educational expenses
2 without the benefit of a graduate degree.

3 35. As a result of Defendants' failure to properly accommodate and provide
4 effective communication to Plaintiff and the resulting harms he has suffered, he now
5 seeks damages and declaratory and injunctive relief to ensure that CSULA reasonably
6 alter Plaintiff's academic record to properly reflect that he took a medical leave of
7 absence from his graduate program due to lack of appropriate accommodations.
8 Further, Plaintiff seeks compensation for emotional distress he suffered from
9 Defendants' discriminatory actions and reasonable attorneys' fees and costs.

10
11 **GOVERNMENT CLAIM FILED**

12 36. Plaintiff timely filed a government claim pursuant to California
13 Government Code § 910, *et seq.* with the Board of Trustees on or about May 7, 2019.
14 On or about July 16, 2019 the Board of Trustees issued a notice informing Plaintiff
15 that his claim had been denied. This action was timely filed thereafter.

16
17 **FIRST CLAIM FOR RELIEF**

18 **The Americans with Disabilities Act**

19 **(42 U.S.C. § 12131 *et seq.*)**

20 **Against Defendant Board of Trustees and Does 1-10**

21 37. Plaintiffs incorporate by reference the allegations contained in each of the
22 foregoing paragraphs and incorporate them herein as if separately alleged.

23 38. Congress enacted the ADA upon finding, among other things, that
24 “society has tended to isolate and segregate individuals with disabilities” and that such
25 forms of discrimination continue to be a “serious and pervasive social problem.”
26 42 U.S.C. § 12101(a)(2).

27 39. In response to these findings, Congress explicitly stated that the purpose
28 of the ADA is to provide a “clear and comprehensive national mandate for the

1 elimination of discrimination against individuals with disabilities” and “clear, strong,
2 consistent, enforceable standards addressing discrimination against individuals with
3 disabilities.” 42 U.S.C. § 12101(b)(1)-(2).

4 40. Title II of the ADA provides in pertinent part: “[N]o qualified individuals
5 with a disability shall, by reason of such disability, be excluded from participation in
6 or be denied the benefits of the services, programs, or activities of a public entity, or
7 be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

8 41. A public entity must not deny a qualified individual with a disability the
9 opportunity to participate in or benefit from the aid, benefit or service. 28
10 C.F.R. § 35.130(b)(1)(i).

11 42. A public entity must not afford a qualified individual with a disability the
12 opportunity to participate in or benefit from an aid, benefit or service that is not equal
13 to that afforded to others. 28 C.F.R. § 35.130(b)(1)(ii).

14 43. A public entity must not provide a qualified individual with a disability
15 the opportunity to participate in or benefit from an aid, benefit or service that is not
16 effective in affording equal opportunity to obtain the same result, gain the same
17 benefit, or to reach the same level of achievement as those provided others. 28
18 C.F.R. § 35.130(b)(1)(iii).

19 44. To meet their obligations under the ADA with regard to persons who are
20 deaf or hard of hearing, a public entity must provide communication that is as
21 effective as communication with nondisabled persons. 28 C.F.R. § 35.160(a).

22 45. A public entity must furnish all appropriate auxiliary aids and services
23 where necessary to afford individuals with disabilities, including applicants,
24 participants, companions and members of the public, an equal opportunity to
25 participate in and enjoy the benefits of, a service, program or activity of a public
26 entity. 28 C.F.R. § 35.160(b)(1).

27 46. In order to meet the standard of “effective communication,” not only
28 must auxiliary aids and services be provided in accessible formats, they must also be

1 provided in a timely manner, and in such a way as to protect the independence of the
2 individual. 28 C.F.R. § 35.160(b)(2).

3 47. A qualified interpreter means an interpreter who “is able to interpret
4 effectively, accurately, and impartially, both receptively and expressively, using any
5 necessary specialized vocabulary.” 28 C.F.R. § 35.104.

6 48. At all relevant times, Defendant Board of Trustees has been a “public
7 entity” within the meaning of Title II of the ADA, offered educational programs and
8 services to the general public, and has been subject to the ADA’s effective
9 communication requirements, which were first enacted nearly three decades ago.

10 49. At all relevant times, Plaintiff has been a qualified individual with a
11 disability within the meaning of Title II of the ADA and has met the essential
12 eligibility requirements for the receipt of the aids, benefits, services, programs, and
13 activities Defendant Board of Trustees at issue in this action.

14 50. Defendants violated the ADA and its implementing regulations by
15 depriving Plaintiff of communication that was as effective as communication
16 Defendants provide to non-deaf individuals on numerous occasions.

17 51. By virtue of the acts and omissions alleged herein, Defendants have, with
18 intent, deliberate indifference, and/or reckless disregard, also violated the ADA,
19 including but not limited to the following:

- 20 a. Failing to accommodate Plaintiff during the Fall 2018 semester;
- 21 b. Failing to properly engage in the interactive process and failing
22 to provide previously approved accommodations;
- 23 c. Failing to provide effective communication to Plaintiff during
24 the Fall 2018 semester;
- 25 d. Failing to provide Plaintiff with a qualified ASL interpreter that
26 has the requisite skills to adequately interpret his graduate
27 course material;

- 1 e. Failing to modify standard policies and procedures necessary to
- 2 afford Plaintiff a full and fair opportunity to complete his
- 3 degree;
- 4 f. Failing to allow Plaintiff to take a medical leave of absence and
- 5 instead, documenting his departure from his program as a
- 6 withdrawal ("W") on his academic record, which has a
- 7 detrimental effect on his academic and employment prospects.

8 52. Through the acts and omissions of Defendant Board of Trustees and its
9 agents and employees described herein, Defendant with intent, deliberate indifference,
10 and/or reckless disregard, subjected Plaintiff to discrimination on the basis of his
11 disability in violation of Title II of the ADA and its implementing regulations noted
12 herein.

13 53. Plaintiff is informed, believes, and based thereon alleges that Defendants
14 could have reasonable provided all aids, benefits, services, programs, and activities in
15 an accessible manner and on an equal basis to Plaintiff, to allow him a full and equal
16 opportunity to participate in Defendant Board of Trustees' educational programs and
17 services.

18 54. As a direct and proximate result of the aforementioned acts, Plaintiff has
19 suffered humiliation, hardship, anxiety, indignity and other significant mental and
20 emotional anguish. Defendants' actions have also irreparably harmed Plaintiff's
21 standing in CSULA and his relationships with various professors that are now greatly
22 diminished if not broken.

23 55. Unless enjoined by this court, Defendants will continue to violate the
24 ADA and perpetuate the alleged conduct, continuing to inflict injury on Plaintiff.

25 56. Pursuant to 42 U.S.C. §§ 12133 and 12205, Plaintiff is entitled to
26 damages, injunctive relief and reasonable attorneys' fees and costs.

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SECOND CLAIM FOR RELIEF

Section 504 of the Rehabilitation Act of 1973

(29 U.S.C. § 794 *et seq.*)

Against Defendant Board of Trustees and Does 1-10

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5 57. Plaintiffs incorporate by reference the allegations contained in each of the
6 foregoing paragraphs and incorporate them herein as if separately alleged.

7 58. Section 504 provides in pertinent part: “[No] otherwise qualified
8 individual with a disability. . . shall, solely by reason of his or her disability, be
9 excluded from the participation in, be denied the benefits of, or be subjected to
10 discrimination under any program or activity receiving federal financial
11 assistance” 29 U.S.C. § 794(a).

12 59. A “program or activity” means “all the operations of a department,
13 agency, special purpose district, or other instrumentality of a State or of a local
14 government, or the entity of such a State or local government that distributes such
15 assistance and each such department or agency (and each other State or local
16 government entity) to which the assistance is extended, in the case of assistance to a
17 State or local government.”” 29 U.S.C. § 794(b)(1)(A),(B).

18 60. The implementing regulations of the Rehabilitation Act prohibit
19 discrimination in post-secondary education and occupational training by a recipient of
20 federal funds by excluding from participation, denying benefits to, or otherwise
21 discriminating against a qualified person with a disability. 34 C.F.R. § 104.43(a).

22 61. The implementing regulations of the Rehabilitation Act prohibit
23 discrimination by a recipient of federal funds by denying a qualified person with a
24 disability the opportunity to participate in or benefit from the aid, benefit or service.
25 34 C.F.R. § 104.4(1)(i).

26 62. The implementing regulations prohibit discrimination by a recipient of
27 federal funds by affording a qualified person with a disability an opportunity to
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1 participate in or benefit from the aid, benefit or service that is not equal to that
2 afforded others. 34 C.F.R. § 104.4(1)(ii).

3 63. The implementing regulations prohibit discrimination by a recipient of
4 federal funds by providing a qualified person with a disability an aid, benefit, or
5 services that is not as effective as that provided others. 34 C.F.R. § 104.4(1)(iii).

6 64. The implementing regulations also require recipients of federal funds
7 providing programs of post-secondary education and occupational training to take
8 such steps that are necessary to ensure that no student with a disability is denied the
9 benefits of, excluded from participation in, or otherwise subjected to discrimination
10 because of the absence of educational auxiliary aids for students with impaired
11 sensory or speaking skills, including the provision of interpreters. 34 C.F.R. § 104.44.

12 65. At all relevant times, Plaintiff has been a qualified individual with a
13 disability within the meaning of the Rehabilitation Act and met the essential eligibility
14 requirements for the receipt of the aids, benefits, services, programs and activities of
15 Defendant Board of Trustees.

16 66. At all relevant times, Defendant Board of Trustees has received federal
17 financial assistance within the meaning the Rehabilitation Act.

18 67. Through the acts and omissions described above, Defendant Board of
19 Trustees has violated the Rehabilitation Act and its implementing regulations.

20 68. Plaintiff is informed, believes, and based thereon alleges that Defendant
21 Board of Trustees committed the acts and omissions alleged herein with intent,
22 deliberate indifference and/or reckless disregard of Plaintiff's rights.

23 69. As a direct and proximate result of the aforementioned acts, Plaintiff has
24 suffered humiliation, hardship, anxiety, indignity, and significant mental and
25 emotional anguish.

26 70. Pursuant to 29 U.S.C. § 794a, Plaintiff is entitled to damages, injunctive
27 relief, and reasonable attorneys' fees and costs.

THIRD CLAIM FOR RELIEF

Unruh Civil Rights Act

(Cal. Civ. Code § 51 *et seq.*)

Against Defendant Board of Trustees and Does 1-10

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5 71. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

6 72. California's Unruh Civil Rights Act provides:

7 All persons within the jurisdiction of this state are free and equal,
8 and no matter what their . . . disability [or] medical condition, are
9 entitled to the full and equal accommodations, advantages,
10 facilities, privileges, or services in all business establishments of
11 every kind whatsoever.

12 73. The Unruh Act expressly incorporates violations of the Americans with
13 Disabilities Act (42 U.S.C. § 12100 *et seq.*) as violations of the Unruh Act. Civ. Code
14 § 51(f).

15 74. At all relevant times, Defendant Board of Trustees and certain DOES
16 owned and/or operated CSULA, a "business establishment" within the meaning of the
17 Unruh Act.

18 75. By virtue of the acts and omissions alleged herein, Defendants have, with
19 intent, deliberate indifference, and/or reckless disregard, failed to provide Plaintiff
20 with full and equal accommodations, advantages, facilities, privileges, and/or services
21 due solely to Plaintiff's disability, and as such, have violated the Unruh Act.

22 76. As a direct and proximate result of the aforementioned acts, Plaintiff has
23 suffered and continues to suffer actual damages, including but not limited to
24 humiliation, emotional, physical, and financial hardship, anxiety, indignity, and
25 significant mental and emotional anguish.

26 77. Defendants are liable for each and every violation of the Unruh Act for
27 Plaintiff's actual damages, including emotional distress, and any amount that may be
28 determined by the court, up to a maximum of three times the amount of actual

1 damage, but in no case less than \$4,000 per violation. Plaintiff is also entitled to
2 declaratory and injunctive relief, as well as reasonable attorneys' fees and costs under
3 the Act. Cal. Civ. Code § 52(a).

4
5 **FOURTH CLAIM FOR RELIEF**

6 **GOV. CODE § 11135 et seq.**

7 **Against Defendant Board of Trustees and Does 1-10**

8 78. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 79. By virtue of the acts and omissions alleged herein, Defendants have
10 violated California Government Code § 11135, which provides, in part:

11 No person in the State of California shall, on the basis of . . .
12 mental disability, physical disability, medical condition, . . . , be
13 unlawfully denied full and equal access to the benefits of, or be
14 unlawfully subjected to discrimination under, any program or
15 activity that is conducted, operated, or administered by the state or
16 by any state agency, is funded directly by the state, or receives any
17 financial assistance from the state.

18 80. Defendants are a state agency and/or funded by the State of California.

19 81. By virtue of the foregoing acts and omissions, Defendants have violated
20 Section 11135.

21 82. Plaintiff is entitled to declaratory and injunctive relief as a result of the
22 violation.

23 83. Plaintiff is entitled an award of reasonable attorneys' fees and costs
24 pursuant to Cal. Code of Civil Procedure § 1021.5.

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FIFTH CLAIM FOR RELIEF

Negligence

Against All Doe Defendants Only

84. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

85. At all relevant times, the DOE Defendants (only) owed a duty of due care to Plaintiff, as well as a heightened duty of care as a student with a disability.

86. Defendants breached their duty of care to Plaintiff by their acts and omissions alleged herein.

87. Defendants violated the ADA, Section 504, the Unruh Act, and Gov't Code § 11135, as alleged herein.

88. At all relevant times, Plaintiff has belonged to the class of persons for whose protection these statutes and regulations were adopted.

89. Defendants' breach of duty proximately caused, was foreseeable in causing, and was a substantial factor in causing Plaintiff to suffer significant emotional, physical and financial distress.

90. Plaintiff's damages resulted from an occurrence the nature of which the violated statutes and regulations were designed to prevent.

91. Defendants' breach of duty also resulted in Plaintiff incurring out-of-pocket expenses.

92. Such damages were reasonably foreseeable to Defendants.

93. By virtue of Defendants' acts and omissions as alleged herein, Plaintiff is entitled to an award of compensatory damages in an amount according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. A declaration that Defendants' conduct as alleged herein has violated, and continues to violate Title II of the ADA, 42 U.S.C. §§ 12131 *et seq.*; Section 504 of

1 the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, *et seq.*; and Cal. Civ.
2 Code § 51, *et seq.*;

3 2. Preliminary and permanent injunctive relief pursuant to the ADA,
4 Section 504 and the Unruh Act, including but not limited to the following: Adjusting
5 Plaintiff's transcript and academic record to reflect that he took a medical leave of
6 absence from CSULA's Charter College of Education due to a lack of appropriate
7 accommodations;

8 3. Statutory and compensatory damages, trebled as permitted by law,
9 including but not limited to the following:

10 a. Compensatory damages including lost future earnings, lost or
11 diminished student benefits, tuition expenses, medical expenses
12 and financial aid; and

13 b. Damages for physical, mental, and emotional distress, and other
14 special and general damages according to proof;

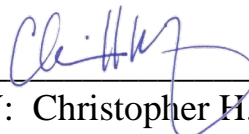
15 4. Interest, including pre-judgment interest, at the legal rate;

16 5. Attorneys' fees and costs as provided by law; and

17 6. Such other relief as the Court finds just and proper.

18 Dated: January 15, 2020

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ALMANZAN | FINNEMAN

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21 BY: Christopher H. Knauf
22 Attorneys for Plaintiff Gamaliel Datugan
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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all issues.

Dated: January 15, 2020

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ALMANZAN | FINNEMAN



Christopher H. Knauf
Attorneys for Plaintiff Gamaliel Datugan

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