

1 Christopher H. Knauf, State Bar No. 185180

2 *ck@goodlaw.biz*

3 Laura N. Diamond, State Bar No. 185062

4 *laura@goodlaw.biz*

5 KNAUF ASSOCIATES

6 2001 Wilshire Blvd, Suite 320

7 Santa Monica, California 90403

8 Tel: (310) 829-4250 Fax: (310) 622-7263

9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 LINDSAY ROGERS,

13 Plaintiff,

14 v.

15 WESTERN UNIVERSITY OF HEALTH
16 SCIENCES, and DOES 1-10, inclusive,

17 Defendants.

Case No.: CV-16-07681-MWF (AGR_x)

**FIRST AMENDED COMPLAINT FOR
DAMAGES, DECLARATORY &
INJUNCTIVE RELIEF; DEMAND FOR
JURY TRIAL**

1. Americans with Disabilities Act
2. Section 504 of the Rehabilitation Act
3. Unruh Civil Rights Act
4. Unfair Competition Law
5. Negligence
6. Intentional Infliction of Emotional Distress

1 **INTRODUCTION**

2 Plaintiff LINDSAY ROGERS hereby alleges the following facts and
3 submits the following claims for relief against Defendant WESTERN
4 UNIVERSITY OF HEALTH SERVICES, and DOE Defendants 1 through 10:

5 1. Plaintiff Lindsay Rogers, a woman with learning disabilities, enrolled
6 in the College of Osteopathic Medicine at Defendants’ Western University of
7 Health Sciences (hereinafter “Western” or Defendants) in June 2014, with the goal
8 of becoming a doctor for underserved populations. She received a four-year federal
9 scholarship that covered most expenses, to be repaid by providing four years of
10 primary care in an underserved community upon graduation.

11 2. Ms. Rogers requested reasonable accommodations for her well-
12 documented learning disability, as she had done at her previous academic
13 institutions, but Western was hostile to her requests, and obstructed her efforts to
14 receive reasonable accommodations on a continuing basis from the time of her
15 initial enrollment.

16 3. Western’s refusals to provide accommodations took their toll, and in
17 the Spring 2015 semester, Ms. Rogers failed two classes. Based on the hostile
18 environment created at the school, and on the advice of faculty, Ms. Rogers felt she
19 had no choice but to withdraw from Western, despite her repeated requests for
20 proper disability accommodations.

21 4. As a result of Western’s refusal to accommodate her learning
22 disability, Ms. Rogers lost her scholarship, lost at least of two years of medical
23 school, and at least to date, her opportunity to fulfill her dream of becoming a
24 doctor. Her experience at Western has caused her both physical and emotional
25 distress for which she has required treatment.

26 5. Ms. Rogers brings this action for compensatory damages and
27 declaratory and injunctive relief under the Americans with Disabilities Act, the
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1 Rehabilitation Act, the Unruh Civil Rights Act, the Unfair Competition Law, and
2 California common law.

3 **JURISDICTION AND VENUE**

4 6. This action arises under Title III of the Americans with Disabilities
5 Act (42 U.S.C. § 12181 *et seq.*) (“ADA”), and Section 504 of the Rehabilitation
6 Act (29 U.S.C. § 794). This Court has jurisdiction over Plaintiff’s federal claims
7 pursuant to 28 U.S.C. §§ 1331 and 1343, and has supplemental jurisdiction over
8 Plaintiff’s state law claims pursuant to 28 U.S.C. §1367(a).

9 7. Venue is proper in the Central District of California under 28 U.S.C.
10 § 1391(b), as Defendants are located in the Central District and all of the acts
11 and/or omissions alleged herein occurred in this judicial district.

12 **PARTIES**

13 8. At all relevant times, Plaintiff Lindsay Rogers was a medical student
14 enrolled at Defendant Western University of Health Sciences, in its College of
15 Osteopathic Medicine. At all relevant times Ms. Rogers resided in the County of
16 Los Angeles and has been an individual with learning disabilities that substantially
17 limit her reading, writing, and verbal processing, when performed without
18 accommodations.

19 9. At all relevant times, Defendant Western University has been a public
20 accommodation with its principal location of operation in Pomona, California, in
21 the County of Los Angeles, State of California. Western is sued in its own right
22 and on the basis of the acts of its officials, agents and employees. At all relevant
23 times, Western was responsible for ensuring that its officials, agents, and
24 employees obeyed the U.S. Constitution and the laws of the United States and the
25 State of California.

26 10. Defendant DOES 1 through 10 are persons who at all relevant times
27 were entities, employees, officers, and/or agents of Western who bear some
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1 responsibility for the actions alleged in this Complaint. Their identities are not yet
2 known such that Plaintiff will amend this Complaint upon learning their identities.

3 11. At all relevant times, all Defendants and each of them were acting in
4 concert with each other and were the agent, principal, subsidiary, representative,
5 alter ego, officer, employer, employee, manager, director, shareholder, partner, co-
6 conspirator, aider and abettor, and fiduciary in proximately causing the injuries and
7 damages alleged herein.

8 12. At all relevant times, all Defendants and each of them were legally
9 responsible to Plaintiff for each of their co-Defendant's wrongs, acts and omissions
10 alleged herein as though they had each committed each act themselves, and at all
11 times authorized, directed, and ratified the acts and omissions of each remaining
12 defendant.

13 **STATEMENT OF FACTS**

14 13. After years of experience working with international human rights,
15 humanitarian, and international development organizations, , Plaintiff Lindsay
16 Rogers dreamed of becoming a doctor to better help disadvantaged and
17 underserved communities. With that goal, Ms. Rogers applied to the College of
18 Osteopathic Medicine at Defendants' Western University, and was granted an
19 interview in Spring 2014.

20 14. Prior to Ms. Rogers' interview, she informed Western, through its
21 Director of the Harris Family Center for Disability and Health Policy, Sandra
22 Lawler, of her learning disabilities.

23 15. Ms. Rogers ultimately enrolled at Western, turning down a Top 50
24 medical school to which she had also been accepted, relying on Western's
25 representation that they would accommodate her disabilities.

26 16. Ms. Rogers received a four-year scholarship from the National Health
27 Service Corps, Health Resource and Service Administration (NHSC/HRSA) to be
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1 used at medical school, valued at approximately \$65,000 per year. The scholarship
2 requires the recipient to provide primary care medical service to an underserved
3 community for four years after completing a medical degree. The scholarship
4 requires full repayment by the student if the four years of services are not
5 completed.

6 17. Ms. Rogers also received a one-year Tylenol FutureCares Scholarship
7 of \$5000, and took out approximately \$14,000 of federal loans for her education.

8 18. Ms. Rogers used the NHSC/HRSA and Tylenol scholarships, and her
9 federal loans, to pay for her education at Western in 2014-2015. Without the
10 scholarships, Ms. Rogers had no way to pay for medical school.

11 19. Before her courses began, Ms. Rogers provided Western with verified
12 documentation of her learning disabilities, a neuropsychological evaluation from
13 January 2012. Ms. Rogers submitted to Western all necessary paperwork to
14 support her request for disability accommodations.

15 20. On the basis of her documentation, Ms. Rogers requested of Western
16 the same accommodations she had received for her Bachelor of Arts at Oberlin
17 College, her Masters of Public Health at Columbia University (New York), and her
18 Post-Baccalaureate pre-med certification at Bryn Mawr College, as well as for the
19 SAT, MCAT, and GRE tests. The requested accommodations included:

- 20 a. Permission to sit in front row of classes.
- 21 b. 100% extended time for all tests and quizzes, with additional breaks for
22 particularly long examinations.
- 23 c. Testing in a smaller, quiet setting; distraction-reduced test taking
24 environment for exams.
- 25 d. Permission to use a test booklet or computer, and ruler or blank paper,
26 for exams.
- 27 e. As needed, note-taker for classes, scribe for exams.

- 1 f. Permission to audio/video record lectures if not provided by school.
- 2 g. Alternative course materials (videos of lectures or animations, *etc.*, if
- 3 and when they are available).
- 4 h. Appropriate flexibility with scheduling while medication is being
- 5 adjusted.

6 21. Ms. Rogers enrolled in an introductory summer course in June 2014
7 and requested accommodations for that course. Western denied her requests on the
8 grounds that this course did not "count" as it was a preparatory course. Ms. Rogers,
9 however, had spent \$750 on the class, and \$600 on rent and additional expenses for
10 books and board. Ms. Rogers sought help from Professor Dr. Brian Kraatz and
11 administrator Dr. Hector Aroyo in seeking accommodations, and they managed to
12 get some of her accommodations for the summer course.

13 22. When Fall classes began, Defendants continued to make Ms. Rogers
14 fight for her necessary accommodations at every turn. Western's Sandra Lawler,
15 and other administrators and faculty, continuously challenged her need for
16 accommodations, in particular double time on exams, paper exams instead of
17 computer, and a reasonable schedule, expressing the view that Ms. Rogers should
18 be "weaned" from her accommodations.

19 23. Ms. Rogers explained to Western that her learning disability, like a
20 physical disability, was a permanent part of her, and was not something she would
21 grow out of or be weaned from. Nonetheless, Western faculty and administrators
22 continued to refuse her accommodations.

23 24. Western's actions contravened the recommendations contained in Ms.
24 Rogers' previous neuropsychological assessment, as well as the opinion of Dr.
25 Nana Sadamura, a psychologist Defendants insisted Ms. Rogers see regarding her
26 learning disability. Dr. Sadamura opined that Ms. Rogers knew how to manage
27 her disability, but needed the accommodation of extra time to do so.

1 25. In Spring 2015, Western continued to refuse to provide Ms. Rogers
2 accommodations, even though they were readily available. For example, Western
3 repeatedly failed to honor Ms. Rogers' request for an available class section that
4 staggered its exams over two days, which would allow for her needed breaks.
5 Instead Ms. Rogers was assigned to another class with full day exams.

6 26. Due to Defendants' failure to provide her accommodations, Ms.
7 Rogers failed a class and was placed on academic probation. This caused her to
8 lose the NHSC/HRSA room and board stipend, jeopardized the remaining
9 scholarship, and forced her to borrow additional federal funds to make up the
10 difference.

11 27. In early May 2015, Western denied Ms. Rogers a leave to visit her
12 dying grandmother on the East Coast. Ms. Rogers squeezed in a rushed visit and
13 returned to Western to take exams, exhausted. Following a fall that caused a
14 concussion, Ms. Rogers took a medical leave of absence to recover.

15 28. As a result of Defendants' conduct, including its refusal to provide
16 reasonable accommodations, Rogers failed a second class.

17 29. In or about June 2015, Western held a disciplinary committee meeting
18 to discuss whether Ms. Rogers should remediate the two classes, repeat the entire
19 year, or be dismissed. Without a faculty advisor present, and still suffering from
20 concussion and grief, Ms. Rogers requested to remediate the two failed courses
21 with proper accommodations, explaining that she had a strong academic record in
22 all previous academic institutions where she had received reasonable
23 accommodations. During this meeting, a faculty member acknowledged that no
24 one could have "pulled off" the schedule given to Ms. Rogers. The meeting was
25 audio recorded, but Defendants refused to give Ms. Rogers the recordings.

26 30. While Ms. Rogers awaited the decision from this disciplinary
27 committee meeting, she received a second summons to a second disciplinary
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1 committee meeting, citing allegedly “unprofessional” behavior. Ms. Rogers sought
2 advice from faculty member Dr. Kraatz, who advised her that she should withdraw
3 because of the hostility toward her, saying “it’s a bad fit” and “I think you should
4 go. They just don't like you.”

5 31. Public record of the notes taken by Defendants at the second
6 disciplinary meeting misrepresented the conversation between Ms. Rogers and
7 Defendants. The discovery of these notes further contributed to Ms. Rogers’
8 withdrawal from Western.

9 32. Ms. Rogers was extremely upset by the failure to provide reasonable
10 accommodations, the denial of a bereavement leave, and the unjustified hostility
11 expressed toward her.

12 33. Based on Western’s actions and inaction, as noted herein, Ms. Rogers
13 withdrew from Western on July 3, 2015, with the intent to transfer to another
14 medical school. To date, and despite her best efforts, Ms. Rogers has been unable
15 to enroll in another medical school due to her record and experience at Western.

16 **FIRST CLAIM FOR RELIEF**

17 **Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.***

18 **By Plaintiff Against All Defendants**

19 34. Plaintiff re-alleges and incorporates by reference all previous
20 paragraphs.

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

25 36. In response to these findings, Congress explicitly stated that the
26 purpose of the ADA is to provide “a clear and comprehensive national mandate for
27 the elimination of discrimination against individuals with disabilities” and “clear,
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1 strong, consistent, enforceable standards addressing discrimination against
2 individuals with disabilities.” 42 U.S.C. §12101(b)(1)-(2).

3 37. Title III of the ADA provides: “No individual shall be discriminated
4 against on the basis of disability in the full and equal enjoyment of the goods,
5 services, facilities, privileges, advantages, or accommodations of any place of
6 public accommodation by any person who owns . . . or operates a place of public
7 accommodation.” 42 U.S.C. §12182(a). Specifically, a violation occurs when a
8 public accommodation fails “*to make reasonable modifications* in policies,
9 practices, or procedures, when such modifications are necessary to afford such
10 goods, services, facilities, privileges, advantages, or accommodations to
11 individuals with disabilities, unless the entity can demonstrate that making such
12 modifications would fundamentally alter the nature of such goods, services,
13 facilities, privileges, advantages or accommodations.” 42 U.S.C.
14 §12182(b)(2)(A)(ii).

15 38. At all relevant times, Defendant has been a “public accommodation”
16 within the meaning of Title III of the ADA and offered educational services,
17 programs, and activities.

18 39. At all relevant times, Plaintiff has been a qualified individual with a
19 disability within the meaning of Title III of the ADA and met the essential
20 eligibility requirements for the receipt of the aids, benefits, services, programs, and
21 activities of Defendants at issue in this action.

22 40. Through the acts and omissions of Defendant and its agents and
23 employees described herein, Defendant, with intent, deliberate indifference, and/or
24 reckless disregard, subjected Plaintiff to discrimination on the basis of the
25 disability in violation of Title III of the ADA and its implementing regulations, by
26 failing to provide reasonable accommodations to Plaintiff.

27 41. Plaintiff is informed, believes, and based thereon alleges that
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1 Defendant could have reasonably provided all aids, benefits, services, programs,
2 and activities in an accessible manner and on an equal basis to Plaintiff, to allow
3 her a full, meaningful, and substantially equal opportunity to participate.

4 42. As a direct and proximate result of the aforementioned acts, Plaintiff
5 has suffered humiliation, hardship, anxiety, indignity, and other significant mental
6 and emotional anguish; sacrificed her remaining three years of scholarship for
7 medical school; has likely lost her opportunity to become a doctor; and must repay
8 the scholarship funds used at Defendant Western’s institution.

9 43. Pursuant to 42 U.S.C. §§ 12181 et seq., Plaintiff is entitled to
10 declaratory and injunctive relief, and reasonable attorneys’ fees and costs incurred
11 in bringing this action.

12 **SECOND CLAIM FOR RELIEF**

13 **Section 504 of the Rehabilitation Act, 29 U.S.C. § 794**

14 **By Plaintiff Against All Defendants**

15 44. Plaintiff re-alleges and incorporates by reference all previous
16 paragraphs.

17 45. Section 504 of the Rehabilitation Act (“Section 504”) provides in
18 pertinent part: “[N]o otherwise qualified individual with a disability . . . shall,
19 solely by reason of his or her disability, be excluded from the participation in, be
20 denied the benefits of, or be subjected to discrimination under any program or
21 activity receiving federal financial assistance. . . .” 29 U.S.C. § 794.

22 46. At all relevant times, Plaintiff has been a qualified individual with
23 disabilities within the meaning of Section 504 and met the essential eligibility
24 requirements for the receipt of the aids, benefits, services, programs, and activities
25 of Western University. At all times relevant to this action, Defendants were
26 recipients of federal financial assistance within the meaning of Section 504.

27 47. Through their acts and omissions described herein, Defendants
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1 violated Section 504 and its implementing regulations, including the following: “A
2 recipient to which this subpart applies shall take such steps as are necessary to
3 ensure that no handicapped student is denied the benefits of, excluded from
4 participation in, or otherwise subjected to discrimination because of the absence of
5 educational auxiliary aids for students with impaired sensory, manual, or speaking
6 skills.” 34 C.F.R. § 104.44(d)

7 48. Plaintiff is informed, believes, and based thereon alleges that
8 Defendant committed the acts and omissions alleged herein with intent, deliberate
9 indifference, and/or reckless disregard of Plaintiff’s rights.

10 49. As a direct and proximate result of the aforementioned acts, Plaintiff
11 has suffered humiliation, hardship, anxiety, indignity, and significant mental and
12 emotional anguish; sacrificed her remaining three years of scholarship for medical
13 school; and must repay the scholarship funds used at Defendant’s institution.

14 50. Pursuant to 29 U.S.C. § 794(a), Plaintiff is entitled to her reasonable
15 attorneys’ fees and costs incurred in bringing this action.

16 **THIRD CLAIM FOR RELIEF**

17 **Unruh Civil Rights Act, Cal. Civ. Code §51 et seq.**

18 **By Plaintiff Against All Defendants**

19 51. Plaintiff re-alleges and incorporates by reference all previous
20 paragraphs.

21 52. California’s Unruh Civil Rights Act provides:

22 All persons within the jurisdiction of this state are free and
23 equal, and no matter what their...disability...are entitled to the
24 full and equal accommodations, advantages, facilities,
25 privileges, or services in all business establishments of every
26 kind whatsoever. Cal.Civ.Code §51.

27 53. Western is a “business establishment” within the meaning of the
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1 Unruh Civil Rights Act, obligated to provide full and equal accommodations,
2 advantages, facilities, privileges and services to Plaintiff.

3 54. As an individual with a learning disability, Plaintiff is in the class of
4 persons protected by the Unruh Civil Rights Act. Cal.Civ.Code §51(e)(1).

5 55. Defendants' failure to provide reasonable accommodations to Plaintiff
6 in its educational programs and services is a violation of this statute.

7 56. Moreover, a violation of the ADA is a violation of this statute.
8 Cal.Civ.Code §51(f).

9 57. Defendants are liable for each and every denial of reasonable
10 accommodation for the actual damages, and any amount that may be determined
11 by a jury, up to a maximum of three times the amount of actual damages but in no
12 case less than \$4,000, and any attorneys' fees that may be determined by the court
13 in addition thereto. Cal. Civ. Code § 52.

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15 **FOURTH CLAIM FOR RELIEF**

16 **Unfair Competition Act, Cal. Bus & Prof Code § 17200 et. seq.**

17 **By Plaintiff Against All Defendants**

18 58. Plaintiff re-alleges and incorporates by reference all previous
19 paragraphs.

20 59. The Unfair Competition Act provides: "Any person who engages, has
21 engaged, or proposes to engage in unfair competition may be enjoined in any court
22 of competent jurisdiction. The court may make such orders or judgments...as may
23 be necessary to prevent the use or employment by any person of any practice
24 which constitutes unfair competition, as defined in this chapter, or as may be
25 necessary to restore to any person in interest any money or property, real or
26 personal, which may have been acquired by means of such unfair
27 competition." Cal. Bus & Prof Code §17203.

1 provide reasonable accommodations that had been timely requested and were readily
2 available, which caused her to fail two classes, to lose her opportunity to become a
3 doctor, causing extreme emotional distress.

4 69. Defendants' breach of duty proximately caused, and was a substantial
5 factor in causing, financial and emotional harm to Plaintiff. Such damages were
6 reasonably foreseeable to Defendants.

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

10 **SIXTH CLAIM FOR RELIEF**

11 **Intentional Infliction of Emotional Distress**

12 **By Plaintiff Against All Defendants**

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

15 72. Defendant Western and its employees' repeated, hostile refusals and
16 obstructions to provide Plaintiff with reasonable accommodations in a learning
17 environment were outrageous.

18 73. Defendants' actions were made with reckless disregard for the
19 probability that Plaintiff Rogers would suffer severe emotional distress.

20 74. Plaintiff Rogers suffered severe emotional distress as a result of
21 Defendants' repeated refusals to provide reasonable accommodations, and their
22 hostile and dismissive attitude toward her learning disability.

23 75. Defendants knew or should have known that their actions were
24 causing Ms. Rogers extreme stress and duress.

25 76. Defendants' conduct was a substantial factor in Plaintiff's emotional
26 distress.

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for relief as follows:

- 3 1. For statutory and compensatory damages as permitted by law and
4 according to proof at trial;
- 5 2. Punitive damages according to proof;
- 6 3. Preliminary and permanent injunctive relief;
- 7 4. Attorneys' fees and costs of suit as permitted by 42 U.S.C. § 12133,
8 29 U.S.C. § 794(a), Calif. Code of Civil Procedure § 1021.5; and
- 9 5. Such other relief as the Court finds just and proper.

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11 Dated: October 21, 2016

KNAUF ASSOCIATES

12 */s/ Christopher H. Knauf*

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14 By: Christopher H. Knauf
15 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: October 21, 2016

KNAUF ASSOCIATES

/s/ Christopher H. Knauf

By: Christopher H. Knauf
Attorneys for Plaintiff

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