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 13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15

16 **Mary Rios,**

17 Plaintiff,

18 v.

19 **Kaiser Foundation Health Plan,**
 20 **Inc.** and Does 1-10, Inclusive,

21 Defendants.
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Case No.

**Complaint for Injunctive Relief
 and Damages for Violations of:**

1. Title III of the American's With Disabilities Act, 42 U.S.C. §12182 *et seq.*;
2. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; and
3. California's Unruh Civil Rights Act, Cal. Civ. Code § 51 *et seq.*

INTRODUCTION

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2 1. Plaintiff Mary Rios (“Plaintiff”) brings this lawsuit alleging that
3 Defendants Kaiser Foundation Health Plan, Inc. and Does 1-10
4 (“Defendants”) utilize prescription policies and procedures that discriminate
5 against people who use wheelchairs.

6 2. As a result of Defendants’ discriminatory acts and omissions as
7 alleged herein, Plaintiff has suffered, and will continue to suffer, damages,
8 and has been, and will continue to be, prevented and deterred from accessing
9 the goods, facilities, programs, services and activities offered at Kaiser’s
10 medical facilities independently and in a manner equal to individuals without
11 disabilities.

12 3. Through this lawsuit, Plaintiff seeks an injunction requiring
13 Defendants to provide her, and similarly situated persons, “full and equal”
14 access to Defendants’ public facilities as required by law. Plaintiff also seeks
15 to be compensated for her damages and for Defendants to pay her reasonable
16 attorneys’ fees, and the costs and litigation expenses incurred in enforcing her
17 civil rights.

PARTIES

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20 5. Plaintiff Mary Rios is, and at all times relevant herein was, an
21 individual and California resident.

22 6. Defendant Kaiser Foundation Health Plan, Inc. (“Kaiser”) is, and
23 at all times relevant to herein was a California corporation.

24 7. Plaintiff is currently unaware of the true identities of DOES 1-
25 10, inclusive, and will seek leave to amend when their true names, capacities,
26 connections, and responsibilities are ascertained.

27 8. Plaintiff is informed and believes that each of the Defendants is
28 the agent, ostensible agent, alter ego, master, servant, trustor, trustee,

1 employer, employee, representative, franchiser, franchisee, lessor, lessee,
2 joint venturer, parent, subsidiary, affiliate, related entity, partner, and/or
3 associate, or such similar capacity, of each of the other Defendants, and was
4 at all times acting and performing, or failing to act or perform, within the
5 course and scope of such similar aforementioned capacities, and with the
6 authorization, consent, permission or ratification of each of the other
7 Defendants, and is personally responsible in some manner for the acts and
8 omissions of the other Defendants in proximately causing the violations and
9 damages complained of herein, and have participated, directed, and have
10 ostensibly and/or directly approved or ratified each of the acts or omissions of
11 each of the other Defendants, as herein described.

12 13 **JURISDICTION & VENUE**

14 9. This Court has subject matter jurisdiction over this action
15 pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the
16 Americans with Disabilities Act (“ADA”) and Section 504 of the
17 Rehabilitation Act (“Section 504”).

18 10. Pursuant to pendant jurisdiction, attendant and related causes of
19 action arising from the same facts are also brought under California’s Unruh
20 Civil Rights Act (“Unruh Act”), which expressly incorporates the ADA. Cal.
21 Civ. Code §§ 51(f), 54.1(d).

22 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and
23 is founded on the fact that the events or omissions giving rise to Plaintiff’s
24 claims arose in this district.

25 26 **FACTUAL ALLEGATIONS**

27 12. Plaintiff has physical impairments resulting from paraplegia
28 that significantly impact her mobility.

1 13. Plaintiff is unable to stand or walk and uses a wheelchair for
2 mobility.

3 14. At all times relevant herein, Kaiser has operated medical offices
4 at 14011 Park Avenue in the City of Victorville, California (hereinafter
5 “High Desert Medical Office”).

6 15. At all times relevant herein, Kaiser has provided urgent care
7 and pharmacy services at the High Desert Medical Office.

8 16. At all times relevant herein, Kaiser has operated a 24/7 care-by-
9 phone line where members can connect with a licensed care provider day or
10 night for advice, referrals, prescriptions, and more.

11 17. On December 4, 2018, Plaintiff was experiencing the symptoms
12 of a urinary tract infection (“UTI”).

13 18. Plaintiff went to High Desert Medical Office urgent care seeking
14 medical assistance for her UTI symptoms.

15 19. The wait at urgent care was anticipated to be between two and
16 three hours.

17 20. Plaintiff has experienced UTIs and been treated by Kaiser for
18 UTIs for years. Because of Plaintiff’s history of UTIs and knowledge of her
19 symptoms, staff at urgent care suggested to Plaintiff that she just call the care-
20 by-phone line to obtain a prescription.

21 21. Plaintiff called the care-by-phone line and spoke to an individual
22 named “Ken.” Ken discussed Plaintiff’s symptoms and medical history with
23 her and appeared prepared to assist her in obtaining a prescription.

24 22. Once Ken learned that Plaintiff was a wheelchair user, however,
25 he refused to further assist her. Ken told Plaintiff telling her that wheelchair
26 users cannot obtain prescriptions via Kaiser’s care-by-phone line.

27 23. Plaintiff ended the call with Ken but soon called the care-by-
28 phone line again. This time, Plaintiff spoke to a woman named “Amore” who

1 confirmed that it was Kaiser's policy not to provide prescriptions via the care-
2 by-phone line to any individual who uses a wheelchair.

3 24. When Plaintiff questioned the Kaiser policy, she was referred to
4 a Charge Nurse named "Susan." Susan also confirmed to Plaintiff that it was
5 Kaiser's policy not to provide prescriptions via the care-by-phone line to any
6 individual who is "paralyzed" or "uses a wheelchair."

7 25. Because Plaintiff could not obtain a prescription via the care-by-
8 phone due to Kaisers policy on wheelchair users, she was forced to wait over
9 two hours to see a nurse. Plaintiff was questioned, but not examined by the
10 nurse, and was finally provided the prescription she had been seeking.

11 26. Plaintiff's experience being denied care-by-phone services due
12 to her use of a wheelchair caused her difficulty, discomfort, embarrassment
13 and frustration.

14 27. On December 11, 2018, Plaintiff called Kaiser's member
15 services to request a copy of the protocols for the care-by-phone line. Plaintiff
16 was told by member services that the protocols could not be found, but that
17 they probably existed in the nurse unit.

18 28. On information and belief, and at all times relevant to this
19 Complaint, it has been Kaiser's policy not to provide prescriptions via the
20 care-by-phone line to any individual who uses a wheelchair.

21 29. Plaintiff has been deterred from using the care-by-phone line
22 since the December 4, 2018 incident.

23 30. Plaintiff plans to utilize Kaiser's care-by-phone option for
24 medical care in the future, including care for future UTIs.

25 31. Until Defendants' discriminatory policies are modified, Plaintiff
26 will be prevented and deterred from using Kaiser's care-by phone line and
27 will suffer ongoing discrimination and damage as a result.

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1 line is a good, service, privilege, advantage, accommodation, and/or
2 opportunity, Kaiser provides to members of the public.

3 39. Defendants have discriminated against Plaintiff on the basis of
4 her disability in violation of Title III of the ADA. Defendant's discriminatory
5 conduct includes, *inter alia*:

6 a. Directly, or through contractual, licensing, or other
7 arrangements, excluding or denying Plaintiff goods,
8 services, facilities, privileges, advantages,
9 accommodations, and/or opportunities, on the basis of her
10 disability. 42 U.S.C. § 12182(b)(1)(A)(i), 28 C.F.R. §
11 36.202(a);

12 b. Providing Plaintiff goods, services, facilities, privileges,
13 advantages, and/or accommodations that are not equal to
14 those afforded non-disabled individuals. 42 U.S.C. §
15 12182(b)(1)(A)(ii), 28 C.F.R. § 36.202(b); and

16 c. Failing to make reasonable modifications in policies,
17 practices, or procedures, when such modifications are
18 necessary to afford such goods, services, facilities,
19 privileges, advantages, or accommodations to Plaintiff,
20 unless the entity can demonstrate that making such
21 modifications would fundamentally alter the nature of
22 such goods, services, facilities, privileges, advantages, or
23 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii), 28
24 C.F.R. § 36.302(a).

25 40. Pursuant to the remedies, procedures, and rights set forth in 42
26 U.S.C. § 12188 and 42 U.S.C. § 12205, Plaintiff prays for judgment as set
27 forth below.

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SECOND CAUSE OF ACTION
Section 504 of the Rehabilitation Act of 1973
29 U.S.C. § 794

41. Plaintiff re-pleads the allegations contained in each of the foregoing paragraphs and incorporates them herein as if separately re-pled

42. Section 504 of the Rehabilitation Act provides that “no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 29 U.S.C. § 794(a).

43. Defendants are recipients of “federal financial assistance” in the form of Medicaid and Medicare payments.

44. Defendants’ acts and omissions as herein alleged have excluded and/or denied Plaintiff the benefit of and/or participation in the programs and activities offered by Defendants to members of the public, in violation of Section 504 and its implementing regulations.

45. Defendants’ duties under Section 504 are mandatory and long-established. Defendants are deemed to have had knowledge of their duties at all times relevant herein; their failure to carry out said duties as alleged herein was willful and knowing and/or the product of deliberate indifference.

46. Pursuant to 29 U.S.C. § 794a, Plaintiff prays for judgment as set forth below.

THIRD CAUSE OF ACTION
Unruh Civil Rights Act
California Civil Code § 51 et seq.

47. Plaintiff re-pleads the allegations contained in each of the foregoing paragraphs and incorporates them herein as if separately re-pled.

1 48. The Unruh Act guarantees, *inter alia*, that persons with
2 disabilities are entitled to full and equal accommodations, advantages,
3 facilities, privileges, or services in all business establishments of every kind
4 whatsoever within the jurisdiction of the State of California. Cal. Civ. Code §
5 51(b).

6 49. The Unruh Act also provides that a violation of the ADA is a
7 violation of the Unruh Act. Cal. Civ. Code § 51(f).

8 50. Kaiser is a business establishment and, as such, must comply
9 with the provisions of the Unruh Civil Rights Act, Cal. Civ. Code § 51 et seq.

10 51. Plaintiff is an individual with a physical disability within the
11 meaning of California Government Code section 12926(m).

12 52. Defendants have violated the Unruh Act by, *inter alia*, denying,
13 or aiding or inciting the denial of, Plaintiff's rights to full and equal use of the
14 accommodations, advantages, facilities, privileges, or services offered at
15 Kaiser.

16 53. Defendants have also violated the Unruh Act by denying, or
17 aiding or inciting the denial of, Plaintiff's right to equal access arising from
18 the provisions of the ADA. See, Plaintiff's First Cause of Action.

19 54. Defendants' duties under the Unruh Act are mandatory and long-
20 established. Defendants are deemed to have had knowledge of its duties at all
21 times relevant herein; its failure to carry out said duties as alleged herein was
22 willful and knowing and/or the product of deliberate indifference. Treble
23 damages are warranted.

24 55. Pursuant to the remedies, procedures, and rights set forth in Cal.
25 Civ. Code § 52, Plaintiff prays for judgment as set forth below.

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PRAYER

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Issue an injunction:
 - a. Ordering Defendants to stop discriminating against wheelchair users in the use of Kaiser’s care-by-phone line to obtain prescriptions;
 - b. Ordering Defendants to develop and adopt non-discrimination policies; and
 - c. Ordering Defendants to train its staff and management regarding “a” and “b” above.
2. Award Plaintiff general, compensatory, and statutory damages in an amount within the jurisdiction of this court;
3. Award Plaintiff attorneys’ fees, litigation expenses and costs of suit, as provided by law; and
4. Award such other and further relief as the Court may deem just and proper.

Dated: June 24, 2019

By: Michelle Uzeta
Michelle Uzeta
Attorneys for Plaintiff