

1 NATALIA A. SIDIAKINA
746 Adobe Drive
2 Santa Rosa, CA 95404
Telephone: (415) 302-9702
3 Fax: (707) 538-3729

4 SHERRYL BAECKEL
10520 Village Road
5 Moreno Valley, CA 92557
Telephone: (951) 286-0637
6

RECEIVED

DEC 17 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 OAKLAND DIVISION

10 NATALIA A. SIDIAKINA, and

11 SHERRYL BAECKEL,

12
13 Plaintiffs,

14 v.

15 JAMES G. BERTOLI, JUDGE, in his official
and personal capacity;
16 ROBERT S. BOYD, JUDGE, in his official
and personal capacity;
17 SUPERIOR COURT OF SONOMA COUNTY;
18 TARA REILLY, JUDGE, in her official and
personal capacity;
19 SUPERIOR COURT OF SAN BERNARDINO
COUNTY;
20 IGNAZIO J. RUVOLO, PRESIDING JUSTICE
in his official and personal capacity;
21 TIMOTHY A. REARDON, JUSTICE, in his
official and personal capacity;
22 PATRICIA K. SEPULVEDA, JUSTICE, in her
official and personal capacity;
23 CALIFORNIA COURT OF APPEAL, FIRST
APPELLATE DISTRICT, DIVISION FOUR;
24 RONALD M. GEORGE, CHIEF JUSTICE,
in his official and personal capacity;
25 JUDICIAL COUNCIL OF CALIFORNIA,
STATE OF CALIFORNIA, and
26 JUDICIAL BRANCH OF CALIFORNIA
GOVERNMENT

27 Defendants.
28

Case No. C 10-03157 JSW

Judge Jeffrey S. White

SECOND AMENDED VERIFIED
COMPLAINT - CLASS ACTION

DEMAND FOR JURY TRIAL

I. JURISDICTION

1
2 This court has jurisdiction over the matters contained in this complaint pursuant to
3 the provisions of the Americans with Disabilities Act (ADA) of 1990, Title II, 42 U.S.C.
4 12131 et. seq., Americans with Disabilities Act Amendments Act (ADAAA) of 9/25/2008,
5 42 U.S.C. A. 12101 et. seq., 29 U.S.C. 794a, 28 C.F.R. 35.101 et. seq., and Torture
6 Victims Protection Act, 28 U.S.C. 1350 et. seq..

II. VENUE

7
8 Venue is appropriate in this court because Plaintiff Natalia A. Sidiakina and 8 of 12
9 Defendants reside and / or work in this district, and a substantial amount of the acts and
10 omissions giving rise to this lawsuit occurred in this district.

III. INTRADISTRICT ASSIGNMENT

11
12 This lawsuit should be assigned to the Oakland Division of this Court because 4 of
13 12 Defendants work in building across the street from the building in which San Francisco
14 Division is located and likely go to lunches and socialize together with Judges of San
15 Francisco Division. These close social and friendship ties will make it difficult for the
16 Judges of San Francisco Division to make orders against Defendants.

IV. PARTIES

17
18 (a) The Plaintiff Natalia A. Sidiakina:

19 1. The plaintiff Sidiakina is a resident since 1994, a permanent resident since May
20 of 2001, application for citizenship in progress, a resident of Sonoma County, California
21 and resides at 746 Adobe Drive, Santa Rosa, California. She is a qualified individual with
22 cognitive disabilities as is defined by 42 U.S.C. 12101 et. seq., and has been in need of
23 the services of the judicial division of the State of California for the purpose of dissolution
24 of marriage litigation. Ms. Sidiakina's cognitive disabilities such as Post-Traumatic Stress
25 Disorder, Panic Disorder, Major Depressive Disorder, Dissociative Disorder, Dissociative
26 Amnesia, and migraine pain disorder were diagnosed by three independent experts in the
27 fields of Post-Traumatic Stress Disorder, Anxiety Disorders, and Dissociative Disorders:
28 Dr. Andrew Leeds, PhD, MFT, Karin Huffer, MS, MFT, and Jo Lauer, MA, LMFT. Three

1 family medicine practitioners Dr. Jann Hanscome, MD, Dr. Bonnie Kneibler, MD and Judy
2 Walenta, CFNP have been treating Ms. Sidiakina and have been prescribing medications
3 for her cognitive disabilities since 2005. From August 2010 to September 2010, Ms.
4 Sidiakina was independently evaluated by Dr. Navneet Attri, MD of Sutter Health
5 Foundation and was, in addition to above-mentioned illnesses, diagnosed with Attention
6 Deficit Disorder and Iron-Deficient Pernicious Anemia.

7 2. From 1994 to May of 2006, Ms. Sidiakina was employed as a business
8 development consultant in the pharmaceutical and biotech industry. Since May of 2006,
9 Ms. Sidiakina has been unemployed due to the sale of her last employer, a
10 pharmaceutical subsidiary of Merck KGaA, to another pharmaceutical company, and her
11 only income was unemployment insurance, all extensions of benefits of which were
12 exhausted in March of 2010. Since 2007, Ms. Sidiakina has been indigent and has been
13 borrowing money from friends to pay for the necessities of life. It is hereby requested
14 that Ms. Sidiakina be allowed to serve as a class representative for all indigent qualified
15 individuals with a cognitive disability needing the services of the judicial division of the
16 State of California.

17 (b) The Plaintiff Sherryl Baeckel:

18 1. The plaintiff Baeckel is a citizen and resident of Riverside County, California and
19 resides at 10520 Village Road, Moreno Valley, California. She is a qualified individual with
20 cognitive disabilities as is defined by 42 U.S.C. 12101 et. seq., and has been in need of
21 the services of the judicial division of the State of California for the purpose of dissolution
22 of marriage, child custody and support litigation. Ms. Baeckel's cognitive and physical
23 disabilities such as severe migraine headaches, scleroderma with significant cognitive
24 fatigue, a neck injury with persistent arthritis pain, emphysema, constant pain due to
25 fibromyalgia, and Complex Post-Traumatic Stress Disorder were diagnosed by Dr.

26 Andrew Rhodes, MD, Dr. Carl Wolnisty, MD, Dr. Zamiri, MD. and Karin Huffer, MS, MFT.

27 2. Ms. Baeckel was attacked on duty as Deputy Sheriff and, as a result of attack,
28 sustained severe neck injury and severe psychological trauma, which resulted in her

1 medical retirement. The only income she receives is disability-related medical retirement
2 of \$2,200.00 per month; one half of which is under the control of Trustees in a Special
3 Needs Trust for medical and related to disability expenses. It is hereby requested that Ms.
4 Baeckel be allowed to serve as a class representative for all indigent qualified individuals
5 with a cognitive disability needing the services of the judicial divisions of the State of
6 California.

7 (d) The Defendants:

8 1. The State of California is a political subdivision of the United States of America
9 and as such it and its political subdivisions are subject to the laws of the United States of
10 America. They are specifically charged under the terms of the United States Constitution
11 and the California Constitution with providing the service of courts and judicial
12 proceedings. All counties of the State of California are political subdivisions of the State of
13 California and are required under the Constitution of the State of California to provide
14 courthouses that provide services to all persons including residents of this State and
15 indigent qualified individuals with cognitive disabilities as defined by 42 U.S.C. 12131.

16 2. Superior Court of Sonoma County and Superior Court of San Bernardino County
17 are the trial courts in Sonoma County and San Bernardino County, respectively. The
18 Court of Appeal of California, First Appellate District, Division Four is a political
19 subdivision of the State of California charged with the appeals of the decisions of the
20 Superior Courts of several Counties, including Sonoma County. Judicial Council of
21 California is a political subdivision of the State of California charged with establishing The
22 Rules of Court for all courts in this State.

23 3. James G. Bertoli and Judge and Robert S. Boyd, Judge are the judges of the
24 Superior Court of Sonoma County. Tara Reilly, Judge is the judge of the Superior Court
25 of San Bernardino County.

26 4. Ignazio J. Ruvolo, Presiding Justice, Timothy A. Reardon, Justice, and Patricia
27 K. Sepulveda, Justice are the Justices of The Court of Appeal of California, First
28 Appellate District, Division Four.

1 5. Ronald M. George, Chief Justice of the California Supreme Court is a Chairman
2 of the Judicial Council of California.

3 **V. PLAINTIFF SIDIAKINA'S PROCEDURAL HISTORY**

4 (a) That as noted above, the plaintiff, Natalia A. Sidiakina, hereinafter referred to
5 as Sidiakina, is indigent and cognitively disabled and as such is a qualified individual with
6 a cognitive disability as defined by 42 U.S.C. 12101 et seq. and 42 U.S.C. 12131(2).

7 (b) On or about July 3, 2005, Sidiakina and her former husband Siamak Navid
8 entered into a written and recorded separation agreement. Per separation agreement, in
9 July of 2005, Sidiakina filed for dissolution of marriage. Since the very beginning of the
10 divorce litigation, Navid was represented by 2 or 3 experienced legal counsels and family
11 law specialists.

12 (c) On or about August 26, 2005, Sidiakina filed an Order to Show Cause for
13 spousal support and attorney's fees. In that order to show cause, Sidiakina submitted an
14 affidavit, in which she informed the family court and the Judge that she had diagnosed
15 psychological disabilities, such as panic disorder, depression, and anxiety disorder and
16 submitted to the trial court the copies of the notes from Walgreen's pharmacy, which
17 contained explanations of conditions for which I have been taking prescription
18 medications.

19 (d) Sidiakina's husband, Siamak Navid, through his attorneys Bruce Schwartz,
20 James Benoit and Carla Boyd, filed perjured Preliminary Declaration of Disclosure, signed
21 8/15/2005, in which he intentionally concealed his personal and community assets of the
22 value greater than \$300,000. Based on his intentional misrepresentation of family assets
23 and taking advantage of Sidiakina's cognitive disabilities, Siamak Navid's attorneys
24 coerced and defrauded Sidiakina into an oral marital settlement agreement on November
25 1, 2006. Sidiakina rescinded this oral agreement in writing and filed a motion to set it
26 aside in December of 2006. Before the set-aside motion was heard, this rescinded
27 agreement was entered as a judgment AFTER TRIAL at the request of Navid's attorneys.

28 (e) In 2007, Sidiakina filed several affidavits that informed James G. Bertoli, Judge

1 of Superior Court of Sonoma County, that Sidiakina had been unemployed since May of
2 2006 and that since January of 2007, after she used all her savings to pay for attorney's
3 fees in her divorce litigation, she had been indigent and, thus, had to represent herself
4 while having severe cognitive disabilities. Sidiakina requested an appointed legal counsel
5 to represent her or, alternatively, to order her ex-husband to pay for Sidiakina's attorney's
6 fees from community property, which had been under her husband's control since the
7 beginning of the divorce litigation.

8 (f) As of December 16, 2010, Siamak Navid DID NOT comply with his obligations
9 under said oral agreement and DID NOT pay off the community debt, which forced
10 Sidiakina into bankruptcy. In spring of 2007, Sidiakina's former bankruptcy attorney
11 Douglas Provencher submitted declarations and written testimony to Judge Bertoli that
12 Siamak Navid's obligations to pay the community debt were UNENFORCEABLE resulting
13 in failure of consideration to Sidiakina in the oral agreement of November 1, 2006. Also in
14 spring of 2007, Sidiakina's former family law attorney Kathleen Smith submitted
15 declaration and written testimony to Judge Bertoli stating that Kathleen Smith
16 MISSTATED the terms of the oral agreement of November 1, 2006 when she read the
17 terms into the record. If Sidiakina was represented by an attorney at the hearing on her
18 set-aside motion on September 14, 2007, the rescinded, based on financial fraud,
19 unenforceable against Siamak Navid, and misstated oral agreement of November 1, 2006
20 and, based on oral agreement of November 1, 2006, but intentionally fabricated as
21 "Judgment After Trial", judgment of dissolution of marriage would have been set aside.
22 But because Sidiakina was a cognitively disabled party, she was intentionally abused,
23 denied reasonable and necessary accommodations, and was forced by Judge Bertoli of
24 Sonoma Superior Court to self-represent herself. On September 14, 2007, Judge Bertoli
25 simply ignored all evidence of financial fraud against cognitively disabled Sidiakina and
26 submitted by her former attorneys declarations and denied Sidiakina's motion to set aside
27 the rescinded, based on financial fraud, unenforceable against Siamak Navid, and
28 misstated oral agreement of November 1, 2006.

1 (g) At the hearing on September 14, 2007, Sidiakina personally informed Judge
2 James G. Bertoli that she suffered from psychological disabilities that rendered her
3 incapable to represent herself and asked Judge Bertoli to stop the hearing and to appoint
4 a counsel to represent her. Judge Bertoli ignored Sidiakina's requests and continued to
5 exploit her fears and disabilities in questioning her why she concluded that Judge Bertoli
6 was personally prejudiced against her. Sidiakina pleaded to stop the inquisition because
7 she was terrified, was having a panic attack, and was feeling horrible physical pain and
8 emotional suffering. Judge Bertoli DID NOT stop. Sidiakina felt that she was dying and
9 lost consciousness.

10 (h) On September 14, 2007, at the request of Navid's attorney James Benoit,
11 Judge Bertoli denied Sidiakina's request for legal representation or attorney's fees as
12 "moot" without considering the merits of the attorney's fees request, Sidiakina's cognitive
13 disabilities and needs, and Navid's abilities to pay.

14 (i) At the hearing on September 14, 2007, Judge Bertoli intentionally inflicted such
15 pain and sufferings upon Sidiakina as punishment for her efforts to disqualify him that
16 caused Sidiakina to experience a panic attack, depersonalization, and derealization,
17 culminating in the loss of consciousness at the hearing. Sidiakina's brain was severely
18 traumatized, which resulted in the disabling conditions of Post-Traumatic Stress Disorder
19 and related Dissociative Disorder, Depersonalization Disorder, Phobia, and Avoidance
20 Disorder. Detailed discussions of these conditions are presented in experts' reports:
21 Report of Karin Huffer, MS, MFT, p. 3-7; Report of Andrew M. Leeds, PhD, MFT, p. 7-10;
22 Report of Jo Lauer, MFT, p. 4-8; Report of Judy Walenta, CFNP, p. 4-5.

23 (j) Since September of 2007, every time Sidiakina thinks of a possibility of being
24 evicted from her home or a possibility to having to go again to Sonoma Superior Court or
25 even thinking of Sonoma Superior Court, she starts having panic attacks with severe
26 migraine pains, stomach cramps, chest pains similar to those in a heart attack,
27 suffocation, dissociation, depersonalization, and, subsequently, major depression
28 episodes. According to Request for Reasonable ADA Accommodation, Assessment and

1 Report in Support of Request, prepared by Judy Walenta, CRNP, Sidiakina is currently
2 taking 6 anti-anxiety and anti-depression medications just to keep her out of bed and
3 somewhat functioning.

4 (k) The hearing on September 14, 2007 caused the trauma to Sidiakina's brain that
5 resulted in the dissociation of neurotransmission between her brain areas and her inability
6 to recall memories related to her divorce, inability to concentrate during legal processes,
7 inability to understand, process, and analyze information related to her divorce.

8 (l) In May of 2009, Sidiakina was diagnosed with Post Traumatic Stress Disorder,
9 Major Depression, Panic Disorder, Dissociative Disorder, and Dissociative Amnesia by
10 Karin Huffer, M.S., MFT, who is an expert in Post Traumatic Stress Disorder and an
11 advocate for psychologically disabled litigants under the Americans with Disabilities Act
12 (ADA) Title II. Expert Huffer's assessment and report, that confirms that Sidiakina is a
13 person with psychological disabilities as defined by the ADA Title II, specifically states at
14 p. 10 and p. 11:

15 **"During court processes, Ms. Sidiakina is likely to become symptomatic and**
16 **she will have problems concentrating, thinking, processing information, and**
17 **responding and presenting her case in court."**

18 **"Only if the Court ensures accommodations including legal representation**
19 **for Ms. Sidiakina, she will have "equal access" to the Court."** (bold added)

20 (m) In July of 2009, Sidiakina was independently diagnosed with Post Traumatic
21 Stress Disorder, Major Depression Disorder, Panic Disorder, Avoidance Disorder,
22 Dissociative Disorder, Dissociative Amnesia, and Depersonalization Disorder by Andrew
23 M. Leeds, Ph.D., MFT, who is an expert in Post Traumatic Stress Disorder and related
24 Depressive Disorders, Dissociative Disorders, and Anxiety Disorders. His assessment
25 and report that confirms that Sidiakina is a person with psychological disabilities as
26 defined in the ADA Title II states at p. 10:

27 **"It is my professional opinion that due to the psychological disabilities**
28 **described above Ms. Sidiakina has been and will continue to be unable to**

1 **represent herself and to comply with the California Rules of Court.”**

2 (n) On December 4, 2008 and on February 18, 2010, Sidiakina filed requests for a
3 Change of Venue and for disqualification of Judge James G. Bertoli as accommodations
4 for Sidiakina's cognitive disabilities because, as a result of abuse and torture inflicted
5 upon her by Judge James G. Bertoli, Sidiakina developed and was diagnosed with
6 phobia of Sonoma Superior Court and of Judge James G. Bertoli. In her affidavit,
7 Sidiakina stated:

8 “Since September of 2007, every time I had a hearing in the Sonoma Court, I had
9 a panic attack right at the Courthouse or a few hours later at night. During a panic
10 attack, I experience unbearable stomach cramps, heart and chest pain,
11 suffocation, and loss of my ability to think clearly and speak. My brain disabilities
12 make it physically impossible for me to have another hearing at the Sonoma Court.
13 Even a thought of having another hearing at the Sonoma Court and, thus, a
14 possibility of having another panic attack right there causes my brain and
15 autonomous nervous system to malfunction so much as to cause my stomach and
16 chest to ache and my heart to beat so fast that I have trouble breathing and
17 thinking. In summary, I am severely disabled in legal processes and need
18 accommodations requested by my doctors- Dr. Andrew M. Leeds, PhD, MFT (see
19 Attachment 3, p. 10-12), Karin Huffer, MS, MFT (see Attachment 2, p. 9-11), Jo
20 Lauer, MFT (see Attachment 4, p. 9-11) and Judy Walenta, CRNP (see
21 Attachment 5, p. 6-8).”

22 (o) Dr. Andrew M. Leeds, PhD, MFT, Karin Huffer, MS, MFT, Jo Lauer, MFT and
23 Judy Walenta, CRNP concurred in their reports titled “Request for Reasonable ADA
24 Accommodations; Assessment and Report in Support of Request” (hereinafter referred to
25 as “ADA Report”) in section “ADA Accommodation Specifically Needed by Client” that:

26 **“1) Ms. Sidiakina needs to avoid places and people that may remind her of**
27 **the traumatic events and are likely to trigger anxiety attack and dissociation,**
28 **specifically Sonoma Superior Court, ...and Sonoma Court Judge J. Bertoli.**

1 **Ms. Sidiakina needs her case to be transferred to Superior Court in another**
2 **county.”** (ADA Report of Dr. Andrew Leeds, PhD, MFT, p. 11; ADA Report of
3 Karin Huffer, MS, MFT, p. 9; ADA Report of Jo Lauer, MFT, p. 9; ADA Report of
4 Judy Walenta, CRNP, p. 6).

5 (p) In spite of direct requests from mental health professionals and experts,
6 presented as supportive attachments to Request for Accommodations by Persons with
7 Disabilities filed by Sidiakina in the Sonoma Superior Court, both times Judge Bertoli
8 denied Sidiakina's requests and insisted on continuing to discriminate against Sidiakina,
9 abuse and torture her, intentionally causing further sever pain and sufferings, damage to
10 Sidiakina's brain, her humiliation and embarrassment.

11 (q) Sidiakina filed two statutory Petitions for Writ of Mandate to appeal the refusal
12 of abusive Judge Bertoli to honor Sidiakina's requests for his disqualification. Both
13 Petitions for Writ were summarily denied without being adjudicated on their merits by the
14 California Court of Appeal, First Appellate District, Division Four. Furthermore, the issues
15 of disqualification of Juge Bertoli were ignored after they were brought up in Sidiakina's
16 appeal. California Supreme Court denied Sidiakina's Petitions for Review.

17 (r) Due to Dissociative Amnesia, Sidiakina is unable to properly recall memories
18 related to her divorce when she is under stress in the legal settings. Due to severe
19 Dissociative Disorder, Sidiakina is unable to concentrate and properly understand,
20 process, and analyze information related to her divorce when she has to write legal
21 papers or speak during hearings. Due to severe Avoidance Disorder, Phobia, and Panic
22 Attacks, Sidiakina is unable to open an envelope from the court for many days and
23 unable to comply with the due dates, procedural rules, and the Rules of Court.

24 (s) During her appeals, on several occasions, Sidiakina requested
25 accommodations as a cognitively disabled litigant, including the appointment of legal
26 counsel on appeal, and submitted experts' reports and her affidavit in support of her
27 request. Ignazio J. Ruvolo, Presiding Justice and Timothy A. Reardon, Justice of the
28 Court of Appeal of California, First Appellate District, Division Four, summarily denied

1 Sidiakina's requests. Subsequently, on August 19, 2009, Justice Reardon, Presiding
2 Justice Ruvolo, and Justice Sepulveda denied Sidiakina's appeals on the ground that
3 Sidiakina failed to comply with the Rules of Court because she "failed to provide a
4 reasoned argument and discussion of legal authority with appropriate citation to the
5 appellate record".

6 (t) It is a self-evident truth that a cognitively disabled person CANNOT provide "a
7 reasoned argument and discussion of legal authority with appropriate citation to the
8 appellate record". It takes three years of law school, passing the California Bar exam, and
9 several years of experience with appeals for a person WITHOUT cognitive disabilities to
10 be able to write a reasoned legal argument and discussion of legal authority with
11 appropriate citation to the appellate record. Moreover, it is well established among
12 lawyers and judges that even an experienced lawyer is at huge disadvantage when
13 representing himself. "A lawyer who represents himself has a fool for a client" is not just a
14 joke, but an official opinion of the Supreme Court of the United States in *Kay v. Ehrler*,
15 499 U.S. 432 (1991) at p. 437-438:

16 **"Even a skilled lawyer who represents himself is at a disadvantage in**
17 **contested litigation. Ethical considerations may make it inappropriate for him to**
18 **appear as a witness. He is deprived of the judgment of an independent third**
19 **party in framing the theory of the case, evaluating alternative methods of**
20 **presenting the evidence, cross-examining hostile witnesses, formulating**
21 **legal arguments, and in making sure that reason, rather than emotion,**
22 **dictates the proper tactical response to unforeseen developments in the**
23 **courtroom. The adage that "a lawyer who represents himself has a fool for a**
24 **client" is the product of years of experience by seasoned litigators."** (bold
25 added)

26 (u) In her Request for Reasonable ADA Accommodations; Assessment and Report
27 in Support of Request, the expert in Post-Traumatic Stress Disorder and related disorders
28 Karin Huffer, M.S., M.F.T. stated:

1 “Ms. Sidiakina suffers from Depression, Panic Disorder, and Anxiety diagnosed
2 by Bonnie Kneibler, M.D, and Jann M. Hanscome, M.D, at Windsor Primary Care
3 Medical Group in Windsor, California, and has been under treatment since 2005.
4 Opinions of Dr. Kneibler and Dr. Hanscome consistently indicate that Ms. Sidiakina
5 suffered first from traumatic reaction to a type of domestic abuse related more to
6 coercion than physical violence although there were incidents of battery in 2003
7 resulting in her husband's arrest.

8 Both doctors report that Ms. Sidiakina's litigation has exacerbated her conditions.
9 It appears that the jeopardy, helplessness, and terror, which Ms. Sidiakina
10 experienced during litigation, have precipitated a Post Traumatic Stress Disorder,
11 which Ms. Sidiakina was already predisposed to from her earlier trauma.

12 Ms. Sidiakina has been in need of ADA Accommodations since August of 2005.
13 The fact that she was not protected by the ADA created an inaccurate perception
14 of her to the Court. Judges react to what is before them and often punitively and
15 unfairly act with inadvertent bias toward litigants with invisible disabilities. English is
16 Ms. Sidiakina's third language. Although she is fluent in English, the language in a
17 court of law requires a literacy that most people do not possess let alone those
18 dealing with English as a third language. Ms. Sidiakina reports that:

19 *“At one time during my answer to Judge Bertoli's interrogations, my voice broke,*
20 *and I felt suffocating. Another time during the dialog between my husband's*
21 *attorney James Benoit and Judge Bertoli, I could not breathe at all, and my heart*
22 *hurt so bad that I felt I was dying. Then my brain went blank. I don't know how long*
23 *it lasted, maybe few minutes. I lost the track of time and the dialog. Because of*
24 *fear and distress, I was unable to remember words in English and properly say*
25 *what I wanted to say. I felt like a rat that is getting repeated electric shocks in the*
26 *cage that it cannot escape.”*

27 **This clearly demonstrates that Ms. Sidiakina did not have access to the**
28 **proceedings or due process of law.** It also appears that Ms. Sidiakiana's

1 expectations of the fairness in the court process, her thorough research as to rules
2 and laws, and outspoken nature complicated by her inability to obtain
3 accommodations for her functional impairments, and created a situation that was
4 detrimental to her in the court. **The Americans with Disabilities Act should**
5 **have protected Ms. Sidiakina when she was first diagnosed in 2005. With**
6 **accommodations, she may have had equal access and avoided the severe**
7 **trauma she suffers today.”** (bold and italics in the original text)

8 (v) Three mental health experts and a family physician concurred that the following
9 accommodations are medically necessary and reasonable given Sidiakina's cognitive
10 disabilities:

11 “A. It is my professional opinion that it is absolutely medically required that Ms.
12 Sidiakina's request for reasonable and necessary accommodations to change
13 venue and transfer Ms. Sidiakina's case from Sonoma County Court to either San
14 Mateo County Court or San Francisco County Court and to continue the hearing
15 from February 26, 2010 to July of 2010 be granted.

16 **B. It is my professional opinion that due to the psychological disabilities**
17 **described above Ms. Sidiakina has been and will continue to be unable to**
18 **represent herself and to comply with the California Rules of Court.**
19 **I fully agree with all eight of the major specific accommodations identified by**
20 **Karin Huffer, MS, MFT in her ADA report and re-stated by Andrew Leeds,**
21 **Ph.D. in his ADA report.**

22 These accommodations are well thought out and are reasonable ways to
23 accommodate the disabilities and impairments from which Ms. Sidiakina suffers.
24 **Most critical is that Ms. Sidiakina did require and continues to require the**
25 **assistance of an attorney to assure her due process. Without such**
26 **accommodations, her mental and emotional disabilities clearly make it**
27 **impossible for her to participate in the legal process and receive equal**
28 **access to the courts.**

1 The accommodations listed in Karin Huffer's report and re-stated in Andrew Leeds,
2 Ph.D. report, would substantially accommodate Ms. Sidiakina's disabilities. For the
3 record, I quote from Karin Huffer's and Andrew Leeds' reports below:

4 "Specifically, Ms. Sidiakina requires the following accommodations to ensure she
5 obtains equal access and fair treatment free from discrimination as mandated by
6 the ADA:

7 (h) Ms. Sidiakina needs to avoid places and people that may remind her of the
8 traumatic events and are likely to trigger anxiety attack and dissociation,
9 specifically Sonoma Superior Court, her husband Mr. Navid, her husband's
10 attorney Mr. Benoit, and Sonoma Court Judge J. Bertoli. Ms. Sidiakina needs
11 her case be transferred to Superior Court in another county.

12

13 **Only if the Court ensures accommodations including legal representation for**
14 **Ms. Sidiakina, will she have "equal access" to the Court.** (bold and italics in
15 the original text) ("Request for Reasonable ADA Accommodations; Assessment
16 and Report in Support of Request" by Jo Lauer, MFT, p. 9, 11; "Request for
17 Reasonable ADA Accommodations; Assessment and Report in Support of
18 Request" by Judy Walenta, CFNP, p. 6, 8)

19 (w) On 3/12/10, Sidiakina appealed under the present California law, California
20 Rules of Court, Rule 1.100, the denial of reasonable accommodations. On 5/12/10,
21 Presiding Justice Ruvolo, Justice Reardon, and Justice Sepulveda of the Court of Appeal
22 of the State of California, First Appellate District, Division Four issued an opinion stating:

23 **"Petitioner's request for accommodations (appointment of counsel and**
24 **change of venue / judicial officer) would create and undue financial burden**
25 **and administrative burden on the court, and fundamentally alter the nature of**
26 **court services. (Cal. Rules of Court, rule 1.100(f)(2) and (3))."** (bold added).

27 This opinion was contrary to several decisions of the U.S. courts:

28 **"The opportunity to be heard must be tailored to the capacities and**

1 **circumstances of those who are to be heard” and when “a party exhibits a**
2 **limited ability to understand a proceeding affecting her rights, the court must**
3 **undertake even more strenuous efforts to explain the process.”** (*Nielson v.*
4 *Colgate-Palmolive*, 199 F.3d 642 (2d Cir. 1999)). (bold added).

5 In *Tennessee v. Lane*, 541 U.S. 509 (2004), the Supreme Court of the United States held
6 that the ADA applies to states courts and that, moreover:

7 “Cases such as *Boddie, Griffin v. Illinois*, 351 U.S. 12, and *Gideon v. Wainwright*,
8 372 U.S. 335, make clear that **ordinary considerations of cost and**
9 **convenience alone cannot justify a State’s failure to provide individuals with**
10 **a meaningful right of access to the courts.** Judged against this backdrop, Title
11 II’s affirmative obligation to accommodate is a reasonable prophylactic measure,
12 reasonably targeted to a legitimate end.” (bold added).

13 (x) To punish Sidiakina for being honest, believing in fair treatment and justice
14 self-represented cognitively disabled party, in August of 2010, Judge Bertoli ordered all
15 moneys due Sidiakina as unpaid spousal support and her share of the community
16 property under the oral agreement of November 1, 2006, \$30,000, to be paid to Navid’s
17 attorneys.

18 (y) In September of 2010, Sidiakina was diagnosed with Iron-Deficient Pernicious
19 Anemia and possible related Addison’s disease, Hypopituitarism, and Chron’s disease.
20 Sidiakina was unable to borrow enough money to pay for her increased to \$410 per
21 month health insurance, which terminated in September of 2010. As a result, since
22 October of 2010, Sidiakina was unable to pay for treatment of above- mentioned
23 illnesses. In her mental health report and declaration of November 29, 2010 in support of
24 Sidiakina’s request for accommodations under the California Rules of Court, Rule 1.100,
25 which is related to, but does not fully cover the Americans with Disabilities Act Title II, Jo
26 Lauer, MA, LMFT, an expert in Trauma, Post-Traumatic Stress Disorder and related
27 Dissociative Disorders, Avoidance Disorders and other disorders, based on the medical
28 records of Sidiakina recorded by Jo Lauer, MA, LMFT and Dr. Navneet Attri, MD, stated:

1 "8. Since May of 2010, I have been recording the deteriorations of Ms. Sidiakina's
2 mental and physical conditions, and exacerbations of her symptoms of Panic
3 Disorder, Post-Traumatic Stress Disorder, Major Depression, Dissociation
4 Disorder, Avoidance Disorder, and Depersonalization Disorder.

5 **9. On August 20, 2010, Dr. Attri confirmed the prior diagnosis of Ms.**
6 **Sidiakina's Anxiety, Depression, Migraine Headaches, Panic Disorder, Post**
7 **Traumatic Stress Disorder, Dissociative Disorder and Tension**
8 **Headache...Additionally, Dr. Attri diagnosed Ms. Sidiakina with Attention**
9 **Deficit Disorder (ADD).**

10

11 **15. Ms. Sidiakina's symptoms of Iron-Deficient Pernicious Anemia include**
12 **severe mental and physical fatigue, frequent confusion, frequent headaches**
13 **and migraines, problems focusing and maintaining attention and**
14 **concentration, and problems thinking and processing information. Dr. Attri**
15 **confirmed these symptoms and /or illnesses in August of 2010...**

16 16. Because Ms. Sidiakina's daily habits and environment has not changed since
17 2005, except for the present divorce and related litigation, **it is my professional**
18 **opinion that the extreme and prolonged stress of Self-Representation during**
19 **this litigation has likely caused Ms. Sidiakina's illnesses.** It will require more
20 procedures and tests to determine the optimal treatment for Ms. Sidiakina's
21 illnesses. Thus, at this time, due to Ms. Sidiakina's indigent status and lack of
22 financial resources to pay for these necessary procedures and tests, it is not
23 possible to suggest the proper treatment and to predict the progress in Ms.
24 Sidiakina's health status and to say when Ms. Sidiakina would be able to
25 participate in legal proceedings in this matter.

26 **17. It is my professional opinion that Ms. Sidiakina is psychologically and**
27 **physically incapacitated and cognitively incompetent to represent herself at**
28 **the hearings and other court processes ...Ms. Sidiakina will continue to be**

1 psychologically and physically incapacitated and cognitively incompetent to
2 represent herself in all court processes until the appropriate treatment for Ms.
3 Sidiakina illnesses takes effect.

4 18. Realistically, it will require at least 12 months for obtaining the funding for
5 necessary tests to determine the appropriate treatment for Ms. Sidiakina and for
6 such appropriate treatment to produce positive changes in Ms. Sidiakina's health
7 status, provided that Ms. Sidiakina is NOT subjected to the extreme stress of Self-
8 Representation during this time." (bold added)

9 (z) In December of 2010, Navid's attorney James Benoit filed a Motion for Writ of
10 Possession to start the eviction process in order to evict indigent, physically and
11 cognitively disabled, and unemployed Sidiakina from her residence onto the street.
12 Sonoma Court set this motion for hearing on January 24, 2011, in spite of Sidiakina being
13 cognitively incompetent to represent herself. Sonoma Court also IGNORED once again
14 Sidiakina's request for accommodations and Sidiakina's request for legal counsel through
15 the currently being implemented Pilot Project under Shriver Civil Counsel Act
16 (Memorandum of which is attached to this Second Amended Verified Complaint- Class
17 Action as Exhibit A).

18 (aa) Because Sidiakina was forced to represent herself despite her requests for
19 accommodations as indigent and qualified litigant with cognitive disabilities in a litigation,
20 in which the opposing party was represented by two or three experienced attorneys and in
21 which Sidiakina's fundamental rights to basic human needs were at stake, she suffered
22 the loss of her home as her only shelter, the loss of all of her material assets, the loss of
23 all her community property in the amount of over \$200,000, a ruined credit, enormous
24 pain and sufferings and brain trauma that resulted in severe cognitive disabilities that
25 prevent her from working in her profession and earning a living for the rest of her life,
26 huge medical and disability related expenses for the rest of her life, and attorneys fees
27 and costs incurred during the protracted litigation and appeals in the amount of over
28 \$50,000. Additionally, Judge Bertoli ordered Sidiakina to pay her ex-husband's attorney's

1 fees in the amount of over \$74,000. Moreover, not only Sidiakina was intentionally denied
2 legal counsel as accommodation by Judge Bertoli and Sonoma Court and, thus, was
3 FORCED by Judge Bertoli to represent herself, but also Judge Bertoli declared Sidiakina
4 a "vexatious litigant" at the request of her ex-husband's attorney under California Code of
5 Civil Procedure section 391(b)(3), which states in part (3) that a vexatious litigant is a
6 party who:

7 "In any litigation while acting in propria persona, repeatedly files unmeritorious
8 motions, pleadings, or other papers,".

9 It is self-evident that in a contested civil litigation an influential attorney will make and win
10 an argument that the opposing cognitively disabled party files "unmeritorious" pleadings.
11 Thus, California Code of Civil Procedure section 391(b)(3) effectively makes ALL
12 cognitively disabled self-represented parties "vexatious litigants". It is unconscionable,
13 immoral, and abusive on the part of the California judges to first deny an award of
14 attorney's fees or an appointed counsel to a cognitively disabled indigent party under the
15 California Rules of Court, Rule 1.100, and then declare this cognitively disabled self-
16 represented party a "vexatious litigant" under California Code of Civil Procedure section
17 391(b). Vexatious litigant status completely denies Sidiakina ANY access to state courts
18 and allows her ex-husband, who was arrested for Domestic Violence against Sidiakina, to
19 further violate court orders, defraud her, and abuse her without recourse. If Sidiakina was
20 represented by an appointed legal counsel, the above would not have happened.

21 **VI. PLAINTIFF BAECKEL'S PROCEDURAL HISTORY**

22 (a) That as noted above, the plaintiff, Sherryl Baeckel, hereinafter referred to as
23 Baeckel, is indigent and cognitively disabled and as such is a qualified individual with a
24 cognitive disability as defined by 42 U.S.C. 12101 et seq. and 42 U.S.C. 12131(2).

25 (b) Baeckel's former husband Scott Baeckel filed for dissolution of marriage in April
26 of 2000. Since the very beginning of the divorce and custody litigation, Scott Baeckel was
27 represented by an experienced legal counsel and a family law specialist.

28 (c) On January 27, 2009, Baeckel, per several recommendations of child custody

1 evaluators, was granted joint legal custody and primary physical custody of her daughter,
2 Sarah Baeckel, with sole legal custody regarding the child's ice skating activities so she
3 could continue to compete at a National level. Baeckel has had primary physical custody
4 of her daughter for 14 years.

5 (d) On January 27, 2009, when Baeckel was self-represented because she did not
6 have money to retain a legal counsel, a confusing order was made by Judge Tara Reilly
7 pertaining to former husband Scott Baeckel's summer visitation time periods. Scott was to
8 have eight weeks visitation in the summer in two-week increments. Due to Baeckel's
9 cognitive disabilities, she did not understand and, therefore, did not bring to Judge's
10 attention the fact that the visitation order was confusing because it contained several
11 parts that were mutually exclusive, in which the particular dates assigned by the Judge for
12 father's visitation DID NOT add up to 8 weeks. After Baeckel received the transcript, she
13 noted that the Judge specifically stated, " So for this year dad will have from June 12th,
14 2009, through Sunday June 28th in its entirety. She [daughter] will then go back to mom
15 for two weeks and then back to dad." Baeckel complied with this order and kept her
16 daughter beginning June 29th, 2009. If Baeckel was represented by a legal counsel, then
17 the legal counsel would have brought to the Judge's attention the mutually exclusive parts
18 of the court order and Baeckel would not have been accused of "violating" the court order
19 when, de facto, she followed the court order precisely.

20 (e) On or about June 23, 2009, Scott Baeckel through his legal counsel, a certified
21 family law specialist, filed a declaration accusing Baeckel of intentionally violating the
22 court visitation order and requesting the change of custody to Scott. The hearings on the
23 change of custody took place on or about August 31, 2009 and December 2, 2009. For
24 August 31, 2009, Baeckel was able to borrow money from friends and family to hire an
25 attorney on a temporary basis for a couple of hours for the hearing only, and on
26 December 2, 2009, Baeckel had to represent herself because she did not find money to
27 hire an attorney.

28 (f) During the August 31, 2009 hearing, the trial Judge Tara Reilly did not give an

1 opportunity to Baeckel's temporary attorney to explain that Baeckel DID NOT intentionally
2 violate the court visitation order and that the order itself was not giving the father the full 8
3 weeks of visitation. Judge Tara Reilly issued an order giving the sole physical custody of
4 Baeckel's daughter to Scott Baeckel.

5 (g) During the December 2, 2009 hearing, Baeckel had to represent herself when
6 she had the extreme migraine headache and an anxiety attack. Judge Tara Reiley issued
7 an order giving the sole legal custody of Baeckel's daughter to Scott Baeckel.

8 (h) The decisions on August 31, 2009 and December 2, 2009 to give physical and
9 legal custody of Baeckel's daughter to Scott Baeckel were against the recommendations
10 of the court evaluators. If Baeckel had legal counsel, she would not have lost the physical
11 and legal custody of her daughter.

12 (i) Due to her cognitive disabilities, confusion and pain from severe migraines
13 exacerbated by the stress of litigation, Baeckel was unable to comply with requests for
14 documents and filing deadlines. Baeckel informed the court about the confusion she was
15 experiencing from her cognitive disabilities. Baeckel was forced to sit in the courtroom for
16 hours waiting for her case to be called, causing her severe migraine headaches and neck
17 pain and resulting in Baeckel's inability to think and speak clearly during the hearings.
18 Due to the migraines and neck pain, Baeckel was unable to type at the computer and
19 timely prepare court documents.

20 (j) On or about January 19, 2010, Baeckel filed a motion and requested the
21 assistance of counsel due to her indigent status and inability to represent herself due to
22 cognitive disabilities. On or about January 29, 2010, Judge Tara Reilly denied Baeckel's
23 request.

24 (k) Since January of 2010, Scott Baeckel through his legal counsel, a certified
25 family law specialist, has filed over ten Order to Show Causes, Motions or pleadings that
26 need Baeckel's response to which Baeckel has been unable to properly respond.

27 (l) Due to her cognitive and physical disabilities, Baeckel was unable to prepare for
28 and attend the hearing scheduled for May 4, 2010. Baeckel wrote down May 6th as the

1 hearing date in error and confusion, and telephoned the court immediately to inform them
2 of her error. The bailiff gave her no direction, but instead, Judge Tara Reilly declared
3 Baeckel a vexatious litigant, based on Baeckel's status as a self-represented litigant.

4 (m) On or about September 15, 2010, Baeckel submitted the necessary paperwork
5 for motions for modification of custody and visitations and for accommodations under the
6 Americans with Disabilities Act and California Rules of Court, Rule 1.100. On or about
7 September 17, 2010, Baeckel received a confidential memorandum from San Bernardino
8 Superior Court's counsel addressed to ADA Coordinator stating that Judge Tara Reilly
9 should not have knowledge of this memorandum and the contents of Baeckel's ADA
10 Report, prepared by Dr. Huffer, because Judge Tara Reilly's decisions on child custody
11 could likely be negatively affected by the said ADA Report. Despite this memorandum
12 being a confidential communication between the Court's counsel and ADA Coordinator,
13 Judge Tara Reilly was provided with this confidential memorandum in violation of ADA
14 and likely based her custody decisions on this memorandum. Consequently, on
15 September 17, 2010, Judge Tara Reilly denied all three Baeckel's motions.

16 (n) Presently, Baeckel is so traumatized by the course of custody litigation that she
17 experiences panic attacks with severe pains every time she gets an envelope from the
18 trial court or the opposing counsel, causing her to instinctively avoid any contact with the
19 court or court personnel. Furthermore, Baeckel's former husband continues to violate the
20 court visitation order and continues to deprive Baeckel, a mother, from seeing her
21 daughter, and because of her "vexatious litigant" status, Baeckel is not allowed to file any
22 court action to stop this abuse of her and her daughter from her former husband. If
23 Baeckel was represented by an appointed legal counsel, then all her severe sufferings
24 from the distress of litigation and the significant deterioration of her cognitive abilities
25 would not have occurred, she would have not lost the custody of her daughter, and would
26 have not be declared a "vexatious litigant" based on her self-represented status.

27

28

1 **VII. THE STATE OF CALIFORNIA AND OTHER DEFENDANTS' RECENT**
2 **HISTORY CONCERNING THE AMERICANS WITH DISABILITY ACT**
3 **AND APPOINTMENT OF LEGAL COUNSEL FOR INDIGENT**
4 **LITIGANTS IN CIVIL ACTIONS**

5 (a) In October of 2006, the Conference of Delegates of California Bar Association
6 passed a resolution in which it recommended California Legislation to add a new
7 provision to the state constitution as Article 1, Section 32:

8 **“All people shall have a right to the assistance of counsel in cases before**
9 **forums in which lawyers are permitted. Those who cannot afford such**
10 **representation shall be provided counsel when needed to protect their rights**
11 **to basic human needs, including sustenance, shelter, safety, health, child**
12 **custody, and other categories the Legislature may identify in subsequent**
13 **legislation.” (bold added)**

14 (b) In 2006, a task force of the California Commission on Access to Justice
15 developed a model statute “State Equal Justice Act” that would implement a
16 comprehensive right of access to equal justice, including, when appropriate, a right to
17 appointed counsel:

18 **“100. LEGISLATIVE FINDINGS**

19 The Legislature finds and declares:

20 **101. Access to justice is a fundamental right in a democratic society. It is**
21 **essential to the enforcement of all other rights and responsibilities in any**
22 **society governed by the rule of law. It also is essential to the public’s**
23 **confidence in the legal system and its ability to reach just decisions.**

24 Recognizing its responsibilities in a democratic society, **the State government**
25 **assumes the duty to guarantee this right to all its citizens.” (bold added).**

26 The full text of “State Equal Justice Act” is published at:

27 [http://www.povertylaw.org/poverty-law-library/research-guides/civil-gideon/state-model-
statute.pdf](http://www.povertylaw.org/poverty-law-library/research-guides/civil-gideon/state-model-
28 statute.pdf)

1 (c) On September 27, 2008, Chief Justice Ronald M. George made the following
2 statement in the State of the Judiciary address at the State Bar Convention:

3 **"The judicial system also has sought- thus far unsuccessfully- to fund three**
4 **pilot projects to provide legal representation in civil cases in which**
5 **fundamental rights are at issue, and we shall continue to pursue an**
6 **appropriation for this purpose. Just as the U.S. Supreme Court's landmark**
7 **decision in *Gideon v. Wainwright* recognized the importance of counsel in**
8 **criminal cases where individual liberty is at stake, counsel may be just as**
9 **essential in those civil proceedings that affect the most fundamental aspects**
10 **of individual lives."** (bold added)

11 (d) Several years ago, the California Bar Association has established a special
12 procedure and special accommodations for cognitively disabled applicants for testing:

13 **"Testing accommodations are available to individuals with mental or physical**
14 **disabilities** as defined in Chapter 7 of the Admissions Rules. Depending on the
15 nature of the disability, **accommodations may include such things as**
16 **assistants (i.e., readers or personal healthcare assistants), wheelchair access,**
17 **permission to dictate to a typist or tape recorder, customized timing,**
18 **separate testing room, customized examination materials (i.e., Braille, large**
19 **print, etc.), extended testing days and permission to bring and use specific**
20 **items or medical aids. When completing the required forms, the applicant**
21 **and his/her physician/specialist should request what they think is necessary**
22 **to allow the applicant to compete on an equal basis with all other applicants**
23 **and must provide adequate documentation and rationale to support the diagnosis**
24 **and their request for accommodations.**

25 The Committee's policies, procedures and forms related to filing a petition for
26 testing accommodations are available online at www.calbar.ca.gov/admissions or
27 upon request." (bold added)
28

1 The full text of special proceedings and special accommodations for cognitively disabled
2 law students can be found at:

3 http://calbar.xap.com/applications/CalBar/info/bar_exam.html

4 (e) On October 12, 2009, California Governor Arnold Schwarzenegger signed AB
5 590, Assembly member Mike Feuer's landmark measure that would make California the
6 first state in the nation to establish a model program providing a right to counsel for low-
7 income people in critical civil cases.

8 **"This law helps ensure essential legal rights are not sacrificed simply**
9 **because someone cannot afford to hire a private lawyer,"** said Feuer. "The
10 current economic crisis and state budget cuts make this measure more critical than
11 ever. Just as health services can decrease the need for expensive ER treatment,
12 **timely access to legal services can keep a family in their home or a child with**
13 **her mother or father, which ultimately saves taxpayers money. This new**
14 **statute will also make the justice system more efficient and**
15 **economical."** (bold added)

16 **"Chief Justice Ronald M. George said** the signing of the legislation was welcome
17 news for both the court system and unrepresented litigants in critical civil cases.
18 "The growing number of unrepresented parties in lawsuits imposes significant
19 costs on the courts and erodes the public's confidence in our system of justice," he
20 said. **"This legislation provides an important step in improving access to**
21 **justice for those most in need."** (bold added)

22 Currently, attorneys are appointed for indigent parties only in criminal cases. **Legal**
23 **officials agree, however, that some issues decided in civil cases can be just**
24 **as significant as in criminal cases, such as cases involving the elderly and**
25 **individuals with disabilities, the well-being and safety of parents and**
26 **children, and the basic need for adequate shelter.** AB 590 would support the
27 project without drawing on California's general fund: A previously-approved \$10
28

1 increase on certain court fees when a party wins a case would be redirected to the
2 program starting in 2011.

3 AB 590 reflects a growing national movement known as "civil Gideon" after the
4 name of the Supreme Court case establishing the right to counsel in criminal
5 cases. **The concept is endorsed by judges, legal leaders and scholars,**
6 **including the American Bar Association, the California Commission on**
7 **Access to Justice, and the Conference of California Bar Associations.**
8 **Members of California's business community, including the California**
9 **Chamber of Commerce, support the measure,** which also provides resources to
10 courts to test more efficient ways to handle the enormous number of currently
11 unrepresented parties in the legal system.

12 **AB 590 will go into effect as a pilot project from July 1, 2011 until July 1,**
13 **2017."** (bold added)

14 The full text of the press release regarding AB 590 can be found at:

15 <http://democrats.assembly.ca.gov/members/a42/newsroom/20091012AD42PR01.htm>

16 (f) In February of 2009, a special study called "The Impact of Legal Aid Services on
17 Economic Activity in Texas" was published. This study affirmatively showed that \$1.00
18 spent on legal aid generates \$7.42 overall gain to the economy:

19 <http://www.texasatj.org/FINAL%20Econ%20Impact%20Study%2002-12-09.pdf>

20 (g) Free legal counsel is provided by the California courts in the following civil
21 litigation cases:

- 22 - to children in family law child custody litigation;
- 23 - to children in juvenile dependency proceedings;
- 24 - to cognitively disabled parties in probate conservatorship proceedings.

25 (h) In October of 2010, the official web site of the California Judicial Branch posted
26 an announcement that the Special Task Force of the Commission on Equal Access to
27 Justice encouraged applications directly from the California judges and the California
28 courts for participation in the Pilot Project and for funding available for Pilot Projects

1 under AB 590, in which the free legal counsel would be appointed to indigent litigants in
2 civil proceedings, regardless of whether indigent litigants are persons with disabilities or
3 not. The memorandum of Justice Earl Johnson, Jr. (ret.), former Justice of the California
4 Court of Appeal and the present Chair of the Shriver Civil Counsel Act Implementation
5 Committee was dated September 23, 2010 and is posted at:

6 <http://www.courtinfo.ca.gov/programs/equalaccess/documents/shriver>
7 [app/Memorandum.pdf](http://www.courtinfo.ca.gov/programs/equalaccess/documents/shriver)

8 By doing so, the California Judicial Branch has openly admitted that the access to the
9 State courts and the due process are likely to be denied to self-represented parties in civil
10 litigation and that providing free legal counsel for indigent parties in civil litigation affecting
11 basic human needs such as shelter and child custody DOES NOT fundamentally alter the
12 nature of court services and DOES NOT create an undue administrative burden on the
13 State courts.

14 (i) The California State Legislature in AB 590 eliminated the possible financial
15 burden on the State courts arising from funding the services of free legal counsel to
16 indigent parties in civil litigation by establishing the \$10 fee increase on certain post-
17 judgment court services. In his above-mentioned Memorandum of September 23, 2010,
18 Justice Earl Johnson, Jr. (ret.) stated that the available funding for free legal counsel
19 projects was expected to be approximately \$10 million to \$11 million per year.
20 Additionally, during the past 20 years, the Judicial Council has had the full authority to
21 establish the court fees, which would have provided the necessary funding for the
22 services of free legal counsel for indigent cognitively disabled litigants in legal issues
23 affecting basic human rights and would have had ensured the compliance of the
24 California State courts with the Americans With Disabilities Act of 1990, and its
25 subsequent amendments. On Page 2 of his Memorandum of September 23, 2010,
26 Justice Earl Johnson, Jr. (ret.) specifically stated:

27 "The purpose of the pilot projects is to improve timely and effective access to
28 justice in civil cases and thereby avoid undue risk of erroneous court decisions

1 resulting from the nature and complexity of the law in the specific proceeding or the
2 disparities between parties in legal representation, education, sophistication,
3 language proficiency, and access to self-help or alternative dispute resolution
4 services.

5 Selected legal services agencies will provide representation to low-income
6 Californians who are at or below 200 percent of the federal poverty level and need
7 representation in one or more of the following areas:

8 **Housing-related matters;**

9 Domestic violence and civil harassment restraining orders;

10 Elder abuse;

11 Guardianship of the person;

12 Probate conservatorship; or

13 **Child custody actions by a parent seeking sole legal or physical custody of a**
14 **child, particularly where the opposing side is represented.**

15 Among the highest priorities will be pilot projects that provide representation in
16 child custody cases. Up to 20% of available funding shall be allocated for pilot
17 projects that provide representation in child custody cases.” (bold added)

18 **(j) It is self-evident that Justice must be based on truth. Whatever is not**
19 **based on truth is injustice. If the truth is ignored simply because it is not presented**
20 **in a specific way and by a lawyer, the justice automatically turns into injustice. In**
21 **the adversary system of justice, a lawsuit is a complex competition with numerous rules,**
22 **tactics, and strategies. In the adversary system, a layman, especially the one with**
23 **cognitive disabilities, has practically no chance in winning against an experienced**
24 **attorney because the truth is ignored by the courts unless it is presented in a specific way**
25 **in compliance with the evidence code and other rules. An experienced attorney will**
26 **always object on different grounds to the evidence proving the truth if such evidence is**
27 **presented by a self-represented party, especially a self-represented party with cognitive**
28 **disabilities, or will urge the court to ignore the facts in the self-represented party's**

1 pleadings or testimony due to non-compliance with the court rules. Then an experienced
2 attorney will argue that a self-represented party “waived” all his/her arguments because
3 there would be no “facts” to support them. Forcing a layman to represent himself going
4 against an experienced lawyer is analogous to forcing a person, who has never in his life
5 played a piano, to compete in playing Mozart’s piano sonatas with a professional pianist.
6 As a person who has never played a piano would never be able to follow all tempo and
7 score instruction and play Mozart well, so a self-represented person who is emotionally
8 involved and legally inexperienced would never be able to comply with all legal
9 requirements and effectively represent himself / herself going against an experienced
10 attorney. Even more so if a person who has never played a piano has a paralyzed hand,
11 which is the equivalent of having cognitive disabilities during self-representation in a civil
12 litigation.

13 (k) In 2008, 2009 and 2010, Justice Earl Johnson, Jr. (ret.), the former Justice of
14 the California Court of Appeal and the present Chair of the Shriver Civil Counsel Act
15 Implementation Committee has been quoted by the National Coalition for a Civil Right to
16 Counsel on its website at: <http://www.civilrighttocounsel.org> as saying that **“Poor people
17 have access to American courts in the same sense that Christians thrown to lions
18 had access to the Coliseum.”**

19 (l) In light of the above, it is the inevitable conclusion that the self-represented
20 indigent cognitively disabled parties in civil litigation affecting basic human needs have
21 been unlawfully denied their fundamental civil rights to access to justice and to due
22 process in the California State courts.

23 (m) In light of the above, it is the inevitable conclusion that providing free legal
24 counsel to indigent cognitively disabled litigants in civil litigation, in which such litigants’
25 fundamental rights to the basic human needs are at stake, DOES NOT create an undue
26 financial burden and /or administrative burden on the State courts, and DOES NOT
27 fundamentally alter the nature of court services. Consequently, the California State courts
28 have been knowingly violating several Federal laws, including the Americans With

1 Disabilities Act, Title II and the Fourteenth Amendment of the U.S. Constitution, by NOT
2 providing reasonable and necessary accommodations, including, but not limited to, free
3 legal counsel, to indigent cognitively disabled litigants.

4 **VIII. CAUSES OF ACTION**

5 (a) That James G. Bertoli, Judge of Superior Court of Sonoma County has
6 discriminated against the plaintiff, Natalia A. Sidiakina, has excluded her from
7 participation in, and/or denied her the access to and the benefits of, the services of the
8 court system and due process in violation of 42 U.S.C. 12132 et seq., has intentionally
9 subjected her to the unconscionable, immoral and inhumane treatment, abused and
10 tortured her during the court processes causing her to experience pain and sufferings so
11 severe that Sidiakina lost consciousness during the hearing on September 14, 2007 and
12 that Sidiakina's brain was permanently traumatized resulting in permanent cognitive
13 disabilities such as severe Post-Traumatic Stress Disorder, Dissociative Disorder and
14 Avoidance Disorder.

15 (b) That James G. Bertoli, Judge of Superior Court of Sonoma County, has
16 intended to continue to discriminate against the plaintiff, Natalia A. Sidiakina, intentionally
17 subject her to the unconscionable, immoral and inhumane treatment, abuse, torture,
18 humiliate, and embarrass her, exclude her from participation in, and/or deny her the
19 access to and the benefits of, the services of the court system and due process in
20 violation of 42 U.S.C. 12132 et seq.

21 (c) That James G. Bertoli, Judge of Superior Court of Sonoma County consistently
22 insisted on continuing to deny necessary and reasonable accommodations for Natalia A.
23 Sidiakina with full knowledge of her cognitive disabilities and severe pain and sufferings,
24 humiliation, and embarrassment that Sidiakina is subjected to during court hearings
25 without accommodations and his knowledge of the requirement to conform to the ADA.

26 (d) That Robert S. Boyd, Judge, Superior Court of Sonoma County, has
27 discriminated against the plaintiff, Natalia A. Sidiakina, has covered up the abuse and
28 torture of Sidiakina while serving as Presiding Judge of Superior Court of Sonoma County

1 and has intended to discriminate against the plaintiff, Natalia A. Sidiakina, intentionally
2 subject her to the unconscionable, immoral and inhumane treatment, abuse, humiliate,
3 and embarrass her, exclude her from participation in, and/or deny her the access to and
4 the benefits of, the services of the court system and due process in violation of 42 U.S.C.
5 12132 et seq.

6 (e) That Robert S. Boyd, Judge of Superior Court of Sonoma County consistently
7 insisted on continuing to deny necessary and reasonable accommodations for Natalia A.
8 Sidiakina with full knowledge of her cognitive disabilities and severe pain and sufferings,
9 humiliation, and embarrassment that Sidiakina is subjected to during court hearings
10 without accommodations and his knowledge of the requirement to conform to the ADA.

11 (f) That Ignazio J. Ruvolo, Presiding Justice and Timothy A. Reardon, Justice of
12 the Court of Appeal of California, First Appellate District, Division Four, have
13 discriminated against the plaintiff, Natalia A. Sidiakina, intentionally subjected her to the
14 unconscionable, immoral and inhumane treatment, abused, humiliated, and
15 embarrassed her, excluded her from participation in, and/or denied her the access to and
16 the benefits of, the services of the court system and due process in violation of 42 U.S.C.
17 12132 et seq.

18 (g) That Tara Reilly, Judge of Superior Court of San Bernardino County, has
19 discriminated against the plaintiff, Sherryl Baeckel, intentionally subjected her to the
20 unconscionable, immoral and inhumane treatment, humiliated, and embarrassed her,
21 excluded her from participation in, and/or denied her the access to and the benefits of,
22 the services of the court system and due process in violation of 42 U.S.C. 12132 et seq.

23 (h) That Tara Reilly, Judge of Superior Court of San Bernardino County, has
24 intended to continue to discriminate against the plaintiff, Sherryl Baeckel, intentionally
25 subject her to the unconscionable, immoral and inhumane treatment, abuse, torture,
26 humiliate, and embarrass her, exclude her from participation in, and/or deny her the
27 access to and the benefits of, the services of the court system and due process in
28 violation of 42 U.S.C. 12132 et seq.

1 (i) That Tara Reilly, Judge of Superior Court of San Bernardino County consistently
2 insisted on continuing to deny necessary and reasonable accommodations for Sherryl
3 Baeckel, with full knowledge of her cognitive disabilities and severe pain and sufferings,
4 humiliation, and embarrassment that Baeckel is subjected to during court hearings
5 without accommodations and her knowledge of the requirement to conform to the ADA.

6 (j) That Ronald M. George, Chief Justice and Judicial Council of California have
7 discriminated against the plaintiffs, Natalia A. Sidiakina and Sherryl Baeckel by knowingly
8 creating The Rules of Court, including, but not limited to, Rule 1.100, pamphlet called "For
9 Persons with Disabilities Requesting Accommodations" of 2007, and Rule 8.204, that
10 make it physically impossible for indigent plaintiffs with cognitive disabilities to
11 meaningfully participate in, and/or have equal and meaningful access to and the benefits
12 of, the services of the court system and due process in violation of 42 U.S.C. 12132 et
13 seq.

14 (k) That the State of California, Superior Court of Sonoma County, Superior Court
15 of San Bernardino County, the Court of Appeal of California, First Appellate District,
16 Division Four, knowingly and intentionally continue to discriminate against the plaintiffs,
17 Natalia A. Sidiakina and Sherryl Baeckel, all other indigent litigants with cognitive
18 disabilities, and all other individuals similarly situated who have a need or responsibility to
19 participate in court processes as litigants in civil matters in which their rights to the
20 fundamental human needs are at stake. Further, there are other Superior Courts in this
21 State that have failed to fully comply with the requirements of the ADA and knowingly and
22 intentionally continue to discriminate against indigent litigants with cognitive disabilities.

23 (l) That the actions of the State of California and other named defendants were
24 conscious, deliberate, and intentional in their active discrimination against the plaintiffs,
25 Natalia A. Sidiakina and Sherryl Baeckel, all other indigent litigants with cognitive
26 disabilities, and all other similarly situated disabled individuals in this State.

27 (m) That the actions of the State of California, Judicial Council of California, and
28 Judicial Branch of the Government of California were conscious, deliberate, and

1 intentional in their active discrimination against the plaintiffs, Natalia A. Sidiakina and
2 Sherryl Baeckel, all other indigent litigants with cognitive disabilities and all other similarly
3 situated disabled individuals in this State. That their persistent false advertising and
4 misrepresentation of the actions of the judicial process on the California Courts web site
5 at <http://www.courtinfo.ca.gov/> as "Committed to providing fair and equal access to
6 justice for all Californians" was with full knowledge of plaintiff's disability, physical inability
7 of plaintiffs to have "fair and equal access to justice" without legal counsel as
8 accommodation, and with their knowledge of the requirements to conform to the ADA.

9 (n) That the actions of the State of California and the other defendants were
10 conscious, deliberate, and intentional in their active discrimination against all other
11 similarly situated cognitively disabled individuals of this State. That their persistent false
12 advertising and misrepresentation of the actions of the judicial process as "fair and equal
13 access to justice", knowing that cognitively disabled individuals were unable to gain
14 meaningful access to court processes, was with full knowledge of cognitively disabled
15 litigants' disabilities and their knowing failure to meet the requirements to conform to the
16 ADA.

17 (o) That in alternative, the actions of the State of California and other defendants
18 were knowing and resulted from the defendants' negligence in complying with the law.

19 (p) That as a result of the defendants' actions, the plaintiff Sidiakina has suffered
20 damages in the form of extreme pain and suffering, resulting in her Post-Traumatic Stress
21 Disorder and permanent cognitive disability, loss of earnings for the rest of her life, the
22 need to take medications and have weakly therapy sessions for the rest of her life, and to
23 incur significant medical expenses for the rest of her life, extreme embarrassment,
24 humiliation, anxiety and panic attacks, dissociation and avoidance in her attempts to
25 represent herself and to gain access to the services provided by the State of California
26 and Superior Court of Sonoma County and not being able to be accommodated. In
27 addition, plaintiff Sidiakina has suffered the loss of her home as her only shelter, loss of
28 her community property valued over \$200,000, sanctions as "vexatious litigant" to pay for

1 her former husband's attorney's fees in the amount of over \$74,000, and incurred
2 attorney fees and expenses including court costs in excess of \$50,000.

3 (q) That as a result of the defendants' actions, the plaintiff Baeckel has suffered
4 damages in the form of extreme pain and suffering, extreme embarrassment, and
5 humiliation in attempting to represent herself and to gain access to the services provided
6 by the State of California and Superior Court of San Bernardino County and not being
7 able to be accommodated. In addition, plaintiff Baeckel has suffered the loss of physical
8 and legal custody of her daughter, was sanctioned as "vexatious litigant", and incurred
9 attorney fees and expenses including court costs in excess of \$30,000.

10 **IX. CLASS ACTION ALLEGATIONS AND REQUEST FOR**
11 **CERTIFICATION AS CLASS ACTION**

12 (a) Now come the plaintiffs, who in addition to bringing this action on behalf of
13 themselves, would request this Court to certify them as class representatives pursuant to
14 the provisions of Rule 23 of the Federal Rules of Civil Procedure, on behalf of all
15 individuals residing in the State of California who are indigent litigants and are qualified
16 individuals with a cognitive disability that prevents them from thinking clearly, staying
17 focused, maintaining attention, speaking and understanding fully, and making logical
18 decisions during the litigation and court processes. These individuals have been
19 subjected to discrimination like the plaintiffs and continue to experience this
20 discrimination, the denial of fair and equal access to justice, and the denial of due
21 process. Each of these individuals has the right to fully and meaningfully participate in
22 judicial proceedings in the courthouses of this State and specifically the named defendant
23 courts and would currently not have access to the judicial processes in the named
24 defendant courts without going through the humiliation and embarrassment that the
25 plaintiffs Natalia A. Sidiakina and Sheryl Baeckel have been forced to endure.

26 (b) Plaintiffs would show that the certification of this class is proper in that (1) the
27 class is so numerous that joinder of all members is impracticable, (2) there are questions
28 of fact and law that are common to the class, (3) the claims and defenses of the

1 representative party is typical of the claims and defenses of the class, and (4) the
2 representative party will fairly and adequately protect the interest of the class.

3 (c) Plaintiffs would further show that the defendants have acted, or refused to act,
4 on grounds generally applicable to the class, thereby making appropriate final injunctive
5 relief or corresponding declaratory relief with respect to the class as a whole. Further, that
6 the questions of fact and fact common to the members of the class predominate over any
7 questions affecting only individual members. As class action is superior to other available
8 methods for the fair and efficient adjudication of the controversy.

9 **X. REQUEST FOR RELIEF**

10 WHEREFORE, Plaintiffs would hereby request this Honorable Court to:

11 1. Render a ruling that by not providing legal counsel as accommodation to
12 plaintiffs and other indigent litigants with cognitive disabilities in civil cases, in which such
13 litigants' fundamental rights to basic human needs are at stake, the Judicial Branch of the
14 California Government and its subdivisions violated the due process rights of plaintiffs
15 and other indigent litigants with cognitive disabilities.

16 2. Render a ruling that during the court processes in Superior Court of Sonoma
17 County and California Court of Appeal, First Appellate District, Division Four, during which
18 plaintiff Sidiakina was denied requested accommodations and had to represent herself,
19 her due process rights were violated and that all rulings made as a result of such court
20 processes are reversed.

21 3. Render a ruling that during the court processes in Superior Court of San
22 Bernardino County during which plaintiff Baeckel was denied requested accommodations
23 and had to represent herself, her due process rights were violated and that all rulings
24 made as a result of such court processes are reversed.

25 4. Render a ruling that by sanctioning plaintiffs Natalia A. Sidiakina and Sherryl
26 Baeckel as "vexatious litigants", based on their Self-Represented status and despite their
27 requests for legal counsel as accommodation for their cognitive disabilities, Judge James
28 Bertoli and Judge Tara Reilly intentionally abused and discriminated against cognitively

1 disabled plaintiffs.

2 5. Render a ruling that Change of Venue and Change / Disqualification of Judge
3 are reasonable accommodations under ADA in Sidiakina's and Baeckel's cases and
4 when requested by mental health professionals on behalf of cognitively disabled litigants.

5 6. Render a ruling that the actions of Judge Bertoli of Sonoma Superior Court
6 during the hearing on September 14, 2007 constituted intentional abuse, torture, and
7 discrimination of cognitively disabled plaintiff Natalia A. Sidiakina.

8 7. Render a ruling that the current practice of summary denial without adjudication
9 on the merits by California Court of Appeal of Petitions for Writ of Mandate regarding
10 failure of trial judge to honor disqualification and recuse himself is a violation of due
11 process rights of litigants who requested disqualification of a trial judge, especially the
12 litigants with cognitive disabilities and / or cognitive illnesses causing anxiety and panic
13 attacks in the presence of the judge.

14 8. Request a ruling from the California Supreme Court on whether the current
15 practice of summary denial without adjudication on the merits by California Court of
16 Appeal of Petitions for Writ of Mandate regarding failure of trial judge to honor
17 disqualification and recuse himself is a violation of California Constitution, Article 6,
18 Section 14.

19 9. Render a ruling that California Rules of Court, Rule 1.100 and pamphlet of
20 Judicial Council of California titled "For Persons with Disabilities Requesting
21 Accommodations" of 2007 are in violation of ADA Title II.

22 10. Render a ruling that California Rules of Court, Rule 8.204 results in denial of
23 due process for those litigants who are not trained as lawyers and results in violation of
24 Fourteenth Amendment of U.S. Constitution.

25 11. Render judgment against James G. Bertoli, Judge for damages for plaintiff
26 Sidiakina's pain and sufferings during the abuse, torture, humiliation, and embarrassment
27 during the course of court proceedings before him in the amount of \$1,000,000 pursuant
28 to the provisions of 42 U.S.C. 12133 and 29 U.S.C. 794a and section 52 of the California

1 Civil Code.

2 12. Render judgment against Robert S. Boyd, Judge for damages for covering up
3 plaintiff Sidiakina's abuse and torture in his capacity of Presiding Judge of the Superior
4 Court of Sonoma County, and for damages for plaintiff Sidiakina's pain and sufferings
5 during intentional abuse, humiliation, and embarrassment during the course of court
6 proceedings before him in the amount of \$1,000,000 pursuant to the provisions of 42
7 U.S.C. 12133 and 29 U.S.C. 794a and section 52 of the California Civil Code.

8 13. Render judgment against Ignazio J. Ruvolo, Presiding Justice and Timothy A.
9 Reardon, Justice for damages for plaintiff's Sidiakina's pain and sufferings during her
10 preparation as self-represented cognitively disabled litigant of three statutory Petitions for
11 Writ, which were summarily denied, two appeals, which were denied, and one Petition for
12 Writ of Mandate by Person With Disabilities, which was also denied, in the amount of
13 \$1,000,000 pursuant to the provisions of 42 U.S.C. 12133 and 29 U.S.C. 794a and
14 section 52 of the California Civil Code.

15 14. Render judgment against Ronald M. George, Chief Justice and the Judicial
16 Council of California for damages for creating the Rules of Court that make it physically
17 impossible for cognitively disabled litigants to have fair and equal access to justice in
18 California and for damages for the plaintiff Sidiakina's pain and sufferings during abuse,
19 humiliation, and embarrassment during the course of litigation and appellate proceedings
20 in the amount of \$1,000,000 pursuant to the provisions of 42 U.S.C. 12133 and 29 U.S.C.
21 794a and section 52 of the California Civil Code.

22 15. Render judgment against the State of California, Superior Court of Sonoma
23 County, Court of Appeal of California, First Appellate District, Division Four for damages
24 for plaintiff Sidiakina's pain and sufferings during abuse and torture, the resulting
25 permanent disability, lost earnings due to disability, past and ongoing medical and other
26 expenses associated with disability evaluations and treatment, humiliation, and
27 embarrassment during the course of proceedings in the Superior Court of Sonoma
28 County, Court of Appeal of California, First Appellate District, Division Four, and the

1 Supreme Court of California in the amount of \$20,000,000 as well as her attorney fees,
2 costs and expenses pursuant to the provisions of 42 U.S.C. 12133 and 29 U.S.C. 794a
3 and section 52 of the California Civil Code for defending her in the grievance procedure,
4 her vindication of her rights in the state court, and for bringing this action.

5 16. Render judgment against the State of California and Judicial Council of
6 California for damages to plaintiff Sidiakina for intentionally dishonest advertising and
7 intentional misrepresentation, on which plaintiff Sidiakina relied to her detriment, on the
8 California Courts web site at <http://www.courtinfo.ca.gov/> "Committed to providing fair
9 and equal access to justice for all Californians" in the amount of \$5,000,000 pursuant to
10 the provisions of 42 U.S.C. 12133 and 29 U.S.C. 794a and section 52 of the California
11 Civil Code.

12 17. Render judgment against Tara Reilly, Judge of San Bernardino Superior Court
13 for damages for plaintiff Marotto's pain and sufferings during the abuse, humiliation, and
14 embarrassment during the course of court proceedings before him in the amount of
15 \$1,000,000 pursuant to the provisions of 42 U.S.C. 12133 and 29 U.S.C. 794a and
16 section 52 of the California Civil Code.

17 18. Render Judgment against the State of California and the Superior Court of San
18 Bernardino County for damages for the plaintiff Baeckel's pain and sufferings during
19 abuse, humiliation, and embarrassment associated with her attempting to represent
20 herself before Judge Tara Reilly in the amount of \$3,000,000 as well as her attorney fees,
21 costs and expenses pursuant to the provisions of 42 U.S.C. 12133 and 29 U.S.C. 794a
22 and section 52 of the California Civil Code for bringing this action.

23 19. That this Court certify this as a class action pursuant to Rule 23 of the Federal
24 Rules of Civil Procedure and that proper notice be given to all individuals in the class in
25 order that they may make the proper election.

26 20. That this Court take such actions necessary and proper through declaratory
27 judgment and injunctive relief to compel the State of California and other defendants to
28 comply with the provisions of the Americans with Disability Act, and further award such

1 damages to the class representatives as are fair and proper. Further that this Court award
2 damages to each member of the class for said abuse, humiliation, and embarrassment
3 associated with the defendants' failure to comply with the ADA. Further that this Court
4 compel the State of California to do a survey of all courts of the State of California to
5 determine if they in fact fully comply with the provisions of the ADA, and if they fail to do
6 so join them as party defendants and compel them to comply with the ADA.

7 21. That this Court grant general relief to the plaintiffs and other persons that are
8 members of the class.

9 **XI. BRIEF SUMMARY OF LEGAL BASIS FOR REQUESTED RELIEF**

10 (a) The denial of a indigent cognitively disabled litigant's request for
11 accommodation, such as representation by appointed legal counsel, under the *ADA Title*
12 *II*, 42 U.S.C. 12131 *et seq.* effectively denies that indigent cognitively disabled litigant
13 his/her constitutional right to due process of law.

14 (b) The US Supreme Court held in *Tennessee v. Lane*, 541 U.S. 509 (2004) that
15 the *ADA Title II* applies to state courts.

16 (c) The States can be sued for violations of and discrimination under *ADA Title II*,
17 42 U.S.C. 12131 *et seq.*

18 "As it applies to the class of cases implicating the fundamental right of access to
19 the courts, Title II constitutes a valid exercise of Congress' authority under §5 of
20 the Fourteenth Amendment to enforce that Amendment's substantive guarantees."
21 (*Tennessee v. Lane*, 541 U.S. 509 (2004), at p. 510).

22 (d) Under the *ADA Title II*, the defendants such as trial judges and ADA
23 administrators can be sued in their official capacities, as an alternative method of suing
24 the entity for which they are representative. (*Hafer v. Melo*, 502 U.S. 21, 112 S. Ct. 358,
25 116 L. Ed.2d 301 (1991); *Gorman v. Bartch*, 152 F.3d 907, 916 (8th Cir. 1998).)

26 (e) State judges do not enjoy absolute immunity for acts that are administrative
27 rather than judicial in nature, such as providing accommodations for parties with
28 disabilities under the *ADA Title II*. The US Supreme Court has held that judges can be

1

2 held liable for damages in suits where actions which are administrative in nature are
3 challenged. (*Forrester v. White*, 484 U.S. 219, 224-225 (1988), *Cameron v. Seitz*, 38 F.3d
4 264, 271 (6th Cir. 1994), *Morrison v. Lipscomb*, 877 F.2d 463 (6th Cir. 1989).)

5 (f) The California Supreme Court in *Kenneth Munson v. Del Taco, Inc.*, (2009) 46
6 Cal.4th 661, stated:

7 "A plaintiff who establishes a violation of the ADA, therefore, need not prove an
8 intentional discrimination in order to obtain damages under section 52 [of the
9 California Civil Code]".

10 In other words, the entities, including the California courts, should be PROACTIVE in
11 eliminating the discrimination against people with disabilities.

12 (g) Under the *California Civil Code, Section 52*, the plaintiff who establishes the
13 violation of the *ADA Title II*, obtains injunctive relief, damages, and attorneys' fees.

14 (h) The right to representation by legal counsel sought by plaintiffs in this
15 Complaint was established in the State of Washington on July 7, 2007, when the
16 Washington Supreme Court adopted a New General Rule 33, which includes
17 "representation by counsel" as "accommodation" for parties with disabilities. As stated in
18 General Rule 33 (a)(1)(C):

19 "... as to otherwise unrepresented parties to the proceedings, representation by
20 counsel, as appropriate or necessary to making each service, program, or activity,
21 when viewed in its entirety, readily accessible to and usable by a qualified person
22 with a disability."

23

24 Dated: December 16, 2010

25

Respectfully Submitted,

26

27

By _____ /S/

28

NATALIA A. SIDIAKINA, Plaintiff

1 held liable for damages in suits where actions which are administrative in nature are
2 challenged. (*Forrester v. White*, 484 U.S. 219, 224-225 (1988), *Cameron v. Seitz*, 38 F.3d
3 264, 271 (6th Cir. 1994), *Morrison v. Lipscomb*, 877 F.2d 463 (6th Cir. 1989).)

4 (f) The California Supreme Court in *Kenneth Munson v. Del Taco, Inc.*, (2009) 46
5 Cal.4th 661, stated:

6 "A plaintiff who establishes a violation of the ADA, therefore, need not prove an
7 intentional discrimination in order to obtain damages under section 52 [of the
8 California Civil Code]".

9 In other words, the entities, including the California courts, should be PROACTIVE in
10 eliminating the discrimination against people with disabilities.

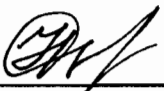
11 (g) Under the *California Civil Code, Section 52*, the plaintiff who establishes the
12 violation of the *ADA Title II*, obtains injunctive relief, damages, and attorneys' fees.

13 (h) The right to representation by legal counsel sought by plaintiffs in this
14 Complaint was established in the State of Washington on July 7, 2007, when the
15 Washington Supreme Court adopted a New General Rule 33, which includes
16 "representation by counsel" as "accommodation" for parties with disabilities. As stated in
17 General Rule 33 (a)(1)(C):

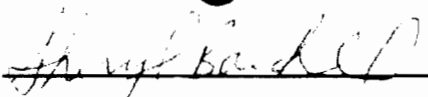
18 "... as to otherwise unrepresented parties to the proceedings, representation by
19 counsel, as appropriate or necessary to making each service, program, or activity,
20 when viewed in its entirety, readily accessible to and usable by a qualified person
21 with a disability."

22
23 Dated: December 16, 2010

24 Respectfully Submitted,

25
26 By  _____

27 NATALIA A. SIDIAKINA, Plaintiff
28

By 

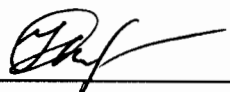
SHERRYL BAECKEL, Plaintiff

VERIFICATION

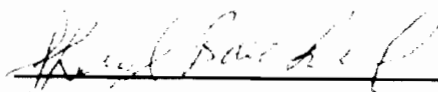
(a) We, the undersigned plaintiffs, declare under the penalty of perjury that the contents of this document titled **SECOND AMENDED VERIFIED COMPLAINT - CLASS ACTION** are true and correct to our own knowledge and that we make this verification because the facts set forth in said document are within our knowledge.

(b) We will submit to this Court all confidential documents containing confidential medical information to be held under seal in order to establish the undisputable facts that we are qualified persons with disabilities, including, but not limited to cognitive disabilities, as is defined by the Americans with Disabilities Act (ADA) of 1990, Title II, 42 U.S.C. 12131 et. seq. and Americans with Disabilities Act Amendments Act (ADAAA) of 9/25/2008, 42 U.S.C. A. 12101 et. seq.

(c) We, the undersigned plaintiffs, declare under the penalty of perjury that the foregoing is true and correct and was executed in Santa Rosa, California by Plaintiff Natalia A. Sidiakina and in Moreno Valley, California by Plaintiff Sherryl Baeckel on December 16, 2010.



NATALIA A. SIDIAKINA, Plaintiff



SHERRYL BAECKEL, Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date September 23, 2010	Action Requested Please review and consider applying for funding
To Legal Services Agencies Superior Courts	Deadline November 5, 2010
From Justice Earl Johnson, Jr. (ret.) Chair of the Shriver Civil Counsel Act Implementation Committee	Contact Bonnie Rose Hough Managing Attorney Center for Families, Children & the Courts 415 865 7668 phone 415 865 7217 fax bonnie.hough@jud.ca.gov
Subject Request for Letters of Interest to Apply for Grant Funding to Operate a Pilot Project Under the Sargent Shriver Civil Counsel Act	

The purpose of this memorandum is to solicit Letters of Interest from qualified legal services organizations and their superior court partners in submitting a proposal for funding to provide legal representation in civil cases to qualified low income persons under the Sargent Shriver Civil Counsel Act.

The Sargent Shriver Civil Counsel Act

The Sargent Shriver Civil Counsel Act (AB 590 (Feuer), Stats. 2009 Ch. 457) provides that commencing in fiscal year 2011–2012, one or more pilot projects selected by the Judicial Council will be funded to provide legal representation to low-income parties on critical legal issues affecting basic human needs. The pilot projects will be operated by legal services nonprofit corporations working in collaboration with their local superior courts.

September 23, 2010

Page 2

The purpose of the pilot projects is to improve timely and effective access to justice in civil cases and thereby avoid undue risk of erroneous court decisions resulting from the nature and complexity of the law in the specific proceeding or the disparities between parties in legal representation, education, sophistication, language proficiency, and access to self-help or alternative dispute resolution services.

Selected legal services agencies will provide representation to low-income Californians who are at or below 200 percent of the federal poverty level and need representation in one or more of the following areas:

- Housing-related matters;
- Domestic violence and civil harassment restraining orders;
- Elder abuse;
- Guardianship of the person;
- Probate conservatorship; or
- Child custody actions by a parent seeking sole legal or physical custody of a child, particularly where the opposing side is represented.

Among the highest priorities will be pilot projects that provide representation in child custody cases. Up to 20% of available funding shall be allocated for pilot projects that provide representation in child custody cases.

Each pilot project must be a partnership between the court, a legal services agency that shall serve as the lead agency for case assessment and direction and other legal services providers in the community. To the extent practical, legal services agencies must make use of pro bono services from attorneys.

Selected court partners will be required to implement improved court procedures, training, case management and administration methods, and best practices to ensure that unrepresented parties in the proposed case types have meaningful access to justice, to guard against the involuntary waiver or other loss of rights in the selected legal areas or the disposition of cases by default or without appropriate information and regard for potential claims and defenses, and to encourage fair and expeditious voluntary dispute resolution, consistent with principles of judicial neutrality.

Selection Requirements and Process

Pilot projects must be a partnership of a lead legal services nonprofit corporation which meets the requirements of Bus. & Prof. Code, § 6213(a), the superior court, and other legal services providers in the community. Each pilot project will be required to form a local advisory committee to include representatives from the bench and court administration, the lead legal services agency and the other agencies that are part of the pilot project. These entities will submit a joint application through a competitive request for proposals (RFP) process administered by the Judicial Council. It is anticipated that the RFP will be released in December 2010.

September 23, 2010

Page 3

Project Roles and Responsibilities

The lead legal services agencies will provide case assessment and direction, including providing representation to eligible individuals or contracting with other legal services providers in the community to provide services to individuals. In so doing, the lead agency must make use of available pro bono services to the extent it is practical. The lead legal services agency also will be the central point of contact for referrals emanating from the court and other agencies providing services through the pilot and will make determinations of an individual's eligibility for services based on uniform criteria. When both parties to a dispute are financially eligible for services, the lead agency must evaluate representation for both parties and have referral protocols in place to other agencies or private attorneys for conflicts.

Judicial Council Committee

The Chief Justice has appointed an Implementation Committee with representation from key stakeholder groups, including judicial officers and legal services providers. This committee will make recommendations on which projects should be funded to the Judicial Council.

Selection Criteria

The committee will select projects to recommend to the Judicial Council based on whether the persons to be assisted are likely to be opposed by a party who is represented by counsel.

Additional factors to be considered include:

- The likelihood that representation will tend to affect whether a party prevails or otherwise obtains a significantly more favorable outcome in a matter in which that party might otherwise have judgment entered against them or be deprived of the basic human need at issue;
- The likelihood of reducing the risk of erroneous court decisions;
- The nature and severity of potential consequences for the unrepresented party if representation is not provided;
- The possibility that providing legal services might help reduce social service costs;
- The unmet need for legal services in the geographic area to be served; and
- The availability and effectiveness of other types of court services, such as self-help.

The committee will assess the applicants' capacity for success, innovation and efficiency, including, but not limited to, the likelihood that the project would deliver quality representation in an effective manner that would meet critical needs in the community and address the needs of the court with regard to access to justice and calendar management. The committee will also assess whether the legal services organizations and the courts have the technological capability to provide data for the evaluation that is required by AB 590.

September 23, 2010

Page 4

Timeline and Funding

Pilot projects will start in fiscal year 2011–2012 and be initially authorized for a three-year period, subject to renewal by the Judicial Council. New projects may subsequently be added by competitive grants if funds become available as the result of the termination or nonrenewal of an earlier project. All pilots and funding will terminate after six years (in 2017) unless the Legislature extends the statutory authority for the pilot projects. Total available funding for all projects is expected to be approximately \$10 - 11 million per year, funded by a \$10 fee increase on certain post-judgment court services.

Records, Evaluation, and Local Oversight

AB 590 requires an evaluation of the pilot projects and a report to the Legislature in 2016. The Judicial Council has entered into a contract for the evaluation design. Each pilot project will be responsible for: keeping appropriate records on the referrals accepted and not accepted, tracking case information for each client represented and referred, collecting information on the effect of the representation on the clients, collecting data about the outcomes associated with the provision of legal services and court services, and providing other data and information for the evaluation as requested by the Judicial Council.

Role of the Letter of Interest

In recognition of the fact that this is a new program and that proposals will take a significant amount of thought and collaboration, the implementation committee is requesting a letter of interest from those programs that are considering requesting funds. Based on those letters of interest, the Committee will design an appropriate evaluation method of the project and will provide additional guidance for applicants when it issues the Request for Proposal (RFP).

If an agency does not submit a letter of interest it WILL NOT be eligible to submit a response to the RFP that will be circulated later this fall.

However, proposals, partners and projected budgets may be changed in response to the RFP.

Anticipated Key Dates

September 23, 2010 - Letters of Interest solicitation issued

October 19, 2010 - Bidders Conference – by conference call 12 noon – 1:30 pm (optional)

November 5, 2010 - Letters of Interest due

December 1, 2010 - Request for Proposals posted

September 23, 2010

Page 5

January 21, 2011 - Proposals due

April 2011 - Judicial Council selects pilot projects, courts and legal aid agencies notified of selection

May 1—September, 2011 - Pilot projects start up

October 1, 2011 - Pilot projects begin providing services (contingent on state budget)

Attachments

Letter of Interest Requirements

Attachment A – Proposed Budget Form

Attachment B – Questionnaire Regarding Capabilities of Pilot Projects' Data Collection Systems