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VIA U.S. MAIL AND ELECTRONIC DELIVERY

Donna Ziegler (donna.ziegler@acgov.org)

Alameda County Counsel  
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Oakland, CA 94612

Melissa Wilk (melissa.wilk@acgov.org)

Alameda County Clerk-Recorder  
1106 Madison Street  
Oakland, CA 94607

**Re: Accessibility of Alameda County Clerk-Recorder Services for Blind Residents**

Dear Mses. Ziegler and Wilk:

I write on behalf of Lisamaria Martinez, a blind resident of Alameda County, to alert you to policies and procedures that currently prevent blind persons from accessing the services of the Alameda County Clerk-Recorder's Office, and by extension, the public programs and services of the County of Alameda (collectively "ACC"), in violation of state and federal antidiscrimination laws. My goal in writing is to explain, in practical terms, the barriers we have identified, and to propose that ACC staff and counsel sit down with us within the framework of a structured negotiation agreement to work collaboratively on solutions to remove those barriers.

Simply put, ACC's policies and procedures do not provide blind Alameda County residents equal access to the means to complete and file forms necessary to run small businesses and engage in other ACC transactions. The experience of our

client is illustrative of these problems. On March 29, 2019, Ms. Martinez went to the Alameda County Clerk-Recorder's Office to file a fictitious business name statement for her new small business. Prior to her visit, she had downloaded the proper form from the [acgov.org](http://acgov.org) website to complete electronically using the screen access software she uses when reading and writing. Most of the fields on the form were accessible fillable fields that allowed Ms. Martinez to fill them out independently using screen access software; however, the form offered no accessible way to sign it, such as through an electronic signature. Instead, Ms. Martinez was forced to request assistance from a sighted person, after printing out the form, to help her manually sign the printed document's signature line. She did so at home and brought the form with her to the Clerk-Recorder's office.

After waiting 20 minutes at the Clerk-Recorder's office for her number to be called, Ms. Martinez spoke with an agent at the counter, Angelina, who told her that the fictitious business name was for an LLC but Ms. Martinez had filled out the form as an individual, and would have to correct the form in order to file it. Ms. Martinez asked for assistance to correct the form. Angelina refused, stating that she could not assist Ms. Martinez because it was a legal document. Ms. Martinez explained that she was asking for assistance different from what might normally be provided because, as a blind person, she was unable independently to fill out the paper form, and required assistance as an accommodation. Angelina again refused. Ms. Martinez asked to speak with a supervisor and was told that there was no supervisor present. Ms. Martinez asked to speak with someone else in authority and waited while Angelina left the counter. Angelina returned approximately 15 minutes later to reiterate that she could not assist Ms. Martinez, and that Ms. Martinez would have to wait to speak with a supervisor if she still sought assistance in properly completing the form. Ms. Martinez said she would wait. After waiting an additional 45 minutes, Ms. Martinez returned to the counter to ask Angelina when she might expect to speak with a supervisor, and was told that there was still no supervisor available, that Angelina would no longer discuss Ms. Martinez's need for assistance, and that Angelina would not speak with Ms. Martinez any longer. After Angelina walked away, Ms. Martinez continued to stand at the counter waiting for a supervisor for approximately twenty more minutes.

Finally, supervisor Laura Briones arrived, and when Ms. Martinez explained the situation and her need for assistance, Ms. Briones asked her if she had someone with her who could help her fill out the form. Ms. Martinez said that she did not and required the assistance of someone from the Clerk-Recorder's office to complete

the form. Ms. Briones repeated what Angelina had told Ms. Martinez: that no one from the Clerk-Recorder's office could assist Ms. Martinez because the office required legal documents such as the fictitious business form to be filled out by the business owner. Ms. Martinez reiterated that she herself was the business owner, and that she would be completing the form, because she would be providing the information to go on the form, but that she required assistance to do so because, as a blind person, she could not complete the paper form herself. Ms. Martinez also explained that the Clerk-Recorder's office was a public entity that was required to provide such assistance as an auxiliary aid or service under Title II of the ADA. Ms. Briones continued to refuse. When asked under what legal authority she was refusing to assist, Ms. Briones cited no legal authority, but asserted that it was due to the form being signed under penalty of perjury.

After approximately 10 minutes of this discussion, Ms. Briones left to speak with someone of greater authority. When she returned, she said that she had spoken with Eva He, the Assistant Clerk-Recorder, and said that Ms. He had confirmed that no one from the Clerk-Recorder's office would assist Ms. Martinez in completing her form. When Ms. Martinez asked if Ms. He had cited any authority for that decision, Ms. Briones said that there was no legal authority, and that Ms. Briones would no longer speak with Ms. Martinez. Ms. Briones then walked away.

Following a more than an hour and a half effort to file a fictitious business form for her small business at the Clerk-Recorder's office, Ms. Martinez was forced to leave without doing so. Her experience was time-wasting, frustrating, dehumanizing, and unnecessary. She would not have suffered it, had the ACC provided her with auxiliary aids and services as legally required.

Title II of the Americans with Disabilities Act ("ADA") requires the ACC to operate in a manner that does not discriminate against blind people or exclude them from participation in or deny them the benefits of ACC services, programs, or activities. 42 U.S.C. § 12132. Relevant regulations explain that this means that the ACC may not:

- Provide blind people opportunities to participate that are different or not equal to those afforded others, or provide aids, benefits, or services to blind people that are "not as effective in affording equal opportunity to obtain the same result [or] to gain the same benefit ... as that provided to others"
- "Provide different or separate aids, benefits, or services" to blind people or otherwise limit qualified blind people in the enjoyment of any right, privilege,

advantage, or opportunity enjoyed by others receiving the aid, benefit, or service”

- “Utilize criteria or methods of administration...that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] that have the ... effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities.”
- “administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor ... establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability.”
- “impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.”

28 C.F.R. §§ 35.130(b)(1)(ii)-(iv) & (vii), (b)(3)(i) & (ii), (b)(6), and (b)(8).

The regulations further explain that ACC must “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless [it] can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7)(i).

ACC additionally has an obligation under federal law to ensure that communication with blind members of the public are as effective as communications with others. 28 C.F.R. § 35.160(a)(1). Where necessary, it must furnish appropriate auxiliary aids and services to afford blind individuals an equal opportunity to participate in, and enjoy the benefits of, ACC services, programs, and activities. 28 C.F.R. § 35.160(b)(1). “Auxiliary aids and services includes ... qualified readers ... accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind.” 28 C.F.R. § 35.104. “In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the [blind] individual.” 28 C.F.R. § 35.160(b)(2).

ACC must give primary consideration to the requests of such a blind individual when determining what types of auxiliary aids and services are necessary. *Id.* ACC may under no circumstances require such a blind individual to bring a non-blind individual to accompany and assist them. 28 C.F.R. § 35.160(c)(1).

Public entities such as the ACC also qualify as “businesses” for purposes of California’s Unruh Civil Rights Act, which requires that they afford blind individuals “full and equal” access to all of their “accommodations, advantages, facilities, privileges, [and] services.” Cal. Civ. Code § 51(b). Moreover, a violation of the ADA constitutes a violation of the Unruh Civil Rights Act. Cal. Civ. Code § 51(f). State law creates liability for statutory damages and fees. Cal. Civ. Code § 52(a).

By failing to provide blind Alameda County residents equal access to the means to complete and file forms necessary to run small businesses and engage in other ACC transactions, the ACC violates these laws. Ms. Martinez timely filed the enclosed claim against the County of Alameda on September 24, 2019.

Rather than focus on developing evidence and applying law to facts within a conventional framework of legal liability and litigation, we propose that the parties, here, focus energy and resources on potential changes to the ACC forms, policies and procedures involved to improve access for blind people. Litigation is costly and time-consuming, and exposes both parties to the hassle of procedural wrangling and to risk. We believe it would be a better use of our collective resources to negotiate a solution to these problems, instead of spending vastly more resources on litigation. We have found that, in situations like the present one, it is more productive for the parties to enter into an innovative alternative dispute process referred to as structured negotiations. We have and can share particular expertise in access for blind people. We hope to collaborate with ACC to improve the experience of blind individuals when transacting business with Alameda County and its Clerk-Reporter’s office, consistent with ACC’s responsibilities under federal and California law. Recognizing that ACC likely has similar goals with respect to its programs and services and access for the blind, we seek to work constructively with ACC through the proven alternative dispute resolution method of structured negotiations.

A structured negotiations agreement is enclosed for your review. Do not hesitate to call me if you have any questions about this process. If you approve, please sign and return the enclosed document within 21 days. We must consider litigation if we do not hear from you within that period.

Sincerely,

*Tim Elder*

**Timothy Elder**  
TRE Legal Practice

Enclosures (3):

- Copy of Tort Claims Act Notice
- Copy of Tort Claims Act Acknowledgement of Receipt
- Structured Negotiations Agreement