Case No. 23-16056

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALETA GUTHREY, a conserved adult, through her conservator, Areta Guthrey, ARETA KAY GUTHREY, Conservator,
Plaintiffs/Appellants,
v.

ALTA CALIFORNIA REGIONAL CENTER, a California Non-Profit corporation, ON MY OWN INDEPENDENT LIVING SERVICES, INC., a California corporation, MARY MCGLADE, MICHELLE RAMIREZ, S.T.E.P., INC., a California corporation, TAMMY SMITH,
Defendants/Appellees.

On Appeal from the United States District Court
for the Eastern District of California
No. 2:18-cv-01087
Honorable Morrison C. England, Jr.

[TENDERED] BRIEF OF *AMICI CURIAE* DISABILITY RIGHTS EDUCATION AND DEFENSE FUND AND ELEVEN OTHER ORGANIZATIONS IN SUPPORT OF NEITHER PARTY URGING REVERSAL AND REMAND TO CONFORM TO CIRCUIT PRECEDENT

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6. Disability Rights Advocates
7. Disability Rights California
8. Disability Rights Legal Center
9. Disability Law United
10. Disability Voices United
11. National Disability Rights Network
12. Youth Justice Education Clinic

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CONSENT OF THE PARTIES TO THE FILING

FEDERAL RULE OF APPELLATE PROCEDURE 29(a)(2)

This motion is filed with the consent of George E. Murphy, counsel for Plaintiffs/Appellants. Jonathan Riddell, counsel for Defendants/Appellees S.T.E.P., Inc. and Tammy Smith has declined to consent. Andrea Williams, counsel for Defendants/Appellees On My Own Independent Living Services, Inc., Mary McGlade and Michelle Ramirez has declined to consent. Counsel for Defendant/Appellee Alta California Regional Center was non-responsive.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, counsel for *Amici Curiae* certifies that no *Amici* has a parent corporation and that no publicly held corporation owns 10 percent or more of any *Amici's* respective stock.

STATEMENT PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 29(a)(4)(E)

The undersigned certifies that no party's counsel authored this brief in whole or in part, and that no party, party's counsel, or any other person other than *Amici*, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

IDENTITY AND INTERESTS OF *AMICI CURIAE*

Amici are organizations that represent and advocate for the rights of people with disabilities. *Amici* have extensive policy and litigation experience and are

recognized for their expertise in the interpretation of state and federal civil rights laws affecting individuals with disabilities including the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213, Section 504 of the Rehabilitation Act, ("Section 504"), 29 U.S.C. § 794, and California's Unruh Civil Rights Act ("Unruh Act"), Cal. Civ. Code § 51. Collectively and individually, *Amici* have a strong interest in ensuring that these laws are properly interpreted and enforced, consistent with Congress's remedial intent to eliminate discrimination and address segregation and exclusion.

Given these strong interests, the February 1, 2023, Order of the Honorable Morrison C. England, Jr., granting the Defendants/Appellees' Motion to Dismiss ("Order") is of significant concern to *Amici*. In the Order, the district court misinterprets the "nexus" requirement under Title III as requiring that Defendants/Appellees' services be provided at their physical office locations, radically constricting the ability of the ADA to address discrimination. The district court also erroneously concludes that a viable violation of Title III of the ADA is a prerequisite for claims under both Section 504 and the Unruh Act when in reality, it is well established that claims under these statutes are independent of an ADA violation. The errors contained in the district court's Order will have a devastating impact on individuals with disabilities—particularly individuals with intellectual and developmental disabilities ("IDD") who rely on services and supports

coordinated by private entities with brick-and-mortar offices but delivered in the field to ensure their full and equal access to and participation in the community.

The experience, expertise, and unique perspective of *Amici* make them particularly well suited to assist this Court in resolving the important legal issues presented in this case. The individual *Amici* are described in the concurrently filed Motion.

SUMMARY OF ARGUMENT

Because they have physical buildings at which and from which they provide services to the public, California Regional Centers and their vendors (including Defendants/Appellees) are all places of public accommodation under Title III of the ADA ("Title III"), 42 U.S.C. § 12181(7)(K), and the services they provide individuals like Plaintiffs/Appellants are covered by that statute and must be provided in a nondiscriminatory manner, *id.* § 12182(a). This Circuit's requirement that discrimination challenged under Title III have a "nexus" to a physical building simply requires a connection to that building; it does not require that the discrimination have occurred on the physical premises of the Title III entity. The district court's opinion requiring a showing that the challenged services were provided at Defendants/Appellees' offices, *Guthrey v. Alta California Reg'l Ctr.*, No. 2:18-cv-01087-MCE-EFB, 2023 WL 1447921, at *4 (E.D. Cal. Feb. 1, 2023),

improperly restricted the reach of Title III, contrary to the plain language of the statute, its legislative history, and this Circuit's precedent.

The district court also improperly required that Plaintiffs/Appellants establish a violation of the ADA as a prerequisite to a claim under either Section 504 or the Unruh Act. These holdings are completely unsupported, as the three statutes—while all addressing disability discrimination—do so in different contexts with, as a result, different required factual predicates.

Ultimately, by eliminating all recourse for individuals with IDD to challenge discrimination by Regional Centers and their vendors, the district court's decision threatens to undermine years of progress through both the ADA and California's Lanterman Developmental Disabilities Services Act ("Lanterman Act").

ARGUMENT

I. California Regional Centers and Their Vendors Are Places of Public Accommodation Providing Services Covered by Title III of the ADA.

California Regional Centers and their vendors are social service establishments that have physical buildings that are open to the public and in which they hold meetings with (among others) clients and members of the public. As such, they fall neatly and uncontroversially under Title III of the ADA. 42 U.S.C. § 12181(7)(K). That statute prohibits disability discrimination "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation . . .." 42 U.S.C.

§ 12182(a). It thus requires that Regional Centers and vendors provide their services in a nondiscriminatory manner. For example, Plaintiffs/Appellants Areta and Aleta Guthrey allege in the operative complaint—the Second Amended Complaint ("SAC")—that Alta California Regional Center ("Alta") denied services to Aleta Guthrey, a disabled adult, on the explicit grounds that she used a gastrostomy tube for nutrition.[1]

This case thus alleges an uncomplicated Title III claim based on facial discrimination in the services provided by entities that own or operate places of public accommodation. Defendants/Appellees unnecessarily complicate this straightforward analysis and, in so doing, ask this Court for a new, highly-restrictive, Title III standard—adopted by the district court—that discrimination is only covered by Title III if it occurs *on the premises of* a place of public accommodation. This is contrary to the plain language of the statute, its legislative history, regulatory interpretation, and Circuit precedent. *Amici* write to reinforce the standard applicable here—one that is consistent with both Circuit precedent and Title III's "broad mandate" to "eliminate discrimination against disabled individuals." *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675, 121 S. Ct. 1879 (2001).

[1] 4-ER 464: ¶ 102.

A. Relevant Facts.[2]

Plaintiff/Appellant Aleta Guthrey is a conserved adult with disabilities. Her mother, Plaintiff/Appellant Areta Guthrey, sought services on her behalf from Defendant/Appellant Alta. Alta and other Regional Centers are nongovernmental nonprofit entities that contract with the California Department of Developmental Services to coordinate and deliver services to Californians with IDD. They "provide assessments, determine eligibility for services, and offer case management services" and "develop, purchase, and coordinate the services" for their clients.[3] Regional Centers then contract with other direct service providers—referred to as "vendors"—to provide services to their clients with IDD. Vendors can be for-profit or nonprofit entities. Defendants/Appellants On My Own Independent Living Services, Inc. ("OMO") and Strategies to Empower People, Inc. ("STEP") are two such vendors that contract with Alta and from which the Guthreys sought services.

Alta, OMO, and STEP all have physical, brick-and-mortar facilities open to the public for, among other things, meetings with clients like the Guthreys and

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[2] *Amici* write in support of neither party, but outline the facts relevant to the legal questions addressed herein. *See generally* SAC, 4-ER 633-668.

[3] Dep't of Developmental Services Regional Centers, https://www.dds.ca.gov/rc/ (last visited Jul. 11, 2024)

more general public gatherings.[4] Indeed, in the SAC, Areta Guthrey alleges she attended meetings at Alta's and STEP's office buildings.[5]

B. Regional Centers and Their Vendors are Places of Public Accommodation.

Title III defines "public accommodation" to include "a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment." 42 U.S.C. § 12181(7)(K). The Supreme Court has held that the definition of public accommodation "should be construed liberally to afford people with disabilities equal access to the wide variety of establishments available to the nondisabled." *PGA Tour*, 532 U.S. at 662. While the categories listed in section 12181(7)—for example, "social service center" in subsection (K)—are exhaustive, the examples in each subsection are merely illustrative. *See* H.R. REP. No. 101–485, pt. 3, at 54 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 477 ("[a] person alleging discrimination does not have to prove that the entity being charged with discrimination is similar to the examples listed in the definition"; instead, they need only "show that the entity falls within the overall category"); Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities Originally

[4] *See, e.g.*, Alta, *Community Meetings* https://www.altaregional.org/alta-sponsored-event/community-meetings (last visited Jul. 11, 2024).
[5] 4-ER 640: ¶ 46; 4-ER 642: ¶ 62; 4-ER 643: ¶¶ 72-73; 4-ER 645: ¶ 89.

Published on July 26, 1991 ("DOJ 1991 Guidance"), 28 C.F.R. pt. 36, App. C, at 943 (2023).[6] Regional Centers and their vendors are all social service centers, providing similar services to people with IDD as the examples—day care centers; senior citizen centers—do for other populations.

C. The Plain Language of Title III Covers Services *of* Places of Public Accommodation, Not Just *in* Places of Public Accommodation.

In statutory interpretation, "[w]e start where we always do: with the text of the statute." *Bartenwerfer v. Buckley*, 598 U.S. 69, 74, 143 S. Ct. 665 (2023) (internal citations omitted). The "General rule" of Title III prohibits disability discrimination "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations ***of*** any place of public accommodation." 42 U.S.C. § 12182(a) (emphasis added). This Court focused specifically on the last clause of that sentence when it held, "'[t]he statute applies to the services ***of*** a place of public accommodation, not services ***in*** a place of public accommodation. To limit the ADA to discrimination in the provision of

[6] Alta's attempt to evade this definition by relying on *Storman v. Alta Reg'l Ctr.*, No. 2:20-cv-0907-KJM-CKD PS, 2021 WL 4690726, at *2 (E.D. Cal. Oct. 6, 2021), will not succeed. There, the court reviewed the *pro se* complaint pursuant to 28 U.S.C. § 1915(e)(2) without benefit of briefing on this issue and concluded that the plaintiff's "allegations fail to plausibly suggest defendant operates a place of public accommodation." *Id.* at *6. Alta overstates this holding, asserting that the court "specifically held that Alta is not a place of public accommodation." Alta Ans. Br. at 14 (citing *Storman* 2021 WL 4690726 at *4). The court did not make that categorical holding and the decision is, in any event, not binding on this Court.

services occurring on the premises of a public accommodation would contradict the plain language of the statute.'" *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905 (9th Cir. 2019) (quoting *Nat'l Fed'n of the Blind v. Target Corp*. (*Target*), 452 F. Supp. 2d 946, 953 (N.D. Cal. 2006) (emphasis in *Target*)); *see also Weyer v. Twentieth Century Fox Film Corp*., 198 F.3d 1104, 1115 (9th Cir. 2000) (holding that "whatever goods or services the place provides, it cannot discriminate on the basis of disability in providing enjoyment of those goods and services").[7]

Regional Centers and their vendors have physical places of public accommodation—office buildings—in which they conduct business with the public to provide their developmental disability and independent living services.[8] They qualify as social service centers under 42 U.S.C. § 12181(7)(K).

Pursuant to the plain language of the statute, the services ***of*** these entities are covered by Title III. Based on this Court's interpretation of that plain language in *Robles*, a complaint that alleges discrimination in services provided by Regional Centers and vendors should survive a motion to dismiss.

"It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall

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[7] Defendant/Appellee Alta characterizes the distinction this Court properly made in *Robles*—between services "of" and "in" a place of public accommodation—as a "novel semantic argument" that is "incorrect and inapposite," with "no foundation in fact or law." Alta Ans. Br. 16-17.

[8] *See, e.g.*, 4-ER 640: ¶ 46; 4-ER 642: ¶ 62; 4-ER 643: ¶¶ 72-73; 4-ER 645: ¶ 89.

statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019). Title III's "General rule" discussed above appears in 42 U.S.C. § 12182(a); the balance of section 12182 provides the "construction" of that general rule, *id.* § 12182(b), and demonstrates that the statute intended to reach—and eliminate discrimination in—far more than just physical buildings. Covered entities may not deny disabled people an opportunity to participate in or benefit from its goods, services, facilities, privileges, advantages, or accommodations; may not provide disabled people an unequal opportunity to so benefit; and may not provide different or separate goods, services, facilities, privileges, advantages, or accommodations. *Id.* § 12182(b)(1)(A)(i) – (iii). They may not "utilize standards or criteria or methods of administration … that have the effect of discriminating on the basis of disability." *Id.* §§ 12182(b)(1)(D). Finally they must make "reasonable modifications in policies, practices, or procedures" and provide "auxiliary aids and services" to ensure disabled people are not "excluded, denied services, segregated or otherwise treated differently." *Id.* § 12182(b)(2)(A)(ii), (iii).

The statutory language does not tether these services, privileges, advantages, accommodations, standards, criteria, methods of administration, policies, practices, procedures, and auxiliary aids to a physical building. Once an entity is established as a place of public accommodation—like Defendants/Appellees' premises here—

it is required to ensure that all of its services, policies, standards, and criteria comply with Title III no matter how or where provided.

Only one provision of section 12182(b) specifically addresses the built environment, requiring public accommodations to remove architectural barriers in existing facilities[9] where readily achievable to do so. *Id.* § 12182(b)(2)(A)(iv). Where not readily achievable, the entity must use "alternative methods" to provide its goods and services. *Id.* § 12182(b)(2)(A)(iv). Department of Justice ("DOJ") regulations interpreting this latter provision contemplate two very specific off-site alternatives: home delivery; and relocating activities to accessible locations. 28 C.F.R. § 36.305(b)(1), (3) (2024) (.[10] That is, places of public accommodation are *required* to provide goods and services away from their physical buildings if necessary to avoid discrimination.

D. The Legislative History and Regulatory Interpretation of Title III Reinforce that the Services of Regional Centers and their Vendors are Covered by that Statute.

The language of section 12182(a) is unambiguous that services "of" a public accommodation are covered, and the rest of section 12182 demonstrates that Congress sought to eliminate disability discrimination in a wide variety of

[9] A later section addresses the requirements for newly constructed and altered facilities. 42 U.S.C. § 12183.
[10] The DOJ was delegated by the statute to issue regulations implementing Title III. 42 U.S.C. § 12186(b).

circumstances beyond the walls of brick-and-mortar buildings. Because the statute is unambiguous, it should not be necessary to consult the legislative history. *Greenwood v. CompuCredit Corp*., 615 F.3d 1204, 1207 (9th Cir. 2010) ("If the plain meaning of the statute is unambiguous, that meaning is controlling and we need not examine legislative history as an aid to interpretation unless the legislative history clearly indicates that Congress meant something other than what it said," (internal citations omitted)). By way of reinforcement, however, the legislative history also supports this Court's holding in *Robles* and the standard urged by *Amici* here:

> Both the public accommodation facility and the programs and services offered by the public accommodation cannot discriminate against individuals with disabilities. As discussed below, there is an *obligation not to discriminate in programs and services provided by the public accommodation*, to remove barriers in existing facilities, and to make new and altered facilities accessible and usable. It is not sufficient to only make facilities accessible and usable; *this title prohibits, as well, discrimination in the provision of programs and activities conducted by the public accommodation*.

See H.R. Rep. No. 101–485, pt. 3, at 54 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 477. The DOJ also provides on-point guidance through the following example: where an administrative medical building does not provide services on-site, "any policies or decisions made in the administrative offices that affect the treatment of patients would be subject to the requirements for public accommodations." Dep't of Justice, *Title III Technical Assistance Manual*,

§ 1.2000, https://www.ada.gov/resources/title-iii-manual/#iii-10000-coverage (last visited Jul. 11, 2024).

The language of the statute, its context, its legislative history, and its interpretation by the agency statutorily tasked with its implementation all demonstrate that Congress intended to address discrimination in a wide range of services, on and off the premises of a place of public accommodation. These dispositive sources bring the services of Regional Centers and their vendors under the ambit of Title III.

E. "Nexus" Means "Connected To," Not "Occurring On The Premises Of."

In determining whether alleged discrimination is covered by Title III, this Circuit requires the plaintiff to show a "nexus" between the challenged conduct and a physical place of public accommodation. *See Weyer*, 198 F.3d at 1115; *Robles*, 913 F.3d at 905.[11] The services provided by Regional Centers and their vendors satisfy this standard.

The nexus requirement was first articulated in *Weyer*, a case challenging the content of an employer-provided benefit plan administered by the defendant

[11] In their Reply Brief, Plaintiffs/Appellants ask this Court to revisit the nexus standard and align itself with First and Seventh Circuit cases that do not limit places of public accommodation to physical spaces. *See* Reply Br. at 11 (citing *Carparts Distribution Ctr. v. Auto. Wholesaler's Ass'n*, 37 F.3d 12 (1st Cir. 1994) and *Doe v. Mut. of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999)). *Amici* support this request but note that it is not necessary to the legal analysis herein.

private insurance company. This Court agreed with the Sixth Circuit that there was "'no nexus between the disparity in benefits and the services which [the insurance company] offers to the public from its insurance office.'" *Weyer* 198 F.3d at 1115 (quoting *Parker v. Metro. Life Ins. Co*., 121 F.3d 1006, 1011 (6th Cir.1997)). This Court noted, however, that while "Title III does not govern the *content* of a long-term disability policy offered by an employer, . . . *whatever goods or services the place provides*, it cannot discriminate on the basis of disability in providing enjoyment of those goods and services." *Id.* (emphasis added).

One of the first cases to analyze this nexus requirement in detail was *Target*, which held that the company's website had a sufficient nexus to its physical stores to satisfy *Weyer* and come under Title III. The *Target* court made the distinction between services "of" and "in" a public accommodation that this Court adopted verbatim in *Robles*,[12] *see supra* at pp. 8-9, and concluded "[t]o the extent defendant argues that plaintiffs' claims are not cognizable because they occur away from a 'place' of public accommodation, defendant's argument must fail." *Target*, 452 F. Supp. 2d at 953. The court criticized the "false dichotomy between those services which impede physical access to a public accommodation and those merely offered by the facility" and explained,

> Such an interpretation would effectively limit the scope of Title III to the provision of ramps, elevators and other aids that operate to remove

[12] *Robles,* 913 F.3d at 905.

> physical barriers to entry. Although the Ninth Circuit has determined that a place of public accommodation is a physical space, the court finds unconvincing defendant's attempt to bootstrap the definition of accessibility to this determination, effectively reading out of the ADA the broader provisions enacted by Congress.

Id. at 955.

The *Target* court discussed an Eleventh Circuit case holding that a game show with an inaccessible telephone screening process was a place of public accommodation. *Id.* at 953 (citing *Rendon v. Valleycrest Prods.*, 294 F.3d 1279 (11th Cir. 2002)). The *Rendon* court makes the crucial if obvious point that discrimination explicitly prohibited by Title III will often occur away from any physical building: "off-site screening appears to be the paradigmatic example contemplated in the statute's prohibition of 'the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability.'" *Id.* at 1284 (quoting 42 U.S.C. § 12182(b)(2)(A)(i)).

Indeed the point of public accommodations discrimination is often to prevent members of protected classes from getting anywhere near the relevant physical facility. *Rendon* provides three examples from Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, which prohibits discrimination on the basis of race by places of public accommodations: cases in which applications to a health club, a summer camp, and a YMCA were denied on that prohibited basis. *Rendon*, 294 F.3d at 1285 (citing *Rousseve v. Shape Spa for Health & Beauty, Inc*., 516 F.2d 64

(5th Cir.1975); *Smith v. YMCA*, 462 F.2d 634 (5th Cir.1972); *Stout v. YMCA*, 404 F.2d 687 (5th Cir.1968)). The *Rendon* court concluded that "[t]here is nothing in the text of the [ADA] to suggest that discrimination via an imposition of screening or eligibility requirements must occur on site to offend the ADA." *Id.* 294 F.3d at 1283-84.

This off-site screening is precisely the type of discrimination alleged here: when Alta learned that Aleta Guthrey used a gastrotomy tube, it categorically denied her services.[13] The principle of *Rendon* makes sense. Under Defendants/Appellees' theory, places of public accommodation are permitted to discriminate on the basis of disability so long as they do it by telephone or email. Alta makes the circular argument that this case lacks the requisite nexus because Alta never provided services to the Guthreys. Alta Ans. Br. at 18. To the contrary, that is precisely what brings this case solidly under Title III: it denied her its services on the basis of her disability. If a covered entity can avoid the requirements of that statute by denying services on that basis, the statute has no meaning.

[13] 4-ER 639: ¶ 44; 4-ER 646: ¶ 102; 4-ER 659: ¶ 212.

F. California Regional Centers and Their Vendors are Open to the Public As Relevant Under Title III.

Defendants/Appellees argue that, because they only serve a subset of the public, they are not places of public accommodation under Title III. *See, e.g.*, STEP Ans. Br. at 17 (stating that STEP only offers services to specific individuals referred to them through the Regional Center). This Court has explicitly rejected such a restrictive standard. In *Martin v. PGA Tour, Inc.*, this Court addressed the question whether golf courses used by the PGA for its tournaments were places of public accommodation with respect to the elite golfers playing in the tournaments. 204 F.3d 994 (9th Cir. 2000), *aff'd sub nom PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001).[14] The PGA argued that this "behind the ropes" area did not satisfy that definition because "the public has no right to enter it." *Id.* at 997. This Court rejected this argument, holding "[t]he statute does not restrict this definition [of a place of public accommodation] to those portions . . . that are open to the general public. The fact that entry to a part of a public accommodation may be limited does not deprive the facility of its character as a public accommodation." *Id.* at 997-98 (citing *Indep. Living Res. v. Or. Arena Corp*., 982 F. Supp. 698, 759 (D. Or. 1997) (holding that arena's executive suites contracted by businesses are public

[14] The PGA did not make this argument to the Supreme Court, but that Court affirmed the general holding that its tournaments were places of public accommodation and that the elite golfers who participated in them were covered by Title III. 532 U.S. at 677-78, 681.

accommodations) and *Menkowitz v. Pottstown Mem'l Med. Ctr.*, 154 F.3d 113 (3d Cir.1998) (holding that Title III applied to disabled physician seeking staff privileges at a hospital)); *see also, e.g.*, *Johnson v. Boitano*, No. 21-CV-01402-SVK, 2021 WL 4818943, at *3 (N.D. Cal. Oct. 15, 2021) (holding that accounting firm that only met with people by appointment was a place of public accommodation).

Defendants/Appellees OMO and STEP rely on language from the district court opinion in *Jankey v. Twentieth Century Fox Film Corp*., 14 F. Supp. 2d 1174 (C.D. Cal. 1998), that was not ultimately adopted by this Court on appeal. In that case, a business visitor to a movie studio challenged the accessibility of parts of the facility provided for the use of studio employees and their guests. The district court ruled for the defendant, using the broad language quoted by OMO and STEP that a place of public accommodation must be "open indiscriminately to other members of the general public." *Id.* at 1178, *quoted in* OMO Ans. Br. at 19; STEP Ans. Br at 16. This Court did not adopt the district court's narrow construction, holding instead that Title III does not apply to entities that are "not in fact open to the public." *Jankey v. Twentieth Century Fox Film Corp.*, 212 F.3d 1159, 1161 (9th Cir. 2000) (internal quotations omitted). This is a crucial difference. As this Court explained in *Martin*:

> the fact that users of a facility are highly selected does not mean that the facility cannot be a public accommodation. For example, Title III

> includes in its definition "secondary, undergraduate, or postgraduate private school[s]." 42 U.S.C. § 12181(7)(J). The competition to enter the most elite private universities is intense, and a relatively select few are admitted. That fact clearly does not remove the universities from the statute's definition as places of public accommodation.

Id. at 998. Indeed, the category of public accommodation into which Defendants/Appellees fall—social service establishments—explicitly includes examples of entities that serve only specific populations: day care centers; senior citizen centers; homeless shelters. 42 U.S.C. § 12181(7)(K).

Further, when a place of public accommodation is open to the public in accordance with this Court's and the Supreme Court's decisions in the *Martin* case, it does not require that the individual plaintiff have received goods or services on the premises to sustain a Title III claim. In *Robles*, for example, the plaintiff attempted to access the defendant's goods and services by using its website and app; there is no indication that he ever went to a physical restaurant. This Court held that "the website and app facilitate access to the goods and services of a place of public accommodation—Domino's physical restaurants. They are two of the primary . . . means of ordering Domino's products to be picked up at *or delivered from* Domino's restaurants." *Robles,* 913 F.3d at 905 (emphasis added). The fact that the restaurant is a place of public accommodation brings it under Title III even for those who order online for home delivery, that is, who never come in contact with the physical premises. *See also Jamesson v. Citimortgage, Inc*., No. SACV

10-550 DOC (MLGx), 2010 WL 11595909, at *7 (C.D. Cal. Oct. 14, 2010) (holding that defendant CitiMortgage, Inc. was a place of public accommodation because of its nexus with Citibank, a physical bank, despite the fact that the plaintiffs had secured their mortgage online, given that applicants generally "have the option of applying for their home loans . . . at a physical, Citibank location.").

G. Regional Centers are Liable under Title III for Discrimination by their Vendors.

Title III prohibits disability discrimination by public accommodations "directly, or through contractual, licensing, or other arrangements." 42 U.S.C. § 12182(b)(1)(A)(i) – (iii). "The intent of the contractual prohibitions of these paragraphs is to prohibit a public accommodation from doing indirectly, through a contractual relationship, what it may not do directly." DOJ 1991 Guidance at 950. This Court has interpreted identical language in Title II of the ADA to hold a state department of corrections liable for discrimination alleged at a private employer under contract with that department. *Castle v. Eurofresh, Inc*., 731 F.3d 901, 910 (9th Cir. 2013).

Melton v. Cal. Dep't of Developmental Servs., No. 20-cv-06613-YGR, 2021 WL 5161929 (N.D. Cal. Nov. 5, 2021), *reconsideration granted on other grounds*, 2022 WL 2126299 (Apr. 29, 2022), is directly on point. In that case, the plaintiff sued (among others) the Regional Center of the East Bay ("RCEB"), alleging disability discrimination in violation of Title III. The court "reject[ed] RCEB's

attempt to escape its obligations under Title III" and ultimately concluded that "whether RCEB itself is a public accommodation is beside the point. Because RCEB facilitates access to the services of its group home vendors, which presumably are public accommodations, RCEB must ensure their compliance with Title III." *Id*. at *12-13.

Similarly here, the Regional Center is responsible for its own discrimination as well as that of the vendors with which it contracts to provide services to its clients.

* * *

In conclusion, this Court cannot affirm the district court's holding on place of public accommodation without running afoul of Supreme Court and Circuit precedent, not to mention the statutory language and legislative history. And as explained below, such a contrary decision would have a devastating effect on the rights of people with IDD in California.

II. The District Court Improperly Required a Viable Violation of Title III of the ADA as a Prerequisite for a Claim under Section 504.

The district court correctly recited the requirements for a claim under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794: "a plaintiff must show (1) he or she is an 'individual with a disability' (2) 'otherwise qualified' to receive the benefit (3) but denied the benefits of the program solely by reason of his disability, (4) provided that the program receives federal financial assistance."

Guthrey, 2023 WL 1447921, at *5 (citing *Weinrich v. L.A. Cty. Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997)).

The court then incorrectly stated that, "[i]n order to demonstrate an additional claim under the Rehabilitation Act, a plaintiff must first establish an ADA claim." *Id.* While the two statutes have similar elements, a Section 504 claim is different from and independent of the ADA. Because Section 504 governs recipients of federal funding and Title III, places of public accommodation, the former statute often applies where the latter does not and vice versa. *Weinrich*, which the district court cites for this mistaken prerequisite requirement, says nothing of the sort. *Id.* at 978 (holding only that Title II of the ADA, 42 U.S.C. § 12132, was modeled on Section 504).

Indeed, the district court invalidated the Guthreys' Title III claims for reasons entirely unrelated to Section 504: its conclusion that Defendants/Appellees were not places of public accommodation. *Guthrey*, 2023 WL 1447921 at *4. As is clear from the elements recited above, Section 504 does not require the plaintiff to establish that the defendant is a place of public accommodation. When the district court subsequently held that the Guthreys could not sustain a 504 claim because they could not sustain a Title III claim, it erred. *Id.* at 5.

Amici respectfully request that this Court clarify that a viable violation of Title III of the ADA is not a prerequisite to a claim under Section 504.

III. The District Court Improperly Required a Viable Violation of Title III of the ADA as a Prerequisite for a Claim under the Unruh Act.

The Unruh Act provides: "All persons within the jurisdiction of this state ... no matter what their ... disability ... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Cal. Civ. Code, § 51, subd. (b). It is well established that "[a] plaintiff can recover under the [Unruh Act] on two alternate theories: (1) a violation of the ADA (§ 51, subd. (f)); or (2) denial of access to a business establishment based on intentional discrimination." *Munson v. Del Taco, Inc.*, 46 Cal.4th 661, 664-665, 94 Cal. Rptr. 3d 685, 208 P.3d 623 (2009); *Martinez v. San Diego Cty. Credit Union*, 50 Cal.App.5th 1048, 1059, 264 Cal. Rptr. 3d 600 (2020) (characterizing ADA violations and intentional discrimination as alternate theories for a single cause of action under the Unruh Act). The Act's statutory language is unambiguous in this regard.

The Unruh Act's prohibition on discrimination by business establishments based on intentional discrimination is broader than the ADA's prohibition on discrimination by places of public accommodation. As the California Supreme Court has acknowledged:

> "The Legislature used the words 'all' and 'of every kind whatsoever' in referring to business establishments covered by the Unruh Act (Civ. Code, § 51), and the inclusion of these words, without any exception and without specification of particular kind of enterprises, *leaves no doubt that the term 'business establishments' was used in the broadest sense reasonably*

> *possible.* The word 'business' embraces everything about which one can be employed, and it is often synonymous with 'calling, occupations, or trade, engaged in for the purpose of making a livelihood or gain.' [Citations.] The word 'establishment,' as broadly defined, *includes not only a fixed location, such as the 'place where one is permanently fixed for residence or business,' but also a permanent 'commercial force or organization' or 'a permanent settled position (as in life or business)*.' [Citations.]"

Warfield v. Peninsula Golf & Country Club, 10 Cal.4th 594, 609–610, 42 Cal. Rptr. 2d 50, 896 P.2d 776 (1995) (quoting *Burks v. Poppy Constr. Co.*, 57 Cal.2d 463, 468-469, 20 Cal. Rptr. 609, 370 P.2d 313 (1962), emphasis added).

The district courts of California have repeatedly acknowledged the Unruh Act's alternate theories of liability. *See, e.g.*, *Brooks v. Lovisa Am., Ltd. Liab. Co.*, No. 220-CV-02493-TLN-KJN, 2022 WL 4387979, at *5 (E.D. Cal. Sept. 21, 2022) ("A plaintiff can recover under the Unruh Act on grounds that: (1) a violation of the ADA has occurred under California Civil Code § 51(f); or (2) that she has been denied access to a business establishment due to intentional discrimination in violation of California Civil Code § 52."); *Rendon v. Bracketron Inc.*, No. 2:19-CV-8896-ODW (JEMx), 2020 WL 65075, at *3 (C.D. Cal. Jan. 7, 2020) ("Unruh may be violated in a number of ways, only one of which is an ADA violation."); *Martinez v. Adidas Am., Inc.*, No. EDCV 19-841 JGB (KKx), 2019 WL 3002864, at *4 (C.D. Cal. July 9, 2019) ("The [Unruh Act] provides for liability independent of the ADA."); *Licea v. J&P Park Acquisitions, Inc.*, No. CV 19-68-R, 2019 WL 1296876, at *1 (C.D. Cal. Mar. 20, 2019) ("[I]t does not follow that a violation of

the ADA must necessarily be established at trial in order to succeed on a [an Unruh Act] claim ....").

Because the statutory language of the Unruh Act is unambiguous as to its alternate theories of liability and broad coverage—as acknowledged repeatedly by both the California and federal courts—it was incorrect for the district court to summarily conclude, without independent analysis, that "[b]ecause Plaintiffs have not identified any viable ADA violation ... their Unruh Act claims also fail." *Guthrey*, 2023 WL 1447921 at *4. The SAC makes clear that Plaintiffs/Appellants' Unruh Act claims against Alta, OMO and STEP are not premised exclusively on ADA violations. The SAC alleges two alternative theories of liability for Plaintiffs/Appellants' Unruh Act claims: discrimination premised on a violation of the ADA,[15] and discrimination independent of the ADA.[16] Whether Plaintiffs/Appellants adequately alleged a viable Unruh Act claim under a non-ADA theory against Defendants/Appellees should have been independently assessed by the district court. The failure to do so was plain error.

Amici respectfully request that this Court clarify that a viable violation of Title III of the ADA is not a prerequisite to a claim under the Unruh Act.

[15] 4-ER 653: ¶¶ 160-161; 4-ER 654: ¶¶ 173-174; 4-ER 656-657: ¶¶ 188-189, 198.
[16] 4-ER 653-654: ¶¶ 162-166; 4-ER 654-655: ¶¶ 172, 175-179, 181; 4-ER 656-657: ¶¶ 187, 190-194, 196-197.

IV. The District Court's Decision Excludes Californians with Developmental Disabilities from Crucial Protections of Federal and State Law, Risking a Return to Historical Isolation and Inequality.

The ADA was passed in 1990 to address this country's history of institutionalizing and isolating disabled people. "Congress found that 'historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.'" *PGA Tour*, 532 U.S. at 674–75 (quoting 42 U.S.C. § 12101(a)(2)). Congress's intent was not only to codify the rights of people with disabilities, but also to promote inclusion and end discrimination through strong enforcement of the statute. H.R. REP. No. 101-485, at 40 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 303, 322 ("the rights guaranteed by the ADA are meaningless without effective enforcement provisions.").

California enacted the Lanterman Act twenty-two years earlier, in 1969, to ensure that one subset of people with disabilities—those with developmental disabilities—have the right to the services and supports they need to live equally with nondisabled people. Its primary goal was to end the institutionalization of people with developmental disabilities and support their integration into the mainstream life of the community. Cal. Welf. & Inst. Code, § 4501.

The Lanterman Act states that recipients of services "have the same legal rights and responsibilities guaranteed all other individuals" and specifically articulates a right of access to the courts that is not to be denied any client. Cal. Welf. & Inst. Code, § 4502(a). It is a comprehensive statutory scheme that created the framework for providing services and supports to people with IDD in the community. Cal. Welf. & Inst. Code, § 4500 *et seq*. It established, among other things, California's system of Regional Centers which, along with their vendors, play an essential role in delivering services in the community to Californians with IDD and to creating meaningful alternatives to institutionalization. When these entities work as intended, people with IDD avoid the institutionalization and degradation that would have been their fate in earlier times. When these entities exclude participants on the basis of disability, however, they risk relegating those clients to institutions or to unsupported and isolated care in their homes, placing immense stress on the individuals and their family members.

The district court's narrow construction of the application of the ADA, Section 504 and the Unruh Act undermines the very purpose of those anti-discrimination statutes and of the Lanterman Act; *i.e*., to protect and promote the well-being and integration of people like Aleta Guthrey by providing them with community-based services and supports.

A. People With IDD Are a Historically Marginalized and at-Risk Subset of the Disability Community.

The Supreme Court has described the historical experience of people with IDD as "unfair and often grotesque mistreatment." *City of Cleburne v. Cleburne Living Ctr*., 473 U.S. 432, 438 (1985). Until the early 19th Century, no care was provided to people with these disabilities outside of the family, the church, and criminal detention centers. James T. Hogan, *Community Housing Rights for the Mentally Retarded*, 1987 Det. C.L. Rev. 869, 874 (1987).[17] From that time until very recently, people with IDD were warehoused in institutions in horrific conditions. *See, e.g.*, Stanley S. Herr, *The New Clients: Legal Services for Mentally Retarded Persons*, 31 Stan. L. Rev. 553, 557 (1979). Families often placed disabled loved ones in these environments, either unaware of how horrific they truly were or because there were no other options for their care.

And these dreadful institutions reflected society's values. People with developmental disabilities were uniformly segregated, confined, and universally denied their autonomy. *See* Sharaya L. Cabansag, *Defending Access to Community-Based Services for Individuals with Developmental Disabilities in the Wake of the "Great Recession,"* 55 How. L.J. 1025, 1027 (2012). Civil rights laws

[17] The term "retarded" is outdated and disfavored. This brief will substitute the accepted term "person with intellectual or development disability" or "person with IDD" except in article titles.

on the federal and state level arose as a direct response to the cruelty and neglect endured by people with IDD in this country, to protect this at-risk population.

Title III contains a private right of action, 42 U.S.C. § 12188(a) and, as discussed above, prohibits discrimination by places of public accommodation including social service establishments, *id.* §§ 12181(7)(K); 12182(a). Defendants/Appellees—Regional Centers and their vendors—ask to be immune from their obligations under Federal and California disability rights laws, violating the letter and spirit of those statutes and undermining decades of legal progress.

B. The District Court's Order Deprives Regional Center Clients of Legal Recourse for Violations of Their Civil Rights.

The effect of the district court's order is to preclude *any* Regional Center client from challenging discrimination by a Regional Center or vendor. Many of those entities spend significant time and resources procuring and providing off-site services—including those that take place in the client's own home—precisely because those services permit disabled people to live independent lives. Ultimately, people with disabilities who receive care or supported living services from any private business or nonprofit—in order to preserve their hard-won independence—will be deprived of a remedy under the ADA for discrimination at the hands of their care providers.

By denying Appellants the ability to proceed with their ADA claims, the district Court deprived them and hundreds of thousands of Regional Center clients

around the State of meaningful protection against discrimination by their state-funded service providers, rendering the promises of the Lanterman Act and the ADA null. Broadly interpreting civil rights statutes is required to effectuate the purpose of the ADA and the Lanterman Act. This approach promotes integration and equal treatment for people with IDD and keeps our society on course to remedy the invidious harms of the past.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court's disposition of the present appeal make clear that (1) neither Title III's definition of public accommodation nor this Court's nexus standard requires that the challenged discrimination have occurred on the Defendants/Appellees' premises; and that (2) a viable violation of Title III of the ADA is not a prerequisite for a claim under either Section 504 or the Unruh Act.

Respectfully Submitted,

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

By: _____

Michelle Uzeta
Attorney for Amici Curiae

Dated: July 11, 2024

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, *Amici* are not aware of any related cases pending in this Court.

CERTIFICATE OF COMPLIANCE PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE RULE 32(g)(1)

I certify that the foregoing brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6). The brief contains 6990 words, excluding the items exempted by Fed. R. App. P. 32(f), as counted using Microsoft Word for Mac, Version 16.57, and uses a proportionally spaced typeface and 14-point font. This brief is accompanied by Form 8, in compliance with Circuit Rule 32-1(e).

Respectfully Submitted,

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

By: s/ Michelle Uzeta
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Attorney for Amici Curiae

Dated: July 11, 2024

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2024, I electronically filed the foregoing [TENDERED] BRIEF OF AMICI CURIAE DISABILITY RIGHTS EDUCATION AND DEFENSE FUND AND ELEVEN OTHER ORGANIZATIONS IN SUPPORT OF NEITHER PARTY URGING REVERSAL AND REMAND TO CONFORM TO CIRCUIT PRECEDENT with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all the participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

Respectfully Submitted,

DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

By: s/ Michelle Uzeta
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Dated: July 11, 2024