

No. 24-304

IN THE
Supreme Court of the United States

LABORATORY CORPORATION OF AMERICA HOLDINGS,
D/B/A LABCORP,
Petitioner,

v.

LUKE DAVIS, JULIAN VARGAS, AND AMERICAN
COUNCIL OF THE BLIND, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

**JOINT APPENDIX (VOLUME I OF II)
(Pages 1-401)**

Benjamin J. Sweet

Counsel of Record

NYE, STIRLING, HALE,

MILLER & SWEET LLP

101 Pennsylvania Blvd., # 2

Pittsburgh, PA 15228

(412) 857-5350

ben@nshmlaw.com

Noel J. Francisco

Counsel of Record

JONES DAY

51 Louisiana Ave., NW

Washington, DC 20001

(202) 879-3939

njfrancisco@jonesday.com

Counsel for Respondents

Counsel for Petitioner

**PETITION FOR CERTIORARI FILED SEPTEMBER 13, 2024
CERTIORARI GRANTED JANUARY 24, 2025**

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**United States Court of Appeals for the Ninth
Circuit
Court of Appeals Docket #: 22-55873**

LUKE DAVIS, JULIAN VARGAS,)
AMERICAN COUNCIL OF THE)
BLIND, individually and on behalf of)
all others similarly situated,)
<i>Plaintiff – Appellee,</i>)
v.)
LABORATORY CORPORATION OF)
AMERICA HOLDINGS, DBA (doing)
business as) Labcorp,)
<i>Defendant – Appellant.</i>)

Date Filed	#	Docket Text
09/22/2022	1	<p>Filed order (DANIEL A. BRESS and LAWRENCE VANDYKE, Circuit Judges) in case no. 22-80053 on September 22, 2022: Petitioner’s motion for leave to file a reply in support of the petition for permission to appeal (Docket Entry No. 6) is granted. Petitioner’s reply has been filed. The court, in its discretion, grants the petition for permission to appeal the district court’s order granting class action certification. See Fed. R. Civ. P. 23(f); Chamberlan v. Ford Motor Co., 402 F.3d 952 (9th Cir. 2005). Within 14 days after the date of this order,</p>

petitioner shall perfect the appeal in accordance with Federal Rule of Appellate Procedure 5(d). [12547947] (RT) [Entered: 09/23/2022 01:19 PM]
* * *

02/08/2024 55 FILED MEMORANDUM DISPOSITION (WILLIAM A. FLETCHER, SALVADOR MENDOZA, JR. and KAREN E. SCHREIER) AFFIRMED. FILED AND ENTERED JUDGMENT. [12857504] (AH) [Entered: 02/08/2024 09:09 AM]
* * *

04/18/2024 63 Filed order (WILLIAM A. FLETCHER, SALVADOR MENDOZA, JR. and KAREN E. SCHREIER) Judge Mendoza has voted to deny the petition for rehearing en banc, and Judge Fletcher and Judge Schreier have recommended denying the petition for rehearing en banc. The full court was advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc, Dkt. No. [62], is DENIED. [12878241] (OC) [Entered: 04/18/2024 10:41 AM]
* * *

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 (WESTERN DIVISION - LOS ANGELES)
 CIVIL DOCKET FOR CASE #:
 2:20-cv-00893-FMO-KS**

Luke Davis, *individually and on behalf of all others
 similarly situated*;

Julian Vargas, *individually and on behalf of all
 others similarly situated*;

American Council of the Blind,

Plaintiffs,

v.

Laboratory Corporation of America Holdings,

Defendant.

Date Filed	#	Docket Text
		* * *
09/03/2020	40	FIRST AMENDED COMPLAINT against Defendant Laboratory Corporation of America Holdings amending Complaint (Attorney Civil Case Opening), 1 , filed by Plaintiffs Luke Davis, Julian Vargas, American Council of the Blind (Attorney Jonathan D Miller added to party American Council of the Blind (pty:pla)) (Miller, Jonathan) (Entered: 09/03/2020)
		* * *

Date Filed	#	Docket Text
		* * *
05/23/2022	97	ORDER RE: MOTION TO CERTIFY CLASS 66 by Judge Fernando M. Olguin: The Motion is granted. *See Order for Details* (gga) (Entered: 05/23/2022)
		* * *
06/13/2022	103	AMENDED ORDER RE: MOTION FOR CLASS CERTIFICATION by Judge Fernando M. Olguin, *See Order for Details* (gga). (Entered: 06/14/2022)
		* * *
08/04/2022	114	ORDER RE: MOTION TO REFINE CLASS DEFINITIONS 107 by Judge Fernando M. Olguin. *See Order for Details* (gga) (Entered: 08/04/2022)
		* * *

Jonathan D. Miller (Bar No.
220848)
jonathan@nshmlaw.com
Alison M. Bernal (Bar No. 264629)
alison@nshmlaw.com
NYE, STIRLING, HALE &
MILLER, LLP
33 West Mission Street, Suite 201
Santa Barbara, California 93101
Telephone: (805) 963-2345
Facsimile: (805) 563-5385

Additional counsel listed below.

Attorneys for Plaintiffs, Luke
Davis, Julian Vargas, American
Council of the Blind, and the
Proposed Class

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

LUKE DAVIS,
JULIAN VARGAS,
and AMERICAN
COUNCIL OF THE
BLIND, individually
and on behalf of all
others similarly
situated,

Plaintiffs,

CASE NO.: 2:20-cv-00893-
FMO-KS

**FIRST AMENDED
CLASS ACTION
COMPLAINT**

1. Violation of Title III of
the Americans with
Disabilities Act of 1990

v. (42 U.S.C. §§ 12101 *et seq.*)
LABORATORY
CORPORATION OF 2. Violation of California’s
AMERICA Unruh Civil Rights Act
HOLDINGS, (Cal. Civil Code § 51 *et seq.*)
Defendant. 3. Violation of California’s
Disabled Persons Act (Cal.
Civil Code § 54, *et seq.*)
4. Violation of Section 504
of the Rehabilitation Act
(“Section 504”), 29 U.S.C.
§ 794(a)
5. Violation of Section
1557 of the Patient
Protection and Affordable
Care Act (“Section 1557”),
42 U.S.C. § 8116.
TRIAL DATE: None
set

Plaintiffs Luke Davis and Julian Vargas (hereinafter individual “Plaintiffs”), individually and on behalf of all others similarly situated, and Plaintiff American Council of the Blind (hereinafter “ACB,” and together with the “Individual Plaintiffs,” the “Plaintiffs”), by their attorneys, allege the following upon information and belief, except for those allegations pertaining to Plaintiffs, which are based on their personal knowledge:

NATURE OF THE ACTION

1. Plaintiffs Luke Davis and Julian Vargas are visually impaired individuals who rely upon auxiliary aids and services such as screen reading software, accessible electronic and information technologies, and other effective methods of making visually delivered materials available to persons who are blind or have low vision. Plaintiff ACB is a nationwide membership organization of blind and visually impaired persons. ACB's mission is to increase the independence, security, equality of opportunity, and quality of life for all blind and visually impaired people.

2. Defendant Laboratory Corporation of America Holdings, (collectively "Defendant" or "LabCorp") discriminated against Plaintiffs by refusing and failing to provide auxiliary aids and services to Plaintiffs, and by requiring Plaintiffs to rely upon other means of communication that are inadequate to provide equal opportunity to participate in and benefit from Defendant's health care services free from discrimination.

3. The Individual Plaintiffs bring this action individually and on behalf of all others similarly situated to compel Defendant to cease unlawful discriminatory practices and implement policies and procedures that will ensure Plaintiffs effective communication, full and equal enjoyment, and a meaningful opportunity to participate in and benefit from Defendant's services. Plaintiffs seek declaratory, injunctive, and equitable relief and attorneys' fees and costs to redress Defendant's unlawful discrimination on the basis of disability in violation of Title III of the

Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the “ADA”), and its implementing regulations. Additionally, Plaintiff Vargas brings this action individually and on behalf of all other similarly situated California residents and seeks declaratory, injunctive, and equitable relief and attorneys’ fees and costs to redress Defendant’s unlawful discrimination on the basis of disability in violation of California’s Unruh Civil Rights Act, California Civil Code § 51 *et seq.* (“Unruh Act”), Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) (“The Rehabilitation Act”), and Section 1557 of the Patient Protection and Affordable Care Act (“Affordable Care Act”), and for statutory damages, in accordance with California Civil Code § 52(a).

4. The Individual Plaintiffs have visited Defendant’s facilities and were denied full and equal access as a result of Defendant’s inaccessible touchscreen kiosks for self-service check-in. Similar denials of full and equal access to Defendants’ services have been faced around the country by members of Plaintiff ACB. Defendant requires all patients use the inaccessible e-check-in touchscreen kiosk to announce their arrival, sign in, and/or register for their appointments.

5. Defendant’s touchscreen kiosks for self-service check-in do not contain the necessary technology that would enable a person with a visual impairment to a) enter any personal information necessary to process a transaction in a manner that ensures the same degree of personal privacy afforded to those without visual impairments; or b) use the device independently and without the assistance of others in the same manner afforded to those without visual impairments.

Plaintiffs were informed by staff of Defendant that the kiosks are not accessible to the blind. As a result, the Individual Plaintiffs, members of Plaintiff ACB, and all other visually impaired individuals are forced to seek the assistance of a sighted person, and thereafter divulge their personal medical information to that sighted person in a nonconfidential setting in order to register.

6. By failing to make its touchscreen kiosks accessible to visually impaired persons, Defendant, a public accommodation subject to Title III of the ADA and the Unruh Act, deprives blind and visually-impaired individuals of the full benefits of Defendant's health care services—all benefits it affords nondisabled individuals—thereby increasing the sense of isolation and stigma among these Americans that Title III of the ADA, the Rehabilitation Act, the Affordable Care Act, and the Unruh Act were meant to redress.

7. Defendant has demonstrated through its interactions with the Individual Plaintiffs and members of ACB that it has adopted a policy and/or pattern and practice of refusing to provide an accessible check-in system for its visually impaired patients, and that this decision, on information and belief, is based purely on financial considerations. Defendant launched the touchscreen kiosks as part of Defendant's Launchpad initiative. The initiative "is focused on eliminating manual processes, digitizing the business, using technology to improve quality, operations and service, and enhancing the consumer experience, which are designed to unlock new avenues for growth and contribute to improvement in long-term margins. This initiative is expected to generate

pre-tax net savings of approximately \$200 million over the three-year period ending in 2021, with pre-tax, one-time charges expected to be approximately \$40 million.”¹

8. Defendant has further demonstrated through its interactions with the individual Plaintiffs and members of ACB that Defendant’s employees are not properly trained regarding the civil rights, communication needs, or how to interact with visually impaired individuals.

9. Defendant’s discrimination sends a message that it is acceptable for medical providers to adopt policies, procedures and practices that deprive blind and visually impaired individuals of the opportunity to be full partners in their receipt of health care services.

10. The ADA, Affordable Care Act (“ACA”), and the Unruh Act expressly contemplate injunctive relief aimed at modification of a policy or practice that Plaintiffs seek in this action. In relevant part, the ADA states:

Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods...

42 U.S.C. § 12188(a)(2); Cal. Civ. Code, § 52(c)(1).
See also, 45 C.F.R. § 92.105.

¹ See, <https://ir.labcorp.com/news-releases/news-release-details/labcorp-announces-2018-fourth-quarter-and-full-year-results-and> (last accessed January 22, 2020).

11. Consistent with 42 U.S.C. § 12188(a)(2), 42 U.S.C. § 128182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a), 29 U.S.C. § 794, 45 U.S.C. § 92.5(a) (applying Section 504 remedies to Section 1557 claims), and the Unruh Act, Plaintiffs seek a permanent injunction requiring that:

- a. Defendant take all steps necessary to bring its touchscreen kiosks into full compliance with the requirements set forth in the ADA, and its implementing regulations, so that blind and visually impaired patients of LabCorp may check in independently, including ensuring the arrival of a blind or visually impaired patient is promptly recognized by LabCorp, and that LabCorp's touchscreen kiosks are fully accessible to, and independently usable by, individuals with visual disabilities, through the implementation of necessary technology that would enable persons with a visual impairment to enter any personal information necessary to process a transaction in a manner that ensures the same degree of personal privacy afforded to those without visual impairments and use the device independently and without the assistance of others in the same manner afforded to those without visual impairments;
- b. Defendant modify its existing policies, practices, and procedures so these barriers to accessibility do not reoccur; and
- c. Plaintiffs' representatives shall monitor Defendant's facilities to ensure that the injunctive relief ordered pursuant to Paragraph 11.a. and 11.b. has been implemented and will remain in place.

12. Plaintiffs' claims for permanent injunctive relief are asserted as a nationwide class claim pursuant to Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) was specifically intended to be utilized in civil rights cases where the Plaintiffs seek injunctive relief for his or her own benefit and the benefit of a class of similarly situated individuals. To that end, the note to the 1996 amendment to Rule 23 states:

Subdivision(b)(2). This subdivision is intended to reach situations where a party has taken action or refused to take action with respect to a class, and final relief of an injunctive nature or a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, is appropriate ... Illustrative are various actions in the civil rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration.

13. In addition, Plaintiff Vargas' claims for statutory damages pursuant to California Civil Code section 52(a) are asserted as a California statewide class claim pursuant to Fed. R. Civ. P. 23(b)(3).

PARTIES

14. Plaintiff Luke Davis is a resident of Philadelphia, Pennsylvania. Mr. Davis is an independent, visually impaired person. Mr. Davis has a medical condition, the diagnosis and monitoring of which requires periodic blood tests. He has visited Lab Corp for some of these tests, and for other routine medical blood tests, on multiple occasions in the last few years.

15. Plaintiff Julian Vargas is a resident of Los Angeles, California. As described above, Mr. Vargas is a visually impaired person. Mr. Vargas was born with a genetic eye disorder referred to as Leber Congenital Amaurosis (“LCA”), and as a result is blind. Like Mr. Davis, Mr. Vargas is very independent and owns his own business teaching individuals with disabilities how to use mobile assistive technology.

16. Plaintiff American Council of the Blind was founded in 1961, and is a national membership organization of approximately 20,000 blind and visually impaired persons, organized as a non-profit corporation under the laws of the District of Columbia. ACB has members in all 50 states and the District of Columbia, and seeks to increase the independence, security, equality of opportunity, and quality of life for all blind and visually impaired people. ACB brings this action in an associational capacity on behalf of its blind and visually impaired members who have been and will continue to be denied the full and equal enjoyment of Defendants’ goods and services. ACB exists to ensure that governments, businesses, employers, and other individuals comply with the laws that protect the rights of people who are blind or visually impaired to participate fully in all aspects of American society. ACB’s members around the nation are current and/or potential customers of Defendants and seek access to Defendants’ goods and services on a private and equal basis. However, ACB members have encountered persistent barriers to accessibility during the registration process at Defendants’ clinics.

17. The Individual Plaintiffs and members of ACB are therefore members of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations

implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*, the Affordable Care Act, the Rehabilitation Act, the Disabled Persons Act, and the Unruh Act, Cal. Civ. Code, § 51 *et seq.*

18. Defendant Laboratory Corporation of America Holdings is, and at all times relevant hereto was, a Delaware Corporation, with its headquarters in Burlington, North Carolina. Defendant owns and operates laboratories, patient service centers, offices, and other facilities throughout the United States. Defendant is “a leading global life sciences company that is deeply integrated in guiding patient care through its comprehensive clinical laboratory and end-to-end drug development services.” See, “About Us” at www.labcorp.com/about-us (last accessed January 22, 2020).

19. The LabCorp location which Plaintiff Julian Vargas visited is located at 15211 Vanowen Street, Unit 319, Van Nuys, California 91405. The LabCorp location which Plaintiff Luke Davis visited is located at 9331 Old Bustleton Avenue, Philadelphia, Pennsylvania 19115. Members of ACB have visited LabCorp locations around the country and encountered similar barriers to accessibility as those encountered by the individual Plaintiffs.

20. Defendant’s facilities are places of public accommodation as defined in 42 U.S.C. §12181(7)(G) and Defendant is, on information and belief, a recipient of federal financial assistance. Thus, it is subject to the requirements of the ADA, the Rehabilitation Act, the Affordable Care Act, and the Unruh Act.

FACTUAL BACKGROUND**The Individual Plaintiffs and Members of ACB
Have Been Denied Full and
Equal Access to Defendants' Facilities**

21. Plaintiff Davis has visited LabCorp patient service centers on multiple occasions. Mr. Davis has faced the following access barriers when trying to make appointments and/or check-in at LabCorp:

- a. October 11, 2016: Mr. Davis attempted to make an appointment via the LabCorp website using the Safari web browser on iOS. Many parts of the LabCorp website were completely inaccessible and required sighted assistance.
- b. December 23, 2017: Mr. Davis had the same experience trying to make an appointment that he had in October 2016. When he arrived at the appointment, the kiosk was completely inaccessible. Fortunately, Mr. Davis was accompanied by a family member who used the kiosk at the location to sign him in. The kiosk check-in process required several pieces of private personal information. Because the kiosk was inaccessible, Mr. Davis had to speak this private medical information out loud to his family member in a small public waiting room, within earshot of other customers.
- c. March 28, 2018: Mr. Davis had a walk-in visit where he again faced the same issue with the inaccessible kiosk. Again, he fortunately had a family member with him to check him in using the kiosk.
- d. October 5, 2018: Mr. Davis requested a family member make an appointment for him using

Safari on iOS, because of Mr. Davis' difficulty accessing the website. When he arrived for his appointment, the LabCorp staff at the location stated they could not help him check in – Mr. Davis had to use the kiosk. Mr. Davis did not have a family member with him. Another patient's aid worker – who Mr. Davis did not know – but who simply happened to be in the waiting room, checked Mr. Davis in using the kiosk. As a result, Mr. Davis had to orally state private information, including his home address and/or phone number, out loud in a public waiting room to a stranger who had kindly offered to help him check in.

- e. Approximately October 4, 2019: Mr. Davis used the LabCorp iOS app to make an appointment. He found the process of choosing a location to be only partially functional (the option to use location services to choose a location close to him either would not work accessibly, or would not work at all), and the entire process was cumbersome and inaccessible. For instance, Mr. Davis found that navigation through the screens was made more difficult by inconsistencies between drag navigation and swipe navigation, with different elements, and element positions, being reported by each method, and neither giving a full understanding of some screens. Mr. Davis further found that the “Toggle navigation” menu button at the app's top left, which was intended to expose various functions, could not be reliably activated with Voiceover. Mr. Davis further found various screen elements that were labeled strangely, or that had no effect, or not the

effect expected. Examples include the “background” link, the “layer 1” link, and other elements. There are selectable tabs on the screen, with no apparent way to know which is selected. After Mr. Davis made an appointment, he had to answer questions such as “Will you be fasting?”, which include “yes” and “no” buttons. These buttons had no accessible indication of which button is selected by default or selected when the user activates one. Under “Financial details”, there is no accessible indication of which coverage option is selected. The options are listed as headings, which are not generally selectable options in an HTML or app context. After trying for several hours to make an appointment using the app, Mr. Davis gave up. The following day he tried again and was successfully able to make an appointment with sighted help. Because of the known inaccessibility of the kiosk, Mr. Davis used the mobile check-in option.

- f. October 29, 2019: Mr. Davis attempted to use the website in Windows to make an appointment. He was only able to get through part of the process before an accessibility problem prevented completion. He attempted to file a website feedback form explaining the problem, which the website invited him to do. However, there were required options on the feedback form which were inaccessible to his screen reader, which therefore prevented him from submitting the feedback form. Mr. Davis ended up using the iOS app again. It was a frustrating experience, as before. Because of the known inaccessibility of the kiosk, Mr. Davis used the mobile check-in option.

g. November 22, 2019: Mr. Davis made an appointment using the iOS app, which was smoother now that he had learned how to work around some of the difficult accessibility areas and knew to just keep trying until it worked. He signed in by mobile check-in due to the inaccessibility of the kiosk.

22. Plaintiff Vargas visited a LabCorp facility on Friday, January 10, 2020. When he arrived, he attempted to sign in using the kiosk so that he would not lose his spot in line. He was unable to check-in at the kiosk. He then asked for, and waited for, a staff member to check in. The staff member finally arrived and expressly told him that the kiosk was not accessible to blind individuals. Mr. Vargas visited the LabCorp patient service center located at 15211 Vanowen Street, Unit 319, Van Nuys, CA 91405.

23. Members of ACB have had similar experiences to the Individual Plaintiffs. Members ranging from Missouri, North Carolina, Colorado, Florida, Texas, and the District of Columbia have reported to ACB that they have visited LabCorp and been unable to sign in independently, and required the assistance of someone other than a staff member to check in for their appointments.²⁶ As a result of Defendant's failure to ensure effective communications with the Individual Plaintiffs and members of ACB, and denial of auxiliary aid and services, the Individual Plaintiffs and members of ACB received services that were objectively substandard, inaccessible, and inferior to those provided to sighted patients, and were subjected to discriminatory treatment because of their disability.

24. Despite this difficulty, frustration, and unequal treatment, the individual Plaintiffs and members of ACB will seek Defendant's health care services in the future, whether by choice or necessity, due to the proximity of Defendant's facilities to their homes, and their insurance coverage, and anticipate being required to do so in order to have additional testing completed, but are deterred from doing so due to the discrimination they have faced and expect to face in the future. Furthermore, the individual Plaintiffs and members of ACB intend to return to Defendant's facilities to ascertain whether those facilities remain in violation of accessibility standards.

//

Defendant Repeatedly Denies Individuals With Disabilities Full and Equal Access to Defendants' Facilities.

25. As the owner and manager of its patient service centers, website, and mobile applications, Defendant employs centralized policies, practices, and procedures with regard to its company-wide policy of electronic check-in at its patient service centers.

26. Though Defendant may have centralized policies regarding the maintenance and operation of its touchscreen kiosks, websites, and mobile applications, Defendant has never had a plan or policy that is reasonably calculated to make its touchscreen kiosks and check-in options fully accessible to, and independently usable by, individuals with vision related disabilities.

27. As a result of Defendant's non-compliance with the ADA, Section 1557, Section 504, and Unruh Act, the Individual Plaintiffs and members of ACB have

been denied the benefit of full and equal enjoyment of Defendant's goods, services, facilities, privileges, advantages, or accommodations, have been denied participation in and have been treated unequally by the Defendant, and Defendant has failed to provide effective and accessible auxiliary aids or services that protect the Individual Plaintiffs' and members of ACB's privacy and independence.

28. If Defendant's touchscreen kiosks and web-based check-in options were accessible, i.e. if Defendant removed and remediated the access barriers described above, the Individual Plaintiffs and members of ACB could independently and privately utilize Defendant's products and services.

29. Unfortunately, Defendant denies approximately 8.1 million² Americans who have difficulty seeing access to its goods, products, and services because the touchscreen kiosks and web-based check-in options are not readily accessible and usable by persons with visual impairments.

JURISDICTION AND VENUE

30. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 12188.

² Press Release, United States Census Bureau, Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports Report Released to Coincide with 22nd Anniversary of the ADA (Jul. 25, 2012), available at <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html> (last accessed April 25, 2019) ("About 8.1 million people had difficulty seeing, including 2.0 million who were blind or unable to see.").

This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

31. Plaintiffs' claims asserted herein arose in this judicial district, and Defendant does substantial business in this judicial district. Specifically, Defendant is registered to do business in California and has hundreds of locations throughout the state, including in this judicial district.

32. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2). Defendant is subject to personal jurisdiction in this District because Defendant does substantial business in this District, and a substantial part of the events or omissions giving rise to these claims occurred in this District. Defendant engaged in the extensive promotion, marketing, distribution, and sales of the services at issue in this District. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure.

CLASS ASSERTIONS

33. Plaintiffs Luke Davis and Julian Vargas ("the Individual Plaintiffs") bring this matter on behalf of themselves and those similarly situated.

34. The Individual Plaintiffs seek certification of the following Nationwide Class: "all legally blind individuals who visited a LabCorp patient service center in the United States and were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp's failure to comply with the ADA's and Rehabilitation Act's auxiliary aids and services requirements during the Class Period." (The "Nationwide Injunctive Class"). The Individual Plaintiffs reserve the right to amend or modify the

Class definition in connection with a motion for Class certification and/or the result of discovery.

35. Plaintiff Vargas also seeks certification of the following California sub-class: “all legally blind individuals who visited a LabCorp patient service center in California and were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp’s use of touchscreen check-in kiosks.” Plaintiff Vargas reserves the right to amend or modify the sub-Class definition in connection with a motion for Class certification and/or the result of discovery.

36. The California sub-class seeks class wide damages pursuant to California Civil Code § 52(a) in the amount of \$4,000 per violation and, pursuant to California Civil Code § 54.3 in the amount of \$1,000 per violation, based on Defendant’s wrongful policy and practice of failing to provide full and equal access to visually impaired Californians as alleged herein. This action does not seek class recovery for actual damages, personal injuries or emotional distress that may have been caused by Defendant’s conduct alleged herein.

37. This action should be certified as a class action under Federal Rule of Civil Procedure 23(a) and (b)(2) for the Nationwide Injunctive Class. It satisfies the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

A. *Numerosity*: Class Members are so numerous that joinder of all members is impracticable. Plaintiffs believe that there are tens of thousands of visually impaired individuals who are Class Members who have been harmed and suffered

discrimination due to Defendant's failure to comply with the ADA's auxiliary aids and services requirements.

- B. *Commonality*: There is a well-defined community of interest and common questions of fact and law affecting members of the class in that they all have been and/or are denied their civil rights to full and equal access to, and use and enjoyment of Defendant's facilities and/or services due to Defendant's failure to make its facilities fully accessible and independently usable as described above.
- C. *Typicality*: The Individual Plaintiffs' claims are typical of the claims of the members of the proposed Nationwide Injunctive Class. The claims of Plaintiffs and members of the class are based on the same legal theories and arise from the same unlawful conduct.
- D. *Adequacy*: The Individual Plaintiffs are all adequate Class representatives. None of their interests conflict with the interests of the Class Members they seek to represent; Plaintiffs will fairly, adequately, and vigorously represent and protect the interests of the members of the class, all of whom are similarly situated individuals with visual impairments, and they have a strong interest in vindicating their own and others civil rights; and, they have retained counsel competent and experienced in complex class action litigation, generally, and who possess specific expertise in the context of class litigation under the ADA and Unruh Act.

38. Class certification of the Nationwide Injunctive Class is appropriate under Fed. R. Civ. P. 23(b)(2) because Defendant has acted on or refused to act on grounds generally applicable to the Class, making appropriate declaratory, injunctive, and equitable relief with respect to the Individual Plaintiffs and the Class as a whole.

39. This action should be further certified as a class action under Federal Rule of Civil Procedure 23(a) and (b)(3) for the California Unruh Damages Sub-Class. Plaintiff Vargas asserts the subclass, limited to class members who are, or during the relevant time were, residents of California, satisfies the class action prerequisites of numerosity, commonality, typicality, and adequacy for the same reasons set forth in preceding paragraph. In addition:

A. *Predominance*: Pursuant to Rule 23(b)(3), the common issues of law and fact identified above predominate over any other questions affecting only individual members of the California Unruh Damages Sub-Class. The Class issues fully predominate over any individual issue because no inquiry into individual conduct is necessary; all that is required is a narrow focus on Defendant's encounters with visually impaired California residents in its facilities.

B. *Superiority*: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

- i. The joinder of thousands of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

- ii. The individual claims of the Class Members are relatively modest compared with the expense of litigating the claims, thereby making it impracticable, unduly burdensome, and expensive—if not totally impossible—to justify individual actions;
- iii. When Defendant’s liability has been adjudicated, all Class Members’ claims can be determined by the Court and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- iv. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of Class claims;
- v. Plaintiffs know of no difficulties to be encountered in the management of this action that would preclude its maintenance as a class action;
- vi. A class action will assure uniformity of decisions among Class Members;
- vii. The Class is readily identifiable from Defendant’s own records and prosecution of this action as a class action will eliminate the possibility of repetitious litigation; and,
- viii. Class Members’ interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by single class action.

40. Accordingly, this case should be maintained as a class action under Rule 23(b)(3) because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

FIRST CAUSE OF ACTION
VIOLATION OF THE ADA, TITLE III
[42 U.S.C. §§ 12101 *et seq.*]
(All Plaintiffs Against all Defendants)

41. Plaintiffs restate each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if more fully set forth herein.

42. At all times relevant to this action, Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12181, *et seq.* was in full force and effect and applied to Defendant's conduct.

43. At all times relevant to this action, the United States Department of Justice regulations implementing Title III of the ADA, 28 C.F.R. Part 36, were in full force and effect and applied to the Defendant's conduct.

44. At all times relevant to this action, the Individual Plaintiffs and members of ACB have been substantially limited in the major life activities of seeing. Accordingly, they are considered individuals with a disability as defined under the ADA, 42 U.S.C. § 12102(2).

45. Defendant operates patient service centers that are places of public accommodation as defined under

Title III of the ADA, 42 U.S.C. § 12181(7)(F). Defendant further operates web-based check-in processes for its patient service centers, which websites and mobile applications are also considered places of public accommodation as defined under Title III of the ADA, 42 U.S.C. §12181(7).

46. Title III of the ADA prohibits discrimination on the basis of disability “in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodations.” 42 U.S.C. § 12182(a).

47. Pursuant to Title III of the ADA and its implementing regulations, a public accommodation cannot deny participation or offer unequal or separate benefits to individuals with disabilities. 42 U.S.C. § 12182(b)(1)(A); 28 C.F.R. §§ 36.202.

48. Pursuant to Title III of the ADA and its implementing regulations it “shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.” 42 U.S.C. § 12182(b)(1)(E)

49. Pursuant to Title III of the ADA and its implementing regulations, a public accommodation shall furnish appropriate auxiliary aids and services to ensure effective communication with individual with disabilities. 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. § 36.303(b)(1).

50. Pursuant to Title III of the ADA and its implementing regulations, a public accommodation, in choosing the type of auxiliary aid or service to ensure

effective communication, must consider the “method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.” 28 C.F.R. § 36.303(c)(1)(ii).

51. Pursuant to Title III of the ADA and its implementing regulations, in order to be effective, the type of auxiliary aid or service provided by the public accommodations “must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.” 28 C.F.R. § 36.303(c)(1)(ii). To this end, the Ninth Circuit has explained, “assistive technology is not frozen in time: as technology advances, [] accommodations should advance as well.” *Enyart v. Nat’l Conference of Bar Examiners, Inc.*, 630 F.3d 1153, 1163 (9th Cir. 2011).

52. Auxiliary aids and services include, but are not limited to, audio recordings, screen reader software, magnification software, optical readers, secondary auditory programs, large print materials, accessible electronic and information technology, other effective methods of making visually delivered materials available to individuals who are blind or have low vision, and other similar services and actions. 28 C.F.R. §§ 36.303(b)(2), (4).

53. Defendant discriminated against the Individual Plaintiffs and members of ACB on the basis of their disability by denying access to full and equal enjoyment of the goods, services, facilities, privileges, advantages, and/or accommodations of its place of public accommodation, and equal opportunity to

participate in and benefit from Defendant's health care services, in violation of the ADA.

54. Defendant further discriminated against the Individual Plaintiffs and members of ACB by failing to ensure effective communication through the specific provision of accessible and effective auxiliary aids and services.

55. Defendant has violated Title III by, without limitation, failing to take the steps necessary to make their touchscreen kiosks readily accessible and usable by persons with visual impairments, including failing to make any of the web-based check in options accessible to patients with visual disabilities, thereby denying individuals with visual disabilities the benefits of the touchscreen kiosks and electronic check-in, providing them with benefits that are not equal to those it provides others, and denying them effective communication.

56. Defendant has further violated Title III by, without limitation, utilizing administrative methods, practices, and policies that allow its touchscreen kiosks and web-based check in processes to be made available without consideration of consumers who can only participate in and benefit from Defendant's health care services with screen reader programs.

57. Making their check-in system accessible and usable by persons with visual impairments, including making their touchscreen kiosks and web-based check in processes readily accessible and usable by persons with visual impairments does not change the content of Defendant's electronic check-in procedure or result in making the electronic check-in procedure different, but rather enables individuals with visual disabilities

to independently check-in, including independently accessing touchscreen kiosks and web-based check-in processes that Defendant already provides.

58. As set out above, absent injunctive relief there is a clear risk that Defendant's actions will recur with Plaintiffs and/or additional visually impaired persons.

59. Plaintiffs are therefore entitled to injunctive relief, as well as an award of attorneys' fees, costs, and disbursements pursuant to the ADA, 42 U.S.C. § 12188(a)(1) and/or common law.

SECOND CAUSE OF ACTION
VIOLATION OF THE UNRUH CIVIL RIGHTS
ACT

[Cal. Civil Code § 51 *et seq.*]

(Plaintiff Vargas Against all Defendants)

60. Plaintiff Vargas restates each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if more fully set forth herein.

61. The Unruh Civil Rights Act, California Civil Code section 51 provides that:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation 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(b).

62. Defendant is a business establishment within the meaning of the Unruh Act. Defendant is the owner and operator of business establishments.

63. Defendant violated the Unruh Act by their acts and omissions, as set forth herein. Specifically, LabCorp's system for offering to the public touchscreen check-in kiosks at thousands of locations throughout California is a business establishment within the meaning of Civil Code § 51, *et seq.* LabCorp generates hundreds of millions of dollars in revenue from the appointments which patients check-in for through the use of e-Check-in touchscreen kiosks. LabCorp's kiosks are an accommodation, advantage, facility, privilege, and service provided by LabCorp, which is inaccessible to blind patrons. This inaccessibility denies blind patients full and equal access to the accommodations, advantages, facilities, privileges, and services that Defendant makes available to the non-disabled public, in violation of the Unruh Civil Rights Act, California Civil Code § 51, *et seq.* These violations are ongoing.

64. Defendant's actions constitute intentional discrimination against the class on the basis of a disability in violation of California Civil Code §§51, *et seq.* Defendant is aware of the complete lack of access of the touchscreen check-in kiosks to blind persons yet has deliberately chosen to provide a benefit and service that is inaccessible to the blind.

65. Defendant is additionally violating California Civil Code § 51, in that the conduct alleged herein constitutes a violation of various provisions of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, as set forth above. California Civil Code § 51(f)

provides that a violation of the right of any individual under the ADA shall also constitute a violation of the Unruh Civil Rights Act.

66. The actions of Defendant were and are in violation of the Unruh Civil Rights Act, California Civil Code §§ 51, *et seq.*, and therefore Plaintiff Vargas is entitled to injunctive relief remedying the discrimination. Unless the Court enjoins Defendant from continuing to engage in these unlawful practices, Plaintiffs and members of the class will continue to suffer irreparable harm.

67. Plaintiff Vargas and the California class are further entitled to statutory minimum damages pursuant to California Civil Code § 52 for every individual violation; i.e., each time a legally blind individual had to try to check-in using the inaccessible touchscreen kiosk.

THIRD CAUSE OF ACTION
**VIOLATION OF THE DISABLED PERSONS
ACT**

[Cal. Civil Code §§ 54-54.3.]

(Plaintiff Vargas Against all Defendants)

68. Plaintiffs restate each and every allegation set forth in the foregoing paragraphs of this Complaint with the same force and effect as if more fully set forth herein.

69. California Civil Code §§ 54-54.3 guarantee full and equal access for people with disabilities to all accommodations, advantages, facilities, and privileges of “all places of public accommodation” and “other places to which the general public is invited.” LabCorp’s thousands of patient service center

locations throughout California featuring the inaccessible e-Check-in touchscreen kiosks constitute “places of public accommodation” or “other places where the public is invited” within the meaning of California Civil Code §§ 54-54.3.

70. LabCorp’s patient services locations constitute accommodations, advantages, facilities, and privileges provided by Defendant to members of the public in California and are, therefore, subject to the access requirements of California Civil Code § 54.1 applicable to “all places of public accommodation” and “other places to which the general public is invited.”

71. Defendant is violating the right of blind and visually impaired persons to full and equal access to public places by denying full and equal access to LabCorp’s e-Check-in touchscreen kiosks in violation of California Civil Code §§ 54-54.3.

72. Defendant is also violating California Civil Code §§ 54-54.3, in that its actions are a violation of the ADA. Any violation of the ADA is also a violation of California Civil Code § 54.1.

73. As a result of Defendant’s wrongful conduct, Plaintiff Vargas and the California sub-class are entitled to statutory minimum damages under California Civil Code § 54.3 for each offense.

FOURTH CAUSE OF ACTION

**VIOLATION OF SECTION 504 OF THE
REHABILITATION ACT**

[29 U.S.C. § 794]

(All Plaintiffs Against all Defendants)

74. Plaintiffs incorporate the allegations in the preceding paragraphs, as if alleged herein.

75. The Individual Plaintiffs and ACB members are individuals with a disability protected by Section 504 of the Rehabilitation Act and qualified to receive health services from Defendant. See 29 U.S.C. § 794(a); 45 C.F.R. § 84.3(j).

76. Defendant is a recipient of federal financial assistance from The Centers for Medicare & Medicaid Services (“CMS”) and is therefore subject to Section 504 of the Rehabilitation Act and its implementing regulations. See 29 U.S.C. § 794; 45 C.F.R. § 84.3(h).

77. Section 504 of the Rehabilitation Act provides that no qualified individual with a disability shall be subjected to disability-based discrimination under any program or activity receiving federal financial assistance. 29 U.S.C. § 794(a).62. Discrimination includes failing to “[a]fford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,” or providing qualified handicapped persons with “an aid, benefit, or service that is not as effective as that provided to others.” 45 C.F.R. § 84.4(b)(1)(ii)-(iii); *see* 45 C.F.R. § 84.52(a)(2)-(3).

78. Section 504 requires health programs or activities that receive federal financial assistance and that have at least fifteen employees to provide auxiliary aids and services to individuals who are blind. 45 C.F.R. § 84.52(b), (d).

79. A recipient may not directly or through contractual, licensing, or other arrangements, discriminate on the basis of disability. 45 C.F.R. § 84.4(b)(1).

80. Defendant’s provision of health care constitutes a program or activity receiving federal financial

assistance and, as recipients, it is required to ensure that both Defendant and its contractors comply with Section 504 of the Rehabilitation Act.

81. Defendant has failed and is failing to meet its obligation to provide blind individuals an equal opportunity to use and benefit from their health care programs and activities. In failing to provide blind patients with an accessible check-in system, Defendant has refused to provide the auxiliary aids and services necessary to communicate with blind patients in an equally effective and timely manner that protects their privacy and independence.

82. As a result of Defendant's actions and omissions, the Individual Plaintiffs and ACB members have suffered and will continue to suffer irreparable harm: they have suffered and continue to suffer from discrimination and unequal access to Defendant's health care services. If there is no change in the status quo, the Individual Plaintiffs and other ACB members will be denied their right to access and engage fully in the provision of their health care.

83. Plaintiffs are entitled to injunctive relief, as well as reasonable attorneys' fees and costs. Further, each Individual Plaintiff and the class are entitled to compensatory damages.

FIFTH CAUSE OF ACTION
VIOLATION OF SECTION 1557 OF THE
PATIENT PROTECTION AND AFFORDABLE
CARE ACT

[42 U.S.C. § 18116]

(All Plaintiffs Against all Defendants)

84. Plaintiffs incorporate the allegations in the preceding paragraphs, as if alleged herein.

85. Since March 2010, there was in full force and effect a statute known as the Patient Protection and Affordable Care Act (the “Affordable Care Act”), 42 U.S.C. § 18001, *et seq.*, Pub.L. 111-148. Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. 42 U.S.C. § 18116. Section 1557’s implementing regulations, 45 C.F.R. §§ 92.1 – 92.203, effective as of July 18, 2016, and affirmed as of June 12, 2020, apply to health programs or activities administered by recipients of Federal financial assistance from the Department of Health and Human Services (the “Department”).

86. Defendant participates in one or more Medicare and Medicaid healthcare plans with third-party payers and is a participating provider under Medicare and Medicaid. As a result, thereof, Defendant is a covered entity under Section 1557.

87. The implementing regulations of Section 1557 prohibit discrimination of an individual on the basis of disability, *inter alia*, and prohibit an individual from being excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination

under any health program or activity. *See* 45 C.F.R. § 92.101(a)(1). Those regulations, in pertinent part, require covered entities to:

- A. Take appropriate initial and continuing steps to notify beneficiaries, enrollees, applicants and members of the public:
- (1) that the covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its healthcare programs or activities. 45 C.F.R. §92.8 (a)(1);
 - (2) that the covered entity provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities. 45 C.F.R. §92.8 (a)(2);
 - (3) how to obtain aids and services. 45 C.F.R. §92.8 (a)(4);
 - (4) the identification of, and contact information for, the responsible employee designated to be responsible for adoption of grievance procedures. 45 C.F.R. §92.8 (a)(5);
 - (5) the availability of grievance procedures and how to file a grievance pursuant to §92.7(b). 45 C.F.R. §92.8 (a)(6); and,
 - (6) how to file a discrimination complaint with the Department of Health and Human

Services Office of Civil Rights. 45 C.F.R. §92.8 (a)(7).

B. That a covered entity shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in health programs and activities, in accordance with the standards found at 28 C.F.R. §§ 35.160 through 35.164. 45 C.F.R. § 92.202(a).

28 C.F.R. §§ 35.160 through 35.164 are the communication access standards required of public entities under Title II of the ADA. Where those regulatory provisions use the term “public entity,” the term “covered entity” shall apply in its place. *See* 45 C.F.R. § 92.202(a). As applied to Section 1557 covered entities, the Title II regulations require them to “take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a)(1). In addition, a covered entity “shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, ... companions, ... an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity of a [covered] entity,” 28 C.F.R. § 35.160(b)(1); and “[i]n determining what types of auxiliary aids and services are necessary, a [covered] entity shall give *primary consideration* to the requests of individuals with disabilities ...” 28 C.F.R. § 35.160(b)(2) (emphasis added).

88. Defendant had a duty under Section 1557 to give primary consideration to Plaintiffs’

communication preference and provide them with appropriate screen reader software or other appropriate aids and auxiliary services that would allow the Individual Plaintiffs and members of ACB to effectively access the check-in service provided to those who are not blind.

89. Defendant's acts and omissions violated Section 1557 and its implementing regulations as Defendant did not take appropriate steps to ensure that communications with Plaintiff were as effective as communications with others in its healthcare services, and Defendant failed to meet its obligations under Section 1557 and the standards found at 28 C.F.R. §§ 35.160 through 35.164. 45 C.F.R. § 92.202(a).

90. Section 1557's implementing regulations provide that the enforcement mechanisms available for and provided under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, *inter alia*, shall be available for purposes of Section 1557 as implemented by this part, and "compensatory damages for violations of Section 1557 are available in appropriate administrative and judicial actions brought under this rule." *See* 45 C.F.R. § 92.301.

91. Defendant's conduct constituted violations of Section 1557.

92. Defendant's conduct constitutes ongoing and continued violations of Section 1557. Unless restrained from doing so, Defendant will continue to violate Section 1557. This conduct, unless enjoined, will inflict injuries on the Individual Plaintiffs and members of ACB for which they will have no adequate remedy at law.

93. Section 505(a)(2) of the Rehabilitation Act, 29 U.S.C. § 794(a)(2), states the “remedies, procedures and that the rights set forth in title VI of the Civil Rights Act of 1964 [being 42 U.S.C. § 2000(d) *et sequitur*] shall be available” for violations of section 504 of the Rehabilitation Act. By law, such remedies include compensatory monetary damages. *Barnes v. Gorman*, 536 U.S. 181 (2002).

94. As a direct and proximate result of the foregoing, the Individual Plaintiffs and members of ACB suffered the loss of a civil right and they suffered great mental anguish; and they will continue so to suffer for a long time in the future; and the Individual Plaintiffs and members of ACB were otherwise injured and damaged.

95. The Individual Plaintiffs and members of ACB are entitled to reasonable attorneys’ fees and costs, pursuant to section 505(b) of the Rehabilitation Act, 29 U.S.C. § 794a.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the members of the Class, pray for:

- a. A Declaratory Judgment that at the commencement of this action Defendant was in violation of the specific requirements of Title III of the ADA, the Rehabilitation Act, and Section 1557 of the ACA, and their relevant implementing regulations, in that Defendant took no action that was reasonably calculated to ensure that its touchscreen kiosks were fully accessible to, and independently usable by, individuals with visual disabilities;

b. A permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) 28 CFR § 36.504(a), 29 U.S.C. § 794, 45 U.S.C. § 92.5(a) (applying Section 504 remedies to Section 1557 claims), 42 U.S.C. § 128182(b)(2)(A)(ii), 28 C.F.R. § 36.302(a), and California Civil Code, § 51 et seq., which enjoins Defendant from continuing its discriminatory conduct and directs Defendant to take all steps necessary to bring its touchscreen kiosk check-in system into full compliance with the requirements set forth in the ADA, ACA, and the Rehabilitation Act, and their implementing regulations. The permanent injunction should require Defendant to make its touchscreen kiosk check-in system fully accessible to, and independently usable by individuals with visual disabilities. To accomplish this objective, Plaintiffs pray the permanent injunction require Defendant to fully implement the following practices and policies:

- (i.) Assess a visual disabled individual's disability to determine the appropriate auxiliary aids and services, and the timing, duration, and frequency with which they will be provided upon a visual disabled individual's arrival at Defendant's facilities. If the visual disabled individual does not request auxiliary aides or services, but Defendant has reason to believe the individual would benefit from auxiliary aids and services, Defendant shall inform the individual that auxiliary aids and services are available free of charge;

- (ii) Assess the need for auxiliary aids and services, and the timing, duration, and frequency with which they will be provided upon a visual disabled individual's arrival at Defendant's facilities;
- (iii) Provide auxiliary aids and services to visual disabled individuals to permit them to use the touchscreen kiosks independently;
- (iv) Develop and maintain a written policy explaining that Defendant will provide auxiliary aids and services, where such auxiliary aids and services are needed, to assist individuals with visual disabilities with independently accessing touchscreen kiosks at Defendant's facilities;
- (v) Provide training for all of Defendant's employees who may interact with individuals with visual disabilities at Defendant's facilities on how to provide auxiliary aids and services to these individuals.

Plaintiffs further pray that under this permanent injunction the Court retain jurisdiction for a period to be determined to ensure that Defendant has adopted and is following an institutional policy that will in fact cause it to remain fully in compliance with the law—the specific injunctive relief requested by Plaintiffs are described more fully in paragraph 11 above.

- c. An Order certifying the classes proposed by the Individual Plaintiffs, naming the Individual

- Plaintiffs as class representatives, and appointing their counsel as class counsel;
- d. On Behalf of the Individual Plaintiffs and the Proposed Class: Payment of statutory damages, in accordance with California Civil Code §§ 52(a) and 54.3 to the California sub-class;
 - e. On Behalf of the Individual Plaintiffs and the Proposed Class: Payment of compensatory damages to the Individual Plaintiffs and the class;
 - f. Payment of costs of suit;
 - g. Payment of reasonable attorneys' fees, pursuant to 42 U.S.C. § 12205, 28 CFR § 36.505, 29 U.S.C. § 794(a), 45 U.S.C. §92.5(a) (applying Section 504 remedies to Section 1557 claims), Cal. Civil Code §52, and Civ. Proc. Code § 1021.5, including costs of monitoring Defendant's compliance with the judgment (*see Gniewkowski v. Lettuce Entertain You Enterprises, Inc.*, Case No. 2:16-cv-01898-AJS (W.D. Pa. Jan. 11, 2018) (ECF 191) ("Plaintiffs, as the prevailing party, may file a fee petition before the Court surrenders jurisdiction. Pursuant to *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 559 (1986), *supplemented*, 483 U.S. 711 (1987), the fee petition may include costs to monitor Defendant's compliance with the permanent injunction."); *see also Access Now, Inc. v. Lax World, LLC*, No. 1:17-cv-10976-DJC (D. Mass. Apr. 17, 2018) (ECF 11) (same);
 - h. On Behalf of the Individual Plaintiffs and the Proposed Class: Award of prejudgment interest pursuant to California Civil Code §3291;

- i. An Order retaining jurisdiction over this case until Defendant has complied with the Court's Orders; and,
- j. The provision of whatever other relief the Court deems just, equitable and appropriate.

Dated: September 3, 2020 By: /s/ Jonathan D. Miller

Jonathan D. Miller (SBN
220848)

jonathan@nshmlaw.com

Alison M. Bernal (SBN
264629)

alison@nshmlaw.com

NYE, STIRLING, HALE &
MILLER, LLP

33 West Mission Street,
Suite 201

Santa Barbara, CA 93101

Telephone: (805) 963-2345

Facsimile: (805) 284-9590

Signatures continued below.

Benjamin J. Sweet

(Admitted *Pro Hac Vice*)

ben@nshmlaw.com

NYE, STIRLING, HALE &
MILLER, LLP

1145 Bower Hill Road, Suite
104

Pittsburgh, PA 15243

Telephone: (412) 857-5350

Matther K. Handley

(Pro Hac Vice Forthcoming)
mhandley@hfajustice.com
HANDLEY FARAH &
ANDERSON PLLC
777 6th St NW
Washington, DC 20001
Telephone: (202) 559-2411
Facsimile: (844) 300-1952
*Attorneys for Plaintiffs Luke
Davis, Julian Vargas, the
American Council of the
Blind, and the Class*

DEMAND FOR JURY TRIAL

Plaintiffs AMERICAN COUNCIL OF THE BLIND, LUKE DAVIS, and JULIAN VARGAS hereby demand a trial by jury of all claims so triable in the above-referenced matter.

Dated: September 3, 2020 By: /s/ Jonathan D. Miller

Jonathan D. Miller (SBN 220848)

jonathan@nshmlaw.com

Alison M. Bernal (SBN 264629)

alison@nshmlaw.com

NYE, STIRLING, HALE & MILLER, LLP

33 West Mission Street,
Suite 201

Santa Barbara, CA 93101

Telephone: (805) 963-2345

Facsimile: (805) 284-9590

Benjamin J. Sweet

(Admitted *Pro Hac Vice*)

ben@nshmlaw.com

NYE, STIRLING, HALE & MILLER, LLP

1145 Bower Hill Road, Suite
104

Pittsburgh, PA 15243

Telephone: (412) 857-5350

Matther K. Handley

(*Pro Hac Vice* Forthcoming)

mhandley@hfajustice.com

HANDLEY FARAH &
ANDERSON PLLC

777 6th St NW

Washington, DC 20001

Telephone: (202) 559-2411

Facsimile: (844) 300-1952

*Attorneys for Plaintiffs Luke
Davis, Julian Vargas, the
American Council of the
Blind, and the Class*

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

LUKE DAVIS and JULIAN VARGAS, individually on behalf of themselves and all others similarly situated,

CASE NO.: 2 : 20-cv-00893

Plaintiffs,

v.

LABORATORY CORPORATION OF AMERICA HOLDINGS; and DOES 1-10, inclusive,

Defendants.

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF JOSEPH SINNING, Laboratory Corporation of America Holdings 30(b)(6), Volume 1, taken on behalf of Plaintiffs, at Cape Girardeau, Missouri, beginning at 10:05 a.m. and ending at 3:55 p.m., on Tuesday, February 2, 2021, before LESLIE JOHNSON, Certified Shorthand Reporter No. 11451.

APPEARANCES:

For Plaintiffs Luke Davis, Julian Vargas, and the Proposed Class:

NYE, STIRLING, HALE & MILLER, LLP
BY: JONATHAN D. MILLER, ESQ.
BENJAMIN SWEET, ESQ.
CALLUM APPLEBY, ESQ.

33 West Mission Street, Suite 201
Santa Barbara, California 93101
(805) 963-2345
jonathan@nshmlaw.com
ben@nshmlaw.com
callum@nshmlaw.com

For Plaintiff Luke Davis, Julian Vargas, and American Council of the Blind:

HANDLEY FARAH AND ANDERSON PLLC
BY: MATTHEW K. HANDLEY, ESQ.
777 6th Street NW, 11th Floor
Washington, DC 20001
(202) 559-2411
mhandley@hfajustice.com

For Defendant:

KELLY DRYE & WAREEN LLP
BY: ROBERT I. STEINER, ESQ.
101 Park Avenue
New York, New York 10178
(212) 808-7800
rsteiner@kelleydrye.com

Also Present:

SCOTT SLATER, Videographer

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Cape Girardeau, Missouri, Tuesday, February 2,
2021

10:05 a.m.

THE VIDEOGRAPHER: Good morning. We are on the record at 10:05 a.m. on February 2nd, 2021. Please note that the microphones are sensitive and may pick up whispering, private conversations, or cellular interference. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is Media Unit 1 of the video-recorded deposition of the PMK of Laboratory Corporation of America Holdings, Mr. Joe Sinning, taken by counsel for Plaintiff in the matter of Luke Davis and Julian Vargas, et al. versus Laboratory Corporation of America Holdings, et al. filed in the United States District Court for the Central District of California, Case No. 2:20-cv-00893.

This deposition is being held as a virtual deposition via Zoom with the witness located in Cape Girardeau, Missouri.

My name is Scott Slater from the firm Veritext Legal Solutions, and I am the videographer. The court reporter is Leslie Johnson from the firm Veritext Legal Solutions. I am not related to any party in this action nor am I financially interested in the outcome.

Counsel and all present will now state their appearances and affiliations for the record. If there are any objections to proceeding, please state them at the time of your appearance, beginning with the noticing attorney.

MR. MILLER: Thank you. Jonathan Miller for the plaintiffs.

MR. STEINER: Rob Steiner for the defendant and the witness.

MR. SWEET: Benjamin Sweet on behalf of plaintiffs and the class.

MR. HANDLEY: Matthew Handley on behalf of the plaintiff.

MR. APPLEBY: Callum Appleby on behalf of the plaintiff.

THE VIDEOGRAPHER: Thank you very much.

Will the court reporter please administer the oath.

JOSEPH SINNING,

having been first duly sworn, was examined and

testified as follows:

BY MR. MILLER:

Q And, Mr. Sinning, this is the corporate background from LabCorp's website. I just want to ask you a preliminary question.

Have you ever reviewed any of LabCorp's marketing material similar to this document before?

A I have not seen this document before.

Q Let me just ask you a few questions, and let me know if you disagree based on your own personal knowledge.

You can see in the second paragraph here, in the last sentence, second sentence from the bottom, it says "LabCorp serves hundreds of thousands of customers around the world and provides diagnostic drug

development and technology-enabled solutions for more than 160 million patient encounters per year.”

Do you agree that that’s what LabCorp accomplishes in its business, basically?

MR. STEINER: Sorry, Jonathan. Objection. Beyond the scope. Foundation.

THE WITNESS: I agree that that’s what’s printed here, so I would assume that it’s correct. But I don’t have direct knowledge of that number.

////

A That is correct.

Q Now, these patient service centers, what is their function within LabCorp? What are they for?

MR. STEINER: Objection. Vague.

THE WITNESS: They’re there to provide a location to collect samples from patients based on what a physician has ordered, or an employer in some cases.

BY MR. MILLER:

Q And that could be for a wide range of diagnostic tests, correct?

A That is correct.

Q It could be, for example, blood tests. That would be one example, right?

A Correct.

Q Then there could be a series of diagnostic tests run from those blood samples, correct?

A Correct.

Q And the patient service centers are the access points by which the patients can go and deliver their samples for LabCorp's diagnostic testing, right?

MR. STEINER: Object to the form. Vague.

THE WITNESS: They're one of many types of

patients can access the diagnostic services that LabCorp offers, correct?

A That is correct.

Q Just returning to Exhibit 5 briefly. If I could direct you to the second page, first paragraph, penultimate sentence starting with "The segment offers a growing menu of nearly 5,000 tests, including a wide range of clinical, anatomic pathology, kinetic, and genomic tests."

Do you see that, sir?

A I do.

Q Is it true that the LabCorp patient service centers provide access to those 5,000 types of tests?

MR. STEINER: Objection. Beyond the scope.

THE WITNESS: Based on the order of the physician, we would provide access to any test offered through LabCorp.

BY MR. MILLER:

Q But it is correct that LabCorp provides approximately — or nearly 5,000 different types of diagnostic tests for patients; isn't that true?

MR. STEINER: Object to the form. Beyond the scope.

THE WITNESS: That's what's written. I don't have direct knowledge of the exact number of tests within the organization.

BY MR. MILLER:

Q Do you have any reason or evidence to believe that that number that's referenced here is incorrect?

A I do not.

Q Are any of the patient service centers that are located within the United States outfitted with kiosks for purposes of checking in the patient?

MR. STEINER: Object to the form.

THE WITNESS: Most of our patient service centers have a kiosk as one option of checking in and for patients while they're coming into the PSC.

BY MR. MILLER:

Q Do all the PSCs have kiosks? You were saying most. Is there some subset that do not?

A There are a few that do not for IT or space reasons that we've not been able to outfit them.

Q How many of the kiosks within the United States — excuse me.

How many of the patient service centers in the United States have kiosks that permit check-in processes for patients?

A The last count I have is 1,853 of them.

Q And do you have an understanding of the number of patient service centers in California that have kiosks that allow a patient to check in?

A My understanding from the last count we did is there were 19 that did not out of that 299.

Q So, if I just subtract 19 from 299, I can get to the number of patient service centers in California that have kiosk check-in?

A Yes, sir. I didn't want to try to do that mental math, sorry.

Q That's all right.

Now, LabCorp doesn't discriminate in providing access to its services at patient service centers, does it, sir?

A Absolutely not.

Q LabCorp seeks to serve all members of the public who wish for services, including individuals with disabilities, right?

A That is correct.

Q And that includes individuals who are blind or low vision, true?

A Correct.

Q And you would agree that LabCorp provides

testing, wouldn't you?

MR. STEINER: Object to the form.

THE WITNESS: Yes, sir.

BY MR. MILLER:

Q How do you have that understanding?

A I have knowledge of having blind people come into the PSC and being serviced by our PSTs.

Q How do you have that knowledge?

A I've been in some locations when it was transpiring as well as had conversations with people about how the service had gone.

Q So you yourself have actually observed blind individuals coming into the patient service center to obtain testing services?

A I have on two occasions, yes.

Q And then how many other occasions have you been made aware that blind individuals accessed patient service centers for diagnostic testing?

A Only on two other occasions where we heard about how the service went.

Q And where did those reports come from?

A It was in conversations with phlebotomists, making sure that they have a good understanding of how to work with individuals.

Q Well, LabCorp engaged in a project called Project Horizon; isn't that true?

A That is our kiosk project, sir.

Q And that project began in the 2016 time frame; is that correct?

A Yes, sir.

Q And the purpose of the project was to implement patient self-service at the LabCorp patient service centers, right?

MR. STEINER: Object to the form.

THE WITNESS: No. The purpose was to create a tablet self-check-in-service as an option for patients in our PSCs.

BY MR. MILLER:

Q So, effectively, you were attempting to create a self-check-in service for patients at each one of your patient service centers; is that — am I correct?

A It's a self-check-in option for patients. They can either use the tablet or they can go to our window and be serviced for the check-in purposes.

Q But now patients can do other things at the self-service center other than just check-ins; isn't that true?

MR. STEINER: Object to the form.

THE WITNESS: They can make a payment on account or on an NOBD, which is notice of balance due. They can also do that at the front window.

BY MR. MILLER:

Q But as it relates specifically to the kiosks that have been placed in the patient service center, they can make a payment. That's another thing they can do other than to check in, right?

A Yes. There is a credit card machine on the side of it.

Q Can they change their appointments for the future?

A No, sir, they cannot.

Q Is that part of the functionality that's going to be rolled out eventually?

A It's in a backlog, but it has not been developed.

Q But does the company have plans to roll out the ability to schedule appointments through the kiosk check-in — or excuse me.

Does LabCorp have plans to allow patients to make appointments through the kiosk?

A It's an idea that's been discussed, but there is no definitive plan as to when that may come to fruition.

Q As part of the Project Horizon, there was a risk assessment done by LabCorp; isn't that true?

A That's my understanding. I have not viewed the risk assessment.

Q And the risk assessment was done to review various risk scenarios that would prevent LabCorp from being successful in Project Horizon; isn't that correct?

MR. STEINER: Objection. Beyond the scope.

THE WITNESS: I have no knowledge of what was done as part of that risk assessment.

BY MR. MILLER:

Q Who made this risk assessment, to your knowledge?

A That would have been part of the steering committee, is my understanding, that was developed back then.

(Exhibit 6 marked for identification.)

BY MR. MILLER:

Q I'm going to show you what we'll mark as Exhibit No. 6. This is a document that's been produced by LabCorp starting at Bates stamp 55 and continuing on through Bates stamp 63, labeled "Project Verizon Business SME Working Group Homework Assignment 8/23/16."

information?

MR. STEINER: Object to form.

Speculation.

THE WITNESS: It would be the directors and managers of the sites within the divisions that would know that.

BY MR. MILLER:

Q So here on the document, returning to Exhibit 6, it says "Mitigation strategy," "PIR/PST required service patient. Possibly offer a braille option at the device."

You already indicated what a PIR is, so what, for the record, is a PST?

A PST is a patient service technician, otherwise known as a phlebotomist.

Q To your knowledge, is any braille option offered at any of the kiosks in patient service centers throughout the United States?

A No, sir, there is not.

Q Do you know why not?

A We have the staff to service the patients, and that's the direction we've chosen to go.

Q Who made that decision?

A It would have been Richard Porter and Kevin DeAngelo back in the day.

really numbered. Are you talking about where it says "CEP Scope Summary"?

Q Right.

A Okay.

Q And does CEP stand for capital expenditure proposal? Is that your understanding of what it stands for?

A Based on what I'm seeing in front of me, yes, sir.

Q And this was one of the slides that was presented to you by LabCorp in 2016?

A If it was this presentation, then yes.

Q Did you come to have an understanding that the Project Horizon requested a capital of \$22.4 million to implement it?

MR. STEINER: Objection. Beyond the scope.

THE WITNESS: That's what I see written in the slide. I don't recall that exact conversation.

BY MR. MILLER:

Q Have you ever come to that knowledge from any other source other than a presentation?

A No, sir. I don't — I don't have that direct knowledge.

Q And was it presented to you that there was a calculated tenure internal rate of return at 28.9 percent and a payback of 3.6 years to recoup that expenditure?

A That's what I see written on the screen. Again, I don't recall that exact discussion back in 2016.

Q As you sit here today, are you aware of whether the Project Horizon has recouped the initial outlay of money to implement the process?

MR. STEINER: Objection. Beyond the scope.

THE WITNESS: The only thing I'm aware of is the tracking that we did to show that we saved

\$14 million in — I believe it was 2019. We have done no other tracking of the savings from the project.

BY MR. MILLER:

Q In 2019, what was the \$14 million savings from? What expenditures were no longer necessary?

A It was related to the transition of some employees from full-time to part-time.

Q Was that the PIRs?

A It was not directly related to PIRs. It could have been phlebotomists as well as PIRs because those are the staff members inside the PSC.

Q So there was a reduction of both PIRs and PSTs as a result of the implementation of Project Horizon?

MR. STEINER: Objection. Misstates his testimony.

THE WITNESS: The placement of the tablets gave us efficiencies within the check-in process that allowed us to move people from full-time to part-time.

BY MR. MILLER:

Q And, in 2019, there was a realized cost savings for the company of \$14 million as a result?

A The documentation that I reviewed, yes, that's what it showed.

Q Now, returning here to Exhibit 7, in the next paragraph it indicates that "The project introduces preregistration and on-site walk-in registration capabilities at all PSC locations to improve patient experience, reduce labor in the largest PSCs, and improve capacity in all patient service centers."

Is that also your understanding of what the project was being implemented for?

A Yes, sir.

Q And when it says “improved capacity in all patient centers,” is it your understanding that LabCorp can now see more patients as a result of the implementation of Project Horizon?

A It gives us the ability to capture the patient information up front without us having to manually type everything in. So it increased our efficiencies and abilities to see more patients in some of our largest facilities. Absolutely.

Q And have you seen an uptick in the amount of patients that LabCorp is able to service as a result of implementing Project Horizon?

A I don’t have direct correlation of what patient volume was prior to Horizon versus after to be able to answer that question.

Q Who would be the person within LabCorp that you believe would have that information?

MR. STEINER: Objection. Speculation.

THE WITNESS: Yeah. I don’t know who would have that because I’m not sure that there’s been any of those type of studies done.

BY MR. MILLER:

Q It goes on to say here in Exhibit 7 with respect to Project Horizon that “It also delivers improved appointment scheduling to drive increased utilization of appointments, improved payment

A That is correct.

Q Do you know who Bart Coan is, listed there as a core team member?

A I do not know Bart.

Q Have you ever interacted with Mr. Coan in any capacity?

A No, sir. I don't know who that individual is.
(Exhibit 8 marked for identification.)

BY MR. MILLER:

Q I'd like to show you what I'll mark as next in order, Exhibit No. 8. It's a document produced by LabCorp labeled "LabCorp Express and LabCorp Precheck." It's five pages.

A Right.

Q Have you ever seen this document before, Mr. Sinning?

A Not that I recall, no.

Q Were you ever made aware in your role as patient service director as to any of the changes in Project Horizon's scope?

A Well, when I took my role as it exists today, patient services director, this was done, to my knowledge. I don't recall seeing this as a phlebotomy director in the north central division.

center, gets a diagnostic test, and a bill is generated. Patient returns a week later.

Can they go to the kiosk and pay for the service they received the week prior?

A If they have the invoice number that was on the bill sent to them, then yes.

Q And, looking here again at Exhibit 9, there's a photograph here of the LabCorp Express check-in.

Is that generally what the units look like throughout the patient service centers?

A Yes, sir.

Q And the device there in the lower right-hand corner, is that the scanner?

A No. That's the tray that the cards go in to be scanned.

Q And that would be both the driver's license and the insurance identification card?

A Correct.

Q And so, looking again at the photograph here on Exhibit 9, this would be typical of what the kiosks look like at each of the patient service centers; is that right?

A Yes. Some will have a banner, and some will not. But yes, the design is exactly what you

appointment via the cell phone that I think you're referring to.

BY MR. MILLER:

Q I'm sorry. So let me take it step by step.

On the website, you can make an appointment at a LabCorp facility, correct?

A That is correct.

Q And that technology on the website is integrated with LabCorp's appointment scheduling system, correct?

A Yes. It creates an appointment.

Q Okay. And then, once the individual has an appointment, there can be check-in through the smartphone, correct?

A Yes. If they provided us either their email address or their telephone number for a text message to send the link to.

Q And that ability to check in through a smartphone is also — that technology is also integrated with the kiosk technology that's available either at the Express kiosk by the patient or behind the counter?

A Correct.

Q And I just want to make sure that I'm

BY MR. MILLER:

Q I'd like to show you what I'll mark next in order Exhibit 11. It's Bates stamped 2068 through 2071.

And my first question is one for identification as to whether you've seen this document before.

A No, I have not.

Q Do you know who Mike Doherty is?

A He's one of our IT security people.

Q Have you ever interacted with Mr. Doherty in your current role?

A Yes. As we put equipment into certain places, we work with him on occasion to deal with wifi and, like I said, IT security stuff.

Q And you can see here on the — I believe the third page of the document, 2070, it's signed by somebody named Bart?

A Yeah. I don't know a Bart.

Q You've already indicated you don't know who Bart Coan is, correct?

A That's correct.

Q Turning to the substance of the email just briefly to see if any of it refreshes your recollection. I'm on LabCorp 2068, the very first page in the penultimate paragraph, second from the bottom.

I'd like to focus your attention to the sentence where it says "Even with those patients that were compliant."

A I'm trying to find that.

MR. STEINER: Where is that?

BY MR. MILLER:

Q It's about three sentences into the paragraph, the second to the last paragraph. "Even with those patients that were compliant."

A I do see that.

Q And the document says, "Even with those patients that were compliant, this may create a negative initial impression because the use of the Express station is no longer seen as optional."

Again, the Express station was the kiosk station. Is that the way it's referred to within LabCorp?

A That is correct.

Q It goes on to say, "With that in mind, I think the patient's expectation then becomes that this experience should be absolutely flawless, since it is not optional."

Again, does that statement refresh your memory at all as to whether LabCorp ever indicated to any of its employees that the Express check-in station was not optional?

A No. I don't recall that ever being communicated to us.

Q Have you ever investigated any type of similar statements?

A We've had a couple of complaints where a PST said "You need to use the tablet," even though our training and protocols say that we're there to service the patient. I have seen that, and we've addressed those in the divisions as they've come up.

Q So, just so I'm clear, there have been occasions where PSTs have directed patients that they have to use the Express check-in tablet?

A Yes. In violation of our policy, yes.

Q So that — you would agree that would be a violation of your LabCorp's internal policies if such a directive was made?

A Correct.

Q In the next paragraph — if you could go to the last paragraph of this page. It goes on to say, "I'm certain there are a number of reasons why the staff are immediately redirecting the patients to the Express stations. Employees really like the wait time report. Employees were not adopting Horizon limited placement options for devices, et cetera. However, in these locations, it seems that a greeter or an ambassador would truly help with the experience if the Express check-in is not optional, at least during some of the busier periods of the day."

Again, do you know whether any greeters or ambassadors were ever hired by LabCorp following the Project Horizon rollout?

MR. STEINER: Objection. Asked and answered.

THE WITNESS: Yeah. I'm not aware of that being done specifically for that reason, no.

BY MR. MILLER:

Q Has hiring of employees at the patient service centers increased or decreased since the rollout of the Project Horizon?

MR. STEINER: Objection. Beyond the scope.

THE WITNESS: And, quite honestly, the pandemic, you know, made a lot of changes in hiring and everything. So it would be very difficult to draw any correlation at this time.

///

MR. STEINER: Objection to the extent there's no foundation.

THE WITNESS: What I'm aware of is that they have one that gives some additional capabilities than the one that we have. But that's all I know at this time.

BY MR. MILLER:

Q So I just want to be very clear. You've come to learn that Aila, A-I-L-A, has a kiosk that has additional functionality and accessibility features; is that right?

A That is correct.

Q And how did you come to learn that information?

MR. STEINER: Just to the extent — let me just caution the witness. To the extent that any of this calls for you to reveal communications with counsel, I'm going to direct you not to answer the question.

THE WITNESS: Therefore, I cannot answer the question.

BY MR. MILLER:

Q Well, to your knowledge, outside of anything you learned from counsel, does the existing Aila product have all the accessibility — or does it have accessibility features for individuals with disabilities to use the product independently?

MR. STEINER: Just object to the form.

THE WITNESS: Yeah. Reask that, please.

BY MR. MILLER:

Q Yeah. No problem.

So currently the patient service centers are equipped with kiosks that were provided at least in part by Aila. The iPad itself was provided by Aila?

A Yes.

Q And did the product that Aila provided have any features that would allow someone with disabilities to use the kiosk independently?

MR. STEINER: Objection to the form of the question.

THE WITNESS: When you say "disability," what kind of disability?

BY MR. MILLER:

Q Let's start with a vision disability.

A No. We provide our employees to assist with those individuals.

Q Do you know one way or the other whether LabCorp ever considered the cost of purchasing an Olea, O-L-E-A, kiosk that was ADA-compliant as opposed to the cost of considering the Aila, A-I-L-A, kiosk and decided that it was an undue hardship to purchase one that was ADA-compliant?

MR. STEINER: Objection to the form of the question. No foundation. Legal conclusion.

THE WITNESS: I'm not aware of which ones were considered and why anything was chosen based on those guidelines.

(Exhibit 15 marked for identification.)

BY MR. MILLER:

Q I'm going to show you what I'll mark as Exhibit No. 15. Let me know, once you've had a chance to review it. It's, for the record, Bates stamped 2836 through 2863. And it's, again, produced by LabCorp.

A I have it up. It's several pages.

Q Yeah. Now, focusing on the first page, just to start with.

And my question is, is it your understanding, Mr. Sinning, that this is the kiosk product that was ultimately purchased by LabCorp to put in its patient service centers?

A It looks like it. I'm just not sure if it's a 12.9-incher or what those dimensions are. But it does look like our device.

LabCorp utilizes in its patient service centers comes from?

A I don't specifically know that answer, no.
(Exhibit 19 marked for identification.)

BY MR. MILLER:

Q If you'd take a look at Exhibit 19.

You might want to just rotate that for your convenience so that it's in portrait mode.

Can you see the exemplar that I'm looking at right here?

A Yes. I do see the stand.

Q It's, again, Bates stamped LabCorp 4133.

Is that an exemplar of what a kiosk looks like at the patient service centers?

A It is.

Q And, outside of the iPad — or strike that.

Does the iPad actually go with the case that surrounds the iPad?

A Yes, sir, it does.

Q And is there any hole in that case for a headphone jack?

A No, sir, there is not.

Q Do you know why not?

A I know the headphone jack is used as part

BY MR. MILLER:

Q Two patients walk into a PSC at the same time with one phlebotomist who is servicing another patient in the back. Patient A is sighted and can go

check in at the Express center kiosk. Patient B needs to wait until the phlebotomist comes back to the window. Patient A proceeds to the check-in location and checks in. Who gets called first?

MR. STEINER: Objection to the hypothetical.

THE WITNESS: So, again, it all depends on who gets signed in. It could have easily been A or B depending on who went to the kiosk first. Somebody in that scenario is going to get service second.

BY MR. MILLER:

Q Let me make it more clear.

Two individuals walk into a patient service center, Patient A and patient B. Patient A is sighted. Patient B is blind. Patient A walks in and checks in at the kiosk, finishes the check in, and sits down to wait. Patient B still has to wait for the phlebotomist to come back in from the back. Who gets to check in first?

MR. STEINER: Objection to the hypothetical. Speculation.

THE WITNESS: We're going to assist the person who hadn't checked in in getting them checked in. And then we would take the first one that checked in in order. They both arrived at the same time in your scenario. Somebody is going to have to go second.

BY MR. MILLER:

Q Right. But in my scenario, it's going to be Patient B, not Patient A, right, who is going to have to go second?

MR. STEINER: Objection to form.

THE WITNESS: It would be.

BY MR. MILLER:

Q Patient B is going to have to wait while patient A gets service?

A The first patient that checked in would be first.
(Exhibit 26 marked for identification.)

BY MR. MILLER:

Q Just a few more screenshots and we can move on here. You can set that exhibit aside. Thank you very much.

I'm showing you what I'm marking next in order Exhibit 26. Let me know once you've had a

are visual impaired during the check-in process at its patient service centers?

A There is nothing specific to visually impaired patients. It's patients in general that we are there to either help them with the kiosk process directly or to assist them through helping them at the window.

Q Do you know whether LabCorp provides any training to its PIRs or PSTs to be able to assess what the individual's disability is?

MR. STEINER: I'm sorry. To assess what their disability is? Is that the question?

MR. MILLER: Yes. To assess what their disability is.

MR. STEINER: Object to the form.

THE WITNESS: No. We don't do any training on assessing a disability.

BY MR. MILLER:

Q Do you know whether LabCorp has any policies that is provided to its PIRs or PSTs on how to assess what disability an individual might have?

A No, sir, we do not.

Q Do you know whether LabCorp provides any training to its PIRs or PSTs to assess what aids or auxilliary services might assist an individual who

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS, JULIAN	)	Case No.
VARGAS, and AMERICAN	)	2:20-CV-00893-
COUNCIL OF THE	)	FMO-KS
BLIND, individually, and)	
on behalf of all others)	
similarly situated,)	
Plaintiffs,)	
)	
v.)	
)	
LABORATORY)	
CORPORATION OF)	
AMERICA HOLDINGS;)	
and DOES 1 through 10,)	
Defendants.)	

DEPOSITION OF JULIAN VARGAS
TAKEN REMOTELY VIA ZOOM VIDEO
CONFERENCE
WEDNESDAY, FEBRUARY 10, 2021

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS, JULIAN) Case No.
VARGAS, and AMERICAN) 2:20-CV-00893-
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)
Defendants.)

DEPOSITION OF JULIAN VARGAS, taken
remotely via Zoom Video Conference, commencing
at 11:01 a.m. Pacific Standard Time on
Wednesday, February 10, 2021, reported by Janet
Murphy, CSR 9650, business address
3510 Torrance Boulevard, Suite 102, Torrance,
California 90503.

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFFS

LUKE DAVIS, JULIAN VARGAS, AMERICAN
COUNCIL OF THE BLIND, AND THE CLASS:

NYE, STIRLING, HALE & MILLER, LLP

BY: BENJAMIN J. SWEET, ESQ.

CALLUM APPLEBY, ESQ.

1145 Bower Hill Road

Suite 104

Pittsburgh, Pennsylvania 15243

(412) 857-5350 / FAX (805) 284-9590

E-MAIL: ben@nshmlaw.com

callum@nshmlaw.com

NYE, STIRLING, HALE & MILLER, LLP

BY: JONATHAN D. MILLER, ESQ.

33 West Mission Street

Suite 201

Santa Barbara, California 93101

(805) 963-2345 / FAX (805) 284-9590

E-MAIL: jonathan@nshmlaw.com

HANDLEY FARAH & ANDERSON PLLC

BY: MATTHEW K. HANDLEY, ESQ.

777 6th Street NW

11th Floor

Washington, DC 20001

(202) 559-2411 / FAX (844) 300-1952

E-MAIL: mhandley@hfajustice.com

ATTORNEYS FOR DEFENDANT

LABORATORY CORPORATION OF AMERICA
HOLDINGS:

KELLEY DRYE & WARREN LLP
BY: ROBERT I. STEINER, ESQ.
JEWEL K. TEWIAH, ESQ.
101 Park Avenue
New York, New York 10178
(212) 808-7800 / FAX (212) 808-7897
E-MAIL: rsteiner@kelleydrye.com
jtewiah@kelleydrye.com

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EXHIBITS MARKED FOR IDENTIFICATION:

(NONE)

QUESTIONS UNANSWERED BY DEPONENT:

(MARKED WITH ^ IN TRANSCRIPT)

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INFORMATION REQUESTED:

(NONE)

PROCEEDINGS HELD VIA ZOOM; WEDNESDAY,
FEBRUARY 10, 2021

11:01 A.M.

DEPOSITION OFFICER: We are going on the
record.

JULIAN VARGAS,

called as a deponent and sworn in by
the Deposition Officer, was examined
and testified as follows:

DEPOSITION OFFICER: Mr. Vargas, would you
please raise your right hand.

Do you solemnly swear or affirm the testimony
you are about to give shall be the truth, the whole
truth, and nothing but the truth?

THE DEPONENT: Yes.

DEPOSITION OFFICER: Thank you.

EXAMINATION

BY MR. STEINER:

Q. Good morning, Mr. Vargas.

Can you state your full name and address for
the record.

A. My name is Julian Vargas. My current address
is 13741 Oxnard Street, Apartment 9, Van Nuys,
California 91401.

Q. Have you ever been deposed before,
Mr. Vargas?

A. No.

Q. Let me first tell you who I am and then give you
some instructions that will hopefully make the
deposition go more smoothly.

My name is Rob Steiner. I'm a lawyer for Laboratory Corporation of America Holdings, which I will refer to in this deposition as "LabCorp."

You will understand that, correct?

A. Correct.

Q. I'm going to be asking you some questions today about an action which you and Mr. Davis as well as American Council of the Blind filed against LabCorp.

If at any point in time you don't understand any of my questions, let me know that, and I will attempt to rephrase the question in a way in which you can understand it.

If you answer one of my questions, I will assume you've understood it as asked.

If you need a break at any time, let me know that, and I will accommodate you with a break. I'll just ask that you respond to any pending questions before taking a break.

It's important that your answers be verbal. The court reporter can't take down a nod or a shake of the head. If you intend to say "Yes," you should say "Yes." If you intend to say "No," you should say "No."

Let's try not to speak over each other. I know this is a little cumbersome. It's hard when we're in-person. It's even more difficult when we're on video. Let me finish my question, which will give your counsel an opportunity to object if he sees fit, and then you can answer it. And I will try to let you finish your answer before I ask another question.

Do you understand these instructions?

A. Yes, I do.

Q. Did you do anything to prepare for this deposition here today?

A. Just conferred with my counsel and talked about these things.

Q. And I'm not going to ask you what you discussed with your counsel.

How long was your conference with your lawyer?

A. We had two conferences, approximately a couple of hours in length.

Q. So both were a couple hours in length for a total of about four hours, or two conferences for about two hours?

A. Each conference was about a couple hours in length, give or take.

Q. Did you review any documents in preparation for your deposition?

A. Yes.

MR. SWEET: I will caution Mr. Vargas to limit his answer to whether he viewed any documents.

BY MR. STEINER:

Q. And did any of the documents that you reviewed, sir, refresh your memory as to any of the facts in this case?

A. Yes.

Q. And what documents that you reviewed refreshed your recollection?

A. The documents related to the — to the deposition.

Q. What documents were those, sir?

A. I don't remember the names of them. A lot of them have titles with like letters and numbers and things like that; but I believe it was the document that was sent with regard to, you know, requesting a deposition and detailing the complaint.

Q. So did you review the allegations in the complaint, sir?

A. Yes, I did.

Q. And did those allegations in the complaint refresh your memory?

A. Yes.

Q. And other than reviewing the complaint in this matter, did you review any other documents that refreshed your recollection?

A. I'm not sure what you mean by "other documents."

Q. So did you review Responses to Requests to Admit in this case?

A. Requests to Admit?

I believe I did see something along those lines.

Q. And did you review your answer to LabCorp's counterclaim?

A. Yes, I did.

Q. Any other documents, sir, that you reviewed that refreshed your memory?

A. I don't recall.

Q. Now, you said you met with counsel.

With whom did you meet?

A. We met, of course, by phone or virtually; with Ben Sweet and Jon Miller and Matt Handley.

Q. Have you discussed your deposition here today with Mr. Davis?

A. I don't think so.

Q. Have you ever spoken to Mr. Davis?

A. I don't recall.

Q. Have you ever met Mr. Davis?

A. Not in-person, no.

Q. Do you know where Mr. Davis lives?

A. I do not.

Q. Have you spoken with Mr. Davis on the telephone?

A. No.

Q. And have you had any video chats with Mr. Davis?

A. No.

Q. Have you had any e-mails with Mr. Davis?

A. Just to clarify, you're referring to Luke Davis?

Q. That's correct.

A. No.

Q. Have you communicated with Luke Davis in any manner whatsoever?

A. No.

Q. What is your understanding of Mr. Davis's role in this litigation?

A. My understanding is that he had a similar experience to what I've experienced at LabCorp, the only exception being that, from what I understand of his condition, he needs to go there more frequently than I do.

Q. But just to be clear, you and Mr. Davis have not at any point in time discussed the claims in this case, correct?

MR. SWEET: Objection; asked and answered.

BY MR. STEINER:

Q. You can answer, Mr. Vargas.

A. That's correct.

Q. Have you and Mr. Davis done anything to coordinate the supervision of counsel in this case?

A. No.

Q. What is your educational background, sir?

A. I attended high school and I've had some vocational school training afterward.

Q. When did you graduate from high school?

A. 1988.

Q. And what vocational training did you take after that?

A. I took computer classes.

Q. Did you get any degrees or certificates from those computer classes?

A. Yes.

Q. What degrees or certificates did you get?

A. Certifying that I had a basic knowledge and understanding of the Windows operating system.

Q. Any other computer certifications that you have?

A. No.

Q. Beyond high school and the computer class that you took that certified that you had a basic

understanding of the Windows application, have you taken any other courses or classes?

A. No.

Q. After you graduated from high school, did you become employed?

A. Not right away.

Q. I just want to get a sense, Mr. Vargas, of your employment history.

Could you just briefly describe for me where you worked and when and what your job was.

A. I don't recall specific dates; but I can tell you that I've done work in telephone-related fields, such as telemarketing, telephone customer service, support.

And then I became involved with assistive technology and it's what I currently do now. I teach and present on the subject of assistive technology.

Q. And when you talk about "assistive technology," you're talking about technology that assists those who are blind or have visual impairments; is that right?

A. That's correct.

Q. Do you have a company that you work through, sir?

A. I currently just work through myself.

Q. And how long have you been providing these assistive technology services?

A. Probably for the last 10 to 15 years.

Q. And to whom do you provide those services, sir?

A. Primarily to end users, people who are looking to become proficient and understanding of how to use

the assistive technology that's found in mobile devices, which is what I specialize in.

Q. And is that assistive technology that is found in the iOS operating system?

A. Yes.

Q. Are there any other operating systems in which you train people how to use as it relates to assistive technologies?

A. Android as well as Windows, but I do very little of that. It seems like these days, most people are interested in iOS.

Q. And so just to understand the work that you do, you provide training to people to familiarize them with how to use iOS to help them, I guess, explore content through applications; is that right?

A. Yes, basically to learn how to use the built-in accessibility on Apple devices so that they can make full use of their device.

Q. And is one of those capabilities in iOS Text to Speech?

A. Well, you might say screen reader.

Q. Okay. So one of the abilities that iOS has is to verbalize what is on the screen; is that correct?

A. That's correct.

Q. And are you compensated for the services that you provide?

A. Sometimes.

Q. Other than the work that you've done in assistive technology, just focusing on the last 10 to 15 years, have you had any other employment?

A. No.

Q. Now, I understand, sir, that you're blind or is it visually impaired or is it the same thing?

A. To me, the terms are interchangeable.

Q. Okay.

A. I prefer to use the word "blind" only because it is the legal definition of my condition. It doesn't necessarily mean that I have no vision whatsoever. It just means that the law recognizes me as blind if my vision is worse than 20 over 200. Plus, I find that in general, people understand the word "blind" more readily when I describe my condition.

Q. Do you distinguish between "blind" and "visually impaired"?

A. I'm not understanding the question.

Q. Sure. Fair enough.

Well, let me ask you, sir, you said — I think I heard you say you're not totally blind; is that correct?

A. That's correct.

MR. SWEET: That misstates his testimony, Rob.

MR. STEINER: Pardon me?

MR. SWEET: That misstates his testimony.

BY MR. STEINER:

Q. So if you could just describe for me, sir, are you able to see shapes? Are you able to see — what is it that you're able to see, generally?

A. I can see light. I can see shapes. It really depends on lighting.

My vision condition is one that degenerates over time. And over the last 15 to 20 years, I've definitely

been going through a noticeable degradation. So I find myself using more and more blindness technique and not so much relying on vision, because it's kind of a changing thing and it's really affected by lighting conditions and such.

Q. Sir, are you able to see features in a room; for instance, furniture, desks, things like that?

A. It depends on the lighting and the contrast. So sometimes, yes; but most of the time, no. I use my cane to help me identify obstacles and such.

Q. You use a white walking cane; is that correct?

A. Yes.

Q. You're participating in this deposition from your home; is that correct?

A. Correct.

Q. And is there anyone in the room with you?

A. No.

Q. Do you live by yourself?

A. No.

Q. Who else lives in the residence?

A. My girlfriend.

Q. Other than this litigation, sir, are you a party to any other litigations?

A. Yes.

Q. What other litigations are you a party to?

A. Currently I'm involved in the litigation with Quest.

Q. Does that litigation relate to the accessibility of its kiosks?

A. Yes.

Q. Other than this litigation and the Quest litigation, are you currently involved in any other litigations?

A. No.

Q. Have you ever previously been a party to a litigation, other than this litigation and the Quest litigation?

A. Yes.

Q. What litigations have you been a party to?

A. I've been a member of class settlements before with the litigation that was brought on by organizations such as the National Federation of the Blind.

Q. Were you a named plaintiff in that case?

A. No.

Q. Are there any cases, putting aside cases in which you may have received a notice to participate in a class settlement, where you have been a named plaintiff?

A. Yes.

Q. What other cases, other than the Quest case and this case?

A. I don't have all the info with me, but I've been involved in website accessibility litigation before.

Q. Against whom?

A. I don't remember at this moment.

Q. Do you remember any of the parties that you sued for website accessibility?

A. Not at the moment, I don't recall.

Q. How many such cases were you a party to?

A. Possibly five or so.

Q. Do you know where those cases were filed?

A. Some might have been here in California. Others in Pennsylvania.

Q. Were you represented by the same counsel that's representing you in this case in those cases?

A. I believe one of the members was involved with the other law firm that represented me.

Q. Were those cases resolved, sir?

A. Yes.

Q. And did they resolve as a result of a settlement?

A. Correct.

Q. Are you familiar with the terms of any of those settlements?

A. I don't recall at the moment.

Q. Did you receive a monetary payment in any of those cases?

A. Yes.

Q. ^ And how much have you received in total, sir?

A. Well, I believe that information may — I may not be able to talk about that because it's a confidential agreement. I'd have to confer with my counsel on that.

Q. We'll circle back to that.

You don't recall, sitting here today, whether the terms of those agreements were confidential?

A. I believe that they were.

MR. SWEET: Objection; misstates testimony.

BY MR. STEINER:

Q. What is your primary source of income, sir?

A. I receive Social Security and SSI and then whatever I earn when I can get a paid client.

Q. Other than the Quest case, this case, and the five or so cases involving website accessibility, have you been a named plaintiff in any other matters?

A. No.

Q. And you testified that there was a case in which you participated in a class settlement; is that correct?

A. That's correct.

Q. And do you recall what the nature of that case was?

A. Website accessibility for target.com.

Q. In any of the cases where you were a named plaintiff, did you submit any declarations or sworn statements to the court?

A. I directed my counsel to submit anything that was necessary for those cases.

Q. Do you know, sir, whether or not you submitted any sworn statements, declarations, affidavits in connection with those cases?

A. I believe so.

Q. And do you recall anything about the content of those sworn statements that you submitted to courts?

A. I believe it was pretty much your run-of-the-mill information that you'd find in anything like that regarding the complaint.

Q. Okay. Sir, I don't know what "run-of-the-mill information" is, so let me just see if you can describe for me any of the information that you recall

submitting in a sworn declaration or affidavit to the court.

A. I don't recall offhand.

Q. When was the last website accessibility case that was filed on your behalf?

A. I don't recall.

Q. And do you consider this case to be a website accessibility case?

A. No.

Q. Prior to LabCorp introducing its kiosks, did you attempt to use or use any LabCorp services?

A. I don't recall. I know that I have annual physical exams, and oftentimes that involves going to a lab, so it's quite possible that I might have at some point in the past.

Q. Can you identify any LabCorp patient service centers that you visited prior to LabCorp introducing its kiosks?

A. The only one that I recall was this one that we're discussing today.

Q. And that was a visit that you made on January 10th, 2020; is that correct?

A. Yes.

Q. And to the best of your recollection, that is the one and only time you have visited a LabCorp patient service center; is that correct?

A. Actually, there were two visits total to the location.

Q. When was the second visit?

A. I think — I mean, I'm not very good with the dates; but if it's okay, I could just more or less describe what the visits were.

Q. Sure.

A. I bel- — basically after the experiences I've had previously with this type of check-in kiosk and difficulty getting assistance at these types of locations, and since this blood test in question was going to require me to come in fasting, I decided to visit LabCorp, I believe it was a day or two prior to the actual date of service, because I wanted to familiarize myself with how to find it and to familiarize myself with what the procedure was going to be when I got there.

So when I went there, I found my way to the window and got the attention of somebody there and explained, you know, what I was there for and asked about their check-in process; you know, would it involve a kiosk, and if so, could somebody show me where the kiosk was, because I wanted to know about it ahead of time, and would it be accessible for a blind person to use independently.

And at that point, I was told that the kiosk was not accessible for a blind person to use independently, so I would have to require a — an attendant, you know, a person there to help me, which they assured me would be available.

So when I went in for service, I went in and I had to wait in the line. And then when it got to be my turn, I went to the window and asked for assistance. And after another few minutes of waiting, someone came out and took my cards, my medical insurance cards, and basically signed me in.

Q. And that was the January 10th date that you handed your cards and got signed in by a LabCorp attendant?

A. Yes.

Q. And you said you visited that facility a couple days prior to January 10th; is that right?

A. Yes. I believe it was a day or two before.

Q. The LabCorp facility that you visited, was that at 15211 Vanowen Street in Van Nuys?

A. Yes, that's correct.

Q. And why did you choose to go to that particular LabCorp facility?

A. I went to that one because it was the closest one to me.

Q. How did you discover that that LabCorp facility was the closest one to you?

A. I believe I asked Siri to find me the nearest location and that's what it returned.

Q. And how did you get to that location?

A. The day of the appointment, I believe I took a paratransit service.

Q. What about the couple days prior, when you went to speak with the LabCorp representative?

A. On that occasion I took the bus.

Q. So other than those two occasions that you've described, have you on any other occasions, either before or after LabCorp introduced its kiosks, gone to a LabCorp PSC?

A. No.

Q. And by “PSC,” you understand I mean a patient service center?

A. I do now, yes.

Q. On both occasions where you visited the Vanowen Street LabCorp PSC, did you go by yourself or were you with someone?

A. I went myself.

Q. And when you went on the 8th — excuse me.

When you went on the 10th of January, did you have a prescription for a service?

A. Yes.

Q. And what service were you seeking at LabCorp on January 10th?

A. It was a prescription from my physician for some bloodwork that needed to be done as part of my annual physical exam.

Q. And what was the name of your physician that made that prescription?

A. Dr. Paul Diehl, spelled D-i-e-h-l.

Q. And where is Dr. Diehl located?

A. He is located in the city of West Hills, California.

Q. And when you went to the LabCorp patient service center on Vanowen Street on the 10th, you were able to check in with the LabCorp representative?

A. I did, after waiting in line and then — and then — yeah. Then I had to wait additional, until they found somebody to take my information, since the kiosk was inaccessible.

Q. So you got to the LabCorp patient service center on the 10th and you waited in line at the counter; is that correct?

A. Yes.

Q. So there were other people waiting in line in front of you; is that correct?

A. I believe so.

Q. Do you know how many other people were waiting in the line in front of you?

A. I could not see to tell.

Q. And did you understand that those individuals waiting in line in front of you were also waiting to check in with a LabCorp representative?

A. I don't know what they were there for. I just know they were in line ahead of me.

Q. Did you overhear any of their conversations with the LabCorp representative?

A. No, I did not.

Q. Did you hear any of those individuals sharing any information about themselves with the LabCorp representative?

A. I did not.

Q. Did you understand what any of those individuals that you were standing in line with were there for?

A. No, I did not.

Q. Did you hear what services they were seeking from LabCorp?

A. No, I did not.

Q. Did you hear anything about their medical condition?

A. No.

Q. And then when it was your turn in line and you approached the counter, there was a LabCorp representative there; is that correct?

A. Yes.

Q. And do you know whether that was a man or a woman?

A. I don't recall.

Q. And did that individual ask for your identification and insurance card?

A. I basically told them that I was there to check in and that I would need assistance with the check-in process, since the kiosk was not accessible.

Q. And did that person then ask you for your insurance card and identification?

A. I believe the person instructed me to wait and that somebody would come out to assist me.

Q. And did someone come out to assist you?

A. Yes.

Q. And did that person that came out to assist you ask for your identification and insurance card?

A. Yes.

Q. And did that person then check you in, sir?

A. Yes.

Q. Other than providing that individual who came out to see you with your identification and insurance card, did the individual who you spoke with at LabCorp ask you for any other information?

A. No. I basically told them that I was concerned about giving information out loud in earshot of others. So they told me that they didn't need me to say anything, that they would get the information from the cards.

Q. That they would get the information from the cards?

A. Yes.

Q. So you were not required to say out loud any personal information when you visited on January 10th, correct?

A. Well, I made it clear that I did not want to do that, so they accommodated that.

Q. And when you gave the individual your insurance card and identification, did they take the cards and identification and then return them to you at some later point in time?

A. Yes.

Q. And do you know what they did with those cards and identification?

A. I have no idea, since I couldn't see what they were doing and they walked away.

Q. Understood.

Those cards and identification were returned to you a short time later; is that correct?

A. Yeah, after a few minutes.

Q. And when you were asked for your cards and identification, were you standing at the check-in counter or were you sitting in a seat or somewhere else?

A. I was still standing at the check-in counter, but off to the side.

Q. And between the time you first encountered an individual at the desk and the time that your identification was taken, approximately how long did you wait?

A. Restate the question?

Q. Between the time that you approached the counter for the first time and someone came and took your identification information, how long were you waiting?

A. So just to clarify, this is after I waited in line?

Q. Right.

You waited in line, you told me; you spoke to someone; and they told you that someone would come out to assist you, correct?

A. Yes.

Q. So how long did it take for someone to come out and assist you?

A. Several minutes, like maybe three to five minutes.

Q. And once your cards were taken from you, sir, to check you in, how long did you wait to be called into the back?

A. Well, I waited several minutes while the cards were taken and they did whatever they did with them.

Then when they came back out, I believe I waited another few minutes before I was taken to the back.

Q. So just so I understand this, sir, you waited in line with other people who you believed were looking to receive services from LabCorp, correct?

MR. SWEET: Objection; misstates testimony.

THE DEPONENT: There were —

BY MR. STEINER:

Q. Is that right, sir?

MR. SWEET: Objection again.

THE DEPONENT: Well, I waited in line. I don't know what those people were there for. I just know I waited in the line.

BY MR. STEINER:

Q. And then once you got to the desk, you waited another three to five minutes for someone to assist you; is that correct?

A. That's correct.

Q. And then once that person assisted you, you waited another three to five minutes to be called into the back?

A. Yeah. Once the cards were returned to me, it took another three to five to be called into the back.

Q. So in total, how long were you at the LabCorp facility on January 10th, 2020?

A. From beginning —

MR. SWEET: Hang on.

Are you asking about the entire time he was there?

MR. STEINER: Yes. Let me clarify the question.

Q. From the time you got to the facility to the time you were called into the back, how long were you waiting?

A. Probably I would say roughly 20 minutes or so.

Q. Do you know if anyone else there who checked in at the kiosk waited more time or less time than you?

MR. SWEET: Objection.

THE DEPONENT: I have no idea, because I didn't talk to anybody who was at the kiosk.

DEPOSITION OFFICER: Counsel, could you please restate your objection? I heard you say "Objection," but if you said anything after that, I'm sorry, I missed it.

MR. SWEET: I did not.

DEPOSITION OFFICER: Thank you. I'm sorry for interrupting.

BY MR. STEINER:

Q. And when you were called into the back, you were asked to sit down; is that correct?

A. Yes, I was — I got into the chair and I sat down.

Q. Was any additional information taken from you when you were in the back of the facility?

A. I don't believe so.

Q. At what point did you provide your prescription for services?

A. In the beginning, when I made contact the first time.

Q. And you handed that prescription to a LabCorp representative; is that correct?

A. Yes, the person behind the desk.

Q. And he or she took the information from you?

A. They took the paper from me and then went to get somebody to assist.

Q. Did anyone at the facility ask you what the prescription was for?

A. No.

Q. Did anyone ask you if you had any medical conditions?

A. I don't believe so.

Q. When you were taken into the back, do you recall having any conversation with the LabCorp technician?

A. Other than just, you know, being guided and perhaps like "Good morning" or salutations types of things, I don't recall any other conversation.

Q. So other than pleasantries, you had no substantive conversation with anyone in the back?

A. No, other than pleasantries and just "Okay. Here's the chair. Have a seat," that kind of thing.

Q. Did you receive the results of your test?

A. Those were sent to my doctor.

Q. To the best of your knowledge, though, the test that your doctor ordered was performed; is that correct?

A. Yes.

Q. And it was performed at the Vanowen Street — excuse me.

It was based on the blood that was taken at the Vanowen Street location on January 10, 2020, correct?

A. Yes.

Q. Now, when you went to the facility on January 8th — I'm sorry. It's not January 8th.

You said you went to the facility a few days before, a couple days before January 10th, right?

A. Yes.

Q. And that was the first time you had been there?

A. Correct.

Q. And were you aware at the time you went a couple days before January 10th that LabCorp was using kiosks?

A. I wasn't aware specifically; but I know that they were being used in many other places, including other labs like them too. So I just assumed that was the case as well, and that was confirmed when I asked.

Q. But when you walked in, sir, again, just because of your blindness, you could not discern any kiosks in the facility, could you?

A. No, I could not. That's why I asked to be directed to it, if it was there.

Q. And when you went to the counter, did you have to wait in line on that first occasion that you went to the location?

A. I think I did, but it didn't seem to be as long of a line.

Q. And when you got to the counter, there was someone there to help you; is that correct?

A. Yes.

Q. And can you tell me what you said to that person and what the person said to you?

A. I said "Hello."

And they asked the usual question, you know, did I have a prescription or how could they help me.

So I explained to them that I would be coming in there soon to have some bloodwork done that was requested by a doctor, and that I did have a prescription for it, and that — I asked — I told them that I wanted to familiarize myself with things about their location since it was going to be a fasting blood test and I didn't want to have to do all that, you know, while I was also hungry.

So I explained that I would need assistance. And I asked if there is a check-in kiosk at this location and, if so, could somebody direct me to it so I could familiarize myself with where it's located, and is it accessible so that a blind person can use it independently.

Q. And what did the representative say?

A. They said that they do have a kiosk, but that unfortunately, it was not something that a blind person could use independently, it wasn't set up for that; and that I would just need to come to the desk or the window there on the day of service and that somebody — they would make somebody available to help me.

Q. And was that the extent of your conversation?

A. More or less.

Q. Well, do you recall anything else from your conversation that day prior to January 10th, 2020?

A. I think — well, when they told me that it was not accessible, I expressed disappointment and I explained that they should make their kiosks accessible so that a blind person could use it as well.

And they said they would — they would take that information, but that unfortunately, at this time, it wasn't accessible.

Q. And so the alternative that they offered you was checking in at the desk, correct?

A. Right.

Q. I'm sorry. I missed that.

A. Yes.

Q. Now, did you ask if you could check in at the desk or they offered you the option to check in at the desk?

A. They offered it, being that the kiosk was inaccessible, according to their description of it. They said, but somebody would help me. All I needed to do was come to the window or the desk at the date of the appointment, you know, the day that I needed the service, and that they would make someone available to help me with the check-in process.

Q. And that's what happened on January 10th, when you showed up for your actual appointment, correct?

A. Yes.

Q. Had someone asked you, sir, to visit the LabCorp location to examine the kiosk?

A. No.

Q. You did that on your own?

A. Correct.

Q. Were you already a party to the Quest litigation?

A. I had talked to my counsel about that. I don't know how far that had gotten at that point, but yes, I was involved in those talks.

And that is, I might add, part of the reason why I went to LabCorp, was because I thought, well, maybe — maybe they might be better-equipped for accessibility.

Q. Before the complaint was filed in this matter, sir, did you review it?

A. Yes.

Q. And did you think it was important to make sure the complaint was accurate?

A. Yes.

Q. And do you believe, sitting here today, that the allegations in the complaint are accurate?

A. Yes.

Q. And when you reviewed the complaint in preparation for your deposition here today, did you notice anything in it that you believed to be inaccurate?

A. The only thing that I noticed was that it didn't make reference to the previous visit that I had made, so that's why I wanted to clarify that detail.

Q. Understood.

And is it fair to say that on the date you visited the LabCorp facility with your prescription, they provided you with medical diagnostic testing services?

A. Yes.

Q. And no one at LabCorp ever refused to provide you with those services; is that correct?

A. Correct.

Q. And no one at LabCorp told you that checking in at the kiosk was the only option for checking in; is that correct?

A. No, I just understand it to be one of two options available.

Q. And the other option is to check in with a person at the desk, correct?

A. Yes.

Q. And so you were never told that the only option for checking in at LabCorp was to check in at the kiosk, correct?

A. Correct.

Q. And since January 10, 2020, have you gone to any other LabCorp patient service centers?

A. No.

Q. Since January 10, 2020, have you revisited this same LabCorp patient service center?

A. No.

Q. So the one and only time that you went to LabCorp to receive a service, you were checked in at the desk, correct?

A. That's correct, and that's because that's the only time I — the last time that my doctor has requested bloodwork.

Q. And when you visited the LabCorp patient service center on January 10, 2020, you were not required to use the kiosk to check in, correct?

A. I was not required because — well, I was not required.

Q. Okay. And when you visited the LabCorp patient service center on January 10, 2020, you were not required to sign in through the kiosk, were you?

A. No.

Q. I am correct, you were not required?

A. You are — I was not required.

Q. And when you visited the LabCorp patient service center on January 10, 2020, you were not required to register for your appointment at the kiosk, correct?

A. No, I was a walk-in.

Q. Were you required, sir, to register for your appointment at the kiosk when you arrived on January 10, 2020?

A. It was not required.

Q. And you — well, withdrawn.

Prior to filing this lawsuit, other than the interactions that you had on January 10, 2020 — excuse me. Let me strike that.

You said a couple days prior to January 10, 2020, you visited the location, you asked about the kiosk, and you told the person you spoke to that the kiosk should be made accessible to blind people; is that right?

A. Yes.

Q. And the person that you spoke to said they would pass along that suggestion; is that right?

A. Yeah. They agreed that it should be and that they would pass along the suggestion so that we would have both options available that everybody else has going to that location.

Q. Did you understand, sir, that sighted people also have the option to check in at the desk?

A. Yes, I do; but they also have the option to perhaps avoid a line and check in at a kiosk, which I did not have that option.

Q. Do you know if the kiosks ever get lines?

A. I don't know.

Q. And you said the first day that you were there, prior to your January 10th visit, there was not a line; is that correct?

A. There — I don't believe there was much of a line.

Q. Do you know on that day if there was a line at the kiosks?

A. I don't know because I don't know where the kiosk is.

MR. SWEET: Rob, we've been going for about an hour now. I think now is a pretty good time for a break.

MR. STEINER: Okay. Do you want to take five minutes?

MR. SWEET: That's fine.

MR. STEINER: Thank you.

DEPOSITION OFFICER: We're going off the record.

(A recess was held from 11:56 to 12:02.)

MR. STEINER: We can go back on the record.

Q. Mr. Vargas, you understand you're still under oath, correct?

A. Yes.

Q. Do you have any knowledge or understanding as to what the patient check-in process was at LabCorp prior to the time it introduced its kiosks?

A. I do not.

Q. Do you know anything about the check-in process at any other LabCorp location, other than the one you visited?

A. No.

Q. When you visited the LabCorp location prior to January 10th, a couple days prior, do you recall what time of day it was?

A. I believe it was in the afternoon.

Q. Do you recall when in the afternoon?

A. Like maybe around 3:00 or 4:00 in the afternoon, give or take.

Q. And when you visited on January 10th, do you recall what time of day it was?

A. That was early in the morning.

Q. When you visited on January 10th, did anyone at LabCorp ask you if you were blind?

A. No.

Q. Did anyone at LabCorp ask you if you were visually impaired?

A. No.

Q. Did anyone ask you to fill out any forms or provide any information which indicated to LabCorp that you were blind or visually impaired?

A. No.

Q. To your knowledge —

A. I believe —

Q. Pardon me?

A. I was going to say, I believe the fact that I walk in with a long white cane and glasses, it indicates to most people that I have a visual impairment.

Q. Fair enough, sir.

You have worked with other people who are visually impaired who do not use a long white cane, correct?

A. I don't recall, but I probably have.

Q. Is it fair to say that it's not always obvious whether someone is visually impaired or blind?

A. Not always.

Q. And so on this occasion, you certainly weren't asked by anyone at LabCorp if you were visually impaired or blind?

A. No.

Q. And are you aware of any record that LabCorp would have indicating that you are visually impaired or blind?

A. No.

Q. Are you aware of any records LabCorp might have related to anyone else that may be visually impaired or blind?

A. No, and I don't see why I would.

Q. And why do you say you don't see why you would be?

A. Because why would I know if they have records on anybody's visual impairment?

Q. But you know they don't have any records on your visual impairment, correct?

MR. SWEET: Objection; misstates testimony.

THE DEPONENT: To the best of my knowledge.

BY MR. STEINER:

Q. Do you know how many blind or visually impaired people use LabCorp services at its PSCs in a given year?

A. I don't.

Q. Do you know how many of the people who use LabCorp services in a given year who are visually impaired but not blind are able to use its kiosks?

MR. SWEET: Objection; compound.

THE DEPONENT: I don't know.

BY MR. STEINER:

Q. Do you know if anyone else that day that you were there on January 10th checked in in the same manner that you checked in?

A. I don't.

Q. You don't know either way, correct?

A. Correct.

Q. Is it fair to say, sir, that when you visited the facility on January 10th in the morning, it was busier than when you visited the facility in the afternoon a couple days prior?

A. Yes.

Q. And had you checked in on January 8th — I'm sorry. I keep saying the 8th. My apologies, sir.

A. That's okay.

Q. Had you checked in the first time that you visited the facility, is it fair to say that you believe your wait time would have been shorter?

MR. SWEET: Objection; calls for speculation.

THE DEPONENT: I don't know.

BY MR. STEINER:

Q. It may have been; you just don't know?

A. That's correct.

MR. SWEET: Same objection.

Julian, I would just caution you to give me a second or two so that I can object where appropriate. Thank you.

BY MR. STEINER:

Q. Is LabCorp within your health insurance network?

A. Yes.

Q. And is that Medicaid?

A. Medicare —

Q. Medicare?

A. — and Medicaid.

Q. And is Quest Diagnostics also within your health insurance network?

A. Yes.

Q. On the day that you visited the LabCorp facility on January 10th, do you know if people who checked in at the kiosk spent more or less than 20 minutes to check in?

MR. SWEET: Objection; lacks foundation.

THE DEPONENT: I don't know.

BY MR. STEINER:

Q. Sir, you rely on auxiliary aids and services to receive goods and services; is that correct?

MR. SWEET: Objection; calls for a legal conclusion.

BY MR. STEINER:

Q. You can answer it, sir, if you understand the question.

A. What do you mean exactly by “auxiliary aids and services”?

Q. Do you know what auxiliary aids and services are?

MR. SWEET: Objection; calls for a legal conclusion.

THE DEPONENT: So I’m asking for you to clarify what you mean by that.

BY MR. STEINER:

Q. Yes.

And I’m just asking you, sir, what your definition is.

Do you have a definition of what an “auxiliary aid and service” is?

A. If you’re referring to screen readers, white canes, and things of that nature, then yes.

Q. A screen reader to your mind is a type of auxiliary aid and service; is that right?

A. Yes. It assists me with getting information that’s on a screen and allows me to interact with a device.

Q. Do you use other types of auxiliary aids and services, other than screen readers?

MR. SWEET: Same objection.

THE DEPONENT: So like I said, I use screen readers on my computers and mobile devices and I use a white cane to travel.

BY MR. STEINER:

Q. Do you read Braille?

A. I do not.

Q. So if LabCorp had signs in Braille at its facilities, that would not be helpful to you?

A. Not to me personally, but other blind people would benefit from it.

Q. You know there are certain blind people that do read Braille and certain that don't, correct?

A. Correct.

Q. Does magnification software work for you as an auxiliary aid?

A. It used to when I was younger, but no longer.

Q. What about large-print materials? Do those work for you as an auxiliary aid?

A. No.

MR. SWEET: Same objection.

BY MR. STEINER:

Q. Do you ever rely on someone to read to you in order to receive goods and services?

A. Sometimes.

Q. And in what circumstances would you rely on someone to read to you in order to receive a good or service?

A. If the information is not available in an accessible format that I would be able to use my screen reader and knowledge of computers and mobile devices to be able to do myself.

Q. Would an example of that be if you went to a restaurant, for instance, and were given a menu?

A. Yes.

Q. And in that case, you would ask a waiter or waitress to read the menu or point out certain things on the menu; is that correct?

A. Correct.

Q. And you're comfortable relying on, at least in that context, someone reading to you the content of written material, correct?

MR. SWEET: Objection; misstates his testimony.

BY MR. STEINER:

Q. Is that correct, sir?

A. I would prefer that the material be available in a format that I can use myself.

And actually, since you bring up restaurants, more and more of them have put their menus available online. And I find myself more often referring to those, when I can get ahold of them, to familiarize myself with a menu.

Q. You have used the services of people reading the material to you in order to get goods and services, right?

A. When there's no other alternative.

Q. Okay. Any other instances that you can think of in getting a good or service where you have relied on someone reading to you so that you can familiarize yourself with the goods and services that are available?

A. None other than when there is not an accessible way that I can do it electronically.

Q. You prefer to have access electronically, correct?

A. Yes.

Q. Are you aware of others who prefer to have access through someone reading them the material?

MR. SWEET: Objection; calls for speculation, lack of foundation.

THE DEPONENT: I know people I guess you would say in both camps. I know a lot of people who prefer to do things for themselves independently and use technology, and there are some people who are more comfortable getting something read to them. It's a personal preference thing.

BY MR. STEINER:

Q. Have you used an app called Be My Eyes?

A. Yes.

Q. And as I understand it, that basically connects you with a person who acts as a qualified reader through the camera on your iPhone; is that right?

A. I would disagree with "qualified reader." Those are volunteers who are not vetted. Anybody could sign up to be a Be My Eyes volunteer and there's no process of training, nor is there a requirement to sign a nondisclosure agreement or anything like that.

So while I would use a service like Be My Eyes for something basic, like "What color is this shirt?," I would certainly not rely on Be My Eyes to help me to obtain personal information on a document.

Q. You've used Be My Eyes in a pharmacy before, correct?

A. I've used it in a pharmacy, but not for prescriptions; for doing things like seeing the

expiration date on a gallon of milk or a jar of juice or something like that.

Q. Have you used it to determine what other products that you might want to buy?

A. Yes, for scanning grocery store shelves.

Q. And do you continue to use Be My Eyes?

A. Sometimes.

Q. And in what instances do you use Be My Eyes?

A. Again, for things like reading an expiration date, “What color is this shirt?,” “Am I standing in front of a Starbucks?,” those kinds of things. Something that — something that would get me quick visual assistance, but not for anything that would require the handling of confidential information.

Q. When you visited the LabCorp on January 10th — withdrawn.

Since filing this lawsuit, sir, have you requested that LabCorp provide you with a specific auxiliary aid?

MR. SWEET: Objection; calls for a legal conclusion.

THE DEPONENT: I have not.

BY MR. STEINER:

Q. Since filing this lawsuit, have you communicated with LabCorp requesting that it provide you with any assistance in checking in at its patient service centers?

A. No, because I haven’t had to go to LabCorp since then.

Q. And I take it that on the one occasion that you were at LabCorp on January 10th — sorry. Withdrawn.

Do you have any facts to indicate, sir, that LabCorp intentionally discriminated against you?

A. Well, the fact that they don't make their kiosks accessible to a blind person feels like discrimination.

Q. Any other facts, sir, to indicate that LabCorp intentionally discriminated against you, other than the fact that its kiosks are not accessible to a blind person?

A. No, no other facts.

Q. Do you know anything about the process that LabCorp used to develop its kiosks?

A. No.

Q. Other than your own personal experience at LabCorp on January 10th at the Van Nuys location, do you know anything about LabCorp's check-in policies or procedures?

A. No.

Q. Do you know anything about how LabCorp's other facilities are operated in California or nationwide as it relates to check-in procedures?

A. No, because it's the only one I've been to.

Q. And on the only occasion that you went to LabCorp, you were able to receive the service that you sought from them, which was medical diagnostic testing, correct?

MR. SWEET: Objection; misstates the testimony.

BY MR. STEINER:

Q. Is that right, sir?

A. I'm sorry. Restate the question?

Q. Sure.

On the one occasion that you went to LabCorp, you were able to receive its medical diagnostic testing services, correct?

MR. SWEET: Objection; misstates his testimony.

THE DEPONENT: Well, I went there to get a blood test, yes.

BY MR. STEINER:

Q. And you got it, correct?

A. I did, but I only had one method of interacting with them.

Q. Prior to filing the complaint in this action, did you ever correspond with LabCorp and tell them they were violating the Americans with Disabilities Act?

A. No.

Q. Prior to filing this lawsuit, did you ever correspond with LabCorp and tell them they were violating any laws?

A. No.

Q. Is the first time that you complained about LabCorp's check-in procedures — well, withdrawn.

Do you have any facts to indicate that LabCorp has refused to make its kiosks independently accessible to the visually impaired for financial reasons?

A. I assume that to make it accessible, they might have had to pay a little bit more, although frankly, a lot of today's kiosk systems are based on either iOS or Android-type devices, all which come with built-in accessibility. And why LabCorp chose not to avail themselves of that and make it available to those customers I guess is beyond me.

Q. So you don't know why they chose not to do that, whether it was for financial reasons or any other reason?

A. I'm assuming it's financial.

Q. Other than your assumption, sir, do you have any facts to indicate that LabCorp chose not to make its kiosks independently usable by those who are blind or visually impaired for financial reasons?

MR. SWEET: Objection; asked and answered.

THE DEPONENT: I don't have hard facts. I just have the experience to rely on.

BY MR. STEINER:

Q. Do you know what training LabCorp provides its employees related to its check-in process?

A. No.

Q. And when you were at the facility on January 10th, is it fair to say that you were treated respectfully?

A. Yes. The people who I interacted with were respectful.

Q. They were helpful; is that correct?

A. Yes.

Q. They were able to see that you got the blood-testing services that you were there to receive, correct?

A. Yes.

Q. Have you ever used LabCorp's website?

A. No.

Q. Do you know whether LabCorp's website is accessible to the visually impaired?

A. I do not, since I haven't used it.

Q. Have you ever used LabCorp's mobile application?

A. No.

Q. And I take it you don't know whether or not that mobile application is accessible to people who are visually impaired?

A. Correct.

Q. LabCorp served your counsel with what are known as Requests for Admission.

Are you familiar with that document?

A. Yes.

Q. And did you review that document prior to the submission of those responses?

A. Yes.

Q. And did you review it to make sure that it was accurate?

A. Yes.

Q. And LabCorp also filed a counterclaim against you; is that correct?

MR. SWEET: Objection —

BY MR. STEINER:

Q. Are you aware of that, sir?

MR. SWEET: — calls for a legal conclusion.

THE DEPONENT: I don't recall.

BY MR. STEINER:

Q. You were able to check in for your service at LabCorp on January 10th, 2020, correct?

A. By going to the desk, yes.

Q. And when you went to the LabCorp patient service center on January 10, 2020, a LabCorp staff member assisted you with the check-in process, correct?

MR. SWEET: Objection; asked and answered.

THE DEPONENT: Yes.

BY MR. STEINER:

Q. And you were not denied any LabCorp product or service when you went to the patient service center on January 10, 2020, correct?

A. I respectfully disagree. I was denied the opportunity to make use of the kiosk available to everybody else who walks in there as an option to announce my arrival and to check in and transact what I needed to transact.

Q. The product or service that you were there for, sir, was blood testing, correct?

MR. SWEET: Objection.

THE DEPONENT: It is, but the check-in process is also part of it.

BY MR. STEINER:

Q. And you told me before that before you filed this lawsuit, you never corresponded with LabCorp regarding any legal violations; is that correct?

A. Correct.

Q. Sir, in Paragraph 4 — well, actually, never mind. Withdrawn.

Do you have any facts to indicate that LabCorp doesn't train its employees to respect the civil rights or communicate effectively with people who are visually impaired?

MR. SWEET: Objection; calls for a legal conclusion.

THE DEPONENT: I do not.

BY MR. STEINER:

Q. Do you know whether the implementation of LabCorp's kiosks enabled you to get seen sooner on January 10th than you would have been seen if there were no kiosks there?

MR. SWEET: Objection; calls for speculation.

THE DEPONENT: I don't know.

BY MR. STEINER:

Q. Are you a member of the American Council of the Blind?

A. No.

Q. You're aware that this lawsuit was brought as a class action; is that correct?

A. Yes.

Q. And what does that mean to you?

A. It means that this process makes it more efficient and available for many blind people, who have had a similar issue, to seek the — the correction of the issue without having to each independently hire their own counsel.

Q. Can you identify any other blind person who has had a similar issue as you when it comes to checking in at a LabCorp patient service center?

A. "Identify," what do you mean?

Q. The name of anyone.

Can you identify anyone who has had a similar issue as you when it comes to checking in at a LabCorp patient service center?

A. Nobody other than the other defendant named in this case.

Q. You mean the other plaintiff, Mr. Davis?

A. Yeah. I'm sorry.

Q. That's okay.

A. I'm not good with my legal terms.

Q. And you told me before, you've never spoken to Mr. Davis, so you don't know anything about his personal experiences, do you, sir?

A. No.

MR. SWEET: Objection.

BY MR. STEINER:

Q. Can you identify anyone, other than yourself, who you claim was denied a LabCorp product and service based on their visual impairment or blindness?

MR. SWEET: Objection; misstates his testimony.

THE DEPONENT: I know that there are a lot of people who have had similar issues with these kiosks in various places. I'm not sure that they would all specifically be LabCorp, but these kiosks are becoming more prevalent; and unfortunately, they're not — many of them are not accessible. So it's at various —

BY MR. STEINER:

Q. I apologize, sir. My question was a little bit different.

A. Okay.

Q. I understand that these kiosks are becoming more prevalent.

My question was: Can you identify anyone who has been denied a product and service from LabCorp because they are visually impaired or blind?

A. What do you mean by “identify”? Like state the name, or how do you mean exactly?

Q. Yes, state the name.

A. No, I cannot.

Q. Without telling me, sir, what was said, how often do you speak with your counsel about this case?

A. Frequently; at least maybe once or twice a month. And obviously, leading up to this deposition, a little more often.

Q. Are you aware, sir, that there is a mediation scheduled in this case?

A. Yes.

Q. And do you know when that is scheduled for?

A. I don't recall.

Q. Have any settlement proposals from LabCorp been communicated to you?

A. Settlement proposals?

No.

MR. SWEET: I would just caution the witness not to disclose any communications with his counsel.

THE DEPONENT: Restate the question, please?

BY MR. STEINER:

Q. I don't have a question pending, sir.

A. Okay.

Q. You're aware, sir, that in this case, you're seeking to certify what's known as a California subclass?

MR. SWEET: Objection; calls for a legal conclusion.

BY MR. STEINER:

Q. If you're not aware of it, just tell me you're not aware of it and we can move on.

MR. SWEET: Objection —

THE DEPONENT: I am aware.

MR. SWEET: — calls for a legal conclusion.

BY MR. STEINER:

Q. I didn't hear your answer, sir.

A. Yes, I am.

Q. And do you know what that California subclass consists of?

A. I'm not aware. I mean, I'm sorry, I'm not familiar.

Q. Do you know who is purported to be included within that California subclass?

A. I believe all blind people in California.

Q. Whether or not they went to a LabCorp patient service center or not?

A. I don't know.

Q. And whether or not they went to a LabCorp patient service center and were able to check in at the desk, correct?

A. I don't recall.

Q. Does the California subclass include anyone that was able to check in at the kiosk, notwithstanding their visual impairment?

A. I don't recall.

Q. You don't recall or you don't know, sir?

MR. SWEET: Objection; asked and answered.

THE DEPONENT: (No response.)

BY MR. STEINER:

Q. Do you know, sir, whether the California subclass includes individuals who were able to check in at the kiosk, notwithstanding their visual impairment?

MR. SWEET: Same objection.

THE DEPONENT: I don't recall.

BY MR. STEINER:

Q. Do you recall if either the California subclass or the nationwide class includes people who are visually impaired but haven't visited a LabCorp facility with a kiosk?

A. I don't recall.

Q. And do you recall if either the nationwide class or the California subclass includes people who, regardless of their sight, prefer to check in at the desk?

A. I don't recall.

Q. You're aware there's also a request to certify a nationwide class of people?

A. Yes.

Q. And do you know who is included in that request?

A. All blind people in the country.

Q. And is it all blind people in the country, regardless of whether or not they have actually visited a LabCorp patient service center?

A. I don't recall.

Q. Do you recall if it is all blind people that have visited a LabCorp patient service center or just those that have attempted to use the kiosk?

A. I don't recall.

Q. Does the nationwide class include people who visited a LabCorp patient service center but were able to check in at the desk?

A. I don't recall.

Q. So the only thing that you can recall, sir, is that the nationwide class includes all blind people in the United States —

MR. SWEET: Objection.

BY MR. STEINER:

Q. — is that right, sir?

MR. SWEET: Objection.

Rob, that's not the only thing he can recall.

MR. STEINER: Excuse me. I didn't intend to suggest that was the only thing he can recall.

Q. The only thing, sir, that you can recall about the composition of the nationwide subclass is that it includes all blind people in the United States?

A. Yes.

MR. STEINER: I wasn't trying to be pejorative, Ben.

MR. SWEET: No problem.

MR. STEINER: And actually, could the reporter read back my question and answer.

DEPOSITION OFFICER: Yes.

(The record was read as follows:

Q. The only thing, sir, that you can recall about the composition of the nationwide subclass is that it includes all blind people in the United States?

A. Yes.)

BY MR. STEINER:

Q. And sir, does the nationwide class include people who aren't blind but have some level of visual impairment?

A. Yes.

Q. And what level of visual impairment do they have to have in order to be included in the nationwide class?

A. I don't recall.

Q. Are you familiar with anyone who is visually impaired who would be able to use, based on your belief, LabCorp's kiosk?

MR. SWEET: Objection; vague.

THE DEPONENT: I'm not aware.

BY MR. STEINER:

Q. How long, sir, have you been considered legally blind?

A. Since birth.

Q. Can you identify, sir, the damages that you have suffered as a result of your experiences at LabCorp on January 10, 2020?

MR. SWEET: Objection; calls for a legal conclusion.

THE DEPONENT: The damage is that I was denied one of two options to announce my arrival and transact with LabCorp regarding my visit there.

BY MR. STEINER:

Q. Did you suffer any financial harm?

MR. SWEET: Objection; calls for a legal conclusion.

BY MR. STEINER:

Q. You can answer it, sir.

A. Okay.

No.

MR. STEINER: Let's take five minutes. I think I'm pretty much done.

MR. SWEET: Okay. Sounds good.

MR. STEINER: Thanks, guys.

THE DEPONENT: Thanks.

DEPOSITION OFFICER: We're going off the record.

(A recess was held from 12:43 to 12:51.)

DEPOSITION OFFICER: We are back on the record.

BY MR. STEINER:

Q. Mr. Vargas, I just have hopefully one or two more questions.

Have you described to me, as best as you can recall, everything that was said between you and the LabCorp representative on the couple days prior to your July 10th visit — sorry — your January 10th, 2020 visit?

A. Yes.

Q. And have you described for me, as best as you can recall, everything that was said between you and the LabCorp representative on the occasion of your January 10th, 2020 visit?

A. Yes.

Q. And have you described to me, as best as you can recall, everything that you did on the occasion of your January 10, 2020 visit as it related to obtaining medical diagnostic testing services from LabCorp?

MR. SWEET: Objection; vague.

THE DEPONENT: Yes.

MR. STEINER: Mr. Vargas, thank you for your time. I don't have anything further.

THE DEPONENT: Thank you.

MR. SWEET: I'm going to ask some questions of our own for Mr. Vargas.

EXAMINATION

BY MR. SWEET:

Q. Julian, thank you for taking the time today to answer questions. I appreciate your diligence.

I'm just going to ask you a few questions about your role as a class representative in this litigation.

Okay?

Why did you want to serve as a class representative in this litigation against LabCorp?

A. Because I am ultimately seeking to help remove access barriers to the world for people like myself, who are blind.

Q. I understand.

And what are your motivations in seeking to represent a class of blind individuals?

A. My motives are to, you know, again, help remove these barriers to accessibility, so that blind people like myself can transact and, you know, do the things we need to do on a daily basis as independently as possible.

Q. And do you have any financial motive in being involved in the litigation as a class representative?

A. Absolutely not.

And this is all about leveling the playing field, making it so that blind people can avail themselves of all the conveniences that are available to everybody else. I'm only seeking injunctive relief and minimum statutory damages on behalf of the class.

Q. And Julian, may I ask you, as far as your role as a class representative in this litigation, what do you see as your duties as a good class representative in this class action?

A. To supervise and direct counsel; to review and approve of documents; to prepare and sit for a deposition, such as this one; to be ready to appear in-person at trial, if that's where it goes, or to actively participate in settlement negotiations, if that's where things go.

Q. Thank you.

And what steps have you taken so far to satisfy your role as a class representative?

A. I've communicated with counsel regularly to keep informed of details and developments in the case. I've spent time, you know, preparing for and ultimately making this appearance here today.

Q. Great.

How often would you say you have communicated with your counsel, without disclosing any substance of those discussions?

A. I would say a good 15 to 20 times.

Q. Great.

And can you tell me what laws this class action is brought under?

A. That would be the Americans with Disabilities Act and other state and federal laws that govern accessibility, such as the Rehabilitation Act, the California Unruh Act, and things like that.

Q. Great. Thank you.

And can you tell me what court the case is happening in?

A. This is in the United States District Court in Los Angeles, California.

Q. And can you tell me who the judge is?

A. The judge is Fernando Olguin.

Q. And Mr. Vargas, do you also understand that you are asserting a claim on behalf of blind Californians under California's Unruh Act?

A. Yes.

Q. And I believe you stated a moment ago that you were seeking only the minimum statutory damages for that claim; is that correct?

A. That's correct.

Q. And so just to be crystal clear for the record, are you seeking any additional compensatory award for

yourself in your individual capacity under this Unruh Act claim, beyond the minimum statutory damages?

A. None whatsoever.

Q. And you further understand that the California subclass is asserting a claim on behalf of blind Californians under the California Disabled Persons Act, right?

MR. STEINER: Objection; leading.

THE DEPONENT: Yes.

BY MR. SWEET:

Q. And do you understand that this claim seeks minimum statutory damages of \$1,000 per violation?

MR. STEINER: Same objection.

BY MR. SWEET:

Q. You can answer.

A. Yes.

Q. And just to be clear, are you seeking any additional compensatory award for yourself in your individual capacity under this Disabled Persons Act claim, beyond the minimum statutory damages?

A. No.

Q. I want to return to some of the testimony that we heard from you earlier today.

I believe Mr. Steiner asked you about your involvement in prior litigation with respect to website accessibility.

Do you recall that discussion?

A. Yes.

Q. And you testified that to the best of your recollection, there may have been up to five, quote,

“cases,” end quote, that you were involved with; is that right?

A. Yes.

Q. And is it your understanding that the term “cases” can relate to lawsuits that are formally filed in court as well as matters that were resolved via a demand letter?

MR. STEINER: Objection to the form.

BY MR. SWEET:

Q. You can answer.

A. Yes. I’m not very good with my legal terms. That’s the reason I have counsel. So I think it’s absolutely possible.

Q. Thank you. That’s helpful.

And you’re not an attorney, are you, Mr. Vargas?

A. No. I think that’s obvious.

Q. You testified a little bit earlier today that you made two trips to the LabCorp location in Van Nuys, one a few days before the ultimate blood test you got on January 10th of 2020; is that correct?

A. Correct.

Q. And do you have plans to return to that location in the future?

A. Yes.

Q. And why would you return to the location?

A. It, for one thing, is conveniently close to me. So when I have to do things, especially like fasting blood tests, I’m familiar with the location already and it’s not far away, so I can easily get to it.

Plus, I want to test and see if they're ever going to make those kiosks accessible so that someday people like myself have both options available that everybody else has, as far as announcing their arrival and transacting with the lab regarding their visit.

Q. Thank you.

A little bit earlier, you testified regarding the practices within LabCorp with regard to training.

Do you recall that testimony?

MR. STEINER: Objection to the form.

THE DEPONENT: Yes.

BY MR. SWEET:

Q. And is it fair to say that you have relied on your counsel with regard to the allegations with regard to training?

A. Yes.

Q. And is it also fair to say that you have relied on your legal counsel to craft the class definition in this matter?

A. Yes.

MR. SWEET: I'd like to go off the record for just a few minutes. I think I am complete, but I want to take a couple moments. So why don't we take a five-minute break.

DEPOSITION OFFICER: We are off the record.

(A recess was held from 1:01 to 1:03.)

DEPOSITION OFFICER: We are back on the record.

BY MR. SWEET:

Q. Do you recall earlier, Julian, giving some testimony about the reasons why you believe that the kiosk was inaccessible?

A. Yes.

Q. And is it fair to say that you relied on your counsel for developing reasons why the kiosks were inaccessible?

A. Yes.

Q. And do you recall giving testimony earlier today about whether the inaccessibility of the kiosks affected other blind individuals?

A. Yes.

Q. And is it fair to say you've relied on your counsel for developing the ways in which the inaccessibility of the kiosks may have affected others?

A. Yes.

MR. SWEET: Thank you so much, Julian, for your testimony today. I have no further questions.

MR. STEINER: Just a couple.

FURTHER EXAMINATION

BY MR. STEINER:

Q. Sir, just so I understand your testimony, you have no facts yourself to indicate why the kiosks are inaccessible; is that right?

A. I do not, because I have no way of learning about the kiosks, since it's not accessible to begin with.

Q. And you have no facts yourself to indicate how the design of the kiosks has impacted other visually impaired or blind people; is that correct?

A. That's correct. I rely on my counsel to do that research.

MR. STEINER: Thank you very much, sir. I think we're done.

MR. SWEET: I think we're finished.

MR. STEINER: Very good. Have a good day.

MR. SWEET: Thank you. Take care.

THE DEPONENT: Thank you.

DEPOSITION OFFICER: The deposition is complete and we're going off the record. Thank you.

(Whereupon, at the hour of 1:05 p.m.,
the proceedings were adjourned.)

-OOO-

REPORTER'S CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter licensed in the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that the deponent in the foregoing proceedings, prior to testifying, was duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a full, complete, and true record of said proceedings.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

In witness whereof, I have this _____ day of _____, 2021, subscribed my name.

- _____ Reading and Signing was requested
- _____ Reading and Signing was requested
- _____ Reading and Signing was requested
- _____ Reading and Signing was requested

JANET MURPHY, CSR NO. 9650

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS and	)	Case No. 2:20-cv-
JULIAN VARGAS,	)	00893
individually on behalf of)	
themselves and all)	
others similarly)	
situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
LABORATORY)	
CORPORATION OF)	
AMERICA HOLDINGS;)	
and DOES 1-10,)	
inclusive,)	
)	
Defendant.)	

DEPOSITION OE BARTHOLOMEW COAN
TAKEN MARCH 5, 2021

REPORTED REMOTELY BY:

ANDREA L. CHECK, CSR No. 748, RPR

Notary Public

THE DEPOSITION OF BARTHOLOMEW COAN was taken on behalf of the Plaintiffs via remote videoconference, commencing at 1:05 p.m. on March 5, 2021, before Andrea L. Check, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

APPEARANCES:

For the Plaintiffs:

(Appearing Remotely)

Nye, Stirling, Hale & Miller, LLP
BY MR. BENJAMIN J. SWEET
& MR. JONATHAN D. MILLER
& MR. CALLUM APPLEBY
1145 Bower Hill Road
Pittsburgh, Pennsylvania 15243
ben@nshmlaw.com

For the Defendants:

(Appearing Remotely)
Kelley Drye & Warren, LLP
BY MR. ROBERT L. STEINER
101 Park Avenue
New York, New York 10178
rsteiner@kelleydrye.com

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P R O C E E D I N G S

COURT REPORTER: The attorneys participating in this proceeding acknowledge that I am not physically present in the proceeding room and that I will be reporting this proceeding remotely. They further acknowledge that the witness will be sworn in remotely by me. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

Please indicate your agreement by stating your name and your agreement on the record. Also, if there is anyone present in the room with you not on video, please so indicate.

MR. SWEET: This is Benjamin Sweet for plaintiffs in the class, and we so consent.

MR. STEINER: Rob Steiner for the defendant and the witness, and we agree.

BARTHOLOMEW COAN,

first duly sworn to tell the truth relating to said cause, testified remotely as follows:

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THE WITNESS: Mr. Sweet, can you restate the question?

Q. (BY MR. SWEET) Sure. What was your understanding of the purpose of Project Horizon?

A. My understanding of the purpose of Project Horizon was to improve our patient experience and

provide efficiencies in the check-in process for our patients .

Q. Did you have an understanding that it was also about cutting costs of the company?

A. As part of the process of providing efficiencies, it's reasonable to expect that some labor costs could be reduced.

Q. And were you aware that the company was tracking the savings that it was achieving throughout the course of the project?

MR. STEINER: Objection; foundation.

THE WITNESS: Yes, I was.

Q. (BY MR. SWEET) And were you made aware in your role on the project of what those savings were?

A. I do not recall the exact amounts.

Q. Well, regardless of whether you recall the amounts, do you recall being made aware that there was [unintelligible]?

COURT REPORTER: Actually, can you repeat

the kiosks, I think their perception is that they could have viewed the use of the kiosk as not optional.

MR. SWEET: Let's look at Exhibit 11, Callum, and put it in the —let's put it in the folder.

(Exhibit 11 marked.)

Q. (BY MR. SWEET) I assume you reviewed this document, sir; am I correct?

A. Which one? Is it 11?

Q. Yes, sir. Hopefully, it is populated by now.

A. Yes, I have seen this document.

Q. And this is the memo you were referencing earlier today?

A. Yes, it is.

Q. About your visit?

A. Yes, it is.

Q. And I would assume that this is a document that helps to refresh your recollection of the visits?

A. Yes, it does.

Q. Let's move down to the paragraph I asked about before and ask you this: It states, "Key Takeaway, from Bart's perspective (please note this opinion is based on visits at only these 3 sites and feedback from the members giving us the tour). In the sites that we visited, the vast majority of patients would proceed to the counter if the line at the counter line was less than three people. The patients were redirected to check in at the Employee Express station. Most patients simply said okay, but many seemed visibly frustrated at the redirection, particularly the older patients. Even with those patients that were compliant, this may create a negative initial impression because the use of Express station is no longer seen as optional. With that in mind, I think the patient's expectation then becomes that this experience should be absolutely flawless since it is not optional."

Did I read that accurately, sir?

A. Yes.

Q. And I'll ask you again, then, you state here that the use of the kiosk is not optional; correct?

MR. STEINER: Objection; asked and answered, argumentative.

THE WITNESS: Again, as I stated previously, this was the perception of the patients based upon the redirection.

Q. (BY MR. SWEET) Who did you send this memo to, sir?

A. I do not recall who I sent the memo to.

Q. You can't recall one person you sent the memo to ?

A. I don't recall.

Q. Did you send it to anyone?

A. Yes, I sent it to some — to some people, but I don't know all of the people I sent it to.

Q. Do you know any of the people that you sent it to?

A. Mark would have been a person that I would have sent it to.

Q. Mr. Wright?

A. Yes.

Q. And so Mr. Wright received this memo, and fair to assume that he would have read it?

MR. STEINER: Objection; speculation.

THE WITNESS: I have no idea if he would have read it or not.

Q. (BY MR. SWEET) Did Mr. Wright ever directly communicate with you to correct this assertion that use of the kiosk is not optional?

A. Again, I think —

MR. STEINER: Objection; mischaracterizes the document.

THE WITNESS: Again, I think you're mischaracterizing what is said in the document.

Q. (BY MR. SWEET) Sir, I'm going to read the sentence again, and I'm going to ask you whether you wrote the sentence, okay?

The sentence is, "With that in mind, I think the patient's expectation then becomes that this experience should be absolutely flawless since it is not optional."

Did you or did you not write that sentence?

A. I wrote that sentence, but it has to be within the context of the entire explanation of what was being described. Reading one sentence does not give you the context of that statement.

MR. SWEET: Move to strike everything after, "I wrote the sentence."

MR. STEINER: Don't worry about that. It's in the record, Bart.

Q. (BY MR. SWEET) Mr. Wright never had a discussion with you about the kiosks not being optional?

A. I think it is important to understand that this visit occurred early in the process of the rollout.

Q. I appreciate that. Did Mr. Wright ever have a discussion with you about whether the kiosks — use of the kiosk was not optional?

A. We talked about, not just Mr. Wright, but that the kiosk was seen as an optional thing.

Q. You discussed that with Mr. Wright?

A. Discussed it with many people.

Q. Who else?

A. Kevin DeAngelo.

Q. And did Mr. DeAngelo and Mr. Wright — strike that.

Did anyone at LabCorp communicate to the PSC level, the PSTs and the PIRs, that use of the kiosk was optional?

A. I cannot state what was communicated from an operational standpoint or not.

Q. Did anyone communicate that information to you?

A. Not that I have recollection of.

Q. Did Mr. Wright respond to your memo in an email and say that the kiosk is optional?

A. I don't have a recollection of that.

Q. Are there any documents which might refresh your recollection, that you're aware of, on that point?

A. Not that I'm aware of.

Q. Did Mr. DeAngelo ever communicate with you his directive that use of the kiosk was optional?

A. Not that I'm aware of.

Q. And there's no documents of which you're aware that might refresh your recollection on that point, are there, sir?

A. Not that I'm aware of.

Q. Other than Mr. DeAngelo and Mr. Wright, is there anyone else who received this memo?

A. The only other person that I know of is Mike Doherty, who made the trip with me, but I don't recall of anybody else?

Q. Well, the question I have, sir, is: If there was an impression that use of the kiosk was not optional, was any communication sent to the PSCs to correct that misperception?

MR. STEINER: Objection; foundation.

THE WITNESS: Again, I have no basis to say whether or not that was communicated or not.

Q. (BY MR. SWEET) Do you know if it was communicated at all?

A. I do not have a knowledge of it.

Q. So you can't say one way or the other?

A. I do not know what was communicated to the patient service teams.

Q. At some point, sir, did you become aware of complaints by blind customers concerning the accessibility of the kiosk?

A. I never became aware of that.

Q. As you sit here today, are you aware of any complaints by blind customers about the use of the kiosk?

A. Only as it relates to this discussion.

A. It wouldn't matter to me.

Q. Well, sir, why would you include those observations in your memo if they weren't important?

A. I don't understand the question.

Q. Well, the memo talks about your key takeaways; correct?

A. Correct.

Q. And one of the takeaways is this discussion about whether the kiosk is optional; correct?

MR. STEINER: Object to the form.

THE WITNESS: I state that the patients did not view it as optional.

Q. (BY MR. SWEET) It's one of the takeaways; correct?

A. It was in that key takeaway section; yes, sir.

Q. So it was important?

A. It's one of our observations.

Q. If somebody has a complaint about the accessibility of the kiosk, how do they make it at LabCorp?

How do you make a complaint?

MR. STEINER: Objection, foundation.

THE WITNESS: I do not know the answer to that.

Q. (BY MR. SWEET) Is there functionality on the

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS and JULIAN)	
VARGAS, individually on	)	Case No. 2:20-cv-
behalf of themselves and all	)	00893
others similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
LABORATORY)	
CORPORATION OF AMERICA))	
HOLDINGS; and DOES 1-10,)	
inclusive,)	
)	
Defendant.)	
_____)	

DEPOSITION OF KEVIN DeANGELO
TAKEN MARCH 3, 2021

REPORTED REMOTELY BY:
ANDREA L. CHECK, CSR No. 748, RPR
Notary Public

THE DEPOSITION OF KEVIN DeANGELO was taken on behalf of the Plaintiffs via remote videoconference, commencing at 1:05 p.m. on March 3, 2021, before Andrea L. Check, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

APPEARANCES:

For the Plaintiffs:

(Appearing Remotely)
Nye, Stirling, Hale & Miller, LLP
BY MR. JONATHAN D. MILLER
& MR. BENJAMIN J. SWEET
& MR. CALLUM APPLEBY
33 West Mission Street, Suite 201
Santa Barbara, California 93101
jonathan@nshmlaw.com

For the Defendants:

(Appearing Remotely)
Kelley Drye & Warren, LLP
BY MR. ROBERT L. STEINER
101 Park Avenue
New York, New York 10178
rsteiner@kelleydrye.com

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P R O C E E D I N G S

COURT REPORTER: The attorneys participating in this proceeding acknowledge that I am not physically present in the proceeding room and that I will be reporting this proceeding remotely. They further acknowledge that the witness will be sworn in remotely by me. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

Please indicate your agreement by stating your name and your agreement on the record. Also, if there is anyone present in the room with you not on video, please so indicate.

MR. MILLER: Thank you very much. This is Jon Miller for the plaintiffs in the proposed class, I consent.

MR. STEINER: And it's Rob Steiner for the defendant and for the witness, we consent.

KEVIN DeANGELO,

first duly sworn to tell the truth relating to said cause, testified remotely as follows:

///

///

answered.

THE WITNESS: The LabCorp patient portal does facilitate some of what you described. The LabCorp website doesn't have any patient-centric information in it.

Q. (BY MR. MILLER) The Express Center kiosk, though, certainly, allows patients to manage their LabCorp interactions and health records; right?

MR. STEINER: Objection; vague, foundation.

THE WITNESS: It allows the patient to manage the interaction for which they are at the PSC for, for that specific interaction.

Q. (BY MR. MILLER) And isn't it true that at a LabCorp Express kiosk patients can perform functions, including finding a lab for a PSC visit?

A. No, that's not —

MR. STEINER: Objection.

Go ahead.

THE WITNESS: That is not correct.

Q. (BY MR. MILLER) Is it true that patients can use the LabCorp website to find a lab for a PSC visit?

A. That is correct.

Q. Is it true that patient's can use a mobile application to find a lab for a PSC visit?

A. That is correct.

Q. Is it true that patients can use the Express Center kiosks to schedule and manage appointments for a PSC visit?

A. It is correct that they can manage appointments for a PSC visit. The ability to schedule an appointment for a PSC visit is somewhat limited to the behavior of our tablets, especially in the afterhours arena when the PSC is no longer seeing patients. But there is some limited ability to schedule an alternate time for an appointment.

Q. And isn't it true that the LabCorp Express kiosk also allows patients to pay and manage their past invoices at the kiosk?

A. That is correct.

Q. And they can do that by themselves? It's a self-service process?

A. That is correct.

Q. And am I correct in understanding that LabCorp patients can also schedule and manage appointments at a PSC via the website application?

A. That's correct.

Q. As well as the mobile apps that LabCorp makes available?

A. That's correct.

Q. And LabCorp makes those mobile apps available

true?

A. That's correct.

Q. The first, again, just for clarity, is the website, and then the ability to then use the mobile applications when they arrive; right?

A. That would be one, is the check-in using the "Wait Where You're Comfortable" app on the mobile device.

Q. And the second method of checking in, which I believe we've already discussed, is the Express Center kiosk; true?

A. That is a second method, correct.

Q. And the third method is at the window with the use or assistance of a LabCorp employee; is that right?

A. That's correct.

Q. And it's LabCorp's position, as far as you know, that a patient that wants — can use any one of those three methods that they choose; right?

MR. STEINER: Object to the form.

THE WITNESS: That's correct.

Q. (BY MR. MILLER) But it's also correct, isn't it, sir, that LabCorp was attempting to have patients largely use the Express Center kiosk as opposed to the window; isn't that true?

MR. STEINER: Object to the form.

policy, no.

Q. (BY MR. MILLER) But you do have a general ADA accessibility policy; right? That's your understanding?

A. We do. That's correct.

(Exhibit 22 marked.)

Q. (BY MR. MILLER) And if we take a look at what was previously marked as Exhibit 22 to Mr. Sinning's deposition, is it your understanding that this is LabCorp's ADA policy?

A. I have the document on the computer now. I believe this is our ADA policy, correct.

Q. And nowhere in that policy does it specifically direct any LabCorp employees how to engage in an interactive process with blind individuals, does it, sir?

MR. STEINER: Objection; the document speaks for itself, legal conclusion.

THE WITNESS: That's correct.

Q. (BY MR. MILLER) Are you aware of any guidance that's been given by LabCorp to its employees of patient service centers on how to engage in the interactive process with blind individuals to be able to access its products and services?

MR. STEINER: Objection; legal conclusion.

THE WITNESS: We have policies — excuse me

—

LabCorp?

A. Indirectly, yes.

Q. And, in fact, in the first year of its implementation, the company saved \$14 million, thereabouts, in labor costs; isn't that true?

A. That is correct.

Q. And, again, in the second year it saved an additional \$10 million in labor costs; isn't that true?

MR. STEINER: Objection; no foundation.

THE WITNESS: Yeah, I'm not aware of what the year two savings were, but we were able to redistribute a significant amount of labor to balance the network.

Q. (BY MR. MILLER) And isn't it true that the company communicated out to its shareholders that it reduced labor costs through Project Horizon?

A. I don't believe we ever communicated directly to our shareholders about Project Horizon.

Q. Isn't it true, though, that LabCorp communicated to its shareholders that it reduced labor costs which were the result of Project Horizon?

A. I don't believe so.

COURT REPORTER: What was that, Mr. Steiner? Was it "Object to the form"?

MR. STEINER: Yes. Kevin, just slow down a little bit. Just like — you guys are —

Q. And so everyone that was on the email in Exhibit 50, presumably, got your homework assignment that's referenced here in Exhibit 6; is that true?

A. That would have been true.

Q. And if we go back and look at Exhibit 6, under "Risk Scenarios," you knew, sir, as of August 23rd, 2016, that one of the risks of the implementation of Project Horizon was a patient who was blind who arrives with a seeing eye dog and was unable to check in at the device; right?

A. That was identified as a risk scenario, correct.

Q. Did you identify that as a risk scenario or did someone else?

A. This document would have been a working document from the group, so someone in the group would have put each one of these forward. I don't know who it was.

Q. And so one of the options to mitigate that was, potentially, offering Braille at the device; correct?

A. One of our team, obviously, suggested that. It was included in this document.

Q. Has Braille ever been offered at any of the Express Center kiosks, to your knowledge?

Q. (BY MR. MILLER) Isn't it more correct, Mr. DeAngelo, that the company's initial directives to its employees was actually to redirect patients back to the kiosks when they came to the window?

MR. STEINER: Objection; no foundation.

THE WITNESS: That is not correct.

Q. (BY MR. MILLER) Sir, do you get copies of the phlebotomy notes that are transmitted by the company to its employees?

A. I do receive those copies.

Q. And do you participate in any way in the content of those notes?

A. I have participated in the content of some of them but not all of them.

Q. If you see something that you disagree with in the notes, do you take any action to try to clarify that or correct that so that your employees get clear communication from the company?

A. Are we talking about the timeframe in question or current day?

Q. The timeframe in question, before you took on your current role.

A. I would have had some level of oversight in the material that was sent to the employee.

Q. So, for example, if you disagreed with some of the instructions in the phlebotomy notes, you had the ability to take action to correct it; right?

A. That is a correct statement.

(Exhibit 52 marked.)

Q. (BY MR. MILLER) And if we take a look at Exhibit 52.

A. Okay. It's in now. I'm opening it.

Q. These are phlebotomy notes from the company dated May 2018.

A. Okay.

Q. Am I correct in understanding these are the phlebotomy notes that you're referring to that get sent to phlebotomists?

A. This is an example of some, yes.

Q. And is that one of the methods that the company uses to communicate with its employees, phlebotomist notes?

A. It is one method, correct.

Q. Specifically, its employees at the patient service centers?

A. That's correct.

Q. And this particular series of phlebotomy notes from May 2018 has some discussion about how to deal with the Express kiosk; correct?

A. It does, that's correct.

Q. And it's informing the phlebotomist as to reasons for nonuse of the Express tablet; right?

A. That's correct.

Q. And so as of May of 2018, LabCorp was instructing its phlebotomists that if a patient walks past the Express tablets and proceeds directly to the front desk without attempting to check in to the tablet,

that they should receive a soft redirect back to the tablet; isn't that true?

A. That's correct, the method of engagement.

MR. STEINER: Kevin, just please slow down a minute so I can get an objection in.

Object to the form of the question.

COURT REPORTER: And go ahead and repeat your answer, as well, because I'm not sure if I got it all.

THE WITNESS: Sure. And my apologies for being too quick. That's an answer, this is one form of communication.

Q. (BY MR. MILLER) I think your answer was a little more specific. You agreed that as of May of 2018 LabCorp was telling its phlebotomists that if a patient comes to the PSC and walks past the kiosk, that the employee should give them a soft redirect back to the kiosk; correct?

MR. STEINER: Object to the form of the question.

THE WITNESS: That's a correct statement. This is one of the ways we were communicating the initial training for our employees on how to encounter — how to manage the encounter with a patient who missed or did not see the tablet on their way into the patient service center. It's an opportunity to interact with that patient one on one.

Q. (BY MR. MILLER) And nothing in this phlebotomy note differentiates whether the individual is sighted or not sighted or blind, does it?

MR. STEINER: Object to the form of the question.

THE WITNESS: Not in this issue, no.

Q. (BY MR. MILLER) And, again, as of the time that these phlebotomy notes were sent, you certainly knew that the company had identified one risk scenario being that a blind individual might not be able to check in at the kiosk; right?

A. Yes, to the extent that it was produced before the product was developed, yes.

Q. Well, even after the product was developed, and as of May of 2018, blind users couldn't check in at the kiosk, could they, by themselves?

A. I have no basis to say they couldn't. And my

were inaccessible to blind users?

A. We did not.

Q. And how about in 2020, did you indicate to them in 2020 that the kiosks are inaccessible to blind users?

A. We did not.

Q. Has the company ever told its employees at the patient service centers that the kiosks are inaccessible to blind users?

A. We did not.

Q. I mean, you would agree, would you not, Mr. DeAngelo, that you don't want your employees telling blind people to go use a kiosk if it's not accessible; right?

A. I disagree. I don't want my employees making a distinction on whether a patient can access the device or not.

Q. But if you know the device is inaccessible to the blind — strike that.

Are you aware of any features that make the kiosks independently usable for the blind?

A. I am not.

Q. So presuming that there are none, you certainly don't want to frustrate blind people by sending them to a device they can't use, do you, sir?

that in isolation, the first thing in that says, "I'll be happy to work on your order and take the order from the patient." The soft redirect is only used when the patient clearly missed something or could not use the device. We've already began the engagement at the window. That is why that is written in the form it is.

Q. (BY MR. MILLER) Well, why, then, are patients being softly redirected back to the device at all?

A. Because there are patients who miss the device in its entirety and would prefer that type of interaction. If they had simply missed the device, this is our opportunity to go ahead and process them but make them aware for future visits that those devices exist.

Q. You'd agree that blind users can't see the kiosks; right?

A. I don't agree. Again, vision impairment is a very subjective thing.

Q. Have any efforts ever been implemented by LabCorp to tell blind patients who come into the facility that the kiosks are inaccessible?

A. No. The company has not done that, to my knowledge.

Q. Has any instruction been made to blind patients that when they come into a LabCorp, they should only be seeking service at the window because there's no

implementing for the very first time. We spent a significant amount of time watching interactions and watching employee behaviors.

Q. And on more than one occasion employees were telling patients that use of the kiosk was, in fact, mandatory; isn't that true?

A. Only in the pilot stage were we aware of that. And that was the result of poor change management.

Q. And it was happening, though, on more than one occasion; isn't that true?

MR. STEINER: Object to the form.

COURT REPORTER: Actually, can you repeat your question?

Q. (BY MR. MILLER) You were aware of more than one instance of employees telling patients that the use of the kiosk was mandatory; right?

MR. STEINER: Object to the form.

THE WITNESS: We were made aware, through the focus groups, that that had been an observed behavior, so the assumption would be they observed it more than once to make it notable.

Q. (BY MR. MILLER) However, the first time that you ever informed employees in writing that the use of the kiosk was not mandatory was after this lawsuit was filed; isn't that true?

MR. STEINER: Objection to the form, no foundation.

THE WITNESS: I have no basis to answer that question.

Q. (BY MR. MILLER) Well, first of all, the focus groups that you referenced, that happened back in the 2016 timeframe; right?

A. Late 2016, early 2017, that would be correct.
(Exhibit 54 marked.)

Q. (BY MR. MILLER) And if we take a look at Exhibit 54.

A. Okay. It's in the file now.

Q. This is a November 2020 newsletter; correct?

A. It is.

Q. And, again, there's a discussion in the newsletter about the Express kiosk check-in process; right? If we take a look here on page 4.

A. I'm scrolling to page 4 now. I see an article on the customer experience.

Q. And there's a discussion about the LabCorp Express kiosks; right?

A. Yes.

Q. And it acknowledges that the Express kiosk is a great tool for the patients; true?

A. It does say that, correct.

Q. It gives the patients a benefit to control and expedite the order-entry process; right?

A. That's correct.

Q. But it goes on to say that self-check-in is not for every patient; right?

A. It does state that.

Q. And further on in the paragraph, it says, “Check-in using the LabCorp Express station tablet is NOT” — and the word “not” is capitalized and underlined — “mandatory for patients”?

A. That’s a correct statement.

Q. And isn’t it true that November of 2020 is the first time that it was communicated in writing to the LabCorp employees that the use of the Express kiosk was not mandatory?

MR. STEINER: Just objection, no foundation.

Jonathan, you know — well, you’re misrepresenting the record. No foundation.

THE WITNESS: My response is, no, that multiple times, and in documents that I reviewed prior to this deposition, we have focused on the patient-first approach, and that this was not, not required for all patients, including the document we referenced in 2018.

Q. (BY MR. MILLER) But you would agree the language here is very specifically telling your employees that the use of the Express kiosk is not mandatory; right?

A. That’s correct.

Q. Have you ever seen that same statement in any documents prior to November of 2020 that LabCorp issued to its employees?

A. I think the intent of the previous documents was exactly this.

Q. And that wasn’t my question. I mean, you would agree with me, this is a very clear statement to

your employees that the use of the Express Center kiosks is not mandatory; right?

A. That's a correct statement.

Q. And did you see a similar very clear statement to your employees, prior to November of 2020, as to whether the kiosks were not mandatory?

MR. STEINER: Objection to the form, no foundation.

THE WITNESS: Well, without specific documents in front of me, I don't have a document to reference if I provide the answer "yes." That was the intent over repeating this article multiple times.

Q. (BY MR. MILLER) You mentioned, though, that you reviewed some documents in preparation for your deposition and certain documents refreshed your recollection.

Did you see any document that preceded this newsletter that told employees of LabCorp expressly that use of the kiosks was not mandatory?

A. I saw multiple newsletters that had a similar article that stressed the patient-first approach with a triage list that did not force patients to use the tablets.

Q. No, but my question is more specific, and I think you know it. Specifically, did those prior newsletters ever say that the use of the Express Center kiosk is not mandatory?

MR. STEINER: Object to the form of the question.

Q. (BY MR. MILLER) Those words.

A. I do not know. I did not review them to that level.

Q. Now, in looking at this area of Exhibit 54, there's a picture here of what appears to be a pamphlet, this: "LabCorp. Having trouble checking in? Please see us for help."

Do you see that?

A. Yes, I do.

Q. And was that a pamphlet or was that a sign that was in LabCorp patient service centers?

they had to interact with a patient, as a whole. That's not the physical interaction with the patient, but it's the allocation of time for every patient that seeks phlebotomy services at a patient service center.

That's what we are measuring time savings in, is in the amount of employee effort required to service the patient end to end. And some of that time — actually, a vast majority of that time, it was not a physical interaction with the patient.

Q. And you also made some projections, as you testified to here, regarding the capacity of improvement, the number of patients that LabCorp could service at each facility in a given day; correct?

A. That was actually one of our higher-level measurements of expanding capacity with existing labor, yes.

Q. And was LabCorp, ultimately, able to extend the amount of patients it serves as a result of the implementation of Project Horizon?

A. We were.

Q. And did that increase profitability to the company?

MR. STEINER: Objection; foundation.

THE WITNESS: I don't know that it increased profitability. It allowed us to expand using the

address in the site.

Q. And when it says "Division, W," what is that in reference to?

A. So that's one of our — that would be one of our six operating divisions. This page indicates the West. And I noticed that all of these sites are California. There would be five other alpha designations.

Q. And then, obviously, there's the address and the city and the state and the ZIP.

When you get to "Headcount," what does that column reference, as far as you know?

A. Number of physical employees at the site.

Q. And then "FTE" would be the full-time equivalent?

A. That's correct. And that's a budgeted number. And so you'll often see the budgeted number not equal the head count. And head count is truly head count, it's not FTE. So the team — I remember this exercise — looked at this many different ways to understand people, to understand budget, open positions. This was a fairly complex exercise that was very dynamic.

Q. And then the "Open Position" would be a location where the budget had allowed for another opening?

A. Or there had been an approved requisition for an additional person that might not be in the budget.

But, again, it's a standalone number. There was an open position that was actively being recruited for.

Q. And how about the next column? I can only see the word that appears to be "Time Budget." It could be "Audit Time Budget," but I can't tell if that is correct.

Do you know what that column references?

A. I don't know what that column references.

Q. How about the "FTE+Open," what does that — what is that in regard to, just adding together the FTE plus the open position?

A. I believe so.

Q. And then when it says "Calculation 1" or "Calc 1," what's that in reference to?

A. I do not know.

Q. How about "Cal 2"?

A. I also do not know.

Q. When you get to "Size Minimum," it appears, is that the minimum number of employees that you need at each location?

A. So there was some modeling done that was exclusive of hours of operation that was just on the number of patients that were coming through the doors each day. And those are two very important metrics that we look at. I suspect that we expected that number to reflect the minimum number of employees we would have on any one day across the — a Monday-through-Friday week.

Q. And then the next column is the "Baseline Size"?

A. Largely, I think — and, again, I believe there was a baseline snapshot taken at one point in time. Remember, this was a very dynamic document, which would have been updated every few weeks. That number, likely, reflected the size of the patient service center at a fixed point in time when the project was starting.

Largely, I would expect — again, I don't have the facts in front of me — but it likely would have been the size of the site at the end of 2016, just for perspective on whether a site was growing or shrinking independent of any work we were doing with this project.

Q. And then there were recommendations on the potential reduction, right, in the next column?

A. Correct. Based on the full implementation of the project.

Q. And so there were some locations — for example, if we look at the first column — where the baseline size may have been 3, and there was a reduction recommended by .5; right?

MR. STEINER: Object to the form.

THE WITNESS: Yeah. So, again, I don't have the context of all of the columns. Just because that site was a 3 at the beginning of the project, at the time this document was produced, there were different numbers of employees in this one site. The original projection might have been in a site that had three or more employees to reduce by a half, but that's why it was important to take into context what the site actually was when this was produced. And, again, these were produced frequently throughout the life of

the project. Without the date references, it's very hard to tell what this was showing.

Q. (BY MR. MILLER) But, ultimately, am I correct in understanding that the reductions in full-time equivalents were made at sites with three or more LabCorp employees at the time it was analyzed?

A. That was the original hypothesis. But for the full implementation of the project, which included not only Express tablets, but the solution behind the desk — and both of those solutions had to include all of the different functional components to actually achieve that level of, you know, opening of capacity.

So one of the challenges we had during the project was because the project evolved over time, we did not deploy the project with all of its feature functionality on day 1, which made incremental savings less than a half an employee per day impossible. It's impossible to do that on that scale. So some of the outcomes were much delayed as the feature functionality of the tablets were updated literally over the first year and a half of the project.

Q. But, ultimately, labor costs for LabCorp were reduced by the implementation of Project Horizon, as we've already discussed; right?

MR. STEINER: Objection; asked and answered.

THE WITNESS: And labor cost was never reduced. We did open available capacity, which reduced the need to add labor, but there was no reduction of labor cost.

Q. (BY MR. MILLER) No employees had their hours reduced through Project Horizon; is that your testimony?

A. That is my testimony. We did move employees from site to site, so we reduced the number of hours at certain work locations. Now, there were other initiatives underway to change employee hours where employees wanted benefits but didn't want to work a full 40 hours. We took great care to not commingle those two data sets. There were other projects underway at the same time.

Q. Did LabCorp reduce hours of employees at any of its facilities through the implementation of Project Horizon?

A. So can you ask your question again? Because what I understood you to say was did we reduce hours of an employee working at a facility because of Project Horizon; is that —

Q. Yes. Yeah, that's my question.

A. Specific facility hours were reduced for some employees, yes.

Q. And did that result in any savings on having to pay benefits for a full-time equivalent?

A. So that's not the question I just answered. I did not answer that we reduced hours of employees. But I will tell you that when we moved employees, those hours were not cut, and there was no reduction of benefits for employees even with a reduction of employee hours.

Q. Just so I'm clear, where it references the "Reduce by," is it your testimony that every reduction

that was, ultimately, made resulted in an employee just working those hours at another location?

A. In most cases, yes. In some cases — and I think my testimony before was clear, and I'll repeat it, if we had a .5 reduction, we may have chosen to reinvest

the kiosks?

MR. STEINER: Objection; no foundation.

THE WITNESS: Our phlebotomists look at many different factors as they make a decision on who to bring back in for phlebotomy next. And that may mean how long the person's been waiting to be registered, it also may mean the type of service, it also may mean the amount of assistance that patient is going to need through the entire phlebotomy process.

Q. (BY MR. MILLER) Does LabCorp, though, have any way to track how long somebody has had to wait at the window for service as one of those criteria?

A. It does not. It's a visual.

COURT REPORTER: Was there an objection?

MR. MILLER: But patient 2 —

COURT REPORTER: Hold on one second.

MR. MILLER: I'm sorry. "It was not. It was a visual," I believe was the answer.

Q. (BY MR. MILLER) So, look, LabCorp has over 400 PSCs where they only have one employee; right?

MR. STEINER: Objection; no foundation.

THE WITNESS: Roughly, a third of our patient service centers, which would equate to a number

around 400, have less than two employees at any one point in time; that's a correct statement.

Q. (BY MR. MILLER) And among that subcategory, the employee who is working there is a phlebotomist, generally; is that right?

A. Of a single-person site?

Q. Yes.

A. That will always be a phlebotomist.

Q. And that person will be responsible at the window for both checking in patients, if they want to avail themselves of the window; right?

A. Correct.

Q. And also servicing patients in the back for whatever services they need at LabCorp; right?

A. That's correct.

Q. And so in that subset of places where there is only one phlebotomist, if they're in the back servicing other customers, they're not available to check people in at the window at that time?

A. That's correct.

Q. And there's no ability in that circumstance that I'm relating to determine how long a patient needs to wait at the window for a check-in?

A. Are you — if you're asking is there an empiric measurement of how long someone's been waiting, the answer is no, but we know the turn cycle of the amount of time it takes to perform a phlebotomy with

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
CASE NO.: 2:20-CV-00893-FMO-KS

LUKE DAVIS, JULIAN VARGAS,
and AMERICAN COUNCIL OF THE
BLIND, individually, and on behalf of
all others similarly situated,

Plaintiffs,

vs.

LABORATORY CORPORATION OF
AMERICAN HOLDINGS; and DOES
1 through 10,

Defendants.

February 17, 2021
Videoconference Deposition
9:07 a.m. – 10:11 a.m.

VIDEOCONFERENCE ZOOM
DEPOSITION OF JOHN HARDEN

Taken before Angela Saxon, Professional Court
Reporter and Notary Public in and for the State of
Florida at Large, pursuant to Notice of Taking
Deposition filed in the above cause.

APPEARANCES:

On behalf of the Plaintiffs:
HANDLEY FARAH and ANDERSON PLLC
777 6th Street NW 11th Floor
Washington, DC 20001
BY: MATTHEW K. HANDLEY, ESQUIRE

mhandley@hfajustice.com

Via Zoom

On behalf of the Plaintiffs:

NYE STIRLING HALE and MILLER LLP

1145 Bower Hill Road, Suite 104

Pittsburgh, PA 15243

BY: BENJAMIN J. SWEET, ESQUIRE

ben@nshmlaw.com

Via Zoom

On behalf of the Defendant

Laboratory Corporation of

America Holdings:

KELLEY DRYE & WARREN LLP

101 Park Avenue

New York, New York 10178

BY: ROBERT I. STEINER, ESQUIRE

JEWEL TEWIAH, ESQUIRE

rsteiner@kelleydrye.com

Via Zoom

ALSO PRESENT: JOSH COLEMAN, Videographer

Via Zoom

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THE VIDEOGRAPHER: We are now on the record my name is Josh Coleman representing Veritext New York.

Today's date is February 17, 2021, and the time is approximately 9:07 a.m. This deposition is being held remotely through Zoom and the witness is located in Daytona Beach, Florida. And this is — this deposition is being taken by counsel for the defendant. The caption of this case is Luke Davis, et al versus the Laboratory Corporation of America Holdings, et al.

This case is filed in the United States District Court for the Central District of California. Case number 2:20-CV-00893-FMO-KS. The name of the witness is John Harden.

At this time the attorneys attending remotely will please state their appearances and whom they represent.

MR. HANDLEY: Matthew Handley on behalf of the plaintiffs in matter and on behalf the witness John Harden.

MR. STEINER: Rob Steiner, I'm sorry, go ahead Ben.

MR. SWEET: I'm sorry, Rob.

Benjamin Sweet, also on behalf of plaintiffs and the class.

MR. STEINER: Rob Steiner on behalf of the defendant, Laboratory Corporation of America Holdings. With me is my colleague, Jewel Tewiah.

THE VIDEOGRAPHER: And our court reporter is Angela Saxon who will make a statement and swear in the witness.

THE COURT REPORTER: Due to the need for this deposition to take place remotely because of the Government's order for social distancing, the parties will stipulate that the court reporter may swear in the witness via videoconference and that the witness has verified that he is in fact John Harden.

Would the attorneys please state your name and so stipulate.

MR. HANDLEY: Matthew Handley, yeah, we stipulate to that.

MR. STEINER: Rob Steiner, we stipulate to that. Thereupon:

JOHN HARDEN

was called as a witness by the Defendant and having been first duly sworn and responding "I do," was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEINER:

Q Good morning, Mr. Harden. Could you state your full name and address for the record, please?

A John Harden. 145 North Halifax Avenue, Unit 605, Daytona Beach, Florida 32118-4291.

Q Mr. Harden, have you ever had your deposition taken before?

A No.

Q First, let me introduce myself. Then I'll give you some instructions. My name is Rob Steiner. I'm a lawyer for Laboratory Corporation of America Holdings, which I'll refer to in this case as LabCorp.

I'm going to ask you some questions today relating to a case, Luke Davis, et al, V Laboratory Corporation of America Holdings. If at any point in time you don't understand any of my questions, please let me know that and I'll attempt to rephrase the question in a way in which you can understand it. If you answer a question, I'll assume you've understood the question as asked.

It's important that all of your answers be

show up.

Q So most of the time you have gone it's been through walk up?

A Yes.

Q If you wanted to make an appointment in advance, do you know how to do that?

A There's a phone number I call.

Q Have you ever noticed anyone when they come in and sign in at the kiosk that they're served — I'm sorry, let me ask this another way.

Have you ever seen anyone or known of anyone who had an appointment who was served prior to you?

A I would have no idea.

Q Do you know what the check-in process is at other LabCorp locations other than the Beville Road one?

A No.

Q Do you know what the staffing levels at any of the other LabCorp locations are other as compared to the staffing levels of the LabCorp location that you go to at Beville Road?

A No, I don't.

Q I think you testified that you've never used the LabCorp check-in kiosk at Beville Road, correct?

A That's correct.

Q Do you know if it's accessible?

A I would say it is not, but I don't know for a fact.

Q What would they need to — what would make it accessible in your opinion?

MR. STEINER: Objection; foundation.

MR. HANDLEY: You can answer, Mr. Harden, if you can.

THE WITNESS: I would think certainly having a voiceover or some screen reading software enabled and voice to plug in earphones.

BY MR. HANDLEY:

Q And on your computer that you use at home, you use a screen reader for that; is that correct?

A Yes.

Q And for your phone, how do you access information on your phone?

A Through the voiceover screen reader.

Q And it's an Apple iPhone that you use?

A Yes.

Q And that's what you're using right now; is that correct?

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS and)	
JULIAN VARGAS,	)	Case No. 2:20-cv-
individually on behalf of	)	00893
themselves and all others)	
similarly situated,)	
)	
Plaintiff,)	
vs.)	
)	
LABORATORY)	
CORPORATION OF)	
AMERICA HOLDINGS;)	
and DOES 1-10, inclusive,)	
)	
Defendant.)	
_____)	

DEPOSITION OF RICHARD M. PORTER
TAKEN MARCH 4, 2021

REPORTED REMOTELY BY:
BEVERLY A. BENJAMIN, CSR No. 710
Notary Public

THE DEPOSITION OF RICHARD M. PORTER was taken on behalf of the Plaintiffs via remote videoconference, commencing at 1:00 p.m. EST on March 4, 2021, before Beverly A. Benjamin, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

APPEARANCES:

For the Plaintiffs:

(Appearing Remotely)

Nye, Stirling, Hale & Miller, LLP

BY MR. JONATHAN D. MILLER

& MR. BENJAMIN J. SWEET

& MR. CALLUM APPLEBY

33 West Mission Street, Suite 201

Santa Barbara, California 93101

jonathan@nshmlaw.com

For the Defendants:

(Appearing Remotely)

Kelley Drye & Warren, LLP

BY MR. ROBERT L. STEINER

101 Park Avenue

New York, New York 10178

rsteiner@kelleydrye.com

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Examination by Mr. Miller	5

EXHIBITS

NO.	DESCRIPTION	PAGE
	(None marked.)	

THE REPORTER: The attorneys participating in this proceeding acknowledge that I am not physically present in the proceeding room and that I will be reporting this proceeding remotely. They further acknowledge that the witness will be sworn in remotely by me and that the testimony will have the same force and effect under the rules as an in-person deposition. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

Please indicate your agreement by stating your name and your agreement on the record. Also, if there is anyone present in the room with you not on video, please so indicate.

MR. MILLER: Thank you. This is Jonathan Miller for the Plaintiffs and proposed class and we assent to those terms.

MR. STEINER: Rob Steiner for the Defendant and for the witness, we agree.

RICHARD M. PORTER,

first duly sworn to tell the truth relating to said cause, testified remotely as follows:

///

independently usable by blind individuals?

MR. STEINER: Object to the form.

THE WITNESS: Are they usable by blind individuals?

Q. (BY MR. MILLER) Are the kiosks independently available by blind individuals so they can do it themselves?

A. No.

Q. To your knowledge, does LabCorp inform blind patients in any manner prior to check-in that the kiosks are not independently usable by them for the check-in process?

A. I've been out of the job for 2 years, so not that I am aware, unless something has changed.

Q. Let's go back and just cover some more background, and we'll get into the specifics a little more shortly.

Outside of speaking with Mr. Sinning, was there anyone else you discussed this case with as opposed to just your deposition?

A. I don't think so.

Q. Let's get a brief thumbnail sketch of your educational background. Just after high school, so any formal education that you've had since high school, can you just give me a quick review of what that might be?

A. Sure. I have an undergraduate's degree from Clemson University and an MBA beyond that.

Q. Mr. Porter, where did you do your MBA work?

A. I also did that at Clemson.

Q. And when did you first go to work for LabCorp?

A. February of 2009.

Q. And what position was that in?

A. It was with the internal audit group. I was a director of the internal audit team.

Q. And just in general what were your job responsibilities in that position?

A. Protecting the company's interest as it related to performing internal audits and directing a team to perform internal audits.

Q. And specifically what type of audits are you referring to? Were they financial audits or audits on patient care? What kind of things were you looking into, just in a general sense?

A. Some financial audits, Sarbanes-Oxley audits, and some operational audits.

Q. What was your title in that position?

A. Director of internal audit.

Q. And how long did you hold that position, Mr. Porter?

A. About 18 months.

Was it the real number of positions at that site? Maybe not. They may have one more or one less or whatever at that site. But that was their original intent, usually at the beginning of the year, this is what size the site is going to be.

Q. Where it says Reduce by, and it's looking at the full-time equivalent. Is that right generally?

A. Yes.

Q. So, in other words, if it says .5, that might be a .5 reduction from a full-time equivalent position, and where it says 1, that would be a one full-time equivalent reduction; right?

A. It could be two part-time.

Q. Fair enough.

And were these the recommended then reductions at the LabCorp patient service centers as a result of the implementation of Project Horizon?

A. Or reallocations, yes. I believe that would be right.

Q. So in some circumstances employees at LabCorp patient service centers were reallocated to other service centers as part of Project Horizon and the efficiencies that were created by the implementation thereof; is that right?

A. That would be right, yes.

Q. And in some circumstances, staff was reduced from full time to part time at some of the patient service centers, is that accurate, as a result of Project Horizon?

A. Yes. To be quite candid with you, at a PSC, many patients are fasting, they come in the morning, so you have an overload in the morning. And so a lot of these savings were really as a result of us being able to measure more closely how many patients were coming in the morning versus the afternoon, and so a combination of that. And then some efficiencies gained by focusing PSTs on patient care versus more front-end activities. And yes, so it's kind of a combination of the two.

Q. In fact, in certain places where you were then serving more patients it allowed you to continue to serve those additional patients without having to hire additional staff; is that right?

A. If increased demand took place at those PSCs, yes.

Q. Ultimately Project Horizon in the first year resulted in a labor cost savings of approximately \$14 million; isn't that true?

A. That and the fact that we were again measuring specific patient arrival. So some of that lift was provided by Horizon, just quite candidly, and a sizable.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS and) Case No. 2: 20-cv-
JULIAN VARGAS,) 00893
individually on behalf of)
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Plaintiff,)
vs.)
)
LABORATORY)
CORPORATION OF)
AMERICA HOLDINGS;)
and DOES 1-10, inclusive,)
Defendant.)
_____)

DEPOSITION OF MARK WRIGHT
TAKEN MARCH 4, 2021

REPORTED REMOTELY BY:
BEVERLY A. BENJAMIN, CSR No. 710
Notary Public

THE DEPOSITION OF MARK WRIGHT was taken on behalf of the Plaintiffs via remote videoconference, commencing at 8:00 a.m. EST on March 4, 2021, before Beverly A. Benjamin, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

APPEARANCES:

For the Plaintiffs:

(Appearing Remotely)

Nye, Stirling, Hale & Miller, LLP

BY MR. BENJAMIN J. SWEET

& MR. CALLUM APPLEBY

1145 Bower Hill Road

Pittsburgh, Pennsylvania 15243

ben@nshmlaw.com

-and-

Nye, Stirling, Hale & Miller, LLP

BY MR. JONATHAN D. MILLER

33 West Mission Street, Suite 201

Santa Barbara, California 93101

jonathan@nshmlaw.com

For the Defendants:

(Appearing Remotely)

Kelley Drye & Warren, LLP

BY MR. ROBERT L. STEINER

101 Park Avenue

New York, New York 10178

rsteiner@kelleydrye.com

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Exhibit 58	Project Horizon PSC Patient Self Service Financial Analysis, February 22, 2016, PowerPoint, Bates No. LabCorp00004477	126

THE REPORTER: The attorneys participating in this proceeding acknowledge that I am not physically present in the room and that I will be reporting this proceeding remotely. They further acknowledge that the witness will be sworn in remotely by me, and that the testimony will have the same force and effect under the rules as an in-person deposition. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

Please indicate your agreement by stating your name and agreement on the record. Also, if there is anyone else present in the room with you not on the video, please so indicate.

MR. SWEET: This is Benjamin Sweet on behalf of the Plaintiffs and the class, and we so agree.

MR. STEINER: Rob Steiner on behalf of the Defendant and the witness, and we agree.

MARK WRIGHT,

first duly sworn to tell the truth relating to said cause, testified as follows:

EXAMINATION

QUESTIONS BY MR. SWEET:

Q. Mr. Wright, good morning. My name is Ben Sweet, and I'm counsel for the Plaintiffs in this

that.

You referenced before something called LaunchPad 1. Was there a LaunchPad 2?

A. In the diagnostics unit there was a LaunchPad 2 started. There was also a LaunchPad in the drug development operating unit as well. All of them had

similar goals to improve process, service, and costs; but they implemented different projects under each of those umbrellas.

Q. Sir, are you aware that the company has claimed that LaunchPad 2 is on track to deliver \$200 million in net savings by the end of this year, 2021, while incurring approximately \$40 million of one-time implementation costs?

MR. STEINER: Objection; foundation.

THE WITNESS: It sounds approximately correct. I'm not currently leading any LaunchPad 2 projects so I'm not close to the figures.

Q. (BY MR. SWEET) And, sir, do you have a sense of what the annual revenues are for LabCorp?

A. Prior to the pandemic it was approximately 7 billion. I think we were — I actually don't recall the figures, but we had an elevated revenue for 2020 driven by the pandemic.

Q. Does 11 1/2 billion sound; correct?

A. It does.

Q. Now, Mr. Sinning testified previously as a corporate designee for LabCorp in this case. Are you aware of that?

MR. STEINER: Objection; form.

THE WITNESS: Am I aware that Joe Sinning has testified?

Q. (BY MR. SWEET) Correct.

A. Yes, I have heard that he testified.

Q. Well, more than hearing about it, Mr. Sinning testified that he spoke to you in advance of his deposition; is that correct?

A. I don't recall any conversation with Joe Sinning about a deposition. I very well could have spoken to Joe Sinning about a variety of things, but nothing that made me think it was about a deposition.

Q. Now, in his deposition Mr. Sinning told us that LabCorp's kiosks do not provide any aid or auxiliary service which would make them independently usable for blind people. Do you agree with him?

MR. STEINER: Objection to the form; foundation.

THE WITNESS: Could you restate the question a different way so I can get to the intent?

Q. (BY MR. SWEET) Certainly.

principals.

We also during discussions of physical and cyber security also consulted with our internal security team, but they weren't primary participants in the discussion about finalizing the physical design of the enclosure.

Q. So during any of those discussions among Aila and Pointsource and your internal team, was there any discussion at all or any analysis performed as to the issue of whether the kiosks should be made accessible for blind people?

MR. STEINER: Object to the form.

THE WITNESS: I would put it a different way. One of our design targets was to make the device as accessible as physically possible within the design constraints that we had.

I'm going to answer your question this way: We found it not at all physically practical within our design constraints to service blind people, and we designed the solutions so that blind people could be serviced at the desk, because we also built the solution to operate behind the desk in the same efficient way that it operated on the tablet.

So we had to make design decisions to make it accessible to wheelchair-bound people and low vision people, but we explicitly recognized that the device could not service a blind person, and they would have to be serviced by the Express solution behind the desk.

Q. (BY MR. SWEET) So there were discussions around the issue of accessibility for blind people among this group?

A. Yes, but it was a short discussion.

Q. And who was involved in those discussions, sir?

A. The same integrated design team that I was leading at the time that involved Aila and Pointsource and my internal team.

Q. And are there any memos or emails or other documentation of these discussions?

A. Not that I'm aware of. The documentation for how the design was implemented is certainly contained on our documentation platforms that we use to build software.

However, I think I'm answering your question fairly directly that we had design intent that anyone that was disabled and unable or preferred not to use the tablet could be serviced equally as well or better from the desk because of the technology solution we

built as part of the Express solution to enable fast check-in at the desk.

MR. STEINER: Objection; no foundation.

THE WITNESS: I disagree with the premise of the question. At any location patients have a choice of whether to use a kiosk or go to the desk. And every —

Q. (BY MR. SWEET) Sir, if the kiosk is unaccessible — I'm sorry.

A. And every patient will be serviced at the desk if they go to the desk. There is no optionality there. They will be serviced at the desk if that's where they go.

Q. Now, Mr. DeAngelo told us yesterday that there were more than 400 locations within the LabCorp network that are what's called FTE 1, which means full-time equivalent employee 1. And am I correct, sir, that that means that the full-time equivalent employee that would be manning that particular location would be a phlebotomist?

MR. STEINER: Objection to the extent it mischaracterizes the prior testimony.

THE WITNESS: Yes, a single employee PSC would have only a phlebotomist present.

Q. (BY MR. SWEET) So in a location where there is one FTE, it's often the case that that one person might be in the back taking a sample from a customer; correct?

MR. STEINER: Objection; form, vague.

THE WITNESS: There will certainly be times they're in the back taking a sample. I couldn't characterize what percentage of the time that is.

Q. (BY MR. SWEET) So in that situation if a second customer comes in, they'll need to wait to check in if they cannot access the kiosk; correct?

MR. STEINER: Object to the form.

THE WITNESS: It's only logical to say if you're choosing not to use the kiosk or are unable to use the kiosk and you go to the desk, you'll have to wait for the person to service you, that's correct.

Q. (BY MR. SWEET) What if the person who is waiting for the one employee to come back, a person who cannot access the kiosk, is waiting there, when a second person comes in who can access the kiosk and check in, does that second person get checked in first?

MR. STEINER: Objection; hypothetical.

THE WITNESS: I can give you a clear answer on how the system is designed.

Q. (BY MR. SWEET) I'm not concerned about the system, sir. I'm asking whether that second person gets checked in first.

MR. STEINER: Same objection.

THE WITNESS: Yes, in a very literal sense the

2020. Are you aware of even one complaint from a blind person regarding the accessibility of the kiosk in the time period from 2016 to 2018?

MR. STEINER: Object to the form.

THE WITNESS: No, I literally never heard of a blind person complaining about trying to use the kiosk prior to knowledge of this suit.

Q. (BY MR. SWEET) Was there ever any analysis performed within LabCorp regarding the issue of providing an accessible kiosk and whether it presented an undue burden to LabCorp?

MR. STEINER: Objection; legal conclusion.

THE WITNESS: I'm sorry, I don't understand the question.

Q. (BY MR. SWEET) Did anyone perform an analysis within LabCorp to determine whether the cost or feasibility of providing accessible kiosks presented an undue burden to the company?

MR. STEINER: Objection; legal conclusion.

THE WITNESS: Not to my knowledge.

Q. (BY MR. SWEET) Let's talk for a moment about some of the services that are offered at the kiosk. So sometimes people will access the kiosk to pay an old invoice; correct?

A. Yes, that is one of the features available at the kiosk.

Q. That same person would not need to have an additional service of a sample taken to pay that old invoice; correct?

A. That's true. You could go to the service center and get that old invoice brought up and paid for without being serviced, correct.

Q. They have the advantage of that bill pay; correct?

MR. STEINER: I'm sorry, can you — you got cut off. Can you say that again?

Q. (BY MR. SWEET) They have the advantage of that bill pay service; correct?

MR. STEINER: Objection; form.

THE WITNESS: I don't understand what — how you're characterizing it as an "advantage." It is a feature; they can pay a bill at the tablet, they can pay a bill at the desk. So I'm not understanding the distinction of what the advantage is. It's a convenience that they could come and pay a bill there instead of having to mail it.

Q. (BY MR. SWEET) Let me ask it a better way. They have the benefit of the flexibility the bill pay at the kiosk option provides; correct?

MR. STEINER: Objection; form.

enclosure, we made design decisions to seal it up essentially.

Q. And you said your research indicated that. Would that research also be recorded within the files of LabCorp?

A. I don't know specifically if they are or not.

I recall the research and the discussions. I don't know exactly what documents were produced.

Q. Were there emails around that topic?

A. I would assume there would be.

Q. You said a moment ago that the issue of accessibility was something that came after the decision to select the Alia kiosk because of its ease of use. Is that an accurate statement?

A. Yes.

Q. Who was involved in this discussion and ultimately this decision?

A. About selecting the Aila enclosure as the preferred enclosure?

Q. That's correct.

A. And what specifically is your question about the decision?

Q. I'm wondering who specifically in terms of personnel within LabCorp, or outside of LabCorp, was involved in the decision to choose the Aila kiosk?

A. Well, there were plenty of people involved in analyzing and recommending, but in the end it would have been Kevin and I making that final decision to go with that particular offering.

Q. Are there emails or other memos surrounding that decision?

A. Yes.

Q. Now, sir, if a blind person comes into a PSC and attempts to check in at the desk because they can't use the inaccessible kiosk, do they have to speak out their private information?

A. No, that's not the way the system was designed. Part of the efficiency that we built with the new technology was the ability to capture information off of their identification cards and insurance cards, which precludes them having to speak anything out loud to get the necessary information to check in.

Q. And going back to the inaccessible kiosk where the port has been covered up. The kiosk that LabCorp

currently uses, you said there was a concern about tampering; is that right?

A. Yes.

Q. Can you explain to me in a little more detail what that concern was with regard to tampering and why it rose to the level of driving a decision that you should provide an inaccessible kiosk?

A. Well, a lot of experience of the team in having delivered other technology solutions in the past and the experiences of other vendors, including Aila, pointed to the fact that the public tends to be very ingenious and curious, and will find any way they can to tamper with or take over or misuse a piece of technology you put out in public.

So it was a very logical conclusion that we would secure it to the maximum possible. And in fact, our experience has played out because people have attempted to vandalize and steal the tablets out of these enclosures after we deployed them. So unfortunately, our concerns were well founded.

Q. Right. But during this same period shortly after the Aila kiosk was rolled out, there were a number of complaints by blind customers, as we discussed. Is that something you would have wanted to know about at the time?

A. So your question is whether I personally would want to know if there were blind people complaining about the ability to use the tablet?

Q. Correct.

A. Is that the question?

Q. That is my question.

delivered.

Q. Now, is there software, security software — and again, forgive me for being a technical dunce — is there security software that could be loaded onto a kiosk that would ensure maximum confidentiality of, for example, personal health information?

A. So the design of the Express solution does not encompass PHI, personal health information. There is no PHI exchanged in any of the transactions accomplished either by the Express tablet or Express admin behind the desk. They are not PHI enabled. They are very specifically secured with software to make them as tamperproof as possible. So if anyone, frankly, ever succeeded in liberating one of the iPads from the enclosure and made off with it, they would find it was unusable because of the security software installed.

Q. Now, the iPads that were used for the Aila kiosk, I think they were versions 5 and 6 originally; is that correct?

A. That sounds right.

Q. And you're aware, sir, that Apple has accessibility features that are included as part of, they're loaded onto an iPad; correct?

A. I'm not specifically familiar with that, no.

Q. You're not familiar with the fact that the Apple iPad has accessibility features?

A. I'm aware of the commercial offerings to make screens easier to read and that type of thing. Are you talking about the accessibility features of iOS, is that what you're referring to?

Q. I am.

A. Yes, I'm aware of those.

Q. And are you familiar with the term API, sir?

A. Yes.

Q. You're aware that Apple offers its API for developers for free for accessibility?

A. That would not surprise me. I'm not specifically familiar with their APIs.

MR. SWEET: Let's hope I did this correctly, Madam Court Reporter, but I've marked, I've tried to mark our first exhibit here in the Marked Exhibits folder, which should be, I believe we are on Exhibit 46.

THE WITNESS: So you've loaded in a PowerPoint.

MR. SWEET: That's correct.

Q. (BY MR. SWEET) And would you just take an opportunity to take a peek at that.

A. (Reviewing document.)

Q. Now, I want to specifically call your attention, Mr. Wright, to slide 10.

A. Um-hmm.

Q. And you see, sir, where it says Payment Services Implementation?

A. Yes.

Q. And there are number of services listed there?

A. Yes.

Q. And one is Express Payment: Current Open Balance Due; right?

A. Yes.

Q. One is Express Payment: Bill Pay without Service; correct?

A. Correct.

Q. Another service listed is Express prepared for TOUCH event triggers; correct?

A. Yes.

Q. So taking you back to Express Payment: Bill Pay without Service, that means someone pays the bill but does not get a lab taken on that visit; correct?

A. Correct.

Q. And that happens quite a bit across the 1,800-plus store network?

A. I'm not aware of the specific counts. I know it is a — not used a lot. If you look at a percentage of how bills are paid, this would barely register.

Q. Gotcha.

A. Patients use other methods to pay their bill but we offered this as a convenience if they so chose.

Q. Understood.

And taking you back to my question about the Apple API, did you or anyone at LabCorp ever inquire of any of your vendors as to whether they could use the Apple API to make the iPad accessible on the Aila kiosk?

A. We did not specifically inquire because we had made the decision to seal the tablet inside the enclosure, which precluded use of speakers or anything else to deliver capabilities.

Q. I'm going to attempt to — was there ever any discussion about whether the built-in Apple security

features would overcome any concerns you had about security on the kiosk?

A. No. But a security discussion ends up being multifaceted. There's the physical security part of the security discussion and then there's the software part of a security discussion. The choice to completely seal up the iPad inside the enclosure was purely driven by physical security concerns, and then we used software to address the other kind of cyber type security concerns.

Q. Understood. We can put that document aside, I believe.

Now I want to take a look at what I've put into the Marked Exhibits portal as Exhibit 28. Sir, you're aware that ATM machines have headphone jacks; correct?

A. Yes.

Q. And they manage to overcome security concerns; correct?

A. I would certainly hope so. It would be speculation on my part on how they achieved that. But I certainly hope my bank is secure with a headphone jack in the ATM.

Q. I do as well.

Did you perform any analysis of how ATM machines are able to provide a headphone port and remain secure?

A. Part of our diligence discovery during the research phase looked at a wide variety of technologies, including those used by ATMs, which use proprietary Linux-based computer systems buried inside the very secure physical housing, and they're

able to achieve a certain level of security in that manner.

Our design target was to use commercially available tablets to be able to deliver a level of service and not go to that type of design with a fortified metal case and a Linux system inside.

Q. Did you perform any analysis of what it would cost to provide that level of security on the kiosk?

A. We did not because we made the decision early on to not make an isolated solution that was only for the kiosk, but to also deliver new technology and capability behind the desk to drive efficiency and a better experience for our patients. So we did not examine how to build accessibility for the blind into the tablet because it was our design intent for them not to use it.

Q. And, sir, as someone who had primary responsibility for the hardware purchases on Project Horizon, do you have any sense at all of what it would cost on a per-unit basis to provide an accessible kiosk?

A. I don't have specific figures but I can generalize it. And it was part of us reaching a conclusion the cost was an order of magnitude higher if we were to select things that were built and offered in the market as opposed to a custom build.

So yes, it was — we did see some very large ATM-like devices that had been adopted by some hospitals, and those were an order of magnitude higher in cost than what we were considering.

Q. Can you quantify for me, sir, with regard to the entire network what that means in terms of an order

of magnitude greater? How much more expensive would it have been?

A. I don't have specific figures that I can recollect. It's probably in our records. I could generalize in a sense of I believe our price point for these devices are around maybe slightly north of \$2,000 apiece, and we were going to deploy approximately 8,000 of them across our network, probably closer to 5,000 of them across our network of 2,000 locations. And the alternatives that we looked at in the healthcare space that were ATM-like cost on the order of \$20,000.

Q. So it was roughly ten times more expensive on a per-unit basis?

A. Approximately.

Q. And I'm assuming this pricing and this discussion around the various options, those records exist within LabCorp; correct?

A. Yes.

Q. And there's emails around that as well?

A. Yes.

Q. So let me just do some quick math here. You said there would be 5,000.

A. That was a starting number, yes.

Q. And I'm assuming that at bulk you would achieve some sort of cost savings across the network for a bulk purchase like that?

A. Surely you would. I have no idea how much.

Q. So do you have a sense of what the cost savings were from the Project Horizon itself over the life of the project since 2016?

A. No, I wouldn't know that number. I believe you probably have in your documents somewhere what our targets were, and we moderately exceeded our targets in the cost savings but I don't recall the exact numbers.

Q. Sir, would it surprise you to learn that LabCorp has not produced any documents around this pricing or around these decisions?

A. I'm sorry? Would it surprise me that?

Q. That LabCorp has not produced any documents surrounding the pricing of the various kiosks.

A. Of the pricing of the options that were considered, is that what you're referring to?

Q. That's correct. You mentioned before an ATM-like option.

A. Um-hmm.

Q. You stated that it would be approximately ten times more than the option that was selected.

A. Um-hmm.

Q. Would it surprise you to learn, sir, there have been no documents produced around that number, around those decisions?

A. It would not surprise me, no.

THE REPORTER: Mr. Steiner, you are on mute. Did you object?

MR. STEINER: I don't know how I got on mute. Objection; form, foundation.

MR. SWEET: Now I'm going to do an unusual thing here, everyone, and I'm going to ask for a quick bathroom break because I didn't take one last time. Can we take just a quick 5 minutes?

(Recess taken.)

MR. STEINER: So it appears during the last session my mic was on mute. I reserve the right to interpose any appropriate objections based on that technology issue upon review of the transcript.

Q. (BY MR. SWEET) Okay. Mr. Wright, I want to go back to this decision around the selection of the inaccessible kiosk. And you stated, I think, that the more secure, in your estimation, option was magnitudes of order more expensive, and you threw out a number of ten times more expensive. Do you recall that testimony?

A. I do. I don't particularly agree with your characterization of the tablet being inaccessible because of the capabilities we built into the tablet to make it accessible to low vision people, wheelchair-bound people, and people with other disabilities. If your characterization is specifically about blind people, then I would agree that we did not make it accessible to blind people.

Q. So back to the ten times more expensive testimony, who did you speak to who gave you a sense that these kiosks would be ten times more expensive?

A. I was actually personally involved in the research and visited a number of vendors, both at their facilities and at the HIMSS conference, and we obtained informal price quotes from many of them to inform our decision.

Q. Can you tell me who some of those vendors were?

A. I don't recall.

Q. You don't recall even one of them?

A. I actually don't remember the name of it. I can picture a number of them in my mind, having touched them and spoken to their salespeople, but I don't recall the exact vendor names.

Q. I just want to be crystal clear on this point because we're going to have a deposition of, I believe it's called Agilent, which used to be Pointsource. And did you talk to Pointsource about — did you get a quote from them, for example?

A. No. Pointsource was not involved in our

Q. And do you recall getting a quote from this company Olea for its kiosk?

A. I don't recall getting a quote from them, no.

Q. I want you to direct your attention to the second page under Specifications. Do you see that?

A. Yes.

Q. One of the listings under Specifications —

A. It's a poor scan so it's difficult to read.

Q. Yeah, I do apologize. This is how it was produced to us. I do apologize for that.

A. Okay.

Q. Under Specifications it says that the kiosk provided here is ADA compliant.

A. Yes, I see that, third bullet from the bottom.

Q. And do you have any sense of how much more expensive this compliant kiosk was than the kiosk you ultimately selected from Aila?

MR. STEINER: Objection; no foundation.

THE WITNESS: I do not know how much this one would have cost. I will tell you that we looked at a number of options like this that had a degree of complexity that included card readers, printers, track balls, and other types of things that we deemed to be inappropriate for our use case due to the cost of maintenance and failure rates of those types of things in the market.

Q. So the ease of use and the cost of maintenance were more important than accessibility; correct?

MR. STEINER: Objection; form.

THE WITNESS: I'm not real sure how to answer that question because it's characterizing that we made an explicit choice to pick reduced maintenance as opposed to accessibility. That was not a specific decision made. We were making a decision to find something in the market that would be durable, and tamperproof, and effective in its cost structure to enable us to offer something like this to the market.

If we had had to pay \$100 million to buy hardware, we would not have put the solution in the market; the business case would not have justified it. Now, I'm using a hypothetical there of 5,000 units at \$20,000 is \$100 million. But it was not a viable solution for us to consider that. But the choice of whether to make it ADA compliant or accessible was not a primary driver in that discussion.

Q. (BY MR. SWEET) You just said that a \$100 million cost was hypothetical. Sir, is it true that you don't know how much more expensive the accessible kiosk would be?

A. That's true, I don't know how much more expensive this particular Olea device would be than the one we selected. I don't know.

Q. You don't know how much —

MR. STEINER: Hold on. Can you guys just slow down a bit so I can get an objection in?

Just note my belated objection to the form. I tried to give it but you guys are talking too fast.

THE WITNESS: I'll slow down.

Q. (BY MR. SWEET) You don't, in fact, sir, know how much more expensive any of the other options would be, as we sit here today, do you?

A. That's not true. In our initial market research we got ranges of costs for different types of configurations, and narrowed the options that we would potentially select based on the design features and the cost structure for something that we could put into the market.

Q. And those various costs from the various vendors, they were provided to LabCorp and to you, and you kept them in the ordinary course of business?

MR. STEINER: Object to the form.

THE WITNESS: I could not point to specific documentation for those, but I...

Q. (BY MR. SWEET) Well, sir, you threw out a number of ten times more expensive. What is that number based on?

A. That's based on my personal recollection of having interacted with these vendors.

Q. Is it based on a review of any documents?

A. Not that I recall.

Q. Did you provide those documents to your counsel?

MR. STEINER: Objection; no foundation.

THE WITNESS: I was not asked to provide any documents by counsel.

Q. (BY MR. SWEET) So this is strictly from your memory; is that correct?

A. That is strictly from my memory of having been personally involved in the research early on.

Q. Did you provide any documents to your counsel, whether in the form of email or memorandum or other documents, which would indicate what the cost of alternative options for the kiosks were?

MR. STEINER: Objection; no foundation.

THE WITNESS: I was not asked to provide documents by counsel.

Q. (BY MR. SWEET) Did you provide any documents which would indicate, which would reflect a decision to select one kiosk over another?

A. I haven't provided any documents at all; so

asset tagging until you just showed me this email.

Q. We can put that one aside.

Now, at some point a decision was made to make the kiosk have multilingual function; is that correct?

A. That's correct.

Q. And were you involved in that decision?

A. I was.

Q. And do you have a general sense of when that decision was made?

A. It was probably a year in. And it was based on feedback from the market.

Q. When you say "feedback from the market," was that in the form of complaints?

A. It was a variety of channels. It was primarily from the leadership of the service centers who were servicing predominantly Spanish-speaking people. We also had secondary communications, but it was primarily the leadership of those centers saying it would be very helpful to have another language.

Q. They were feeding back to you in management and telling you that it would be helpful for them to perform their job in primarily Spanish-speaking areas to have a multilingual function on the kiosk.

A. Correct.

Q. And am I correct also, sir, that the multilingual function is not only Spanish, it's other languages as well?

A. It was designed and built that way, yes.

Q. What other languages are involved?

A. I really don't know if we've deployed another language beyond Spanish yet. The system was designed to be multilingual so we could load into the database different languages. But to my knowledge, we only have English and Spanish deployed in the market today.

Q. And you described for us this feeding back from the PSC level about this need for a Spanish-speaking option on the kiosk. Do you recall whether there was any feedback from the PSC level about concerns of

accessibility with the kiosk on LabCorp blind customers?

A. Not to my knowledge, no.

Q. And if there were complaints or concerns at the PSC level about blind accessibility on the kiosk, how would that normally make its way to management? What would be the normal channel it would find its way there?

MR. STEINER: Object to the form.

THE WITNESS: Again, it would be similar to what I've described with the Spanish-speaking requirement: A combination of feedback from management

I don't know for sure. When I first viewed it in your display I did not immediately recognize it. But I can definitively say that I did not author the homework assignment. It's just not something I did.

Q. Understood.

Do you know if anything was done about the mitigation strategy listed in Exhibit 6?

A. The use of commercially available tablets made any type of interactive braille solution completely impractical. So I'm not sure even what the scope or intent of this braille option is, but it's not technically feasible to implement braille on a commercial tablet. So I'm not sure what we could do with that concept. I can tell you it was not implemented because it's technically impractical to do so.

Q. Understood.

Did you perform any analysis at this time, shortly after you received this email in August of 2016, to determine whether a braille option was a feasible option?

A. Since I can't recall ever having seen this document, discussing a braille option. I can certainly tell you to the best of my knowledge there was not any specific study done to consider doing a braille option.

Q. You never had any interactions with blind disability rights groups or blind individuals to determine whether that would be something they would appreciate having at the PSCs; correct?

MR. STEINER: Objection; form.

THE WITNESS: That's correct; we had no interaction with blind advocacy groups.

Q. (BY MR. SWEET) I've moved to the Marked Exhibits folder an exhibit that was previously marked Exhibit 13. I'll ask you, Mr. Wright, to review that briefly.

A. (Reviewing document.)

Q. Specifically I want you to focus on page 2 of this document.

A. Um-hmm.

Q. Now, you see in the upper left-hand corner of page 2 it says: "Mark Wright edits for all sections, 10/11/2016." Do you see that?

A. I see that.

Q. That means that you were personally the editor of this document; correct?

A. No. It means that I would have been a reviewer of the document and provided edits to the document

after a review. But I wasn't the original author of the document.

Q. In the period of 2016 to 2020, which is a large part of your tenure at LabCorp, did you have occasion to update the board on any of those topics?

A. Yes.

Q. Which topics?

A. The two that I mentioned; patient recruitment and the patient experience.

Q. Both occurred during the 2016 to 2020 time frame.

A. Yes.

Q. Your colleague, Mr. Sinning, testified that Project Horizon led to lower wait times overall for patients. Do you agree with that?

A. Yes, I do.

Q. Do you know how much lower?

A. No, I don't.

Q. And it generally resulted in individual locations being able to see more patients per day; correct?

A. That would be correct in the context of we increased their capacity for a given number of employees to see more a day. Staffing a PSC is variable based on market demand; so they'll staff up and down based on how many patients are coming. But the measures indicated increased capacity per employee.

Q. I'm going to try another exhibit here.

(Exhibit 58 marked.)

Q. (BY MR. SWEET) It is LabCorp 00004477. It's a PowerPoint presentation.

A. So it doesn't have an exhibit number in the front.

Q. Not yet.

A. Did you say 4477?

Q. Yes, sir.

I want to call your attention to — let's go to page 2 first. First of all, have you seen this document before?

A. Yes.

Q. When is the last time you saw it, sir?

A. Back in 2016 when we built it.

Q. On the second page — and were you involved in creating this document?

A. I was.

Q. What was your involvement?

A. I was one of the primary contributors along with Kevin DeAngelo and our financial analyst to frame up the overview.

Q. This document is aimed at analyzing the financial impact of Project Horizon; correct?

A. Correct.

Q. Now, on page 3, it talks about kiosk hardware, HW. Do you see that?

A. Yes.

Q. And it says quote: "Assumed 3 year refresh of Kiosk HW (base case is 5 year) (Total plus 4.5 million capital and related Depreciation)." Did I read that correctly?

A. Yes.

Q. That's referring to the fact that your plan is to refresh the kiosk hardware every 3 years; correct?

A. It was an assumption used for the financial modeling. The actual intent was to get the longest useful life of the assets, but it was contingent on Apple not changing their hardware too much. So it was an assumption.

Q. But it was always an assumption that there would be hardware refresh as part of the Horizon Project; correct?

A. Correct.

Q. Has that come to pass, has there been a hardware refresh?

A. I wouldn't characterize it as a refresh as much as I would an incremental modernization. There was a time, a year or more back, when Apple changed the position of the camera on their iPad and caused us to have to ask Aila to modify the enclosure design to handle the new camera position.

So in that sense, that is the degree of the revision. And as these enclosures and tablets age out, they are incrementally replaced in the market out of our warehouse. So there is not a big bang refresh of let's pull them all in and put new stuff out. It's as they have problems or age out, they'll be individually replaced with a new version.

So we currently have a mix of first generation and second generation enclosures and tablets in the market today.

Q. Are there documents around the decision to ask Aila to adjust the camera?

A. I'm sure they must exist somewhere. I don't have them in my personal possession, but we did have to issue an order for new enclosures that accommodated the new camera position.

Q. At any point, from the beginning of Project Horizon when you actually ordered the Aila kiosk until now, has there ever been a reevaluation of whether you can put acceptable kiosks for blind people into the PSC locations ?

MR. STEINER: Object to the form.

THE WITNESS: No.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

LUKE DAVIS, JULIAN
VARGAS, individually
and on behalf of
themselves and all
others similarly
situated; and
AMERICAN COUNCIL
OF THE BLIND

Plaintiffs,

v.

LABORATORY
CORPORATION OF
AMERICA
HOLDINGS,

Defendant.

Case No.: 2:20-cv-00893

**EXPERT REPORT OF
RACHAEL BRADLEY MONTGOMERY**

Expert Report of Rachael Bradley Montgomery**I. QUALIFICATIONS****Professional and Educational Background**

I have over 20 years of experience in usability, disability-related education, and accessibility. I currently consult on the accessibility of kiosks, web sites, software applications, and overall organizations. I regularly evaluate kiosks, web sites, and mobile applications for clients. I have written and implemented kiosk and web standards, procurement guidelines, testing methodologies, and training programs for a number of organizations. I co-chair the W3C Accessibility Guidelines Working Group and am executive director of a charity that helps small organizations remove accessibility barriers.

I have a Master's in Information Studies focused on usability of emerging technology from University of Illinois Urbana-Champaign. I have a PhD in Information Science focused on usability and accessibility from University of Maryland, College Park. I periodically teach courses in usability, user experience, and accessibility at both institutions, as well as speak about these topics at various events. A copy of my CV is attached as Exhibit A.

During the previous 4 years I have not testified at trial or deposition.

II. ASSIGNMENT

I have been retained by counsel for Plaintiffs to offer my expert opinion on:

1. Whether the LabCorp Express kiosks are independently accessible to blind users.

2. Whether providing kiosks that are independently accessible to blind users would be readily achievable, and would not result in an undue financial burden or fundamentally alter the essential nature of the goods and services offered by LabCorp.
3. Whether the LabCorp website and mobile applications are independently accessible to blind users.

Exhibit B includes a list of all documents and data that I considered for my assignment.

I reserve the right to amend or supplement this report if additional relevant documents or information become available.

I am being compensated at a rate of \$125 for my time spent on this matter except for time spent preparing for and testifying at deposition for which I am being compensated \$200 per hour for my time.

My compensation is not contingent on the nature of my findings or the outcome of this case.

III. OPINIONS

A. The LabCorp Express kiosks in use at LabCorp Patient Service Centers are not independently accessible to blind and low vision users.

I conducted a review of a local LabCorp Express Kiosk on December 21st at the 18 E Market St, Leesburg, VA 20176, USA. See page 2 of Exhibit C for photos from that review. Exhibit D presents the American with Disabilities Act (ADA) and Section 508 of the Rehabilitation Act of 1973 (508) standards that support blind users. The LabCorp Express Kiosk I

reviewed was not accessible to blind users. Accessible kiosks provide speech output either publicly through speakers or privately through headphones (ADA 707.5, 508 402.2). This allows blind users to interact with the kiosks and complete their tasks using the kiosk (508 302.1). As LabCorp kiosks are handling medical information, private output would be expected (508 405.1). The kiosk reviewed did not allow users access to a headphone jack (ADA 707.5, 508 402.2.3) nor provide the required braille instructions to indicate how to start speech output (ADA 707.8, 508 402.2.5). The kiosk did not include a tactile navigation keypad which makes navigating the kiosk much easier for low vision and blind users (ADA 707.6.1, 508 407.3.1). This kiosk also does not meet other standards, such as tactile symbols (ADA 707.6.3.2) and volume control (508 402.3.1), but these requirements depend on the standards listed above being met before becoming relevant. There is no way for a blind user, who relies on audio alternatives to access visual content to interact with this kiosk.

B. Providing kiosks at LabCorp Patient Service Centers that are independently accessible to blind and low vision users is readily achievable, and would not create an undue financial burden or fundamentally alter the essential nature of the goods and services offered by LabCorp.

Readily achievable solutions exist for providing an independently accessible kiosk for blind users. These solutions, described herein, would not result in an undue financial burden or fundamentally alter the goods or services offered by LabCorp.

One solution would be customizing the Aila kiosks by adding a tactile keypad, which allows a user to control the focus on the screen. One such example is the AudioNav keypad for iOS which costs \$295.00 (See page 3 Exhibit C¹) and has tactile navigation keys and a headphone jack. This kit includes the firmware, adapter, cables and the power supply for the keypad. The iPad adapter allows multiple USB cables to be used so that the kiosk can receive power and work with devices. An additional cost would be required to mount the keypad. The advantage of using the AudioNav or a comparable keypad is that it uses an external headphone jack, rather than the headphone jack of the actual iPad. This lowers maintenance costs when the tactile keypad needs to be replaced due to wear. Other tactile keypads separate the keypad and headphone jack to further lower maintenance costs if one breaks (See pages 4-5 Exhibit C).

Another solution would be to allow a headphone to be connected directly to the iPad and turn on the iOS VoiceOver application when a headphone plug is inserted. A tactile keypad is required for full compliance with standards but this solution would at least provide a possible way for a visually impaired individual to use the kiosk. If the iPad used does not provide a headphone jack, a separate headphone jack with volume control could be added and would cost

¹ Exhibits C and E are provided in PDF format which may not be fully accessible. PowerPoint versions are available upon request which are fully accessible.

around \$155 (See page 6 Exhibit C) plus the cost of mounting it.

Another solution would be purchasing a kiosk from a company that provides accessible kiosks. A number of companies provide kiosks in a standard build (which is less expensive) for healthcare check-in that include options that make them fully accessible. One such example, Frank Mayer's Advantage Floor Standing Kiosk, meets ADA requirements and is designed to support an optional AudioNav keypad (See page 7 Exhibit C). This kiosk provides features comparable to the Aila kiosk purchased by LabCorp.

Each of the options discussed above would allow LabCorp to maintain the functionality and utility of its kiosks, while increasing the accessibility for blind users.

I reserve the right to supplement this section of my report after reviewing the deposition testimony of other Kiosk vendors that I understand plaintiffs' counsel is obtaining.

C. The LabCorp website and iPhone mobile application are not independently accessible to blind users.

I assessed the accessibility of LabCorp's website and iPhone mobile application for persons who use screen readers on 14 March 2021. Screen readers consist of software with which blind technology users can independently access and interact with properly coded websites and mobile applications. On a computer, they do so with a combination of hardware and software that allow someone who cannot see the screen to find, navigate, and interact with on-screen content using the keyboard instead of a mouse. When

a website is properly developed, the software provides information about interface elements, such as hyperlinks, menus, buttons, form fields, and images. The most common type of software reads screen content and certain coding cues aloud by means of a speech synthesizer. It allows users to skim pages, screens, documents and tables by navigating with designated keystrokes. It also allows for efficient navigation based on lists the screen reader generates based on the code.

I looked at the main screen, along with the search and navigation, and the appointment scheduling flow. I tested against the Web Content Accessibility Guidelines (WCAG) 2.1 A and AA standards that support blind individuals (See Exhibit D). While I found errors on every page, this report will only focus on critical errors. Critical errors are those that would cost the user a great deal of time or be insurmountable. My findings are documented in Exhibit E¹. There were a number of critical errors that would prevent a blind user from successfully scheduling an appointment. I confirmed the errors using both JAWS and NVDA, which WebAIM's survey identifies as the most commonly used screen readers by blind individuals to navigate websites (See page 2 Exhibit E). I am aware that third party assistive technology is available on the LabCorp website through a company called Essential Accessibility; however, it does not provide the comparable keyboard navigation and other functionality of commonly used screen readers. Accessibility standards are designed to allow users who need assistive technology to use the assistive technology of their choice, which LabCorp's website does not allow a user to do.

The overall navigation in the website has accessibility barriers (See page 4 Exhibit E). The search button is not labeled (WCAG 3.3.2) and the submenus on the main navigation do not notify the screen reader user that they are collapsed or expanded (WCAG 4.1.2). Hitting Enter causes no audible change. The skip navigation is not consistently linked to a useful target so that when it is used, it either:

- 1) lands on a region that rereads the page information to the screen reader user, or
- 2) does not move the focus past the repetitive navigation (WCAG 2.4.1).

There were a number of critical errors throughout the appointment scheduling process (See pages 5-8 Exhibit E). The heading structure, which many blind users use to navigate is not complete on the Search Results page (WCAG 1.3.1, 2.4.6). Adding to the difficulty, the buttons for Making an Appointment are repetitive and unclear. This forces a screen reader user to tab through every interactive component to make a selection (WCAG 2.4.6). Screen reader users typically navigate using lists of links and buttons. The components for the locations, hours, contacts, and services do not tell the screen reader user when they are collapsed or expanded and, again, are repetitive throughout the page (WCAG 4.1.2, 2.4.6). On the Schedule an Appointment page, the Yes No buttons which are required to proceed are not labeled (WCAG 3.3.2) and do not work when JAWS is active (Usability Issue). In addition, the Calendar widget is not keyboard accessible (WCAG 2.1.1). As a result, blind users, who rely on the keyboard, would not be able to proceed past this screen. If they did make it to the

Patient Information screen, several form fields are not labeled so the user would not know what information to enter (WCAG 3.3.2). Errors are also not available to screen reader users, and no information about how to fix problems and proceed is provided (WCAG 3.3.1). On the next screen, the controls to enter Financial information are not true controls, are not keyboard accessible, and are not associated with form labels (WCAG 2.1.1, 3.3.2, 4.1.2). The cancel button is also not in the tab order (WCAG 2.1.1). If a screen reader user made it this far, there is no way for them to proceed.

I used the Wayback machine to review the 2017 site to test the main page and Lab search (See pages 9-11 Exhibit E). The search button was not labeled (WCAG 2.4.6). The drop down menus in the main navigation are not keyboard accessible (WCAG 2.1.1). On both pages, the form fields used placeholder text as labels (WCAG 3.3.2). This makes forms difficult to navigate as the labels disappear when data is present.

I also tested the LabCorp Patient mobile application for iPhone using VoiceOver (See pages 12-14 Exhibit E). The coding makes navigating the application difficult for screen reader users because buttons, headings, and links are not identified (WCAG 4.1.2). The tab stops are also poorly designed with a number of empty stops and information that is out of order (WCAG 2.4.3). The tabs for the menu were not tied to activating the menu and are out of order from where users would expect them (WCAG 2.4.3).

The Schedule an Appointment link loads the website within the application. Using a website within an application on a mobile device can create a different

experience than using the website in a desktop experience. The limited screen size often changes the page layout and presentation. Gesture based interactions work differently than keyboard interactions do. Within this environment, the screen reader did not announce new pages when they loaded (WCAG 2.4.2). The mobile calendar view was accessible to gestures but still included barriers to interacting with it. The list of times is not in an expected order, so the user has to swipe a number of times to find them (WCAG 2.4.3). The time screen displayed also did not capture the keyboard focus so the user would navigate unexpectedly if they tap instead of swipe (WCAG 2.4.3). Buttons and content were still unlabeled (WCAG 1.1.1, 2.4.6) and the error messages remained unavailable to the screen reader user (WCAG 3.3.1). Finally, the financial data does not include controls and it is unclear how it should be used (WCAG 3.3.2, 4.1.2).

Neither the LabCorp website nor LabCorp's Patient mobile application for iPhone are independently accessible to blind users.

IV. CONCLUSION

As explained above, it is my opinion to a reasonable degree of certainty that the LabCorp Express kiosk, LabCorp website, and LabCorp Patient mobile application for iPhone are not independently accessible to blind users. In addition, as explained above, it is my opinion to a reasonable degree of certainty, that providing kiosks that are independently accessible to blind users was and is readily achievable, and would not create an undue

financial burden for LabCorp or fundamentally alter the essential nature of the goods and services it offers.

/s/ Rachael Bradley Montgomery,
PhD
Rachael Bradley Montgomery, PhD

March 25, 2021



3452 East Foothil Blvd., Suite 220 | Pasadena, CA 91107 | (626) 744-3540 | www.Rule26.com

EXHIBIT A - Report of Sean Chasworth

This is a report pursuant to FRCP 26 regarding my analysis in the matter of Davis, et al, v. Laboratory Corporation of America. If called as a witness, I would competently testify thereto. I make this declaration in support of Plaintiff's Motion for Class Certification. If called as a witness could and would testify truthfully and competently to those facts.

I am a data analyst with Phillips, Fractor & Company, LLC ("PFC"), which offers consulting services to law firms, government agencies, and other organizations as well as expert witness and consulting services in support of litigation, primarily in the areas of statistics, economics, finance, and questionnaire related research. I have worked with PFC and predecessor firms for over fifteen years, during which time I have performed database management,

statistical reporting, and analysis on over one hundred databases.

I have given deposition testimony, testified in Federal District court, various administrative courts and arbitrations, and submitted numerous declarations for state and federal court actions regarding my opinions or methodology. I have a bachelor's degree in mathematics from the University of Redlands and have passed numerous professional examinations. Prior to my tenure at PFC, I was a mathematics teacher in California public schools, a pension analyst (for which I passed numerous Actuarial Examinations), and financial analyst (for which I passed examinations toward the Chartered Financial Analyst credential from the CFA Institute). My current CV, and a list of recent testimony is attached in Exhibit B.

PFC (and its predecessor firms) has provided consulting and expert services on numerous litigation matters, including California wage and hour class action matters and has been retained by both plaintiffs and defendants. In many of these cases, I have consulted on data collection and analysis issues, to assist with the quantitative assessment of liability and class-wide economic losses.

We have been engaged by Nye, Stirling, Hale & Miller, LLP in this matter. PFC is not engaged on a contingency basis for this case. An engagement letter has been attached as Exhibit C. My hourly rate for this engagement is \$300 per hour, for both analysis and testimony. Neither my compensation nor my opinions are dependent on the outcome of this litigation.

Assignment and Preliminary Results

I was asked by Nye, Stirling, Hale & Miller, LLP to estimate the number of legally blind individuals who were denied independent access to LabCorp's services as a result of LabCorp's use of "Express Kiosks".

Based upon my analysis below, to a reasonable degree of certainty:

1. There are at least 87,500 legally blind class members nationwide.
2. There are at least 8,861 legally blind members of the California Minimum Statutory Damages class.
3. The damages to legally blind class members are at least \$8,861,000 per year, in accordance with California's Disabled Persons Act, which prescribes a statutory penalty of \$1,000 per access violation.
4. The damages to legally blind class members are at least \$35,444,000 per year, in accordance with the Unruh Civil Rights Act, which prescribes a statutory penalty of \$4,000 per access violation.

In performing this analysis, I have relied upon certain sources of data typically used in both research and commercial applications, employing standard calculation techniques in reaching these results that are typically performed by experts in statistics, economics, and social sciences. A list of documents that I have relied upon is attached as Exhibit D.

Nationwide Populations of the Legally Blind

According to the US. Bureau of the Census 2019 American Community Survey (ACS), approximately

1.9% (3,755,672 out of a total of 197,503,214) of the U.S. Population age 18 to 64 years old, and approximately 6.0% (3,164,285 out of a total of 52,782,417) of the U.S. Population age 65 years and over 'have a vision difficulty'. This represents a total of approximately 2.8% (6,919,957 out of a total population of 250,285,631) of the over-18 population who 'have a vision difficulty'.

The National Federation of the Blind's "Blindness Statistics" states that in the United States, 4,034,600 people of ages 16 – 64, and 3,171,100 people age 65 and older, reported having a visual disability in 2016. This is 2.0% of the population aged 16 – 64, and 6.6% of the population aged 65 and over.

In 2016, the U.S. National Institutes of Health (NIH) press release reported that approximately 1 million Americans were legally blind (defined as vision of 20/200 vision or worse), with 3.2 million Americans having visual impairment (defined as 20/40 or worse vision with best possible correction) as of 2015.

This indicates that approximately 14.5% (or 1 million divided by 6,919,957) of people who are visually impaired are also legally blind. The above documents are provided in Exhibit E.

A database prepared by Easy Analytics Software, Incorporated ("EASI Data"), a company which provides proprietary demographic and consumer information for both research and business applications, reports (as of 2019) an estimated 27,543,751 with 'Vision Trouble' in the United States, from a population of 328,144,740, or approximately 8.4% of the US population.

This indicates that, of those with approximately 3.6% (or 1 million divided by 27,543,751) who are reported as having 'Vision Trouble' in the EASI data are also legally blind. This information is provided in Exhibit F.

According to Page 35 of the deposition of Joseph Sinning, Patient Services Director of LabCorp, the company services "...about 125,000 people a day across the country." If the number of visually impaired people is similar to that reported in the US adult population, that would mean approximately $125,000 \times 2.8\% = 3,500$ people with 'visual difficulties', and approximately $3,500 \times 14.5\% = 507.5$ people who are legally blind are denied independent access each day. Assuming 260 weekdays in a typical year, the number of that times legally blind individuals would be denied independent access is $260 \times 507.5 = 131,950$ times per year.

According to a 2018 "Investor and Analyst Day" presentation, LabCorp receives approximately \$7 billion in annual revenue in an \$80 billion industry, or a share of approximately 8.75% of the United States lab market. This document is provided in Exhibit E.

If I were to assume that only 8.75% of the legally blind population of the USA would be potential users of LabCorp services each year, and would be denied independent access by LabCorp, there would be approximately $1,000,000 \times 8.75\% = 87,500$ people per year.

I was provided a Microsoft Excel file named "Davis-LabCorp00000515.xlsx" which contains a list of the addresses of LabCorp locations, including 1,795 locations in the United States. From this list, I

identified 1,562 distinct ZIP codes, 1,222 distinct cities, towns, and Census Designated Places, and 542 distinct counties in the United States which contain a LabCorp facility.

35 of the 1,222 distinct cities appear to be 'communities' or similar subdivisions of other, larger cities, or were not found in our data. To prevent duplicate counting of these areas, these 35 'cities' were removed from further analysis, leaving 1,187 cities.

Using the EASI Data referenced above, I calculated a total population of approximately 52,956,129 in the 1,562 distinct ZIP codes with at least one LabCorp location. In addition, I calculated a total of approximately 4,450,986 with "Vision Trouble", which is 8.4% of the population of those ZIP codes. Adjusting for the proportion of legally blind in the EASI Data gives approximately $3.6\% \times 4,450,986 = 160,235$ people in the ZIP code area and legally blind.

Using the EASI Data referenced above, I calculated a total population of approximately 115,212,616 in the 1,187 analyzed cities with at least one LabCorp location. In addition, I calculated a total of approximately 9,703,681 with "Vision Trouble", which is 8.4% of the adult population of those cities. Adjusting for the proportion of legally blind in the EASI Data gives approximately $3.6\% \times 9,703,681 = 349,333$ people in those cities and legally blind.

Using the EASI Data referenced above, I calculated a total population of approximately 225,928,175 in the 542 distinct counties with at least one LabCorp location. In addition, I calculated a total population of approximately 18,793,502 with "Vision Trouble", which is 8.3% of the population of those counties.

Adjusting for the proportion of legally blind in the EASI Data gives approximately $3.6\% \times 18,793,502 = 676,566$ people in those counties and legally blind.

References and data used for this analysis are attached as Exhibit F.1.

California State-Wide Population of the Legally Blind

The 2019 American Community Survey reports that approximately 1.5% of the California Population age 18 to 64 years old and approximately 6.0% of the U.S. Population age 65 years and over 'have a vision difficulty'. This represents a total of approximately 698,434 people with vision difficulties. Since these percentages are similar to nationwide measures, I will assume that national statistics are also appropriate for application to the State of California, or other geographic areas for purposes of this analysis.

Since approximately 14.5% (1 million out of 6.9 million) of Americans who reported as 'having a vision difficulty' on the ACS are also legally blind as reported by the NIH, that implies that approximately $698,434 \times 14.5\% = 101,273$ people in California are legally blind.

If I were to assume that only 8.75% (based on LabCorp share of the United States lab market as noted above) of the legally blind population of California would be potential users of LabCorp services in a year and would be denied independent access by LabCorp, there would be approximately $101,273 \times 8.75\% = 8,861$ people who were denied independent access each year.

Using the Microsoft Excel file named "Davis-LabCorp00000515.xlsx", referenced above, I identified

299 LabCorp locations in California, located in 238 distinct ZIP codes, 190 distinct cities, towns, and Census Designated Places, and 35 California Counties.

Nine of the 190 distinct cities In California appear to be 'communities' or similar subdivisions of other, larger cities. To prevent duplicate counting of these areas, these nine 'cities' were removed from further analysis, leaving 181 cities.

Using the EASI Data referenced above, I calculated a total population of approximately 9,670,828 in the 238 distinct ZIP codes with at least one LabCorp location. In addition, I calculated a total of approximately 790,613 with "Vision Trouble", which is 8.2% of the population of those ZIP codes. Adjusting for the proportion of legally blind in the EASI Data (referenced above) gives approximately $3.6\% \times 790,613 = 28,462$ people in the ZIP code area and legally blind.

Using the EASI Data referenced above, I calculated a total population of approximately 6,201,701 in the 181 analyzed cities with at least one LabCorp location. In addition, I calculated a total of approximately 499,927 with "Vision Trouble", which is 8.1% of the adult population of those cities. Adjusting for the proportion of legally blind in the EASI Data (referenced above) gives approximately $3.6\% \times 499,927 = 17,997$ people in those cities and legally blind.

Using the EASI Data referenced above, I calculated a total population of approximately 38,248,883 in the 35 distinct California counties with at least one LabCorp location. In addition, I calculated a total population of approximately 3,114,995 with "Vision Trouble", which is 8.1% of the population of those

counties. Adjusting for the proportion of legally blind in the EASI Data (referenced above) gives approximately $3.6\% \times 3,114,995 = 112,140$ people in those counties and legally blind.

If I were to assume that only 8.75% of the population (based on LabCorp share of the United States lab market as noted above) of these areas who are legally blind and potential users of LabCorp services, and would be denied independent access by LabCorp, there would be approximately $28,462 \times 8.75\% = 2,490$ people in ZIP codes with LabCorp facilities, $17,997 \times 8.75\% = 1,575$ in cities with LabCorp facilities, and $112,140 \times 8.75\% = 9,812$ in counties with LabCorp facilities who were denied independent access.

As it is possible that someone would potentially use a LabCorp facility that does not live in a ZIP code, city, or county which contains a LabCorp facility, the amounts of people calculated above is likely to be conservatively estimated.

References and data used for this analysis are attached as Exhibit F.2.

***Penalties for Denial of Independent Access
under California Law***

Under California's Disabled Persons Act, violations related to access for the disabled carry a statutory penalty of \$1,000 per violation. Under the Unruh Civil Rights Act, civil rights violations related to access for the disabled carry a statutory penalty of \$4,000 per violation.

Assuming that there are 8,861 people who are legally blind and would be potential users of LabCorp services in California, with each person having a single violation in a given year, the statutory penalty

would total $8,861 \times \$1000 = \$8,861,000$ per year under California's Disabled Persons Act. The statutory penalty under the Unruh Civil Rights Act would total $8,861 \times \$4000 = \$35,444,000$ per year.

As it is possible that more than 8.75% of the visually impaired population of California may be potential users of LabCorp services, or that an average person might have more than one such violation, the amounts calculated above are conservatively estimated.

Conclusions

It is my opinion, to a reasonable degree of certainty:

A nationwide class of legally blind people who may be denied independent access to LabCorp facilities ranges from at least 87,500 people to as many as 676,566 people in a particular year.

A California sub-class of legally blind people who may be denied independent access to LabCorp facilities ranges from at least 8,861 people to as many as 112,140 people in a particular year.

Damages to a California sub-class under the Disabled Persons Act would be at least \$8,861,000 per year, and under the Unruh Civil Rights Act would be at least \$35,444,000 per year.

I reserve the right to update or revise this preliminary analysis as I become aware of additional relevant information or identify any area where feasible updating or revision is necessary to substantially improve the accuracy or communication of my analysis and reported results.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 23rd day of March, 2021.

A handwritten signature in black ink, appearing to read "Sean Chasworth". The signature is fluid and cursive, with a prominent loop at the end.

SEAN CHASWORTH

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

LUKE DAVIS, JULIAN
VARGAS, and
AMERICAN COUNCIL
OF THE BLIND,
individually and on
behalf of all others
similarly situated,
Plaintiffs,

v.

LABORATORY
CORPORATION OF
AMERICA
HOLDINGS,
Defendant.

Case No.: 2:20-ck-00893-
FMO-KS

EXPERT REPORT OF BRUCE DEAL

March 8, 2021

CONFIDENTIAL

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I. QUALIFICATIONS

1. I am a Managing Principal of Analysis Group, Inc. (“Analysis Group”), an economic and financial consulting firm with offices located throughout the United States and internationally. I lead the economic consulting practice in Analysis Group’s Menlo Park, California office. I have over 25 years of experience in economic, litigation, and financial consulting. I have developed and managed hundreds of assignments requiring complex economic analysis of publicly available and internal client information. I have a Master in Public Policy (“MPP”) degree from Harvard University and have completed additional graduate coursework at Harvard. I have taught economics and analytic methods to graduate students at Harvard University and published articles on economics-related topics.
2. I have provided expert testimony in dozens of matters over 25 years and have led the analysis on projects covering a wide range of topics. In much of my expert work, I deal with questions involving the use and analysis of large, complex datasets. I have specific expertise in the healthcare industry. During my career, I have worked on hundreds of projects involving insurance, quality of care, calculation of economic damages, and class action lawsuits. I have prepared expert reports in numerous litigations involving the health care industry, including matters determining reasonable value for hospital and physician services, assessing payments for laboratory and hospital services,

and matters relating to class certification issues. I have testified many times in state and federal courts, on behalf of both plaintiffs and defendants. Further information about my professional activities and prior testimony appears in **Appendix A**.

II. CASE BACKGROUND

3. Defendant Laboratory Corporation of America Holdings (“Labcorp” or “Defendant”) is a global life sciences company that, among other things, operates approximately 2,000 diagnostic testing centers, known as patient service centers (“PSCs”), in the United States.¹ Patients visit PSCs to provide samples of blood, urine, tissue, or other specimen types for medical diagnostic testing.² PSCs accept both walk-in patients and visits by appointment.³ I understand that in 2017, as part of “Project Horizon,” Labcorp began introducing touchscreen tablets at kiosks for self-service check-in, alongside the option to check-in with a staff member at the patient service desk.⁴

¹ Laboratory Corp of America Holdings, Form 10-K for the fiscal year ended December 31, 2019, at pp. 4, 7. *See also*: Deposition of Joe Sinning, February 2, 2021 (“Sinning Deposition”), at 35:8.

² Sinning Deposition, at 36:2-19.

³ Deposition of Julian Vargas, February 10, 2021 (“Vargas Deposition”), at 39:5-8, Deposition of Luke Davis, February 16, 2021 (“Davis Deposition”), at 31:2-7.

⁴ Sinning Deposition, at 42:25, 43:1-20, Vargas Deposition, at 35:21-25, 36:1-15. I understand that in December 2018, the

4. Plaintiffs Mr. Davis and Mr. Vargas allege that Labcorp “discriminated against [them] by refusing and failing to provide auxiliary aids and services to Plaintiffs, and by requiring Plaintiffs to rely upon other means of communication that are inadequate to provide equal opportunity to participate in and benefit from Defendant’s health care services free from discrimination.”⁵ Specifically, Plaintiffs allege that “Defendant’s touchscreen kiosks for self-service check-in do not contain the necessary technology that would enable a person with a visual impairment to a) enter any personal information necessary to process a transaction in a manner that ensures the same degree of personal privacy afforded to those without visual impairments; or b) use the device independently and without the assistance of others in the same manner afforded to those without visual impairments.”⁶
5. The proposed class in this matter is defined by Plaintiffs to be:⁷

option to check-in via a mobile device was introduced for patients that had made a reservation in advance.

⁵ First Amended Class Action Complaint, *Luke Davis, et al. v. Laboratory Corporation of America Holdings*, Case No. 2:20-cv-00893-FMO-KS, United States District Court, Central District of California, September 3, 2020 (“Complaint”) at ¶ 2.

⁶ Complaint at ¶ 5.

⁷ Complaint at ¶ 34. While the Complaint makes reference to a “Class Period,” the dates of the period are not defined.

[A]ll legally blind individuals who visited a LabCorp patient service center in the United States and were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp's failure to comply with the ADA's and Rehabilitation Act's auxiliary aids and services requirements during the Class Period.

6. Plaintiffs also propose a "California sub-class," defined as:⁸

[A]ll legally blind individuals who visited a LabCorp patient service center in California and were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp's use of touchscreen check-in kiosks.

III. ASSIGNMENT

7. I have been retained by counsel for Labcorp to offer my expert opinion on whether common methods can be used to identify a class of injured persons. I was also asked to offer my expert opinion as to whether individualized inquiry would be necessary to determine whether visually impaired persons received inferior services compared to sighted patients, and/or whether such persons were harmed. I understand that Plaintiffs propose to identify the class, and/or deal with other purported class issues, by applying census data on the share of

⁸ Complaint at ¶ 35.

the population with visual impairments to the number of patients using Labcorp facilities. To the extent that Plaintiffs provide an affirmative expert report describing their proposed methodology in more detail, I may be asked to update my testimony. For the purposes of this report, I have been asked to provide a preliminary evaluation of Plaintiffs' proposed methodology.

8. **Appendix B** includes a list of all documents and data that I considered for my assignment. I reserve the right to amend or supplement this report if additional relevant documents or information become available.
9. Analysis Group is being compensated at a rate of \$890 per hour for my time. Other professional staff at Analysis Group working under my direction have assisted me in this assignment. Neither my compensation nor that of the Analysis Group is contingent on the nature of my findings or the outcome of this case.

IV. SUMMARY OF OPINIONS

10. In order to properly identify the proposed class, one must, among other things, identify how many visually impaired individuals: (1) visited or attempted to visit a Labcorp PSC with a self-serve check-in kiosk; and (2) were denied Labcorp's goods and service as a result, or were not offered those services on an equal basis. As I discuss throughout this report, applying broad nationwide statistics answers neither of these questions.

11. First, applying broad nationwide statistics on visual impairment fails to account for: (1) the distribution of Labcorp PSCs and its correlation (or lack thereof) with the U.S. population and the population of visually impaired persons; (2) the individualized nature of patient choice when selecting a laboratory testing provider; and (3) the diversity in self-service check-in kiosk availability across Labcorp PSCs throughout the proposed class period.
12. Second, even if one were able to identify the number of visually impaired persons visiting a Labcorp PSC with a check-in kiosk, such an estimate would not take into account the individualized check-in experiences of those Labcorp patients, many of whom may not have experienced any barriers at all to checking-in and therefore would not have suffered any of the harm Plaintiffs allege. For example, the individualized check-in experiences discussed herein all reflect vastly different check-in experiences at Labcorp PSCs with a check-in kiosk. Some of the witnesses claim to have been required to check-in at the kiosk; some claim they were told kiosk check-in was not required and were offered assistance at the desk; and some never tried to, or had any desire to, use the kiosks at all and expressed a preference for desk check-in. The only common thread among the experiences is that none of the individuals were denied the laboratory testing services that they desired. Thus, applying broad nationwide statistics, as Plaintiffs have indicated they plan to do, is insufficient for identifying the class

members, for accurately estimating the size of the class, and for determining which, if any, class members suffered any harm without conducting an individualized inquiry into each member's claim.

V. USING CENSUS DATA IS NOT AN ACCURATE METHODOLOGY TO ESTIMATE THE NUMBER OF CLASS MEMBERS

13. The Complaint alleges that “Defendant denies approximately 8.1 million Americans who have difficulty seeing access to its goods, products, and services.”⁹ The 8.1 million figure cited by Plaintiffs is based on a 2012 press release by the U.S. Census Bureau, discussing the report “Americans with Disabilities: 2010.”¹⁰ It is simply a citation to the nationwide number in the report, effectively implying that every single visually impaired person in the U.S. on the list was denied “access to [Labcorp’s] goods, products, and services.” However, such broad nationwide numbers do not correspond to specific class members at issue in this matter. The relevant question in this matter is not how many visually impaired individuals exist in the United States, but how many visually impaired individuals:

⁹ Complaint at ¶ 29 (internal citation omitted).

¹⁰ U.S. Census Bureau, “Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports,” July 25, 2012, available at <https://www.census.gov/newsroom/releases/archives/miscellaneous/cbl2-134.html>.

(1) visited or attempted to visit a Labcorp PSC with a check-in kiosk; and (2) as a result, were denied a good or service or were not offered the good or service on an equal basis. Thus, to properly assess class membership or estimate the number of putative class members, one must contend with both of these issues, and all issues associated with answering these questions.

A. Broad Nationwide Numbers Do Not Correspond to the Patients that Visit Labcorp's PSCs

14. There are numerous factors that may influence the number of visually impaired individuals visiting a Labcorp PSC with a self-serve check-in kiosk that are not accounted for by simply citing overall counts from the U.S. population or even applying simple nationwide census averages to a patient count. In this section, I identify a number of such issues.
15. **Population Distribution and PSC Visit Distribution:** First, patient visits at Labcorp PSCs are not evenly or equally distributed across the United States. As seen in **Exhibits 1a and 1b**,¹¹ Labcorp visits are not well correlated with

¹¹ These exhibits rely on data from Labcorp covering January 1, 2018 through December 30, 2020 (*see* Davis-LabCorp00004749, Davis-LabCorp00004750, Davis-LabCorp00004752) and from the U.S. Census Bureau (*see* U.S. Census Bureau, "American Community Survey Dataset ACSDT1Y2019," 2019, available at <https://data.census.gov/cedsci/table?q=vision&g=0100000US.04000.001&tid=ACSDT1Y2019.B18103&tp=true&hidePreview=true>). Note that the Complaint (at ¶ 29) cites that there are 8.1 million visually impaired people in the U.S. This estimate is based on US

state population, nor with the share of that population that is visually impaired. Examples include:

- New Jersey accounts for only 2.7 percent of the U.S. population, but has a disproportionate number of Labcorp visits, representing 11.5 percent of all U.S. Labcorp visits.
 - Michigan, which accounts for 3.0 percent of the U.S. population, has only 0.3 percent of all U.S. Labcorp visits.
 - Massachusetts, which accounts for 2.1 percent of U.S. population has only 0.2 percent of all U.S. Labcorp visits.
 - There are no Labcorp PSC visits *at all* in Hawaii, Maine, North Dakota, Vermont, or Puerto Rico, states and territories that cumulatively comprise 2.2 percent of the U.S. population.
16. Similarly, certain states have disproportionately more Labcorp visits than the share of the population that is visually impaired. Examples include:
- California has 9.7 percent of the U.S. visually impaired population, but accounts for disproportionately more Labcorp visits, with 14.9 percent of the total.

Survey of Income and Program Participation data from 2010, whereas the Census data I rely on in **Exhibits 1a and 1b** are from 2019.

- Florida has 7.0 percent of the U.S. visually impaired population, but accounts for 13.9 percent of all Labcorp visits.
 - Tennessee has 2.7 percent of the U.S. visually impaired population, but accounts for only 0.9 percent of Labcorp visits.
17. From a statistical perspective, applying national totals or national averages to a patient population that does not follow the same distribution as the U.S. population does not provide accurate results. National averages would tend to undercount in states with a disproportionately high share of Labcorp patients, and over-count in states with a disproportionately low (or zero) share of Labcorp patients.
 18. This geographic variation in Labcorp visits and potential utilization by visually impaired people presents serious hurdles in identifying relevant class members. For example, the state with the most Labcorp visits in the nation is California (14.9 percent of Labcorp visits in the country). However, California has among the *lowest* prevalence for visual impairment (1.9 percent), lower than the national average (2.4 percent). Thus, applying the 2.4 percent national average to California would likely substantially overstate the number of visually impaired California residents who went to Labcorp PSCs. Similarly, as discussed, Puerto Rico has no Labcorp PSC visits, but has the highest prevalence of visual impairment at 6.6 percent.

19. **Demographic Factors:** The proposed class does not consider variability in demographic factors specific to the visual impairment population (such as age), and how they vary from the general Labcorp population. Labcorp provided demographic data on the 61,522,195 patients that visited a Labcorp PSC from January 1, 2018 through December 30, 2020.¹² As seen in **Exhibit 2**, while 25.5 percent of all visually impaired people are 75 and older, only 17.5 percent of the Labcorp population are even 70 and older (and only 5.4 percent are 80 and older). Additionally, 2.7 percent of patients were younger than ten years old and would be less likely to use a Labcorp kiosk on their own, without caregiver/adult supervision, regardless of visual impairment.
- B. Broad Nationwide Statistics Do Not Capture Individualized Patient Choices for Laboratory Testing Services**
20. Broad nationwide statistics would also not capture more nuanced aspects of population clustering and consumer choice. For example, they would not capture factors like whether visually impaired populations are more or less likely to reside near a Labcorp PSC, more or less likely to choose alternate methods to a PSC for their bloodwork or testing, or more or less likely

¹² See Davis-LabCorp00004749, Davis-LabCorp00004750, Davis-LabCorp00004752.

to have Labcorp as an in-network provider for their insurance. I discuss these examples below.

21. **Location of Testing:** Labcorp PSCs provide access to routine laboratory testing, but they are certainly not the only option to obtain laboratory testing, and are not even the only option offered by Labcorp. According to the deposition testimony of Labcorp witness Joseph Sinning, testing services through PSCs represent only about 20 percent of Labcorp's business.¹³ Sample collection can also be performed at hospitals, at many doctor's offices, and even at select pharmacies.¹⁴ Even if Labcorp performs the test, the tissue or fluid sample collection may or may not even be provided by Labcorp, and they may or may not have check-in procedures similar to those at a Labcorp PSC.¹⁵ In addition, Labcorp is not the only provider of stand-alone collection facilities. For example, Quest Diagnostics operates approximately 2,000 locations in the U.S.,¹⁶ comparable to the number of Labcorp

¹³ Sinning Deposition, at 37:10-19.

¹⁴ Sinning Deposition, at 36:20-37:9, 77:18-78:8.

¹⁵ Sinning Deposition, at 78:3-21.

¹⁶ Quest Diagnostics, "Laboratory and Office Locations Around the World," available at <https://www.questdiagnostics.com/home/about/locations/>.

locations in the U.S.¹⁷ Thus, it is important to consider the patient's options in choosing a laboratory testing provider, and whether those choices may be correlated with visual impairment. Such an evaluation would require much more detailed analysis than simply using national statistics.

22. For example, a key component of choosing a laboratory provider is likely the convenience of the location. As discussed above, some states have relatively few Labcorp locations. If that location is not convenient to the visually impaired population—for example, if it is not accessible by public transportation or is simply very far away from the home of individuals who are visually impaired—that may impact the choices of patients and whether or not they visit a Labcorp PSC for their medical diagnostic testing needs.
23. **Insurance Coverage:** Another key component of patient choice in healthcare relates to insurance coverage. Most insurance plans partner with certain providers to provide discounted services that are “in-network” while services that are “out-of-network” are relatively expensive for the member.¹⁸ Thus, a patient with

¹⁷ Labcorp's 2019 Form 10-K indicated that it had “nearly 2,000 PSCs.” (Laboratory Corp of America Holdings, Form 10-K for the fiscal year ended December 31, 2019, at p. 7).

¹⁸ *See, e.g.*, American Health Insurance Plans Center for Policy and Research, “Charges Billed by Out-of-Network Providers: Implications for Affordability,” September 2015, available at

an insurance plan that has Labcorp as an out-of-network provider is less likely to select Labcorp for their testing needs. Using national statistics does not capture how insurance coverage relates to the visually impaired population.

C. Broad Nationwide Statistics Do Not Capture Location-Specific Kiosk Availability

24. Even if a visually impaired person chose to go to a Labcorp PSC during the proposed class period, that is not sufficient to identify whether the individual qualifies as a purported class member. For example, the Labcorp location may not necessarily have had a kiosk check-in procedure in place at that time. The question raised by Plaintiffs' allegations in this matter is whether a visually impaired person: (1) visited or attempted to visit a Labcorp PSC with a *self-service check-in kiosk*; and (2) as a result was denied a good or service or was not offered the good or service on an equal basis. Thus, at a minimum, a PSC must have had a functioning self-service check-in kiosk at the time of the patient's visit to even potentially establish class membership. To the extent that the PSC did not have a kiosk installed or had a kiosk that was not working, this would not be a relevant visit for the purposes of this matter.

25. **Installation of Kiosks:** Labcorp began introducing check-in kiosks at its PSCs in October 2017.¹⁹ However, the process of installing kiosks was not instantaneous and universal; they were rolled out over the course of at least a year. As depicted in **Exhibit 3**, kiosks were slowly rolled out beginning in October 2017 until finally, by September 2018, they had been introduced in 1,699 PSC locations.²⁰ This is still not 100 percent of PSC locations. Indeed, I understand that there are currently 48 Labcorp PSCs without a check-in kiosk.²¹
26. **Was the Kiosk Even Working?:** Even after a given location had a kiosk installed, there were periods of time where a given kiosk at a given location was not operational.²² In those cases, there would be no potential violation, as the site would be functionally equivalent to one that had no kiosk at all, and visually impaired individuals would necessarily receive identical service to sighted individuals.

¹⁹ Sinning Deposition, at 83:7-11.

²⁰ The source of these data was last updated September 26, 2018 so rollout information on the remaining PSC locations is not available.

²¹ See Davis-LabCorp00004354. I understand that the highlighted locations in the spreadsheet are PSCs without self-service check-in kiosks.

²² See Davis-LabCorp00004751, Davis-LabCorp00004748, Davis-LabCorp00004755.

27. Even if one could accurately identify the number of visually impaired people that visited Labcorp PSCs during the proposed class period, that would not accurately identify the number of visually impaired people who visited a Labcorp PSC with a working check-in kiosk. To the extent that a visually impaired person visited a Labcorp PSC that had no check-in kiosk at the time of their visit, that patient cannot be considered a class member.
28. Furthermore, even if one could identify the number of visually impaired individuals who visited a Labcorp PSC with a working check-in kiosk, that does not mean that the visually impaired person: (1) attempted to check-in at the kiosk; or (2) was denied service or received substandard service.

VI. AN ANALYSIS OF WHETHER VISUALLY IMPAIRED PERSONS RECEIVED INFERIOR SERVICES COMPARED TO SIGHTED PATIENTS, AND/OR WHETHER SUCH PERSONS WERE HARMED, REQUIRES INDIVIDUALIZED INQUIRY

29. The Complaint alleges that the proposed class members “received services that were objectively substandard, inaccessible, and inferior to those provided to sighted patients, and were subjected to discriminatory treatment because of their disability.”²³ Furthermore, the Complaint indicates that, as a result of his inability to use

²³ Complaint at ¶ 23.

the kiosks unassisted, Plaintiff Mr. Davis needed to verbally state private information aloud, in one instance to a stranger, in a public waiting room where it could have been overheard.²⁴

30. Even if Plaintiffs were able to identify the number of visually impaired persons who went to Labcorp PSCs with installed and functioning check-in kiosks, this would still not be sufficient to show that each of those persons was required to engage with a kiosk and/or received inferior services than sighted persons and/or were otherwise harmed. In fact, based on the deposition testimony that I have reviewed, the proposed class members likely had a variety of experiences that would require individualized inquiry in order to determine whether they fit within the proposed class definition, could have any claim against Labcorp, and/or experienced any harm. In this section, I discuss several of these issues.

A. Patients' Individualized Check-In Experiences Impact Whether or Not They Have Received Inferior Services and/or Experienced Any Harm

31. As discussed above, kiosks were installed at Labcorp facilities on a rolling basis starting in late 2017 through at least 2018. Prior to the installation of kiosks, all patients—visually impaired and otherwise—checked Plaintiffs' in at the desk. Moreover, contrary to allegations, once

²⁴ Complaint at ¶ 21.

kiosks were installed, I understand that desk check-ins remained a routine check-in option.²⁵

32. In fact, as shown in **Exhibit 4**, data from Labcorp shows that only 65 percent of patients chose to use a self-service check-in kiosk during the 180-day period ending February 19, 2021. Thus, the addition of a check-in kiosk added one additional check-in option, but it was clearly not a *requirement* and did not remove or alter the prior check-in options for visually impaired persons. If anything, providing a self-serve option may have improved upon the prior check-in experience at the desk, by providing shorter lines for desk check-ins as others were using the kiosks.
33. Even more fundamentally, the administrative check-in process is not the good or service being provided by Labcorp. It is simply an administrative step to the desired laboratory testing service. I am not aware that Plaintiffs have shown—or even alleged—that the self-serve kiosks led to any substandard, inaccessible, or inferior laboratory testing service. Plaintiffs’ theory of harm rests on the premise that visually impaired persons attempted to use the check-in kiosks and were unable to do so or were forced to check-in at the desk and as a result were denied a Labcorp good or service or not offered it on an equal basis. In fact, testimony in this matter

²⁵ Sinning Deposition, at 43:14-20, Davis-LabCorp00004298-00004302.

indicates the opposite, and at a minimum illustrates the diversity of experience, including:

- **Plaintiff Mr. Vargas** – Mr. Vargas testified that he was told (accurately) he need not use the kiosk and that someone would check him in.²⁶
- **Plaintiff Mr. Davis** – Mr. Davis testified that he has checked in at Labcorp PSCs in multiple ways. Prior to the introduction of kiosks, he checked in with a Labcorp staff member during appointments.²⁷ After kiosks were rolled out, Mr. Davis claimed he was referred to a kiosk at least six times,²⁸ and starting in 2019, chose to use the mobile check-in option.²⁹ I also note that Mr. Davis claimed he was required to use a kiosk to check-in at PSC locations that did not have a kiosk installed at the time of his visit,³⁰ making his claimed experience not possible.

²⁶ Vargas Deposition, at 22:9-19, 56:16-20.

²⁷ Davis Deposition, at 26:19-22.

²⁸ Davis Deposition, at 59:6-13.

²⁹ Davis Deposition, at 59:17-21.

³⁰ Compare Davis Deposition, at 23:5-8, 42:13-43:9 with Davis-LabCorp00000650, Hz Rollout Tab: Row 773. Mr. Davis testified that he visited the Labcorp PSC at 9331 Bustleton Avenue, Philadelphia in 2016 and was told he needed to check in at the kiosk. However, Labcorp's data show that a kiosk was not installed in that location until December 2017.

- **Mr. Harden** – Both Mr. Harden and his wife have never used or attempted to use kiosks or mobile check-in service.³¹ Mr. Harden testified that over the last four years, and on 32 visits to a Labcorp PSC, he and his wife checked in with Labcorp staff and were never directed to a kiosk to check in.³² Mr. Harden received service as expected and felt that staff were trained to accommodate his visual impairment.³³
34. The fact that these three deponents each recalled different experiences in checking in to Labcorp PSCs—all of which indicate no hardship or difficulty associated with receiving the laboratory testing services themselves—is itself indicative of the individualized nature of the claims alleged and any alleged harm in this matter.
35. I understand that different Labcorp facilities have varying numbers of full-time and part-time staff who are equipped to assist patients with check-in, which may affect the check-in experience of potential class members. For example, I understand that certain locations, but not all, have a dedicated Patient Intake Representative (“PIR”) who sits at the front desk to check in patients, while others have only

³¹ Deposition of John Harden, February 17, 2021 (“Harden Deposition”), at 26:13-19, 33:5-7,

³² Harden Deposition, at 25:19-26:19.

³³ Harden Deposition, at 33:13-23.

phlebotomists available.³⁴ Among Labcorp PSCs with only phlebotomists, some have only a single phlebotomist while others have multiple working at the same time.³⁵ This variation in staffing may impact whether staff are available to immediately greet and assist patients with check-in. For example, where a PSC has two phlebotomists, but no PIR, one phlebotomist will often sit at the front desk full time, while allowing the other to focus on collecting samples for testing. Depending on the circumstance, however, in locations with multiple phlebotomists, each may handle both collections and check-ins.³⁶ And in locations with more phlebotomists (three, four, five, or more), it is statistically more likely (due to variation in arrival times) that someone is at the desk when a patient arrives, even if that location does not keep a phlebotomist full-time at the desk as a matter of practice. As yet another example, certain Labcorp locations are located inside Walgreens stores, where there is always a dedicated Walgreens staff member available to assist patients, if needed.³⁷ In short, there are a wide range of ways in which check-in desks are staffed,

³⁴ Sinning Deposition, at 47:22-48:4.

³⁵ Sinning Deposition, at 79:12-21.

³⁶ Interview with Joseph Sinning, March 8, 2021.

³⁷ Sinning Deposition, at 78:3-8.

which will also contribute to variation in the experience of a visually impaired customer.

36. In addition, I understand that even if a patient checks in at the kiosk before a patient who checks in at the desk, factors such as the type of testing being done, whether the patient had an appointment, and what type of assistance the patient may need as it relates to performing the testing will impact who is seen first by a phlebotomist.³⁸ That is, even if checking in at the desk is a slower process,³⁹ this does not necessarily indicate that patients checking in at the desk are delayed in receiving Labcorp's medical diagnostic testing services.
37. One method of harm posited by Mr. Davis is that he needed to verbally disclose his private information. However, there is no evidence that this applies equally or even commonly across proposed class members. In fact, Plaintiff Mr. Vargas testified that he checked in by providing his written credentials to a Labcorp representative; he did not need to verbally

³⁸ Deposition of Kevin DeAngelo, March 3, 2021, Rough Transcript, at 131:17-132:12, 135:9-15.

³⁹ This premise is itself not uniform and would depend on a variety of factors, including how efficiently people check in at the kiosk, especially when they are unfamiliar with it, compared to how efficiently they can check in at the desk with a PIR or phlebotomist who presumably is familiar with the check-in process and is able to efficiently check patients in. *See* Harden Deposition, at 29:15-30:11.

disclose any private information.⁴⁰ Nor did he overhear any information disclosed by the patients ahead of him in line.⁴¹ This experience was echoed by Ms. VanLant, who stated that she did not have to verbally disclose any private information or information regarding her visit.⁴² In fact, the check-in process at the desk before and after kiosks were installed appear to have been substantially unchanged. Thus, to the extent that any visually impaired persons gave their information verbally at the check-in desk, this would not be representative of the experiences of even the putative class representative, Mr. Vargas. Moreover, if anything, the existence of the kiosks would minimize the number of people in line for the check-in desk, and thus minimize the chance that someone would overhear private information, even if a patient was asked for it or chose to give it.

B. Not All Visually-Impaired Patients Are Unable to Use the Kiosks

38. As indicated in the U.S. Census Bureau press release discussed above that announced the Americans with Disabilities: 2010 report, as of 2010, “[a]bout 8.1 million people had difficulty

⁴⁰ Vargas Deposition, at 22:14-19.

⁴¹ Vargas Deposition, at 25:3-26:8.

⁴² Deposition of Robin VanLant, February 17, 2021 (“VanLant Deposition”), at 29:2-7.

seeing, including 2.0 million who were blind or unable to see.”⁴³ That is, 6.1 million of the 8.1 million visually impaired people (more than 75 percent) had some sight. Visual impairment may include issues regarding clarity/sharpness of vision, light sensitivity, contrast sensitivity, field of vision, and color blindness.⁴⁴ It is certainly likely that patients with certain categories of visual impairment may be able to use a kiosk, depending on the degree of severity and type of visual impairment. Any estimation or identification of a proposed class would need to provide more accurate information as to the interaction between visual impairment and the inability to use the kiosk. Ms. Stanley, the 30(b)(6) witness (person most knowledgeable) for Plaintiff American Council of the Blind, recognized these disparities among potential class members, testifying that “[n]o two people with a visual impairment need the same accommodation” and that “no one accommodation

⁴³ United States Census Bureau, “Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports,” July 25, 2012, available at <https://www.census.gov/newsroom/releases/archives/miscellaneous/cbl-2-134.html>.

⁴⁴ WebAIM, “Survey of Users with Low Vision #2 Results,” October 31, 2018, available at <https://webaim.org/projects/lowvisionsurvey2/>.

is going to accommodate every person everywhere.”⁴⁵

39. For example, Mr. Vargas testified that the law recognizes blindness as vision worse than 20/200.⁴⁶ However, research shows that “people with acuities as low as 20/2000 (acuity letters 100 times larger than 20/20 letters) can read ... provided that adequate magnification is available.”⁴⁷ And, in fact, statistics show that 51 percent of visually impaired people are able to use their phone camera and screen as a magnifier.⁴⁸ Thus, it is entirely possible that many Labcorp patients who were visually impaired—but with some sight ability—may have been able to use the kiosks. Accurate identification of class members would require that these factors be considered.

VII. CONCLUSION

40. As I have discussed throughout this report, broad nationwide statistics neither provide sufficient information to identify the number of visually

⁴⁵ Deposition of Claire Stanley, December 7, 2020, at 8:14-18, 22:21-22, 72:23-24.

⁴⁶ Vargas Deposition, at 14:18-20.

⁴⁷ Legge, Gordon E., “Reading Digital with Low Vision,” *Visible language* vol. 50, 2 (2016): 102-125.

⁴⁸ Michael Crossland, Rui Silva and Antonio Macedo, “Smartphone, Tablet Computer and E-reader Use by People with Vision Impairment,” July 28, 2014, available at <https://pubmed.ncbi.nlm.nih.gov/25070703/>.

impaired persons visiting a Labcorp PSC with a working check-in kiosk, nor do they provide insight into whether those persons were harmed by the existence of the check-in kiosk. Such statistics do not account for the population distribution of visually impaired persons, nor do they account for the myriad ways in which the individual patient's choices and experiences influence whether that particular patient was harmed by the existence of a check-in kiosk.

A handwritten signature in black ink, appearing to read "Bruce Deal", is positioned above a horizontal line.

Bruce Deal

March 8, 2021

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
CASE NO.: 2:20-CV-00893-FMO-KS

LUKE DAVIS, JULIAN VARGAS,
and AMERICAN COUNCIL OF THE
BLIND, individually, and on behalf of
all others similarly situated,

Plaintiffs,

vs.

LABORATORY CORPORATION OF
AMERICAN HOLDINGS; and DOES
1 through 10,

Defendants.

February 17, 2021
Videoconference Deposition
9:07 a.m. – 10:11 a.m.

VIDEOCONFERENCE ZOOM
DEPOSITION OF JOHN HARDEN

Taken before Angela Saxon, Professional Court
Reporter and Notary Public in and for the State of
Florida at Large, pursuant to Notice of Taking
Deposition filed in the above cause.

A Yeah, personal computer, home computers.

Q And what was your next job, sir?

A 2000 I retired.

Q And do you currently have any employment?

A I currently do a little bit of braillewriter repair just as a hobby more than anything else.

Q Do you read Braille, sir?

A Yes.

Q Sir, are you visually impaired?

A Yes.

Q And are you — can you describe your level of visual impairment?

A Totally blind now. I was able to see a little bit as a younger person, never been able to read print very well.

Q When would you say approximately that you became totally blind?

A Oh, it kind of went slowly, but I would say sometime between 2000 and 2010.

Q Have you ever been a party to a litigation, sir?

A Repeat.

Q Sure. Have you ever been a plaintiff in a litigation or a defendant in a litigation?

Q And the first question, sir, was have you attempted to access LabCorp's facilities through the use of the E-kiosk check-in system in the past three years. Do you recall that question, sir?

A If it was on the survey, yes.

Q And then do you recall responding: No, I walk in and go to the window just as I always did, and the receptionist checks me in just like she always did. In fact, I was unaware there was an E-kiosk. Is that your answer, sir?

A That sounds familiar, yes.

Q And was that a true and accurate answer of your experience going to that —

A Yes.

Q Let me just finish my question.

MR. HANDLEY: Let him finish the question, Mr. Harden. Thanks.

THE WITNESS: Sorry.

BY MR. STEINER:

Q Was that a true and accurate statement of your experiences going to LabCorp's Patient Service Centers within the last three years prior to responding to the survey?

A Yes.

Q Do you recall, sir, being asked the

is that correct?

A That is correct. And it's Beville Road, not Bellview.

Q I apologize, sir, Beville Road.

A Hey, it's a strange spelling. It's an easy mistake.

Q Thank you. And since you responded to this survey on June 26, 2020, have you continued to go to the LabCorp Patient Service Center at Beville Road in South Daytona Florida?

A Yes.

Q And have your experiences going to that location been the same as they were at the time you responded to this survey on June 26, 2020?

A Yes.

Q And how many times would you estimate you've been to that LabCorp Patient Service Center on Seville Road since June 26, 2020?

A Well, every three months, so three times.

Q You go to that LabCorp Patient Service Center approximately every three months; is that correct?

A That is correct.

Q And when you go to that patient service center, what goods or services are you seeking from LabCorp?

A Leaving a blood sample for them to do their tests on for as ordered by my physician.

Q And on every instance, sir, that you've been to that location in the last three years, have you been able to get the goods and services from LabCorp that you were there for?

A Yes.

Q Have you ever been denied any goods and services from LabCorp at a patient service center?

A No.

Q Sir, I'm going to skip question three and go to question four on the survey. The question was, Have you ever — sorry, excuse me, Have you attempted to access LabCorp's E-kiosk check-in system and were forced to disclose private information to another person to get help signing in. Do you recall that question, sir?

A Yes.

Q And your response was: I hand my ID card to the receptionist and private information is never spoken to anyone. Do you recall that response, sir?

A Yes.

Q Was that an accurate response relating to your experience at the Beville Road LabCorp Patient Service Center over the last three-and-a-half years?

A Yes.

Q Sir, you wrote on the survey response dated June 26, 2020, ADA states that a business needs to make reasonable accommodations for the disabled; they certainly do that. Do you recall that response, sir?

A Yes.

Q Was that an accurate response relating to your experiences at LabCorp's Beville Road Patient Service Center over the last three years?

A Yes.

Q And since you filled out that survey, has anything happened at any of the LabCorp Patient Service Center on Beville Road that would cause you to change any of your responses to this survey?

A No.

Q Sir, the last time you were at a LabCorp Patient Service Center was when?

A It was the middle of January. The exact date, I couldn't say.

Q That's fine. The middle of January 2021?

A Yes.

Q And you would have been at a patient service center approximately in the middle of

yourself?

A I don't believe so. I don't remember.

Q What is your wife's name, sir?

A Teresa Faye Harden.

Q Does Ms. Harden have visual impairment?

A Yes.

Q Is Ms. Harden legally blind?

A Yes.

Q And so I take it from your testimony that the two of you obtain goods and services from that LabCorp Patient Service Center on Beville Road, correct?

A Yes.

Q Are you aware of any instance where Ms. Harden, your wife, has been denied any goods and services from the patient service center on Beville road?

A She has not been denied any services.

Q Has your wife to your knowledge been able to check in at the window in the last four years?

A Yes.

Q Has she ever been required to use the kiosk to check in?

A No.

Q Have you ever been required to use the kiosk to check in?

A No.

Q As to Ms. Harden, does she require laboratory testing services at the same frequency that you do, sir?

A Yes.

Q So approximately every three months?

A Approximately.

Q So the two of you collectively over the last four years would have been at a LabCorp Service Center approximately, what is that, 32 times?

A Probably.

Q And on each and every occasion that you've gone, the two of you have gone, of those 32 times you've been able to check in at the desk, correct?

A Correct.

Q You have never been required on any of those 32 times to check in at the kiosk, correct?

A That is correct.

Q Sir, when you were at the location on Beville Road in January of this year, you were able I take it to physically access that location?

A Yes.

Q You entered the location and then tell me what you would do.

the phlebotomist who drew your blood in the back?

A I don't believe so.

Q When you have gone to the desk, have you ever had to wait in line?

A No.

Q So you walk up to the desk and your information is taken from you almost immediately; is that correct?

A That's correct.

Q And then you're asked to take a seat and depending on how busy this location is depends on how long it takes for them to call you into the back; is that right?

A Right.

Q Do you know whether people who are checking in the kiosks are able to check in sooner than you or if that takes more or less time?

A Repeat.

Q Sure. Do you know whether, sir, on the occasions that you've been to the LabCorp Patient Service Center since they introduced the kiosk, if it is quicker to check in at the kiosk or check in at the desk?

A I don't really — it depends on the person at the kiosk. Some people take a minute and some people take three or four minutes.

At the desk I'm probably there a minute at the most.

Q And so your understanding is that some people are less familiar with the kiosk and so it may take them longer to check in at the kiosk than at the desk; is that correct?

A Yes.

Q So you find checking in at the desk to be an efficient way to get services from LabCorp?

A Yes.

Q And do you have any reason, sir, to check in at the kiosk?

A No.

Q Have you ever tried to use the kiosk, sir?

A No.

Q When you check in at the desk, sir, have you ever been required to provide any personal medical information?

A No.

Q Are you aware of anyone, sir, who is visually impaired who has been denied the opportunity to check in at a LabCorp Patient Service Center at the desk?

A I'm not aware of anyone.

Jonathan D. Miller (SBN 220848) Jonathan nshmlaw.com	Benjamin J. Sweet (pro hac vice) ben@nshmlaw.com
Alison M. Bernal (SBN 264629) alison@nshmlaw.com	NY , STIRLING, HALE & MILLER, LLP
NYE, STIRLING, HALE & MILLER, LLP	1145 Bower Hill Road, Suite 104
33 West Mission Street, Suite 201	Pittsburgh, PA 15243
Santa Barbara, CA 93101	Telephone: (412) 857- 5350
Telephone: 805) 963-2345	
Facsimile: (805) 284-9590	

Attorneys for Plaintiffs Julian Vargas, Anne West, American Council of the Blind, and the Proposed Class

Additional Counsel Listed on Signature Page

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

LUKE DAVIS, JULIAN VARGAS, and AMERICAN COUNCIL OF THE BLIND, individually and on behalf of themselves and all others similarly situated, <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p>	CASE NO. 2:20-CV-00893-FMO-KS PLAINTIFF AMERICAN COUNCIL OF THE BLIND'S SUPPLEMENTAL RESPONSE TO REQUEST NO. 17 OF DEFENDANT LABORATORY CORPORATION OF
--	--

LABORATORY
CORPORATION OF
AMERICA
HOLDINGS; and
DOES 1 through 10,
Defendants.

**AMERICA HOLDINGS'
FIRST SET OF
REQUESTS FOR
PRODUCTION OF
DOCUMENTS**

Plaintiff American Council of the Blind (“ACB”) submits the following supplemental response to Request No. 17 of Defendant Laboratory Corporation of America Holdings’ First Set of Requests for Production of Documents.

PRELIMINARY STATEMENT

The following supplemental response is rendered and based upon information in the possession of ACB at the time of the preparation of this response.

REQUEST FOR PRODUCTION NO. 17

The complete list to whom You sent Your June 2020 Survey (Bates Stamped PL204) along with any and all responses received thereto in their original form.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17

ACB objects to this request as overly broad, unduly burdensome, unreasonable, and not proportional to the needs of the case. ACB also objects to this request to the extent it unnecessarily and unreasonably invades the privacy interests of its members.

Without waiving any objections, ACB responds as follows: ACB agrees to produce nonprivileged, responsive documents within its custody, control, or possession sufficient to show ACB’s recordation of instances where its members have interacted with LabCorp that can be located after a reasonable search.

***SUPPLEMENTAL RESPONSE TO REQUEST
FOR PRODUCTION NO. 17***

Without waiving any objections, ACB further responds that the June 2020 Survey was sent to a total of 4,542 persons.

Dated: March 2, 2021 NYE, STIRLING, HALE &
MILLER, LLP

/s/Jonathan D. Miller

Jonathan D. Miller

Alison M. Bernal

Benjamin J. Sweet

Jordan T. Porter

HANDLEY FARAH &
ANDERSON

/s/Matthew Handley

Matthew Handley

Attorneys for Plaintiffs

VERIFICATION

I have read the foregoing PLAINTIFF AMERICAN COUNCIL OF THE BLIND'S SUPPLEMENTAL RESPONSE TO REQUEST NO. 17 OF DEFENDANT LABORATORY CORPORATION OF AMERICA HOLDINGS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS and know its contents.

- I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
- I am the Director of Advocacy and Governmental Affairs of the American Council of the Blind, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in the supplemental response to Request No. 17 are true.
- I am one of the attorneys of record for _____, a party to this action. Such party is absent from the county in which I have my office, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document(s). I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on 3/2/2021.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Clark Rachfal

Clark Rachfal

**PROOF OF SERVICE
DISTRICT OF COLUMBIA**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the District of Columbia. My business address is 200 Massachusetts Avenue, NW, 7th Floor, Washington, DC, 20001.

On March 3, 2021, I served true copies of the following document(s) described as following document(s):

**PLAINTIFF AMERICAN COUNCIL OF THE
BLIND'S RESPONSE TO FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS FROM DEFENDANT
LABORATORY CORPORATION OF AMERICA
HOLDINGS**

on the interested parties in this action as follows:

Robert L. Steiner, Esq.
rsteiner@kelleydrye.com
KELLY DRYE & WARREN LLP
101 Park Avenue
New York NY 10178
Telephone: (212) 808-7800

Tahir L. Boykins, Esq.
KELLEY DRYE & WARREN LLP
tboykins@kelleydrye.com
1800 Century Park East, Suite 600
Los Angeles, CA 90067-4008
Telephone: (310) 712-6100

Attorneys for Defendant

- BY EMAIL:** I caused the above listed document(s) to be sent via electronic mail to

the above listed email address from the email address mhandley@hfajustice.com and did not receive an error message after sending.

I declare under penalty of perjury under the laws of the State of California and the District of Columbia that the above is true and correct. Executed on March 3, 2021.

/s/ Matthew Handley
Matthew Handley

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS and JULIAN VARGAS, individually on behalf of themselves and all others similarly situated,

CASE NO.: 2:20-cv-00893

Plaintiffs,

v.

LABORATORY
CORPORATION OF
AMERICA HOLDINGS;
and DOES 1-10, inclusive,

Defendants.

VIDEOTAPED VIDEOCONFERENCE
DEPOSITION OF LABORATORY CORPORATION
OF AMERICA HOLDINGS 30(B)(6),

JOSEPH SINNING

Cape Girardeau, Missouri

Tuesday, February 2, 2021

Volume 1

Reported by:

LESLIE JOHNSON

RPR, CCR, CSR No. 11451

Job No.: 4445335

PAGES 1 – 232

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS and JULIAN CASE NO.: 2:20-cv-
VARGAS, individually on 00893
behalf of themselves and all
others similarly situated,
Plaintiffs,

v.

LABORATORY
CORPORATION OF
AMERICA HOLDINGS;
and DOES 1-10, inclusive,
Defendants.

VIDEOTAPED VIDEOCONFERENCE
DEPOSITION OF JOSEPH SINNING, Laboratory
Corporation of America Holdings 30(b)(6), Volume 1,
taken on behalf of Plaintiffs, at Cape Girardeau,
Missouri, beginning at 10:05 a.m. and ending at
3:55 p.m., on Tuesday, February 2, 2021, before
LESLIE JOHNSON, Certified Shorthand Reporter
No. 11451.

BY MR. MILLER:

Q Do you have knowledge of any number of how
many patients are served by LabCorp at their service
centers throughout the United States?

A I know that we're seeing about 125,000 people a
day across the country.

Q At how many patient service centers?

A Just under 1900.

Q And those are located throughout the United States?

A That is correct.

Q How many patient service centers are located within California?

A One second. I've got that number in my — 299 locations.

Q Do you know how many patients on average LabCorp sees at their patient service centers in California?

MR. STEINER: Objection. Beyond the scope.

THE WITNESS: Yeah. I do not have that number with me.

BY MR. MILLER:

Q But it would certainly be a portion of the 125,000 that LabCorp sees per day; is that right?

A That is correct.

Q Now, these patient service centers, what is their function within LabCorp? What are they for?

MR. STEINER: Objection. Vague.

THE WITNESS: They're there to provide a location to collect samples from patients based on what a physician has ordered, or an employer in some cases.

BY MR. MILLER:

Q And that could be for a wide range of diagnostic tests, correct?

A That is correct.

Q It could be, for example, blood tests. That would be one example, right?

A Correct.

Q Then there could be a series of diagnostic tests run from those blood samples, correct?

A Correct.

Q And the patient service centers are the access points by which the patients can go and deliver their samples for LabCorp's diagnostic testing, right?

MR. STEINER: Object to the form. Vague.

THE WITNESS: They're one of many types of

processes for patients?

A The last count I have is 1,853 of them.

Q And do you have an understanding of the number of patient service centers in California that have kiosks that allow a patient to check in?

A My understanding from the last count we did is there were 19 that did not out of that 299.

Q So, if I just subtract 19 from 299, I can get to the number of patient service centers in California that have kiosk check-in?

A Yes, sir. I didn't want to try to do that mental math, sorry.

Q That's all right.

Now, LabCorp doesn't discriminate in providing access to its services at patient service centers, does it, sir?

A Absolutely not.

Q LabCorp seeks to serve all members of the public who wish for services, including individuals with disabilities, right?

A That is correct.

Q And that includes individuals who are blind or low vision, true?

A Correct.

Q And you would agree that LabCorp provides

Project Horizon; isn't that true?

A That is our kiosk project, sir.

Q And that project began in the 2016 time frame; is that correct?

A Yes, sir.

Q And the purpose of the project was to implement patient self-service at the LabCorp patient service centers, right?

MR. STEINER: Object to the form.

THE WITNESS: No. The purpose was to create a tablet self-check-in service as an option for patients in our PSCs.

BY MR. MILLER:

Q So, effectively, you were attempting to create a self-check-in service for patients at each one of your patient service centers; is that — am I correct?

A It's a self-check-in option for patients. They can either use the tablet or they can go to our window and be serviced for the check-in purposes.

Q But now patients can do other things at the self-service center other than just check-ins; isn't that true?

MR. STEINER: Object to the form.

THE WITNESS: They can make a payment on account or on an NOBD, which is notice of balance due. They can also do that at the front window.

BY MR. MILLER:

Q But as it relates specifically to the kiosks that have been placed in the patient service center, they can make a payment. That's another thing they can do other than to check in, right?

A Yes. There is a credit card machine on the side of it.

Q Can they change their appointments for the future?

A No, sir, they cannot.

Q Is that part of the functionality that's going to be rolled out eventually?

A It's in a backlog, but it has not been developed.

Q But does the company have plans to roll out the ability to schedule appointments through the kiosk check-in — or excuse me.

Does LabCorp have plans to allow patients to make appointments through the kiosk?

A It's an idea that's been discussed, but there is no definitive plan as to when that may come to fruition.

Q As part of the Project Horizon, there was

assuming the role. The project was complete by the time that I assumed my role as this position. So . . .

BY MR. MILLER:

Q We see here on the third risk scenario, “Patient arrives with seeing eye dog and is unable to check in with device.”

Has anyone ever told you that one of the risk scenarios at the kiosk at the patient service center is the patient arriving with a seeing eye dog and unable to check in with a device?

A It’s never been discussed as a risk assessment. We have a policy in place that has been communicated many times that we have employees in our PSCs that are there to help patients that either will not, cannot, or won’t use the tablet. We’ve never taken that position away, and we have no intentions of doing so.

Q Are any of those employees who are directed to assist phlebotomists?

A They are.

Q How many of them are phlebotomists as opposed to staff that just handle check-ins?

MR. STEINER: Object to the form.

THE WITNESS: We have very few PIRs — I don’t have the exact number in my head — which is a patient intake representative. The vast majority of the people working in our patient service centers doing patient care and intake are phlebotomists.

BY MR. MILLER:

Q Has there been any reduction in patient intake representatives following the implementation of Project Horizon?

A I don’t have direct knowledge if it was a PIR that was reduced or not. What we did, because of the efficiencies gained, was move some people to part-time

versus full-time. We have not eliminated any positions in general because of the tablet.

Q But there has been a reduction in hours as a result of the tablet; isn't that true?

A Yes, based on the efficiencies that we have gained in doing this process.

Q But you can't tell me how many hours has been reduced?

A No, sir, I cannot.

Q Or how many — or what positions they relate to?

A Not directly, no, sir.

Q Who would be the individual, to your knowledge, within LabCorp that would possess that

at the front desk to be able to tell — to tell that information?

A At our Walgreens locations, it's the Walgreens team members that would help that person check in, not us, because there's not a front desk at Walgreens. That's part of our agreement with Walgreens, that they're there to assist the patients if they need it.

Q Then why would you have the bell ring the phlebotomist in the back?

A So that we know somebody was — had checked in.

Q Well, if there was somebody at the front desk to service the individual, why would the phlebotomist need to know that?

A At the Walgreens we do not have a front desk. That's why we have an agreement with Walgreens to assist anybody that needs assistance.

Q Has the bell functionality been implemented only at the Walgreens?

A Yes.

Q Has it been implemented at any other patient service centers?

A Not to my knowledge.

Q Are there any patient service centers within the United States where the phlebotomists are the individuals responsible for handling the check-in, if people can't check in vis-à-vis the kiosk or on their smartphone?

A State that again.

Q Are there any patient service centers within the United States where the phlebotomists have the primary responsibility of checking in individuals who can't check in on the kiosk or their smartphone?

MR. STEINER: Object to the form.

THE WITNESS: All of our employees that work in patient service centers are there to assist patients if they need it.

BY MR. MILLER:

Q Including the phlebotomists?

A Yes.

Q Is it true that there are patient service centers that only employ one employee at their center?

A Yes.

Q And isn't it true that there — bear with me here.

Isn't it true there is over 440 locations throughout the United States where there is only one

And I'm not sure what you're referring to as far as scope changes.

Q All right. Project Horizon was rolled out by LabCorp to the patient service centers in 2018; is that accurate?

A Yes.

Q And do you know specifically when that project began being rolled out to the patient service centers in 2018?

A It would have been October of 2017 when it started.

Q And how do you have that information?

A There was a discussion with Mark Wright, Lori Crozier and Richard Porter.

Q Am I correct in understanding, though, that the bulk of the rollout to patient service centers occurred in 2018, after January of 2018?

MR. STEINER: Objection to the form.

THE WITNESS: That is my understanding, that Richard Porter was running that project.

BY MR. MILLER:

Q Does Mr. Porter have more knowledge — or strike that.

Would Mr. Porter have more knowledge than you as to the dates that various patient service

at the tablet?

A Well, our credit card capture program isn't paying for the service. It is authorizing us to have payment taken from their credit card after the insurance is adjudicated, based on what the insurance says. So they can authorize up to said amount that they choose. That's all done at the front desk.

The credit card machine on the tablet allows a patient to either pay on an open balance or pay on a past-due balance as they're registering.

Q Can the patient also pay for the service they're receiving on the date when they check in?

A Not at the tablet. That takes place at the front desk.

Q Does that take place upon check-in or check-out?

A Upon check-in.

Q So the process currently works with the LabCorp Express kiosk, a patient who wants to use the kiosk can come in and use the kiosk to check in; is that right?

A That is correct.

MR. STEINER: Objection to form.

////

sale patient when they come to LabCorp. Some have insurance that covers services, correct?

A That is correct.

Q So those individuals can check in vis-à-vis the kiosk and then just wait to be called for their appointment; is that right?

A Yes.

Q And so, just so I'm clear, is it your testimony that the kiosk can only be used to resolve past payments owed?

A A current bill, which is a bill that's been sent to them within dunning 1 and 2 or a past-due bill, which is dunning 3 and on.

Q But can a patient at the kiosk pay for the services that they're receiving on that given day?

A No, sir, they cannot.

Q Can they pay for the services that they receive upon their next visit —

MR. STEINER: Object to the form.

BY MR. MILLER:

Q — at the kiosk?

A State that question again. I'm sorry.

Q Sure.

So a patient — so, in the scenario I'm proposing, patient comes into a patient service

patient themselves, the check-in system that's been implemented through the Horizon project has to be used by one of those two sources. It's not optional?

MR. STEINER: Objection to form.

THE WITNESS: That is what we've asked people to do.

BY MR. MILLER:

Q Am I correct that the same software that is available at the kiosk for patients' self-check-in is the same software utilized at the window?

A Yeah. It's called Express Admin at the window, but yes, it's the same technology, just not using a tablet.

Q In other words, is the technology integrated between what's available at the self-check-in kiosk and what's available at the window?

A Yes.

Q And is the technology also integrated with the check-in process vis-à-vis LabCorp's website?

MR. STEINER: Object to the form.

THE WITNESS: Well, there's not a check-in process via the website. It's a check-in for an

clear. Once the patient makes an appointment through the website portal, can they also check in through their mobile app on the smartphone?

A No. It is only done through either the email or the text.

Q Not through the mobile app?

A That's correct.

Q To your knowledge, does LabCorp ever indicate to its employees that all patients must use the self-check-in kiosk and that it was not optional?

A Every patient must go through the check-in process that's part of either the tablet or behind the counter. That's our communication. I'm not aware of anything that says every patient has to use the tablet itself.

Q The express kiosk?

A Correct. We've always provided ourselves to be part of that process.

Q As the patient services director, have you been made aware from any source that any LabCorp employees have recommended hiring additional individuals to assist in the waiting room to help patients coming in following the implementation of Project Horizon?

memory at all as to whether LabCorp ever indicated to any of its employees that the Express check-in station was not optional?

A No. I don't recall that ever being communicated to us.

Q Have you ever investigated any type of similar statements?

A We've had a couple of complaints where a PST said "You need to use the tablet," even though our training and protocols say that we're there to service the patient. I have seen that, and we've addressed those in the divisions as they've come up.

Q So, just so I'm clear, there have been occasions where PSTs have directed patients that they have to use the Express check-in tablet?

A Yes. In violation of our policy, yes.

Q So that — you would agree that would be a violation of your LabCorp's internal policies if such a directive was made?

A Correct.

Q In the next paragraph — if you could go to the last paragraph of this page. It goes on to say, "I'm

certain there are a number of reasons why the staff are immediately redirecting the patients to the Express stations. Employees really like the

kiosk presently?

A Checking in for myself, my child, or somebody else.

Q Is there — you can see on the top of Exhibit 23 there's a "Hello, please check in here" sentence.

Is there any kind of similar verbiage in the current iteration of the LabCorp Express kiosks?

A I believe it's asking "Who are you checking in for?"

Q Okay.

A And then you —

Q And so you can then — I'm sorry. You can pick one of those three options?

A Correct.

Q So, as you review Exhibit 23, this was a prior iteration of what was displayed, to your knowledge, on the Express kiosks?

A According to the date, it was from 2016. I do not believe this is how it initially rolled out.

Q And so, once you make that election between one of the three options presently, if you choose yourself, what's the next screen that it takes you to?

A It takes you to scanning the driver's license.

Q And does it tell you where to scan the driver's license? Is there a direction of where to hold it?

A Yeah. It tells you to put it in the tray.

Q And then, once you scan the driver's license, what's the next screen that it takes you to?

A It depends on whether you're a known patient or not. If you're a known patient, it takes you to your demographics page for you to review it. And, if you're not a known patient, then you scan your insurance card.

Q And, when you say it takes you to a demographics page, what's generally depicted on the demographics page?

A Address, phone number, e-mail, texting capabilities, insurance, who is paying for the bill today.

Q And can a patient update any of their demographic information on that page if it's not correct?

A They can.

Q Through the Express center kiosk?

A Yes, sir.

Q And then once the — does the patient have to confirm that the demographic information is correct when it goes to that screen?

A They're asked — the question is, "Is everything correct, yes or no?" And, if it's "no," then you're able to edit it. If it's "yes," then you just move on to the next screen.

Q And, if you're an unknown patient, where does it take you to on the Express center kiosk instead of the demographic screen?

A To scan your insurance card.

Q And then, once you do that for — and, again, does it direct you where to scan the insurance card?

A It does.

Q And then, once you scan the insurance card, what screen does it take you to next for an unknown patient?

A To the demographics page.

Q And then, once at the demographics page, can you input your personal information at the Express center kiosk?

A You can correct anything if it needs to be.

Q Does LabCorp integrate with the insurance cards to get demographic information? Is that how it would then populate that field?

MR. STEINER: Object to the form.

BY MR. MILLER:

Q So, in other words — well, let me ask it this way. You're an unknown patient. You come to the Express center kiosk. You identify somebody who hasn't previously logged in or is unknown to the system. You've scanned your driver's license. You've now scanned your insurance card.

How does the demographic information get then inputted into the next screen?

A It comes from the two cards that we've scanned.

Q Okay. So it pulls from those sources?

A Correct.

Q And then, at that point, can the unknown patient start to input or make any corrections to the information, the demographic information?

A They can.

Q Okay. And then does it again ask the patient to confirm that the information is correct?

A You have an "OK" button at the top if everything is correct.

Q And once that "OK" button is hit, what happens next in the process?

A It takes you to a screen to ask you what service you're there for and gives you options on the screen.

Q And what kind of options does it generally provide?

A Lab work, drug screen, other, specimen dropoff.

Q And can the patient then select one of those options?

A They can.

Q And, once that option is selected, then what happens next?

A It asks them whether or not they're fasting.

Q And the patient can answer that through the kiosk?

A Yes. "Yes" or "no."

Q And then, once those options are selected, what's the next functionality in the kiosk?

A It tells them that they're checked in, to have a seat, and we'll be with them as soon as we can.

Q Okay. And that's for both known and

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS, JULIAN Case No.
VARGAS, AND 2 :20-CV-00893-FMO-
AMERICAN COUNCIL KS
OF THE BLIND,
INDIVIDUALLY AND
ON BEHALF OF ALL
OTHERS SIMILARLY
SITUATED,

Plaintiffs,

vs.

LABORATORY
CORPORATION OF
AMERICA HOLDINGS,

Defendant. /

Pursuant to Notice, the remote video deposition of
CLAIRE STANLEY was taken on Monday,
December 7, 2020, commencing at 10:00 a.m., before
David C. Corbin, a Registered Professional Reporter
and Notary Public.

REPORTED BY: David Corbin, RPR

A. No.

Q. Okay. I had sent your counsel a copy of the deposition notice in this case. Did you get an opportunity to review it before the deposition?

MR. HANDLEY: Rob — sorry. Rob, just so I can be clear. We cut and paste the topics into a word document for her so that it would be particularly accessible. So the notice itself she may not have seen but the topics she is designated for she has.

A. Thank you.

Q. That's fine. So — and that was the point I was getting to. I'm not trying to trick you, ma'am. You understand that you have been designated by counsel for the American Council of the Blind as a corporate representative to testify on its behalf in this matter; is that correct?

A. Yes.

Q. Okay. And I understand you haven't reviewed the notice in the form in which it was issued, but did you review the topics that were in that notice which numbered one through 19?

A. Yes.

Q. Okay. And when did you do that?

A. I'm pausing because I'm trying to think of

as being visually impaired?

A. No, we do not.

Q. So if someone wears glasses and their vision can be corrected to 20/20 or something close, would that person be defined as visually impaired?

A. Again, we don't get nit picky on where your visual acuity lies. It's a personal identification.

Q. Okay. So are there any specific requirements to join ACB as a member?

A. Nope. Even sighted people are allowed to join.

Q. So of the 20,000 members that you have, fair to say some are — some are totally blind, some are sighted, and then there are others that are somewhere in between?

A. Yes.

Q. And those somewhere in between would — some would lean more towards totally blind and some would lean more towards being able to see with corrective lenses, correct?

A. Yes. But I can't give you a percentage. I don't know that.

Q. Does ACB survey its members to determine where they fall in terms of the spectrum for visual acuity?

A. We are beginning, and I mean very early infancy stage, to collect that data. But at this time, no, we don't have that information.

Q. Okay. So you can't tell me if a majority of ACB members are totally blind or if a majority of them are visually impaired and to what level?

A. No, I can not.

Q. Has — you said ACB is beginning to — that process. What are they doing to begin that process?

A. Developing a survey.

Q. Has that survey been sent out?

A. No.

Q. And does the survey ask members to quantify in any way their level of visual impairment?

A. No.

Q. How does the survey propose to identify the level of visual impairment for its membership?

A. It asks basic questions based on a few very short identifications that again are based on people's identification. It's not a, you know, number system or anything like that.

Q. So it's descriptive. It's not like your 20/200 or something like that in terms of your level of vision?

A. Correct. Your acuity is not asked.

Q. So I take it on the survey there are a number of categories from blind to able to — to sighted; is that right?

A. Yes. Very, very basic. Very broad strokes identification.

Q. And how many categories are there?

A. I don't recall.

Q. Is it more or less than five?

A. Probably less. But I don't recall.

Q. And is it fair to say that based on the level of visual impairment individuals in ACB have that they might need different accommodations in order to participate in certain activities?

A. Yes.

Q. And so if one is totally blind, they might need accommodations that someone who is simply visually impaired may not need; is that correct?

A. That's correct. No two people with a visual impairment need the same accommodation.

Q. And are there some members of ACB who to your knowledge need no accommodation in order to participate in daily life activities?

administrative staff who is in charge of sending that out?

A. One person in particular does, but I'm not sure if she is the one who sent it out on this occasion.

Q. What's her name?

A. Kelly Gasque.

Q. Can you spell the last name?

A. G-A-S-Q-U-E.

Q. And to your knowledge did this go out in June of 2020?

A. Yes.

Q. Does ACB — you told me ACB does not have a method of identifying which of its members used or tried to use Lab Corp for its medical diagnostic testing services other than the survey results; is that right?

A. Correct.

Q. Does ACB have a method of identifying which of its members who used Lab Corp were able to receive Lab Corp's products and services?

A. The only way is through the response of the survey.

Q. So as far as ACB knows, only 12 of its members tried to or were able to use Lab Corp's products and services?

A. That's based on the response to the survey.

Q. And you can't identify any other members of ACB who have used or tried to use ACB — sorry, let me strike that. You can't identify any other members who have used or tried to use Lab Corp's services other than those 12 people?

A. Not at this time.

Q. Has ACB sent a follow-up request to its members to answer the survey questions?

A. No.

Q. Did you review the complaint in this matter?

A. I did, but it's been a while. But yes.

Q. When was the first time you reviewed it?

A. Oh, goodness, I can't give you a precise date.

Q. Was it several months ago?

A. Likely.

Q. Do you know if you reviewed it before it was filed?

A. I can't say with certainty.

Q. Okay. Did you provide any comments on the complaint to anyone?

Q. Can you spell the last name, please?

A. L-O-V-E-R-I-N-G.

Q. And what's Ms. Lovering's title?

A. Editor.

Q. When you — did you have a conversation with Mr. Harden after you received his survey responses?

A. Not that I can recollect.

Q. Did you have e-mail communications with him?

A. Not that I can recollect.

Q. Now, Mr. Harden in his survey response states that, he says “ADA states that a business needs to make reasonable accommodations for the disabled. They certainly do that.” Do you recall reading that?

A. Yes.

Q. Okay. And did you think it was — would have been a good idea to follow up with Mr. Harden to ask him to elaborate on that statement?

A. No, not that I can recollect.

Q. Mr. Harden was basically telling you that the allegation in the complaint that Lab Corp required all patients to use the kiosk to check in was not true, right?

A. Yes.

Q. And you — you discounted Mr. Harden’s statement concluding that it must have been an isolated incident, correct?

A. Yes.

Q. And your basis for discounting Mr. Harden’s statement that Lab Corp makes reasonable accommodation for people that are blind and visually impaired was what?

A. Can you rephrase your question?

Q. What was the basis for your discounting Mr. Harden’s statement?

A. There were greater — there was a greater number of persons who had problems than those who did not.

Q. Okay. And Mr. Harden volunteered that he's able to hand his I.D. card to the receptionist and private information is never spoken to anyone, correct?

A. That's what he said.

Q. Right. And you had never asked that question in your survey, right?

A. No.

Q. You had never asked whether patients are required to check in using the kiosk, right?

blind or visually impaired?

A. No.

Q. Did you do any investigation to determine whether or not the way Lab Corp used to check patients in was still available to those that simply preferred to not use the kiosks for whatever reason?

A. No.

Q. Do you know when Lab Corp introduced its kiosk check-in system?

A. No, I do not.

Q. Is it ACB's view that being able to check in with a receptionist it discriminates against those that are blind or visually impaired?

A. I'm sorry, can I —

MR. HANDLEY: I'm going to object as calling for a legal conclusion. You can answer, Claire.

A. Can you kind of restate what you mean.

Q. Sure. So my question is is ACB contending that if Lab Corp allows patients to check in with a patient service technician or a receptionist that that is discriminatory?

A. No.

Q. Have you reviewed in connection with your litigation, with this litigation, any of Lab Corp's

can't see the kiosk, that they have to check in through the kiosk?

A. No, I am not aware.

Q. Are you aware of anything that Lab Corp has done as it relates to people who are visually impaired to advise them that they have no other choice but to check in through the kiosks?

A. I'm not aware of anything Lab Corp has done, no.

Q. Are you aware of — so your contention is — ACB's contention in this litigation is that Lab Corp requires all patients to use the kiosks to announce their arrival, sign in and/or register for their appointments, correct?

A. Correct.

Q. Are you aware of anything that Lab Corp has done to communicate to its patients that alleged policy?

A. No.

Q. Do you know how many of ACB's members have experiences similar to Mr. Harden in as much as they have been able to check in with a receptionist?

A. I do not.

Q. Do you know of any Lab Corp facility where patients were informed that they had to check in

A. The list of suggestions is in the letter that we provided.

Q. The letter doesn't include a request that Lab Corp allow its employees to check patients in, correct?

A. Yes.

Q. Is there a reason why that's not a request made in the letter?

A. I'm not sure.

Q. Now, one of the requests that is made in the letter is providing speech output that provides information a blind user needs as the user navigates through the kiosk workflow, correct?

A. Correct.

Q. And are there certain people that notwithstanding such speech output, is it your belief they would still have difficulty navigating the kiosk?

A. Can you rephrase that.

Q. Sure. Is providing speech output, will that resolve the accessibility concerns of everyone that is blind or visually impaired?

A. No one accommodation is going to accommodate every person everywhere.

Q. Okay. Because everyone has different levels of impairment and different comfort levels with the technology that might be offered to accommodate their disability, correct?

A. Correct.

MR. HANDLEY: Can I stop one second. Does someone have an animal that they need tending to.

A. I was going to say that. My dog is — yeah, she is chomping at the bit. I should probably take her out.

MR. STEINER: I don't have very much more but why don't we do this. Why don't we go off the record for — tell me how long you need, I'm happy to take 15, 20 minutes.

A. I don't even need that. Probably just five, ten minutes. She is getting stir crazy.

MR. STEINER: Let's take ten minutes. And then I don't make any promises, but hopefully we can be done within the hour after that.

(Short break was taken.)

BY MR. STEINER:

Q. Ma'am, we're back on the record. Among the requests that ACB makes is for a tactile keypad for navigation of the check-in kiosks. Are you aware of that?

a legal conclusion. But go ahead and answer, Claire.

A. It would be preferable than having to rely on another human being that is not an employee of Lab Corp.

Q. So it is ACB's preference that a staff member be available to check in people that are blind or visually impaired, correct?

A. Correct.

Q. And is that more preferable to having a kiosk that provides speech output?

A. I would not — I wouldn't choose either or. I see them as options.

Q. Options for accommodations for people who are blind or visually impaired, correct?

A. Correct.

Q. Is there a specific remedy that you're looking for for people such as Mr. Harden who have been able to check in with a receptionist where private information is never spoken?

A. No.

Q. Is there any remedy that you're looking for in people of Mr. Harden's situation?

A. No.

Q. Other than the lawsuit against Quest, has

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LUKE DAVIS and JULIAN	)	Case No. 2 : 20-cv-
VARGAS, individually on	)	00893
behalf of themselves and all)	
others similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
LABORATORY)	
CORPORATION OF)	
AMERICA HOLDINGS;)	
and DOES 1-10, inclusive,)	
)	
Defendant.)	
)	

DEPOSITION OF MARK WRIGHT
TAKEN MARCH 4, 2021

REPORTED REMOTELY BY:
BEVERLY A. BENJAMIN, CSR No. 710
Notary Public

principals.

We also during discussions of physical and cyber security also consulted with our internal security team, but they weren't primary participants in the discussion about finalizing the physical design of the enclosure.

Q. So during any of those discussions among Aila and PointSource and your internal team, was there any discussion at all or any analysis performed as to the issue of whether the kiosks should be made accessible for blind people?

MR. STEINER: Object to the form.

THE WITNESS: I would put it a different way. One of our design targets was to make the device as accessible as physically possible within the design constraints that we had.

I'm going to answer your question this way: We found it not at all physically practical within our design constraints to service blind people, and we designed the solutions so that blind people could be serviced at the desk, because we also built the solution to operate behind the desk in the same efficient way that it operated on the tablet.

So we had to make design decisions to make it accessible to wheelchair-bound people and low vision people, but we explicitly recognized that the device could not service a blind person, and they would have to be serviced by the Express solution behind the desk.

Q. (BY MR. SWEET) So there were discussions around the issue of accessibility for blind people among this group?

A. Yes, but it was a short discussion.

Q. And who was involved in those discussions, sir?

A. The same integrated design team that I was leading at the time that involved Aila and PointSource and my internal team.

Q. And are there any memos or emails or other documentation of these discussions?

A. Not that I'm aware of. The documentation for how the design was implemented is certainly contained on our documentation platforms that we use to build software.

However, I think I'm answering your question fairly directly that we had design intent that anyone that was disabled and unable or preferred not to use the tablet could be serviced equally as well or better from the desk because of the technology solution we built as part of the Express solution to enable fast check-in at the desk.

Robert I. Steiner (admitted *pro hac vice*)
rsteiner@kelleydrye.com

KELLEY DRYE & WARREN LLP

3 World Trade Center
175 Greenwich Street
New York, NY 10007

Telephone: (212) 808-7800

Facsimile: (212) 808-7897

Becca Wahlquist (State Bar No.
215948)

bwahlquist@kelleydrye.com

KELLEY DRYE & WARREN LLP

1800 Century Park East, Suite 600
Los Angeles, CA 90067

Telephone: (310) 712-6100

Facsimile: (310) 712-6199

Attorneys for Defendant

Laboratory Corporation of America

Holdings

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

LUKE DAVIS, et al.
Plaintiffs,

v.

LABORATORY
CORPORATION OF
AMERICA
HOLDINGS, et al.

Defendant

s.

CASE NO. 2:20-CV-00893-
FMO-KS

**DEFENDANT
LABORATORY
CORPORATION OF
AMERICA HOLDINGS'S
NOTICE OF NEW
AUTHORITY IN
SUPPORT OF ITS
OPPOSITION TO**

**PLAINTIFFS' MOTION
FOR CLASS
CERTIFICATION**

Hon. Fernando Olguin

Defendant Laboratory Corporation of America Holdings provides herein notice to the Court of new authority, *TransUnion LLC v. Ramirez*, No. 20-297, 2021 WL 2599472 (U.S. June 25, 2021), which is relevant to its Opposition to Plaintiffs' Motion for Class Certification and is attached hereto as Exhibit A.

DATED: July 2,
2021

KELLEY DRYE & WARREN
LLP

By: /s/ Becca Wahlquist
Becca Wahlquist (State Bar
No. 215948)
Robert I. Steiner (admitted *pro
hac vice*)
*Attorneys for Defendant
Laboratory Corporation of
America Holdings*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LUKE DAVIS, JULIAN
VARGAS, *et al.*,

Plaintiffs,

v.

LABORATORY
CORPORATION OF
AMERICA HOLDINGS,

Defendant.

Case No. CV 20-0893
FMO (KSx)

**AMENDED ORDER
RE: MOTION FOR
CLASS
CERTIFICATION**

Having reviewed and considered all the briefing filed with respect to plaintiffs' Motion for Class Certification, (Dkt. 66, "Motion"), the court finds that oral argument is not necessary to resolve the Motion, *see* Fed. R. Civ. P. 78(b); Local Rule 7-15; *Willis v. Pac. Mar. Ass'n*, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

BACKGROUND¹

On January 28, 2020, Luke Davis ("Davis") and Julian Vargas ("Vargas" and together with Davis, "plaintiffs") filed this putative class action. (*See* Dkt. 1, Class Action Complaint). On September 3, 2020, plaintiffs and the American Council of the Blind ("ACB") filed the operative First Amended Class Action Complaint ("FAC"), (Dkt. 40), against Laboratory Corporation of America Holdings ("defendant" or "LabCorp"), asserting claims for

¹ Capitalization, quotation marks, punctuation, and emphasis in record citations may be altered without notation.

violations of: (1) the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, *et seq.*; (2) California’s Unruh Civil Rights Act (“Unruh Act”), Cal. Civ. Code §§ 51, *et seq.*; (3) California’s Disabled Persons Act (“CDPA”), Cal. Civ. Code §§ 54, *et seq.*,² (4) Section 504 of the Rehabilitation Act (“RA”), 29 U.S.C. § 794(a); and (5) Section 1557 of the Patient Protection and Affordable Care Act (“ACA”), 42 U.S.C. § 8116. (Dkt. 40, FAC at ¶¶ 41-95). The Unruh Act and CDPA claims are brought by Vargas on behalf of himself and a putative California class, (*see id.* at ¶¶ 60-73), while the remaining federal claims are brought by plaintiffs on behalf of the Nationwide Injunctive Class. (*See id.* at ¶¶ 41-59, 74-95). Plaintiffs seek declaratory and injunctive relief, statutory damages, and attorney’s fees. (*See id.* at Prayer for Relief). Plaintiffs do “not seek class recovery for actual damages, personal injuries or emotional distress that may have been caused by defendant’s conduct[.]” (*Id.* at ¶ 36).

Plaintiffs allege that LabCorp discriminates against them and other visually impaired individuals, “by refusing and failing to provide auxiliary aids and services to Plaintiffs, and by requiring [them] to rely upon other means of communication that are inadequate to provide equal opportunity to participate in and benefit from Defendant’s health care services

² Plaintiffs concede that their claim under the CDPA cannot be maintained, and request that the court dismiss it pursuant to Federal Rule of Civil Procedure 41(a)(2). (*See* Dkt. 84, Plaintiffs’ Supplemental Memorandum in Support of Plaintiffs’ Motion for Summary Judgment [] at 5 n. 2). Accordingly, the court will not address any arguments regarding the CDPA claim.

free from discrimination.” (Dkt. 40, FAC at ¶¶ 1-2). Plaintiffs allege that they visited LabCorp’s patient services centers (“PSCs”) “and were denied full and equal access as a result of defendant’s inaccessible touchscreen kiosks for self-service check-in.” (*See id.* at ¶¶ 4, 21-22). According to plaintiffs, the touchscreen kiosks “do not contain the necessary technology that would enable a person with a visual impairment to [a] enter any personal information necessary to process a transaction in a manner that ensures the same degree of personal privacy afforded to those without visual impairments; or [b] use the device independently and without the assistance of others in the same manner afforded to those without visual impairments.” (*Id.* at ¶ 5). Indeed, “Plaintiffs were informed by staff of defendant that the kiosks are not accessible to the blind.” (*Id.*). As a result, “plaintiffs, members of [] ACB, [a national membership organization of approximately 20,000 blind and visually impaired persons,] and all other visually impaired individuals are forced to seek the assistance of a sighted person, and thereafter divulge their personal medical information to that sighted person in a nonconfidential setting in order to register.” (*Id.* at ¶¶ 5, 16).

LabCorp has approximately 2,000 PSCs throughout the country, 299 of which are located in California. (Dkt. 82, Exh. 32 (Deposition of Joseph Sinning) (“Sinning Depo”) at JA1062). In October 2017, LabCorp launched “Project Horizon” to roll out check-in kiosks at its PSCs. (*Id.* at JA1071). In preparation for Project Horizon, LabCorp considered proposals from two companies for the kiosks. (Dkt. 80, Exh. 18 (Wright Depo) at JA477); (Dkt. 80, Exh. 26 at JA711-

714). Although one of the companies proposed to provide kiosks that were ADA compliant, LabCorp selected the company, Alia, that did not provide ADA compliant kiosks. (Dkt. 80, Exh. 18, Deposition of Mark Wright (“Wright Depo”) at JA464, JA477).

Approximately 1,853 PSCs nationwide have check-in kiosks, 280 of which are in California. (Dkt. 82, Exh. 32 (Sinning Depo) at JA1064). According to LabCorp, the “kiosks are only available for use during normal business hours, when there is also at least one employee present at each PSC who can operate front desk check ins as needed.” (*Id.* at JA1065-66).

With respect to the instant Motion, plaintiffs seek an order certifying the following class and subclass pursuant to Rules 23(b)(2) and (3) of the Federal Rules of Civil Procedure:³

All legally blind individuals in the United States who visited a LabCorp patient service center in the United States and were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp’s failure to make its e-check-in kiosks accessible to legally blind individuals. [“Nationwide Injunctive Class” or “Rule 23(b)(2) Class”]

All legally blind individuals in California who visited a LabCorp patient service center in California and were denied full and equal enjoyment of the goods, services, facilities,

³ All “Rule” references are to the Federal Rules of Civil Procedure unless otherwise indicated.

privileges, advantages, or accommodations due to LabCorp's failure to make its e-check-in kiosks accessible to legally blind individuals. ["California Class" or "Rule 23(b)(3) Class"].

(Dkt. 66, Motion at 2); (Dkt. 66-1, Joint Brief Concerning Plaintiff's Motion for Class Certification ("Joint Br.") at 30).

LEGAL STANDARD

Rule 23 permits a plaintiff to sue as a representative of a class if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Courts refer to these requirements by the following shorthand: "numerosity, commonality, typicality and adequacy of representation[.]" *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012). In addition to fulfilling the four prongs of Rule 23(a), the proposed class must meet at least one of the three requirements listed in Rule 23(b). *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345, 131 S.Ct. 2541, 2548 (2011).

"Before it can certify a class, a district court must be satisfied, after a rigorous analysis, that the prerequisites of both Rule 23(a) and" the applicable Rule 23(b) provision have been satisfied. *Olean*

Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods L.L.C., 31 F.4th 651, 664 (9th Cir. 2022) (*en banc*) (internal quotation marks omitted). A plaintiff “must prove the facts necessary to carry the burden of establishing that the prerequisites of Rule 23 are satisfied by a preponderance of the evidence.” *Id.* at 665.

On occasion, the Rule 23 analysis “will entail some overlap with the merits of the plaintiff’s underlying claim[,]” and “sometimes it may be necessary for the court to probe behind the pleadings[.]” *Dukes*, 564 U.S. at 350-51, 131 S.Ct. at 2551 (internal quotation marks omitted). However, courts must remember that “Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466, 133 S.Ct. 1184, 1194-95 (2013); *see id.*, 133 S.Ct. at 1195 (“Merits questions may be considered to the extent – but only to the extent – that they are relevant to determining whether the Rule 23 prerequisites . . . are satisfied.”); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n. 8 (9th Cir. 2011) (The court examines the merits of the underlying claim “only inasmuch as it must determine whether common questions exist; not to determine whether class members could actually prevail on the merits of their claims . . . To hold otherwise would turn class certification into a mini-trial.”) (citations omitted). Finally, a court has “broad discretion to determine whether a class should be certified, and to revisit that certification throughout the legal proceedings before the court.” *United Steel, Paper & Forestry, Rubber Mfg. Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. ConocoPhillips Co.*, 593 F.3d 802, 810 (9th Cir.

2010) (internal quotation marks omitted); *see also Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1092 (9th Cir. 2010) (The decision to certify a class and “any particular underlying Rule 23 determination involving a discretionary determination” is reviewed for abuse of discretion.).

DISCUSSION

1. RULE 23(a) REQUIREMENTS.⁴

A. *Numerosity.*

A putative class may be certified only if it “is so numerous that joinder of all members is impracticable[.]” Fed. R. Civ. P. 23(a)(1). “Although the size of the class is not the sole determining factor, . . . where a class is large in numbers, joinder will usually be impracticable.” *A.B. v. Hawaii State Department of Education*, 30 F.4th 828, 835 (9th Cir. 2022) (internal quotation marks omitted); *see Jordan v. Cty. of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir.), *vacated on other grounds by Cty. of Los Angeles v. Jordan*, 459 U.S. 810, 103 S.Ct. 35 (1982) (class sizes of 39, 64, and 71 are sufficient to satisfy the

⁴ To the extent LabCorp may be challenging the nationwide class on the ground that it is a fail-safe class, the court rejects the challenge, as defendant merely referenced a “fail-safe class” in its “Introductory Statement,” (*see* Dkt. 66-1, Joint Br. at 6); it provided no argument or authority to support its challenge. (*See, generally, id.* at 30-32, 34-45, 47-53); (Dkt. 86, Supplemental Memorandum in Support of LabCorp’s Opposition to Motion to Certify Class); *see Beasley v. Astrue*, 2011 WL 1327130, *2 (W.D. Wash. 2011) (“It is not enough merely to present an argument in the skimpiest way, and leave the Court to do counsel’s work – framing the argument, and putting flesh on its bones through a discussion of the applicable law and facts.”).

numerosity requirement). “As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members[.]” *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000); *see Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 473-74 (C.D. Cal. 2012) (same).

Based on plaintiffs’ expert’s analysis, plaintiffs contend that “there are at least 87,500 legally blind class members nationwide” and “at least 8,861 legally blind class members in California.” (Dkt. 66-1, Joint Br. at 33); (Dkt. 81, Exh. 27 (Sean Chasworth Report) at JA722). In addition, plaintiffs rely on LabCorp’s survey responses, which indicate that LabCorp received over 60 complaints from persons with low or no vision having difficulty using the kiosks. (*See* Dkt. 66-1, Joint Br. at 33). Additionally, according to plaintiffs, LabCorp has records showing that there were more than 130 complaints nationwide from individuals with low or no vision who claimed they could not use the kiosks. (*See id.* at 33-34).

With respect to the California Class, LabCorp contends that the “survey responses . . . cannot satisfy the numerosity requirement” because of the 23 responses, four praised the kiosks, “leav[ing] only 19 potential California class members identified in those responses, not all of which may be legally blind[.]”⁵

⁵ LabCorp also claims, without any supporting argument, that the responses to its own survey are “inadmissible and unsworn[.]” (Dkt. 66-1, Joint Br. at 35). As an initial matter, defendant’s reference to “inadmissible and unsworn” survey responses “is too cursory and undeveloped for the Court to fully understand and consider[.]” *See Wyles v. Sussman*, 2019 WL 3249590, *3 (C.D. Cal. 2019); *see also Beasley*, 2011 WL 1327130, at *2 (“It is not

(Dkt. 66-1, Joint Br. at 35). However, given the number of complaints, and “[b]ecause not every patient will lodge a complaint[,] . . . it is highly unlikely that the[] complaints [and survey responses] reflect every individual who encountered” accessibility issues with the kiosks. *See Vargas v. Quest Diagnostic Clinical Labs.*, 2021 WL 5989958, *5 (C.D. Cal. 2021) (“*Quest*”). Thus, the court finds that plaintiffs have met the numerosity requirement as to the California Class.

With respect to the Nationwide Injunctive Class, LabCorp does “not dispute that there is a likelihood of at least 40 instances nationwide of some legally blind individuals who might claim that they have had difficulty using a kiosk for check-in[.]” (Dkt. 66-1, Joint Br. at 34). Instead, it takes issue with whether the individuals actually fall within the class definition since they were “not denied service – the medical testing services PSCs provide[.]” (*Id.*). However, this is a merits question which the court declines to

enough merely to present an argument in the skimpiest way, and leave the Court to do counsel’s work – framing the argument, and putting flesh on its bones through a discussion of the applicable law and facts.”). Further, putting aside the fact that LabCorp itself relies on its own survey responses in support of its own argument, (*see* Dkt. 66-1, Joint Br. at 35), LabCorp’s argument is unpersuasive because “[i]nadmissibility alone is not a proper basis to reject evidence submitted in support of class certification.” *Sali v. Corona Regional Medical Center*, 909 F.3d 996, 1004 (9th Cir. 2018); *see Vargas v. Quest Diagnostic Clinical Labs.*, 2021 WL 5989958, *4 n. 3 (C.D. Cal. 2021) (The “Ninth Circuit does not require that evidence submitted in connection with a class certification motion be admissible.”).

address here. As such, the court finds that plaintiffs have met the numerosity requirement as to the Nationwide Injunctive Class.

B. *Commonality*.

Commonality is satisfied if “there are common questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). It requires plaintiffs to demonstrate that their claims “depend upon a common contention . . . [whose] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Dukes*, 564 U.S. at 350, 131 S.Ct. at 2551; *see also Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (explaining that the commonality requirement demands that “class members’ situations share a common issue of law or fact, and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief”) (internal quotation marks omitted). “The plaintiff must demonstrate the capacity of classwide proceedings to generate common answers to common questions of law or fact that are apt to drive the resolution of the litigation.” *Mazza*, 666 F.3d at 588 (internal quotation marks omitted). “This does not, however, mean that every question of law or fact must be common to the class; all that Rule 23(a)(2) requires is a single significant question of law or fact.” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (emphasis and internal quotation marks omitted); *see Mazza*, 666 F.3d at 589. Proof of commonality under Rule 23(a) is “less rigorous” than the related preponderance standard under Rule 23(b)(3). *See Mazza*, 666 F.3d at 589 (characterizing commonality as a “limited burden[.]” stating that it “only requires a single significant

question of law or fact[.]” and concluding that it remains a distinct inquiry from the predominance issues raised under Rule 23(b)(3). “The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

Here, plaintiffs contend there are several common questions, including whether: (1) “LabCorp’s kiosks are independently accessible to legally blind individuals”; (2) “LabCorp has implemented the inaccessible check-in kiosks system across its national network of more than 1,800 PSCs”; (3) “LabCorp trained its employees that use of the kiosks to check-in was mandatory”; (4) “use of the kiosk is a good or service LabCorp offers its customers”; (5) “LabCorp offers a qualified aid or auxiliary service to allow legally blind individuals to access the check-in kiosk service”; and (6) “LabCorp has remedied the inaccessible check-in kiosk across its system.” (Dkt. 66-1, Joint Br. at 37). LabCorp “does not dispute that there is at least one common question of law at issue here.”⁶ (*Id.*). The court agrees. *See, e.g., Quest*, 2021

⁶ LabCorp contends that as to the Nationwide Injunctive Class, there is no single injunction or declaration that will provide relief to the class as a whole. (*See* Dkt. 66-1, Joint Br. at 37-38). However, as LabCorp appears to recognize, that issue should be addressed as part of assessing the Rule 23(b)(2) factors. (*See id.* at 38). Similarly, with respect to the California Class, LabCorp contends only that common issues do not predominate. (*Id.*).

WL 5989958, at *5 (finding plaintiff satisfied commonality based on similar questions).

*C. Typicality.*⁷

Typicality requires a showing that “the claims or defenses of the representative parties are typical of the claims or defenses of the class[.]” Fed. R. Civ. P. 23(a)(3). The purpose of this requirement “is to assure that the interest of the named representative aligns with the interests of the class.” *Wolin*, 617 F.3d at 1175 (internal quotation marks omitted). “The requirement is permissive, such that representative claims are typical if they are reasonably coextensive with those of absent class members; they need not be substantially identical.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017) (internal quotation marks omitted). “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Wolin*, 617 F.3d at 1175 (internal quotation marks omitted). The typicality requirement is “satisfied when each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.” *Stearns v. Ticketmaster Corp.*,

⁷ Because the Supreme Court has noted that “[t]he commonality and typicality requirements of Rule 23(a) tend to merge[.]” *General Tel. Co. of the SW v. Falcon*, 457 U.S. 147, 157 n. 13, 102 S.Ct. 2364, 2371 n. 13 (1982), the court hereby incorporates the Rule 23(a) commonality discussion set forth above. *See supra* at § I.B.

655 F.3d 1013, 1019 (9th Cir. 2011), *abrogated on other grounds in Comcast Corp. v. Behrend*, 569 U.S. 27, 133 S.Ct. 1426 (2013) (internal quotation marks omitted).

Here, Davis and Vargas have the same claims as the absent class members. (See Dkt. 40, FAC at ¶¶ 41-95). Both are legally blind and seek to represent classes of other legally blind individuals who, like them, encountered allegedly inaccessible kiosks at LabCorp's PSCs. (See Dkt. 79, Exh. 13 (Deposition of Vargas) ("Vargas Depo") at JA150); (Dkt. 79, Exh. 14 (Deposition of Luke Davis ("Davis Depo") at JA228); (Dkt.66-1, Joint Br. at 30) (class definitions). As such, their claims are typical of the claims of the class. See Fed. R. Civ. P. 23(a)(3); *Stearns*, 655 F.3d at 1019 ("[E]ach class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability.").

Nonetheless, LabCorp contends that plaintiffs "failed to provide sufficient evidence that their own preference is typical for all the legally blind individuals they seek to represent, or that proposed class members suffered any injury related to inability to check-in on the kiosk." (Dkt. 66-1, Joint Br. at 39). However, LabCorp ignores typicality's permissive standard, see *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) ("Under the rule's permissive standards, representative claims are typical if they are reasonably coextensive with those of absent class members; they need not be substantially identical.") (internal quotation marks omitted), and the Ninth Circuit's admonition that courts may "not insist that the named plaintiffs' injuries be identical with those of the other class members, only that the unnamed class

members have injuries similar to those of the named plaintiffs and that the injuries result from the same, injurious course of conduct.” *Id.* (citation and internal quotation marks omitted); *see, e.g., id.* at 686 (“It does not matter that the named plaintiffs may have in the past suffered varying injuries or that they may currently have different health care needs; Rule 23(a)(3) requires only that their claims be ‘typical’ of the class, not that they be identically positioned to each [o]ther or to every class member.”).

Moreover, the scope and extent of any proposed injunction has yet to be litigated, and thus, there is no basis to conclude that plaintiffs will seek an injunction covering only their “own preference[s].” In any event, the court is confident that, assuming liability is established, it can, after obtaining the parties’ input, fashion an appropriate injunction.

D. Adequacy.

Rule 23(a)(4) permits certification of a class action if “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). A two-prong test is used to determine adequacy of representation: “(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Ellis*, 657 F.3d at 985 (internal quotation marks omitted). “Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees.” *Id.*

The adequacy of counsel is also considered under Rule 23(g).

Here, LabCorp challenges only the adequacy of plaintiffs, as it relates to the Rule 23(b)(2) class. (*See* Dkt. 66-1, Joint Br. at 42-43) (contending plaintiffs are inadequate “where a single injunction could not resolve all issues”). Because LabCorp “incorporates its challenges to Plaintiffs’ typicality[,]” (*id.* at 42), the court rejects it for the reasons set forth above. *See supra* at § I.C.

In any event, the court finds this factor is satisfied. There are no known conflicts between the absent class members and plaintiffs and their counsel. (*See* Dkt. 66-1, Joint Br. at 42). Plaintiffs have vigorously pursued this action on behalf of the two classes, participated in discovery, including by each submitting to deposition, and will appear and testify at trial if necessary. (Dkt. 79, Exh. 13 (Vargas Depo) at JA203-206) (testifying regarding his role in this litigation and the reasons for pursuing the claims asserted); (Dkt. 79, Exh. 14 (Davis Depo) at JA336-40) (same as to the Nationwide Injunctive Class). Further, plaintiffs’ counsel are experienced, (Dkt. 79, Exh. 2 (Declaration of Jonathan D. Miller) (“Miller Decl.”) at ¶¶ 15-19) (outlining counsel’s experience); (Dkt. 17, Exh. 3 (Declaration of Matthew K. Handley) (“Handley Decl.”) at ¶¶ 10-13) (outlining counsel’s experience), and have prosecuted this action vigorously.

II. RULE 23(b) REQUIREMENTS.

A “proposed class or subclass must also satisfy the requirements of one of the sub-sections of Rule 23(b), which defines three different types of classes.”

Parsons, 754 F.3d at 674 (9th Cir. 2014) (internal quotation marks omitted). Here, plaintiffs seek certification under Rule 23(b)(2) and (b)(3). (Dkt. 66-1, Joint Br. at 30) (class definitions)

A. *Rule 23(b)(2) Requirements – Nationwide Injunctive Class.*

A class may be maintained under Rule 23(b)(2) if “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]” *Dukes*, 564 U.S. at 360, 131 S.Ct. at 2557. This provision applies “only when a single injunction or declaratory judgment would provide relief to each member of the class.” *Id.* “It does not authorize class certification when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant.” *Id.* “Similarly, it does not authorize class certification when each class member would be entitled to an individualized award of monetary damages.” *Id.* at 360-61, 131 S.Ct. at 2557. “Thus, 23(b)(2) sets forth two basic requirements. First, the party opposing the class must have acted, refused to act, or failed to perform a legal duty on grounds generally applicable to all class members. Second, final relief of an injunctive nature or a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, [must be] appropriate.” 2 *Newberg on Class Actions* § 4:26 (5th ed. 2014) (internal quotation marks omitted).

Plaintiffs seek to certify a Rule 23(b)(2) class with respect to their federal claims, particularly the ADA

claim. (See Dkt. 66, Motion at 2). LabCorp does not dispute that it “has acted or refused to act on grounds that apply generally to the class[.]” Fed. R. Civ. P. 23(b)(2); (see, generally, Dkt. 66-1, Joint Br. at 43-45). Instead, it challenges only the second Rule 23(b)(2) requirement, arguing that a single injunction will not provide relief to each member of the class. (See Dkt. 66-1, Joint Br. at 43-45). LabCorp claims that ACB’s Rule 30(b)(6) witness, Claire Stanely, “acknowledge[d] that the injunction Plaintiffs seek would not provide relief to each member of the class.”⁸ (*Id.* at 44). Stanley, however, did not testify that a single injunction or remedy would not render the kiosks accessible. (See, generally, Dkt. 82, Exh. 35 (Stanley Depo) at JA1099-1100). Rather, when asked whether providing “speech output” would “resolve the accessibility concerns of everyone that is blind or visually impaired[.]” Stanley testified that “[n]o one accommodation is going to accommodate every person everywhere.” (*Id.* at JA1099). In other words, Stanley’s testimony does not mean that an injunction cannot be crafted that will be generally applicable to the class as a whole. See *Parsons*, 754 F.3d at 688 (The Rule 23(b)(2) indivisibility requirement is “unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole.”)

⁸ LabCorp makes a similar argument regarding plaintiffs’ accessibility expert, Rachael Bradley Montgomery. (See Dkt. 66-1, Joint Br. at 44).

LabCorp appears to be “exaggerate[ing] what is required under Rule 23(b)(2)[,]” *Nightingale v. U.S. Citizenship and Immigration Services*, 333 F.R.D. 449, 463 (N.D. Cal. 2019), because LabCorp’s conduct need not have injured all class members in exactly the same way. In other words, “[t]he fact that some class members may have suffered no injury or different injuries from the challenged practice does not prevent the class from meeting the requirements of Rule 23(b)(2).” *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010); see *Parsons*, 754 F.3d at 688 (The Rule 23(b)(2) “inquiry does not require an examination of the viability or bases of the class members’ claims for relief, . . . and does not require a finding that all members of the class have suffered identical injuries.”). “[I]t is sufficient to meet the requirements of Rule 23(b)(2) that class members complain of a pattern or practice that is generally applicable to the class as a whole.” *Rodriguez*, 591 F.3d at 1125 (internal quotation marks omitted).

Moreover, as the Ninth Circuit has made clear, “the primary role of [Rule 23(b)(2)] has always been the certification of civil rights class actions.” *Parsons*, 754 F.3d at 686. In a civil rights action, the fact that the discriminatory conduct may have affected different members of the class in different ways does not prevent certification under Rule 23(b)(2). See, e.g., *Gibson v. Local 40, Supercargoes and Checkers*, 543 F.2d 1259, 1264 (9th Cir. 1976) (“A class action may be maintained under [Rule] 23(b)(2) alleging a general course of racial discrimination by an employer or union, though the discrimination may have . . . affect[ed] different members of the class in different ways.”). Here, there is no dispute that this case

constitutes a typical civil rights class action. As one court in this District stated, in addressing nearly identical class claims against another company that provides diagnostic testing services, this case is “a civil rights action against a party charged with unlawful, class-based discrimination based on the use of a specific auxiliary aid or service, and is a prime candidate for 23(b)(2) certification.” *Quest*, 2021 WL 5989958, at *7. In short, the court finds that certification of the Nationwide Injunctive Class is appropriate under Rule 23(b)(2). *See id.*

B. Rule 23(b)(3) Requirements – California Class.

Certification under Rule 23(b)(3) is proper “whenever the actual interests of the parties can be served best by settling their differences in a single action.” *Hanlon*, 150 F.3d at 1022 (internal quotation marks omitted). Fed. R. Civ. P. 23(b)(3) requires two different inquiries, specifically a determination as to whether: (1) “questions of law or fact common to class members predominate over any questions affecting only individual members[.]” and (2) “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

1. Predominance.

“Though there is substantial overlap between [the Rule 23(a)(2) commonality test and the Rule 23(b)(3) predominance test], the 23(b)(3) test is far more demanding[.]”⁹ *Wolin*, 617 F.3d at 1172 (internal

⁹ Given the substantial overlap between Rule 23(a) and Rule 23(b)(3), and to minimize repetitiveness, the court hereby

quotation marks omitted). “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623, 117 S.Ct. 2231, 2249 (1997). “This calls upon courts to give careful scrutiny to the relations between common and individual questions in a case.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453, 136 S.Ct. 1036, 1045 (2016). “The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues. When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.” *Id.* (citations and internal quotation marks omitted); see *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 545 (9th Cir. 2013) (“The predominance analysis under Rule 23(b)(3) focuses on the relationship between the common and individual issues in the case and tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation.”) (internal quotation marks omitted). The class members’ claims do not need to be identical. See *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir.

incorporates the Rule 23(a) discussion set forth above. See *supra* at § I.B.

2001) (allowing “some variation” between class members); *Abdullah*, 731 F.3d at 963 (explaining that “there may be *some* variation among individual plaintiffs’ claims”) (internal quotation marks omitted). The focus is on whether the “variation [in the class member’s claims] is enough to defeat predominance under Rule 23(b)(3).” *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund*, 244 F.3d at 1163; see *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975) (“[C]ourts have taken the common sense approach that the class is united by a common interest in determining whether defendant’s course of conduct is in its broad outlines actionable, which is not defeated by slight differences in class members’ positions[.]”).

Where, as here, a plaintiff’s claims arise under state law, the court “looks to state law to determine whether the plaintiffs’ claims – and [defendant’s] affirmative defenses – can yield a common answer that is ‘apt to drive the resolution of the litigation.’” *Abdullah*, 731 F.3d at 957 (quoting *Dukes*, 564 U.S. at 350, 131 S.Ct. at 2551); *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809, 131 S.Ct. 2179, 2184 (2011) (“Considering whether questions of law or fact common to class members predominate begins . . . with the elements of the underlying cause of action.”) (internal quotation marks omitted).

The Unruh Act provides that “[a]ll persons within the jurisdiction of [California] are free and equal, and 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(b). The California Supreme Court has stated that the purpose of the Unruh “Act is to create

and preserve a nondiscriminatory environment in California business establishments by banishing or eradicating arbitrary, invidious discrimination by such establishments.” *White v. Square, Inc.*, 7 Cal.5th 1019, 1025 (2019) (internal quotation marks omitted). “In enforcing the [Unruh] Act, courts must consider its broad remedial purpose and overarching goal of deterring discriminatory practices by businesses” and construe it “liberally in order to carry out its purpose.” *Id.* (citations and internal quotation marks omitted).

“In general, a person suffers discrimination under the [Unruh] Act when the person presents himself or herself to a business with an intent to use its services but encounters an exclusionary policy or practice that prevents him or her from using those services.” *White*, 7 Cal.5th at 1023; *Thurston v. Omni Hotels Mgmt. Corp.*, 69 Cal.App.5th 299, 307-08 (2021) (holding that plaintiff, who was blind, “had to show a ‘bona fide intent’” to use defendant’s services) (quoting *White*, 7 Cal.5th at 1032). “While . . . an Unruh Act claimant need not be a client or customer of the covered public accommodation, and . . . he or she need not prove intentional discrimination upon establishing an ADA violation,” a “claimant’s intent or motivation for visiting the covered public accommodation is []relevant to a determination of the merits of his or her claim.” *Thurston*, 69 Cal.App.5th at 309.

“As part of the 1992 reformation of state disability law, the [California] Legislature amended the Unruh [] Act to incorporate by reference the ADA, making violations of the ADA per se violations of the Unruh [] Act.” *Jankey v. Lee*, 55 Cal.4th 1038, 1044 (2012). “To prevail on a discrimination claim under Title III [of the ADA], a plaintiff must show that: (1) he is disabled

within the meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied public accommodations by the defendant because of his disability.” *Arizona ex rel. Goddard v. Harkins Amusement Enterprises, Inc.*, 603 F.3d 666, 670 (9th Cir. 2010).

Under the Unruh Act, “[w]hoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 . . . is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000)[.]” “The litigant need not prove she suffered actual damages to recover the [Unruh Act’s] independent statutory damages of \$4,000.” *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 731 (9th Cir. 2007). Plaintiffs contend that common questions predominate because they seek only statutory damages under the Unruh Act which are directly attributable to their theory of harm and can be determined without complicated calculations.¹⁰ (Dkt. 66-1, Joint Br. at 46). They add that “should the need arise for class members to confirm eligibility to recover statutory damages under the Unruh Act, it is well-settled that this issue may properly be addressed

¹⁰ LabCorp does not challenge predominance under *Comcast*, 569 U.S. 27, 133 S.Ct. 1426. (See, generally, Dkt. 66-1, Joint Br. at 47-50). Nor could it since plaintiffs are merely seeking statutory damages under the Unruh Act.

by way of a claim form after class wide liability has been determined.” (*Id.* at 46-47).

LabCorp contends that individualized issues abound, (Dkt. 66-1, Joint Br. at 48), because “[t]o recover statutory damages under the Unruh Act, a class member must show they ‘personally encountered’ an Unruh Act violation that caused them difficulty, discomfort, or embarrassment.” (*Id.* at 47). According to LabCorp, “even if Vargas argued that checking in at the front desk caused him difficulty, discomfort, or embarrassment, his own experience cannot be imputed to other California residents who are legally blind[,]” (*id.* at 47-48), because “not all California PSC’s [] have kiosks and for those that do, staffing varies widely[.]” (*Id.*). LabCorp’s contentions are unpersuasive.

LabCorp’s argument boils down to determining whether each class member used or was exposed to a kiosk at one of LabCorp’s PSCs. But predominance is not concerned with determining who may be entitled to class membership, *i.e.*, identifying legally blind class members who attempted to or were discouraged from using LabCorp’s kiosks. Rather, the superiority prong is where that issue is considered. *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1126 (9th Cir. 2017) (declining to impose a separate administrability requirement to assess the difficulty of identifying class members, in part, because the superiority criterion already mandates considering “the likely difficulties in managing a class action”) (internal quotation marks

omitted).¹¹ Here, defendant’s concern as to whether a particular class member “personally encountered” a check-in kiosk – *i.e.*, identifying those who are entitled to class membership – will not predominate over the more important common questions of fact and law such as whether: (1) “LabCorp’s kiosks are independently accessible to legally blind individuals”; (2) “LabCorp has implemented the inaccessible check-in kiosks system across its national network of more than 1,800 PSCs”; (3) “LabCorp trained its employees that use of the kiosks to check-in was mandatory”; (4) “use of the kiosk is a good or service LabCorp offers its customers”; (5) “LabCorp offers a qualified aid or auxiliary service to allow legally blind individuals to access the check-in kiosk service”; and (6) “LabCorp has remedied the inaccessible check-in kiosk across its system.” *See supra* at § I.B.

In addition, although Vargas “need not prove [that] [h]e suffered actual damages,” *Molski*, 481 F.3d at 731, to prevail on his Unruh disability discrimination claim, LabCorp argues that predominance cannot be established because eligibility for statutory damages cannot “be addressed by way of a claim form after class wide liability has been determined[.]” (*See* Dkt. 66-1, Joint Br. at 49) (internal quotation marks omitted). In effect, LabCorp argues that predominance cannot be

¹¹ To the extent that LabCorp may be arguing that predominance is lacking due to a lack of ascertainability, (*see* Dkt. 66-1, Joint Br. at 47-50), it is without merit. *See Briseno*, 844 F.3d at 1133 (“[T]he language of Rule 23 neither provides nor implies that demonstrating an administratively feasible way to identify class members is a prerequisite to class certification[.]”).

established because the entitlement to statutory damages will have to be done on an individual basis after liability is established. (*See id.*). However, it is well-settled that “the presence of individualized damages cannot, by itself, defeat class certification under Rule 23(b)(3).” *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013). In other words, “the fact that the amount of damage may not be susceptible of exact proof or may be uncertain, contingent or difficult of ascertainment does not bar recovery.” *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th Cir. 2015) (internal quotation marks omitted); *see also Comcast*, 569 U.S. at 35, 133 S.Ct. at 1433 (noting that damages “[c]alculations need not be exact” at the class-certification stage). As the Ninth Circuit recently reiterated, “a district court is not precluded from certifying a class even if plaintiffs may have to prove individualized damages at trial, a conclusion implicitly based on the determination that such individualized issues do not predominate over common ones.” *Olean Wholesale Grocery Cooperative, Inc.*, 31 F.4th at 669. Here, the court can bifurcate the case into a liability and damages phase and, assuming there is a liability determination, create a claims process by which to validate individualized claim determinations. *See, e.g., Briseno*, 844 F.3d at 1131 (“Defendant[] will have . . . opportunities to individually challenge the claims of absent class members if and when they file claims for damages. At the claims administration stage, parties have long relied on claim administrators, various auditing processes, sampling for fraud detection, follow-up notices to explain the claims process, and other techniques tailored by the parties and the court to

validate claims. Rule 23 specifically contemplates the need for such individualized claim determinations after a finding of liability.”) (citation and internal quotation marks omitted); *Mullins v. Direct Digital LLC*, 795 F.3d 654, 667 (7th Cir. 2015) (parties regularly rely on “claims administrators, various auditing processes, sampling for fraud detection, follow-up notices to explain the claims process, and other techniques tailored by the parties and the court” to validate claims); *Nevarez v. Forty Niners Football Co., LLC*, 326 F.R.D. 562, 577 (N.D. Cal. 2018) (“Class members can certify whether they were present at the Stadium and whether they encountered an actionable Unruh Act violation.”) (citing Cal. Civ. Code § 55.56); *see also Tyson Foods*, 577 U.S. at 461, 136 S.Ct. at 1050 (recognizing that bifurcation could resolve problems regarding uninjured class members); 4 *Newberg on Class Actions*, § 11:6, at 21 (5th ed. 2014) (“Courts have employed either issue certification (certifying only the question of liability for class treatment) or bifurcation (separating liability from damages and trying liability first, then damages) as the means to effectuate the goal of aggregated treatment.”) (footnote omitted).

Further, even assuming it was proper to consider, under the predominance prong, the issue of identifying class members, the court is not persuaded that the “personally encountered” and “difficulty, discomfort, or embarrassment” standard upon which LabCorp relies, (*see* Dkt. 66-1, Joint Br. at 47), has application to the specific Unruh Act disability discrimination

claim in this action.¹² That standard, which is set forth in California Civil Code § 55.56¹³ of the Construction Related Accessibility Standards Compliance Act (“CRAS”), *see* Cal. Civ. Code §§ 55.51–55.57, provides in relevant part that statutory damages under § 52(a) may “be recovered in a *construction-related* accessibility claim against a place of public accommodation only if a violation or violations of one or more *construction-related* accessibility standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion. A violation personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation.” Cal. Civ. Code § 55.56(a)-(c) (emphasis added); *see Mundy v. Pro-Thro Enterprises*, 192 Cal.App.4th Supp. 1, 5 (2011) (“Section 55.56 is part of a comprehensive statutory scheme that was enacted in 2008 with the intent of increasing voluntary compliance with equal access standards while protecting businesses from abusive access litigation. The provisions in [§§] 55.51 through 55.57

¹² With respect to the intent to use LabCorp’s services, *see White*, 7 Cal.5th at 1023, LabCorp does not challenge that requirement. (*See, generally*, Dkt 66-1, Joint Br. at 47-50). In any event, that requirement would not defeat a finding of predominance. *See Quest*, 2021 WL 5989958 at *8 (noting that “there is no real question that the putative class members had a bona fide intent to use [defendant’s] services” because plaintiff proposed to use defendant’s records to identify class members).

¹³ Unless otherwise indicated, all section references are to the California Civil Code.

apply only to a construction-related accessibility claim, which is defined as a violation of a construction-related accessibility standard under federal or state law[.]” (citations and internal quotation marks omitted); *Hernandez v. Polanco Enterprises, Inc.*, 624 F.Appx. 964, 965 (9th Cir. 2015) (“Under California law, [plaintiff] must prove – in addition to the ADA violation – that she ‘personally encountered the violation [of a construction-related accessibility standard] on a particular occasion’ and that it caused her ‘difficulty, discomfort, or embarrassment,’ thus denying her full and equal access to a place of public accommodation.”) (quoting Cal. Civ. Code § 55.56(a)-(c)) (first alteration added).

The two cases cited by LabCorp for the proposition that it is necessary for a class member to establish that he or she personally encountered an Unruh Act violation that caused difficulty, discomfort or embarrassment, (see Dkt. 66-1, Joint Br. at 47), are both construction-related accessibility cases. See *Doran v. 7 Eleven, Inc.*, 2011 WL 13143622, *1 (C.D. Cal. 2011) (“*Doran I*”), *aff’d*, 509 F.Appx. 647 (9th Cir. 2013) (noting that plaintiff was a “paraplegic” and that defendant had previously “remov[ed] all barriers related to his disability”); *Botosan v. Paul McNally Realty*, 216 F.3d 827, 830 (9th Cir. 2000) (plaintiff was a paraplegic asserting claims based on “lack of a designated parking space for disabled persons”).¹⁴

¹⁴ Although the court in *Quest* recognized that § 55.56 “applies specifically to construction-related accessibility claims[.]” 2021 WL 5989958, at *8, it also appeared to accept defendant’s argument that “both federal and California courts have [] articulated the same standard without reference to section

Similarly, the three ADA cases LabCorp relies on as examples of where class certification was denied, (*see* Dkt. 66-1, Joint Br. at 47-49) – *Vondersaar v. Starbucks Corp.*, 2015 WL 629437, *4 (C.D. Cal. 2015), *aff'd*, 719 F.Appx. 657 (9th Cir. 2018); *Moeller v. Taco Bell*, 2012 WL 3070863, *14 (N.D. Cal. 2012); *Antoninetti v. Chipotle Mexican Grill, Inc.*, 2012 WL 3762440, *5-*6 & n. 1 (S.D. Cal. 2012) – do not compel the conclusion that predominance is lacking here because, unlike those cases, this case does not involve construction-related accessibility claims. *See Quest*, 2021 WL 5989958, at *8 (noting that these cases “have certain notable similarities: all three involved disabled plaintiffs who alleged that counter heights and other physical barriers to access in fast food establishments violated the ADA and the Unruh Act”).¹⁵ The cases relied upon by LabCorp involved

55.56.” (*Id.*). LabCorp has not cited, nor has the court found a California published case that has addressed this standard outside of the construction-related accessibility context. On the contrary, the cases suggest otherwise. *See, e.g., Mundy*, 192 Cal.App.4th Supp. at 5 (“The provisions in [§§] 55.51 through 55.57 apply only to a construction-related accessibility claim, which is defined as a violation of a construction-related accessibility standard under federal or state law[.]”) (citations and internal quotation marks omitted); *Munson v. Del Taco, Inc.*, 46 Cal.4th 661, 677-78 (2009) (noting that §§ 55.53-55.57 were enacted to “protect[] businesses from abusive access litigation” arising from construction-related accessibility claims).

¹⁵ These cases are also distinguishable because, as the court in *Nevarez* observed, *Moeller* and *Antoninetti* are procedurally distinct in that the class certification motions were decided “after the defendants’ liability had been adjudicated, which meant that the most important common question had already been resolved.” *Nevarez*, 326 F.R.D. at 586 (emphasis omitted). The same holds

various accessibility issues at different restaurants while Vargas's Unruh Act claim is based on LabCorp's kiosks, which are identical. While LabCorp maintains that "[n]ot all California PSC's [sic] even have kiosks[.]" and "for those that do, staffing varies widely depending on location and a PSC's size: some locations have a dedicated patient intake representative ('PIR') who sits full time at the front desk to check in patients; others have phlebotomists to conduct both check in and testing; and some PSCs are located inside Walgreens stores where there is always a dedicated Walgreens staff member to assist patients," (Dkt. 66-1, Joint Br. at 48), the variations are not as significant as LabCorp makes them out to be. First, of the 299 PSCs in California, (Dkt. 82, Exh. 32 (Sinning Depo) at JA1064), only 19 do not have kiosks. (*Id.*). Second, with respect to PIRs, there is evidence that LabCorp has "very few PIRs" and instead, "[t]he vast majority of the people working in [the PSCs] doing patient care and intake are phlebotomists." (*Id.* at JA1067-68). In other words, LabCorp is aware of which PSCs in California have kiosks, when they were installed and made operational, and how each PSC is staffed.

true with respect to *Quest*, where the court had already resolved a motion for summary judgment. See *Vargas v. Quest Diagnostics Clinical Laboratories, Inc.*, 2021 WL 5989961, *11 (C.D. Cal. 2021). Here, the court has not yet ruled on a summary judgment motion. Further, unlike the instant case, the kiosks in *Quest* were not identical because at some point, defendant "began to roll out a change to its kiosks that allow[ed] visually-impaired patients to swipe the touchscreen using three fingers, which checks the patient in and alerts a phlebotomist that the patient has arrived." *Quest*, 2021 WL 5989958, at *1.

Finally, even if the standard set forth in § 55.56 applied in this case, it would not defeat a finding of predominance. In *Nevarez*, the plaintiffs, who required the use of wheelchairs, 326 F.R.D. at 569, sued several defendants, including the owners and operators of Levi's Stadium, asserting claims under the ADA and the Unruh Act. *See id.* at 568-71. The plaintiffs alleged that they faced barriers in accessing the stadium, including a lack of accessible seating, narrow security checkpoints, heavy doors, and inaccessible counters. *See id.* at 569-70, 578. The plaintiffs sought to certify a Rule 23(b)(3) class of persons who use wheelchairs, scooters or other mobility aids who "purchased, attempted to purchase, or for whom third parties purchased accessible seating," and who were denied equal access to the stadium. *Id.* at 572. The plaintiffs sought "statutory minimum damages of \$4,000 per actionable violation of the Unruh Act[.]" *Id.* at 571.

With respect to the predominance requirement, the defendants made the same argument LabCorp makes here – namely that "individual questions predominate because each class member will have to prove that they 'personally encountered' an Unruh Act violation that caused 'difficulty, discomfort, or embarrassment' to the class member." *Nevarez*, 326 F.R.D. at 585 (quoting Cal. Civ. Code §§ 55.56(b)-(c)). Then-district Judge Koh rejected the defendants' contention that application of § 55.56 defeated predominance, noting that defendants kept "records of class members' purchases of accessible seating that include[d] names and contact information." *Id.* at 586. Similar to *Nevarez* and, as discussed below, *see infra* at § II.B.2., there should be minimal logistical difficulties to

identifying class members given the uniformity of the kiosks, and the fact that LabCorp “knows how many patients checked in, and has information on those patients from their provided ID and insurance[.]” (Dkt. 66-1, Joint Br. at 21 n. 4).

In short, the court finds that plaintiff has established that common questions of fact and law predominate over individualized questions.

2. Superiority.

“[T]he purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy.” *Wolin*, 617 F.3d at 1175 (internal quotation marks omitted). To determine superiority, the court must look at

- (A) the class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

Of the four superiority factors, LabCorp appears to dispute only the fourth factor regarding whether the case is manageable as a class action.¹⁶ (*See* Dkt. 66-1,

¹⁶ Given the substantial overlap between LabCorp’s predominance argument, which appears to primarily challenge

Joint Br. at 51-53). First, LabCorp relies on “[t]wo of the decisions[, *Antoninetti* and *Moeller*,] already discussed in Labcorp’s predominance section” to argue that “class procedures” are “not superior for adjudicating” plaintiffs’ Unruh Act claim, “considering the individualized issues involved in assessing damages and the hefty per-claimant minimum statutory damages amounts incentivizing lawsuits.” (*Id.* at 51). LabCorp’s argument and the cases it relies on were addressed and rejected in the previous section. *See supra* at § II.B.1. Further, it should be noted that LabCorp provides no explanation or authority as to why the statutory minimum damages amount under the Unruh Act qualifies as “hefty” and, even assuming it did qualify as a “hefty” damages amount, LabCorp does not explain why that matters in terms of assessing whether a class action is manageable. (*See, generally*, Dkt. 66-1, Joint Br. at 51). In any event, the \$4,000 statutory damages amount is a minimal sum that “would be dwarfed by the cost of litigating on an individual basis[.]” *Wolin*, 617 F.3d at 1175; *see Local Joint Exec. Bd. of Culinary/Bartender Trust Fund*, 244 F.3d at 1163 (stating that “[i]f plaintiffs cannot proceed as a class, some – perhaps most – will be unable to proceed as individuals because of the disparity between their litigation costs and what they hope to recover”). In other words, the superiority requirement strongly “weighs in favor of class certification.” *Wolin*, 617 F.3d

the feasibility of maintaining a Rule 23(b)(3) class, the court hereby incorporates the predominance discussion set forth above. *See supra* at § II.B.1.

at 1175 (discussing Rule 23(b)(3)(A) superiority factor). As the *Nevarez* court stated, “[a]lthough class members are entitled to \$4,000 in damages per Unruh Act violation that sum pales in comparison with the cost of pursuing litigation. Consequently, this factor points towards certification.” 326 F.R.D. at 589; see *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund*, 244 F.3d at 1163 (In cases where a number of individuals seek only to recover relatively small sums, “[c]lass actions may permit the plaintiffs to pool claims which would be uneconomical to bring individually.”).

Second, with respect to LabCorp’s contention that the class would not be manageable given that plaintiffs “have not indicated how they would locate [] class members[,]” (Dkt. 66-1, Joint Br. at 51-52), it is a “well-settled presumption that courts should not refuse to certify a class merely on the basis of manageability concerns.” *Briseno*, 844 F.3d at 1128 (internal quotation marks omitted); *Nevarez*, 326 F.R.D. at 590 (same). Moreover, “[t]here is no requirement that the identity of class members . . . be known at the time of certification.” *Ries v. Ariz. Beverages USA LLC*, 287 F.R.D. 523, 535 (N.D. Cal. 2016); see *id.* (“If there were [an identification requirement], there would be no such thing as a consumer class action.”). In any event, identifying class members here would not be difficult. LabCorp “knows how many patients checked in, and has information on those patients from their provided ID and insurance[.]” (Dkt. 66-1, Joint Br. at 21 n. 4). While it may not know at this point “which persons would fall into the category of legally blind[.]” (*id.*), making that determination at a later stage of the proceedings would not be an unduly burdensome task.

Indeed, LabCorp was able to determine that Davis was mistaken with respect to the dates of one of his visits to a LabCorp PSC. (See Dkt. 266-1, Joint Br. at 23); (Dkt. 79, Exh. 14 (Davis Depo) at JA268-69). Certainly a similar undertaking could be done at the appropriate juncture.

Based on the foregoing, IT IS ORDERED THAT:

1. The Motion (**Document No. 66**) is **granted** as set forth in this Order. The court certifies the following classes:

Nationwide Injunctive Class: All legally blind individuals in the United States who visited a LabCorp patient service center in the United States during the applicable limitations period and were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp's failure to make its e-check-in kiosks accessible to legally blind individuals.

California Class: All legally blind individuals in California who visited a LabCorp patient service center in California during the applicable limitations period and were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp's failure to make its e-check-in kiosks accessible to legally blind individuals.¹⁷

¹⁷ Since the class definitions discussed by the parties did not address the temporal scope of the two classes, the court added the language "during the applicable limitations period" to the definition. See *Torres v. Mercer Canyons, Inc.*, 835 F.3d 1125, 1139 (9th Cir. 2016) (acknowledging that "the district court

2. The court hereby appoints Luke Davis and Julian Vargas as the representatives of the Nationwide Class and Vargas as the representative of the California Class.

3. The court hereby appoints the law firms of Nye, Stirling, Hale & Miller, LLP and Handley, Farah & Anderson, PLLC as class counsel.

Dated this 13th day of June, 2022.

/s/

Fernando M. Olguin
United States District Judge

may . . . adjust the scope of the class definition, if it later finds that the inclusiveness of the class exceeds the limits of [the defendant] legal liability”).

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LUKE DAVIS, JULIAN
VARGAS, *et al.*,

Plaintiffs,

v.

LABORATORY
CORPORATION OF
AMERICA HOLDINGS,

Defendant.

Case No. CV 20-0893
FMO (KSx)

**ORDER RE: MOTION
TO REFINE CLASS
DEFINITION**

Having reviewed and considered all the briefing filed with respect to plaintiffs' Motion to Refine Class Definitions, (Dkt. 107, "Motion"), the court finds that oral argument is not necessary to resolve the Motion, *see* Fed. R. Civ. P. 78(b); Local Rule 7-15; *Willis v. Pac. Mar. Ass'n*, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.¹

BACKGROUND²

On May 23, 2022, the court granted Luke Davis ("Davis") and Julian Vargas's ("Vargas" and together with Davis, "plaintiffs") motion for class certification in connection with their complaint against Laboratory

¹ Capitalization, quotation marks, punctuation, and emphasis in record citations may be altered without notation.

² The court hereby incorporates its Order of June 13, 2022 (Dkt. 103, "Amended Class Cert. Order").

Corporation of America Holdings (“defendant” or “LabCorp”), and certified the following classes:³

Nationwide Injunctive Class: All legally blind individuals in the United States who visited a LabCorp patient service center in the United States during the applicable limitations period and were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp’s failure to make its e-check-in kiosks accessible to legally blind individuals.

California Class: All legally blind individuals in California who visited a LabCorp patient service center in California during the applicable limitations period and were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp’s failure to make its e-check-in kiosks accessible to legally blind individuals.

(See Dkt. 97, Court’s Order of May 23, 2022, at 24).

Approximately one month before the court issued its decision, the Ninth Circuit, in an *en banc* decision, stated that “[a] court may not . . . create a ‘fail safe’ class that is defined to include only those individuals who were injured by the allegedly unlawful conduct.”⁴

³ Because of the similarity of the class definitions, the court will refer to them in the singular.

⁴ The court was aware of, and even cited, the *Olean* decision in its class certification order. (See, e.g., Dkt. 97, Court’s Order of May 23, 2022, at 4, 17). However, the court did not address whether plaintiffs’ proposed class definition constituted a fail-safe class because defendant did not raise the argument for the court to rule

Olean Wholesale Grocery Cooperative, Inc. v. Bumble Bee Foods, LLC, 31 F.4th 651, 669 n. 14 (9th Cir. 2022) (*en banc*). LabCorp provided the court with a copy of its Rule 23(f) Petition for Permission to Appeal Order Granting Class Certification (“Petition”) in which it argues, among other things, that the court erred in certifying “fail-safe” classes. (*See* Petition at 13-14). Plaintiffs now seek to redefine the certified classes “to remove any claim . . . that the current class definitions contain ‘fail safe’ language[.]” (Dkt. 107-1, Memorandum of Points and Authorities in Support of Plaintiffs’ Motion to Refine Class Definitions (“Memo”) at 2).

DISCUSSION

Pursuant to Rule 23 of the Federal Rules of Civil Procedure,⁵ “[a]n order that grants . . . class certification may be altered or amended before final

on it. *See Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 543 (9th Cir. 2016) (an “argument must be raised sufficiently for the trial court to rule on it” to preserve it for appellate review); (Dkt. 103, Amended Class Cert. Order at 5 n. 4) (“To the extent LabCorp may be challenging the nationwide class on the ground that it is a fail-safe class, the court rejects the challenge, as defendant merely referenced a ‘fail-safe class’ in its ‘Introductory Statement[.]’; (*see* Dkt. 66-1, Joint Br. at 6); it provided no argument or authority to support its challenge.”); *Beasley v. Astrue*, 2011 WL 1327130, *2 (W.D. Wash. 2011) (“It is not enough merely to present an argument in the skimpiest way, and leave the Court to do counsel’s work – framing the argument, and putting flesh on its bones through a discussion of the applicable law and facts.”).

⁵ All “Rule” references are to the Federal Rules of Civil Procedure unless otherwise indicated.

judgment.” Fed. R. Civ. P. 23(c)(1)(C); see *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 160, 102 S.Ct. 2364, 2372 (1982) (“Even after a certification order is entered, the [court] remains free to modify it in the light of subsequent developments in the litigation.”); *Owino v. CoreCivic, Inc.*, 36 F.4th 839, 847 (9th Cir. 2022) (same). A “fail-safe” class is “one that is defined so narrowly as to preclude[] membership unless the liability of the defendant is established.” *Torres v. Mercer Canyons, Inc.*, 835 F.3d 1125, 1138 n. 7 (9th Cir. 2016) (internal quotation marks omitted). “Such a class definition is improper because a class member either wins or, by virtue of losing, is defined out of the class and is therefore not bound by the judgment.” *Olean*, 31 F.4th at 669 n. 14 (quoting *Messner v. Northshore University HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012)); *Messner*, 669 F.3d at 825 (explaining that a fail-safe class is “one that is defined so that whether a person qualifies as a member depends on whether the person has a valid claim”). However, a fail-safe class “can . . . be solved by refining the class definition rather than by flatly denying class certification on that basis.” *Olean*, 31 F.4th at 669 n. 14 (internal quotation marks omitted); see also 1 *Newberg on Class Actions* § 3:6 (5th ed.) (2021 Supp.) (“[E]ven those courts that disapprove of fail-safe classes recognize that a court can simply fix the class definition instead of denying class certification.”).

Plaintiffs seek to redefine the class as follows:

Nationwide Injunctive Class: All legally blind individuals who visited a LabCorp patient service center with a LabCorp Express Self-Service kiosk in the United States during the applicable

limitations period, but were unable to use the LabCorp Express Self-Service kiosk.

California Class: All legally blind individuals who visited a LabCorp patient service center with a LabCorp Express Self-Service kiosk in California during the applicable limitations period, but were unable to use the LabCorp Express Self-Service kiosk.

(See Dkt. 107-1, Memo at 8). Relying on *Mullins v. Direct Digital, LLC*, 795 F.3d 654 (7th Cir. 2015), (see Dkt. 107-1, Memo at 7), plaintiffs contend that the redefined class definition is not fail-safe because the requirements for class membership are subject to objective criteria. (*Id.* at 8). More specifically, they contend that the definition comports with the requirement that “[i]t identif[y] a particular group of individuals [] harmed in a particular way [] during a specific period in particular areas.” (*Id.* at 7) (quoting *Mullins*, 795 F.3d at 660-61). However, the portion of the *Mullins* decision relied on by plaintiffs relates to whether the class definition is too vague. See 795 F.3d at 659-61 (noting that “classes that are defined too vaguely fail to satisfy the ‘clear definition’ component” of ascertainability and finding that the class definition was “not vague” because “[i]t identifie[d] a particular group of individuals [] harmed in a particular way [] during a specific period in particular areas”). It was not, with respect to the quoted test, addressing a fail-safe class.⁶ See, generally, *id.*

⁶ As such, the court will not address LabCorp’s arguments, (see Defendant [LabCorp’s] Memorandum in Opposition to Plaintiffs’

With respect to fail-safe classes, the *Mullins* court explained that “[t]he key to avoiding this problem is to define the class so that membership does not depend on the liability of the defendant.” *Mullins*, 795 F.3d at 660. Here, the proposed class definition is defined “so that membership does not depend on the liability of the defendant.” *See id.* In other words, if LabCorp “prevails, *res judicata* will bar class members from re-litigating their claims.” *Id.* at 661. Moreover, there is “a reasonably close fit between the class definition and [plaintiffs’] chosen theory of liability.” *Torres*, 835 F.3d at 1138 n. 7.

In its Opposition, LabCorp divides its brief into three separate sections. The first section argues that “the currently certified classes are fail-safe.” (Dkt. 110, Opp. at 2); (*see id.* at 2-5). However, it’s unclear why LabCorp is making this argument since plaintiffs’ Motion seeks to “remove any doubt” as to whether the current class definition is arguably a fail-safe class within the meaning of *Olean*. (*See* Dkt. 107-1, Memo at 7).

The second section of LabCorp’s opposition asserts that “the fail-safe classes cannot be ‘refined’ into classes with fail-safe memberships.” (Dkt. 110, Opp. at 5); (*see id.* at 5-8). LabCorp asserts that, although plaintiffs “have dropped some of the language more closely tied to their theory of ADA violations . . . , and now define class membership as all legally blind persons ‘unable to use’ the kiosk[,]” (*id.* at 6), plaintiffs

Motion [] (“Opp. ” 7-8), regarding plaintiffs’ reliance on *Mullins*’s objective criteria test.

are “still seeking certification of the same fail-safe class of persons who Plaintiffs believe have ADA claims . . . because an independently accessible kiosk was not available to them.” (*Id.* at 6-7). LabCorp asserts, for instance, that “if members of the California class are shown to have no Unruh Act claim, they will fall out of the proposed definition.” (*Id.* at 7). LabCorp’s assertions are unpersuasive.

As an initial matter, LabCorp does not explain how or why the refined definition constitutes a fail-safe class or why class members will fall out of the class definition if LabCorp were to prevail on the certified claims.⁷ (*See, generally*, Dkt. 110, Opp. at 6-8). Indeed, LabCorp’s Opposition – which makes little, if any, effort to explain how or why the revised class definition is fail-safe – focuses on challenging the revised class definition as overbroad. (*See id.* at 6-7). For example, LabCorp contends that the class “cannot be certified so broadly as to include persons ‘unable to use’ a LabCorp kiosk, including, for example: (i) persons visiting a patient service center . . . without

⁷ Nor could it because, unlike the prior class definition, which generally tracked the ADA, (*see* Dkt. 103, Amended Class Cert. Order at 3-4, 24) (certifying classes composed of blind persons who “were denied full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations due to LabCorp’s failure to make its e-check-in kiosks accessible to legally blind individuals”); 42 U.S.C. § 12182(a) (“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation[.]”), the revised class definition markedly does not. (*See* Dkt. 107-1, Memo at 8).

an operational kiosk; or (ii) persons who preferred to (and did) check in at the front desk, as 25% of all Labcorp PSC patients do; or (iii) persons who (like Plaintiff Vargas) were directed to check in at the front desk and never attempted to use a kiosk or may have even known a kiosk existed at a particular PSC.” (*Id.* at 6). In other words, LabCorp contends that the “revised [class] definition[] [is] overbroad” in that it includes class members who were not harmed as a result of LabCorp’s conduct. (*See id.* at 6-7). LabCorp’s contentions are unpersuasive.

As an initial matter, LabCorp provides no evidence or citation to the record to support its contentions. (*See, generally*, Dkt. 110, Opp. at 6). LabCorp’s contention that plaintiffs’ refined class definition is overbroad because it “include[s] individuals in all of these situations,” (*id.*), is inaccurate because “even a well-defined class may inevitably contain some individuals who have suffered no harm as a result of a defendant’s unlawful conduct.” *Torres*, 835 F.3d at 1136. “Ultimately, [LabCorp’s] argument reflects a merits dispute about the scope of . . . liability, and is not appropriate for resolution at the class certification stage of this proceeding.” *Id.* at 1137.

In any event, there is no doubt that the conduct at issue here is uniform as the crux of plaintiffs’ legal challenge is that LabCorp’s kiosks are not ADA compliant and, therefore, are inaccessible to visually impaired users. (*See* Dkt. 40, FAC at ¶¶ 4-6, 29); (Dkt. 103, Amended Class Cert. Order at 8) (noting that the commonality requirement was met, in part, based on contention that “LabCorp trained its employees that use of the kiosks to check-in was mandatory”); (Dkt. 79, Exh. 12 (Deposition of Joseph Sinning) (“Sinning

Depo”) at JA61-62) (testimony that use of kiosks was “not optional”); (*id.* at JA63); (Dkt. 80, Exh. 20 (Deposition of Bartholomew Coan) (“Coan Depo”) at JA518-524); (Dkt. 80, Exh. 17 at JA445); *see, e.g., Vargas v. Quest Diagnostics Clinical Labs, Inc.*, CV 19-8108 DMG (MRWx) (“*Quest*”) (Dkt. 228 at 5) (“The ‘common policy’ here is Quest’s widespread rollout of its kiosks, which on their own are inaccessible to visually impaired users.”). Thus, the “situations” LabCorp describes “merely highlight[] the possibility that an injurious course of conduct may sometimes fail to cause injury to certain class members.”⁸ *Torres*, 835 F.3d 1136. However, “such fortuitous non-injury to a subset of class members does not necessarily defeat certification of the entire class, particularly as the

⁸ Indeed, LabCorp’s focus on making absolutely sure that only those individuals who were actually harmed can be members of the class seeks to impose an ascertainability requirement that is not allowed under Ninth Circuit law, *see Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1126, 1133 (9th Cir. 2017) (“[T]he language of Rule 23 neither provides nor implies that demonstrating an administratively feasible way to identify class members is a prerequisite to class certification[.]”), and is inconsistent with important policy objectives of class actions by denying class members with the only meaningful possibility they may have to recover anything at all. *See Mullins*, 795 F.3d at 667-68 (The problem “with this dilution argument [that a class may include class members with invalid claims] is that class certification provides the only meaningful possibility for bona fide class members to recover anything at all. . . . [¶] By focusing on making absolutely certain that compensation is distributed only to those individuals who were actually harmed, the heightened ascertainability requirement has ignored an equally important policy objective of class actions: deterring and punishing corporate wrongdoing.”) (internal quotation marks omitted).

district court is well situated to winnow out those non-injured members at the damages phase of the litigation, or to refine the class definition.” *Id.* at 1137; *see Olean*, 31 F.4th at 669 n. 14 (“[T]he court may redefine the overbroad class to include only those members who can rely on the same body of common evidence to establish the common issue.”).

In an effort to address the *Olean* Court’s concerns regarding fail-safe classes and because plaintiffs do not object to the court further refining the class definition, (Dkt. 111, Reply at 10 n. 4), the court will define the class as follows:

Nationwide Injunctive Class: All legally blind individuals who visited a LabCorp patient service center with a LabCorp Express Self-Service kiosk in the United States during the applicable limitations period, and who, due to their disability, were unable to use the LabCorp Express Self-Service kiosk.

California Class: All legally blind individuals who visited a LabCorp patient service center with a LabCorp Express Self-Service kiosk in California during the applicable limitations period, and who, due to their disability, were unable to use the LabCorp Express Self-Service kiosk.

The revised definition addresses any concerns regarding an over-inclusive class, while also avoiding a fail-safe definition. *See Messner*, 669 F.3d at 825 (“Defining a class so as to avoid, on one hand, being over-inclusive and, on the other hand, the fail-safe problem is more of an art than a science.”); *Torres*, 835 F.3d at 1138 n. 7 (Ninth Circuit “require[s] no more than a reasonably close fit between the class definition

and the chosen theory of liability.”). The revised class definition is similar to the one recently adopted by Judge Gee in the *Quest* case. *See Quest*, CV 19-8108 DMG (MRWx) (Dkt. 228 at 6). The difference in definitions stems from the fact that the defendant in *Quest* introduced a three-finger swipe function at some point in the process. *See id.*; *see also Vargas v. Quest Diagnostics Clinical Labs.*, 2021 WL 5989958, *1 (C.D. Cal. 2021) (“Beginning in 2020, Quest began to roll out a change to its kiosks that allows visually-impaired patients to swipe the touchscreen using three fingers, which checks the patient in and alerts a phlebotomist that the patient has arrived.”). Here, no such action was taken. Also, in this case, there is evidence that LabCorp implemented its kiosks across its national network of more than 1,800 PSCs, and that LabCorp trained its employees that use of the kiosks to check-in was mandatory. (*See* Dkt. 103, Amended Class Cert. Order at 3, 8); (Dkt. 79, Exh. 12 (Sinning Depo) at JA61-62) (testimony that use of kiosks “not optional”); (*id.* at JA63); (Dkt. 80, Exh. 20 (Coan Depo) at JA518-524); (Dkt. 80, Exh. 17 at JA445).

Moreover, the revised class definition does not impact the court’s determinations regarding class certification. As the court previously found, common questions of fact and law predominate over individualized questions. (*See* Dkt. 103, Amended Class Cert. Order at 15-22); (*see id.* at 8) (common questions of fact and law include, but are not limited to, whether: (1) “LabCorp’s kiosks are independently accessible to legally blind individuals”; (2) “LabCorp has implemented the inaccessible check-in kiosks system across its national network of more than 1,800 PSCs”; (3) “LabCorp trained its employees that use of

the kiosks to check-in was mandatory”; (4) “use of the kiosk is a good or service LabCorp offers its customers”; (5) “LabCorp offers a qualified aid or auxiliary service to allow legally blind individuals to access the check-in kiosk service”; and (6) “LabCorp has remedied the inaccessible check-in kiosk across its system.”). Indeed, during the class certification proceedings, LabCorp did “not dispute that there is at least one common question of law at issue here.” (*Id.* at 8) (*quoting* LabCorp’s portion of Dkt. 66-1, Joint Brief Concerning Plaintiff’s Motion for Class Certification at 37).

The third and final section of LabCorp’s opposition contends that “no refinement to the Rule 23(b)(3) California sub-class can render it certifiable.” (Dkt. 110, Opp. at 8); (*see id.* at 8-13). Most of this section of LabCorp’s brief seeks to reargue the propriety of the court’s certification order. (*See id.* at 8-13). For instance, LabCorp refers to Judge Gee’s denial of class certification of the *Quest* plaintiffs’ Rule 23(b)(3) class, and her subsequent denial of plaintiffs’ request for reconsideration of that decision. (*See id.* at 9-11). But as the court previously explained, there are significant and fundamental factual and procedural differences between this case and the *Quest* case.⁹ (*See, e.g.*, Dkt.

⁹ Given that LabCorp is now contradicting its prior position that this case is “fundamentally different from the *Quest* [] case[.]” (Dkt. 90, Defendant[’s] Opposition to Plaintiffs’ Request for Judicial Notice at 4), it appears, as plaintiffs argue, that LabCorp is seeking to “improve its litigation position by attempting to align the facts of this case with the facts in *Quest*[.]” (Dkt. 111, Reply at 7).

103, Amended Class Cert. Order at 20 n. 15) (noting that the *Quest* court had already resolved a summary judgment motion, and that the kiosks in *Quest* were not identical to those in this action). Nothing about the *Quest* Court's denial of the plaintiffs' request for reconsideration changes this court's conclusion that certification under Rule 23(b)(3) was proper in this case.

In any event, LabCorp did not timely file a motion for reconsideration, *see* Local Rule 7-18 (motion for reconsideration "must be filed no later than 14 days after entry of the Order that is the subject of the motion or application"), or make any effort to satisfy any of the requirements for reconsideration. (*See, generally*, Dkt. 110, Opp.); *see* Local Rule 7-18 (grounds for reconsideration are (1) material difference in fact or law; (2) emergence of new material facts or change of law; or (3) manifest showing of a failure to consider material facts).

The only argument LabCorp raises in the final section of its brief that relates to the refined class definition is its contention that, "with fail-safe Rule 23(b)(3) classes now barred in this Circuit, Plaintiffs' new proposed definition of persons who were 'unable to use' a kiosk would obviously include non-injured legally blind persons – such as those who preferred to and did check in at the PSC front desk, or those who visited a PSC without an operational kiosk." (Dkt 110, Opp. 11-12). But this is the same argument LabCorp raised in the previous section of its brief. (*See, e.g., id.* at 6) (contending that the refined class definition is overbroad because it includes "persons 'unable to use' a LabCorp kiosk, including, for example: (i) persons visiting a patient service center . . . without an

operational kiosk; or (ii) persons who preferred to (and did) check in at the front desk, as 25% of all Labcorp PSC patients do”). For the reasons set forth above, the court rejects this argument. Moreover, the court has already determined that such individualized issues would not predominate, and that a class action is superior to other methods for fairly and efficiently adjudicating the present controversy. (See Dkt. 103, Amended Class Cert. Order at 13-24). In short, the redefined Rule 23(b)(3) class definition does not undermine the court’s previous determinations.

Finally, LabCorp, in a one-sentence concluding paragraph, states that “the *Olean* Court recently recognized the Supreme Court’s directive that ‘[e]very class member must have Article III standing in order to recover individual damages,’ and cautioned: ‘Rule 23 also requires a district court to determine whether individualized inquiries into this standing issue would predominate over common questions.’” (Dkt. 110, Opp. at 13) (quoting *Olean*, 31 F.4th at 669 n. 12 (quoting *TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2208 (2021))). However, LabCorp says nothing further on this issue, much less argue why or how the standing requirement defeats predominance. (See, generally, Dkt. 110, Opp. at 13). “It is not enough merely to present an argument in the skimpiest way, and leave the Court to do counsel’s work – framing the argument, and putting flesh on its bones through a discussion of the applicable law and facts.” *Beasley*, 2011 WL 1327130, at *2; see also *Yamada*, 825 F.3d at 543 (an “argument must be raised sufficiently for the trial court to rule on it” to preserve it for appellate review).

In any event, as the court previously noted, (*see* Dkt. 103, Amended Class Cert. Order at 18), the Ninth Circuit in *Olean* reiterated its previous holding “that a district court is not precluded from certifying a class even if plaintiffs may have to prove individualized damages at trial, a conclusion implicitly based on the determination that such individualized issues do not predominate over common ones.” 31 F.4th at 669. The *Olean* Court rejected the notion “that Rule 23 does not permit the certification of a class that potentially includes more than a de minimis number of uninjured class members.” *id.*; *see also id.* at 668-69. Just as the court previously concluded that predominance is not defeated by individualized questions regarding damages, it also persuaded that predominance is not defeated by individualized inquiries into standing. *See Torres*, 835 F.3d at 1137 n. 6 (For standing, “it must be possible that class members have suffered injury, not that they did suffer injury, or that they must prove such injury at the certification phase.”).

CONCLUSION

In short, the *Olean* Court’s statement regarding fail-safe classes does not change the court’s findings and conclusions that the Rule 23(a), (b)(2) and (b)(3) factors have been satisfied.¹⁰ Therefore, the court declines to decertify the class, (*see* Dkt. 110, Opp. at 13) (concluding with request that court decertify the

¹⁰ In other words, in refining the class definition, this Order does not materially alter the composition of the class or materially change in any manner the Amended Order Re: Motion for Class Certification.

classes), and the court's Amended Order Re: Motion for Class Certification otherwise stands.

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiffs' Motion to Refine Class Definition (**Document No. 107**) is **granted** as set forth in this Order.

2. Page 24, Lines 13-23 of the Court's Amended Order of June 13, 2022 (Dkt. 103) is replaced with the following:

Nationwide Injunctive Class: All legally blind individuals who visited a LabCorp patient service center with a LabCorp Express Self-Service kiosk in the United States during the applicable limitations period, and who, due to their disability, were unable to use the LabCorp Express Self-Service kiosk.

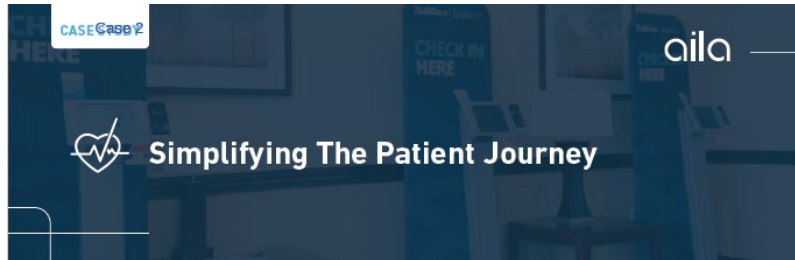
California Class: All legally blind individuals who visited a LabCorp patient service center with a LabCorp Express Self-Service kiosk in California during the applicable limitations period, and who, due to their disability, were unable to use the LabCorp Express Self-Service kiosk.

3. Counsel for the parties shall forthwith provide a copy of this Order to the Ninth Circuit Court of Appeals.

Dated this 4th day of August, 2022.

/s/

Fernando M. Olguin
United States District Judge



Aila’s self-service patient healthcare check-in solution saves time, saves money, and improves the patient experience for global healthcare diagnostics companies

CHALLENGE

Modernize and streamline antiquated, paper-based patient check-in process

SOLUTION

An intuitive self-service patient check-in and checkout system

RESULTS

Improved patient experience
Reduction in patient wait time per visit
Increased data accuracy & security
Reduced paperwork and burden on staff

BACKGROUND

Nothing says **inefficient**—or **old-fashioned**—like the typical patient registration process: Arrive at the healthcare facility. Fill out paper forms on a clipboard. Hand over ID and insurance cards to the receptionist for manual entry into the company’s system.

Yet many modern healthcare organizations still rely on paper forms and manual data entry to get the job done.

LabCorp, a global healthcare diagnostics company, discovered that their manual intake process was causing some

Modernized brand experience significant problems for customers and their bottom line.

BAD FOR STAFF: It was time consuming and labor-intensive for the staff

- **WASTEFUL FOR PROVIDERS:** Manual data entry and penmanship introduced clerical errors—often resulting in rejected insurance claims and other downstream costs

BAD FOR PATIENTS: Patients were overly burdened at registration and experienced longer-than-necessary wait times. They were often further inconvenienced by unpaid claims

HOW WE HELP

We simplify healthcare check-in for patients and practices by enabling a seamless intake, verification, payment, and processing workflow.

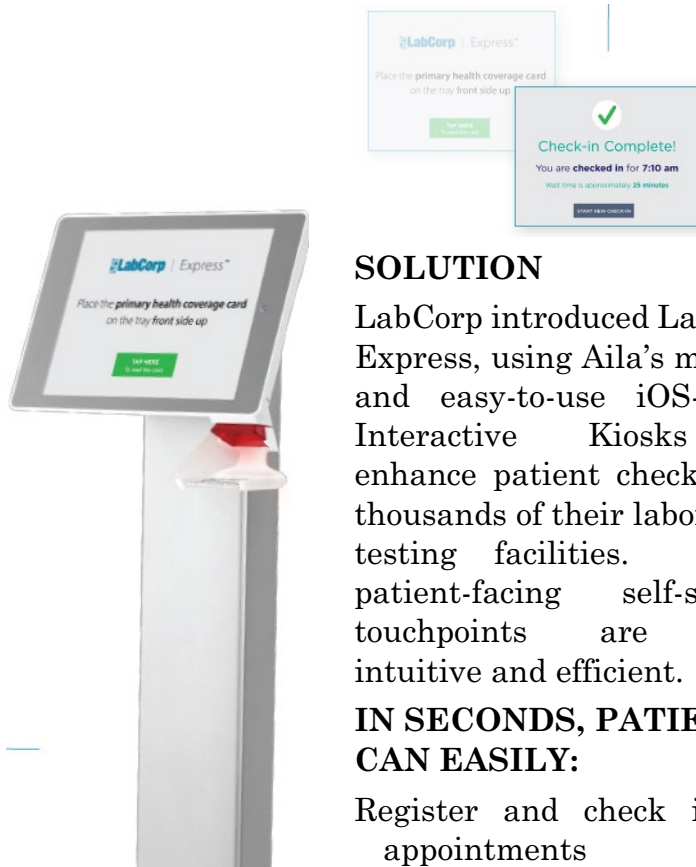
CHALLENGE

With over 115 million patient interactions every year, this was shaping up to be quite the costly check-in/check-out process. In fact, an internal review identified

“The new kiosk system is easy to use and a big improvement. It helps speed things along.”

that these issues were directly – **STAN C.,**
hurting the company's HENDERSON,
bottom line. NV

LabCorp needed to modernize their customer registration infrastructure to **reduce unnecessary costs, free up staff to focus on higher-level tasks, and streamline the patient registration experience.**



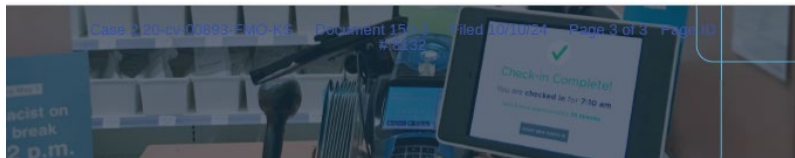
SOLUTION

LabCorp introduced LabCorp Express, using Aila's modern and easy-to-use iOS-based Interactive Kiosks to enhance patient check-in at thousands of their laboratory testing facilities. Aila's patient-facing self-service touchpoints are both intuitive and efficient.

IN SECONDS, PATIENTS CAN EASILY:

Register and check in for appointments

- Securely scan patient ID and insurance card
- Verify insurance coverage and authenticate IDs
- Register and check in for appointments
- Track status of medical diagnostic tests
- Seamlessly integrate with the LabCorp mobile app



RESULTS

With Aila's Interactive Kiosk, LabCorp Express now provides a fast, secure system to better serve patients throughout the entire check-in and checkout process — all while reducing costs.

After a significant boost to ROI and positive customer feedback, LabCorp is expanding the LabCorp Express to partner outpatient facilities and retail pharmacies with Aila's Interactive Kiosk.

Goodbye to paper forms and clipboards. Hello to a modern, cost-effective solution that improves **both the patient**

“The new sign-in stations are super convenient: scan your driver's license, answer a few questions on the touch screen, and you're done!”

— JERRY P.,
HAMILTON SQ,
NJ

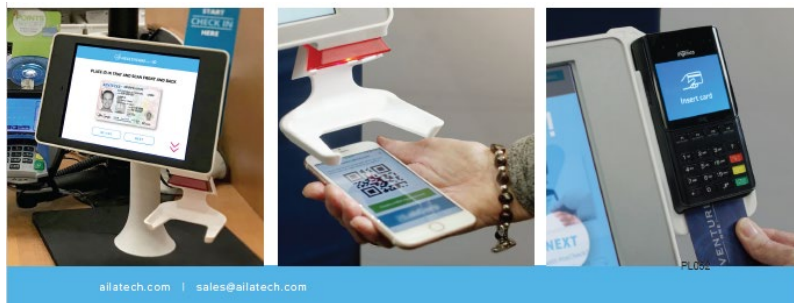
experience and company revenue.

“LabCorp Express in our PSCs has been well received by patients, with **88%** positive responses to point of service surveys overall and **94%** positive when checking in with the reservation.”

– DAVID P. KING, CHAIRMAN AND CEO OF LABCORP

ABOUT AILA’S HEALTHCARE SOLUTION

Aila Technologies simplifies the healthcare check-in process for patients and practices by enabling a seamless intake, verification, payment and processing workflow. **EXPLORE: ailatech.com**



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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LUKE DAVIS, JULIAN
VARGAS, and AMERICAN
COUNCIL OF THE BLIND,
individually and on behalf of
all others similarly situated,
Plaintiff-Appellee,

v.

LABORATORY
CORPORATION OF
AMERICA HOLDINGS,
d/b/a LABCORP,
Defendant-Appellant.

No. 22-55873

D.C. No.2:20-cv-00893-
FMO-KS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding
Argued and Submitted November 9, 2023
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: FLETCHER and MENDOZA, Circuit Judges, and SCHREIER, **District Judge.

On May 23, 2022, the district court certified two classes in the instant action: a California class under Federal Rule of Civil Procedure 23(b)(3) seeking damages under California’s Unruh Civil Rights Act (Unruh Act); and a nationwide class seeking relief under the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Affordable Care Act. On June 13, 2022, the district court amended its class certification order to refine the class definitions. LabCorp filed an interlocutory appeal of the May 23 class-certification order under Rule 23(f), sua sponte challenging plaintiffs’ Article III standing, as well as the propriety of the district court’s certification order. We authorized the interlocutory appeal on September 22, 2022. We have jurisdiction under 28 U.S.C. § 1292(e) and Rule 23(f). Considering Article III standing de novo, *Crum v. Circus Circus Enters.*, 231 F.3d 1129, 1130 (9th Cir. 2000), and reviewing the district court’s class-certification decision for abuse of discretion, *Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1002 (9th Cir. 2018), we affirm.

1. LabCorp argues that plaintiffs lack Article III standing for their Unruh Act claim because class representative Vargas, along with class members, did not experience a cognizable injury and were not concretely harmed. Although the district court did not directly address standing in either of its class-certification orders, “we have an independent duty to

** The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.

do so before turning to the merits.” *Langer v. Kiser*, 57 F.4th 1085, 1091 (9th Cir. 2023). “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). In the disability discrimination context, we have found that “it is not necessary for standing purposes that the barrier completely preclude the plaintiff from entering or from using a facility in any way.” *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 947 (9th Cir. 2011). Instead, the plaintiff need only demonstrate that the barrier “interfere[s] with the plaintiff’s ‘full and equal enjoyment’ of the facility.” *Id.* (quoting 42 U.S.C. § 12182). Full and equal enjoyment requires “effective communication” with disabled individuals. *Robles v. Domino’s Pizza, LLC*, 913 F.3d 898, 906-07 (9th Cir. 2019); *see also* 28 C.F.R. § 36.303(c)(1).

Vargas established an injury sufficient to confer standing. Because a plaintiff must demonstrate standing “with the manner and degree of evidence required at the successive stages of the litigation,” *Lujan*, 504 U.S. at 561 (1992), we assess whether plaintiffs have demonstrated standing under a “preponderance of the evidence” standard, *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 665 (9th Cir. 2022). Vargas contends that he entered a LabCorp facility and intended to check in using the kiosk but was unable to do so because the kiosk was not accessible to the blind. Instead, Vargas was forced to wait until he was noticed by a staff member who aided him with check-

in. As a result of the inaccessibility of the kiosk, Vargas was unable to immediately preserve his place in the patient queue, as sighted patients could, or to access any other kiosk features, such as the ability to privately alter account information. Thus, Vargas was denied effective communication and, by extension, the full and equal enjoyment of LabCorp's services. This injury is adequately concrete to convey Article III standing.

2. The district court also did not abuse its discretion in certifying the Unruh Act class over LabCorp's objections to commonality, predominance, typicality, manageability, and superiority. To certify a class under Rule 23, plaintiffs must make two showings. First, plaintiffs must demonstrate commonality, numerosity, typicality, and adequacy of representation under Rule 23(a). "Second, the plaintiffs must show that the class fits into one of three categories." *Olean Wholesale Grocery Coop.*, 31 F.4th at 663. This case falls into the third category, which permits a class action if "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

LabCorp first challenges the district court's finding that common facts predominate the Unruh Act claim, arguing that the standing of each class member requires "an individualized inquiry" into whether each class member has demonstrated "difficulty, discomfort, or embarrassment." But difficulty, discomfort, or embarrassment are required to recover damages only in construction-related Unruh Act

claims. *See* Cal. Civ. Code § 55.56(c). Because this case concerns effective communication and not construction, such a showing for each plaintiff is not required. Nor is it required that each plaintiff suffer identical harm; rather, the relevant inquiry is whether class members were subject to the same injuring behavior. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1120 (9th Cir. 2017). Because all class members maintain that their injury resulted from the inaccessibility of a LabCorp kiosk, the commonality requirement is satisfied.¹

Based on the same findings, we also uphold the district court’s holding that common questions predominate. The district court identified six common issues, whose answers could determine key elements of the case. Finding that these questions predominate is not an abuse of the district court’s discretion.

Next, LabCorp challenges the typicality of Vargas’s claim, arguing that his experiences and the experiences of class members “varied significantly.” Rule 23’s typicality requirement, however, is a “permissive standard,” satisfied when representative claims “are reasonably co-extensive with those of absent class members[.]” *Castillo v. Bank of Am., NA*, 980 F.3d 723, 729 (9th Cir. 2020) (quotations omitted). Representative claims “need not be substantially identical[]” to the claims of absent members. *Id.* Here,

¹ LabCorp’s allegation that some potential class members may not have been injured does not defeat commonality at this time. *See Olean*, 31 F.4th at 668–69 (holding that Rule 23 permits “certification of a class that potentially includes more than a de minimus number of uninjured class members”).

like the absent class members, Vargas is blind, tried to access LabCorp services, and was unable to do so using a kiosk. Thus, his claim is typical of the class, and the district court did not abuse its discretion in so finding.

Lastly, LabCorp challenges the superiority of class adjudication, as required by Rule 23(b)(3). Though four factors determine superiority under the Rule, LabCorp disputes only the fourth factor: the manageability of the class. Fed. R. Civ. P. 23(b)(3)(A)–(D). LabCorp contends that the class is unmanageable because there is no proposed way of identifying which persons visiting LabCorp stations are legally blind.²

As the district court found, “identifying class members would not be difficult” because “Labcorp knows how many patients checked in, and has information on those patients from their provided ID and insurance.” Though no specific method for identifying class members has been identified, claims administrators, auditing processes, and other techniques may be used to validate claims. And as the court managing the litigation process, the district

² Though LabCorp also argues that the \$4,000 damages amount available under the Unruh Act is significant enough to weigh against superiority under Rule 23(b)(3), such concerns are typically adjudicated under the Rule 23(a) factors. But, even if we were to consider LabCorp’s argument, we agree with the district court that the \$4,000 statutory damage amount is a minimal sum that “would be dwarfed by the cost of litigating on an individual basis” in this case, given the complexity of the litigation. See *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010).

court is best situated to determine its own capacity to oversee the location of class members.

3. The district court did not abuse its discretion in certifying the nationwide class based on its determination that a nationwide injunction could provide relief to all members. The district court certified the nationwide class under Rule 23(b)(2), which permits class certification when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief . . . is appropriate respecting the class as a whole[.]” LabCorp argues that no single injunction could provide relief to all class members, because not all blind people prefer the same accommodations. But the class members in this action were not injured by LabCorp’s failure to meet their preferences; instead, all class members were injured by the complete inaccessibility of LabCorp kiosks for blind individuals. As the district court reasoned, by adding technological accommodations, the kiosks could be rendered accessible to the blind, thus addressing the injuries of the entire class. Although some class members may still prefer not to use the kiosks, providing them the ability to make that choice in the first place relieves any current injury. The district court did not abuse its discretion in reaching the same conclusion.

4. Lastly, we decline to address LabCorp’s argument that the district court erred in certifying two fail-safe classes. LabCorp appeals only the district court’s May 23 order, and not the revised class definitions in its June 13 order. Although LabCorp’s argument references the refined definitions from the June 13 order, only the May 23 order was attached to

LabCorp's interlocutory appeal, as is required by Federal Rule of Appellate Procedure 5. Further, LabCorp never attempted to amend or refile its interlocutory appeal to include the June 13 order. Therefore, LabCorp's argument is not properly before this court. *See Stockwell v. City and County of San Francisco*, 749 F.3d 1107, 1113 (9th Cir. 2014) ("We must police the bounds of our jurisdiction vigorously [concerning Rule 23(f) appeals] as elsewhere.")

AFFIRMED.

FILED

APR 18 2024

MOLLY C. DWYER, CLERK

U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LUKE DAVIS, et al., Plaintiff-Appellees, v. LABORATORY CORPORATION OF AMERICA HOLDINGS, DBA (doing business as) Labcorp, Defendant-Appellant.	No. 22-55873 D.C. No.2:20-cv-00893- FMO-KS Central District of California, Los Angeles ORDER
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Before: W. FLETCHER and MENDOZA, Circuit Judges, and SCHREIER,¹ District Judge.

Judge Mendoza has voted to deny the petition for rehearing en banc, and Judge Fletcher and Judge Schreier have recommended denying the petition for rehearing en banc. The full court was advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc, Dkt. No. 62, is DENIED.

¹ The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.