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By Anna Bunes
Deputy

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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

GREATER LOS ANGELES AGENCY ON DEAFNESS, INC., DANIEL JACOB, EDWARD KELLY AND JENNIFER OLSON, on behalf of themselves and all others similarly situated, Plaintiffs, v. TIME WARNER, INC., a Delaware Corporation, Defendant.	Case No. RG 11580682 **COMPLEX LITIGATION** **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE UNRUH CIVIL RIGHTS ACT, CAL. CIV. CODE § 51, *et seq.*, AND THE CALIFORNIA DISABLED PERSONS ACT, CAL. CIV. CODE § 54, *et seq.*** [illegible]

INTRODUCTION

1. This lawsuit seeks to end the ongoing violation of California anti-discrimination law that Defendant Time Warner, Inc. ("Defendant" or "Time Warner") commits against people who are deaf or hard of hearing by refusing to caption its online news videos at CNN.com. Through this refusal, Defendant denies people who are deaf or hard of hearing access to much of the most important content it offers through CNN.com. Without any form of captioning, deaf individuals cannot benefit from the broad, instant, and constant video news access that CNN.com provides. This lawsuit seeks to end Time Warner's ongoing discrimination by requiring it to provide closed captioning for its videos on CNN.com.

2. Time Warner is one of the largest media and entertainment companies in the world. Time Warner maintains approximately 1,100 subsidiaries, including Turner Broadcasting System, Inc.

3. Turner Broadcasting System Inc. is involved in various aspects of television production, distribution and operation. It is a major producer of news and entertainment programs and programming for the basic cable industry. It owns cable networks and program services, including various CNN networks (CNN, CNN Headline News, CNNfn and CNNSI), and it operates numerous online news sites including CNN.com.

4. In January 2011, CNN.com had 33 million unique visitors and 864 million monthly page views to the home page alone.

5. Viewership of CNN.com rises dramatically when breaking news becomes available. For example, according to its own website, CNN.com received 67 million global page views in a single day, March 12, 2011, immediately following the Japanese earthquake and tsunami. The vast majority of users who visited CNN.com that day watched a video; according to its own website, CNN.com received 60 million global video starts on March 12, 2011.

6. CNN.com operates in California and is visited by millions of Californians on a regular basis.

7. At any given time, CNN.com displays hundreds of short videos on its website providing news and other information. Some of these videos were previously broadcast on

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CNN's television channel with captioning, and then posted online for viewing at the viewer's convenience. Some of these videos are only shown online. None of these videos shown on CNN.com has captioning.

8. Captioning can be readily provided as an option for hearing impaired visitors to CNN.com without significant difficulty or expense and without interfering with the experience that non-disabled visitors to CNN.com enjoy.

9. Closed captioning means that users only see the captions by activating a key on their control system that turns on the captions. Hearing viewers who do not activate the closed caption do not see the captions. Technology is currently available that would enable Defendants to provide what is essentially closed captioning for videos on the CNN.com website.

10. Many of the videos on CNN.com are accompanied by text; however, this text rarely matches the content of the video and is not a substitute for captioning.

11. For example, on April 14, 2011, CNN.com posted a video entitled "Concrete Pumps Head to Nuclear Plant," which was a story about two American concrete pumps that were shipped to Japan to assist with a nuclear reactor emergency at the Fukushima power plant following a massive earthquake in the region. The text that accompanied the video had a different title and was about the cause of damage at the Fukushima power plant. The content of the video and the article regarding this unfolding international event were only tangentially related.

12. Moreover, even if the script accompanying the videos on CNN.com did match the audio content of the videos, this would still not provide an equivalent experience to making the videos themselves accessible. Users of CNN.com watch the videos because they provide a unique combination of visual information and audible information. The visual portion often contributes to the user's experience in ways that a purely audible or printed version does not provide. CNN.com goes to great effort to create and offer visitors to CNN.com video content precisely because many visitors prefer to experience the combined visual and audible content of

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a video rather than simply read printed articles. Deaf and hard of hearing visitors to CNN.com would equally benefit from this experience if the videos contained a captioning option.

13. Deafness and hearing loss are among the most prevalent conditions thought to constitute a disability. Approximately 1 million Americans are functionally deaf; including approximately 100,000 Californians.

14. Defendant captions the video content of its television broadcast programming, but it refuses to caption its online news videos. By refusing to caption its online news videos, Defendant has knowingly violated its legal obligation to make its website business accessible for millions of individuals who are deaf or hard of hearing, and has intentionally presented the video content on CNN.com in a way that cannot be accessed by persons who are deaf or hard of hearing.

15. Because Defendant has not complied with its legal obligations to provide captioning on CNN.com, it excludes Californians who are deaf or hard of hearing from a wealth of critical information regarding current events, which Defendant makes available to the hearing public.

16. Defendant's refusal to provide any captioned online video content on CNN.com violates California's Unruh Civil Rights Act, Civil Code §51 *et seq.* (the "Unruh Act") and the California Disabled Persons Act, California Civil Code §54 *et seq.* (the "CDPA").

JURISDICTION

17. This is an action for declaratory and injunctive relief and statutory damages under the Unruh Civil Rights Act, Cal. Civ. Code §§51 *et seq*, and for declaratory relief and statutory damages under the CDPA, Cal. Civ. Code §§54 *et seq*. This Court has jurisdiction over the claims alleged herein pursuant to Cal. Civ. Code, §§51, 52, Cal. Civ. Code §54.3.

VENUE

18. Venue is proper in Alameda County under California Code of Civil Procedure §395.5 because liability arises in Alameda County. Defendant has been and is committing the acts alleged herein in Alameda County, has been and is violating the rights of persons with disabilities in Alameda County, and has been and is causing injury to persons with disabilities in Alameda County.

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19. Plaintiff Daniel Jacob resides in Alameda County.

PARTIES

20. Plaintiff Daniel Jacob is an individual with a disability in that he is deaf. He is a citizen of California and a resident of Alameda County.

21. Plaintiff Edward Kelly is an individual with a disability in that he is deaf. He is a citizen of California.

22. Plaintiff Jennifer Olson is an individual with a disability in that she is deaf. She is a citizen of California.

23. Plaintiff The Greater Los Angeles Agency on Deafness ("GLAD") is a non-profit corporation duly organized under the laws of the State of California. GLAD's mission is to ensure that the deaf and hard of hearing community in California has access to the same opportunities as their hearing counterparts. GLAD provides direct services to deaf and hard of hearing individuals and engages in advocacy and education. GLAD's services include providing communication assistance, peer counseling, independent living skills education, employment placement and health education.

24. GLAD has had to divert its organizational resources due to Defendant's discriminatory conduct. Among other things, GLAD has expended staff time and resources trying to inform deaf and hard of hearing persons of breaking news events that it would not have had to expend if CNN.com provided captioning for its videos.

25. Defendant Time Warner, Inc. is a public company whose stock is traded on the New York Stock Exchange under the symbol "TWX." It is duly incorporated under the laws of the State of Delaware, with principal places of business in New York, New York, and Atlanta, Georgia.

26. Plaintiffs seek full and equal access to CNN.com and enjoyment of the services provided by CNN.com in California. CNN.com is owned and operated by Defendant.

FACTS

27. There are more than 1 million Americans who are functionally deaf, including more than 100,000 Californians.

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28. Many individuals who are deaf or have significant hearing loss utilize captioning to understand video content. Captioning displays dialogue, and may also identify who is speaking and include non-speech information conveyed through sound, such as sound effects, music and laughter.

29. Videos cannot be made accessible to many people with significant hearing loss by simply increasing the volume. Many such persons simply cannot hear sound at various frequencies. Therefore, even for those with some hearing, simply increasing the volume of speech is often insufficient to make speech understandable. Many other persons have no hearing at all.

30. For these deaf and hard of hearing persons, captioning is often the only method by which they can fully understand the information contained in videos.

31. Defendant has systematically failed and refused to provide captions for its video content on CNN.com.

32. GLAD contacted Time Warner prior to this litigation and requested, on behalf of deaf and hard of hearing persons in California, that Time Warner provide captioning for its videos on CNN.com. Time Warner refused this request and has therefore intentionally excluded deaf and hard of hearing visitors to CNN.com access to the videos offered to hearing visitors.

EXPERIENCES OF NAMED PLAINTIFFS

33. Plaintiff Daniel Jacob is the Information Technology Specialist at the Deaf Counseling, Advocacy & Referral Agency (DCARA) in San Leandro, California. In his professional capacity, Mr. Jacob ensures that all DCARA video outreach has closed captioning. He visits CNN.com daily from computers at both his home and office. Mr. Jacob is deaf and thus is excluded from using CNN.com's online videos as a news source.

34. Plaintiff Edward Kelly is the Regional Director of Orange County Deaf Equal Access Foundation, one of GLAD's outreach offices. In his professional capacity, Mr. Kelly provides direct services to other deaf and hard of hearing individuals on a variety of issues

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including employment counseling, interpreter referrals and help with public benefits. Mr. Kelly visits CNN.com daily from computers at both his home and office. Because he is deaf, Mr. Kelly is excluded from using CNN.com's online videos as a news source. In order to watch videos with captioning, Mr. Kelly must wait until the news airs on television.

35. Plaintiff Jennifer Olson is the Deputy Director of GLAD. In her professional capacity, Ms. Olson oversees all of GLAD's programs including the human services and health programs. Additionally, Ms. Olson oversees GLAD's grant applications and participates in GLAD's budgeting process. Ms. Olson heavily relies on the internet to conduct research for her job. She regularly visits CNN.com in an effort to gather information relevant to her diverse job duties. Ms. Olson was particularly interested in watching videos regarding the potential government shutdown in April 2011 as it directly impacted GLAD's government services programs. Because none of the videos on CNN.com concerning this topic were accessible to her, Ms. Olson had to rely on only a part of CNN.com's content—specifically, the written text presented separately from the videos.

CLASS ALLEGATIONS

36. Pursuant to Code of Civil Procedure §382, Plaintiffs bring this action on behalf of themselves and all other persons similarly situated. The class the named Plaintiffs seek to represent is composed of all persons who are deaf or hard of hearing in California and require captions to access the video content on CNN.com.

37. The persons in the class are so numerous that joinder of all such persons is impractical and the disposition of their claims in a class action is a benefit to the parties and to the Court.

38. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented in that they, or their members, have been and continue to be denied their civil rights to access the video content on CNN.com due to the lack of captioning.

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39. Common questions of law and fact predominate, including questions raised by Plaintiffs' allegations that Defendant does not provide access to CNN.com because it has failed and refused to caption the video content on CNN.com.

40. Claims of the named Plaintiffs are typical of the claims of the class as a whole because the named Plaintiffs are similarly affected by Defendant's failure to provide access to CNN.com.

41. The named Plaintiffs are adequate class representatives because they are directly affected by Defendant's failure to provide access to CNN.com. The interests of the named Plaintiffs are not antagonistic to, or in conflict with, the interests of the class as a whole. The attorneys representing the class are experienced in class action litigation, particularly on behalf of persons with disabilities.

42. Defendant has acted and/or failed to act on grounds generally applicable to the class by failing to provide captions for video content on CNN.com, thereby making appropriate final declaratory and/or injunctive relief with respect to the class as a whole.

FIRST CAUSE OF ACTION

(Violation of California Civil Code §§ 51, *et seq.* – the Unruh Act)

43. Plaintiffs incorporate by reference the foregoing allegations as if set fully herein.

44. The Unruh Act, Cal. Civ. Code § 51, guarantees all people within the jurisdiction of California, no matter what their disabilities, the full and equal accommodations, advantages, facilities, privileges and services of all business establishments of every kind whatsoever.

45. Various individuals who receive services from GLAD, the individual named Plaintiffs and the proposed class are people with disabilities under Cal. Civ. Code §51.

46. CNN.com is a business establishment within the meaning of Cal. Civ. Code §§ 51, *et seq.*

47. Through CNN.com, Time Warner Inc. offers people within the jurisdiction of California the video content on the CNN.com website.

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48. Despite being placed on notice that the lack of captioning on CNN.com excludes deaf and hard of hearing patrons from much of the benefits and advantages of the website, Defendant has continued to post videos on CNN.com without any form of captioning.

49. Because of Defendant's refusal to caption the videos on CNN.com, Californians who are deaf or hard of hearing have been denied full and equal access to CNN.com's video content, have not been provided services that are provided to other Californians who are not disabled, and/or have been provided services that are inferior to the services provided to non-disabled Californians. These violations are ongoing. Defendant's failure and refusal to correct the barriers to full and equal access to its video content for Plaintiffs and the putative class constitutes intentional discrimination.

50. Defendant's actions were and are in violation of the Unruh Act.

51. Plaintiffs are thus entitled to injunctive relief remedying the discrimination, pursuant to Cal. Civ. Code §52.

52. Plaintiffs are also entitled to statutory damages under Cal. Civ. Code §52.

53. Cal. Civ. Code § 52 further entitles Plaintiffs to reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs request relief as set forth below.

SECOND CAUSE OF ACTION

(Violation of Cal. Civ. Code §§ 54, *et seq.* – the California Disabled Persons Act)

54. Plaintiffs incorporate by reference the foregoing allegations as if set fully herein.

55. The California Disabled Persons Act, Cal. Civ. Code §§ 54 and 54.1 guarantees people with disabilities full and free use of all public places and full and equal access to all places to which the public is invited.

56. Time Warner is violating the right of deaf and hard of hearing persons to full and equal access to public places by denying full and equal access to CNN.com.

57. CNN.com constitutes a "public place" within the meaning of the CDPA, Cal. Civ. Code § 54.1. By failing to provide any form of captioning, the areas of CNN.com that offer video content are inaccessible to patrons who are deaf and hard of hearing.

58. The actions of Defendant were and are in violation of the CDPA.

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59. Plaintiffs are thus entitled to statutory minimum damages for each offense, and to declaratory relief, under Cal. Civ. Code § 54.3.

60. Plaintiffs are also entitled to reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs request relief as set forth below.

THIRD CAUSE OF ACTION

(Declaratory Relief, Code Civ. Proc. § 1060)

61. Plaintiffs incorporate by reference the foregoing allegations as if set fully herein.

62. Plaintiff Kelly, Jacob and Olson and the Organizational Plaintiffs contend that CNN.com, which Time Warner owns, operates, and/or controls, must provide deaf and hard of hearing people full and equal access to its website contents and services under California Civil Code §§ 51, *et seq.* and California Civil Code §§ 54, *et seq.*, which prohibit discrimination against people who are deaf and hard of hearing. Defendant Time Warner contends that it may lawfully deny people who are deaf and hard of hearing full and equal access to CNN.com and its contents.

63. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

RELIEF REQUESTED

64. A declaration that Defendant is violating the Unruh Act, Cal. Civ. Code §§51 and 52 and the California Disabled Persons Act, Cal. Civ. Code §§54 and 54.3, by failing to provide captioning to communicate video content on CNN.com to deaf and hard of hearing individuals in California;

65. A preliminary and permanent injunction, prohibiting Defendant from continuing to violate section 51 of the Unruh Act in California, and requiring Defendant to take steps necessary to ensure that the benefits and advantages offered by CNN.com are fully and equally enjoyable to persons who are deaf or have hearing loss in California;

66. Damages in an amount to be determined by proof, including applicable statutory damages pursuant to Cal. Civ. Code §52 or Cal. Civ. Code § 54.3, *see* Cal. Civ. Code § 54.3 (c)

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("A person may not be held liable for damages pursuant to both [Section54.3] and Section 52 for the same act or failure to act.");

67. Plaintiffs' reasonable attorneys' fees, expenses, and costs of suit as provided for by law, including Cal. Civ. Code §§ 52 and 54.3 and Cal. Code Civ. Pro. § 1021.5, to be paid for by Defendant;

68. Such other and further relief as the Court deems just and proper.

Dated: June 15, 2011

Respectfully Submitted,

DISABILITY RIGHTS ADVOCATES

By: _____
Laurence W. Paradis

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