

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

RUSSELL KANE & CHRISTOPHER  
MYERS, individually and on behalf of  
all others similarly situated,

**CLASS ACTION COMPLAINT**

**Case No.:**

*Plaintiffs,*

*-against-*

**Jury Demanded**

ZOOM VIDEO COMMUNICATIONS,  
INC.; and, DOES 1-10,

*Defendant.*

---

Russell Kane and Christopher Myers (“Plaintiffs”), individually and on behalf of all others similarly situated, by and through undersigned counsel, 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. In a September 25, 2018, letter to U.S. House of Representative Ted Budd, U.S. Department of Justice Assistant Attorney General Stephen E. Boyd confirmed that public accommodations must make the websites they own, operate, or control equally accessible to individuals with disabilities. Assistant Attorney General Boyd’s letter provides:

The Department [of Justice] first articulated its interpretation that the ADA applies to public accommodations’ Websites over 20 years ago. This interpretation is consistent with the ADA’s title III requirement that the goods, services, privileges, or activities

provided by places of public accommodation be equally accessible to people with disabilities.<sup>1</sup>

2. Plaintiffs Russell Kane and Christopher Myers are hearing-impaired individuals who rely upon auxiliary aids and services, interpreters, and Video Remote Interpreting (“VRI”) communication software, to remain as independent as possible. These auxiliary aids and services allow hearing-impaired individuals to participate in and receive the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.

3. Defendant Zoom Video Communications, Inc. (“Defendant” or “Zoom”) discriminated against Plaintiffs and those similarly situated by imposing a surcharge in order to effectively participate in and benefit from Defendant’s services free from discrimination.

4. 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 full and equal enjoyment, and a meaningful opportunity to participate in and benefit from Defendant’s services without the surcharge for their disability. 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.

5. Plaintiff Christopher Myers also brings this action individually and on behalf of all other similarly situated California residents and seeks declaratory,

---

<sup>1</sup> See Letter from Assistant Attorney General Stephen E. Boyd, U.S. Department of Justice, to Congressman Ted Budd, U.S. House of Representatives (Sept. 25, 2018) (available at <https://images.cutimes.com/contrib/content/uploads/documents/413/152136/adaletter.pdf>) (last visited December 16, 2020).

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"), and for statutory damages, in accordance with California Civil Code § 52(a).

6. Plaintiff Russell Kane also brings this action individually and on behalf of all other similarly situated New York 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 New York's Human Rights Laws, N.Y. Exec. Law § 290 *et seq.*, and for statutory damages, in accordance with N.Y. Exec. Law § 296.

7. The individual Plaintiffs have utilized Defendant's video conference and web conferencing services and were denied full and equal access as a result of Defendant's surcharge on the technology required for closed captioning. Without this technology, Plaintiffs' only option to equally use and communicate on Defendant's video conference service is to attempt lip-reading through a video chat.

8. Lip-reading, or speech reading, is the ability to understand the speech of another by watching the speaker's mouth and face. It is an extremely speculative means of communication and no substitute for closed captioning on a video call. Approximately 40% of the spoken sounds of aural language are visible, and many of those appear identical on the lips.<sup>2</sup> Even the most accomplished lip-readers, in a well-lit room, in a one-to-one situation, have been found to understand

---

<sup>2</sup> See Centers for Disease Control and Prevention, *Speech Reading*, <https://www.cdc.gov/ncbddd/hearingloss/parentsguide/building/speech-reading.html> (Last visited December 17, 2020). See also Altieri NA, Pisoni DB, Townsend JT. Some normative data on lip-reading skills, found at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3155585/#:~:text=A%20lip%2Dreading%20recognition%20accuracy,standard%20deviations%20above%20the%20mean.&text=With%20these%20results%2C%20it%20is,to%20a%20normal%2Dhearing%20population> (Last visited December 17, 2020).

four to five words in a twelve-word sentence.<sup>3</sup> Absent the purchase of the additional technology, lip-reading is the only way to attempt to participate in Zoom Video Chats.

9. Defendant requires hearing-impaired individuals to purchase additional technology to participate fully in the services it offers. While Defendant already possesses the technology to support the closed captioning software, the services can cost \$200.00 per hour or higher.<sup>4</sup> Defendant permits third-party software companies to integrate a closed captioning service into its software. This is the only tool for Plaintiffs to fully participate in the use of Defendant's services.

10. By failing to make its services accessible to hearing impaired persons, Defendant, a public accommodation subject to Title III of the ADA and the Unruh Act, deprives deaf and hearing-impaired individuals of the full benefits of Defendant's services—all benefits it affords nondisabled individuals—thereby increasing the sense of isolation and stigma among these Americans that Title III of the ADA, N.Y. Exec. Law § 290 *et seq.* and the Unruh Act were meant to redress.

11. Defendant's discrimination sends a message that it is acceptable for service providers to adopt policies, procedures, and practices that deprive deaf and hearing-impaired individuals of the opportunity to fully participate in its services.

12. This discrimination is particularly acute during the current COVID-19 global pandemic. According to the Centers for Disease Control and Prevention ("CDC"), Americans living with disabilities are at higher risk for severe illness from COVID-19 and are therefore recommended to shelter in place throughout the duration of the pandemic.<sup>5</sup> This underscores the importance of access to online

---

<sup>3</sup> *Id.*

<sup>4</sup> <https://support.zoom.us/hc/en-us/articles/207279736-Managing-and-viewing-closed-captioning>

<sup>5</sup> See Centers for Disease Control and Prevention Website, *Coronavirus Disease 2019 (2019)*, available at [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-)

services, such as Defendant’s video conferencing platform, for this especially vulnerable population. For many disabled individuals, they are relying on Defendant’s video services for contact with friends and family – a service that is free for those who can hear, but requires a surcharge for the hearing-impaired.

13. The COVID-19 pandemic is particularly dangerous for disabled individuals.<sup>6</sup> The overwhelming burden on hospitals is leading to a concern that the emergency services will ration treatment. Although the U.S. Department of Health and Human Services has issued guidance that no priority treatment will occur, disabled individuals are in fear that their diminished capacity to communicate will affect their treatment.<sup>7</sup> With public health experts expecting social distancing to extend through 2022, and the uncertainty surrounding businesses transitioning back to normal operations, the importance of accessible online services has been heightened. During these unprecedented times, disabled individuals risk losing their jobs, experiencing difficulty acquiring services like health care, and lacking the information they need to stay safe.<sup>8</sup>

---

[ncov%2Fspecific-groups%2Fhigh-risk-complications.html](#) (last visited December 4, 2020) (“Based on currently available information and clinical expertise, older adults and people of any age who have serious underlying medical conditions might be at higher risk for severe illness from COVID-19.”).

<sup>6</sup> See The New York Times, *‘It’s Hit Our Front Door’: Homes for the Disabled See a Surge of Covid-19* (2020), available at <https://www.nytimes.com/2020/04/08/nyregion/coronavirus-disabilities-group-homes.html?smid=fb-nytimes&smtyp=cur> (last accessed December 4, 2020) (“As of Monday, 1,100 of the 140,000 developmentally disabled people monitored by the state had tested positive for the virus, state officials said. One hundred five had died—a rate far higher than in the general population”).

<sup>7</sup> See The Atlantic, *Americans With Disabilities Are Terrified* (2020), available at <https://www.theatlantic.com/politics/archive/2020/04/people-disabilities-worry-they-wont-get-treatment/609355/> (last visited December 4, 2020) (explaining that disabled individuals are inherently more susceptible to the virus, leading to complications in hospital in which the individuals are unable to effectively communicate with doctors while intubated).

<sup>8</sup> See Slate, *The Inaccessible Internet 2020*, available at <https://slate.com/technology/2020/05/disabled-digital-accessibility-pandemic.html> (last visited December 4, 2020).

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.