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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ALAMEDA**

13 **STATE OF CALIFORNIA**, ex rel. **BRYAN**
14 **BASHIN**, and **BRYAN BASHIN**, in his
individual capacity,

15 Plaintiffs,

16 vs.

17 **CONDUENT INCORPORATED**, a New York
18 corporation and **CONDUENT STATE &**
LOCAL SOLUTIONS, INC., a New York
19 corporation,

20 Defendants.

Case No.: RG18888208

**SECOND AMENDED COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
FALSE CLAIMS ACT AND THE UNRUH
CIVIL RIGHTS ACT.**

DEMAND FOR JURY TRIAL

Before the Hon. Brad Seligman
Department 23

Trial Date: none set

1 Plaintiff Bryan Bashin, on behalf of the People of the State of California (“State” or
2 “California”), alleges as follows:

3 **I. INTRODUCTION**

4 1. This is a *qui tam* action against Conduent Incorporated and Conduent State & Local
5 Government Solutions (collectively, the “Defendants”) to recover damages, civil penalties, and
6 attorneys’ fees and costs on behalf of California for the Defendants’ violation of the California
7 False Claims Act, Government Code sections 12650(a)(1), (a)(2), and (a)(8), in connection with
8 their contract with the State of California Department of Parks and Recreation (“DPR”) to design,
9 test, and maintain ReserveCalifornia.com, the public-facing website that is the primary means by
10 which visitors book campgrounds and lodging in California state parks.

11 2. The Defendants promised DPR that they would deliver a website that would comply with
12 state and federal accessibility requirements and be accessible to, and could be used by, visitors with
13 disabilities, including blindness.

14 3. Instead, Defendants delivered a website that—on its “go-live” date of August 1, 2017 and up
15 to the present date—has been inaccessible to blind users like Mr. Bashin, and to people with limited
16 vision or manual dexterity necessary to navigate the website. As a result, Mr. Bashin and other
17 similarly situated people with such disabilities—likely numbering tens of thousands—have been
18 deprived of the ability to use the website to secure reservations in California’s most popular parks
19 and been relegated to partial and inferior access to the benefits of state parks.

20 4. Because of the deprivation described in the previous paragraph, Mr. Bashin (in his
21 individual capacity) seeks declaratory and injunctive relief and statutory damages under the Unruh
22 Civil Rights Act, Civil Code sections 51 and 52, to remedy the Defendants’ interference with his
23 right to be free from discrimination, as a blind person, when using the state services available
24 through ReserveCalifornia.com.

25 5. Mr. Bashin is an outdoor enthusiast, frequent camper, and frequent user of the California
26 state parks. He camps roughly four to six times per year, of which, on average, three camping trips
27 are in California state parks. He most recently camped at a California state park in June 2019. He
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1 seeks online information regarding California state park sites approximately eight to ten times per
2 year.

3 6. When seeking information or to reserve a campsite, Mr. Bashin first tries to do so online,
4 independently. Because he is blind, Mr. Bashin uses a screen-reader program to navigate the
5 internet. Mr. Bashin has tried repeatedly to use DPR's new online reservation system since shortly
6 after ReserveCalifornia.com became available to the public on August 1, 2017. He has found,
7 notwithstanding repeated efforts, that he could not access the website using his screen-reader
8 software.

9 7. On the multiple occasions during the past two years that Mr. Bashin has sought online
10 information about state parks, and the multiple occasions that he has camped at state parks, Mr.
11 Bashin tried independently to use ReserveCalifornia.com. Each time, he has been denied access to
12 its benefits because the website was not compatible with standard screen-reader software.

13 8. When Mr. Bashin has found that he cannot use ReserveCalifornia.com, he arranges a time
14 when a friend can assist him in reviewing and comparing online park descriptions, availability and
15 other information necessary to select a camping site with available dates and features that best
16 match his preferences, and then with reserving the selected site. Working with another person to
17 obtain the information available online and to book campsites, even when that person is a friend
18 with whom Mr. Bashin has a rapport, is time-consuming, laborious, and limited in its scheduling
19 availability compared to independent online access, and places Mr. Bashin in an inferior position in
20 gaining access to highly sought-after camping and lodging locations.

21 9. To afford people with disabilities an equal opportunity to obtain information and web
22 services, a website must be compatible with assistive technologies, such as screen-reader software
23 for the blind and voice-control software for those who cannot type or click a mouse by hand. To be
24 compatible with assistive technologies, the website's design must comply with digital accessibility
25 standards, much the same way a building must comply with construction standards such as by
26 adding ramps to be compatible with wheelchair use. The functional specifications for web design
27 contained in the Web Content Accessibility Guidelines ("WCAG") 2.0, Level AA, published by the
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1 World Wide Web Consortium (“W3C”), supply digital accessibility standards for the internet
2 technology industry.

3 10. In January 2015, DPR published a Request for Proposals (“RFP”), seeking a contractor to
4 redesign the public-facing website that is the primary means by which visitors book campgrounds
5 and lodging in California state parks. From the outset, through its RFP and subsequent contractual
6 provisions, DPR explicitly required the successful bidder to design and test ReserveCalifornia.com
7 to ensure that, from the date the website became available to the public, it would comply with
8 WCAG 2.0 Level AA and offer equal access to people with disabilities who use assistive
9 technologies.

10 11. On August 12, 2015, a company doing business as Xerox State & Local Solutions, Inc.,
11 which subsequently was assumed into Conduent Incorporated, and now does business under
12 contract with DPR as “Conduent State & Local Solutions, Inc. (formerly Xerox State & Local
13 Solutions, Inc.),” submitted a proposal to DPR, and was awarded the contract on March 30, 2016.

14 12. Xerox State & Local Solutions, Inc. submitted the bid documents, statements or records
15 upon which they knew DPR would rely in awarding the contract, knowing that they did not intend
16 to conduct the design and testing activities necessary to ensure that the website complied with the
17 accessibility requirements established by DPR. The false representations in the bid were material to
18 the State’s decision to award Defendants the contract approved on March 30, 2016 and amended to
19 change the contractor’s name to Conduent State & Local Solutions on March 30, 2017 (the
20 “Contract”), and later to pay for false claims that Defendants submitted under the Contract, such as
21 those made after the website became available to the public on August 1, 2017.

22 13. Defendants continued their knowing falsity in the Web Design Plan and Master Testing Plan
23 (collectively, “Plans”) that the Contract required them to submit prior to the major design activities
24 for the website and prior to making it available to the public. The Plans contained false statements
25 or records material to Defendants’ later false claims for payment. Defendants knew of the falsity of
26 these submissions when they were made.

1 14. Defendants' knowing falsity in the records or statements they submitted in their bid
2 materials and Plans and in other written and oral communications, had a natural tendency to
3 influence, or were capable of influencing, DPR's payment of Defendants' later claims for state
4 funds. These submissions influenced Defendants' winning the Contract; obtaining DPR approval to
5 move the project forward; and obtaining DPR approval to make the website available to the public,
6 after which Defendants could claim payment in the form of fees and a percentage of revenue that
7 the Contract allowed them to receive following the website's "go-live" date. The knowingly false
8 bid materials and Plans were material to DPR's decision to pay Defendants' later false claims under
9 the Contract.

10 15. Defendants failed to use website design practices that would ensure compliance with
11 WCAG 2.0 Level AA standards and equal access for people with disabilities and failed to conduct
12 even minimally sufficient accessibility testing that would have revealed the inaccessibility of
13 ReserveCalifornia.com. They delivered a website inaccessible to blind people and others with
14 disabilities who navigate the internet using assistive technology, filled with hundreds, if not
15 thousands, of violations of WCAG 2.0 Level AA standards.

16 16. ReserveCalifornia.com remains out of compliance with the contractual accessibility
17 requirements as of July 9, 2019.

18 17. Since August 1, 2017, Defendants have presented false claims for payment to DPR,
19 knowing that their representations and certifications regarding its compliance with mandatory
20 accessibility requirements in the Contract were false.

21 18. As a result, Defendants have injured the State, depriving it of substantial benefits of the
22 website for which the State has paid Defendants millions of dollars.

23 19. Defendants have also deprived the State of the accessible public website it is required by
24 federal and state disability rights laws to provide. As a result of the magnitude and severity of
25 inaccessibility in the non-conforming website Defendants delivered, visitors with several categories
26 of disabilities, including Plaintiff Bryan Bashin, are now denied an opportunity to book online
27 reservations and fully enjoy California's most popular state parks.

1 20. Defendants have injured, and continue to injure, Mr. Bashin, by their actions and inactions
2 in designing, testing, and maintaining a website through which DPR offers benefits of its state parks
3 services, programs, and activities from which Mr. Bashin is excluded because of his disability.

4 **II. PARTIES**

5 21. *Qui Tam* Plaintiff BRYAN BASHIN is a resident of California and lives in Alameda
6 County. Mr. Bashin is blind and a person with disabilities within the meaning of the Americans
7 with Disabilities Act of 1990, 42 U.S.C. 12132 (“Title II”) and the Unruh Civil Rights Act,
8 California Civil Code sections 51 and 52.

9 22. Defendant CONDUENT INCORPORATED is a New York corporation with headquarters at
10 100 Campus Drive, Suite 200, Florham Park, New Jersey, 07932. Conduent Incorporated was
11 created in January 2017 as part of Xerox Corporation’s divestment of its former business services
12 division. Pursuant to a Separation and Distribution Agreement dated December 30, 2016, Conduent
13 Incorporated assumed all liabilities related to the “Conduent Group” of companies, which included
14 Xerox State & Local Solutions, Inc.

15 23. Defendant CONDUENT STATE & LOCAL SOLUTIONS, INC. is a New York
16 corporation. It is a wholly owned subsidiary of Conduent Incorporated, with which it shares
17 corporate headquarters, at 100 Campus Drive, Suite 200, Florham Park, New Jersey, 07932.
18 Conduent State & Local Solutions assumed the obligations of Xerox State & Local Solutions, Inc.
19 under the Contract pursuant to a Contract amendment that its agent signed on March 30, 2017.

20 **III. JURISDICTION AND VENUE**

21 24. This court has jurisdiction over the claims alleged herein pursuant to the California False
22 Claims Act, California Government Code section 12652(C)(2); the Unruh Civil Rights Act,
23 California Civil Code section 52; and California Code of Civil Procedure section 1060.

24 25. This court has jurisdiction over Defendants because this action is based on Defendants’
25 contracting to do business in and with the State, and because of Defendants’ contacts with the State.
26 Defendants are corporations authorized to do business in California and conduct substantial
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1 business in California. Defendants have developed and maintained the website,
2 ReserveCalifornia.com, for use throughout California and in Alameda County.

3 26. Venue is proper in Alameda County because liability arises in part in Alameda County,
4 where Plaintiff resides, and because Defendants are all non-resident corporations, and Plaintiff
5 designates this venue.

6 **IV. FACTS**

7 **A. Disability Access Laws and Contractual Accessibility Requirements**

8 27. Online services provided by state governmental entities must adhere to state and federal
9 statutes and regulations designed to assure equal opportunity to people with disabilities. These
10 include California Government Code section 11135 (including provisions now located at
11 Government Code section 7405); Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. § 794d
12 (“Section 508”); and the California State Administrative Manual (“SAM”) section 4833.

13 28. Since well before DPR issued its RFP and Defendants signed the Contract, California law
14 has required that “state governmental entities, in developing, procuring, maintaining, or using
15 electronic or information technology, either indirectly or through the use of state funds by other
16 entities, shall comply with the accessibility requirements of Section 508 of the federal
17 Rehabilitation Act of 1973 ... and regulations implementing that act” Cal. Gov’t Code § 7405(a)
18 (previously found in Cal. Gov’t Code § 11135(d)).

19 29. Section 508 extends the disability rights mandate to electronic information and data,
20 requiring covered entities to ensure that the electronic information and data they procure and use
21 provides comparable access to members of the public with disabilities. 29 U.S.C. § 794d(a)(1)(A).
22 Section 508 includes specific, mandatory requirements applicable to Defendants, who developed the
23 ReserveCalifornia.com website on behalf of DPR.

24 30. As SAM section 4833 explains, in requiring compliance with Section 508, Government
25 Code section 7405 mandates that “individuals with disabilities, who are members of the public
26 seeking information or services from an Agency/state entity, have access to and use of information
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1 and data that is comparable to that provided to the public who are individuals without disabilities
2 unless an undue burden would be imposed on the Agency/state entity.”

3 31. On January 18, 2017, the Access Board published a final rule that added compliance with
4 WCAG 2.0 Level AA to the specific, mandatory requirements for entities covered by Section 508.
5 34 C.F.R. §§ 1194.1 and Part 1194 Appendix E205.4.

6 32. As Government Code section 11135, Section 508, and SAM section 4833, the laws and
7 regulations that the RFP and the Contract reference, are now aligned in requiring compliance with
8 WCAG 2.0 Level AA—which the State also independently required in the RFP and Contract—and
9 these state and federal requirements overlap in their general equal access requirements, they are
10 referred to herein, collectively, as “Section 11135.”

11 **B. DPR’s Request for Proposal and Contract for Online Services**

12 1. Scope of Work and Deliverables

13 33. On or about January 21, 2015, DPR issued an RFP soliciting bids for recreation reservations
14 sales and management services. The RFP included a detailed Scope of Work (“SOW”) and
15 Deliverables with requirements for successful bids.

16 34. The SOW required the design, development, and user testing of a public website that would
17 provide users access to information in a clear and informative manner and allow transactions like
18 booking tours, reserving campsites or lodgings, and purchasing passes or merchandise.

19 35. The SOW defines recreation field sales “go-live” as “the first date that recreation sales are
20 made available to the public,” and reservation transactions “go-live” as the first date that the
21 website or contact center is made available to the public. It details explicit, sequential “Go-Live
22 Prerequisites” that must occur before the website becomes available to the public and the contractor
23 can claim payment. These include a trial phase, followed by service acceptance.

24 36. Under the structure of the SOW requirements, which were incorporated into the Contract, in
25 allowing the website to go live, the Contractor must certify that it has complied with website
26 accessibility design requirements and testing requirements.

1 37. The SOW required the Contractor to provide ongoing operations and maintenance, including
2 website improvements and technical support to modify or enhance the Service to ensure that it
3 supports DPR requirements.

4 38. The SOW required prospective contractors to submit a draft Website Design Plan with their
5 proposal, and then to submit a final Website Design Plan following award of the contract. The SOW
6 required the Contractor's Website Design Plan to describe how it would (1) comply, *inter alia*, with
7 Section 11135 and (2) develop an accessible user interface design and screen mockups.

8 39. The SOW identified the requirements listed in the paragraph immediately above as "(M)"
9 for mandatory.

10 40. In separate User Interface Requirements, the SOW identified meeting User Interface
11 Requirements that included compliance with Section 11135 as "(M)" for mandatory.

12 41. The State therefore identified compliance with Section 11135 as one of five major aspects of
13 website design and configuration that were mandatory, and then reiterated the need for compliance
14 with Section 11135 as a mandatory User Interface Requirement, a second of the five major aspects
15 of website design.

16 42. DPR required bidders to specify in their SOW submission how they proposed to validate,
17 through testing and demonstration, that the contracted-for services satisfied the mandatory
18 accessibility requirements during the testing phase of the project.

19 43. The RFP specified that DPR would not accept delivery of the ReserveCalifornia.com
20 website until testing was completed and demonstrated compliance with the mandatory accessibility
21 standards.

22 44. In addition to identifying the accessibility provisions as mandatory, DPR included a
23 contractual provision imposing hefty liquidated damages for non-compliance with the accessibility
24 requirements. Under the Contract's Special Terms and Conditions, DPR may assess liquidated
25 damages of up to \$10,000 per calendar day if the Contractor fails to provide a website that, by a
26 defined "In-Service Date" of August 1, 2017, meets "Mandatory (M) requirements," including those
27 relating to compliance with accessibility requirements.

1 45. Xerox State & Local Solutions, through David Wright, Senior Vice President of Xerox State
2 & Local Solutions, Inc., and DPR finalized the Contract on March 30, 2016. The value of the
3 Contract was estimated, by its own cost and fee provisions, as in excess of \$66 million at the time of
4 execution.

5 46. On March 30, 2017, David Wright, as Vice President of “Conduent State & Local Solutions,
6 Inc. (formerly Xerox State & Local Solutions, Inc.)” signed an amendment to change the
7 contractor’s name from Xerox State & Local Solutions, Inc. to Conduent State & Local Solutions,
8 Inc. Pursuant to the March 30, 2017 amendment, Conduent State & Local Solutions, Inc. assumed
9 the rights and obligations of Xerox State & Local Solutions, Inc. under the Contract.

10 2. Invoicing and Payment Pursuant to the Contract

11 47. The Contract explains that the contractor may request payment from DPR following “go-
12 live” by submitting an invoice not more frequently than monthly in arrears for the preceding
13 calendar month.

14 48. Payment amounts are based on a formula that includes eligible reservation-based
15 transaction fees and a percentage of eligible recreation field sales revenue.

16 **C. Defendants’ False Statements and Records Material to Their Later False Claims**

17 1. Documents in Response to RFP Containing False Statements and Records

18 49. In its response to the RFP, subsequently incorporated into the Contract, Xerox State & Local
19 Solutions, Inc. described extensive qualifications and practices to ensure it would meet the SOW’s
20 accessibility requirements.

21 50. Xerox State & Local Solutions, Inc. assured DPR in their “Bidder Detailed Response
22 Document” that the “Xerox web design team understands the requirements of Section 508 and
23 WCAG 2.0”; that accessibility guidelines were “embedded in our design team culture”; and that
24 “testing is conducted throughout the design process to conform to standards.”

25 51. Xerox State & Local Solutions, Inc. further asserted in its “Bidder Detailed Response
26 Document” that its web design process followed such accessibility practices as checking for
27

1 keyboard accessibility, evaluating form accessibility and usability, checking images, verifying color
2 and contrast, testing content scaling, and checking headings and tags.

3 52. Xerox State & Local Solutions, Inc. submitted a draft Website Design Plan that included a
4 user interface design with draft screen mockups. According to Xerox State & Local Solutions, Inc.,
5 the Website Design Plan—which “defines and describes all major aspects of website design and
6 configuration”—“demonstrates compliance with Section 11135 of the California Government code
7 and USAB Section 508 standards, and Web Content Accessibility Guidelines (WCAG) 2.0
8 developed by the World Wide Web Consortium (W3C).” This statement was knowingly false.

9 53. Xerox State & Local Solutions, Inc. stated that its website design undergoes extensive
10 testing to maintain compliance with industry standards for accessibility, such as Section 508 and
11 WCAG Level 2.0, and that each new feature or function on the site undergoes internal and third-
12 party testing for accessibility in adherence to these standards.

13 54. Xerox State & Local Solutions, Inc. presented testing reports to DPR that had been
14 generated by AChecker and WAVE, third-party “automated testers” that it described as “standard[]
15 in these type of tests” and that are listed as accessibility tools by WC3.org, the organization that
16 publishes the WCAG 2.0 Level AA standards with which the website must comply. Xerox State &
17 Local Solutions, Inc. stated that running these automated testing tools produced no errors. It
18 suggested that results were sufficient to demonstrate compliance with the SOW’s accessibility
19 requirements. This was knowingly false.

20 55. In fact, Defendants’ use of automated testing alone with tools such as AChecker and WAVE
21 was insufficient either to ensure accessibility or to demonstrate conformance with accessibility
22 standards such as Section 508 and WCAG 2.0. Defendants’ statement to the contrary was
23 knowingly false.

24 56. Defendants’ non-conforming design practices resulted in delivery to DPR of a website that
25 was inaccessible to visitors who rely on assistive technology. Defendants’ assurances to DPR that
26 the website would comply with the Contract’s accessibility requirements if Defendants used such
27 non-conforming design practices were knowingly false.

1 62. Defendants’ failure to include accessibility testing in SFT or UAT in its 42-page Master Test
2 Plan was likely to result in a website that was not accessible and was not compliant with
3 accessibility standards. Defendants’ statement to the contrary was knowingly false.

4 63. User testing, done by having humans, and not just automated tools, access site features and
5 verify functionality, would have discovered that the website is non-compliant with Section 11135
6 standards and that it was inaccessible to visitors with disabilities. The methods that Defendant relied
7 upon in its testing practices fall recklessly below industry standards for developing accessible and
8 Section 11135-compliant websites.

9 64. The degree to which ReserveCalifornia.com website was inaccessible when it went “live” on
10 August 1, 2017 demonstrates design and testing inconsistent with Defendants’ knowingly false
11 representations in their Plans. These knowingly false representations following award of the
12 Contract were material to their false claims subsequent to “go-live.”

13 4. Website Submitted for “Go-Live” As False Statement or Record

14 65. ReserveCalifornia.com became available for the public to use on or about August 1, 2017.

15 66. The website is not accessible to internal or external blind or other disabled users within the
16 meaning of the Section 11135 requirements under the Contract. Conduent State & Local Services,
17 Inc.’s submission of a website that it falsely presented as meeting the Contractual requirements for
18 Go-Live was material to its false claims to DPR subsequent to “go-live.”

19 67. For example, many pages have no titles, have no headings, have unlabeled or mislabeled
20 controls or images, use non-compliant color schemes, or use visual-only challenges, all of which
21 violate the general legal requirement for accessibility and the required WCAG 2.0 functional
22 specifications required by the Contract.

23 68. These and numerous other website design elements do not conform to the legal
24 requirements in Section 508 or WCAG 2.0 AA accessibility standards and make it difficult or
25 impossible for a blind user to complete many transactions, as further evidenced by Plaintiff Bryan
26 Bashin’s inability to independently use the website on numerous occasions.

1 provisions for invoicing and payment in the Contract, while knowingly, falsely certifying
2 compliance with accessibility standards material to the state’s decision to pay.

3 76. Each one of the Conduent State & Local Solutions, Inc.’s false claims since “go-live,” and
4 the resulting payments by DPR, came about because Conduent State & Local Solutions, Inc. falsely
5 maintained that the website was accessible to visitors with disabilities as required by their contract
6 with the State.

7 77. Defendants’ assurances of compliance had the natural tendency to influence, or were
8 capable of influencing, DPR’s decisions to pay Defendants pursuant to those invoices.

9 **E. Experience of Bryan Bashin**

10 78. Since August 1, 2017, the ReserveCalifornia.com website has employed a “rolling window
11 reservation system,” under which “[t]he public can reserve the highly sought-after campsites and
12 lodging six months in advance from the current date,” beginning at 8 a.m. Pacific time. In other
13 words, a visitor who wished to camp during the weekend of August 2-4, 2019 could make a
14 reservation through the website beginning at 8 a.m. Pacific time on February 2, 2019. Highly
15 sought-after campsites are often reserved soon after they become available.

16 79. Because of the inaccessibility of the ReserveCalifornia.com website, Mr. Bashin is unable to
17 use it independently to enjoy the same level of access to state parks that is enjoyed by people
18 without disabilities.

19 80. Mr. Bashin can occasionally rely on the assistance of a sighted friend to assist him after 6:30
20 p.m. weekdays by browsing available campsites, conferring with him, and making a reservation for
21 him via the website. That occasional assistance is how Mr. Bashin currently uses
22 ReserveCalifornia.com, multiple times a year. But Mr. Bashin has often missed the opportunity to
23 reserve at his desired state park campsites because of the need to rely on volunteer assistance.

24 81. To the extent that Defendants offer an alternative, separate service through a “Customer Call
25 Center” for people “having issues booking a campsite,” that service is only available between 8 a.m.
26 and 6 p.m. Pacific time, and does not offer access to program activities, benefits, and privileges
27 equal to that available to sighted users twenty-four hours a day through ReserveCalifornia.com.

1 82. Absent direct and independent access to the information presented on the website, Mr.
2 Bashin has been forced to spend hours depending on sighted individuals to review park
3 descriptions, site availability, and other information that would otherwise be readily accessible to
4 him but for his blindness and the website's inaccessibility.

5 83. Mr. Bashin would use the website independently to book his regular camping trips, just as
6 he uses other online services, were the website accessible.

7 84. In issuing its RFP, and entering into a Contract with Defendants for the design and delivery
8 of a fully accessible, WCAG 2.0 Level AA compliant ReserveCalifornia.com website, DPR sought
9 to ensure that people with visual and other disabilities did not have to rely on the kindness or
10 assistance of others to enjoy full and equal access to state parks, consistent with federal and state
11 accessibility laws.

12 85. This action is based upon information that has not been disclosed publicly or, to the extent it
13 has been, Bryan Bashin is the original source of such information.

14 **F. Damage to the State**

15 86. Defendants, through their deception, have damaged the State in that they deprived DPR of
16 substantial benefits under the Contract. As a result of Defendants' knowing falsity, the State has
17 been deprived of the full benefit of accessible online services for which it paid, and does not have a
18 website that meets the requirements tied to availability, usability, and accessibility for which it
19 contracted.

20 87. Defendants' false claims have cheated hundreds of thousands of disabled people out of the
21 equality and opportunity that the State sought to secure through its contractual terms.

22 88. The delivered website will need to be redesigned, rebuilt, and tested so that it conforms with
23 accessibility standards and is accessible to disabled users. To the extent that the inaccessibility of
24 the website has diminished the reservation fees DPR would otherwise have earned from visitors
25 with disabilities, Defendants have injured the State by depriving it of those fees.

26 89. Because of DPR's reasonable reliance on Defendants' false statements and assurances of
27 technical competence and expertise, the State has been deprived of liquidated damages to which it is
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1 entitled, as Defendants have failed to provide a website that meets “Mandatory (M)” Section 11135
2 requirements for almost two years since the defined “In-Service Date” of August 1, 2017. DPR
3 retains the legal right to pursue liquidated damages at any point in the term of the Contract once the
4 lack of WCAG compliance is established by a fact finding or judgment on the merits in this case.

5 **V. FIRST CAUSE OF ACTION**

6 **California False Claims Act, Gov. Code §§ 12650(a)(1)-(2), and (a)(8)**

7 **Brought on Behalf of the State of California Against All Defendants**

8 90. Plaintiff incorporates by reference and re-alleges the foregoing allegations as if set forth
9 fully herein.

10 **A. False Records and Statements Material to False Claims**

11 91. Any person who “knowingly makes, uses, or causes to be made or used a false record or
12 statement material to a false or fraudulent claim” violates the California False Claims Act. Cal.
13 Gov’t Code § 12651(a)(2).

14 92. Through Xerox State & Local Solution, Inc.’s response to the State’s RFP, as described
15 herein, Defendants violated Government Code section 12651(a)(2).

16 93. Through Xerox State & Local Solutions, Inc., Defendants made or used or caused to be
17 made or used these false records or statements knowingly, within the meaning of Government Code
18 section 12650(b)(3) in that they had actual knowledge of the falseness of the information, or acted
19 in deliberate ignorance of the truth or falsity of the information, or acted in reckless disregard of the
20 truth or falsity of the information.

21 94. To the extent that Defendants, through Xerox State & Local Solutions, Inc., were ignorant of
22 the falsity of its records or statements at the time they were made, that ignorance was due to their
23 own recklessness with regard to the truth, and they failed to notify the State once they learned of the
24 falseness of their records or statements.

25 95. The false records or statements that Defendants, through Xerox State & Local Solutions,
26 Inc. made or used or caused to be made or used between January 2015 and December 2016 were
27 material to Defendants’ subsequent false claims for payment made by Conduent State & Local
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1 Solutions, Inc. following go-live on August 1, 2017, in that they had a natural tendency to influence,
2 or were capable of influencing, the state's payment or receipt of money, property, or services. Gov't
3 Code § 12650(b)(4).

4 96. Through their use and repetition of the false information that Xerox State & Local Solutions,
5 Inc. provided between January 2015 and December 2016, Defendants, through Conduent State &
6 Local Solutions, Inc., violated Government Code section 12651(a)(2).

7 97. Through Conduent State & Local Solutions, Inc.'s own statements subsequent to that date,
8 as described herein, Defendants, through Conduent State & Local Solutions, Inc., have further
9 violated Government Code section 12651(a)(2).

10 98. The false records or statements that Conduent State & Local Solutions, Inc. made or used or
11 caused to be made or used between January 2015 and December 2016 were material to Defendants'
12 subsequent false claims for payment following go-live on August 1, 2017, in that they had a natural
13 tendency to influence, or were capable of influencing, the state's payment or receipt of money,
14 property, or services. Gov't Code § 12650(b)(4).

15 99. As a result of the false records and statements that Defendants, through Xerox State & Local
16 Solutions, Inc. and Conduent State & Local Solutions, Inc., made or used or caused to be made or
17 used, the State paid out monies to Defendants through Conduent State & Local Solutions, Inc., to
18 which Defendants were not entitled.

19 **B. False Claims**

20 100. By the conduct and acts described above, Defendants have violated the California
21 False Claims Act within the meaning of Government Code section 12651(a)(1) on sixteen or more
22 occasions, in that they have knowingly presented or caused to be presented false or fraudulent
23 claims for payment or approval, through Conduent State and Local Solution, Inc.'s submission of
24 false claims in the form of requests for payment to DPR.

25 101. Conduent State & Local Solutions, Inc.'s claims were false or fraudulent in that it
26 did not actually perform the work for which payment or approval was sought. It did not complete
27

1 the requirements as it indicated in requesting payment, in that under the Contract, completion of
2 requirements for payment included compliance with the Contract's accessibility provisions.

3 102. Conduent State & Local Solutions, Inc. knowingly submitted the false claims in that
4 it had actual knowledge that the information they contained certifying compliance with the material
5 accessibility provisions of the Contract was false; or acted in deliberate ignorance of the truth or
6 falsity of the information; or acted in reckless disregard of the truth or falsity of the information.
7 Gov't Code § 12650(b)(3).

8 103. To the extent that Conduent State & Local Solutions, Inc. was ignorant of the falsity
9 of its claims at the time they were made, its ignorance was due to its own recklessness with regard
10 to the truth, and it failed to notify the State once or it learned of the falseness of its claims.

11 104. Defendants' false or fraudulent claims were material to DPR's decision to pay out
12 money to Conduent State & Local Solutions, Inc., in that their false or fraudulent nature, as
13 described supra, had a natural tendency to influence or was capable of influencing the payment or
14 receipt of money on the claim. Gov't Code § 12650(b)(4).

15 105. To the extent that either of the Defendants did not knowingly participate in the
16 making of any false claim, that Defendant is a beneficiary of an inadvertent submission of a false
17 claim to the State, who subsequently discovered the falsity of the claims and failed to disclose them
18 to the State within a reasonable time after such discovery or should have known of the falsity and
19 failed to disclose it, in violation of Government Code section 12651(a)(8).

20 **C. Liability of Conduent Incorporated for Violations of the California False Claims Act**

21 106. Conduent Incorporated, through the December 30, 2016 Separation and Distribution
22 Agreement under which assumed the liabilities of Xerox State & Local Solutions, Inc. is liable for
23 the damage caused by the violations of the California False Claims Act by Xerox State and Local,
24 Inc. between 2015 and December 30, 2016.

25 107. Conduent Incorporated is liable for violations of the California False Claims Act by
26 Conduent State & Local Solutions, Inc. since January 1, 2017, in that the latter has acted as the alter
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1 ego of Conduent Incorporated with respect to its obligations to provide an accessible website under
2 the Contract.

3 108. The ownership and interests of the Conduent Incorporated and Conduent State &
4 Local Solutions, Inc. are united. The two entities share offices, addresses, and web sites. Mr.
5 Wright, Ms. Salone, and Ms. Anderson, who acted under the Contract as officers and agents of
6 Xerox State & Local Solutions, Inc., whose liabilities were assumed by Conduent Incorporated,
7 have continued to act under the Contract as officers and agents of Conduent State & Local
8 Solutions, Inc., a wholly-owned subsidiary of Conduent Incorporated. Conduent Incorporated has
9 caused a third party, DPR, to allow its wholly-owned subsidiary, Conduent State & Local Solutions,
10 Inc., to succeed in the Contract entered into by a prior subsidiary, Xerox State & Local Solutions,
11 Inc. whose liabilities Conduent Incorporated assumed.

12 109. In the alternative, on information and belief, Conduent Incorporated exerts such
13 control over Conduent State & Local Solutions, Inc. as to make the latter an agent or instrumentality
14 of Conduent Incorporated for purposes of violations of the California False Claims Act by
15 Conduent State & Local Solutions, Inc.

16 110. It would sanction a fraud and/or promote injustice to allow Conduent Incorporated to
17 use the corporate form to avoid liability for violations of the California False Claims Act by Xerox
18 State & Local Solutions, Inc. and Conduent State & Local Solutions, Inc.

19 111. As a result of Defendants' violations of the California False Claims Act, the State
20 suffered and continues to suffer damages, as described *supra* § IV.F.

21 **VI. SECOND CAUSE OF ACTION**

22 **California Unruh Civil Rights Act, Civ. Code § 51(f)**

23 **Brought by Bryan Bashin In His Individual Capacity Against All Defendants**

24
25
26 112. Plaintiff incorporates by reference and re-alleges the foregoing allegations as if set
27 forth fully herein.

1 113. The Unruh Act provides that “all persons within the jurisdiction of this state are free
2 and equal, and no matter their ... disability ... are entitled to the full and equal accommodations,
3 advantages, facilities, privileges or services in all business establishments of every kind
4 whatsoever.” Cal. Civ. Code § 51(b).

5 114. Under state law, a violation of the right of any individual under the federal
6 Americans with Disabilities Act of 1990 (Public Law 101-336), 42 U.S.C. § 12101, et seq. (“ADA”
7 or “the Act”) constitutes a per se violation of the Unruh Act. Cal. Civ. Code § 51(f).

8 115. Title IV of the ADA provides that “[i]t shall be unlawful to ... interfere with any
9 individual in the exercise or enjoyment of ... or on account of his or her having aided or encouraged
10 any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.”
11 42 U.S.C. § 12203(b).

12 116. Federal regulations implementing the ADA clarify that this provision makes it illegal
13 for a private entity to “interfere with any individual in the exercise or enjoyment of ... any right
14 granted or protected by the [ADA]....” 28 C.F.R. § 35.134(b).

15 117. Title II of the Americans with Disabilities Act, 42 U.S.C. 12131 to 12134 (“Title II”)
16 states that “no qualified individual with a disability shall, by reason of such disability, be excluded
17 from participation in or be denied the benefits of the services, programs, or activities of a public
18 entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

19 118. Mr. Bashin is a qualified individual with a disability within the meaning of 42 U.S.C.
20 section 12131(2), as well as Civil Code section 51(e)(1) and Government Code section 12926(m).

21 119. The California Department of Parks and Recreation is a public entity within the
22 meaning of 42 U.S.C. § 12131(1)(B), and ReserveCalifornia.com is a service, program, or activity
23 of a public entity, the California Department of Parks and Recreation.

24 120. Title II requires state agencies such as DPR to remove communication barriers and
25 provide auxiliary aids and services so people with disabilities can use government websites. Under
26 the implementing regulations, auxiliary aids include “accessible electronic and information
27 technology. 28 C.F.R. § 35.104.

1 121. Mr. Bashin has exercised, or attempted to exercise, a right protected by the ADA
2 and, by extension, the Unruh Act, on the numerous occasions since August 1, 2017 that he has
3 attempted to use ReserveCalifornia.com and been unable to do so using his screen reader assistive
4 technology.

5 122. Defendants have engaged and continue to engage in actions or inaction with respect
6 to the design, construction, testing, and maintenance of ReserveCalifornia.com that result in a
7 website that Mr. Bashin cannot use with his screen reader assistive technology, and thereby
8 interfere with Mr. Bashin in his exercise or enjoyment of the right not to be excluded from
9 participation in or denied the benefits of the services, programs, or activities of the California
10 Department of Parks and Recreation, as protected by Title II, in violation of 42 U.S.C. section
11 12203(b) and 28 C.F.R. section 35.134(b).

12 123. Defendants' violation of rights under the ADA, as described herein, constitutes a
13 violation of Mr. Bashin's rights under the Unruh Act, Civil Code section 51(f).

14 124. As a result of Defendants' conduct, Mr. Bashin is entitled to a finding that
15 Defendants have violated his rights under the Unruh Act and injunctive relief under California Civil
16 Code section 52 requiring Defendants to make ReserveCalifornia.com accessible to him as a blind
17 individual.

18 125. Whoever denies, aids or incites a denial, or makes any discrimination or distinction
19 contrary to the Unruh Act, Civil Code section 51, is liable for each and every offense for the actual
20 damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a
21 maximum of three times the amount of actual damage but in no case less than four thousand dollars
22 (\$4,000), and any attorney's fees that may be determined by the court in addition thereto. Cal. Civ.
23 Code § 52(a). As a result of their conduct, Defendants are further liable to Mr. Bashin for damages
24 and attorney's fees pursuant to California Civil Code section 52(a).

25 **D. Liability of Conduent Incorporated for Violations of the Unruh Act**

26 126. Conduent Incorporated, through the December 30, 2016 Separation and Distribution
27 Agreement under which it asserted its assumption of the liabilities of Xerox State & Local
28

1 Solutions, Inc. is liable for the damage to Mr. Bashin caused by violations of the Unruh Civil Rights
2 Act by Xerox State and Local, Inc. between 2015 and December 30, 2016.

3 127. Conduent Incorporated is liable for violations of the Unruh Civil Rights Act by
4 Conduent State & Local Solutions, Inc. since January 1, 2017, in that the latter has acted as the alter
5 ego of Conduent Incorporated with respect to its obligations to provide an accessible website under
6 the Contract.

7 128. The ownership and interests of the Conduent Incorporated and Conduent State &
8 Local Solutions, Inc. are united. The two entities share offices, addresses, and web sites. Mr.
9 Wright, Ms. Salone, and Ms. Anderson, who interfered with Mr. Bashin's rights under the Unruh
10 Civil Rights Act as officers and agents of Xerox State & Local Solutions, Inc., whose liabilities
11 were assumed by Conduent Incorporated, have continued to interfere with his rights under the
12 Unruh Civil Rights Act as officers and agents of Conduent State & Local Solutions, Inc., a wholly-
13 owned subsidiary of Conduent Incorporated. Conduent Incorporated has caused a third party, DPR,
14 to allow its wholly-owned subsidiary, Conduent State & Local Solutions, Inc., to succeed in the
15 Contract entered into by a prior subsidiary, Xerox State & Local Solutions, Inc. whose liabilities
16 Conduent Incorporated assumed.

17 129. In the alternative, on information and belief, Conduent Incorporated exerts such
18 control over Conduent State & Local Solutions, Inc. as to make the latter an agent or instrumentality
19 of Conduent Incorporated for purposes of violations of the Unruh Civil Rights Act by Conduent
20 State & Local Solutions, Inc.

21 130. It would sanction a fraud and/or promote injustice to allow Conduent Incorporated to
22 use the corporate form to avoid liability for violations of the Unruh Civil Rights Act by Xerox State
23 & Local Solutions, Inc. and Conduent State & Local Solutions, Inc.

24 **VII. THIRD CAUSE OF ACTION**

25 **Declaratory Relief**

26 **on Behalf of Bryan Bashin In His Individual Capacity, Cal. Civ. Proc. § 1060**

1 131. Plaintiffs incorporate by reference and re-allege the foregoing allegations as if set
2 forth fully herein.

3 132. An actual controversy has arisen and now exists between the parties in that Plaintiff
4 contends, and is informed and believes that Defendants deny, that in their design, construction,
5 testing, and maintenance policies and practices that fail to ensure that ReserveCalifornia.com is
6 independently accessible to blind persons, Defendants interfere with rights protected by Title II of
7 the ADA, 42 U.S.C. section 12132, in violation of Title IV of the ADA, 42 U.S.C. section 12203(b),
8 and the Unruh Act. A judicial declaration is necessary and appropriate at this time in order that each
9 of the parties may know their respective rights and duties and act accordingly.

10 WHEREFORE, Plaintiffs request relief as set forth below.

11
12 **VIII. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff-Relator prays for judgment as follows:

- 14 1. On Plaintiff's First Cause of Action for violation of the California False Claims Act, entry
15 of judgment in favor of plaintiff State of California, ex rel. Bryan Bashin, and against each
16 Defendant, jointly and severally:
- 17 a. For three times the damages sustained by the State as a result of the false
18 statements and records made or used by Defendants material to their false
19 claims in an amount to be proven at trial;
 - 20 b. For civil penalties in the amount of \$11,000 for each submission of a false
21 statement or record material to a false claim;
 - 22 c. For recovery of costs, attorneys' fees, and expenses; and,
 - 23 d. For such other and further relief as the Court deems just and proper.
- 24 2. On Plaintiff's First Cause of Action for violation of the California False Claims Act, entry of
25 judgment in favor of plaintiff State of California, ex rel. Bryan Bashin, and against each
26 Defendant, jointly and severally:

- 1 a. For three times the damages sustained by the State as a result of Defendants' false
2 claims in an amount to be proven at trial;
- 3 b. For civil penalties in the amount of \$11,000 for each false claim submitted for
4 payment;
- 5 c. For recovery of costs, attorneys' fees, and expenses; and,
- 6 d. For such other and further relief as the Court deems just and proper.

7 3. On Plaintiff's Second Cause of Action for violation of the Unruh Act:

- 8 a. An order enjoining Defendants from violating the Unruh Act by interfering with Mr.
9 Bashin's right to equal participation in the benefits of the programs, services, and
10 activities of the California Department of Parks and Recreation in Defendants'
11 design, redesign, construction, rebuilding, and testing of the ReserveCalifornia.com
12 website;
- 13 b. Statutory damages to Mr. Bashin in his individual capacity for Defendants' violation
14 of Civil Code section 52(a);
- 15 c. Plaintiff's reasonable attorneys' fees and costs as authorized by California Civil
16 Code § 52;
- 17 d. For such other and further relief as the Court deems just and proper.

18 4. On Plaintiff's Third Cause of Action for Declaratory Relief:

- 19 a. For a declaration that Defendants' actions or inactions with respect to their design,
20 construction, and testing of ReserveCalifornia.com interfere with Mr. Bashin's rights
21 as a blind participant in the programs and activities of the California Department of
22 Parks and Recreation;
- 23 b. Plaintiff's reasonable attorneys' fees and costs as authorized by California Code of
24 Civil Procedure § 1021.5;
- 25 c. For such other and further relief as the court deems proper.
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1 Dated: July 10, 2018

TRE LEGAL PRACTICE

2
3 By:  _____

4 Anna R. Levine

5 *Attorneys for Qui Tam Plaintiff Bryan Bashin*

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