No. 12-17235

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATALIA A. SIDIAKINA,

Plaintiff – Appellant,

v.

JAMES G. BERTOLI, Judge; et al.,

Defendants – Appellees.

Appeal from the United States District Court
for the Northern District of California
Honorable Jeffrey S. White, District Judge, Presiding

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Does a per se rule refusing appointment of counsel as an accommodation for disabled litigants violate Title II of the Americans with Disabilities Act ("ADA")? Defendants' brief avoids this crucial issue. Unavoidably, defendants admit to a court pamphlet explicitly stating the per se rule that "the court cannot provide free legal counsel as an accommodation" and "it is not an accommodation for a disability." Most of defendants' brief, however, is spent disclaiming that the written rule reflects official policy or binds court personnel. If defendants are conceding that courts should consider appointment of counsel as a reasonable accommodation under the ADA and have the necessary means to do so, and that the rule should be rescinded, then further proceedings may be unnecessary.

Yet the remainder of defendants' brief substantiates that, consistent with the written rule, courts uniformly deny appointment of counsel as an accommodation. And, in the end, defendants footnote a handful of reasons why they believe that appointment of counsel is indeed never required under the ADA, and is not within the state courts' power absent authorized funding. Defendants' own arguments support Sidiakina's allegation of a per se rule.

None of defendants' three rationales for affirming the dismissal of Sidiakina's generalized challenge to the per se rule have merit. First, Sidiakina's generalized challenge to the rule is not barred by the *Rooker-Feldman* doctrine. As

explained in *Feldman*, a federal district court can review the validity of a state court rule as promulgated and grant prospective relief, as long as it does not review the state court's application of the rule to plaintiff. Thus, contrary to defendants' argument, Sidiakina's generalized challenge to the rule is not inextricably intertwined with the application of the rule in her state proceedings because the district court can evaluate whether the rule, as stated, complies with the ADA.

Second, Sidiakina can amend her complaint to allege standing for prospective relief. Defendants have raised standing for the first time on appeal and conjecture that Sidiakina's return to state court is purely hypothetical. On remand, however, Sidiakina will allege her intent to return to state court to enforce or modify a prior court order issued in her divorce proceedings. Given her well-documented cognitive disabilities, Sidiakina would seek appointment of counsel as an accommodation. It is all but certain that she will be denied counsel, in line with the written rule and defendants' own arguments showing a uniform refusal and lack of authorized funding to appoint counsel as an accommodation.

Third, Sidiakina has sufficiently stated that defendants have a per se rule. Again, both the written rule and defendants' own arguments reflect as much.

Finally, given the extent of fact finding that will be necessary and the importance of the legal issue, counsel should be appointed on remand under 28 U.S.C. § 1915.

ARGUMENT

I. Sidiakina's Generalized Challenge to the Per Se Court Rule Refusing Appointment of Counsel as an ADA Accommodation Seeks Prospective Relief that is Not Inextricably Intertwined with her State Court Proceedings

Sidiakina alleged both generalized and as-applied challenges to the per se rule refusing appointment of counsel. The *Rooker-Feldman* doctrine permits her generalized challenge to go forward because it is not inextricably intertwined with her state court proceedings: the district court does not need to review how the state courts applied the rule to Sidiakina to evaluate its general validity, and the district court can grant prospective relief without affecting the state court rulings.

A. *Rooker-Feldman* permits a generalized challenge to a state court rule while barring an inextricably intertwined challenge

To understand why the *Rooker-Feldman* doctrine does not bar Sidiakina's generalized challenge to the per se rule, the best place to start is *Feldman* itself. *See Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2001). This Court has recognized that *Feldman* is "likely to apply primarily in cases in which the state court both promulgates and applies the rule at issue," as here. *Noel v. Hall*, 341 F.3d 1148, 1158 (9th Cir. 2003). *Feldman* involved a mix of individualized and generalized challenges to a court rule, as here. *D.C. Court of Appeals v. Feldman*,

460 U.S. 462, 486-87 (1983).[1] The Supreme Court found the former were barred but the latter could proceed in federal court. *Id.* Despite defendants' reliance on *Feldman* to argue that all of Sidiakina's claims, including her generalized claim, are "inextricably intertwined" with her state court proceedings, they fail to discuss *Feldman*'s analysis or distinguish its facts. *See* Appellees' Answering Brief ("AB") at 34-40.

In fact, the backgrounds in *Feldman* and this case are analogous. The two *Feldman* plaintiffs were denied admission to the District of Columbia Bar under a court rule that prohibited membership without proof of graduation from an approved law school. *Id*. at 464-65. The District of Columbia court of appeals denied the plaintiffs' petitions to waive the rule. *Id*. at 468, 472. Then plaintiffs brought actions in federal district court challenging the court rule as it was applied to them and on its face. *Id*. at 468 & n.3, 472-73. Here, Sidiakina alleges she was denied appointment of counsel as an accommodation under a per se state court rule. The California Court of Appeal denied Sidiakina's appeal from the denial of the accommodation. She then brought this action in federal court challenging denial of counsel in her own state proceedings and the per se rule on its face.

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[1] *Feldman* referred to plaintiffs' challenge to the court rule on its face as a general challenge rather than a facial challenge. *See, e.g.*, 460 U.S. at 483, 485, 487 ("[t]he remaining allegations . . . involve a general attack on the constitutionality of [the] Rule"). In analyzing *Feldman*, this Court has used the terms "general" and "facial" interchangeably. *See Noel*, 341 F.3d at 1157. Sidiakina will do so, as well.

Feldman carefully distinguished generalized claims from as-applied claims. 460 U.S. at 486. The Supreme Court "refuse[d] to accept . . . petitioners' argument that the sum and substance of respondents' federal court actions were to obtain review of the prior adverse decisions of the District of Columbia court of appeals in their individual cases" because "a close reading of the complaints discloses that respondents mounted a general challenge to the constitutionality of the rule." *Id*. at 487 n.18 (internal quotation marks omitted). The generalized challenge could be considered by the federal district court even though the as-applied claims were "inextricably intertwined" with the prior court of appeal decisions. *Id*. at 486-87.

Following *Feldman*, "[c]ourts have generally concluded that claims are inextricably intertwined when the district court must scrutinize both the challenged rule and the state court's application of that rule." *Dubinka v. Judges of the Superior Court*, 23 F.3d 218, 222 (9th Cir. 1994).

B. Sidiakina states a generalized claim for prospective relief that is not inextricably intertwined with her state proceedings because the district court would look at the rule on its face and not as applied

Defendants suggest that the sum and substance of Sidiakina's action is only to obtain reversal of her state court decisions and, thus, is inextricably intertwined with the state proceedings. *See* AB at 23-28, 37. But, as in *Feldman*, a "close reading of the complaint[]" belies this assertion. *Feldman*, 460 U.S. at 487 n.18.

In the eighth "Request for Relief" in her operative complaint, Sidiakina states a stand-alone general challenge to the per se rule refusing appointment of counsel:

> 8. Render a ruling that California Rules of Court, Rule 1.100 and pamphlet of Judicial Council of California titled "For Persons with Disabilities Requesting Accommodations" of 2007 are in violation of ADA Title II.

Appellant's Excerpts of Record ("ER") 128. Sidiakina also requests "declaratory judgment and injunctive relief to compel the State of California and other defendants to comply with the provisions of the Americans with Disability Act." ER 130.[2]

Contrary to defendants' assertion, Sidiakina's generalized challenge is not inextricably intertwined because the district court need only evaluate whether, as a general matter, a per se rule against the appointment of counsel violates the ADA. To do so, the district court would look to ADA law, and evaluate whether the per se rule complies. This analysis does not require the court to look to what happened in Sidiakina's state proceedings. And, if the per se rule violates the ADA, Sidiakina seeks a declaration that it does so and an injunction requiring compliance with the ADA going forward. Neither of these prospective remedies require the court to undo any of Sidiakina's prior state court rulings. Thus, one can easily

[2] The State of California is a properly named defendant and is represented by the same counsel as the other appellees. *See* Dkt. 25. It is unclear, however, whether the State is a party to the answering brief, because the cover of the brief includes all appellees, but the signature block at the end omits the State. Whatever the reason for the omission, it does not affect the issues on appeal.

conceive how Sidiakina's generalized challenge can "be teased apart from her retrospective claims." AB at 41-42.

Sidiakina's allegations are sufficient to state a plausible and cognizable claim at this point in the proceedings. Under a liberal reading of the complaint, Sidiakina's stand-alone generalized challenge to the per se rule expressed in the pamphlet is clear. *Hebbe v. Plilar*, 627 F.3d 338, 341-42 (9th Cir. 2010) (pro se complaint must be construed liberally). Further, Sidiakina's allegations regarding the per se rule must be taken as true and construed in her favor at this point in the proceedings. *Henry A. v. Willden*, 678 F.3d 991, 998 (9th Cir. 2012). If there was any doubt as to whether Sidiakina intended to state a facial challenge, the district court should have granted leave to amend. *Id.* at 1005 ("[W]e have repeatedly held that a district court should grant leave to amend . . . unless it determines that the pleading could not possibly be cured by the allegation of other facts." (internal quotation marks and citation omitted)).

C. Defendants rely on cases where plaintiffs failed to facially challenge a general rule and failed to seek prospective relief

Defendants rely upon inapposite cases where plaintiffs failed to facially challenge a general rule and failed to seek prospective relief (AB at 38-40):

- In *Bianchi*, 334 F.3d at 897-98, plaintiff complained that it was unconstitutional for a disqualified trial judge to later sit on the panel in his appeal. Unlike in *Feldman* or here, plaintiff did not identify a generally applicable rule at issue or seek prospective relief. *See id.* at 898-99.

- In *Worldwide Church of God v. McNair*, 805 F.2d 888, 890, 892 (9th Cir. 1986), plaintiffs sought to have a federal district court declare their state trial court verdict unconstitutional. Because plaintiffs failed to point to any generalized rule, the district court would need to review the state court's application of constitutional theories to the particular circumstances of the case. *Id.* at 892-93.

- In *Cooper v. Ramos*, 704 F.3d 772, 779-800 (9th Cir. 2012), plaintiff stated that he was challenging a DNA testing statute "as interpreted by the California courts." But, plaintiff failed to show that the state courts had a categorical bar against tampering claims. *Id*. at 781. In reality, plaintiff's claims were only about "the particular outcome in his state case." *Id*.

Of course, if a plaintiff does not identify a general rule, the federal court cannot evaluate the rule on its face and must resort to reviewing the state court's application. These cases, contrasted with *Feldman*, demonstrate that Sidiakina's claims are not inextricably intertwined. In *Bianchi*, *Worldwide Church of God*, and *Cooper*, plaintiffs' claims were inextricably intertwined to their own proceedings because there was no general rule to review on its face. In *Feldman* and here, plaintiffs identified a general rule that could be evaluated on its face.

Defendants emphasize that the Court should pay "close attention to the relief sought." AB at 33. In part, Sidiakina sought reversal of her prior state court orders, but so did the plaintiffs in *Feldman*. 460 U.S. at 468-69 & n.3, 472-73. The relevant point is that Sidiakina also seeks prospective, generalized relief.

Feldman dispenses with two additional theories raised by defendants. First, defendants argue that Sidiakina's facial challenge to the per se rule is barred

because it might undercut the state court's application of the rule to her. *See* AB at 35-37. *Feldman* permitted a facial challenge, even if it would undercut the rule on which the state court relied, because such a challenge does "not require review of a judicial decision in a particular case." *Feldman*, 460 U.S. at 487. If the district court here ultimately decides that the per se rule violates the ADA, Sidiakina's prior state court rulings will nonetheless stand.

Defendants misguidedly suggest this result is barred by post-*Feldman* case law in this Court. *See* AB at 35-37. But their interpretation would be a contradiction, not an extension, of *Feldman*. Not surprisingly then, the cases defendants cite for this interpretation do not actually support it. For example, defendants quote from *Noel* that a request for declaratory relief "invalidating the state court rule on which the state court decision relied" is inextricably intertwined with state proceedings. *Noel*, 341 F.3d at 1158. But *Noel* was discussing declaratory relief related to the state court's rule as applied to plaintiff. *Id.* at 1158 n.7. By comparison Sidiakina's request for declaratory relief invalidating the per se rule on its face would not impermissibly relate to her prior state court proceedings.

Second, defendants contend, without factual or legal support, that Sidiakina's facial challenge is doomed under *Rooker-Feldman* because the state court already considered the same challenge. *See* AB at 43. There are no facts in

the instant record to show that Sidiakina raised a facial, rather than an as-applied, challenge to the per se rule during her state court proceedings. (And the state court record shows that she did not.) In any event, this contention fails as a matter of law because *Feldman* allowed plaintiffs' facial challenges to proceed even though plaintiffs had raised the same challenges in state court. *Feldman*, 460 U.S. at 467-69 & n.3; *see also Bianchi*, 334 F.3d at 899-900 (explaining distinction between *Rooker-Feldman* and res judicata principles). Defendants do not cite any case that supports their position otherwise.

Accordingly, defendants' arguments for the application of *Rooker-Feldman* to Sidiakina's general challenge of the per se rule are contrary to case law. [3]

II. Sidiakina Has Standing for Prospective Relief Because She Intends to Return to State Court to Enforce or Modify an Order

Defendants conjecture that Sidiakina's prospective interest in challenging the per se rule refusing appointment of counsel is purely hypothetical. *See* AB at 43-48. To the contrary, Sidiakina could amend her complaint to allege standing and should be allowed to do so.

[3] Although defendants suggest that the Court could alternatively affirm under the doctrine of equitable abstention, they fail to provide even a cursory argument. *See* AB at 48 n.8. The Court should decline their invitation to manufacture an argument on their behalf. *See Arredondo v. Ortiz*, 365 F.3d 778, 781 (9th Cir. 2003) ("we decline to address an issue that is simply mentioned but not argued").

This Court has recognized that "[o]ften a plaintiff will be able to amend its complaint to cure standing deficiencies" and "[t]o deny any amending of the complaint places too high a premium on artful pleading and would be contrary to the provisions and purpose of Fed. R. Civ. P. 15." *United Union of Roofers, etc. No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398, 1402-03 (9th Cir. 1990) (remanding for the district court to determine standing); *see also Hoohuli v. Ariyoshi*, 741 F.2d 1169, 1181 (9th Cir. 1984) ("On remand, the . . . plaintiffs should be permitted to amend their complaint to assert injury and standing . . . ."). This is particularly true with regard to a cognitively disabled pro se litigant like Sidiakina who is unlikely to understand the nuanced pleading requirements that apply to each form of relief that she seeks.

On remand, Sidiakina can allege standing for prospective relief from the per se rule. For injunctive and declaratory relief, Sidiakina must show "a real or immediate threat of an irreparable injury." *Clark v. City of Lakewood*, 259 F.3d 996, 1007 (9th Cir. 2001). Sidiakina will allege that she intends to return to California state court to either enforce or modify a court order in her divorce proceedings requiring her ex-husband to pay $141,500 for certain community credit card debt. Sidiakina's ex-husband has failed to fully comply with the order and, as a result of the outstanding credit card debt, Sidiakina's credit score has suffered and she has been hounded by collection agencies. Given the well-

documented cognitive and physical impairments that Sidiakina has repeatedly suffered during litigation, she would seek appointment of counsel as an accommodation under Rule 1.100. And, based on the per se policy in the Judicial Council pamphlet that prohibits appointment of counsel as an accommodation (and defendants' own statements on appeal that appointment of counsel is neither required nor statutorily authorized, AB at 53-54 n.10), it is all but certain that Sidiakina will be denied counsel as an accommodation. *See, e.g.*, *Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001) ("where the harm alleged is directly traceable to a written policy, there is an implicit likelihood of its repetition in the immediate future" (internal citation omitted)).

These allegations establish Sidiakina's standing because her anticipated injury is "neither conjectural nor hypothetical" and is "realistic and credible." *Clark*, 259 F.3d at 1107-08; *see also Associated Gen. Contrs., Inc. v. Coal. for Econ. Equity*, 950 F.2d 1401, 1407 (9th Cir. 1991) ("In all cases in which the Supreme Court denied standing because the injury was too speculative there was either little indication in the record that the plaintiffs had firm intentions to take action that would trigger the challenged governmental action, or little indication in the record that, even if plaintiffs did take such action, they would be subjected to the challenged governmental action.").

Thus, Sidiakina can allege standing for prospective relief and should be given the opportunity to amend her complaint on remand to do so.

III. Sidiakina Has Sufficiently Established a Per Se Rule to Survive a Motion to Dismiss

In her operative complaint, Sidiakina sufficiently identifies an explicit per se rule refusing appointment of counsel as an ADA accommodation. Defendants admit to the written rule, then vehemently disclaim that the rule has any weight or effect. If by denying the per se rule defendants mean to concede that appointment of counsel is among the types of accommodations that a court may provide to a disabled litigant under the ADA, then Sidiakina welcomes that resolution. Such a concession would logically entail renouncing the rule and ensuring the necessary funding and authorization for appointment of counsel under the ADA. Instead, however, defendants ultimately endorse the per se rule by their own arguments.

A. Defendants disclaim the written per se rule but demonstrate that courts act in accordance with the rule

Sidiakina has pointed to an explicit written statement that courts "cannot provide free legal counsel as a medical accommodation" and "it is not an accommodation for a disability." *See* Appellant's Motion for Judicial Notice ("MJN"), Dkt. 17 at p. 9; ER 128. Her allegation that this constitutes a per se rule refusing appointment of counsel as an accommodation contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). Any factual challenges to Sidiakina's "complaint have no bearing on the legal sufficiency of the allegations under Rule 12(b)(6)." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). To survive defendants' motion to dismiss, Sidiakina does not need to show a probability that defendants are bound by or directly follow this express rule; it is enough that the allegation "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

The pamphlet creates a reasonable inference that the per se rule exists and is followed, even if it is not legally binding. The cases cited by defendants merely stand for the proposition that agency policy statements are not accorded deference. *See* AB at 50. Regardless, courts can follow the per se rule, and Sidiakina's complaint (and defendants' own arguments) indicate that they do. Further, the disclaimers on the pamphlet do not render its usage implausible. Although the pamphlet states it does "not necessarily represent . . . official positions or policies," its availability through the courts' website suggests approval of the content. *See* MJN, Dkt. 17 at pp. 5 ¶ 2, 8. The fact that a similar pamphlet for Court personnel omits the per se rule does not prove the rule's inexistence as defendants suggest, *see* AB at 12; there are many conceivable reasons for the omission, including avoiding redundancy with the pamphlet for Court users.

Defendants point out that judges are not bound by the per se rule expressed in the pamphlet, but do not show that any judge has actually granted counsel as an accommodation. Defendants cite three cases, none of which indicates that California courts have even *considered* appointing counsel as an accommodation. *See* AB at 9 & n.2. To start, *In re Marriage of James & Christine C.*, 70 Cal. Rptr. 3d 715, 726 (Cal. Ct. App. 2008), actually addresses appointment of counsel under the Family Code, rather than under the ADA. The two unpublished cases footnoted by defendants similarly avoid the issue of whether appointment of counsel is even a *possible* accommodation, while affirming the denial of counsel. *See Langsam v. Cal. Dep't of Trans.*, 2012 Cal. App. Unpub. Lexis 3930, *14 n.4 (Cal. Ct. App. May 24, 2012) ("We do not reach the ADA coordinator's finding that the accommodation 'would fundamentally alter the nature of the service, program, or activity.'"); *Stanley v. Dorn, Platz & Co.*, 2009 Cal. App. Unpub. Lexis 44, at *13 (Cal. Ct. App. Jan. 6, 2009) ("We start with the observation that no case has ever held that appointed counsel is an appropriate accommodation as defined by the rules we have set forth. Further, we take no position on whether appointed counsel could ever be a reasonable accommodation . . . ."). If anything, these cases show consistent refusal to appoint counsel, in line with the written per se rule.

What is more, defendants affirmatively state at the end of their brief that California courts cannot appoint counsel as an accommodation because they lack "statutory authorization" and "attached funding" to do so. AB at 53-54 n.10.

The orders in Sidiakina's own case—which defendants highlight—are consistent with the per se rule. They are wholly irrelevant to Sidiakina's facial claim, but are worth mentioning because they demonstrate defendants' self-contradictory attempts to reject the per se rule. The superior court in Sidiakina's proceedings denied appointment of counsel on the generalized conclusion that the ADA does not require an entity to provide services of a personal nature. *See* AB at 18. The Court of Appeal denied a writ on the broad grounds that appointment of counsel would create an undue financial and administrative burden and alter the nature of court services. *See* AB at 19. The courts' explanations are not specific to Sidiakina's request and reflect a per se rule that would apply to *any* disabled applicant.[4]

B. Defendants take the position that appointment of counsel is never required under the ADA and is never authorized, which reflects a per se rule

Perhaps the strongest evidence of a per se rule against the appointment of counsel is defendants' admission, buried in a final footnote, that they do not view

[4] Defendants' six-page discussion of Sidiakina's state proceedings in general has no bearing on her facial claim. *See* AB at 14-19. While Sidiakina disagrees with certain characterizations, she will not engage in irrelevant factual disputes here.

appointment of counsel as a reasonable accommodation in any circumstances and that courts do not have the necessary funding authorization to appoint counsel. *See* AB at 53-54 n.10. Defendants contend that appointment of counsel is a personal service not required by the ADA; would fundamentally alter the nature of court services; would be an undue financial burden; and is not currently authorized or funded. *Id.* These arguments would apply to *any* disabled applicant's request for appointment of counsel. It is thus hard to reconcile defendants' assertions that (a) there is no per se rule against appointment of counsel as an accommodation, but, (b) per se, appointment of counsel is never a reasonable or authorized accommodation. It sure sounds like a per se rule. *See Sierra Club v. Flowers*, 526 F.3d 1353, 1359 (11th Cir. 2008) ("'if it walks like a duck, quacks like a duck, and looks like a duck, then it's a duck'" (citation omitted)).

C. Defendants cannot evade the ADA's requirements through an informal rule or policy

If defendants could evade the ADA by simply denying the existence of a formal rule refusing appointment of counsel, while having an informal policy or practice doing the same, the ADA's "guarantees would risk becoming an empty formality." *Hoye v. City of Oakland*, 653 F.3d 835, 854 (9th Cir. 2011). Even if defendants successfully distance themselves from the written per se rule in the pamphlet, Sidiakina should be permitted to present a general challenge to defendants' unwritten per se policy refusing counsel. *Id.* at 855 (noting that a

facial challenge to an unwritten policy "'bears much in common with a facial challenge on written policy,'" with the primary difference being "an evidentiary one" (citation omitted)). As discussed, defendants' own arguments on appeal reflect a per se policy—written or unwritten.

IV. Counsel Should be Appointed for Further Proceedings and Factual Discovery on Remand

This case presents an important generalized challenge to a per se rule that refuses appointment of counsel as an accommodation for *any* disabled litigant. Defendants have disclaimed that court personnel follow the rule, while seeming to demonstrate that they do. As detailed in Sidiakina's opening brief, defendants' stated rationales for the per se rule require further legal and factual development on remand. *See* Appellant's Opening Brief ("OB") at 22-24, 25. The possibility of extensive discovery on defendants' fundamental alteration defense, along with the importance and strength of Sidiakina's claim and her demonstrated cognitive disability during litigation, warrant appointment of counsel on remand. *See* OB at 25-27; *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004).

Defendants' objections to appointment of counsel fail to persuade. They state that Sidiakina is "more than capable of articulating her position." AB at 56. However, defendants themselves would be quick to point out that Sidiakina did not effectively communicate her generalized challenge and her request for prospective relief. Further, although defendants take pains to point out that the district court

must request, rather than compel, counsel to represent Sidiakina under 28 U.S.C. § 1915, these comments do not bear on whether counsel is warranted. *See* AB at 56. The district court is in the best position to determine the process for securing counsel under § 1915.

CONCLUSION

For the foregoing reasons, Sidiakina requests that the Court reverse the dismissal of her generalized ADA claim against the State defendants and remand for further proceedings. In addition, this Court should direct the district court to appoint counsel for Sidiakina and permit her to amend her complaint to focus it on her generalized claim and to assert standing for prospective relief.

Respectfully submitted,

Dated: November 21, 2013

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7), I certify that the attached Appellant's Reply Brief contains 4,793 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), and has been prepared in a proportionally spaced typeface using size 14 Times New Roman font.

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SPERO LAW OFFICE

By: __/s/ Leah Spero__
Leah Spero

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 21, 2013.

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

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