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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO/OAKLAND DIVISION

20 IVANA KIROLA, MICHAEL KWOK, and
21 ELIZABETH ELFTMAN, on behalf of
22 themselves and all others similarly situated;

23 Plaintiffs,

24 vs.

25 THE CITY AND COUNTY OF SAN
26 FRANCISCO ("the CITY"); GAVIN
27 NEWSOM, in his official capacity as Mayor;
28 AARON PESKIN, in his official capacity as
President of the Board of Supervisors; JAKE
MCGOLDRICK, MICHELA ALIOTO-PIER,
ED JEW, CHRIS DALY, SEAN ELSBERND,
BEVAN DUFTY, TOM AMMIANO, SOPHIE
MAXWELL, ROSS MIRKARIMI, AND
GERARDO SANDOVAL, in their official
capacities as members of the Board of
Supervisors;

Defendants.

FILED

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RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
DISCRIMINATION AGAINST PERSONS
WITH DISABILITIES IN VIOLATION OF:
THE AMERICANS WITH
DISABILITIES ACT OF 1990; SECTION 504 OF
THE REHABILITATION ACT OF 1973;
CAL CIV. CODE §§ 51, ET SEQ., CAL. CIV.
CODE §§ 54, ET SEQ., AND CAL. GOVT. CODE
§§ 11135, ET SEQ.

CLASS ACTION

INTRODUCTON

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2 1. This action seeks to redress the CITY AND COUNTY OF SAN FRANCISCO's
3 (hereafter "the CITY") failure to provide to persons with mobility disabilities the minimum legally
4 required access to facilities, programs, services, and activities owned, operated, controlled,
5 provided and/or maintained by the CITY. Plaintiffs IVANA KIROLA, MICHAEL KWOK, and
6 ELIZABETH ELFTMAN have suffered ongoing deprivations of their civil rights as well as loss of
7 equal access because of the CITY's repeated violations of federal and state disability
8 nondiscrimination laws regarding access for persons with mobility disabilities. The facilities
9 owned, operated, or controlled by the CITY are characterized by multiple, pervasive, and
10 hazardous physical access barriers. The CITY's architectural barriers include, *inter alia*,
11 dangerous and inaccessible sidewalks, dangerous and unsafe intersections, inaccessible passenger
12 loading zones, inaccessible public buildings, inaccessible paths of travel within public buildings,
13 inaccessible service counters within public buildings, inaccessible or nonexistent parking for the
14 disabled, inadequate signage and excessive door pressures in public buildings, inaccessible or non-
15 operational elevators within public buildings, inaccessible public parks, and inaccessible public
16 pools. Many of these barriers constitute safety hazards to persons who have mobility disabilities.

17 2. The CITY has also failed to adopt and implement effective policies to ensure that its
18 public facilities and programs are readily accessible to and usable by persons with mobility
19 disabilities. The CITY has performed new construction and alterations to its existing facilities
20 without complying with federal and state disability access design standards. The CITY has known
21 for at least thirty years that it was required by Section 504 of the Rehabilitation Act of 1973 and its
22 accompanying regulations to address its unequal facilities in the form of a Self-Evaluation Plan
23 and a Transition Plan, in which the CITY identified facilities, programs, services, and activities
24 that deny equal access to persons with disabilities. The CITY has also known for over a twenty-
25 five years that it was required by Section 504 of the Rehabilitation Act of 1973 and its
26 accompanying regulations to have implemented structural changes to create equal access to the
27 facilities and programs owned, operated, controlled and/or maintained by the CITY. In addition,

1 the CITY has known that it was required under Title II of the Americans with Disabilities Act of
2 1990 ("ADA") to make structural changes to create equal access to its facilities by January 26,
3 1995. The CITY has failed to meet these federal and state requirements, failed to develop and
4 implement adequate plans, and has denied equal access to persons with mobility disabilities. The
5 Mayor of the CITY and the members of the CITY's Board of Supervisors are each responsible for
6 ensuring compliance with federal and state law within and by the CITY's various facilities,
7 programs, services, and activities. Despite the obligation of the Mayor and the Board of
8 Supervisors to ensure that the CITY complies fully with federal and state disability non-
9 discrimination laws, they have failed and refused to ensure such compliance.

10 3. Plaintiffs seek declaratory and injunctive relief against the Defendants for severely
11 limiting Plaintiffs' access to the CITY's facilities, programs, services, and activities by knowingly
12 refusing to eliminate architectural and programmatic barriers, resulting in emotional and physical
13 distress to Plaintiffs and violating Title II of the Americans With Disabilities Act, 42 U.S.C. §
14 12101 *et seq.*, and its accompanying regulations; Section 504 of the Rehabilitation Act of 1973, as
15 amended, 29 U.S.C. § 794, and its accompanying regulations; 42 U.S.C. § 1983; California Civil
16 Code §§ 51 *et seq.*; California Civil Code §§ 54, *et seq.*; and California Government Code
17 §§11135, *et seq.*

18 4. Plaintiffs have no adequate remedy at law and, unless the Defendants are
19 preliminarily and permanently enjoined, Plaintiffs will continue to suffer irreparable harm as a
20 result of their exclusion from basic facilities, programs, services, and activities.

21 JURISDICTION

22 5. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§
23 1331, 1343(a)(3)-(4). The Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, Section
24 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, and 42 U.S.C. § 1983 present
25 federal questions and confer jurisdiction on this Court over Plaintiffs' claims regardless of the
26 amount in controversy. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction
27 over Plaintiff's pendant claims under California law.

1 VENUE

2 6. Venue is proper in the Northern District of California, the judicial district in which
3 these claims have arisen, pursuant to 28 U.S.C. §1391(b).

4 INTRADISTRICT ASSIGNMENT

5 7. Assignment of this action to the United States District Court for the Northern District
6 of California, San Francisco/Oakland, is proper pursuant to Civil L.R. 3-2 because these civil
7 claims arose in the County of San Francisco, within this District.

8 THE PARTIES

9 8. Plaintiff IVANA KIROLA is a person with a mobility disability within the meaning
10 of all applicable statutes, and she is a qualified person with disabilities within the meaning of Title
11 II of the ADA and Section 504 of the Rehabilitation Act of 1973. IVANA KIROLA has cerebral
12 palsy. She is unable to walk, has limited use of her hands, and is legally blind. She uses a power
13 wheelchair for mobility. Plaintiff IVANA KIROLA is a resident of San Francisco County and is a
14 citizen of the State of California and the United States.

15 9. Plaintiff MICHAEL KWOK is a person with a mobility disability within the
16 meaning of all applicable statutes, and is a qualified person with a disability within the meaning of
17 Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. MICHAEL KWOK is a
18 quadriplegic with impaired motor and sensory functions. He has been disabled since he was in a
19 car accident in 1987. He uses both a manual wheelchair and a power wheelchair for mobility. In
20 most instances, Plaintiff MICHAEL KWOK uses a manual wheelchair for mobility in order to
21 maintain his physical health and for greater maneuverability. Plaintiff MICHAEL KWOK is a
22 resident of San Francisco County and is a citizen of the State of California and the United States.

23 10. Plaintiff ELIZABETH ELFTMAN is a person with a mobility disability within the
24 meaning of all applicable statutes, and she is a qualified person with disabilities within the
25 meaning of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. She has been
26 using a cane for mobility for more than two years. Ms. Elftman can only walk for six blocks at a
27 time, and in doing so, she must rest frequently for several minutes. Plaintiff ELIZABETH

1 ELFTMAN is a resident of San Francisco County and is a citizen of the State of California and the
2 United States.

3 11. The CITY is a local government entity, with responsibility for providing Plaintiffs
4 with access to its public facilities, programs, services, and activities.

5 12. GAVIN NEWSOM is the Mayor of the CITY (hereinafter the "Mayor"); AARON
6 PESKIN is the President and a member of the Board of Supervisors; JAKE MCGOLDRICK,
7 MICHELA ALIOTO-PIER, ROSS MIRKARIMI, ED JEW, CHRIS DALY, SEAN ELSBERND,
8 BEVAN DUFTY, TOM AMMIANO, SOPHIE MAXWELL, and GERARDO SANDOVAL are
9 members of the Board of Supervisors (hereinafter the "Board"). The Mayor and the Board are
10 each legally responsible for ensuring compliance with federal and state law by the CITY.

11 13. The CITY, the Mayor and the Board of Supervisors will be collectively referred to as
12 "Defendants."

13 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

14 14. The CITY receives federal and state funds for its programs and facilities.

15 15. The CITY has numerous illegal physical and programmatic barriers to residents,
16 visitors, and other individuals who use wheelchairs and/or who have mobility disabilities,
17 including Plaintiffs IVANA KIROLA, MICHAEL KWOK, and ELIZABETH ELFTMAN, which
18 deny such persons full and equal access to the CITY's public premises, facilities, programs,
19 services, and activities. Examples of such barriers include the following:

- 20 a. CITY sidewalks that do not have curb ramps and are, therefore, inaccessible to
21 persons with mobility impairments;
- 22 b. CITY sidewalks with curb ramps that are too steep or that have hazardous cross-
23 slopes, or are located in such a way as to force persons with mobility
24 impairments onto the streets, making them inaccessible to persons with mobility
25 disabilities and unsafe for them to use;
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- c. Designated passenger loading zones in the middle of CITY blocks that lack curb ramps, making them inaccessible for persons with mobility disabilities;
- d. Public buildings and spaces (including, but not limited to, key and unique administrative buildings, museums, libraries, parks, and recreation centers) housing facilities, programs, services, and activities offered by the CITY that contain ramps that are too steep, constituting safety hazards to persons with mobility disabilities;
- e. Public facilities with hazardous or inaccessible paths of travel, making them unsafe for persons with mobility disabilities;
- f. Public facilities with restrooms that are inaccessible to persons with mobility disabilities;
- g. Public facilities with inaccessible or non-operational elevators;
- h. Public facilities that are inaccessible to persons with mobility disabilities because the entryways are too steep or consist only of stairs;
- i. Public facilities with entire floors or sections that are inaccessible to persons with mobility disabilities because they are accessible only by stairs;
- j. Public facilities with drinking fountains and service counters that are inaccessible to persons with mobility disabilities;
- k. Public facilities with inadequate signage, making them inaccessible to persons with mobility disabilities;
- l. Public facilities with door hardware or excessive door pressures that prevent access through the doors to persons with mobility disabilities;
- m. Public facilities that lack or have insufficient parking accessible to persons with mobility disabilities;

1 n. Parks, including Golden Gate Park, that are inaccessible, or only partially
2 accessible, to persons with mobility disabilities;

3 16. The CITY continues to perform new construction of its public buildings and
4 facilities that does not comply with state and federal disability access design standards.

5 17. The CITY has received numerous complaints regarding these and similar access
6 barriers, yet the CITY has failed to come into full compliance with applicable laws
7 notwithstanding the severe negative impact that this conduct has caused for Plaintiffs IVANA
8 KIROLA, MICHAEL KWOK, and ELIZABETH ELFTMAN as well as other persons with
9 mobility disabilities.

10 18. Because of the Defendants' misconduct and failure to remove architectural and
11 programmatic access barriers, Plaintiffs have been denied full and equal access to the CITY's
12 facilities, programs, services, and activities. Plaintiffs have suffered and risk suffering severe
13 physical injury and damage to their mental health because Defendants have failed and refused to
14 ensure that the CITY complies with federal and state disability anti-discrimination laws, including
15 the CITY's failure to remove illegal and hazardous architectural and programmatic barriers.

16 19. Defendants have known for years that they are operating illegal facilities and
17 programs, which, by reason of multiple and severe architectural barriers, discriminate against
18 persons with mobility disabilities. Despite this knowledge, Defendants have intentionally refused
19 to comply with federal and state disability non-discrimination laws.

20 20. The Mayor and the Members of the Board of Supervisors are legally responsible for
21 failing to ensure the CITY's full compliance with federal and state law, as alleged in this
22 Complaint.

23 21. Plaintiff IVANA KIROLA travels to many parts of the CITY on a regular basis,
24 including the Western Addition, the Mission, and the Financial District, and has been denied
25 access at many points throughout the CITY.

26 22. Plaintiff IVANA KIROLA has cerebral palsy and must use a scooter for mobility.
27 Plaintiff IVANA KIROLA experiences mobility difficulties due to cracked and inaccessible
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1 sidewalks, inaccessible paths of travel, inadequate and dangerous curb ramps, a lack of curb cuts,
2 and a lack of adequate or accessible ramps and accessible paths of travel at CITY parks, pools, and
3 public buildings. Plaintiff IVANA KIROLA has been repeatedly and routinely denied full and
4 equal access to the CITY's facilities, programs, services, and activities because of the Defendants'
5 refusal and failure to provide the legally required access to the CITY's streets and buildings.

6 23. Many of the CITY'S curb ramps are too steep and make travel for Plaintiff IVANA
7 KIROLA difficult and dangerous. For example, the curb ramps at the intersections of Octavia
8 Street and McCallister Street and at Van Ness Avenue and California Street are too steep, and the
9 curb ramp at the intersection of Olive Street and Van Ness Avenue is so steep that Plaintiff
10 IVANA KIROLA fell out of her wheelchair when trying to cross the street.

11 24. Many intersections in the CITY still lack curb ramps. For example, the intersection
12 at Grove Street and Fillmore Street, which is in Plaintiff IVANA KIROLA'S residential
13 neighborhood, has curbs that do not provide curb ramps. Because this intersection does not have
14 curb ramps, Plaintiff IVANA KIROLA is often forced to take a longer alternate route. Plaintiff
15 IVANA KIROLA also has difficulty traveling in this area of her neighborhood because the cross
16 slope on the south side of the sidewalk on Grove Street between Fillmore Street and Webster
17 Street is too steep.

18 25. Lack of curb ramps also impedes Plaintiff IVANA KIROLA's travel and use of
19 public areas of the CITY outside of her neighborhood. For example, the intersection of 18th Street
20 and Shotwell Street has a curb without a curb ramp. The intersection of Guerrero Street and 16th
21 Street has a curb with only one curb ramp. Curbs on 26th Street between Mission and Harrison are
22 missing curb ramps. Plaintiff IVANA KIROLA travels this area at least twice a month when
23 going to the CITY'S Garfield Swimming Pool.

24 26. Plaintiff IVANA KIROLA uses the CITY'S pools for exercise, but does not have
25 full and equally effective access to them. Hamilton, Garfield, and Sava pools do not have
26 accessible showers, and the "accessible" bathroom at Sava pool does not have a grab bar. North
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1 Beach pool is also inaccessible because its entry door is too heavy and has excessive door pressure,
2 and is not equipped with an automated push button to open it.

3 27. Plaintiff IVANA KIROLA encounters access barriers in her neighborhood when she
4 goes to grocery stores located at the intersections of Geary Boulevard and Masonic Avenue and at
5 Geary Boulevard and Fillmore Street. The curb ramps on Masonic Avenue are too steep, and the
6 curb ramps on Geary Boulevard do not have detectable domes, which make them difficult for
7 Plaintiff IVANA KIROLA to detect and use.

8 28. Plaintiff IVANA KIROLA also encounters access barriers when she goes to the
9 Financial District. Many of the curb ramps on Montgomery Street are too steep, and several of
10 them have sections of pavement missing at the bottom of the curb ramp, which results in a safety
11 hazard. Many of the curb ramps in the Financial District have lips that are in excess of three
12 inches high and which are not beveled.

13 29. Plaintiff IVANA KIROLA encounters access barriers when traveling to her doctors'
14 offices. When visiting her doctor, who is located at Divisadero Street and Geary Boulevard,
15 Plaintiff IVANA KIROLA has to navigate curb ramps that are too steep. When visiting her doctor
16 at the Parnassus Medical Center, she also has to use curb ramps that are too steep.

17 30. Plaintiff IVANA KIROLA has difficulty accessing the City Health Department
18 building located at 101 Grove Street because the entry ramp is too steep. Furthermore, the
19 entrance for persons with mobility disabilities is on the side of the building, and is separate and
20 distinct from the main entrance used by nondisabled persons. The intersection of Polk Street and
21 Grove Street, where the City Health Department is located, is also not fully accessible because the
22 curb ramps do not have detectable domes. Plaintiff IVANA KIROLA has gone off the curb in her
23 wheelchair at this intersection because she was not able to detect the curb.

24 31. Many of the bus islands in the CITY, including those located at Church Street and
25 Market Street and at Market Street and 8th Street, are not accessible. A bus driver once let Plaintiff
26 IVANA KIROLA off on an inaccessible island where she was stranded until she had someone help
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1 her off the island. There were no curb ramps for a person with a mobility disability to use at the
2 bus island.

3 32. Many of the CITY'S parks are inaccessible to Plaintiff IVANA KIROLA, including
4 Alamo Square Park, which has an "accessible" entrance that is too steep, and Park Merced, which
5 has sidewalks that are too narrow and are uneven. Golden Gate Park is also inaccessible to
6 Plaintiff IVANA KIROLA because many of its sidewalks are too narrow and the cross-slopes are
7 too steep. Plaintiff IVANA KIROLA visits Golden Gate Park several times a year and has to deal
8 with these access barriers each time she visits. Plaintiff IVANA KIROLA faces similar barriers
9 when she visits the Palace of Fine Arts where the sidewalks lack curb ramps.

10 33. Plaintiff MICHAEL KWOK travels to many parts of the CITY for business, social
11 or recreational purposes, and has been denied access at many points throughout the CITY.

12 34. Plaintiff MICHAEL KWOK is a quadriplegic. He uses a wheelchair for mobility.
13 Plaintiff MICHAEL KWOK experiences mobility difficulties due to cracked and inaccessible
14 sidewalks, inaccessible paths of travel, inadequate and dangerous curb ramps, and a lack of curb
15 ramps. Plaintiff MICHAEL KWOK has been repeatedly and routinely denied full and equal
16 access to the CITY's facilities, programs, services, and activities because of the Defendants'
17 refusal and failure to provide the legally required access to the CITY's streets and buildings.

18 35. Plaintiff MICHAEL KWOK lives at 6th Street and Howard Street. He has lived at
19 this location for three years, but has lived in the SOMA neighborhood for almost 20 years. Many
20 of the intersections in his neighborhood do not have accessible curb ramps. He must use these
21 inaccessible sidewalks and curb ramps on a daily basis to patronize neighborhood cafes, stores and
22 movie theatres, and therefore encounters access barriers every day. For example, at Howard Street
23 and 8th Street, there is a curb ramp that has a pothole at the bottom of the ramp. This barrier is
24 dangerous for Plaintiff MICHAEL KWOK to navigate. The curb ramps along Howard Street
25 beyond 5th and 9th Streets are also inaccessible. In his neighborhood there are also several sections
26 of sidewalk in which the tree roots have made the sidewalk uneven and difficult to use for
27 someone in a wheelchair. Traveling from Folsom Street to Harrison Street, Plaintiff MICHAEL
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1 KWOK also must use curb ramps that are inaccessible and unsafe, and that are characterized by
2 potholes and other bumps in their surface.

3 36. Plaintiff MICHAEL KWOK travels to the Civic Center to go to City Hall, the Main
4 Library, and to the Farmer's Market on a bi-weekly basis. To get to Civic Center, he travels across
5 sections that do not have adequate curb ramps, which include, for example, Mission Street between
6 7th Street and 9th Street and the intersection of Minna Street and 7th Street. Plaintiff MICHAEL
7 KWOK also travels along Market Street when he goes to the Civic Center and to City Hall. When
8 he does so, he encounters curb ramps that have abrupt lips that are often more than two inches high
9 at the bottom of the ramp. Going over these lips in his power wheelchair causes difficulty for
10 Plaintiff MICHAEL KWOK because the jarring changes the direction that his power chair is
11 going, and also unbalances his body in his wheelchair and causes him physical discomfort.
12 Plaintiff MICHAEL KWOK also encounters curb ramps with abrupt lips at various other locations
13 throughout the City.

14 37. Plaintiff MICHAEL KWOK also goes to Union Square weekly. When he does so,
15 he crosses Market Street at 5th Street, which is hazardous because the locations of the curb ramps
16 force him into oncoming traffic. Potholes created by streetcars create additional hazards at this
17 intersection, as well as at the intersection of Market Street and 8th Street.

18 38. Plaintiff MICHAEL KWOK goes to Cathedral Hill and Japan Town on a weekly
19 basis. When Plaintiff MICHAEL KWOK travels up Van Ness Avenue from Market Street to go to
20 these areas (or to use the AMC 1000 movie theatre on Van Ness), he has difficulty crossing the
21 intersections because the curb ramps on Van Ness are very steep and many of them are hazardous
22 to climb in a wheelchair.

23 39. Last summer, Plaintiff MICHAEL KWOK fell out of his chair when crossing 5th
24 Street and Tehama Street because the pavement at this section was uneven. Such falls are not
25 uncommon for Plaintiff MICHAEL KWOK, as many of the City's streets and sidewalks are
26 hazardous for him to travel.

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1 40. Many of the CITY'S parks are inaccessible to Plaintiff MICHAEL KWOK,
2 including Golden Gate Park and Alamo Square Park. Golden Gate Park and Alamo Square Park
3 contain numerous curb ramps that are not accessible. In addition, the park located at Turk Street
4 and Gough Street is not accessible because of inaccessible curb ramps on the sidewalks nearby,
5 and because the main entrance to the park has steps. Plaintiff MICHAEL KWOK used to try to
6 use many of the CITY's parks, but no longer does so because of the access barriers that he
7 encounters in the parks.

8 41. Plaintiff MICHAEL KWOK often goes to the City's Main Library in the Civic
9 Center. When he goes, he cannot enter through the main entrance on Larkin Street because the
10 main entrance is not accessible to him. He enters from Grove Street, the side entrance. Once he is
11 in the library building, he must descend a steep ramp. Controlling his chair while going down the
12 ramp is difficult, and going up the ramp, which he has to do to exit the library, is exhausting.

13 42. Plaintiff MICHAEL KWOK also encounters inaccessible curb ramps and potholes
14 when he travels along Larkin Street between Eddy Street and Turk Street. The curb ramps in this
15 area are also hazardous, and Plaintiff MICHAEL KWOK has almost fallen out of his wheelchair
16 on several occasions when trying to navigate them.

17 43. Plaintiff ELIZABETH ELFTMAN travels to many parts of the CITY, and has been
18 denied access at many points throughout the CITY. Plaintiff ELIZABETH ELFTMAN has been a
19 resident of San Francisco for over forty years.

20 44. Plaintiff ELIZABETH ELFTMAN has a physical disability and is unable to walk
21 without the assistance of a cane and cannot walk more than six blocks at a time without stopping to
22 rest for several minutes. Plaintiff ELIZABETH ELFTMAN experiences mobility difficulties due
23 to cracked and inaccessible sidewalks, lack of adequate handrails, and lack of accessible paths of
24 travel at CITY buildings and parks. Plaintiff ELIZABETH ELFTMAN has been repeatedly and
25 routinely denied full and equal access to the CITY's facilities, programs, services, and activities
26 because of the Defendants' refusal and failure to provide the legally required access to the CITY's
27 streets and buildings.

1 45. Tree roots have raised and damaged the sidewalks in Plaintiff ELIZABETH
2 ELFTMAN'S neighborhood near the intersection of Laguna Street and Geary Boulevard. Plaintiff
3 ELIZABETH ELFTMAN, who uses a cane and has difficulty navigating the abrupt transitions
4 created by the damaged sidewalk, has tripped and fallen near this intersection because this portion
5 of the sidewalk had been upturned by tree roots. Plaintiff ELIZABETH ELFTMAN goes shopping
6 at stores on Post Street, Laguna Street and Webster Street, and encounters tripping hazards on the
7 sidewalks while traveling in her neighborhood for these purposes.

8 46. Plaintiff ELIZABETH ELFTMAN has medical appointments on a monthly basis at
9 the University of California Medical Center at San Francisco and Kaiser Medical Center for
10 doctors' appointments. When she goes to these appointments she uses the bus stop at Masonic
11 Street and Geary Boulevard. The pavement at this stop is damaged and uneven, which makes this
12 stop difficult and unsafe for her to use and inaccessible to someone using a wheelchair. Plaintiff
13 ELIABETH ELFTMAN has also encountered access barriers on Sutter Street, where there is a
14 section of sidewalk that is partially missing, broken and uneven.

15 47. Plaintiff ELIZABETH ELFTMAN lives a few blocks from Jefferson Square Park,
16 which is inaccessible to her because it does not have handrails with extensions. Plaintiff
17 ELIZABETH ELFTMAN has difficulty climbing and descending stairs when the handrails do not
18 have extensions. The extensions give her the stability she needs at the bottom and top of a
19 staircase.

20 48. Plaintiff ELIZABETH ELFTMAN has encountered physical access barriers in
21 various CITY facilities. Davies Symphony Hall is inaccessible because of a lack of accessible
22 paths of travel and a lack of handrails with extensions. The War Memorial Opera House is
23 inaccessible because it does not have handrails with extensions, does not have adequate accessible
24 parking, contains doors that are too heavy to be accessible, and lacks accessible seating. The
25 Opera House's lack of doors that have the required clearance makes it inaccessible to wheelchair
26 users.

1 49. Plaintiff ELIZABETH ELFTMAN'S primary source of exercise is swimming, and
2 she uses the CITY's public pools. None of the pools she has used (Garfield, Hamilton, and North
3 Beach Pool) have handrails with extensions, which makes entering and exiting the pools both
4 difficult and unsafe for her. In addition, the last step on the staircase in the Hamilton pool is
5 approximately one foot above the floor of the pool, which makes the last step too steep and unsafe
6 for Plaintiff ELIZABETH ELFTMAN to use. In an attempt to provide for a more gradual descent,
7 the CITY has placed a plastic block at the foot of the staircase, but the plastic block is an
8 inadequate and unsafe substitute for a real step.

9 CLASS ALLEGATIONS

10 50. The named Plaintiffs bring this action on behalf of themselves and all persons
11 similarly situated. The class that Plaintiffs seek to represent is comprised of all residents of San
12 Francisco who have mobility disabilities and who seek to have access to and use its facilities,
13 programs, services, and activities.

14 51. The members of the proposed class are so numerous that joinder of all such persons
15 is impracticable and the disposition of their claims in a class action is a benefit both to the parties
16 and to this Court.

17 52. There is a well-defined community of interest among the members of the proposed
18 class in the questions of law and fact to be decided in this case. All members of the class have
19 been and continue to be denied their civil rights to full and equal access to, and use and enjoyment
20 of, the facilities, programs, services and activities operated by the Defendants because of the
21 violations of disability access laws alleged herein.

22 53. There are numerous questions of law and fact common to the class, including, but
23 not limited to, the following:

- 24 a. Whether the CITY adopted a "transition plan" as required by 28 C.F.R. §35.150(d);
- 25 b. Whether any transition plan adopted by the CITY was adequate;
- 26 c. The extent to which any transition plan adopted by the CITY remains
- 27 unimplemented;
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- d. Whether the CITY’s sidewalks, crosswalks, parks, libraries, pools, museums and public buildings owned and operated by the CITY contain physical barriers to access by persons with mobility disabilities which violate the disability access laws alleged herein and applicable regulations;
- e. Whether physical barriers to access deprive class members, including the named Plaintiffs, of full and equal access to, and the use and enjoyment of, programs, services and activities offered by the CITY.
- f. Whether facilities or parts of facilities owned or operated by the CITY are “new construction” and/or “alterations” within the meaning of 28 C.F.R. § 35.151;
- g. Whether facilities or parts of facilities owned or operated by the CITY that constitute “new construction” or “alterations” are in compliance with 28 C.F.R. § 35.151.

54. The issues of law and fact common to the class predominate over individual issues.

55. The claims of the named Plaintiffs are typical of those of the class in that they arise from the same course of conduct engaged in by the CITY. The relief sought herein will benefit all class members alike.

56. The CITY has acted and refused to act on grounds generally applicable to the class, making the declaratory and injunctive relief sought on behalf of the class as a whole appropriate.

57. The named Plaintiffs will fairly and adequately represent the interests of the class. They have no interests adverse to the interests of other members of the class and have retained counsel who are competent and experienced in litigating complex class actions, including large-scale disability rights class action cases.

58. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since joinder of all members of the class is impracticable.

59. References hereafter to Plaintiffs include the named Plaintiffs and each member of the class.

FIRST CLAIM
Violations of the Americans with Disabilities Act of 1990
(Against all Defendants)

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3 60. Plaintiffs incorporate by reference as though fully set forth herein the preceding
4 paragraphs of this Complaint.

5 61. The acts alleged herein constitute violations of Title II of the Americans with
6 Disabilities Act of 1990, 42 U.S.C. §§12131, *et seq.*, and the regulations promulgated thereunder.
7 Title II of the ADA provides, *inter alia*, that (a) people with disabilities shall not be excluded from
8 participation in, nor be denied the benefits of any services, programs, or activities of a public
9 entity, or be subjected to discrimination by any such entity; (b) a public entity may not provide a
10 qualified person with a disability any aid, benefit, or service that is inferior to that received by non-
11 disabled persons; (c) public entities and recipients of federal monies that employ fifteen or more
12 persons shall adopt and complete implementation of an effective transition plan by no later than
13 January 26, 1995.

14 62. The CITY is a public and local government entity within the meaning of Title II of
15 the ADA and employs more than fifteen employees at all times relevant to this action.

16 63. Defendants' discriminatory conduct alleged herein constitutes, *inter alia*, (a) failure
17 to provide safe and equal access to the CITY's programs, facilities, services, and activities; (b)
18 denial of access to the CITY's facilities, programs, services, and activities; (c) failure to formulate
19 and implement an adequate self-evaluation and transition plan; (d) failure to take prompt and
20 equitable steps to remedy its discriminatory conduct; and (e) failure to maintain in operable
21 condition those features of facilities and equipment that Title II of the ADA requires to be readily
22 accessible to and usable by persons with disabilities.

23 64. The premises administered by Defendants include buildings, structures, and related
24 facilities within the meaning of the Americans with Disabilities Act Accessibility Guidelines
25 ("ADAAG") and the Uniform Federal Access Standards ("UFAS"). Plaintiffs are informed and
26 believe, and on that basis allege, that since January 26, 1992, Defendants have constructed, altered,
27 or repaired parts of these premises within the meaning of the ADAAG and the UFAS, and that

1 Defendants have failed to make their facilities readily accessible to and usable by persons with
2 disabilities as required under federal accessibility standards.

3 65. Pursuant to 42 U.S.C. §12133 and the remedies, procedures, and rights set forth in
4 §794 of Title 29 incorporated therein, Plaintiffs pray for judgment as set forth below.

5 **SECOND CLAIM**
6 **Violations of Section 504 of the Rehabilitation Act of 1973**
7 **(Against All Defendants)**

8 66. Plaintiffs incorporate by reference as though fully set forth herein the preceding
9 paragraphs of this Complaint.

10 67. The acts alleged herein constitute violations of Section 504 of the Rehabilitation Act
11 of 1973, 29 U.S.C. §§794, *et seq.*, and the regulations promulgated thereunder. Section 504 of the
12 Rehabilitation Act provides, *inter alia*, that no otherwise qualified individual with a disability
13 shall, solely by reason of his or her disability, be excluded from the participation in, be denied the
14 benefits of, or be subjected to discrimination under any program or activity receiving federal
15 financial assistance.

16 68. The CITY is a direct recipient of federal financial assistance sufficient to invoke the
17 coverage of Section 504, and has received such federal financial assistance at all times relevant to
18 the claims asserted in this Complaint.

19 69. Defendants have violated Plaintiffs' rights under Section 504 of the Rehabilitation
20 Act of 1973 and the regulations promulgated thereunder by: (1) denying Plaintiffs their right to
21 full, equal, and safe access to the facilities, programs, services, and activities offered by the CITY;
22 (2) failing to develop and implement an adequate self-evaluation and transition plan that sets forth
23 the steps necessary to achieve full and equally effective access for persons with mobility
24 disabilities; and (3) by otherwise discriminating against the Plaintiffs solely by reason of their
25 disabilities.

26 70. The premises owned and operated by Defendants include buildings, structures, and
27 related facilities within the meaning of the Americans with Disabilities Act Accessibility
28 Guidelines (ADAAG) and the Uniform Federal Access Standards (UFAS). Plaintiffs are informed

1 and believe, and on that basis allege, that since June 3, 1977, Defendants have constructed, altered
2 or repaired parts of these premises within the meaning of the ADAAG, the UFAS, and other
3 applicable federal disability access design standards, and have failed to make those premises
4 readily accessible to and usable by persons with disabilities as required under federal accessibility
5 standards.

6 **THIRD CLAIM**
7 **42 U.S.C. §1983**

8 **(Against the Mayor and Members of the Board of Supervisors in their Official Capacities)**

9 71. Plaintiffs incorporate by reference as though fully set forth herein the preceding
10 paragraphs of this Complaint.

11 72. The acts and omissions of the Mayor and Members of the Board of Supervisors,
12 under color of law as well as official policy and custom, as hereinabove set forth, deprive Plaintiffs
13 of their rights under Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA in
14 violation of 42 U.S.C. §1983, for which Plaintiffs seek and are entitled to injunctive and
15 declaratory relief.

16 73. The acts of Defendants as herein alleged were willful, intentional, and oppressive.

17 **FOURTH CLAIM**

18 **(Violations of California Civil Code §§51, *et seq.*)**
19 **(Against All Defendants)**

20 74. Plaintiffs incorporate by reference as though fully set forth herein the preceding
21 paragraphs of this Complaint.

22 75. Defendants own, operate and/or lease business establishments within the meaning of
23 the Unruh Civil Rights Act. CITY facilities are public accommodations whose facilities and
24 programs are open to the general public and are operated for the public benefit. The CITY
25 provides its facilities, programs and services to the public, enters into business contracts with a
26 myriad of business entities, and markets and promotes its programs, services, facilities and
27 activities to the general public.

28 76. The actions of Defendants constitute intentional discrimination against persons with
disabilities and violate the Unruh Civil Rights Act, Cal. Civ. Code §§ 51, *et seq.*, in that physically

1 disabled persons have been and are denied full and equal accommodations, advantages, facilities,
2 privileges, and services provided to non-disabled persons.

3 77. The actions of Defendants were and are in violation of the Unruh Civil Rights Act,
4 Cal. Civ. Code §§ 51, *et seq.* and therefore Plaintiffs are also entitled to injunctive relief and
5 reasonable attorneys' fees and costs.

6 **FIFTH CLAIM**
7 **(Violations of Cal. Civ. Code §§ 54, *et seq.*)**

8 78. Plaintiffs incorporate by reference as though fully set forth herein the preceding
9 paragraphs of this Complaint.

10 79. The facilities of the CITY constitute places of public accommodation and places to
11 which the general public is invited within the meaning of California Civil Code §§ 54.1, *et seq.*
12 The CITY provides its facilities, programs and services to the public, enters into business contracts
13 with a myriad of business entities, and markets and promotes its programs, services, facilities and
14 activities to the general public.

15 80. Defendants' discriminatory conduct also includes the CITY's failure to comply with
16 California Government Code §§ 4450, *et seq.* California Government Code sections 4450 *et seq.*
17 requires that all buildings, structures, sidewalks, curbs and related facilities that are constructed
18 with the use of state, county, or municipal funds must provide full and equal access to persons with
19 disabilities. The accessibility standards require that in no instances shall such standards of
20 accessibility and usability provided be a lesser standard than that provided by the Accessibility
21 Guidelines prepared by the federal Access Board as adopted by the United States Department of
22 Justice to implement the Americans with Disabilities Act of 1990. The City and County of San
23 Francisco is an entity that is funded directly by the State of California and/or that receives financial
24 assistance from the State of California.

25 81. Defendants have failed to ensure that all buildings, structures, sidewalks, curbs and
26 related facilities of the CITY provide full and equal access to persons with disabilities, as required
27 by California Government Code §§ 4450, *et seq.* and Cal. Civ. Code §§ 54, *et seq.* Defendants
28

1 have also failed to rectify the unauthorized deviations from applicable regulations and building
2 standards by full compliance within 90 days after discovery of the deviation, as required by Cal.
3 Govt. Code §4452 and Cal. Civ. Code §§ 54, *et seq.*

4 82. Defendants have violated, and continue to violate, Plaintiffs' rights under Civil Code
5 §§ 54, *et seq.* and therefore, Plaintiffs are also entitled to injunctive relief and reasonable attorneys'
6 fees and costs.

7 **SIXTH CLAIM**
8 **(Violations of Cal. Govt. Code §§ 11135, *et seq.*)**

9 83. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint, as
10 though fully set forth herein.

11 84. The CITY is funded directly by the State of California and receives financial
12 assistance from the State of California sufficient to invoke the coverage of Government Code
13 sections 11135, *et seq.* The City was the recipient of such funding and financial assistance at all
14 time relevant to the claims asserted in this Complaint.

15 85. Defendants have refused and failed to provide Plaintiffs with full and equal access to
16 their facilities, programs, services and activities as required by California Government Code
17 sections 11135, *et seq.*

18 **ALLEGATIONS SUPPORTING DECLARATORY AND INJUNCTIVE RELIEF**

19 86. Plaintiffs incorporate by reference as though fully set forth herein the preceding
20 paragraphs of this Complaint.

21 87. A present and actual controversy exists regarding the respective rights and
22 obligations of Plaintiffs and Defendants. Plaintiffs desire a judicial determination of their rights
23 and Defendants' obligations in a declaration as to whether, and to what extent, the Defendants'
24 conduct violates applicable law.

25 88. Such a declaration is necessary and appropriate at this time in order that Plaintiffs
26 may ascertain their rights. Such a declaration is also necessary and appropriate to prevent further
27 harm or infringement of Plaintiffs' rights.

1 89. Plaintiffs have no adequate remedy at law for the harm to them arising from the
2 conduct alleged herein. Unless and until Defendants are preliminarily and permanently enjoined
3 from engaging in such conduct, Plaintiffs will continue to suffer irreparable harm as a result of
4 their exclusion from basic facilities, programs, services, and activities.

5 90. Plaintiffs are entitled to declaratory and injunctive relief pursuant to each of the laws
6 under which this action is brought.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully pray that this Court:

9 1. Issue a declaratory judgment that Defendants' failure to provide full, equal, and safe
10 access for Plaintiffs to the facilities, programs, services, and activities that Defendants offer to non-
11 disabled persons violates Plaintiffs' rights under Title II of the ADA, § 42 U.S.C. 12131 *et seq.*,
12 and the regulations promulgated thereunder, Section 504 of the Rehabilitation Act of 1973, 29
13 U.S.C. § 794, and the regulations promulgated thereunder, California Civil Code §§ 51 *et seq.*;
14 California Civil Code §§ 54, *et seq.*; and California Government Code §§ 11135, *et seq.*

15 2. Issue a declaratory decree that the ongoing acts and omissions of the Mayor and the
16 Members of the Board of Supervisors are taken under color of law, policy, or custom, and deprive
17 Plaintiffs of rights secured under Title II of the ADA and Section 504 of the Rehabilitation Act;

18 3. Issue preliminary and permanent injunctions requiring each of the Defendants to
19 undertake remedial measures to mitigate the effects of Defendants' past and ongoing violations of
20 Title II of the ADA, Section 504 of the Rehabilitation Act, and the regulations promulgated under
21 each of these statutes. At a minimum, the Defendants should be enjoined to take the following
22 actions:

- 23 a. Develop and implement a plan to remove all disability access barriers that deny or
24 limit access to persons with disabilities in the CITY's newly constructed facilities
25 or in areas of facilities that are subject to the alterations provisions of federal or
26 state disability nondiscrimination laws;

