

1 Paula D. Pearlman, State Bar No. 109038
2 Shawna L. Parks, State Bar No. 208301
3 Debra Patkin, State Bar No. 252197
4 Sage Reeves, State Bar Reg. No. 800786
5 DISABILITY RIGHTS LEGAL CENTER
6 919 Albany Street
7 Los Angeles, California 90015
8 Tel: (213) 736-1031; Fax: (213) 736-1428
9 Shawna.Parks@lls.edu

6 (Additional Counsel on the Following Page)

7 Attorneys for Plaintiffs and the proposed Class

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10 VICTOR PINEDA, ANATOLI ILYASHOV,
11 and COMMUNITIES ACTIVELY LIVING
12 INDEPENDENT AND FREE ("CALIF"), on
13 behalf of themselves and all others similarly
14 situated,

13 Plaintiffs,

14 vs.

15 CITY OF LOS ANGELES, a public entity;
16 ANTONIO VILLARAIGOSA, in his official
17 capacity as Mayor; ERIC GARCETTI, in his
18 official capacity as President of the Los
19 Angeles City Council; ED REYES, WENDY
20 GREUEL, DENNIS P. ZINE, TOM
21 LABONGE, JACK WEISS, TONY
22 CARDENAS, RICHARD ALARCÓN,
23 BERNARD PARKS, JAN PERRY, HERB J.
24 WESSON, JR., BILL ROSENDAHL, GREIG
25 SMITH, JOSÉ HUIZAR, AND JANICE
26 HAHN, in their official capacities as members
27 of the Los Angeles City Council,

23 Defendants.

Case No.:

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

1. **Americans with Disabilities Act**
(42 U.S.C. § 12131 *et seq.*)
2. **Section 504 of the Rehabilitation Act of 1973**
(29 U.S.C. § 794 *et seq.*)
3. **California Government Code Section 11135,**
et seq.
4. **Unruh Civil Rights Act (Cal. Civil Code §**
51, *et seq.*)
5. **California Government Code § 4450, *et seq.***

1 Guy B. Wallace, State Bar No. 176151
Clint J. Brayton, State Bar No. 192214
2 Christian Schreiber, State Bar No. 245597
Andrew P. Lee, State Bar No. 245903
3 Naomi B. Sunshine, State Bar No. 244094
SCHNEIDER WALLACE
4 COTTRELL BRAYTON KONECKY LLP
180 Montgomery Street, Suite 2000
5 San Francisco, CA 94104
Tel. (415) 421-7100; Fax: 415-421-7105
6 gwallace@schneiderwallace.com

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1 **JURISDICTION AND VENUE**

2 1. Jurisdiction and venue are proper in this Court because this action arises under California
3 state law and federal statutes that the Court has concurrent jurisdiction over, Defendants are located
4 in the County of Los Angeles, and the acts and omissions complained of herein have occurred and
5 continue to occur in the County of Los Angeles.

6 **INTRODUCTION**

7 2. This lawsuit is brought against the City of Los Angeles (“the City”), the Mayor, and City
8 Council Members in their official capacities (collectively, “Defendants”) to address systemic and
9 pervasive discrimination against people with mobility disabilities with respect to the City’s curb
10 ramps, sidewalks, crosswalks, pedestrian crossings and other walkways (hereafter “pedestrian rights
11 of way”). Plaintiffs include a membership organization dedicated to providing services and
12 advocacy by and for persons with disabilities in the City and two residents of the City with mobility
13 disabilities as well as those similarly situated.

14 3. The City’s pedestrian rights of way are not readily accessible to and usable by persons with
15 mobility disabilities. Given the numerous physical access barriers on the City’s pedestrian rights of
16 way, persons with mobility disabilities must choose between remaining segregated from significant
17 amounts of daily activities, including visiting public facilities, places of public accommodation, or
18 friends, and thereby remaining safe, or risking injury or death by traveling on or around inaccessible
19 pedestrian rights of way. The lack of access to the City’s system of pedestrian rights of way
20 deprives people with mobility disabilities of their independence, and essentially relegates them to
21 second-class citizen status.

22 4. This failure to ensure accessible and safe pedestrian rights of way for people with
23 disabilities manifests in myriad ways throughout the City. Nearly half of the City’s thousands of
24 miles of pedestrian rights of way are in need of repair and are not accessible to persons with
25 mobility disabilities. The City’s current expenditures on this problem will not address all of the
26 current inaccessible and broken pedestrian rights of way for more than 80 years. Moreover, this
27 estimate does not even include stretches of accessible pedestrian rights of way that will become
28 damaged or worn during the intervening years.

1 5. In addition, the City fails to provide curb cuts at all required locations and the installation of
2 curb ramps has been shrinking. Notably, the City's purported installation of curb ramps has been
3 reduced from 7,205 in 1999-2000 to only 570 in 2006-2007. Without curb ramps, Plaintiffs cannot
4 access the City's pedestrian rights of way or their intended destinations at all or at least without
5 significant difficulty, delay, or danger. Finally, Plaintiffs are informed and believe, and on that
6 basis allege, that Defendants have no plan to *maintain* curb ramps or accessible sidewalks once they
7 are built.

8 6. As a result of the above, the City's pedestrian rights of way are characterized by numerous
9 physical access barriers, including but not limited to the following:

- 10 a. Unsafe, noncomplying (slopes too steep, hazardous cross-slopes, high curb ramp lips),
11 or missing of curb ramps;
- 12 b. Broken pedestrian rights of way that are cracked, crumbled, steep, sunken, or uneven
13 or that have improper slopes or broken and inaccessible surfaces;
- 14 c. Physical obstacles on the sidewalk between intersections, such as improperly placed
15 signs or bus stop benches; and
- 16 d. Apron parking (vehicles parking in driveways so they protrude onto the pedestrian
17 rights of way and leave insufficient space for persons with mobility aids to pass
18 through).

19 7. Accessibility of pedestrian rights of way goes to the heart of the purpose of the Americans
20 with Disabilities Act ("ADA") and other disability rights laws, including integration and
21 accessibility. Defendants provide and are responsible for maintaining these public pedestrian rights
22 of way, which constitute an essential government program, service, and activity for residents and
23 visitors alike. Yet, when viewed in their entirety, this system of pedestrian rights of way is not
24 accessible to persons with mobility disabilities in violation of multiple federal and state disability
25 rights laws. This lawsuit seeks to force Defendants to comply with these laws and finally, some 18
26 years after the enactment of the ADA and many more years after enactment of California's
27 disability rights protections, provide access to City pedestrian rights of way for *all* Californians.

28 8. Plaintiffs thus bring this action to remedy violations of Title II of the ADA, 42 U.S.C. §

1 12131, *et seq.*, and its accompanying regulations, Section 504 of the Rehabilitation Act, 29 U.S.C. §
2 794, *et seq.* (the “Rehabilitation Act”) and its accompanying regulations, as well as analogous state
3 statutes including California Government Code § 11135, California Civil Code § 51, *et seq.*, and
4 California Government Code §4450. Plaintiffs seek declaratory and injunctive relief pursuant to the
5 above statutes, as well as an award of attorneys’ fees and costs under applicable law.

6 **PARTIES**

7 9. Organizational Plaintiff Communities Actively Living Independent and Free (“CALIF”), a
8 membership organization, is an independent living center: a private, non-profit community-based
9 corporation providing services and advocacy by and for persons with disabilities in the City,
10 including individuals who have been discriminated against and subjected to hazardous conditions
11 due to the access barriers at issue in the present case. CALIF seeks to achieve full inclusion,
12 equality, and civil rights for people with disabilities. Accordingly, the interests that CALIF seeks to
13 protect through this litigation are germane to its mission and purpose. Furthermore, CALIF’s
14 members include persons with mobility disabilities that have been harmed and continue to
15 experience harm because the City and the other Defendants identified below have failed and
16 continue to fail to provide access to the City’s system of pedestrian rights of way and/or CALIF has
17 suffered injury as a result of the City’s inaccessible pedestrian rights of way. CALIF members have
18 encountered inaccessible pedestrian rights of way throughout the City of Los Angeles. Because
19 CALIF seeks only injunctive relief, individual participation of CALIF members is not required.

20 10. Named Plaintiff Victor Pineda has muscular dystrophy, lives in the Westwood area of the
21 City, and uses a motorized wheelchair for mobility. Plaintiff Pineda is a “qualified person with a
22 disability” and a person with “a disability” within the meaning of all applicable statutes and
23 regulations including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, 29 U.S.C. § 705(20)(B), and
24 California Government Code § 12926.

25 11. Named Plaintiff Anatoli Ilyashov lives in the Los Feliz neighborhood of the City, has
26 multiple sclerosis, and uses a motorized wheelchair for mobility. Plaintiff Ilyashov is a “qualified
27 person with a disability” and a person with “a disability” within the meaning of all applicable
28 statutes and regulations including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104, 29 U.S.C. §

1 705(20)(B), and California Government Code § 12926.

2 12. The Plaintiff class consists of all persons with mobility disabilities who have been denied
3 access to pedestrian rights of way in the City because of their disabilities.

4 13. References to "Plaintiffs" herein shall be deemed to include the Organizational Plaintiff,
5 Named Plaintiffs, and each member of the class, unless otherwise indicated.

6 14. The City is a local government entity with the responsibility of providing Plaintiffs with
7 access to its public facilities, programs, services, and activities. The City is responsible for
8 constructing, maintaining, repairing, and regulating the system of pedestrian rights of way within
9 the City. Presently, and at all times relevant to this Complaint, the City has been a public entity
10 within the meaning of Title II of the ADA and has received federal financial assistance within the
11 meaning of the Rehabilitation Act as well as state financial assistance within the meaning of
12 Government Code Section 11135.

13 15. Antonio Villaraigosa is the Mayor of the City (hereinafter the "Mayor"); Eric Garcetti is the
14 President of the City Council; Ed Reyes, Wendy Greuel, Dennis P. Zine, Tom LaBonge, Jack
15 Weiss, Tony Cardenas, Richard Alarcón, Bernard Parks, Jan Perry, Herb J. Wesson, Jr., Bill
16 Rosendahl, Greig Smith, José Huizar, and Janice Hahn are members of the Los Angeles City
17 Council (hereinafter the "City Council"). The Mayor and the City Council are each, in their official
18 capacity, legally responsible for ensuring compliance with federal and state law by the City.

19 16. The City, the Mayor and the City Council members will be collectively referred to as
20 "Defendants."

21 **FACTUAL ALLEGATIONS**

22 17. Defendants have systematically failed, and are failing, to install and maintain accessible
23 pedestrian rights of away in violation of federal and state law. Numerous pedestrian rights of way
24 are characterized by multiple disability access problems, which include but are not limited to the
25 following examples:

- 26 a. Unsafe, noncomplying (slopes too steep, hazardous cross-slopes, high curb ramp lips), or
27 missing curb ramps;
- 28 b. Broken pedestrian rights of way that are cracked, crumbled, steep, sunken, or uneven or

1 that have improper slopes or broken and inaccessible surfaces;

2 c. Physical obstacles on the sidewalk between intersections, such as improperly placed signs
3 or bus stop benches; and

4 d. Apron parking (vehicles parking in driveways so they protrude onto the pedestrian rights
5 of way and leave insufficient space for persons with mobility aids to pass through).

6 18. Defendants have systematically failed, and are failing, to maintain accessible pedestrian
7 rights of way in violation of federal and state law. Numerous pedestrian rights of way are riddled
8 with problems, which include but are not limited to the following examples. Many pedestrian rights
9 of way have buckled due to tree roots, resulting in abrupt changes in level. Others have obstacles
10 such as light poles and bus benches narrowing the path of travel. Many pedestrian rights of way are
11 overdue for maintenance, with broken, cracked, crumbled, sunken, and/or caved concrete.
12 Defendants have also failed to provide accessible alternative routes during construction.

13 19. Apron parking is prohibited by California Vehicle Code § 22500 and Los Angeles
14 Municipal Code § 80.53. However, Defendants through their local parking enforcement officers do
15 not ticket violators who park on aprons or otherwise effectively enforce these prohibitions. As a
16 result, in certain parts of the City, cars frequently are parked such that they block the path of travel
17 along pedestrian rights of way. This results in obstacles along pedestrian rights of way that make
18 the path of travel too narrow for pedestrians with mobility disabilities.

19 20. Defendants have also failed, and are failing, to install and maintain curb ramps in violation
20 of federal and state law. For example, thousands of intersections in the City have no curb ramps or
21 an inadequate number of curb ramps. Even among the intersections that do have curb ramps, many
22 of them have curb ramps that are improperly installed and/or maintained, have lips where the
23 sidewalk meets the street that are too steep to use, or are otherwise noncomplying (slopes too steep or
24 hazardous cross-slopes). Many other curb ramps are not maintained; they are broken, cracked,
25 crumbled, sunken, and/or caved.

26 21. Also, in many instances, segments of the City's pedestrian rights of way do not comply with
27 new construction or alteration accessibility requirements. For example, on information and belief,
28 the City fails to install curb cuts consistently when it repaves streets. As a result, persons with

1 mobility disabilities have been denied meaningful access to the City's pedestrian rights of way,
2 public buildings, parks, transportation, and/or places of public accommodation either through
3 complete denials of access or through delay of travel or unsafe conditions.

4 22. These systemic failures have caused the City's pedestrian rights of way to be inaccessible
5 when viewed in their entirety in violation of state and federal law.

6 23. Plaintiffs allege that these barriers are not isolated or limited circumstances. Rather, these
7 barriers are present throughout the City, thus denying access to persons with disabilities City-wide.
8 Persons with mobility disabilities encounter numerous obstacles to using pedestrian rights of way
9 throughout the City, including but not limited to the Downtown, Venice, Eagle Rock, Los Feliz, the
10 Valley, Hollywood, Westside and LAX neighborhoods. As a result of these barriers, persons with
11 disabilities have been denied access to accommodations or public services. Furthermore, these
12 barriers discourage persons with mobility disabilities from exploring or visiting areas of the City.
13 These barriers have also delayed travel and caused these persons to fear for their safety, as these
14 conditions often create situations that are downright dangerous for persons with disabilities.

15 24. This discrimination and systemic inaccessibility has a severe negative impact on persons
16 with mobility disabilities within the City as represented by the experiences of members of the
17 Organizational Plaintiff CALIF.

18 25. Organizational Plaintiff CALIF has suffered injuries as a result of the City's inaccessible
19 pedestrian rights of way and/or members who reside and/or work throughout the City and who have
20 used, and will continue to use or attempt to use, the City's system of pedestrian rights of way and
21 who have encountered, and will continue to encounter the various types of access barriers described
22 herein.

23 26. The experience of Named Plaintiffs Pineda and Ilyashov are further representative of the
24 nature of barriers experienced by persons with disabilities in the City.

25 27. Due to his mobility disability, Named Plaintiff Victor Pineda uses a motorized wheelchair.
26 Plaintiff Pineda is a graduate student at UCLA and lives in the residential North Westwood Village.
27 He has encountered numerous obstacles to using pedestrian rights of way in the City. This includes,
28 but is not limited to, those described below in his neighborhood.

1 28. As a graduate student, a large portion of Plaintiff Pineda's educational experience is
2 interacting with his classmates, professors, and acquaintances. Some of them live in the residential
3 portion of North Westwood Village, which borders Plaintiff Pineda's apartment complex. Because
4 of multiple barriers, Plaintiff Pineda cannot access this neighborhood. As a result, Plaintiff Pineda
5 is barred from several social and professional growth opportunities.

6 29. For example, Plaintiff Pineda's friends have a regular, once-a-month gathering. Often, these
7 gatherings are held at either an apartment on Levering Avenue or an apartment on Strathmore
8 Drive. Plaintiff Pineda is forced to miss out on these events because he cannot travel to and from
9 these streets safely due to apron parking and the lack of curb ramps. In addition, there are several
10 other events in this area that Plaintiff Pineda, like a typical graduate school student, would like to
11 attend, such as study groups, dinners, social events and similar social and professional
12 opportunities. But Plaintiff Pineda cannot access these events, which occur approximately every
13 three weeks, for the same reasons.

14 30. The inaccessibility of the North Westwood Village also limits Plaintiff Pineda to a single
15 route to school that goes through Westwood Village, a commercial area where Plaintiff Pineda must
16 battle the congestion and squeeze through vehicles and people. Plaintiff Pineda is forced to use this
17 route because all the other residential routes are inaccessible to him.

18 31. Plaintiff Pineda's neighborhood is inaccessible because it contains numerous problematic
19 pedestrian rights of way. For example, the sidewalks are so poorly maintained that they are
20 impassable for someone in a wheelchair. Several stretches of sidewalks feature cracks, significant
21 holes, breaks, bumps, and significant heaving that creates pointy bumps, such as the sidewalk on the
22 east side of Strathmore Drive between Weyburn Drive and Landfair Avenue, and the sidewalk on
23 the north side of Landfair Avenue east of Strathmore. Others sidewalks are simply too narrow for
24 Plaintiff Pineda to travel on them. For example, the sidewalk on Strathmore Drive when one
25 immediately turns right from Weyburn Place is too narrow for a person in a wheelchair to travel on
26 it.

27 32. A lack of curb ramps forces Plaintiff Pineda to travel on the street in his wheelchair even
28 though doing so is dangerous. For example, at the intersection of Strathmore Drive and Levering

1 Avenue there is only one curb ramp. Plaintiff Pineda must exit the one corner of the intersection
2 that has a curb ramp, cross the street to a corner without a curb ramp, wait in the street, and finally
3 cross that street and use a driveway to access the sidewalk. This is very dangerous, especially with
4 college students zooming by and the area being visibility hampered because of hilly roads and
5 parked vehicles on both sides of the street.

6 33. The intersection of Landfair Avenue and Roebling Avenue also has no curb ramps. This
7 causes further access problems for Plaintiff Pineda because he has to travel on the street along
8 vehicular traffic and enter and exit a sidewalk using a driveway. However, driveways in this area
9 are often blocked by vehicles parked on the aprons, leaving insufficient room for Plaintiff Pineda to
10 access them. Furthermore, it is unsafe for Plaintiff Pineda to use driveways since drivers of
11 vehicles backing out of them do not always see him attempting to enter or exit the sidewalk nearby.

12 34. Similarly, poorly maintained curb cuts create an obstacle for Plaintiff Pineda. One example
13 can be found at the intersection of Weyburn Place and Strathmore Drive. While the southwest
14 corner has no curb cut, the southeast corner has a curb cut that is in a poor shape. There is a slab of
15 asphalt covering half of the curb cut, creating an uneven surface. Cracks on the slab makes this
16 section even more uneven. As a result, Plaintiff Pineda risks having his wheelchair toppling over or
17 becoming stuck if he travels over this curb cut. In addition, the same half of the curb cut is raised at
18 the point where it meets the street. When Plaintiff Pineda attempts to travel over this cut, half of his
19 wheelchair is raised. Again, this imposes a risk of the chair toppling over or being stuck at the curb
20 cut.

21 35. Apron parking is widespread in North Westwood Village. Although apron parking is
22 illegal, local parking enforcement officers do not ticket violators who park on aprons and block the
23 sidewalks, even though they do ticket vehicles parked parallel to the curb in violation of parking
24 signs. Plaintiff Pineda has consistently experienced apron parking on a number of sidewalks,
25 including, but not limited to: Strathmore Drive between Levering Avenue and Landfair Avenue,
26 along Landfair Avenue east of Strathmore Drive, Levering Avenue between Strathmore Drive and
27 Gayley, and along Roebling Avenue. The narrow spaces between the vehicles on the sidewalk
28 prevent Plaintiff Pineda from traveling along the sidewalk. As a result, Plaintiff Pineda often must

1 travel on the street to reach his destination, literally risking his life. Plaintiff Pineda and others such
2 as Donald Shoup, a Professor of Urban Planning at UCLA, have brought the issue of apron parking
3 to Defendants' attention, only to be ignored. Since March 2006, Professor Shoup has called and
4 sent letters and/or email messages to the Mayor, City Attorney Rocky Delgadillo, Defendant Weiss,
5 the City of Los Angeles Department of Transportation and the City of Los Angeles Police
6 Department asking them to address apron parking.

7 36. Due to his mobility disability, Named Plaintiff Anatoli Ilyashov uses a motorized
8 wheelchair. He lives near the intersection of Los Feliz Boulevard and Hillhurst Avenue in the Los
9 Feliz neighborhood of the City. He has encountered numerous obstacles to using the sidewalks in
10 the City. This includes, but is not limited to, those described below in his neighborhood.

11 37. Plaintiff Ilyashov frequently visits a plaza two blocks from his home that includes
12 Albertson's grocery store, Coffee Bean, California Sushi, and another local restaurant at which he
13 loves to eat. To reach the plaza from his residence, Plaintiff Ilyashov has to cross the intersection of
14 Hillhurst Avenue and Avocado Street. But until about a month ago this intersection had only one
15 curb ramp, on the west side of Hillhurst (even this curb ramp might be non-compliant). Thus, to
16 pass this intersection, Plaintiff Ilyashov (who lives on the eastern side of Hillhurst) had to turn onto
17 Avocado from Hillhurst, go down Avocado until he found a driveway, and then cross the street and
18 travel on the street until he found another driveway to re-enter the sidewalk. He was required to do
19 this even though vehicles often travel at high speeds down this busy street. While traveling on the
20 sidewalks on both sides of Avocado to and from driveways, Plaintiff Ilyashov had to carefully roll
21 over the broken, cracked and bumpy portions. He often has had to battle to keep his balance and to
22 avoid toppling over if a wheel got caught in a crack or hit a bump. And some parts are simply
23 impassable because they are sunken or caved. So, Plaintiff Ilyashov often chose to avoid these
24 inaccessible sidewalks and instead travel down Hillhurst Street, an extremely busy street with
25 vehicles passing at high speeds, from Los Feliz Boulevard to Ambrose Avenue which is extremely
26 dangerous.

27 38. Another intersection, Hillhurst Avenue and Ambrose Avenue, initially had no curb ramps
28 whatsoever. For years Plaintiff Ilyashov was forced to travel on Hillhurst Avenue itself to reach the

1 plaza. In these instances Plaintiff Ilyashov had to risk his safety only to access his neighborhood
2 and public accommodations located therein. As he traveled on the street, drivers would often shout
3 at him to move onto the sidewalk as if he did not know what he was doing. In addition, once he
4 reached the plaza, Plaintiff Ilyashov had to enter through its driveway rather than the connecting
5 sidewalk because of the lack of a curb ramp. This was very dangerous given that vehicles
6 constantly drove in and out of the plaza through its driveway. Moreover, the lip of this driveway is
7 too high for a wheelchair, so Plaintiff Ilyashov's wheelchair often got stuck there.

8 39. Plaintiff Ilyashov complained to certain Defendants several times three to four years ago via
9 phone and letter about these intersections. Yet the intersection at Hillhurst Avenue and Ambrose
10 Avenue was only recently repaired, more than three years after Plaintiff Ilyashov first requested a
11 curb ramp. And only after a formal demand letter was sent as part of the above-caption action, was
12 the curb ramp at the intersection of Hillhurst Avenue and Avocado Street and a portion of the
13 adjoining sidewalk repaired.

14 40. These experiences are typical of those experienced by persons with mobility disabilities in
15 the City and demonstrate the inaccessibility, fear, humiliation, and isolation that people with
16 mobility disabilities experience while trying to navigate the system of pedestrian rights of way in
17 the City. Defendants have been put on notice of allegations of class-wide violations of federal and
18 state laws regarding people with mobility disabilities for tort claims filed by Plaintiffs Pineda and
19 Ilyashov and multiple complaints by persons with mobility disabilities about the City's pedestrian
20 rights of way. There is no adequate remedy at law and Plaintiffs have been irreparably harmed.

21 41. Plaintiffs therefore seek injunctive and declaratory relief requiring Defendants to ensure
22 compliance with Title II of the ADA and its accompanying regulations, Section 504 of the
23 Rehabilitation Act and its accompanying regulations, California Government Code § 11135, *et seq.*,
24 California Civil Code § 51, *et seq.*, and California Government Code § 4450.

25 **CLASS ACTION ALLEGATIONS**

26 42. Organizational Plaintiff CALIF and Named Plaintiffs Pineda and Ilyashov bring this action
27 individually and on behalf of all persons with mobility disabilities who have been denied access to
28 pedestrian rights of way in the City because of their disabilities as a class action pursuant to

1 California Code of Civil Procedure Section 382.

2 43. Each member of the proposed class is a “qualified person with a disability” and/or a person
3 with a “disability” pursuant to 42 U.S.C. § 12131(2), Section 504 of the Rehabilitation Act, and/or
4 applicable California law. The persons in the class are so numerous that the joinder of all such
5 persons is impracticable and that the disposition of their claims in a class action rather than in
6 individual actions will benefit the parties and the court. The class consists of tens of thousands of
7 persons with mobility disabilities.

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

13 45. There are numerous questions of law and fact common to the class, including, but not
14 limited to, the following:

- 15 a. Whether facilities or parts of facilities owned or operated by Defendants are “new
16 construction” and/or “alterations” within the meaning of 28 C.F.R. 35.151;
- 17 b. Whether facilities or parts of facilities owned or operated by Defendants that constitute
18 “new construction” or “alterations” are in compliance with 28 C.F.R. 35.151;
- 19 c. Whether Defendants are violating Title II of the ADA, 42 U.S.C. sections 12131, *et*
20 *seq.*, by failing to make its facilities, programs, services and activities accessible to
21 and useable by persons with disabilities, and otherwise discriminating against persons
22 with mobility disabilities, as set forth above;
- 23 d. Whether Defendants are violating Section 504 of the Rehabilitation Act, 29 U.S.C. §
24 794 *et seq.*, by failing to make its facilities, programs, services and activities
25 accessible to and useable by persons with disabilities, and otherwise discriminating
26 against people with mobility disabilities, as set forth above;
- 27 e. Whether Defendants are violating California Government Code Section 11135(a),
28 which prohibits denial of benefits to persons with mobility disabilities of any program

1 or activity that is funded directly by the state or receives any financial assistance from
2 the state;

3 f. Whether Defendants are violating California Civil Code § 51 *et seq.*, by failing to
4 provide full and equal access to people with mobility disabilities; and

5 g. Whether Defendants are violating California Government Code § 4450, *et seq.*, by
6 failing to provide full and equal access to persons with disabilities.

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

8 47. Plaintiffs and the class they represent are informed, believe, and thereon allege that
9 Defendants have not adopted and do not enforce appropriate policies and procedures to ensure that
10 Defendants are in compliance with these statutes to ensure nondiscrimination against persons with
11 disabilities and equal access to programs, services and activities for persons with disabilities.

12 48. Defendants acted or refused to act on grounds generally applicable to the class, thereby
13 making appropriate final injunctive or declaratory relief with respect to the class as a whole. Class
14 claims are brought for the purposes of obtaining declaratory and injunctive relief only.

15 49. The claims of Named Plaintiffs are typical of those of the class in that they arise from the
16 same course of conduct engaged in by Defendants. The relief sought herein will benefit all class
17 members alike.

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

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

24 52. Plaintiffs contemplate the eventual issuance of notice to the proposed class members that
25 would set forth the subject and nature of the instant action. To the extent that any further notices
26 may be required, Plaintiffs contemplate the use of additional media and/or mailings.

27 53. References hereafter to Plaintiffs include the named Plaintiffs and each member of the
28 class.

1 **FIRST CAUSE OF ACTION**

2 **The Americans with Disabilities Act**

3 **by Plaintiffs Individually and on Behalf of The Plaintiff Class Against All Defendants**

4 **42 U.S.C. § 12101 et seq.**

5 54. Plaintiffs incorporate by reference each and every allegation contained in the foregoing
6 paragraphs.

7 55. Congress enacted the ADA upon finding, among other things, that “society has tended to
8 isolate and segregate individuals with disabilities” and that such forms of discrimination continue to
9 be a “serious and pervasive social problem.” 42 U.S.C. § 12101(a) (2).

10 56. In response to these findings, Congress explicitly stated that the purpose of the ADA is to
11 provide “a clear and comprehensive national mandate for the elimination of discrimination against
12 individuals with disabilities” and “clear, strong, consistent, enforceable standards addressing
13 discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b) (1)-(2).

14 57. Title II of the ADA provides in pertinent part: “[N]o qualified individual with a disability
15 shall, by reason of such disability, be excluded from participation in or be denied the benefits of the
16 services, programs, or activities of a public entity, or be subjected to discrimination by any such
17 entity.” 42 U.S.C. § 12132.

18 58. At all times relevant to this action, the City is a “public entity” within the meaning of Title
19 II of the ADA and provides a program, service or activity to the general public.

20 59. At all times relevant to this action, Plaintiffs are qualified individuals with disabilities within
21 the meaning of Title II of the ADA and met the essential eligibility requirements for the receipt of
22 the services, programs, or activities of the City. 42 U.S.C. § 12131.

23 60. Defendants are mandated to operate each program, service, or activity “so that, when viewed in
24 its entirety, it is readily accessible to and useable by individuals with disabilities.” 28 C.F.R. § 35.150;
25 *see also* 28 C.F.R. §§ 35.149 & 35.151. Pedestrian rights of way themselves constitute a vital public
26 program, service, or activity under Title II of the ADA. 28 C.F.R. § 35.104; *Barden v. City of*
27 *Sacramento*, 292 F.3d 1073 (2002).

28 61. The regulations implementing Title II of the ADA specifically provide that a public entity

1 must install curb ramps at intersections whenever it newly constructs or alters sidewalks, streets,
2 roads and/or highways at any time after January 26, 1992 and must comply with Uniform Federal
3 Accessibility Standards (UFAS) or with the Americans with Disabilities Act Accessibility
4 Guidelines for Buildings and Facilities (ADAAG). 28 C.F.R. § 35.151. A street resurfacing project
5 by a public entity is an alteration under the meaning of the regulation. *Kinney v. Yersalim*, 9 F.3d
6 1067, 1073-74 (3rd Cir. 1993); *Lonberg v. City of Riverside*, 2007 WL 2005177, * 6 (C.D. Cal.
7 2007).

8 62. The regulations implementing Title II of the ADA provide that a public entity must maintain
9 the features of all facilities required to be accessible by the ADA. 28 C.F.R. § 35.133. Facilities
10 required to be accessible include roads, walks, and passageways. 28 C.F.R. § 35.104.

11 63. The regulations implementing Title II also provide that a public entity must provide and
12 maintain accessibility for temporary facilities, including but not limited to, “temporary safe
13 pedestrian passageways around a construction site.” 28 C.F.R. 36 App. A 4.1.1(4).

14 64. Plaintiffs are informed, believe and thereon allege that the City’s pedestrian rights of way are
15 not fully, equally, or safely accessible to Plaintiffs when viewed in their entirety. The premises
16 administered by Defendants include facilities within the meaning of ADAAG and UFAS. Plaintiffs
17 are informed and believe, and on that basis allege, that since January 26, 1992, Defendants have
18 constructed, altered, or repaired parts of these facilities within the meaning of the ADAAG and the
19 UFAS, and that Defendants have failed to make their facilities readily accessible to and usable by
20 persons with disabilities as required under federal accessibility standards.

21 65. Plaintiffs are informed, believe and thereon allege that Defendants violated the ADA by
22 failing to enforce City and State apron parking codes or otherwise prohibit apron parking and
23 thereby denying them the benefits of the City’s pedestrian rights of way.

24 66. Plaintiffs are informed, believe and thereon allege that Defendants and their agents and
25 employees have failed to provide or otherwise prohibit accessible alternative routes during
26 construction.

27 67. Plaintiffs are informed, believe and thereon allege that Defendants and their agents and
28 employees have and continue to violate the ADA by failing to timely respond to and remedy

1 complaints about the said barriers.

2 68. Plaintiffs are informed, believe and thereon allege that Defendants committed the acts and
3 omissions alleged herein with intent and/or reckless disregard of Plaintiffs' rights.

4 69. As a direct and proximate result of the aforementioned acts, Plaintiffs have suffered, and
5 continue to suffer humiliation, hardship and anxiety, due to Defendants' failure to address
6 accommodations, modifications, services and access required for Plaintiffs' disabilities.

7 70. Because Defendants' discriminatory conduct is ongoing, declaratory and injunctive relief
8 are appropriate remedies.

9 71. Pursuant to 42 U.S.C. § 12133, Plaintiffs are entitled to declaratory and injunctive relief as
10 well as reasonable attorneys' fees and costs incurred in bringing this action. Named Plaintiffs are also
11 entitled to damages.

12 **SECOND CAUSE OF ACTION**

13 **Section 504 of the Rehabilitation Act**

14 **by Plaintiffs Individually and on Behalf of The Plaintiff Class Against All Defendants**

15 **29 U.S.C. § 794 *et seq.***

16 72. Plaintiffs incorporate by reference each and every allegation contained in the foregoing
17 paragraphs.

18 73. Section 504 of the Rehabilitation Act of 1973 provides in pertinent part: "[N]o otherwise
19 qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded
20 from the participation in, be denied the benefits of, or be subjected to discrimination under any
21 program or activity receiving federal financial assistance" 29 U.S.C. § 794.

22 74. Plaintiffs are otherwise qualified to participate in the services, programs, or activities that
23 are provided to individuals in the City. *See* 29 U.S.C. § 794(b).

24 75. The City is a direct recipient of federal financial assistance sufficient to invoke the coverage
25 of Section 504, and has received such federal financial assistance at all times relevant to the claims
26 asserted in this Complaint.

27 76. Plaintiffs are informed, believe and thereon allege that Defendants and their agents and
28 employees have and continue to violate the Rehabilitation Act and the regulations promulgated

1 thereunder by excluding Plaintiffs from participation in, denying Plaintiffs the benefits of, and
2 subjecting Plaintiffs based solely by reason of their disability to discrimination in the benefits and
3 services the City's pedestrian rights of way and for the reasons set forth above.

4 77. Plaintiffs are informed, believe and thereon allege that Defendants committed the acts and
5 omissions alleged herein with intent and/or reckless disregard of Plaintiffs' rights.

6 78. As a direct and proximate result of the aforementioned acts, Plaintiffs suffered and continue
7 to suffer humiliation, hardship, and anxiety due to Defendants' failure to address accommodations,
8 modifications, services and access required for their disabilities.

9 79. Because Defendants' discriminatory conduct is ongoing, declaratory and injunctive relief
10 are appropriate remedies.

11 80. Pursuant to 29 U.S.C. § 794(a), Plaintiffs are entitled to declaratory and injunctive relief and
12 to recover from Defendants the reasonable attorneys' fees and costs incurred in bringing this action.
13 Named Plaintiffs are also entitled to damages.

14 **THIRD CAUSE OF ACTION**

15 **California Government Code § 11135**

16 **by Plaintiffs Individually and on Behalf of The Plaintiff Class Against All Defendants**

17 81. Plaintiffs incorporate by reference each and every allegation contained in the foregoing
18 paragraphs.

19 82. Section 11135(a) of the California Government Code provides in pertinent part: "No person
20 in the State of California shall, on the basis of . . . disability, be unlawfully denied the benefits of, or
21 be unlawfully subjected to discrimination under, any program or activity that is funded directly by
22 the state or receives any financial assistance from the state."

23 83. The City is funded directly by the State of California and receives financial assistance from
24 the State of California sufficient to invoke the coverage of Government Code Sections 11135, *et*
25 *seq.* The City was the recipient of such funding and financial assistance at all time relevant to the
26 claims asserted in this Complaint.

27 84. Plaintiffs are informed, believe and thereon allege that Defendants and their agents and
28 employees have and continue to violate California Government Code § 11135 by unlawfully denying

1 Plaintiffs the benefits of, and unlawfully subjecting Plaintiffs to discrimination under the City's
2 programs and activities and for the reasons set forth above.

3 85. Defendants have refused and failed to provide Plaintiffs with full and equal access to their
4 facilities, programs, services and activities as required by California Government Code Sections
5 11135, *et seq.*

6 86. As a direct and proximate result of the aforementioned acts, Plaintiffs have suffered, and
7 continue to suffer humiliation, hardship and anxiety, due to Defendants' failure to address
8 accommodations, modifications, services and access required for Plaintiffs' disabilities.

9 87. Because Defendants' discriminatory conduct is ongoing, declaratory and injunctive relief
10 are appropriate remedies.

11 88. Plaintiffs are also entitled to reasonable attorneys' fees and costs in filing this action.

12 **FOURTH CAUSE OF ACTION**

13 **Unruh Civil Rights Act**

14 **by Plaintiffs Individually and on Behalf of The Plaintiff Class Against All Defendants**

15 **California Civil Code § 51 *et seq.***

16 89. Plaintiffs incorporate by reference each and every allegation contained in the foregoing
17 paragraphs.

18 90. California Civil Code § 51(b) provides in pertinent part that "All persons within the
19 jurisdiction of this state are free and equal, and no matter what their . . . disability or medical
20 condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or
21 services in all business establishments of every kind whatsoever."

22 91. Pursuant to California Civil Code § 51(f), a violation of the ADA also constitutes a violation
23 of California Civil Code §51 *et seq.*

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

1 general public. The City is a “business establishment” and pedestrian rights of way are
2 “accommodations, advantages, facilities, privileges, or services” within the meaning of California
3 Civil Code § 51 *et seq.*

4 93. Plaintiffs are informed, believe and thereon allege that Defendants and their agents and
5 employees have and continue to violate California Civil Code § 51 *et seq.* by denying Plaintiffs full
6 and equal access to its pedestrian rights of way comparable to the access that it offers to others and
7 for the reasons set forth above, including violating the ADA.

8 94. The actions of Defendants constitute intentional discrimination against persons with
9 disabilities and violate the Unruh Civil Rights Act, Cal. Civ. Code §§ 51, *et seq.*, in that physically
10 disabled persons have been and are denied full and equal accommodations, advantages, facilities,
11 privileges, and services provided to non-disabled persons.

12 95. As a direct and proximate result of the aforementioned acts, Plaintiffs have suffered, and
13 continue to suffer, humiliation, hardship and anxiety, due to Defendants’ failure to address
14 accommodations, modifications, services and access required for Plaintiffs’ disabilities.

15 96. Pursuant to California Civil Code § 52.1(f), Defendants are liable to each named plaintiff for
16 their actual damages up to three times their actual damages, but no less than \$4,000 for every
17 offense of California Civil Code § 51 *et seq.*

18 97. Because Defendants’ discriminatory conduct is ongoing, declaratory and injunctive relief
19 are appropriate remedies.

20 98. Plaintiffs are also entitled to reasonable attorneys’ fees and costs in filing this action.
21 Named Plaintiffs are also entitled to damages.

22 **FIFTH CAUSE OF ACTION**

23 **California Government Code § 4450, *et seq.***

24 **by Plaintiffs Individually and on Behalf of The Plaintiff Class Against All Defendants**

25 99. Plaintiffs incorporate by reference each and every allegation contained in the foregoing
26 paragraphs.

27 100. The City’s facilities are publicly funded and intended for use by the public within the
28 meaning of California Government Code § 4450, *et seq.*

1 101. Plaintiffs are informed, believe and thereon allege that Defendants' and their agents and
2 employees have and continue to violate California Government Code § 4450, *et seq.*, and regulations
3 implemented pursuant thereto, by constructing, altering, installing, maintaining, and/or operating its
4 pedestrian rights of way in violation of disability access requirements and for the reasons set forth
5 above. The aforementioned acts and omissions of Defendants constitute a denial of equal access to
6 and use of the City's pedestrian rights of way and caused Plaintiffs to suffer deprivation of their
7 civil rights.

8 102. As a direct and proximate result of the aforementioned acts, Plaintiffs have suffered, and
9 continue to suffer, humiliation, hardship and anxiety, due to Defendants' failures to address
10 accommodations, modifications, services and access required for Plaintiffs' disabilities.

11 103. Because the City's discriminatory conduct is ongoing, declaratory and injunctive relief are
12 appropriate remedies.

13 104. Plaintiffs are also entitled to reasonable attorneys' fees and costs in filing this action.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs request judgment as follows:

16 1. A declaration that Defendants' conduct as alleged herein has violated, and continues to
17 violate, Title II of the Americans with Disabilities Act; Section 504 of the Rehabilitation Act of
18 1973; California Government Code §§ 11135 and 4450; and California Civil Code § 51;

19 2. Issue preliminary and permanent injunctions requiring each Defendant to undertake
20 remedial measures to mitigate the effects of Defendants' past and ongoing violations of Title II of
21 the ADA, Section 504 of the Rehabilitation Act, California Government Code §§ 11135 and 4450;
22 and California Civil Code § 51; and the regulations promulgated under each of these statutes. At a
23 minimum, Defendants should be enjoined to take the following actions:

- 24 a. Develop and implement a plan to ensure that the City's pedestrian rights of way when
25 viewed in their entirety are readily accessible to and useable by individuals with
26 disabilities;
- 27 b. Develop and implement plans to ensure that all existing City facilities comply with
28 the more stringent of either the Americans with Disabilities Act Accessibility

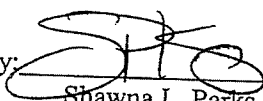
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Guidelines or Title 24 of the California Code of Regulations, including, without limitation, removal of all architectural barriers that pose safety hazards individuals with disabilities;

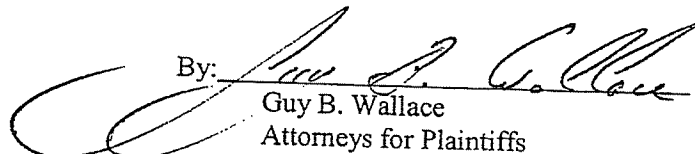
- c. Develop and implement plans to ensure that all future new construction and alterations to City facilities comply with Title 24 of the California Code of Regulations standards and Cal. Govt. Code §§ 4450, *et seq.*; and
 - d. Retain jurisdiction of this case until Defendants' fully complied with the Orders of this Court;
- 3. Award of damages to named Plaintiffs Pineda and Ilyashov to the extent provided by law;
 - 4. Award Plaintiffs' attorneys' fees and costs, as provided by statute; and
 - 5. Such other relief as the Court finds just and proper.

DATED: December 8, 2008

Respectfully Submitted,
DISABILITY RIGHTS LEGAL CENTER

By: 
Shawna L. Parks
Attorneys for Plaintiffs

SCHNEIDER WALLACE
COTTRELL BRAYTON
KONECKY LLP

By: 
Guy B. Wallace
Attorneys for Plaintiffs