

1 LAURENCE PARADIS (CA BAR NO. 122336)
JULIA PINOVER (CA BAR NUMBER PENDING)
2 Disability Rights Advocates
2001 Center Street, Third Floor
3 Berkeley, California 94704-1204
Telephone: (510) 665-8644
4 Facsimile: (510) 665-8511
TTY: (510) 665-8716
5 Email: general@dralegal.org

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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

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12 LORI GRAY, PETER MENDOZA, and ANN
13 SIECK on behalf of themselves and all others
similarly situated,

14 Plaintiffs,

15 v.

16 GOLDEN GATE NATIONAL
17 RECREATIONAL AREA, BRIAN O'NEILL,
General Superintendent of Golden Gate
18 National Recreation Area, in his official
capacity, NATIONAL PARK SERVICE, and
19 MARY BOMAR, Director of the National
Park Service, in her official capacity,

20 Defendants.
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Case No. CV-08-0722

Magistrate Judge Laporte

**AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS: SECTION 504 OF THE
REHABILITATION ACT OF 1973**

INTRODUCTION

1
2 Plaintiffs complain of Defendants herein and allege that:

3 1. This lawsuit is brought against Defendants NATIONAL PARK SERVICE
4 (“NPS”), GOLDEN GATE NATIONAL RECREATIONAL AREA (“GGNRA”), MARY
5 BOMAR, Director of NPS, in her official capacity, and BRIAN O’NEILL, General
6 Superintendent of GGNRA, in his official capacity (collectively “Defendants”), who own,
7 operate, maintain and/ or control GGNRA. This case arises out of Defendants’ systemic pattern
8 and practice of discrimination against Plaintiffs who are people with mobility and/or vision
9 disabilities through Defendants’ failure to provide the minimum legally required access to
10 GGNRA.
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12 2. GGNRA is the largest national park unit in an urban area in the United States and
13 is one of the most visited NPS units, with over 13 million visitors a year. It contains
14 approximately 75,000 acres of land and water, which is equivalent to two-and-a-half times the
15 size of the consolidated city and county of San Francisco. The park is not one continuous
16 locale, but rather a collection of areas that stretch from northern San Mateo County to southern
17 Marin County, and includes several parts of San Francisco. The park is as diverse as it is
18 expansive; it contains famous tourist attractions including but not limited to Muir Woods, Marin
19 Headlands, Alcatraz, Stinson Beach and the Cliff House. GGNRA is also home to 1,273 plant
20 and animal species, encompasses 59 miles of bay and ocean shoreline, and has military
21 fortifications that span centuries of California history from the Spanish conquistadors to Cold
22 War-era Nike missile sites. This system of parks and historic buildings is hereafter referred to as
23 “GGNRA facilities”.
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25 3. Throughout GGNRA facilities, Defendants have systemically discriminated
26 against Plaintiffs on the basis of their disabilities by failing to provide adequate accommodations
27 for people with mobility and/or vision disabilities. For example, Defendants have failed to
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1 provide adequate programmatic access to trails for people with mobility disabilities. Trails
2 provide a wide variety of experiences to the visitor, from vistas to significant natural, cultural
3 and educational experiences. These routes are integral to the many programs and facilities
4 within GGNRA parks, yet people with disabilities are unable to fully participate in the outdoor
5 experience due to Defendants' failure to provide program access to its trails. As a result of
6 Defendants' failure to provide these and other accommodations for people with disabilities, such
7 persons have been and are being denied their rights to access at GGNRA facilities.

9 4. Defendants also discriminate against Plaintiffs by failing to provide adequate
10 accommodations for people with vision disabilities at GGNRA facilities. For example,
11 Defendants have routinely and repeatedly failed to provide signage, paths of travel, displays,
12 exhibits, publications and other information systems that are accessible to people with vision
13 disabilities. As a result of Defendants' failure to provide these and other accommodations for
14 people with vision disabilities, such persons have been and are being denied their rights to access
15 at GGNRA facilities.

17 5. GGNRA facilities constitute key public programs, services and activities provided
18 for the benefit of residents and visitors to California. By refusing to provide access to these
19 fundamental public programs, services and activities, Defendants discriminate against persons
20 with disabilities in violation of Section 504 of the Rehabilitation Act.

21 6. For many decades, GGNRA has been required to identify and remedy access
22 barriers of the type described above but has failed and refused to meet this obligation. For over a
23 year, Plaintiffs, through their counsel, have tried to resolve these issues through negotiations with
24 GGNRA. Despite these efforts, the parties have been unable to reach an agreement on a plan of
25 action to ensure programmatic access to all programs, services, and activities in GGNRA. This
26 lawsuit seeks to put an end to this ongoing discrimination by requiring Defendants to meet their
27 obligation to provide program access to people with mobility and/or vision disabilities.
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JURISDICTION

7. This is an action for declaratory and injunctive relief brought pursuant to Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1342 and 1343 for claims arising out of Section 504.

8. This Court has jurisdiction to issue injunctive relief and a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

9. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the District in which this complaint is filed, because Defendant GGNRA owns and maintains non-compliant facilities within the Northern District of California, and the acts and omissions giving rise to this claim have occurred within the Northern District of California.

PARTIES

10. Plaintiffs are individuals with mobility and/or vision disabilities who have been and/or will be denied access to GGNRA due to Defendants’ failure and refusal to provide the necessary accommodations to make GGNRA services, programs, and activities accessible.

11. Unless otherwise indicated, “Plaintiffs” means and refers to the named plaintiffs and the proposed class as described below.

12. Plaintiff LORI GRAY, who is blind and uses a motorized wheelchair, is a resident of Berkeley, California. She is a person with a disability under all applicable statutes. She has visited, or tried to visit, numerous GGNRA facilities, including but not limited to, Muir Woods, Marin Headlands, and Crissy Field. At each of these facilities, she has experienced barriers, such as inaccessible trails and a lack of information in alternative formats, which have impeded her ability to fully enjoy GGNRA facilities.

1 13. Plaintiff PETER MENDOZA has cerebral palsy and uses a wheelchair as a result
2 of suffering with cancer that required his leg to be amputated below the knee. Mr. Mendoza is a
3 person with a disability under all applicable statutes. Mr. Mendoza is also a resident of
4 Berkeley, California. Mr. Mendoza has visited, or tried to visit several GGNRA facilities
5 including, but not limited to, Fort Mason and the Marin Headlands. At each of these facilities he
6 has experienced access barriers, such as inaccessible paths of travel, non-compliant signage
7 marking accessible paths of travel, and inaccessible restrooms. These barriers have impeded
8 Mr. Mendoza’s ability to fully enjoy GGNRA facilities and have caused Mr. Mendoza both
9 embarrassment and frustration.
10

11 14. Plaintiff ANN SIECK, who uses a motorized wheelchair, is a resident of
12 Berkeley, California. She is a person with a disability under all applicable statutes. She has
13 visited, or tried to visit, numerous GGNRA facilities, including but not limited to, Muir Woods
14 and Marin Headlands. At each of these facilities, she has experienced barriers, such as
15 inaccessible trails, which have impeded her ability to fully enjoy GGNRA facilities.
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17 15. Defendants NATIONAL PARK SERVICE, GOLDEN GATE NATIONAL
18 RECREATION AREA, MARY BOMAR, and BRIAN O’NEILL own, operate, maintain and/or
19 control the GGNRA facilities that fail to provide adequate accommodations to people with
20 mobility and/or vision disabilities.

21 16. Defendant NATIONAL PARK SERVICE (“NPS”) is the United States federal
22 agency responsible for regulating the use of all national parks, including GGNRA. NPS is a
23 bureau within the United States Department of Interior.

24 17. Defendant MARY BOMAR is the Director of NPS and is sued in her official
25 capacity.
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1 services and facilities denies persons with mobility and/or vision disabilities their civil rights to
2 program access at GGNRA.

3 22. Defendants have failed and are failing to provide programmatic access to such
4 facilities, programs, services and activities. As a result, Plaintiffs have been and are being
5 denied their civil rights to access at GGNRA facilities.

6 23. Defendants have failed and are failing to provide program access to its trails so
7 that people with mobility and/or vision disabilities can fully participate in the outdoor
8 experiences offered at GGNRA facilities. Many trails currently contain excessive grades and
9 cross-slopes, unstable surfaces, uneven surfaces, as well as other obstacles such as gates, rocks,
10 roots and logs. As a result of Defendants' failure to provide these and other accommodations for
11 people with mobility and/or vision disabilities, such persons have been and are being denied their
12 civil rights to programmatic access at GGNRA facilities.

13 24. Defendants have failed and are failing to provide program access to its
14 educational exhibits and informational materials so that people with vision disabilities can fully
15 participate in the experiences at GGNRA facilities. Educational trails and interpretive exhibits
16 throughout GGNRA facilities contain a series of informational panels, signs and/or printed
17 brochures that are inaccessible to individuals with vision disabilities. For example, such
18 materials frequently fail to provide distinctive tactile surfaces that call attention to informational
19 panels, displays or signs; raised Arabic numerals and symbols for identification; and related
20 guides and assistive devices. Defendants also fail to provide informational materials, such as
21 maps, in alternative formats. As a result of Defendants' failure to provide these and other
22 accommodations for people with vision disabilities, such persons have been and are being denied
23 their civil rights to programmatic access at GGNRA facilities.

24 25. Defendants have failed and are failing to provide detailed summaries of accessible
25 features at each park unit. Detailed trail assessments relating to trail difficulty and conditions,
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1 for instance, are part of a solution to the common frustration that all users face when they are
2 unaware of trail conditions and therefore unable to determine whether a trail matches their
3 ability. Providing such information on the GGNRA website would open access to many people
4 with mobility and/or vision disabilities by describing the surface conditions, grades and
5 clearances at the entry point and across the duration of a trail. As a result of Defendants' failure
6 to provide these and other accommodations for people with mobility and/or vision disabilities,
7 such persons have been and are being denied their civil rights to programmatic access at
8 GGNRA facilities.
9

10 26. Defendants have also engaged in new construction and alteration of existing
11 facilities in violation of applicable disability access standards.

12 27. Defendants' violations are knowing and intentional and in deliberate disregard of
13 Plaintiffs rights pursuant Section 504.

14 **EXPERIENCES OF NAMED PLAINTIFFS**

15 28. Plaintiff Gray has a vision disability and a mobility disability, which requires her
16 to use a wheelchair. She is the Adventures and Outings Program Coordinator for a non-profit
17 organization. In this position, she plans and attends numerous outings, many of which occur at
18 GGNRA facilities, such as Muir Woods, Marin Headlands and Crissy Field. Plaintiff Gray has
19 experienced and, absent an injunction, will continue to experience access barriers where
20 GGNRA facilities are inaccessible to people with mobility and/or vision disabilities due to the
21 access barriers described herein.
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23 29. Plaintiff Gray has experienced physical barriers along trails throughout GGNRA
24 facilities which have impeded or fully prohibited her travel along those trails. For example,
25 during a trip to Crissy Field, Gray struggled to pass a part of the trail that was covered with sand
26 and dirt and during another trip to Marin Headlands, she skidded down an extremely steep,
27 gravel path near the Visitor's Center. Access barriers, such as unstable surfaces and excessive
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1 slopes, are both frustrating and hazardous as they can cause a wheelchair to tip over or skid out
2 of control.

3 30. Plaintiff Gray has also experienced sensory barriers at GGNRA supporting
4 facilities and along GGNRA trails. At Crissy Field, she was unable to access informational
5 materials, such as maps and the activities schedule, because they were not provided in alternative
6 formats. Without access to these types of information materials, she is forced to rely on GGNRA
7 employees, who are often times in short supply or unavailable for assistance. Furthermore, many
8 of the exhibits at the Visitor's Center were inaccessible because they are behind glass. In
9 addition, the educational signs along GGNRA trails lack the tactile resources necessary for
10 Plaintiff Gray to understand the information provided.

11 31. Plaintiff Gray has also experienced sensory barriers when trying to access
12 information presented in GGNRA exhibits and educational programs. On March 9, 2007 she
13 was unable to access maps and models at the Bay Area Discovery Museum in the Marin
14 Headlands. Despite the fact that the Museum was engaging in a celebration of accessibility,
15 there were no available tactile models of visual exhibits or alternative format maps of the
16 museum to allow people with vision impairments to understand information presented by the
17 museum.
18

19 32. Plaintiff Mendoza, who has cerebral palsy, is a cancer survivor, suffered a leg
20 amputation below the knee, and uses a wheelchair, has repeatedly encountered access barriers on
21 paths of travel, insufficient signage indicating accessible travel routs, and inaccessible facilities
22 during his visits to GGNRA headquarters at Fort Mason, and during visits to the Marin
23 Headlands. Plaintiff Mendoza has experienced and, absent an injunction, will continue to
24 experience access barriers where GGNRA facilities are inaccessible to people with mobility
25 disabilities due to the access barriers described herein.
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1 33. Plaintiff Mendoza has experienced physical access barriers along the paths of
2 travel at the GGNRA headquarters building located at Fort Mason and throughout the Fort
3 Mason park. At Fort Mason, Plaintiff Mendoza has repeatedly encountered impassible sidewalk
4 barriers at curb-to-sidewalk ramps and inaccessible uneven paving on both the sidewalks that
5 surround the GGNRA headquarters building and on the sidewalks throughout the park. Plaintiff
6 Mendoza has also experienced barriers at Fort Mason with regards to Defendants' failure to
7 provide signs that clearly label the locations and routs of accessible paths of travel. The
8 inaccessible curb cuts, uneven sidewalk surfacing, and inadequate signage at Fort Mason have
9 impeded Plaintiff Mendoza's ability to navigate around, move within, and enjoy the Fort Mason
10 facility.

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12 34. Plaintiff Mendoza also experienced inadequate access to restroom facilities at Fort
13 Mason. In order to gain accessible restroom access at the Fort Mason headquarters building, a
14 person with a disability uses an intercom located at the rear entrance to the headquarters building
15 to alert GGNRA staff. When Plaintiff Mendoza tried to access this restroom using the intercom
16 system provided, he was left waiting outside the rear entrance to the building for an extended
17 period of time. In this instance, Plaintiff Mendoza was forced to wait to gain access to the
18 restroom because the GGNRA front desk was not staffed at that time. As a result of this
19 incident, Plaintiff Mendoza contacted GGNRA personnel and verbally lodged a complaint
20 suggesting that Defendants provide an emergency contact for the intercom to expedite and
21 ensure that people with disabilities have access to the accessible restroom in the GGNRA
22 headquarters building at Fort Mason.

23
24 35. Plaintiff Mendoza also experienced serious access barriers at the Marin Headlands
25 due to Defendants' failure to provide an accessible restroom at this facility. When visiting the
26 Marin Headlands Visitors' Center, Plaintiff Mendoza was unable to use the non wheelchair
27 accessible restrooms at the Visitors' Center. As a result of the inaccessible restrooms at this
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1 facility, Plaintiff Mendoza became unable to control his bladder. Defendants' failure to provide
2 accessible restrooms at the Marin Headlands Visitors' Center caused Plaintiff Mendoza extreme
3 embarrassment and public humiliation. Defendants' continued failure to provide accessible
4 restrooms at this and other GGNRA facilities makes GGNRA facilities inaccessible to Plaintiff
5 Mendoza and similarly situated people with mobility disabilities.

6
7 36. Plaintiff Sieck, who has a mobility disability that requires her to use a wheelchair,
8 maintains a website that rates Bay Area parks for accessibility. As a result, she frequently visits
9 GGNRA facilities, including but not limited to Muir Woods and Marin Headlands. Plaintiff
10 Sieck has experienced and, absent an injunction, will continue to experience GGNRA facilities
11 that are inaccessible to people with mobility disabilities due to the access barriers described
12 herein.

13 37. Plaintiff Sieck has experienced physical barriers along trails throughout GGNRA
14 facilities, which have impeded or fully prohibited her travel along those trails. During a visit to
15 Muir Woods, abrupt changes in level due to uprooted trees buckling the asphalt path impeded her
16 travel along the main trail. She also experienced significant difficulty accessing the trail at Old
17 Battery Road and Bunker Road because the pedestrian pass-throughs at the beginning and end of
18 the trail contained deep ruts due to erosion. She was only able to access this trail with the
19 assistance of her non-disabled husband. Access barriers, such as uprooted paths and deep ruts,
20 are both frustrating and hazardous as they can cause a wheelchair to tip.

21 CLASS ALLEGATIONS

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23 38. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the named
24 Plaintiffs seek injunctive and declaratory relief on their own behalf and on behalf of all persons
25 similarly situated. The class the named Plaintiffs seek to represent is composed of all persons
26 with mobility and/or vision disabilities who use and/or will use GGNRA facilities. The class
27 claims asserted herein are solely for injunctive and declaratory relief for the class.
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1 be excluded from the participation in, be denied the benefits of, or be subjected to discrimination
2 under any program or activity receiving federal financial assistance or under any program or
3 activity conducted by an Executive agency or by the United States Postal Service.” 29 U.S.C. §
4 794(a).

5 46. An “individual with a disability” is defined under the statute, in pertinent part, as
6 “an individual who has a physical or mental impairment which substantially limits one or more
7 of such person’s major life activities.” 29 U.S.C. § 705(20)(A).

8 47. Section 504 requires the head of every executive agency to promulgate
9 regulations as shall be necessary to carry out the Act. 29 U.S.C. § 794(a).

10 48. The Department of Interior Section 504 regulations provide that “no qualified
11 handicapped person shall, on the basis of handicap, be excluded from participation in, be denied
12 the benefits of, or otherwise be subjected to discrimination under any program or activity
13 conducted by the agency.” 43 C.F.R. § 17.530(a)

14 49. These regulations define “discrimination” to prohibit GGNRA, in providing any
15 aid, benefit or service, from directly or through contractual, licensing, or other arrangements, on
16 the basis of handicap, from:
17

- 18
- 19 a. “Deny[ing] a qualified handicapped person the opportunity to participate in or benefit
20 from the aid, benefit, or service,” 43 C.F.R. § 17.530(b)(1)(i); *see also* 43 C.F.R. §
21 17.203(b)(i);
 - 22 b. “Afford[ing] a qualified handicapped person an opportunity to participate in or
23 benefit from the aid, benefit, or service that is not equal to that afforded others,” 43
24 C.F.R. § 17.530(b)(1)(ii); *see also* 43 C.F.R. § 17.203(b)(1)(ii);
 - 25 c. “Provid[ing] a qualified handicapped person with an aid, benefit, or service that is not
26 as effective in affording equal opportunity to obtain the same result, to gain the same
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1 benefit, or to reach the same level of achievement as that provided to others,” 43

2 C.F.R. § 17.530(b)(1)(iii); *see also* 43 C.F.R. § 17.203(b)(1)(iii);

3 d. “Provid[ing] different or separate aids, benefits or services to handicapped persons or
4 to any class of handicapped persons than is provided to others unless such action is
5 necessary to provide qualified handicapped persons with aid, benefits, or services that
6 are as effective as those provided to others,” 43 C.F.R. § 17.530(b)(1)(iv); *see also* 43
7 C.F.R. § 17.203(b)(1)(iv);

8 e. “Otherwise limiting a qualified handicapped person in the enjoyment of any right,
9 privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or
10 service,” 43 C.F.R. § 17.203(b)(1)(vii).

11
12 50. These regulations further define discrimination to prohibit GGNRA, directly or
13 through contractual or other arrangements, from “utilize[ing] criteria or methods of
14 administration the purpose or effect of which would—(i) Subject a qualified handicapped person
15 to discrimination on the basis of handicap, (ii) Defeat or substantially impair accomplishment of
16 the objectives of a program or activity with respect to handicapped persons.” 43 C.F.R. §
17 17.530(b)(2); *see also* 43 C.F.R. § 17.203(b)(4).

18
19 51. The regulations require GGNRA to “operate each program or activity so that the
20 program or activity, when viewed in its entirety, is readily accessible to and usable by
21 handicapped persons.” 43 C.F.R. § 17.550(a); *see also* 43 C.F.R. §§ 17217(a), 17270(a),(b).

22 52. For new construction, “[e]ach building or part of a building that is constructed or
23 altered by, on behalf of, or for use of they agency shall be designed, constructed, or altered so as
24 to be readily accessible to and useable by handicapped persons.” 43 C.F.R. § 17.551; *see also* 43
25 C.F.R. § 17218(a),(b).

26
27 53. The regulations require the agency to “within one year of the effective date of this
28 part, evaluate, with the assistance of interested persons, including handicapped persons or

1 organizations representing handicapped persons, its current policies and practices, and the effects
2 thereof, that do not or may not meet the requirements of this part, and, to the extent modification
3 of any such policies and practices is required, the agency shall proceed to make the necessary
4 modifications.” 43 C.F.R. § 17.510(a); *see also* 43 C.F.R. § 17.205.

5
6 54. In the event that structural changes to facilities are necessary to achieve program
7 accessibility, the regulations require the agency to “develop, within six months of the effective
8 date of this part, a transition plan setting forth the steps necessary to complete such changes. The
9 plan shall be developed with the assistance of interested persons, including handicapped persons
10 or organizations representing handicapped persons.” 43 C.F.R. § 17.550(d); *see also* 43 C.F.R. §
11 17.217(e).

12
13 **FIRST CAUSE OF ACTION**
(Violation of Section 504 of the Rehabilitation Act of 1973)

14 55. Plaintiffs incorporate by reference herein the allegations in paragraphs 1-54,
15 inclusive.

16 56. Plaintiffs are informed and believe and thereon allege that all programs and
17 activities described herein are provided at facilities owned and/or maintained by Defendants, or
18 are operated and/or administered by Defendants or their agents.

19 57. By their actions or inactions in denying Plaintiffs their right to have access to the
20 programs, services and activities offered by Defendants, and discriminating against Plaintiffs
21 solely by reason of their disabilities, Defendants have violated Plaintiffs’ rights under Section
22 504(a) of the Rehabilitation Act of 1973 and the regulations promulgated there under.

23 58. Plaintiffs have no adequate remedy at law and unless the relief requested herein is
24 granted, Plaintiffs will suffer irreparable harm in that they will continue to be discriminated
25 against and denied access to the programs, services and activities of GGNRA parks.
26 Consequently, Plaintiffs are entitled to injunctive relief, as well as reasonable attorneys’ fees and
27 costs.
28

DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, THIRD FLOOR
BERKELEY, CALIFORNIA 94704-1204
(510) 665-8644

1 WHEREFORE, Plaintiffs request relief as set forth below.

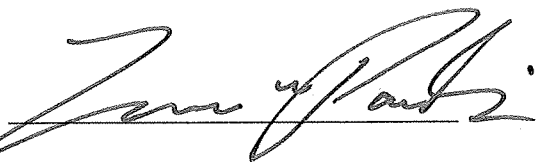
2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiffs pray for judgment as follows:

- 4 1. An order enjoining Defendants from violating Section 504(a) of the Rehabilitation
5 Act.
6 2. A declaration that GGNRA is being operated in a manner that discriminates
7 against persons with mobility and/or vision disabilities and that fails to provide access for
8 persons with disabilities as required by law;
9 3. Compensatory damages for the named plaintiffs according to proof;
10 4. Plaintiffs' reasonable attorneys' fees and costs;
11 5. Such other and further relief as the Court deems just and proper.
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18 DATED: 2 - 06 - 08

DISABILITY RIGHTS ADVOCATES

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21 By: 

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23 LAURENCE W. PARADIS
24 Attorney for Plaintiffs
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