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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
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 12 CALIFORNIANS FOR DISABILITY
 13 RIGHTS, INC. (“CDR”), CALIFORNIA
 COUNCIL OF THE BLIND (“CCB”),
 14 BEN ROCKWELL and DMITRI
 BELSER, on behalf of themselves, and on
 15 behalf of all others similarly situated,

16 Plaintiffs,

17 v.

18 CALIFORNIA DEPARTMENT OF
 TRANSPORTATION (“Caltrans”) and WILL
 19 KEMPTON, in his official capacity.

20 Defendants.

Case No. C 06 5125

**CLASS ACTION COMPLAINT FOR
 VIOLATION OF CIVIL RIGHTS:
 AMERICANS WITH DISABILITIES
 ACT; SECTION 504 OF THE
 REHABILITATION ACT; CAL. CIV.
 CODE § 54, et seq.; CAL. CIV. CODE § 51,
 et seq.; CAL. CIV. CODE § 4450, et seq.;**
**CAL. GOV’T. CODE 11135, et seq.; and
 DECLARATORY RELIEF**

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INTRODUCTION

Plaintiffs complain of Defendants herein and allege that:

1. This lawsuit is brought against Defendant California Department of Transportation (“Caltrans”) to remedy a systemic pattern and practice of discrimination being committed by Caltrans against people with mobility and vision disabilities. Caltrans provides and maintains many facilities throughout the state of California that are inaccessible to people with disabilities. These facilities include sidewalks and other pedestrian pathways, as well as park and ride facilities. These facilities frequently contain access barriers that expose disabled persons to many hazards, including forcing wheelchair users to roll in the streets alongside vehicular traffic. Caltrans has been required for many decades to identify and remedy such access barriers but has failed and refused to meet this obligation. This lawsuit seeks to put an end to such discrimination by requiring Caltrans to meet its obligation to protect the health and safety of Californians with disabilities.

2. Defendant Will Kempton is sued in his official capacity as Director of Caltrans. Caltrans and Kempton will be referred to in this complaint together as “Defendants”.

3. Plaintiff Californians for Disability Rights, Inc. (“CDR”) is a membership organization representing persons with all disabilities throughout California, including individuals who have been discriminated against and subjected to hazardous conditions due to the access barriers at issue in this case. Plaintiff California Council of the Blind (“CCB”) is a membership organization representing Californians with vision disabilities, including individuals who have been discriminated against and subjected to hazardous conditions due to the access barriers at issue in this case. Plaintiff Ben Rockwell uses a wheelchair and has been personally discriminated against and subjected to hazardous conditions due to the access barriers at issue in this case. Plaintiff Dmitri Belser has a vision disability and has been personally discriminated against and subjected to hazardous conditions due to the access barriers at issue in this case. CDR, CCB, Rockwell and Belser will be referred to in this complaint together as “Plaintiffs”.

1 4. Plaintiffs sue on behalf of themselves and all Californians with mobility and
2 vision disabilities who are being discriminated against and subjected to hazardous conditions due
3 to the access barriers at issue in this case.

4 5. Defendants provide for public use an extensive network of physical facilities
5 around the state of California, including many public sidewalks, crosswalks, pedestrian
6 crossings, and other walkways (hereafter referred to as “pedestrian rights of way”). Defendants
7 also provide for public use at various locations around California a system of Park and Ride
8 facilities. This system of pedestrian rights of way and Park and Ride facilities is hereafter
9 referred to collectively as “Caltrans facilities”.

10 6. These Caltrans facilities constitute a key public program, service and activity
11 within Caltrans jurisdiction. Caltrans provides this public program, service and activity for the
12 benefit of residents of and visitors to the state of California. By refusing to provide access to this
13 key public program, service and activity, Defendants discriminate against persons with
14 disabilities in violation of federal and state law. Throughout the state of California, Defendants
15 have systemically:

- 16 ■ Failed, and are failing, to provide program access to Caltrans
17 facilities in that they have not developed and implemented a
18 comprehensive Self-Evaluation and Transition plan covering
19 pedestrian rights of way;
- 20 ■ Followed, and are following, an unlawful policy of limiting the
21 budget for accessibility upgrades to 20 percent of the total budget
22 for Resurfacing, Restoration and Rehabilitation projects (“RRR”)
23 thereby refusing to provide program access to all Caltrans facilities
24 along resurfaced, restored or rehabilitated projects;
- 25 ■ Installed and/or maintained, and are installing and/or maintaining,
26 pedestrian rights of way which have missing curb cuts, unsafe curb
27 cuts, dangerous slopes and crumbled or uneven pavement, and
28 inadequate detectable warnings, amongst other barriers;
- Installed and/or maintained, and are installing and/or maintaining,
Park and Ride facilities with inaccessible paths of travel and non-
compliant accessible parking spaces, amongst other barriers;
- Failed, and are failing, to provide accessible alternative routes
during construction and information in accessible form for persons
with vision disabilities when sidewalks are closed; and

- 1 ▪ Failed, and are failing, to inform local residents which facilities are
2 under the jurisdiction of Caltrans, thereby, hindering the complaint
3 process.

4 7. These systemic failures create significant barriers for persons with disabilities. As
5 a result of these barriers, disabled pedestrians experience unsafe, anxiety-ridden travel
6 experiences while using Caltrans facilities. Defendants' failure to make accessible facilities
7 under its jurisdiction denies persons with disabilities access to Defendants' programs, services
8 and activities and is in violation of both federal and state access requirements.

9 8. CDR made efforts to resolve this dispute without litigation. In a letter dated June
10 6, 2006, CDR requested that Caltrans remedy or make plans to remedy the violations listed
11 herein. Caltrans refused and has since failed to take any remedial action.

12 9. Defendants' repeated failures to fulfill its obligations under federal and state law
13 is particularly egregious in light of the Ninth Circuit's decision in *Barden v. City of Sacramento*,
14 292 F.3d 1073 (2002), which held that "Title II's prohibition of discrimination in the provision
15 of public services applies to the maintenance of public sidewalks."

16 10. Plaintiffs include individuals with mobility disabilities who require use of a
17 wheelchair, motorized scooter, or any other mobility device to navigate Caltrans facilities. Such
18 individuals require curb ramps that are properly designed, located, constructed, and maintained
19 so that they can use the pedestrian rights of way to travel to and from their desired destinations
20 without being required to travel in traffic and or traverse hazardous and unsafe curb ramps. Such
21 individuals also require that pedestrian rights of way be properly maintained so that they are free
22 from abrupt changes in level of over ¼ inch (or ½ inch if the change in level is beveled), which
23 are difficult if not impossible to traverse by a person using a wheelchair, and cross-slopes of
24 more than two percent, which may cause a wheelchair or scooter to tip over sideways.
25 Pedestrian rights of way must also be sufficiently wide to allow passage of a mobility device.
26 Barriers such as light poles, trash cans and other obstructions must not narrow the pedestrian
27 right of way such that it is impassable for those with mobility disabilities. Finally, such
28 individuals require that alternative accessible routes be provided during construction that results
 in sidewalk closures.

1 11. Plaintiffs also include individuals with vision disabilities. Such individuals
2 require that where paths of travel end and/or cross a street, the area be properly marked with
3 yellow truncated domes, permitting such individuals to safely use pedestrian rights of way and to
4 safely cross streets. Such individuals also require pedestrian rights of way be properly
5 maintained so as to be free from protruding objects (with overhead clearance of less than 80
6 inches) and other hazards that interfere with their ability to navigate safely. Such individuals
7 also require that information about sidewalk closures due to construction, or any other reason, be
8 provided in accessible form.

9 12. The named plaintiffs in this action, on behalf of themselves and all others
10 similarly situated, challenge Defendants' systemic failure to make its facilities readily accessible
11 to and useable by individuals who have mobility and/or vision disabilities. These actions are in
12 violation of Title II of the Americans with Disabilities Act, and section 504 of the Rehabilitation
13 Act of 1973, which requires public entities and entities receiving federal funds to provide equal
14 access to public services for people with disabilities. These actions are also in violation of
15 California Civil Code § 51, *et seq.*; California Civil Code § 54, *et seq.*; California Government
16 Code § 4450, *et seq.*; and California Government Code § 11135, *et seq.*

17 JURISDICTION

18 13. This is an action for declaratory and injunctive relief, brought pursuant to the
19 Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 to 12213, specifically Title II of
20 the ADA, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, as well as
21 California Civil Code § 51 *et seq.* ("the Unruh Act"), California Civil Code § 54 *et seq.* ("the
22 Disabled Persons Act"), California Government Code § 4450 *et seq.*, and California Government
23 Code § 11135, *et seq.*

24 14. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343 for
25 claims arising under the ADA and Section 504 of the Rehabilitation Act.

26 15. This Court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C.
27 §§ 2201 and 2202.

1 development, publications, emergency funds, accessible technology loans, and scholarships.
2 CCB's goal is to ensure that culture, laws, programs, and attitudes throughout California are
3 inclusive of all people, especially persons who have blind or vision disabilities. Accordingly, the
4 interests that CCB seeks to protect through this litigation are germane to its mission and purpose.
5 Further, CCB's members include persons with vision disabilities who have been harmed and
6 continue to experience harm because Defendants have failed and continue to fail to provide
7 access to Caltrans facilities. Because this complaint seeks only injunctive relief, this lawsuit
8 does not require the individual participation of CCB members.

9 20. Named Plaintiff Rockwell is a person with a disability under all applicable
10 statutes. Plaintiff Rockwell uses a motorized wheelchair for mobility, and regularly travels along
11 the pedestrian rights of way under the jurisdiction of Caltrans. Plaintiff Rockwell has
12 experienced and continues to experience barriers along these pedestrian rights of way because of
13 Defendants ongoing violations.

14 21. Named Plaintiff Belser is a person with a disability under all applicable statutes.
15 Plaintiff Belser has a vision disability, uses a cane, and regularly travels along the pedestrian
16 rights of way under the jurisdiction of Caltrans. Plaintiff Belser has experienced and continues
17 to experience barriers along these pedestrian rights of way because of Defendants' ongoing
18 violations.

19 22. Defendant Caltrans is a governmental entity as defined by the laws of the State of
20 California and has fifty (50) or more employees. Caltrans also is a public entity within the
21 meaning of Title II of the ADA, as that term is defined under 42 U.S.C. § 12131(l); 28 C.F.R. §
22 35.104. Defendant Caltrans is responsible for installing, repairing and maintaining all pedestrian
23 rights of way along California state highways, including but not limited to the design,
24 installation, repair and maintenance of the system of public sidewalks, crosswalks, pedestrian
25 crossings, other walkways and Park and Ride facilities along the state highway system
26 throughout the state of California.

1 30. Claims of the named Plaintiffs are typical of the claims of the class as a whole
2 because the Named Plaintiffs, or their members, are similarly affected by Defendants' failure to
3 provide access to Caltrans facilities.

4 31. Defendants have acted and/or failed to act on grounds generally applicable to the
5 class as a whole, thereby making appropriate final declaratory and injunctive relief with respect
6 to the class as a whole.

7 32. References to Plaintiffs shall be deemed to include each named plaintiff and each
8 member of the class, unless otherwise indicated.

9 **FACTS COMMON TO ALL ALLEGATIONS**

10 33. Caltrans is responsible for the design, construction, maintenance and operation of
11 the California State Highway System and all pedestrian rights of way and Park and Ride
12 facilities along those systems. In total, Caltrans manages more than 45,000 miles of California's
13 highway and freeway lanes.

14 34. Defendants have failed, and are failing, to prepare and implement a Self-
15 Evaluation and Transition Plan relating to its facilities that provides access to pedestrian rights of
16 way and Park and Ride facilities. Federal law requires that public entities create self-evaluation
17 and transition plans for all existing facilities, including pedestrian rights of way that are not
18 accessible. A transition plan must include a schedule for providing curb ramps or other sloped
19 areas where pedestrian rights of way cross curbs. Defendants' failure to prepare and implement
20 a Self-Evaluation and Transition Plan relating to and ensuring program access to Caltrans
21 facilities denies persons with mobility and/or vision disabilities program access to such facilities.

22 35. Defendants have followed, and are following, an unlawful policy of limiting the
23 budget for accessibility upgrades to 20 percent of the total budget for alteration projects, known
24 as Resurfacing, Restoration and Rehabilitation projects ("RRR"). As such, Defendants routinely
25 fail to install and/or improve accessible features for pedestrian rights of way in conjunction with
26 RRR projects where such work will cost more than 20 percent of the total cost of the RRR
27 project. The implementing regulations for Title III of the ADA (technically inapplicable to
28 Defendants) permit limits to the percentage of an alteration project's total budget used to make

1 the paths of travel to the altered area accessible. However, courts have held that Title II of the
2 ADA, which requires newly constructed or altered streets to have curb ramps, supersedes any
3 exception based on disproportionate costs. Because curb ramps are a part of the alteration and
4 not a path of travel to the alteration, the Title III exception does not apply. Defendants' failure to
5 install and/or improve accessible features for pedestrian rights of way in conjunction with RRR
6 projects where such installation and/or improvement costs in excess of 20 percent of the total
7 RRR budget denies persons with mobility and/or vision disabilities program access to pedestrian
8 rights of way under Caltrans' jurisdiction.

9 36. Defendants have failed, and are failing, to install and maintain sidewalks,
10 crosswalks, pedestrian crossings and other walkways in violation of federal and state law. For
11 example, many intersections have no curb ramps or have curb ramps that are improperly
12 designed and/or constructed. Diagonal ramps intended to serve both corners are routinely
13 misplaced and are therefore unusable or dangerous; slopes on existing ramps are too steep and
14 threaten to tip a wheelchair or scooter using the ramp; landings are non-existent and force
15 individuals with mobility disabilities to use the much steeper side flares to access the curb cut;
16 and gutter pans have lips where the sidewalk meets the street and are often too steep to be used.
17 Similarly, many sidewalks are riddled with problems: many have buckled due to tree roots,
18 resulting in abrupt changes in level, or are narrowed by obstacles such as light poles and trash
19 cans. Further, compliant detectable warnings – yellow truncated domes – are frequently absent
20 on curb ramps. Also, protruding objects, such as low hanging tree limbs, reduce overhead
21 clearance and interfere with the ability to navigate safely. Caltrans facilities that do not contain
22 curb cuts, have inadequate and/or unsafe curb cuts, lack detectable warnings, or have
23 inaccessible pedestrian rights of way include (but are not limited to) facilities that have been
24 resurfaced or otherwise altered since January 26, 1992. Defendants' failure to install and
25 maintain its pedestrian rights of way in an accessible condition denies persons with mobility
26 and/or vision disabilities access to Caltrans facilities.

27 37. Defendants have failed to install and/or maintain, and are failing to install and/or
28 maintain, Park and Ride facilities with accessible paths of travel that are free from protruding

1 objects and compliant accessible parking spaces in violation of federal and state law. As a result,
2 persons with mobility and/or vision disabilities are unable to safely use these facilities to access
3 public transportation on which they are often dependent. Defendants' failure to install and/or
4 maintain Park and Ride facilities in an accessible condition denies persons with mobility and/or
5 vision disabilities access to Caltrans facilities.

6 38. Defendants have failed, and are failing, to provide accessible alternative routes
7 during construction and information in accessible form for persons with visual disabilities when
8 sidewalks are closed. As a result, persons with mobility disabilities are often forced to travel in
9 the street with traffic while persons with visual disabilities face danger of unknowingly walking
10 into a construction site. Defendants' failure to maintain in an accessible condition alternative
11 routes to sidewalks that are closed during construction and provide information in accessible
12 form about sidewalk closures denies persons with mobility and/or vision disabilities access to
13 Caltrans facilities.

14 39. Defendants have failed, and are failing, to inform local residents which sidewalks,
15 crosswalks, pedestrian crossings, other walkways and Park and Rides are under the jurisdiction
16 of Caltrans. As a result, persons with mobility and/or vision disabilities frequently are not able
17 to readily determine the pedestrian rights of way for which Caltrans is the responsible entity,
18 thereby hindering pedestrian complaints to Caltrans regarding accessibility compliance.
19 Defendants' failure to provide jurisdictional information to persons with mobility and/or vision
20 disabilities contributes to the denial of access to Caltrans facilities.

21 **EXPERIENCES OF NAMED PLAINTIFFS**

22 40. Plaintiff CDR has members who reside throughout the State of California and
23 who have used, and will continue to use, Caltrans facilities and who have encountered and will
24 continue to encounter the various types of access barriers described herein. These barriers cause
25 frustration and anxiety and require CDR members to expend substantially more effort than
26 would be required if Caltrans facilities were accessible.

27 41. For example, a CDR member with a mobility disability regularly uses the
28 Manzenita Park and Ride facility in Marin County, California. This CDR member reports that

1 the cross-slopes in the accessible parking spaces at this facility exceed the two percent legally
2 allowed, thereby making it difficult for him to exit his vehicle. In addition, because the Park and
3 Ride does not have a designated accessible pedestrian right of way from the parking lot to the
4 bus stop, he is forced to travel in the flow of the parking lot traffic when traveling from his
5 parking space to the bus stop. Finally, the CDR member notes that the pedestrian signal button
6 is inaccessible to persons in wheelchairs because it is placed too high and can only be accessed
7 from a steeply sloped sidewalk.

8 42. Also for example, a CDR member with a mobility disability must regularly travel
9 along Palm Avenue (California State Highway 75) in Imperial Beach, California to visit friends.
10 The sidewalk has multiple barriers including overgrown shrubbery, which narrows the sidewalk,
11 and steep cross-slopes (up to 28 percent) from driveways, which cause her scooter to tip over
12 sideways. In an effort to alert the government entity responsible for remedying the excessive
13 cross-slopes and narrow sidewalks in the 1300 block, she has contacted various entities at all
14 levels of government, including Caltrans, the City of Imperial Beach and the County of San
15 Diego. However, for over a year and a half, each of these three entities shuffled her complaint to
16 another of the three entities claiming that the pedestrian right of way is not under its jurisdiction.
17 Ultimately, Caltrans claimed jurisdiction and made a temporary fix using asphalt to minimize the
18 cross-slopes. The temporary fix, however, is non-compliant.

19 43. Plaintiff CCB has members who reside throughout the State of California and
20 who have used, and will continue to use, Caltrans facilities and who have encountered and will
21 continue to encounter the various types of access barriers described herein. These barriers cause
22 frustration and anxiety and require CCB members to expend substantially more effort than would
23 be required if Caltrans facilities were accessible.

24 44. For example, a CCB member with a vision disability, who uses a cane for
25 navigation, regularly uses El Camino Real (California State Highway 82) throughout the cities of
26 Palo Alto and Mountain View, mostly to access the main bus routes. Indeed, this CCB member
27 chose to live in his current residence because of its close proximity to the bus routes. However,
28 his walk to the bus stop is riddled with barriers. Close to the corner of Rengstorff Avenue and El

1 Camino Real, he encountered a dangerously low-hanging tree limb that extended over the entire
2 width of the sidewalk. Caltrans improperly trimmed the tree limb, which resulted in a greater
3 danger because, through the tree trimming, Caltrans transformed the overhanging tree limb into a
4 freshly cut, sharp-edged branch that protrudes over the sidewalk threatening blind pedestrians
5 who are unable to detect the tree limb. Walking along El Camino Real in Palo Alto, this member
6 has tripped over uneven pavement due to tree roots, which caused the sidewalk to buckle. He is
7 also unaware of any detectable warnings along El Camino Real in Mountain View and Palo Alto.

8 45. Another CCB member with a vision disability, who uses a service dog for
9 navigation, frequently walks along the Pacific Coast Highway (“PCH”) (California Highway
10 One). She walks along PCH to avoid residential streets where she and her service dog are more
11 likely to encounter other dogs. She regularly crosses PCH at Temple Avenue. Though the
12 crossing has an audible pedestrian signal, there are no detectable warnings at the corners. For
13 instance, on the southwest corner, because the curb is blended into the street, it is impossible to
14 tell where the sidewalk ends and where the street begins. On more than one occasion, this CCB
15 member has found herself standing in the street while waiting to cross PCH.

16 46. Plaintiff Rockwell has a mobility disability, which requires him to use a
17 wheelchair. He is resident of the City of Long Beach, California, where he is frequently denied
18 program access to Caltrans facilities as he conducts his daily activities, including going to
19 medical appointments, shopping, and visiting patients at community hospitals. Plaintiff
20 Rockwell has experienced and, absent an injunction, will continue to experience Caltrans
21 facilities, which are inaccessible to people with mobility disabilities due to the access barriers
22 described herein.

23 47. Plaintiff Rockwell has experienced and will continue to experience Caltrans
24 facilities which contain no curb ramps; curb ramps that are not accessible to a person with a
25 mobility disability due to improper design, installation, construction, and/or maintenance; and,
26 pedestrian rights of way that are not accessible to a person with a mobility disability due to
27 improper design, installation, construction and/or maintenance.

28

1 48. Plaintiff Rockwell regularly travels on PCH in Long Beach, California, which
2 contains pedestrian rights of way under Caltrans' jurisdiction. PCH has numerous intersections
3 that do not have curb cuts or have inadequate curb cuts. The lack of curb cuts along PCH
4 subjects Plaintiff Rockwell to frustrating and dangerous travel experiences. In addition, these
5 access barriers require Plaintiff Rockwell to expend substantially more time navigating PCH than
6 would be required if PCH were accessible. For instance, Plaintiff Rockwell must often re-trace
7 his route back to the previous curb cut and then travel in the street of a six-lane expressway with
8 on-street parking along some parts of the street in order to reach his destination. Such routes,
9 which force him into traffic traveling at high speeds, put Plaintiff Rockwell at serious risk of
10 danger.

11 49. For example, in August of 2006, Plaintiff Rockwell was traveling along PCH to
12 eat at The International House of Pancakes restaurant, a route he frequently travels. After
13 entering the sidewalk at the intersection of PCH and Long Beach Boulevard, Plaintiff Rockwell
14 proceeded west on the south side of the street. Traveling west, Plaintiff Rockwell was forced to
15 enter the street on at least three separate occasions due to mid-block obstacles and excessively
16 steep slopes on curb ramps. Plaintiff Rockwell traveled on the street as close as possible to the
17 cars parked along the curb. Nonetheless, at least, two large trucks drove within four inches of his
18 wheelchair. Additionally, a local bus driver opened the door of his bus as he passed and yelled at
19 Plaintiff Rockwell because he was traveling in the street.

20 50. On those occasions that Plaintiff Rockwell is able to access the sidewalk using
21 curb ramps, he often experiences difficulty using the curb ramps because they are excessively
22 sloped. As a result, he is forced to slow his motorized wheelchair to avoid tipping over
23 backwards.

24 51. Plaintiff Rockwell also confronts obstructions such as light poles, sign posts and
25 broken and/or uneven pavement on PCH. All of these obstructions not only impede his path of
26 travel but also force him to travel in the street. For example, at the corner of PCH and Pacific
27 Avenue, Plaintiff Rockwell has experienced great difficulty traveling along the pedestrian right
28 of way, because the light pole creates an obstruction. As a result, he is forced to re-trace his path

1 and enter the street in order to continue on PCH. This is not uncommon as light poles also
2 obstruct the path of travel at the corners of PCH and Obispo Avenue and PCH and Orizaba
3 Avenue.

4 52. While traveling on PCH, Plaintiff Rockwell has tipped over in his wheelchair on
5 numerous occasions. Indeed, in an attempt to remediate this problem, Plaintiff Rockwell
6 purchased a new wheelchair that has rear anti-tip wheels. While these wheels have mitigated the
7 tendency of his wheelchair to tip over backwards, they offer no assistance on excessive slopes or
8 for mid-block barriers, which still force Plaintiff Rockwell to travel in the street. As a
9 consequence, he continues to be harmed by Defendants' conduct.

10 53. Plaintiff Belser has a vision disability and uses a cane to aid in navigation. He is a
11 resident of the City of Berkeley, California, where he is frequently denied access to Caltrans
12 facilities as he conducts his daily activities, including going to work. Plaintiff Belser has
13 experienced and, absent an injunction, will continue to experience Caltrans facilities, which are
14 inaccessible to people with vision disabilities due to the access barriers described herein.

15 54. For example, Plaintiff Belser regularly travels on San Pablo Avenue (California
16 State Highway 123) and Ashby Avenue (California State Highway 13) in Berkeley, California,
17 which contain pedestrian rights of way under Caltrans' jurisdiction. Ashby Avenues lacks
18 detectable warnings on almost all of the existing curb ramps. Detectable warnings indicate to
19 persons with vision disabilities where the sidewalk ends and the street begins. Applicable law
20 requires that detectable warnings be in the form of yellow, truncated domes. The absence of
21 detectable warnings along streets such as Ashby Avenue makes it makes it difficult for a person
22 with a vision disability to navigate the pedestrian route with full assurance and safety. Without
23 proper detectible warnings, pedestrians with vision disabilities are exposed to the risk that they
24 may enter oncoming traffic without being aware that they are in a danger zone. For instance, at
25 particularly busy intersections where vehicles often cut corners, detectable warnings help
26 Plaintiff Belser know where it is safe to stand. Plaintiff Belser has also experienced, on both San
27 Pablo and Ashby Avenues, protruding objects which reduce the overhead clearance and which
28 are imperceptible ahead of time to persons with vision disabilities. Uneven/broken pavement

1 along San Pablo and Ashby Avenues create additional obstacles, which are often imperceptible
2 ahead of time to persons with vision disabilities. These barriers and safety hazards along San
3 Pablo and Ashby Avenues subject Plaintiff Belser to frustrating and dangerous travel
4 experiences, particularly since they are high traffic speed routes.

5 55. The conditions along Ashby Avenue are so difficult and dangerous that Plaintiff
6 Belser avoids using this route when possible. However, Plaintiff Belser does have to use Ashby
7 Avenue on his way to and from the South Berkeley Senior Center, which requires him to walk
8 between Ellis Street and Telegraph Street along Ashby Avenue. Plaintiff Belser has experienced
9 no detectable warnings along this route. Indeed, along Ashby Avenue from Adeline Boulevard
10 to Tunnel Road (approximately 19 blocks in length), there is only one curb ramp with the
11 required yellow truncated domes.

12 56. Pedestrians with vision disabilities experience further difficulties when using
13 Caltrans facilities due to a lack of adequate information when construction activities block part
14 or all of a pedestrian route. When such construction takes place, Caltrans needs to ensure that
15 pedestrians with vision disabilities are notified of the construction and provided adequate
16 information in accessible forms so that they can use alternate routes. Caltrans frequently fails to
17 do so. For example, Plaintiff Belser has experienced many occasions when the sidewalk along
18 Caltrans routes such as San Pablo Avenue has been blocked due to construction but Mr. Belser
19 did not become aware of the construction until encountering the closure partway down the block.
20 Consequently, Mr. Belser then had to re-trace his steps and cross to the other side of the street,
21 making it even more difficult for a person with vision disability to navigate along these routes.
22 The lack of information in accessible forms about sidewalk closures due to construction has
23 caused Plaintiff Belser to expend substantially more time navigating these pedestrian rights of
24 way than would be required if Caltrans had provided such information.

25 **FIRST CAUSE OF ACTION**
26 **(Violation of the Americans with Disabilities Act of 1990)**

27 57. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 56,
28 above, inclusive.

1 58. Title II of the Americans with Disabilities Act (“ADA”) prohibits a public entity
2 from excluding a person with a disability from participating in, or denying the benefits of, the
3 goods, services, programs and activities of the entity or otherwise discriminating against a person
4 on the basis of disability. 42 U.S.C. § 12132.

5 59. In requiring public entities to prepare and implement a Self-Evaluation and
6 Transition Plan to evaluate and improve accessibility, the regulations issued by the U.S.
7 Department of Justice specifically require public entities to include “a schedule for providing
8 curb ramps or other sloped areas where pedestrians walks cross curbs” and provides priorities for
9 such schedule. 28 C.F.R. § 35.150(d)(2). Plaintiffs are informed and believe that Defendants do
10 not have a Self-Evaluation or Transition Plan that addresses pedestrian rights of way.
11 Defendants’ failure to prepare and implement a Self-Evaluation and Transition Plan constitutes
12 unlawful discrimination on the basis of disability in violation of Title II of the ADA.

13 60. The regulations implementing Title II of the ADA also generally require that,
14 when a public entity alters any existing facility in any manner that affects usability, the altered
15 portions must be made accessible to and usable by individuals with disabilities. 28 C.F.R. §
16 35.151(b).

17 61. The regulations implementing Title II of the ADA specifically provide that a
18 public entity must install curb ramps at intersections whenever it alters sidewalks, streets, roads
19 and/or highways at any time after January 26, 1992. 28 C.F.R. § 35.151(e). An RRR project
20 undertaken by Caltrans constitutes an alteration within the meaning of the ADA. Since the
21 effective date of the ADA, Defendants have failed to provide proper curb ramps when Caltrans
22 alters sidewalks, streets, roads and/or highways. Defendants’ conduct in failing to provide
23 proper curb ramps when they alter sidewalks, streets, roads and/or highways constitutes unlawful
24 discrimination on the basis of disability in violation of Title II of the ADA.

25 62. The regulations implementing Title II of the ADA provide that a public entity
26 must maintain the features of all facilities required to be accessible by the ADA. 28 C.F.R. §
27 35.133. Facilities required to be accessible include roads, walks, passageways and parking lots.
28 28 C.F.R. § 35.104.

1 63. Defendants' conduct in failing to maintain accessible facilities by failing to fix
2 uneven and/or crumbling pavement, failing to remove protruding and/or moveable obstructions,
3 failing to ensure a sufficiently wide path of travel, failing to correct excessive cross-slopes on the
4 path of travel and failing to provide compliant accessible parking spaces thus constitutes
5 unlawful discrimination on the basis of disability in violation of Title II of the ADA.

6 64. The regulations implementing Title III of the ADA – 28 C.F.R. 36 App. A – and
7 applying to Title II – 28 C.F.R. 35.151(c) – provide that a public entity must maintain
8 accessibility for temporary facilities, including but not limited to, “temporary safe pedestrian
9 passageways around a construction site.” 28 C.F.R. 36 App. A 4.1.1(4).

10 65. Defendants' conduct in failing to provide accessible alternative routes during
11 construction and accessible information for persons with visual disabilities when sidewalks are
12 closed constitutes unlawful discrimination on the basis of disability in violation of Title II of the
13 ADA.

14 66. The regulations implementing Title II of the ADA also provide that a “public
15 entity shall make available to applicants, participants, beneficiaries, and other interested persons
16 information regarding the provisions of this [regulation] and its applicability to the services,
17 programs, or activities of the public entity.” 28 C.F.R. § 35.106.

18 67. Defendants' conduct in failing to provide information about which facilities are
19 under their jurisdiction thus constitutes unlawful discrimination on the basis of disability in
20 violation of Title II of the ADA.

21 68. Defendants' conduct constitutes an ongoing and continuous violation of the ADA
22 and unless restrained from doing so, Defendants will continue to violate the ADA. Said conduct,
23 unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at
24 law. Consequently, Plaintiffs are entitled to injunctive relief pursuant to section 308 of the ADA
25 42 U.S.C. § 12188.

26 WHEREFORE, Plaintiffs pray for relief as set forth below.
27
28

**SECOND CAUSE OF ACTION
(Violation of § 504 of the Rehabilitation Act of 1973)**

69. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 68 above, inclusive.

70. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated hereunder, prohibit discrimination against people with disabilities by recipients of federal funding. Section 504 provides, in pertinent part, that:

No otherwise qualified handicapped individual . . . shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance

71. Defendants have received substantial federal financial assistance at all relevant times.

72. Defendants have discriminated against Plaintiffs in programs and activities receiving federal financial assistance solely because of the disabilities of Plaintiff Rockwell, Plaintiff Belser and Plaintiff CDR's members, and all others similarly situated, in violation of 29 U.S.C. § 794 and the regulations promulgated hereunder.

73. As a proximate result of Defendants' violations of Section 504, Plaintiffs have been injured as set forth herein.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**THIRD CAUSE OF ACTION
(Violation of California Civil Code § 54, et seq.)**

74. Plaintiffs incorporate by reference herein the allegations in paragraphs 1 through 73, above, inclusive.

75. The facilities under the jurisdiction of Caltrans constitute places of public accommodation and/or places to which the general public is invited within the meaning of California Civil Code §§ 54.1 and 54.3.

76. Defendants have and are violating Plaintiffs' rights under California Civil Code § 54.1 *et seq.* by denying Plaintiffs full and equal access to and use and enjoyment of Caltrans facilities due to the acts and omissions alleged herein.

1 77. Defendants' discriminatory conduct alleged herein includes, *inter alia*, the
2 violation of the rights of persons with disabilities set forth in Title II of the ADA and
3 accompanying regulations, all of which have been expressly incorporated into California Civil
4 Code section 54.1, *et seq.* since January 1, 1993.

5 78. Defendants' actions constitute a violation of Plaintiffs' rights under California
6 Civil Code § 54, *et seq.*, and therefore Plaintiffs are entitled to injunctive relief remedying the
7 violations.

8 WHEREFORE, Plaintiffs pray for relief as set forth below.

9 **FOURTH CAUSE OF ACTION**
10 **(Violation of California Civil Code § 51, *et seq.*)**

11 79. Plaintiffs incorporate by reference herein the allegations in paragraph 1 through
12 78, above, inclusive.

13 80. The conduct of Defendants alleged herein constitutes a violation of the Unruh
14 Civil Rights Act, California Civil Code § 51, *et seq.*, in that the conduct alleged herein
15 constitutes a violation of various provisions of the ADA, as set forth above, all of which have
16 been expressly incorporated into California Civil Code § 51. Pursuant to California Civil Code §
17 51, a violation of the civil rights of a person with a disability under the ADA is also a violation
18 of the civil rights of a person with a disability under the Unruh Civil Rights Act,

19 81. The actions of Defendants were and are in violation of the Unruh Civil Rights
20 Act, California Civil Code § 51, *et seq.*, and therefore Plaintiffs are entitled to injunctive relief
21 remedying the violations.

22 WHEREFORE, Plaintiffs pray for relief as set forth below.

23 **FIFTH CAUSE OF ACTION**
24 **(Violation of California Government Code § 4450, *et seq.*)**

25 82. Plaintiffs incorporate by reference herein the allegations in paragraphs 1 though
26 81 above, inclusive.

27 83. Caltrans facilities are publicly funded and intended for use by the public within
28 the meaning of California Government Code § 4450, *et seq.* Defendants have constructed,
altered, installed, maintained and/or operated its facilities in violation of disability access
requirements under California Government Code § 4450, *et seq.*, and regulations implemented

1 pursuant thereto. The aforementioned acts and omissions of the Defendants constitute a denial
2 of equal access to and use of Caltrans facilities.

3 84. Defendants' failure to provide full and equal access to Caltrans facilities has
4 caused Plaintiffs to suffer deprivation of their civil rights. Plaintiffs request injunctive relief
5 enjoining Defendants from maintaining the violations described above.

6 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

7 **SIXTH CAUSE OF ACTION**
8 **(California Government Code § 11135, et seq.)**

8 85. Plaintiffs incorporate by reference herein the allegations of paragraphs 1 through
9 84, above, inclusive.

10 86. California Government Code § 11135 and the regulations promulgated
11 thereunder, prohibit discrimination against people with disabilities by any program or activity
12 funded by the state. Section 11135 provides, in pertinent part, that:

13 No person in the State of California shall, on the basis of . . .
14 disability, be unlawfully denied the benefits of, or be unlawfully
15 subjected to discrimination under, any program or activity that is
16 funded directly by the state or receives any financial assistance
17 from the State.

16 87. Caltrans' programs and activities are funded primarily by the state.

17 88. Defendants have discriminated against Plaintiffs in such programs and activities
18 solely because of their disabilities in violation of Government Code § 11135 and the regulations
19 promulgated thereunder.

20 89. As a proximate result of Defendants' violations of § 11135, Plaintiffs have been
21 injured as set forth herein.

22 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

23 **SEVENTH CAUSE OF ACTION**
24 **(Declaratory Relief)**

24 90. Plaintiffs incorporate by reference herein the allegations of paragraphs 1 through
25 89, above, inclusive.

26 91. Plaintiffs contend, and are informed and believe that Defendants deny failing to
27 comply with applicable laws prohibiting discrimination against persons with disabilities in
28 violation of the ADA, Section 504 of the Rehabilitation Act, § 51 of the California Civil Code, §

1 54 of the California Civil Code, § 4450 of the California Government Code and § 11135 of the
2 California Government Code.

3 92. A judicial declaration is necessary and appropriate at this time in order that each
4 of the parties may know their respective rights and duties and act accordingly.

5 WHEREFORE, Plaintiffs pray for relief as set forth below.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for relief as follows:

8 93. An order and judgment enjoining Defendants from violating the Americans with
9 Disabilities Act; Section 504 of the Rehabilitation Act of 1973; § 51 of the California Civil
10 Code; § 54 of the California Civil Code; § 4450 of the California Government Code; and §11135
11 of the California Government Code.

12 94. A declaration that the facilities listed herein under the jurisdiction of Caltrans,
13 including the sidewalks, crosswalks, pedestrian crossings, other walkways and Park and Rides,
14 are constructed, designed, and/or maintained in a manner which discriminates against Plaintiffs
15 and which fails to provide program access for persons with disabilities as required by law;

16 95. Plaintiffs' reasonable attorneys' fees, litigation expenses, and costs;

17 96. Such other and further relief as the Court deems just and proper.

18
19 DATED: September 19, 2006

DISABILITY RIGHTS ADVOCATES

20 By: /s/ Mary-Lee Kimber

21 MARY-LEE E. KIMBER
22 Attorneys for Plaintiffs
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