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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MARK WILLITS, JUDY GRIFFIN,
BRENT PILGREEN, and
COMMUNITIES ACTIVELY LIVING
INDEPENDENT AND FREE
("CALIF"), on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a public
entity; ANTONIO VILLARAIGOSA,
in his official capacity as Mayor; ERIC
GARCETTI, in his official capacity as
President of the Los Angeles City
Council; ED REYES, PAUL
KREKORIAN, DENNIS P. ZINE,
TOM LABONGE, PAUL KORETZ,
TONY CARDENAS, RICHARD
ALARCON, BERNARD PARKS, JAN
PERRY, HERB J. WESSON, JR., BILL
ROSENDAHL, GREIG SMITH, JOSE
HUIZAR, AND JANICE HAHN, in
their official capacities as members of
the Los Angeles City Council,

Defendants.

Case No.: 2:10-cv-05782 CBM (RZx)

Honorable Consuelo B. Marshall

**NOTICE OF MOTION AND
MOTION FOR CLASS
CERTIFICATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: October 4, 2010

Time: 11:00 a.m.

Court: 2

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PLEASE TAKE NOTICE THAT on October 4, 2010, at 11:00 a.m., or at such other date and time as may be ordered by the Court, in Courtroom 2 of the above-captioned Court, located at 312 North Spring Street, Los Angeles, CA 90012. Plaintiffs in this matter will and hereby do move for an order certifying a class of all persons with mobility disabilities who have been denied access to pedestrian rights of way in the City as a result of Defendants' policies and practices with regard to the City's pedestrian walkways and disability access.

This motion is made upon the grounds that the requirements of Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure have been satisfied. First, the putative class is so numerous as to render impractical any joinder of the members of the class. Second, there are numerous factual and legal issues that are common to the members of the proposed class. Third Plaintiffs' claims are typical of the class claims. Fourth, Plaintiffs and their counsel fulfill the adequacy of representation prong of Rule 23(a). Lastly, pursuant to Rule 23(b)(2), Plaintiffs allege conduct by Defendants that is generally applicable to the class and seeks declaratory and injunctive relief for the class.

This motion is based upon this Notice of Motion and Motion, the accompanied Memorandum of Points and Authorities; the Declarations of Mark Willits, Judy Griffin, Brent Pilgreen, Lillibeth Navarro, Shawna Parks, Guy Wallace, Mark T. Johnson, Jeff Mastin, Mitchell LaPlante, PhD, Donald Shoup, PhD, Michael Dukakis, Ruthee Goldkorn, Virgilio Orlina, Sandra Matamoros, Don Edward Williams, Harley Rubenstein, Audrey Harthorn, Clotill Cleo Ray, Carol Wilson, Catherine Shimozono, Dina Garcia, Sandy Varga, Beverly Overton, Cynde Soto, Jose Martinez and Ali Shoja Jahanabad, and all supporting exhibits; all pleadings and papers filed in this action; and any argument or evidence that may be presented at the hearing in this matter, if a hearing is deemed necessary.

1 This motion is made following conferences of counsel pursuant to L.R. 7-3,
2 via letter on August 5, 2010 and with a follow up in person conference on August
3 23, 2010.

4
5 DATED: September 1, 2010

Respectfully Submitted,

6 DISABILITY RIGHTS LEGAL CENTER

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9 BRAYTON KONECKY LLP

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13 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case was brought to address the systemic failure of the City of Los
4 Angeles (“the City”) to provide meaningful access for persons with mobility
5 disabilities to the City’s curb ramps, sidewalks, crosswalks, pedestrian crossings
6 and other walkways (hereafter “pedestrian rights of way”), in violation of federal
7 and state laws prohibiting disability-based discrimination. The City’s failure to
8 provide such access to its pedestrian rights of way for persons with mobility
9 disabilities is precisely the sort of class-wide discrimination that Rule 23(b)(2)
10 class actions were designed to address.

11 The evidence will show that persons with mobility disabilities, including
12 more than 280,000 such persons in the City of Los Angeles, are similarly harmed
13 and deprived of their civil rights by the City’s failure to adopt and implement
14 practices and procedures that ensure disability access to the City’s system of
15 sidewalks and pedestrian rights of way. The litigation of the claims asserted by
16 Plaintiffs in this action involve numerous questions of law and fact that are
17 common to the class, the core issue being whether Defendants’ practices and
18 procedures and the resulting barriers to access to the City’s pedestrian rights of
19 way violate the Americans with Disabilities Act (“ADA”), Section 504 of the
20 Rehabilitation Act of 1973, California Civil Code §§ 51 and 54, *et seq.*, and
21 California Government Code §§ 4450 and 11135.

22 Accessibility of pedestrian rights of way goes to the heart of the purpose of
23 the ADA and other disability rights laws, including the primary purpose of
24 integration and accessibility of government services, programs and activities for
25 persons with disabilities. As a result of the City’s failure to adopt and implement
26 policies and practices for ensuring access, hundreds of thousands of people with
27 mobility disabilities in the City of Los Angeles have been systematically denied
28 equal access to the City’s system of sidewalks and pedestrian rights of way, in

1 violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation
2 Act of 1973, California Civil Code §§ 51 and 54, *et seq.*, and California
3 Government Code §§ 4450 and 11135.

4 Determining the City's liability and the proper relief will involve questions
5 of both fact and law that are common to the proposed class. Certification as a
6 class action is the most efficient way to address these systemic issues, and to
7 avoid multiple lawsuits that would raise similar questions and involve similar
8 facts and legal claims. Accordingly, the Court should certify the proposed class
9 under Federal Rule of Civil Procedure 23(b)(2).

10 **II. STATEMENT OF FACTS**

11 **A. Defendants Have Failed to Make the Public Pedestrian Right-of-** 12 **Way Accessible to Persons with Mobility Disabilities.**

13 There are approximately 10,750 miles of sidewalks in the City. The City
14 estimates that roughly 4,600 miles, or 43% of its sidewalks are in need of repair.¹
15 The City's current policies and practices with respect to this issue are not
16 designed to correct even the existing sidewalk barriers, assuming no further
17 deterioration or damage, for more than 80 years. As of 2005, City Council
18 members acknowledged that "A customer calling in for sidewalk service today
19 can expect the work to be done in 83 years."² Despite its awareness for the past
20 several years of the City's broken system of sidewalks and consequential denial of
21 meaningful access for persons with mobility disabilities, the City has failed to
22 develop or implement a plan to effectively address the problem. Compl. ¶ 23.

23 ¹ Public Works and Budget and Finance Committee Report to the City
24 Council of the City of Los Angeles, reported and adopted on June 26,
25 2007, attached to the Declaration of Shawna L. Parks ("Decl. of Parks")
as Exhibit D.

26 ² City of Los Angeles City Council Motion (File Number 05-1853)
27 brought by Councilman Bernard Parks and seconded by Councilman
28 Greig Smith, attached to Decl. of Parks as Exhibit E.

1 The City's failed policies and practices with respect to curb ramps are of a
2 similar scope. Compl. ¶ 26. There are approximately 40,000 intersections in the
3 City of Los Angeles, which amounts to approximately 160,000 street corners.³
4 Although the City has sporadically undertaken efforts to install curb ramps in
5 certain parts of the City in past years, it has significantly reduced that effort in
6 recent years, going from 7,205 curb ramp installations in 1999-2000 to only 570
7 in 2006-2007.⁴ Based on the City's records, it has installed only 26,275 curb
8 ramps between 1997 and 2007 and an estimated 1,838 curb ramps between 2007
9 and 2009,- totaling only 28,107 curb ramps.

10 This severe shortage of accessible corners is a reflection of the City's
11 policy and practice, including its policy of limiting "projects related to making
12 the Public Sidewalk System more accessible," to those locations that are the
13 subject of complaints filed by "concerned constituents," unless they were
14 identified in the City's initial grouping of curb ramps.⁵ Without curb ramps,
15 Plaintiffs cannot access pedestrian rights of way or their intended destinations
16 without significant difficulty, delay, or danger, if at all. Compl. ¶¶ 28, 29.
17 Equally troubling, is the fact that at least some of the curb ramps installed by the
18 City *since the effective date of the ADA*, fail to comply with the design

20 ³ See City of Los Angeles Transportation Profile, 2009, p. 11, attached to
21 the Decl. of Decl. of Parks as Exhibit F. The report can also be found at
22 <http://ladot.lacity.org/pdf/PDF10.pdf>. This calculation assumes that
23 intersections have an average of four corners.

24 ⁴ See City of Los Angeles, Public Works Department, Bureau of Street
25 Services, Report on Indicators of Workload, attached to Decl. of Parks as
26 Exhibit G.

27 ⁵ See Americans with Disabilities Act (ADA) Revised Transition Plan,
28 City of Los Angeles, Revised September, 2000, p. 3-26, attached
(without appendices) to the Decl. of Parks as Exhibit H; Compl. ¶ 23.

1 specifications set forth in the mandatory Americans with Disabilities Act
2 Accessibility Guidelines (“ADAAG”). *See* Decl. of Mastin, ¶¶ 75-81.

3 As a result, when viewed in its entirety, the City’s system of pedestrian
4 rights of way is inaccessible to persons with mobility disabilities in violation of
5 multiple federal and state disability rights laws due to the prevalence of numerous
6 conditions that serve as barriers to access for wheelchair users and other
7 individuals who have mobility disabilities. Compl. ¶¶ 28. Examples of such
8 systemic barriers include:

- 9 a. City sidewalks that do not have curb ramps and are therefore
10 inaccessible to persons with mobility impairments (see Decl. of
11 Mastin, ¶¶ 41-47);
 - 12 b. City sidewalks with curb ramps that are too steep or that have
13 hazardous cross slopes, or are located in such a way as to force
14 persons with mobility impairments onto the streets, making them
15 inaccessible and unsafe to use (see Decl. of Mastin, ¶¶ 48-58);
 - 16 c. City sidewalks that have an insufficiently wide path of travel
17 making them impossible to traverse for people with mobility
18 disabilities; city sidewalks that have permanent obstructions or
19 protrusions such as sign posts, trees, and other objects that block
20 or interfere with an accessible path of travel, causing members of
21 the proposed class to travel in vehicular traffic lanes (Decl. of
22 Mastin, ¶¶ 59-63);
 - 23 d. Sections of City sidewalks that are broken, missing, cracked or
24 otherwise in a state of disrepair; this includes changes in elevation
25 of more than one-half inch, entire concrete flags that are elevated
26 or depressed, and sidewalks that are uprooted by adjacent trees
27 (Decl. of Mastin, ¶¶ 64-74);
- 28

- 1 e. Sidewalks and curb ramps on streets that have been altered or
2 newly constructed without making the sidewalks compliant with
3 applicable accessibility standards or installing compliant curb
4 ramps at the intersections of those streets as required by 28 C.F.R.
5 § 35.151 (Decl. of Mastin, ¶¶ 75-81);
- 6 f. Sidewalks that are regularly made inaccessible for extended
7 periods of time due to construction without the provision of
8 alternate accessible paths of travel, the placement of objects in the
9 path of travel and apron parking on driveways that obstructs the
10 path of travel (Decl. of Mastin, ¶¶ 82-83; 85-89; *see e.g.* Decl. of
11 Donald Shoup and Decl. of Michael Dukakis).

12 Compl. ¶¶ 23-27. These conditions exist throughout the City (Compl. ¶ 29), as
13 described by the declarations of class members submitted in support of this
14 motion and as documented by the site inspections performed and described in the
15 Declaration of Jeff Mastin. Mr. Mastin found barriers across a wide geographical
16 expanse of Los Angeles within residential, commercial and civic districts. Mr.
17 Mastin found that the types, number and degree of barriers observed are
18 representative of those existing throughout the City of Los Angeles. *Id.* at ¶ 32, ll.
19 8-11. Moreover, Mr. Mastin observed “many instances of the same types of
20 barriers [as identified above] repeated throughout the City. Decl. of Mastin, ¶ 33,
21 ll. 12-21. Thus, the bottom line, is that these barriers deny access to the
22 pedestrian rights of way to people with mobility disabilities.

23 **B. The Proposed Class Includes at Least 280,000 People with**
24 **Mobility Disabilities in the City of Los Angeles Who Have Been**
25 **Systematically Denied Access to Its Pedestrian Rights-of Way.**

26 These barriers affect a substantial number of people with mobility
27 disabilities. In 2008, there were more than 280,000 persons with mobility
28

1 disabilities living in the City of Los Angeles.⁶ This number is arrived at using US
2 Census Bureau data for the City of Los Angeles combined with national data on
3 the percentage of persons with mobility disabilities. Decl. of LaPlante ¶15.

4 The named plaintiffs, as well as members of the proposed class, are directly
5 and similarly harmed because of Defendants' policies and practices with regard to
6 the City's pedestrian walkways and disability access. Members of the proposed
7 class repeatedly encounter or are deterred by barriers when traveling along the
8 pedestrian rights of way that make it difficult or impossible for them to traverse or
9 access the sidewalk or crosswalk and/or require that they utilize significantly
10 longer or more dangerous routes to get to their destination. Compl. ¶11.

11 Plaintiff Mark Willits, for example, is deterred from traveling around his
12 neighborhood because of missing curb ramps in at least 15 intersections close to
13 his home. Decl. of Willits, ¶ 7. Mr. Willits is also forced to travel in his
14 wheelchair in the street along with traffic due to cracks and raised sidewalks as
15 well as the lack of curb ramps in the downtown area of Los Angeles. Decl. of
16 Willits, ¶ 12, ll. 3-13. Similarly, several members of the proposed class report
17 that they are forced to ride in the street with traffic because of inaccessible
18 sidewalks due to lack of curb ramps or broken or constricted sidewalks. *See* Decl.
19 of Dina Garcia, ¶ 6; Decl. of Don Edward Williams, ¶ 7; Decl. of Carol Wilson, ¶
20 7; Decl. of Ruthee Goldkorn, ¶ 7; Decl. of Audrey Harthorn, ¶ 8. Plaintiff Willits
21 often feels in danger of tipping over when he travels along poorly maintained
22 sidewalks with significant cracks. *See* Decl. of Willits, ¶ 12. Likewise, other
23 declarants feel in danger of tipping over when traveling along damaged, uneven,
24 or lifted sidewalks in their respective areas. *See* Decl. of Cynthia Soto, ¶ 6; Decl.

25 ⁶ Many thousands more travel to or through the City for work, school or
26 other reasons. *See, e.g.*, Declarations of Beverly Overton, Ruthee
27 Goldkorn, Harley Rubenstein, and Cynthia Soto (class members who
28 travel to the City on a regular basis).

1 of Dina Garcia, ¶ 7; Decl. of Harley Rubenstein, ¶ 6.

2 As another example, named Plaintiff Judy Griffin encounters significant
3 problems due to inaccessible sidewalks when taking public transportation, causing
4 bus drivers to pass her because she is unable to wait close enough to the bus stop.
5 See Decl. of Griffin, ¶¶ 8-9. Additionally, Plaintiff Griffin is dropped off in the
6 street because of an inaccessible sidewalk located adjacent to the bus stop. Id. at ¶
7 9. Similarly, members of the proposed class are deterred from using bus stops
8 because of barriers on the sidewalks adjacent to designated bus stops or from or
9 traveling to bus stations due to inaccessible sidewalks. See Decl. of Sandy Varga,
10 ¶ 5; Decl. of Navarro, ¶ 8; Decl. of Audrey Harthorn, ¶ 8. Named Plaintiff Griffin
11 experiences fear of being hit by a vehicle when she is forced to use a driveway
12 because of the absence a curb ramp. Decl. of Griffin, ¶ 10. Several declarants also
13 experience fear of serious injury when they are forced into driveways and/or
14 streets along with vehicular traffic due to absence of curb ramps or other barriers
15 to pedestrian rights of way. See Decl. of Carol Wilson, ¶ 7; Decl. of Virgilio
16 Orlina, ¶ 7; Decl. of Harthorn, ¶ 8;

17 Named Plaintiff Brent Pilgreen, like many members of the proposed class,
18 is deterred from visiting particular restaurants and stores close to his home as a
19 result of severely cracked sidewalks with hazardous cross-slopes, making it
20 dangerous for him to travel on them. See Decl. of Brent Pilgreen, ¶¶ 6-7; Decl. of
21 Orlina, ¶ 7; Decl. of Rubenstein, ¶ 6.

22 **C. Proposed Class Representatives**

23 **1. Communities Actively Living Independent and Free**
24 **(“CALIF”)**

25 Organizational Plaintiff CALIF is an independent living center (“ILC”)
26 based in downtown Los Angeles: a private, non-profit community-based
27 corporation providing advocacy, resources and individualized assistance to people
28 with disabilities, including mobility disabilities, in the Los Angeles area. CALIF

1 is devoted to the goal of full inclusion, equality, and civil rights for all people
2 with disabilities, especially in the underserved minority communities of Los
3 Angeles. CALIF's advocacy and direct service work is based on a close
4 association with its constituents. Many of the founders and leaders of CALIF are
5 themselves seniors and/or people with disabilities. Accordingly, the interests that
6 CALIF seeks to protect through this litigation are germane to its mission and
7 purpose. Compl. ¶11. CALIF and its constituents have been directly harmed by
8 the City's failure to provide access to its system of pedestrian rights of way and
9 CALIF has suffered injury as a result of the City's inaccessible pedestrian rights
10 of way. See Compl. ¶11; Declaration of CALIF Executive Director, Lillibeth
11 Navarro ¶¶ 9, 10.

12 **2. Mark Willits**

13 Named Plaintiff Mark Willits is a person with a disability under all
14 applicable statutes. Willits is a resident of the Woodland Hills who is quadriplegic
15 and uses a motorized wheelchair for mobility. Compl. ¶12. Mr. Willits is forced
16 to travel in his wheelchair in the street along with traffic because of the
17 inaccessible sidewalks. He is unable to travel along the sidewalks in other areas
18 close to his home because of permanent obstructions such as signposts,
19 streetlamps, and power poles. Compl. ¶¶ 35, 38.

20 **3. Judy Griffin**

21 Named Plaintiff Judy Griffin is a person with a disability under all
22 applicable statutes. Ms. Griffin is a resident of the Westwood neighborhood of
23 Los Angeles with muscular dystrophy who uses a motorized wheelchair for
24 mobility. Compl. ¶ 13. Plaintiff Griffin is a homemaker and run errands and
25 shops for her family. She also has ongoing medical appointments, requiring her to
26 travel downtown. Plaintiff Griffin uses public transportation to travel throughout
27 the City on her errands and to visit her doctors. Because of multiple barriers she
28

1 encounters, however, Plaintiff Griffin must face serious risks each day she travels
2 around the City. Compl. ¶ 41.

3 **4. Brent Pilgreen**

4 Named Plaintiff Brent Pilgreen is a person with a disability under all
5 applicable statutes. He lives at the intersection of Martha Street and Noble
6 Avenue in Sherman Oaks, California. Due to his mobility disability, Mr. Pilgreen
7 uses a motorized wheelchair. Compl. ¶ 14. Mr. Pilgreen is deterred from
8 traveling on sidewalks near restaurants and stores in his neighborhood and in
9 other areas of the City because of uplifted, cracked sidewalks and permanent
10 obstructions blocking sidewalks. As a result of barriers he has encountered,
11 Plaintiff Pilgreen must be driven to the location he wants to visit in his
12 neighborhood or surrounding areas. Each trip he is required to take in a vehicle
13 causes him extreme exhaustion and requires at least a day to physically recover.
14 Consequently, Plaintiff Pilgreen often avoids leaving his home and is deprived of
15 his independence and is segregated from his neighborhood and other parts of his
16 community. Compl. ¶ 52.

17 **III. LEGAL ARGUMENT**

18 **A. The Proposed Class**

19 Plaintiffs seek an order and judgment enjoining Defendants from violating
20 the ADA, Section 504 of the Rehabilitation Act, California Civil Code §§ 51 and
21 54, and California Government Code §§ 4450 and 11135, and requiring
22 Defendants to ensure that the City's pedestrian rights of way when viewed in their
23 entirety are readily accessible to and useable by individuals with disabilities;
24 undertake prompt remedial measures to eliminate the physical barriers to access
25 to pedestrian rights of way to make such rights of way accessible to people with
26 mobility disabilities in accordance with federal and state nondiscrimination
27 statutes; ensure that all future new construction and alterations to City pedestrian
28 rights of way comply with the Americans with Disabilities Act Accessibility

1 Guidelines and/or Uniform Federal Accessibility Standards, Title 24 of the
2 California Code of Regulations standards and Cal. Govt. Code §§ 4450, et seq.;
3 and remain under this Court's jurisdiction until Defendants fully comply with the
4 Orders of this Court. As such, Plaintiffs move to certify a class under
5 Fed.R.Civ.P. 23(a) and 23(b)(2) consisting of:

6 All persons with mobility disabilities who have been denied access
7 to pedestrian rights of way in the City as a result of Defendants'
8 policies and practices with regard to the City's pedestrian
9 walkways and disability access.

10 Plaintiffs seek only injunctive and declaratory relief on behalf of
11 the class.

12 **B. The Legal Standard Under Rule 23**

13 Plaintiffs seek to certify a single class of persons with mobility-related
14 disabilities pursuant to Rule 23(b)(2). The proposed class seeks injunctive and
15 declaratory relief only, based upon the City's alleged violation of federal and state
16 laws that prohibit governmental discrimination against persons with disabilities
17 by the denial of access to a public entity's programs, services and activities.
18 Under Rule 23(a), class certification is proper if: (1) the class is so numerous that
19 joinder of all members is impracticable, (2) there are questions of law or fact
20 common to the class, (3) the claims or defenses of the representative parties are
21 typical of the claims or defenses of the class; and (4) the representative parties
22 will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).
23 In addition to meeting the requirements of Rule 23(a), the class must also be
24 certifiable under one of three sub-provisions of Rule 23(b). Fed. R. Civ. P. 23(b);
25 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). All of the
26 requirements of Rule 23(a) are met in this case, and certification of the class is
27 proper under Rule 23(b)(2).
28

1 C. **It is Well-Settled That Class Certification Is Appropriate In**
2 **Cases Involving Systemic Challenges Under Title II Of The ADA**
3 **And Similar Disability Nondiscrimination Laws.**

4 Both Title II of the ADA and Section 504 prohibit discrimination against
5 persons with mobility disabilities, and require that they be provided with full and
6 equal access to the benefits provided to the public by government entities such as
7 the City. Title II provides, “no qualified individual with a disability shall, by
8 reason of such disability, be excluded from participation in or be denied the
9 benefits of the services, programs or activities of a public entity, or be subjected
10 to discrimination by any such entity.” 42 U.S.C. § 12132. Under the regulations
11 adopted pursuant to Title II of the ADA and Section 504, the City is obligated to
12 make all of its programs, services and activities “readily accessible to and usable
13 by” persons with disabilities. 28 C.F.R. § 35.150. Additionally, newly
14 constructed or altered streets, roads and highways having curbs at intersections
15 with street level pedestrian walkways, and newly constructed or altered pedestrian
16 walkways, must contain curb ramps at the intersection of the street and the
17 pedestrian walkway. 28 C.F.R. § 35.151(e)).

18 The courts, including the Ninth Circuit, have repeatedly held that actions
19 which challenge a public entity’s failure to remove architectural barriers are
20 suitable for class certification, and the such actions meet all of the legal
21 requirements for class certification established by Federal Rule of Civil Procedure
22 23(b)(2). In so holding, the courts have recognized that the presence of
23 architectural barriers to persons with disabilities results in a class-wide impact
24 such that there is little or no variation in the experiences of class members who
25 have attempted to use inaccessible facilities.

26 In *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001), cert. denied, 537 U.S.
27 812 (2002), the Ninth Circuit specifically held that systemic disability access
28 challenges on behalf of persons with mobility disabilities pursuant to Title II of

1 the ADA and Section 504 should be certified as class actions. *Id.* at 879. As the
2 Ninth Circuit explained in *Armstrong*, cases alleging systemic non-compliance
3 with the disability access duties of Title II of the ADA and Section 504 are
4 suitable for class certification in that all of the issues, both factual and legal,
5 which will determine the public entity's liability focus solely on the defendant's
6 acts and omissions. *Id.* at 868-70. The extent to which the City has failed to
7 remove barriers that deny or limit program access, and the determination of which
8 barriers must be removed, are factual and legal questions that are the same for
9 every class member. Moreover, the sufficiency of the City's policies and
10 procedures for providing program access to persons with mobility disabilities is a
11 common question of fact and law. As a result, injunctive relief would be the same
12 for and would benefit all plaintiffs. In short, *Armstrong* is directly on point, and
13 controls the case at bar.

14 Numerous courts have held that systemic disability access cases pursuant to
15 Title II of the ADA and Section 504 are appropriate for class certification.
16 Indeed, in *Californians for Disability Rights, Inc. v. California Dep't of Transp.*,
17 249 F.R.D. 334, 345 (N.D. Cal. 2008) ("*CDR v. Caltrans*"), a case that also
18 involved access to pedestrian walkways, the District Court for the Northern
19 District of California noted that "[c]ases challenging an entity's policies and
20 practices regarding access for the disabled represent the mine run of disability
21 rights class actions certified under Rule 23(b)(2)."

22 As set forth below, Plaintiffs satisfy all four requirements of Rule 23(a) and
23 the requirements of Rule 23(b)(2) and this action should be certified as a class
24 action.

25 **D. The Class Meets All the Requirements of Rule 23(a).**

26 **1. The Class Is So Numerous that Joinder Is Impracticable.**

27 Rule 23(a)(1) requires that the class be "so numerous that joinder of all
28 members is impracticable." Fed. R. Civ. P. 23(a)(1). Plaintiffs do not need to

1 show that joinder would be impossible, only impracticable. *Haley v. Medtronic,*
2 *Inc.* 169 F.R.D. 643, 647-648 (C.D.Cal. 1996). It is not necessary for Plaintiffs to
3 be able to state the “exact number of potential class members” nor is a particular
4 number of class members required to establish numerosity, instead “whether
5 joinder is impracticable depends on the facts and circumstances of each case.”
6 *Bates v. United Parcel Service*, 204 F.R.D. 440, 444 (N.D. Cal. 2001); *True v.*
7 *Am. Honda Motor Co., Inc.*, 2009 U.S. Dist. LEXIS 29814, *10 (C.D. Cal. Mar.
8 25, 2009); *see also Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439,
9 448 (N.D. Cal. 1994). Numerosity is generally satisfied where general knowledge
10 and common sense indicate that the class is large. *Orantes-Hernandez v. Smith*,
11 541 F. Supp. 351, 370 (C.D. Cal. 1982); *Cervantez v. Celestica Corp.*, 253 F.R.D.
12 562, 569 (C.D. Cal. 2008); *Doe v. Los Angeles Unified Sch. Dist.*, 48 F.Supp.2d
13 1233, 1239 (C.D. Cal. 1999); 1 Newberg on Class Actions, §3:3 (“Where the
14 exact size of the class is unknown but general knowledge and common sense
15 indicate that it is large, the numerosity requirement is satisfied.”)

16 Here, reliable, published census data and mobility disabilities statistics as
17 well as general knowledge and common sense indicate that the proposed class is
18 large. Published census and mobility disabilities statistics data show there at least
19 280,000 people with mobility disabilities living in the city of Los Angeles. *See*
20 Decl. of LaPlante ¶15. This does not even account for the thousands more who
21 travel to or through the City on a daily basis.

22 The number of people with mobility disabilities that are affected by the
23 systemic denial of meaningful access to the City’s public pedestrian rights of way
24 is more than sufficient to make joinder impracticable given that numerosity has
25 generally been found when the class consists of 40 or more members. *See* 1 Conte
26 & Newberg, *Newberg on Class Actions* §3.5 (4th ed. 2006) (the plaintiff whose
27 class is 40 or greater should meet the test of Rule 23(a)(1) on that fact alone); 5
28 *Moore’s Federal Practice*, §23.22(3)(a) (3d ed. 2003) (classes with more than 40

1 members generally held sufficient to meet numerosity requirement); *Burdick v.*
2 *Union Sec. Ins. Co.*, 2008 U.S. Dist. LEXIS 108616, *5-6 (C.D. Cal. Mar. 25,
3 2008); *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 569 (C.D. Cal. 2008).
4 Indeed, courts have certified classes many times smaller. *See, e.g., In re Beer*
5 *Distrib. Antitrust Litig.*, 188 F.R.D. 557, 562 (N.D. Cal. 1999) (numerosity
6 satisfied where record evidenced “more than twenty-five”).

7 In addition, joinder here would be further impracticable because it would
8 be nearly impossible to identify all of the members of this large class. *See Arnold*
9 *v. United Artists Theatre Circuit Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994)
10 (“[b]y the very nature of this class, its members are unknown and cannot be
11 readily identified.”); *Sung Park v. Ralph's Grocery Co.*, 254 F.R.D. 112, 120
12 (C.D. Cal. 2008); *Moeller v. Taco Bell Corp.*, 220 F.R.D. 604, 608 (N.D. Cal.
13 2004). The proposed class accordingly meets the numerosity requirement of Rule
14 23(a)(1).

15 2. There Are Numerous Questions of Law and Fact Common to 16 the Class.

17 Rule 23(a)(2) requires that there exist “questions of law or fact common to
18 the class.” Fed. R. Civ. P. 23(a)(2). The Ninth Circuit construes this requirement
19 permissively, “All questions of fact and law need not be common to satisfy the
20 rule.” *Dukes v. Wal-Mart Stores Inc.*, 603 F.3d 571, 615 (9th Cir. 2010) (citing
21 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)); *accord Maddock*
22 *v. KB Homes, Inc.*, 248 F.R.D. 229, 238 (C.D. Cal. 2007) citing *Jordan v. County*
23 *of Los Angeles*, 669 F.2d 1311, 1320 (9th Cir. 1982) (“The commonality
24 requirement is generally construed liberally; the existence of only a few common
25 legal and factual issues may satisfy the requirement.”). Commonality can even be
26 met where only one of the many issues of law or fact is common to all class
27 members. *Int'l Molders' & Allied Workers' Local Union No. 164 v. Nelson*, 102
28 F.R.D. 457, 462 (N.D. Cal. 1983); *Slaven v. BP America, Inc.*, 190 F.R.D. 649,

1 655 (C.D. Cal. 2000) (finding this element can be met by raising a single common
2 issue that is central to the class).

3 The general practice in civil rights suits is to find that “commonality is
4 satisfied where the lawsuit challenges a system-wide practice or policy that
5 affects all of the putative class members.” *Armstrong v. Davis*, 275 F.3d 849, 868
6 (9th Cir. 2001); *see also Arnold v. United Theatre Circuit Inc.*, 158 F.R.D. 439,
7 448 (N.D. Cal 1994) (commonality requirement is “met by the alleged existence
8 of common discriminatory practices.”). *Jordan v. Los Angeles County*, 669 F.2d
9 1311, 1321 (9th Cir. 1982) citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329
10 F.2d 909 (9th Cir. 1964) (“The commonality requirement is satisfied ‘where the
11 question of law linking the class members is substantially related to the resolution
12 of the litigation even though the individuals are not identically situated’”) *vacated*
13 *on other grounds*, 459 U.S. 810 (1982). Moreover, actions for injunctive relief are
14 generally considered to present common questions. *See Baby Neal for and by*
15 *Kanter v. Casey*, 43 F.3d 48, 57 (3rd Cir. 1994) (“[B]ecause they do not also
16 involve an individualized inquiry for the determination of damage awards,
17 injunctive actions by their very nature often present common questions satisfying
18 Rule 23(a)(2).”) (quoting 7A Charles Alan Wright et al., *Federal Practice and*
19 *Procedure* § 1763, at 247 (2d ed. 1986)); *See also Riker v. Gibbons*, 2009 U.S.
20 Dist. LEXIS 35449, *8 (D. Nev. Mar. 31, 2009).

21 This is a quintessential civil rights class action, in that it revolves around
22 the City’s illegal system-wide policies and practices, and their systemic failures to
23 take necessary action, which have affected all class members in the same manner.
24 This is an action based solely on defendants’ actions, not plaintiffs’ individual
25 circumstances. Indeed, cases on precisely this issue have proceeded on a class
26 basis before. *See, e.g., Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir.
27 2002) (class action in which Ninth Circuit held that sidewalks were subject to
28 Title II of the ADA); and *Californians for Disability Rights, Inc. v. California*

1 *Dept. of Transp.*, 249 F.R.D. 334 (N.D.Cal. 2008) (certifying class of persons
2 with mobility and vision disabilities regarding barriers along sidewalks, cross-
3 walks, pedestrian underpasses, pedestrian overpasses and any other outdoor
4 designated pedestrian walkways).

5 Plaintiffs' claims all stem from a common set of facts, as the systemic
6 failures described above have affected all class members in the same manner;
7 namely, by denying them meaningful access to the City's public pedestrian rights
8 of way. *See Rosario v. Livaditis*, 963 F.2d 1013, 1017-18 (7th Cir. 1992 ("The
9 fact that there is some factual variation among the class grievances will not defeat
10 a class action ... a common nucleus of operative fact is usually enough to satisfy
11 the commonality requirement.")).

12 Similarly, that the class in this case includes people with various mobility
13 disabilities, or that there may be some issues which affect one subgroup more than
14 the other, does not defeat commonality. *See Armstrong*, 275 F.3d at 868
15 (rejecting call from defendants for separate lawsuits for each disability group, and
16 finding commonality where class members in all groups "suffer similar harm"
17 from an alleged discriminatory practice); *Rodde v. Bonta*, 357 F.3d 988 (9th Cir.
18 2004) (certified class consisting of: "All present and future recipients of the
19 Medicaid program: (a) who reside in the County of Los Angeles; (b) who have or
20 will have disabilities; and (c) who, because of their disabilities[,] need or will
21 need inpatient and/or outpatient rehabilitative and other medical services that are
22 currently provided at Rancho Los Amigos National Rehabilitation Center.");
23 *Pottinger v. Miami*, 720 F. Supp. 955, 958 (S.D. Fla. 1989) (certifying a class
24 consisting of all those who are "involuntarily homeless" within a geographic area,
25 stating the "status of the plaintiffs as homeless is a fact common to the class");
26 *Kincaid v. City of Fresno*, 244 F.R.D. 597, 601 (E.D. Cal. 2007) (Certifying class
27 of "All persons in the City of Fresno who were or are homeless, without
28 residence, after October 17, 2003, and whose personal belongings have been

1 unlawfully taken and destroyed a sweep, raid, or clean up by any of the
2 Defendants” stating “members of the class share common questions of law and
3 fact in the manner in which the sweeps were carried out, the fact and content of
4 any notice, the seizure and destruction of personal property and whether any pre
5 or post deprivation remedy was afforded).

6 Thus, the determination of the City’s liability will turn on whether the
7 City’s systemic inactions and actions, including inadequate policies, have been
8 sufficient to satisfy its obligations under applicable law. That inquiry will involve
9 numerous questions of both law and fact that are common to the class, and thus
10 better answered in a single class action, rather than in a multitude of individual
11 suits addressing many of the same questions.

12 Indeed, the commonality of the legal issues raised is readily apparent from
13 Plaintiffs’ Complaint, which asserts multiple causes of action based on the City’s
14 alleged violations of various state and federal anti-discrimination provisions.
15 Plaintiffs contend that Defendants have violated these non-discrimination laws on
16 a systemic basis by failing to implement policies and procedures that provide
17 meaningful access to the City’s public pedestrian rights of way. Consequently,
18 the same questions exist for the prospective class as a whole. Such questions
19 include the overarching issues of whether Defendants have violated and are
20 continuing to violate Title II of the ADA, 42 U.S.C. § 12131, et seq., and Section
21 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq., as well as California
22 Government Code Sections 11135(a) and 4450, and Civil Codes 51 and 54, by
23 failing to make their programs, services and activities accessible to and useable by
24 persons with disabilities and by failing to adopt and implement plans for the
25 identification and removal of barriers to access. Within these overarching
26 common issues are a number of sub-issues that represent common questions of
27 law, including, by way of example: whether the City is required by the ADA and
28 Section 504 to make its system of pedestrian rights of way, when viewed in its

1 entirety, readily accessible to and usable by persons with mobility disabilities;
2 whether the City is required by the above laws to make its pedestrian rights of
3 way in all parts of the City readily accessible to and usable by persons with
4 mobility disabilities; whether the City's system of pedestrian rights of way, when
5 viewed in its entirety, is readily accessible to and usable by persons with mobility
6 disabilities; whether the City was required to make its system of pedestrian rights
7 of way accessible to persons with mobility disabilities by no later than January 26,
8 1995 under the ADA and by no later than June 3, 1977 under Section 504; and
9 whether the City's failure to make its system of public pedestrian rights of way
10 accessible to and useable by persons with disabilities, discriminates against
11 individuals with mobility disabilities, and/or denies people with disabilities the
12 benefits of its programs, services and activities.

13 “[W]hile factual patterns experienced by individual members are inevitably
14 distinct, they give rise to the common question of whether or not the defendants
15 discriminated against a class of people.” Newberg & Conte, Newberg on Class
16 Actions at Section 24.22. The allegations in this case give rise to numerous
17 questions of fact that are common to the class as a whole, all of which focus
18 solely on the City's policies and systemic actions and failures to act. By way of
19 example, common questions of fact include, but are not limited to: whether the
20 City's design and construction of curb ramps and sidewalks since the effective
21 dates of section 504, the ADA and corresponding state law are consistent with
22 applicable design standards; the extent of barriers that exist throughout the public
23 rights of way; whether the City has relied primarily on requiring persons with
24 mobility disabilities to affirmatively complain about access barriers; and whether
25 the City has adopted and implemented a policy and practice of concurrently
26 installing curb ramps at intersections of streets that are newly constructed,
27 repaved or otherwise altered, as required by 28 C.F.R. 35.151(e)(1). In addition to
28 the foregoing, and as explained above, the same policies, practices and procedures

1 apply to the class as a whole. Moreover, the records, expert testimony and other
2 evidence documenting the state of Defendants' existing system of public
3 pedestrian rights of way demonstrate that the same types of problems exist
4 system-wide. In short, the facts that will establish whether the City is liable to the
5 class as a whole are the same facts that would be raised in individual class
6 member suits.

7 **3. The Named Plaintiffs' Claims Are Typical of the Class.**

8 Under Rule 23(a) (3), class certification is proper when "the claims or
9 defenses of the representative parties are typical of the claims or defenses of the
10 class." Typicality under Rule 23(a)(3) requires the Court to determine "whether
11 the named plaintiffs' individual circumstances markedly diverge or whether the
12 legal theories and claims differ as to defeat the purposes of maintaining a class."
13 *Von Colln v. County of Ventura*, 189 F.R.D. 583, 591 (C.D. Cal. 1999); *Gen. Tel.*
14 *Co. of the Southwest v. Falcon*, 457 U.S. 147, 156 (1982) (Typicality requires that
15 the named plaintiffs be members of the class they represent and "'possess the
16 same interest and suffer the same injury'" as class members.") (internal citation
17 omitted).

18 In order to satisfy typicality the named plaintiffs' claims need not be
19 identical to the claims of the class. Rather, the claims are typical if they are
20 "reasonably co-extensive with those of absent class members." *Dukes v. Wal-Mart*
21 *Stores Inc.*, 603 F.3d 571 at 613 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d
22 1011, 1020 (9th Cir. Cal. 1998); 5 Herbert B. Newberg & Alba Conte, *Newberg*
23 *on Class Actions*, § 24.25 at 24-105 (3d ed. 1992). It is sufficient for plaintiffs'
24 claims to "arise from the same remedial and legal theories" as the class claims.
25 *Arnold v. UA Theatre Circuit, Inc.*, 158 F.R.D. 439, 449 (N.D. Cal. 1994)
26 (citations omitted).

27 A finding of commonality frequently supports a finding of typicality. *See*
28 *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) (noting how the

1 commonality and typicality requirements "merge"). Similarly, "[i]f the claims of
2 the named plaintiffs and putative class members involve the same conduct by the
3 defendant, typicality is established regardless of . . . factual difference." *In re*
4 *Heritage Bond Litig.*, 2004 WL 1638201, *7 (C.D. Cal. July 12, 2004); *Burdick v.*
5 *Union Sec. Ins. Co.*, 2008 U.S. Dist. LEXIS 108616, *7-8 (C.D. Cal. Mar. 25,
6 2008). When discrimination is alleged, it is sufficient that the named plaintiffs
7 have suffered the same type and manner of injury from the same discriminatory
8 practice as the other members of the class. *See Dukes v. Wal-Mart Stores Inc.*,
9 603 F.3d at 613; *see also Baby Neal v. Casey*, 43 F.3d 48, 58 (3rd Cir. 1994)
10 ("cases challenging the same unlawful conduct which affects both the named
11 plaintiffs and the putative class usually satisfy the typicality requirement
12 irrespective of the varying fact patterns underlying the individual claims");
13 *Moeller v. Taco Bell Corp.*, 220 F.R.D 604, 611 (N.D. Cal. 2004) (class members
14 need only have injuries similar to those of the named plaintiffs); *Int'l Molders &*
15 *Allied Workers' Local Union No. 164 v. Nelson*, 102 F.R.D. 457, 463 (N.D. Cal.
16 1983) (typicality is found where the class representatives' claims "arise from the
17 same practice and course of conduct that forms the basis of the claims of the
18 class," and are based on the same legal theory).

19 In this case, the named Plaintiffs have alleged that they suffered the same
20 type of harm as members of the class, caused by the same system-wide failure of
21 the City to provide meaningful access to its public pedestrian rights of way for
22 people with disabilities, and the named Plaintiffs' claims and class claims are
23 based on the same legal theories. Like the members of the class, Plaintiffs
24 CALIF, Willits, Griffin and Pilgreen allege that they have been directly harmed
25 by the City's failure to provide meaningful access to its public pedestrian rights of
26 way. This harm takes the form of the denial of access to the City's public
27 pedestrian rights of way as a result of physical or architectural barriers that
28 Plaintiffs and other class members regularly encounter at the City's sidewalks,

1 crosswalks and intersections. The barriers encountered by named Plaintiffs are
2 representative of the common barriers that class members have encountered. *See*
3 *also Arnold* 158 F.R.D. at 450 (“where disabled persons challenge the legal
4 permissibility of architectural design features, the interests, injuries, and claims of
5 the class members are, in truth, identical such that *any* class member could satisfy
6 the typicality requirement for class representation.”). The named Plaintiffs’
7 individual claims and the class claims in this case are brought under the same
8 laws and share the very same legal theories, and the relief that Plaintiffs seek –
9 declaratory relief and injunctive relief requiring the City to address the various
10 system-wide failures – is class-wide.

11 **4. Plaintiffs Will Fairly and Adequately Protect the Interests of**
12 **the Class.**

13 Rule 23(a)(4) requires that “the representative parties will fairly and
14 adequately protect the interests of the class. “This factor requires: (1) that the
15 proposed representative Plaintiffs do not have conflicts of interest with the
16 proposed class, and (2) that Plaintiffs are represented by qualified and competent
17 counsel.” *Dukes v. Wal-Mart Stores Inc.*, 603 F.3d 571 at 614; see also *Hanlon*,
18 150 F.3d at 1020. Adequate representation is usually presumed in the absence of
19 contrary evidence. *See* 3 Newberg §7:24 at 78. A defendant who opposes
20 certification on this basis must demonstrate a “real probability of conflict that
21 goes to the subject matter of the class lawsuit”; speculation is insufficient. *Int’l*
22 *Molders & Allied Workers' Local Union No. 164 v. Nelson*, 102 F.R.D. 457, 464
23 (N.D. Cal. 1983). “This standard requires similarity, not identity, of interests. Nor
24 does it preclude some unique interests; it only precludes adverse interests” *Dukes*
25 *v. Wal-Mart Stores Inc.*, 222 F.R.D. 137, 168 (N.D. Cal. 2004). Representative
26 plaintiffs do not need to have intimate knowledge of the allegations. “A plaintiff
27 need possess no more than marginal familiarity [] with the facts of his case, and
28 need not fully understand the legal theories, particularly when he or she is

1 represented by competent counsel." *Brink v. First Credit Res.*, 185 F.R.D. 567,
2 571 (D. Ariz. 1999).

3 As set forth in declarations submitted herewith, the individual class
4 representatives are deeply committed to improving access for persons with
5 disabilities and are ready, willing and able to act as effective advocates for the
6 class in this case. *See* Decl. of Willits, ¶ 4; Decl. of Griffin, ¶ 5; Decl. of Pilgreen,
7 ¶ 4. Similarly, organizational Plaintiff CALIF has worked hard for many years to
8 improve access for persons with disabilities, and is fully prepared to vigorously
9 represent both its clients and the class in this case. *See* Decl. of Lillibeth Navarro,
10 ¶ 2. Moreover, there is no conflict between the interests of the class
11 representatives and those of the other members of the class.

12 Plaintiffs have likewise chosen experienced and qualified counsel who are
13 recognized experts in class action litigation and the protection of the rights of
14 persons with disabilities. Named Plaintiffs and their attorneys are well-qualified
15 to litigate their claims against the City of Los Angeles. *See* Decl. of Shawna L.
16 Parks, Decl. of Guy Wallace and Decl. of Mark Johnson (detailing qualifications
17 of Plaintiffs' counsel); and *Jordan*, 669 F.2d at 1323 (holding that adequacy of
18 counsel can be met by showing that the named plaintiffs' attorneys are qualified,
19 experienced, and generally able to conduct litigation).

20 **E. The Conditions of Rule 23(b)(2) are Met.**

21 Plaintiffs seek to certify the class under Fed.R.Civ.P. 23(b)(2), which
22 applies when "the party opposing the class has acted or refused to act on grounds
23 generally applicable to the class, thereby making appropriate final injunctive
24 relief or corresponding declaratory relief with respect to the class as a whole."
25 Fed. R. Civ. P. 23(b)(2). For a class to be certified under Rule 23(b)(2), "it is
26 sufficient if class members complain of a pattern or practice that is generally
27 applicable to the class," even if not all class members have been injured by the
28 challenged practice. *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998);

1 *Burdick v. Union Sec. Ins. Co.*, 2008 U.S. Dist. LEXIS 108616, *13 (C.D. Cal.
2 Mar. 25, 2008) citing *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 57 (3rd
3 Cir. 1994) (“Rule 23(b)(2) certification is appropriate when a “defendant's
4 conduct is central to the claims of all class members irrespective of their
5 individual circumstances and the disparate effects of the conduct”). The
6 requirements of Rule 23(b) are also “almost automatically satisfied in actions
7 primarily seeking injunctive relief.” *Baby Neal v. Casey*, 43 F.3d 48, 58 (9th Cir.
8 1994) (citation omitted); *see also Von Colln v. County of Ventura*, 189 F.R.D.
9 583, 592 (C.D.Cal. 1999) (“If Rule 23(a) prerequisites have been met and
10 injunctive relief has been requested, the action should be allowed to proceed
11 under subdivision(b)(2).”) (citation omitted).

12 The claims raised by Plaintiffs in this action are precisely the sorts of
13 claims that Rule 23(b)(2) was intended to facilitate. “Rule 23(b)(2) class actions
14 were designed specifically for civil rights cases seeking broad declaratory or
15 injunctive relief for a numerous and often unascertainable or amorphous class of
16 persons.” 1966 Rules Advisory Committee Notes, 39 F.R.D. 69, 102 (1966); *see* 4
17 *Newberg on Class Actions* §4.11 (3rd ed., 1992); Wright, Miller & Kane, *Federal*
18 *Practice & Procedure* Civil 2d, § 1775, p. 470 (1986).

19 As discussed above, all of the Rule 23(a) requirements are satisfied in this
20 case. Moreover, Plaintiffs’ claims in this case are brought on behalf of a large
21 and amorphous class, and stem from deficiencies with the City’s policies and
22 practices that apply to the entire class. Finally, the Plaintiff class in this case
23 seeks only class-wide injunctive and declaratory relief to address such
24 deficiencies, and does not seek any damages. Only named Plaintiffs seek
25 damages based on individual claims. Certification under Rule 23(b)(2) is thus
26 proper.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court
3 certify the class set forth in the Notice of Motion, appoint Plaintiffs as the class
4 representatives, and appoint Disability Rights Legal Center and Schneider
5 Wallace Cottrell Brayton Konecky, LLP as class counsel.

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7 DATED: September 1, 2010

Respectfully Submitted,

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DISABILITY RIGHTS LEGAL CENTER

By: 
Surisa E. Rivers
Attorneys for Plaintiffs