Paula D. Pearlman (SBN 109038)
Paula.Pearlman@lls.edu
Shawna L. Parks (SBN 208301)
Shawna.Parks@lls.edu
Surisa E. Rivers (SBN 250868)
Surisa.Rivers@lls.edu
DISABILITY RIGHTS LEGAL CENTER
919 Albany Street
Los Angeles, California 90015
Tel: (213) 736-1031; Fax: (213) 736-1428

Attorneys for Plaintiffs and the Proposed Class (Continued on next page)

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

Guy B. Wallace (SBN 176151)
gwallace@schneiderwallace.com
Mark T. Johnson (SBN 076904)
mjohnson@schneiderwallace.com
Andrew P. Lee (SBN 245903)
alee@schneiderwallace.com
SCHNEIDER WALLACE
COTTRELL BRAYTON KONECKY LLP
180 Montgomery Street, Suite 2000
San Francisco, CA 94104
Tel. (415) 421-7100; Fax: 415-421-7105

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on October 4, 2010, at11:00 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.

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

DATED: September 1, 2010

Respectfully Submitted,

DISABILITY RIGHTS LEGAL CENTER

SCHNEIDER WALLACE COTTRELL BRAYTON KONECKY LLP

By: _____
Surisa E. Rivers
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

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

II. STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

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

a. City sidewalks that do not have curb ramps and are therefore inaccessible to persons with mobility impairments (see Decl. of Mastin, ¶¶ 41-47);

b. City sidewalks with curb ramps that are too steep or that have hazardous cross slopes, or are located in such a way as to force persons with mobility impairments onto the streets, making them inaccessible and unsafe to use (see Decl. of Mastin, ¶¶ 48-58);

c. City sidewalks that have an insufficiently wide path of travel making them impossible to traverse for people with mobility disabilities; city sidewalks that have permanent obstructions or protrusions such as sign posts, trees, and other objects that block or interfere with an accessible path of travel, causing members of the proposed class to travel in vehicular traffic lanes (Decl. of Mastin, ¶¶ 59-63);

d. Sections of City sidewalks that are broken, missing, cracked or otherwise in a state of disrepair; this includes changes in elevation of more than one-half inch, entire concrete flags that are elevated or depressed, and sidewalks that are uprooted by adjacent trees (Decl. of Mastin, ¶¶ 64-74);

e. Sidewalks and curb ramps on streets that have been altered or newly constructed without making the sidewalks compliant with applicable accessibility standards or installing compliant curb ramps at the intersections of those streets as required by 28 C.F.R. § 35.151 (Decl. of Mastin, ¶¶ 75-81);

f. Sidewalks that are regularly made inaccessible for extended periods of time due to construction without the provision of alternate accessible paths of travel, the placement of objects in the path of travel and apron parking on driveways that obstructs the path of travel (Decl. of Mastin, ¶¶ 82-83; 85-89; *see e.g.* Decl. of Donald Shoup and Decl. of Michael Dukakis).

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

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

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

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

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

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

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

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

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

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

C. <u>Proposed Class Representatives</u>

1. Communities Actively Living Independent and Free ("CALIF")

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

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

2. Mark Willits

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

3. Judy Griffin

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

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

4. Brent Pilgreen

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

III. LEGAL ARGUMENT

A. The Proposed Class

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

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

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

B. The Legal Standard Under Rule 23

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

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

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

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

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

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

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

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

D. <u>The Class Meets All the Requirements of Rule 23(a).</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. <u>The Conditions of Rule 23(b)(2) are Met.</u>

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

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

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

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

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IV. CONCLUSION

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

DATED: September 1, 2010

Respectfully Submitted,

DISABILITY RIGHTS LEGAL CENTER

By: 

Surisa E. Rivers
Attorneys for Plaintiffs