

1 PAUL L. REIN, Esq. (SBN 43053)  
2 LAW OFFICES OF PAUL L. REIN  
200 Lakeside Drive, Suite A  
Oakland, CA 94612  
3 Telephone: 510/832-5001  
4 Facsimile: 510/832-4787  
reinlawoffice@aol.com

5 Attorneys for Plaintiff  
6 JOHN SCHULZ

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9

10 JOHN SCHULZ,  
11 Plaintiff,  
12 v.  
13 CITY OF PACIFICA; and DOES 1-10,  
14 INCLUSIVE,  
15 Defendants.

CASE NO.  
Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES: COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND DAMAGES: DENIAL OF CIVIL RIGHTS AND ACCESS TO PUBLIC FACILITIES TO PHYSICALLY DISABLED PERSONS, PER FEDERAL AND CALIFORNIA STATUTES (including CIVIL CODE §§ 51, 52, 54, 54.1, 54.3 and 55; and HEALTH & SAFETY CODE §§ 19953 *et seq.*); INJUNCTIVE RELIEF PER TITLE II, AMERICANS WITH DISABILITIES ACT OF 1990 (including 42 USC §§ 12181 *et seq.*)

DEMAND FOR JURY TRIAL

20  
21 Plaintiff JOHN SCHULZ complains of Defendants CITY OF PAICIFICA; and DOES 1-  
22 10, Inclusive, and each of them, and alleges as follows:

23 1. **INTRODUCTION:** This case involves the denial of accessible public facilities,  
24 including entry to buildings, paths of travel, restrooms and related facilities to Plaintiff JOHN  
25 SCHULZ and other similarly disabled persons at Pacifica City Hall located at 170 Santa Maria  
26 Ave, Pacifica, CA 94044, and the building located at “1800 Francisco Boulevard,” Pacifica, CA  
27 94044, which allegedly provides services for those disabled persons unable to access City Hall,  
28 and the Pacifica Parks, Beaches & Recreation Department located 1810 Francisco Boulevard,

1 Pacifica, CA 94044. Plaintiff JOHN SCHULZ is a “person with a disability” or “physically  
2 handicapped person” who requires the use of a wheelchair for locomotion, and is unable to use  
3 portions of public facilities which are not accessible to mobility disabled persons, including those  
4 who require the use of a wheelchair. On or about December 29, 2017, and several times  
5 thereafter, Plaintiff was denied his rights to full and equal access at these facilities, and was  
6 denied his civil rights under both California law and federal law, and continues to have his rights  
7 denied, because these facilities were not, and are not now, properly accessible to physically  
8 disabled persons, including those who use wheelchairs. Plaintiff seeks injunctive relief to require  
9 Defendants to adopt policies which provide persons with mobility impairments with the  
10 accessibility features required under federal and state laws that mandate public accommodations  
11 be made accessible to and useable by disabled persons. Plaintiff also seeks recovery of damages  
12 for his discriminatory experiences and denial of access and of civil rights, which denial is  
13 continuing as a result of Defendants’ failure to provide disabled accessible facilities. Plaintiff  
14 also seeks recovery of reasonable statutory attorney fees, litigation expenses and costs, under  
15 federal and state law.

16       2.       **JURISDICTION:** This Court has jurisdiction of this action pursuant to 28 USC §  
17 1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*  
18 Pursuant to pendant jurisdiction, attendant and related causes of action arising from the same facts  
19 are also brought under California law, including but not limited to violations of California  
20 Government Code § 4450, *et seq.*, and Government Code § 11135; California Civil Code §§ 51,  
21 52, 54, 54.1, and 54.3; and Title 24 California Code of Regulations.

22       3.       **VENUE:** Venue is proper in this court pursuant to 28 USC § 1391(b) and is  
23 founded on the fact that the real property which is the subject of this action is located in this  
24 district and that Plaintiff’s causes of action arose in this district.

25       4.       **INTRADISTRICT:** This case should be assigned to the San Jose intradistrict as  
26 the real property which is the subject of this action is located in this intradistrict and Plaintiff’s  
27 causes of action arose in this intradistrict.

28       5.       **PARTIES:** Plaintiff is a qualified physically disabled person who requires use of a

1 wheelchair for locomotion. Defendant CITY OF PACIFICA and defendants Does 1-5 are public  
2 entities subject to Title II of the ADA, the Rehabilitation Act of 1973, and to all other legal  
3 requirements referred to in this complaint. Defendants Does 6-9 are employees and/or agents of  
4 Defendant CITY OF PACIFICA. On information and belief, all such Doe Defendants wrongfully  
5 discriminated against Plaintiff on the basis of his disability as part of a joint venture and common  
6 enterprise with the named defendants.

7         6. Plaintiff does not know the identities of Does 1-10 at this time and prays leave to  
8 substitute the true names of each such defendant when they have been ascertained. Plaintiff does  
9 not know the relative responsibilities of defendant and Does 1-5 in the ownership and operation  
10 of the facilities herein complained of, and alleges a joint venture and common enterprise by  
11 Defendant CITY OF PACIFICA and Does 1-10 in the ownership and operation of each such  
12 facility. On information and belief, plaintiff also alleges that each such defendant was and is an  
13 owner and operator, lessor and lessee of the public facilities complained about herein.

14         7. **GOVERNMENT CLAIM:** On or about May 24, 2017, Plaintiff made a timely  
15 public entity claim to the City of Pacifica, which was deemed rejected on July 10, 2017, after 45  
16 days passed without an acceptance or rejection of Plaintiff's claim by the City of Pacifica.

17         8. **FACTUAL STATEMENT:** JOHN SCHULZ (hereinafter also "Plaintiff") is  
18 disabled by quadriplegia following a spinal injury at his T2 vertebrae. He cannot walk or stand  
19 without use of mobility assistive devices. He requires the use of a wheelchair for mobility.  
20 Despite his quadriplegia, Mr. Schulz continues to lead an active life, and he works as a  
21 commercial crab fisherman who goes out in a boat with a one-man crew.

22         9. On December 24, 2016, Mr. Schulz received a citation from the City of Pacifica  
23 regarding a boat stored in his driveway. The citation was dated December 22, 2016, and  
24 indicated that he should go to the Pacifica City Hall to address the issue/pay any fine. Mr.  
25 Schultz found no indication on the citation that City Hall was inaccessible to disabled persons and  
26 received no such warnings from any other source. A true and correct copy of that citation is  
27 attached as Exhibit A to this Complaint and incorporated herein.

28         10. On December 29, 2016, Mr. Schulz went to the Pacifica City Hall to address the

1 citation. When he arrived at City Hall, Mr. Schulz could find no way to get into the building in  
2 his wheelchair. There were three steps leading up to the front door of the building from each  
3 direction, and he saw no other accessible entrance. At that time Mr. Schulz saw no sign  
4 indicating how disabled members of the public could access services provided at City Hall, so he  
5 had to ask a passerby, who happened to be a City employee, to go into City Hall in order to  
6 request assistance for him. This created unwanted attention and embarrassment for Mr. Schulz,  
7 who prides himself on his independence and was going to require him to carry out private  
8 conversations with city representative in public areas.

9 11. Eventually, a City employee came outside to speak with Mr. Schulz about his  
10 citation. The City employee ended up having to bring the paperwork out Mr. Schulz who was  
11 forced to wait outside of City Hall due to the inaccessible front entrance. This caused Mr. Schulz  
12 further discomfort and embarrassment as he was required to deal with a private matter in full  
13 view of any passersby rather than in the comfort and privacy of an office in City Hall as any able-  
14 bodied citizen would have been allowed to do.

15 12. Subsequent investigation by Plaintiff's representatives revealed there is a sign near  
16 City Hall, to the left of and about forty feet from the entrance and facing out towards the street  
17 apparently intended to inform disabled individuals that they should go to a different building at  
18 "1800 Francisco Drive" for "City Hall" services. However, Mr. Schulz neither saw that sign, nor  
19 was it placed in an obvious area for an individual attempting to enter City Hall to see. Thus, the  
20 City of Pacifica was and is not providing sufficient notice or directional signage for disabled  
21 persons attempting to access City of Pacifica services. Notice of how disabled individuals can  
22 access City services, including dealing with any citations issued by the City, should be provided  
23 on any initial citation so that a disabled citizen does not have to experience discomfort, difficulty  
24 and embarrassment in attempting to access clearly inaccessible facilities.

25 13. Additionally, since the initial incident Mr. Schulz has twice attempted to access  
26 city services at the designated "accessible" office located at, on information and belief, "1800  
27 Francisco Boulevard," Pacifica, CA, and at the Pacifica Parks, Beaches & Recreation Department  
28 located at 1810 Francisco Boulevard, Pacifica, CA, where he went for a hearing on his "ticket"

1 complaint. On information and belief, the dates for those two appearances (the second a formal  
2 hearing on Mr. Schulz's citation) were January 19, 2017, and February 23, 2017. Although the  
3 City misidentifies on its signage that both buildings are "accessible," Mr. Schulz was unable to  
4 access either without assistance. Both buildings have entry doors that are excessively heavy, and  
5 Mr. Schulz, who is a crab fisherman who prides himself on his remaining upper body strength left  
6 despite his quadriplegia, was unable to open either door without assistance. The building housing  
7 the Pacifica Parks, Beaches & Recreation Department is only "accessible" by an unsafe,  
8 noncompliant ramp in the back of the building without proper handrails and with a steep slope  
9 and uneven surface. Thus, there were three separate incidents. On information and belief the  
10 public counters in both City offices were and are also not properly complaint with state and  
11 federal access law standards.

12  
13 **FIRST CAUSE OF ACTION:**  
14 **DISCRIMINATION OF TITLE II OF THE AMERICANS WITH DISABILITES ACT OF**  
15 **1990**

16 14. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
17 the factual allegations contained in Paragraphs 1 through 13, above, and incorporates them herein  
18 by reference as if separately replied hereafter.

19 15. At all times herein mentioned, Plaintiff was entitled to the protections of the  
20 "Public Services" provisions of Title II of the ADA, Subpart A, which prohibits discrimination by  
21 any public entity as defined by 42 USC section 12131. Pursuant to 42 USC 12132, section 12132  
22 of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded  
23 from participation in or be denied the benefits of the "services, programs or activities" of a public  
24 entity, or be subjected to discrimination by such entity. Plaintiff was at all times relevant herein a  
25 qualified individual with a disability for all purposes under the ADA.

26 16. In violation of Title II of the ADA, Defendants has failed to ensure that individuals  
27 with physical disabilities such as Plaintiff are not excluded from "services, programs and  
28 activities" at the subject facilities and property. By reason of Defendants' failure to remove  
architectural barriers to access at the subject facilities so as to render them "accessible to and

1 useable by” mobility impaired persons, despite actual notice of the inaccessible conditions, as  
2 more specifically set forth hereinabove, and by their policy decisions as above-described,  
3 defendants have discriminated against Plaintiff in violation of Title II of the ADA and the  
4 regulations adopted to implement the ADA. With relation to damages claimed under Title II of  
5 the ADA, each such instance of discrimination is alleged to have been intentional and/or have  
6 been created and maintained in conscious disregard of the effect upon Plaintiff and other similarly  
7 disabled persons, and with deliberate indifference. Also, all such facilities constructed or altered  
8 in any way since 1968 were also altered in violation of California Government Code section  
9 4450ff. Further, on information and belief, if Plaintiff is required to return to any of these three  
10 buildings, he would find there is no accessible restroom available for his possible use.

11 17. As a result of such intentional discrimination, in violation of section 12132 of the  
12 ADA, Plaintiff is entitled to the remedies, procedures and rights set forth in section 505 of the  
13 Rehabilitation Act of 1973 (29 USC 794a), as provided by section 12133 of the ADA.

14 18. On information and belief, to the date of filing of this Complaint, Defendants have  
15 failed to make the facilities and property as described herein accessible to and usable by  
16 physically disabled persons, as required by law.

17 19. Plaintiff requests that an injunction be ordered requiring that Defendants make all  
18 such facilities and properties herein described accessible to and usable by mobility impaired  
19 disabled persons, and to train their employees and agents with regard to having appropriate  
20 sensitivity to the needs of physically disabled persons, and in taking appropriate steps to  
21 accommodate their disabilities, and requiring that all notices sent by the City of Pacifica to any of  
22 its citizens, which may require or offer the opportunity for said citizen to enter any of these three  
23 buildings, contain a warning that its specified facilities are not accessible, and offer reasonable  
24 accessible alternative accommodations.

25 20. Plaintiff requests an award of appropriate damages, and of litigation expenses,  
26 costs, and reasonable attorney fees, all as provided by law.

27 //

28 //

1 **SECOND CAUSE OF ACTION:**  
2 **VIOLATION OF § 504 OF THE REHABILITATION ACT OF 1973**

3 21. Plaintiff re-pleads and incorporate by reference, as if fully set forth hereafter, the  
4 factual allegations contained in Paragraphs 1 through 20 of this Complaint and incorporate them  
5 herein as if separately re-pleaded.

6 22. Defendant City of Pacifica and Does 1-5 are each a government agency existing  
7 under the laws of the State of California with responsibility for, *inter alia*, operating the property  
8 and the facilities described hereinabove. Plaintiff is informed and believes and thereon alleges  
9 that Defendant City of Pacifica and Does 1-5, and each of them, has been a recipient of federal  
10 financial assistance and that part of that financial assistance was and is used to fund the  
11 construction, alteration, maintenance and operations of one or more of the subject buildings  
12 and/or of functions and activities which take place within such buildings.

13 23. By reason of their actions or inactions in failing to make their programs, services,  
14 and activities readily accessible to disabled persons, despite actual notice, defendants have acted  
15 with deliberate indifference and have intentionally discriminated against plaintiff, thereby  
16 violating plaintiff's rights under § 504 of the Rehabilitation Act of 1973, 29 USC § 794, and the  
17 regulations promulgated thereunder, and entitling him to an award of damages for each denial of  
18 rights.

19 24. Plaintiff has a need to, and wishes to return to each of the facilities complained of  
20 herein and intends to do so in the future, and can only do so with full and equal access to these  
21 facilities. Plaintiff has no adequate remedy at law, and unless the relief requested herein is  
22 granted, Plaintiff and other similarly disabled persons who have cause to visit or attempt to visit  
23 any of these buildings will continue to suffer irreparable injury by the deprivation of accessible  
24 facilities and other public facilities in these buildings.

25 25. Plaintiff requests that an injunction be ordered requiring that Defendant make all  
26 such facilities herein described accessible to and usable by disabled persons and modify its  
27 policies and practices to ensure that Plaintiff and other mobility disabled persons are not denied  
28 the use of Defendants' facilities or denied the benefit of its "programs, services and activities"

1 because of disability.

2 26. Plaintiff requests appropriate damages, litigation expenses and costs, and  
3 reasonable attorney fees, all as provided by statute.

4 WHEREFORE, Plaintiff prays for damages and injunctive relief as hereinafter  
5 stated.

6  
7 **THIRD CAUSE OF ACTION:**  
8 **VIOLATION OF CALIFORNIA LAW INCLUDING: THE UNRUH ACT, CIVIL**  
9 **CODE §§ 51 and 52, AND THE AMERICANS WITH DISABILITIES ACT AS**  
10 **INCORPORATED BY CIVIL CODE § 51(f)**

11 27. Plaintiff re-pleads and incorporate by reference, as if fully set forth again herein,  
12 the allegations contained in Paragraphs 1 through 26 of this Complaint, and incorporate them  
13 herein as if separately re-pleaded.

14 28. At all times relevant to this complaint, California Civil Code § 51 has provided  
15 that physically disabled persons are free and equal citizens of the state, regardless of medical  
16 condition or disability, and the subject College is an entity covered by § 51.

17 All persons within the jurisdiction of this state are free and equal, and no matter  
18 what their sex, race, color, religion, ancestry, national origin, disability, or  
19 medical condition are entitled to the full and equal accommodations, advantages,  
20 facilities, privileges, or services in all business establishments of every kind  
21 whatsoever.

22 Cal. Civ. C. § 51(b). Civil Code section 52 provides that the discrimination by Defendants  
23 against Plaintiff on the basis of his disability constitutes a violation of the general anti-  
24 discrimination provision of §§ 51 and 52. For purposes of this statute, Defendant operated the  
25 specified premises as business establishments where they levy and collect fees, fines, and costs at  
26 such buildings.

27 29. Defendants' discrimination constitutes a separate and distinct violation of Civil  
28 Code § 52, which provides that:

Whoever denies, aids or incites a denial, or makes any discrimination or  
distinction contrary to section 51, 51.5, or 51.6 is liable for each and every offense  
for the actual damages, and any amount that may be determined by a jury, or a  
court sitting without a jury, up to a maximum of three times the amount of actual

1 damage but in no case less than four thousand dollars (\$4,000), and any attorney's  
2 fees that may be determined by the court in addition thereto, suffered by any  
person denied the rights provided in Section 51, 51.5, or 51.6.

3 30. The actions and omissions of defendants as herein alleged constitute a denial of  
4 access to and use of the described public facilities by physically disabled persons within the  
5 meaning of California Civil Code §§ 51 and 52. As a proximate result of defendants' action and  
6 omissions, defendants have discriminated against plaintiff in violation of Civil Code §§ 51 and  
7 52. On information and belief, each day upon which plaintiff encountered one or more obstacles  
8 to access which caused him difficulty, discomfort, or embarrassment constituted a separate  
9 violation of California Civil Code §§ 51 and 52.

10 31. Any violation of the Americans With Disabilities Act of 1990 (as pled in the First  
11 Cause of Action) constitutes a violation of California Civil Code § 51(f), thus independently  
12 justifying an award of damages and injunctive relief pursuant to California law, including Civil  
13 Code section 52. Per § 51(f), "A violation of the right of any individual under the Americans  
14 With Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this  
15 section."

16 32. Plaintiff has no adequate remedy at law and, unless the relief requested herein is  
17 granted, Plaintiff and other disabled persons will continue to suffer irreparable harm as a result of  
18 Defendants' failure to fulfill their obligations to provide meaningful access to the subject public  
19 facilities.

20 33. Wherefore Plaintiff asks this Court to preliminarily and permanently enjoin any  
21 continuing refusal by Defendants to grant full and equal access to Plaintiff in the respects  
22 complained of and to require Defendants to comply forthwith with the applicable statutory  
23 requirements relating to access for disabled persons. Such injunctive relief is provided for a  
24 violation of California Government Code §§ 4450, *et seq.*, and by California Civil Code §§ 51, *et*  
25 *seq.*, and § 52. Plaintiff alleges that Defendants failed and continue to fail to provide legally  
26 required access at City of Pacifica City Hall (and its related facilities) as well as the Pacifica  
27 Parks, Beaches & Recreation Department, and further requests that the Court award damages  
28 pursuant to Civil Code § 52 and attorney fees, litigation expenses and costs pursuant to Civil

Code § 52(a), Code of Civil Procedure § 1021.5, and other law, all as hereinafter prayed for.

34. **DAMAGES:** As a result of the denial of equal access to these facilities and due to the acts and omissions of Defendants in owning, operating, leasing, constructing, altering and maintaining the subject facilities, Plaintiff suffered multiple violations of his civil rights, including but not limited to rights under Civil Code §§ 51 and 52, all to his damages per Civil Code § 52. Defendants’ actions and omissions to act constitute discrimination against Plaintiff on the sole basis that he was and is physically disabled and unable, because of the architectural and policy barriers created and/or maintained by defendants in violation of the subject laws, to use these public facilities on a full and equal basis as other persons.

35. **FEES AND COSTS:** As a result of Defendants’ acts, omissions and conduct, Plaintiff has been required to incur attorney fees, litigation expenses and costs as provided by statute in order to enforce Plaintiff’s rights and to enforce provisions of the law protecting access for disabled persons and prohibiting discrimination against disabled persons. Plaintiff therefore seeks recovery of all reasonable attorney fees, litigation expenses and costs pursuant to the provisions of California Civil Code § 52, *et seq.* Additionally, Plaintiff’s lawsuit is intended to require that defendants make their facilities and policies accessible to all disabled members of the public, justifying “public interest” attorney fees, litigation expenses and costs pursuant to the provisions of California Code of Civil Procedure § 1021.5 and other applicable law.

WHEREFORE, Plaintiff prays the Court grant relief as requested below.

**FOURTH CAUSE OF ACTION:  
VIOLATION OF CALIFORNIA LAW INCLUDING CIVIL CODE §§ 54 and 54.1  
GOVERNMENT CODE §§ 4450, *et seq.*, AND THE AMERICANS WITH DISABILITIES  
ACT AS INCORPORATED BY CIVIL CODE §§ 54(c) and 54.1(d)**

36. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the factual allegations contained in Paragraphs 1 through 35 of this Complaint and incorporates them herein.

37. At all times relevant to this Complaint, California Civil Code § 54(a) has provided that:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(a) Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, . . . public facilities and other public places.

Emphasis added.

38. At all times relevant to this Complaint, California Civil Code § 54.1 has provided that physically disabled persons are not to be discriminated against because of physical handicap or disability in the use of a public accommodation:

. . . [P]hysically disabled persons shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles. . . or any other public conveyances or modes of transportation, telephone facilities, hotels, lodging places, places of public accommodation, and amusement or resort, and other places to which the general public is invited, subject only to the conditions or limitations established by law, or state or other federal regulations, and applicable alike to all other persons.

Emphasis added. The discrimination by Defendants against Plaintiff on the basis of his disability constitutes a violation of the general anti-discrimination provision of Civil Code §§ 54 and 54.1.

39. Plaintiff is informed and believes and therefore alleges that the specified public facilities are structures or related facilities within the meaning of California Government Code §§ 4450 and 4451. Plaintiff is further informed and believes and therefore alleges that the Defendants have constructed, altered, or repaired relevant portions of the subject public property, structure and facilities since November 13, 1968 within the meaning of Government Code §§ 4450, *et seq.*, including § 4456, thereby requiring provision of access to persons with disabilities, as required by law. The actions and omissions of Defendants as herein alleged constitute a denial of access to and use of the described public facilities by physically disabled persons within the meaning of Government Code §§ 4450, *et seq.* As a proximate result of Defendants' action and omissions, Defendants have discriminated against Plaintiff in violation of Government Code §§ 4450, *et seq.*, and of the Title 24-2 regulations adopted to implement §§ 4450ff. Each violation of §§4450, *et seq.* constitutes a violation of Civil Code §§ 54 and 54.1.

40. Any violation of the Americans With Disabilities Act of 1990 (as pled in the First Cause of Action) also constitutes a violation of §§ 54 (c) and 54.1(d) of the California Civil Code, thus independently justifying an award of damages and injunctive relief pursuant to California

1 law. Plaintiff alleges that he has been denied such full and equal access as required by California  
2 law which incorporates Title II of the ADA, including but not limited to § 204.

3 41. Plaintiff has no adequate remedy at law and, unless the relief requested herein is  
4 granted, plaintiff and other disabled persons will continue to suffer irreparable harm as a result of  
5 Defendants' failure to fulfill their obligations to provide meaningful access to the subject public  
6 facilities.

7 42. Wherefore Plaintiff asks this Court to preliminarily and permanently enjoin any  
8 continuing refusal by Defendant to grant full and equal access to Plaintiff in the respects  
9 complained of and to require defendants to comply forthwith with the applicable statutory  
10 requirements relating to access for disabled persons. Such injunctive relief is provided for a  
11 violation of California Government Code §§ 4450, *et seq.*, for causing a denial of rights by  
12 disabled persons, by California Civil Code § 54, *et seq.* Civil Code § 54.3 provides that any  
13 person or corporation who denies or interferes with admittance to or enjoyment of the public  
14 facilities as specified in §§ 54 and 54.1 or otherwise interferes with the rights of an individual  
15 with a disability is liable for each offense for the actual damage and any amount as may be  
16 determined by a court or jury up to a maximum of three times the amount of actual damages but  
17 in no case less than \$1,000 per violation, and such attorney fees as may be determined by the  
18 Court in addition thereto. Plaintiff alleges that Defendants failed to provide legally required  
19 access at the City of Pacifica City Hall and the other specified related facilities as a violation on  
20 each specified day he attempted to access the services and facilities provided by the City, or was  
21 deterred from attempting such access and further requests that the Court award damages pursuant  
22 to Civil Code § 54.3 and attorney fees, litigation expenses and costs pursuant to Government  
23 Code §§ 4450, *et seq.*, Civil Code §§ 54.3 and 55, California Code of Civil Procedure § 1021.5  
24 and other law, all as hereinafter prayed for.

25 43. **DAMAGES:** As a result of the denial of equal access to these facilities and due to  
26 the acts and omissions of defendants in owning, operating, leasing, constructing, altering and  
27 maintaining the subject facilities, Plaintiff has suffered multiple violations of his civil rights,  
28 including but not limited to rights under Civil Code §§ 54 and 54.1, all to his damages per Civil

1 Code § 54.3, as hereinafter stated. Defendants’ actions and omissions to act constitute  
2 discrimination against Plaintiff on the sole basis that he was and is physically disabled and  
3 unable, because of the architectural barriers created and/or maintained by Defendants in violation  
4 of the subject laws, and/or due to Defendants’ multiple policy violations of Civil Code §§ 54 and  
5 54.1, to use these public facilities on a full and equal basis as other persons.

6 44. **FEES AND COSTS:** As a result of Defendants’ acts, omissions and conduct,  
7 Plaintiff has been required to incur attorney fees, litigation expenses and costs as provided by  
8 statute in order to enforce Plaintiff’s rights and to enforce provisions of the law protecting access  
9 for disabled persons and prohibiting discrimination against disabled persons. Plaintiff therefore  
10 seeks recovery of all reasonable attorney fees, litigation expenses and costs pursuant to the  
11 provisions of California Civil Code §§ 54.3 and 55. Additionally, Plaintiff’s lawsuit is intended  
12 to require that Defendants make their facilities and policies accessible to all disabled members of  
13 the public, justifying “public interest” attorney fees, litigation expenses and costs pursuant to the  
14 provisions of California Code of Civil Procedure § 1021.5 and other applicable law.

15 WHEREFORE, Plaintiff prays the Court grant relief as requested below.

16  
17 **FIFTH CAUSE OF ACTION:**  
18 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135,**  
19 **DISCRIMINATION UNDER PROGRAM RECEIVING**  
20 **FINANCIAL ASSISTANCE FROM THE STATE**

21 45. Plaintiff repleads and incorporates by reference, as if fully set forth hereafter, the  
22 factual allegations contained in Paragraphs 1 through 44 of this Complaint and incorporates them  
23 herein.

24 46. On information and belief, the administration, supervision and maintenance by  
25 Defendants of the properties, structure and facilities that are the subject of the action are funded in  
26 part by the State of California.

27 47. Defendants have failed to make its programs, services and activities readily  
28 accessible to and useable by disabled persons in violation of California Government Code §§  
11135, *et seq.* Government Code § 11135 states:

1 § 11135. Programs or activities funded by state; discrimination on basis of ethnic  
2 group identification, religion, age, sex, color, or disability; federal act; definition.

3 No person in the State of California shall, on the basis of ethnic group  
4 identification, religion, age, sex, color, or disability, be unlawfully denied the  
5 benefits of, or be unlawfully subjected to discrimination under, any program or  
6 activity that is funded directly by the state or receives any financial assistance  
7 from the state. With respect to discrimination on the basis of disability, programs  
8 and activities subject to subdivision (a) shall meet the protections and prohibitions  
9 contained in Section 202 of the Americans With Disabilities Act of 1990 (42  
10 U.S.C. Sec. 12132), and the federal rules and regulations adopted in  
11 implementation thereof, except that if the laws of this state prescribe stronger  
12 protections and prohibitions, the programs and activities subject to subdivision (a)  
13 shall be subject to the stronger protections and prohibitions.

14 48. Plaintiff has no adequate remedy at law and, unless the requested relief is granted,  
15 Plaintiff and other disabled persons will suffer irreparable harm in that they will continue to be  
16 discriminated against and denied access to and accommodation within the subject facilities, and  
17 denied the benefits of the “programs, services and activities” offered to the general public.  
18 Further, Plaintiff suffered damages, as specified hereinabove, as the result of denial of his civil  
19 rights when he tried to use these facilities, or was deterred from attempting such usage, according  
20 to proof. Because Plaintiff seeks improvement of access for similarly situated physically disabled  
21 persons, which will benefit a significant portion of the public, plaintiff seeks attorney fees and  
22 costs pursuant to California Code of Civil Procedure § 1021.5, as to this cause of action and as to  
23 all causes of action in this complaint that seek injunctive relief.

24 WHEREFORE, Plaintiff prays the Court grant relief as requested below.

25 **PRAYER FOR RELIEF**

26 Plaintiff has no adequate remedy at law to redress the wrongs suffered as set forth in this  
27 Complaint. Plaintiff has suffered and will continue to suffer irreparable injury as a result of the  
28 unlawful acts, omissions, policies, and practices of the Defendants as alleged herein, unless  
Plaintiff is granted the relief he requests. Plaintiff and Defendants have an actual controversy and  
opposing legal positions as to Defendants’ violations of the laws of the United States and the  
State of California. The need for relief is critical because the rights at issue are paramount under  
the laws of the United States and the State of California.

1           WHEREFORE, Plaintiff JOHN SCHULZ prays for judgment and the following specific  
2 relief against Defendants:

3           1.       Issue a preliminary and permanent injunction directing that Defendants, as current  
4 owners and operators, lessors or lessees of the subject premises, and alternatively, as  
5 governmental agencies subject to Title II of the ADA, to modify the above described facilities at  
6 the property and other non-conforming facilities and related described facilities, and make  
7 appropriate policy changes, so that Plaintiff and similarly situated persons with disabilities may  
8 obtain the benefits of, and access to, Defendants’ “programs, services and activities” in a “full  
9 and equal” manner as required by law; to properly *maintain* such accessible facilities once they  
10 are provided; and to train their employees and agents in proper sensitivity to and appropriate  
11 responses to the needs and rights of Plaintiff and other physically disabled persons and take all  
12 reasonable steps to accommodate their needs, including but not limited to warning all disabled  
13 members of the public of the lack of access they may face if they attempt to visit or attempt to  
14 obtain public services at any of these building;

15           2.       Retain jurisdiction over the Defendants until such time as the Court is satisfied that  
16 Defendants’ unlawful policies, practices, acts and omissions, and maintenance of physically  
17 inaccessible public facilities and policies as complained of herein no longer occur, and cannot  
18 recur;

19           3.       Award to Plaintiff all appropriate damages, including but not limited to statutory  
20 damages, general damages, and treble damages in amounts within the jurisdiction of the Court, all  
21 according to proof;

22           4.       Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and  
23 costs of this proceeding as provided by law;

24           5.       Award prejudgment interest pursuant to Civil Code § 3291; and

25           6.       Grant such other and further relief as this Court may deem just and proper.

26 //

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Date: October 4, 2017

LAW OFFICES OF PAUL L. REIN

/s/ Paul L. Rein  
By PAUL L. REIN, Esq.  
Attorney for Plaintiff  
JOHN SCHULZ

**JURY DEMAND**

Plaintiff hereby demands a trial by jury for all claims for which a jury is permitted.

Date: October 4, 2017

LAW OFFICES OF PAUL L. REIN

/s/ Paul L. Rein  
By PAUL L. REIN, Esq.  
Attorney for Plaintiff  
JOHN SCHULZ

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOHN SCHULZ,

(b) County of Residence of First Listed Plaintiff San Mateo (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Paul Rein, Esq., Law Offices of Paul Rein, 200 Lakeside Drive, STE A, Oakland CA, 94612 510/832-5001 (ph)

DEFENDANTS

CITY OF PACIFICA; and DOES 1-10, INCLUSIVE,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Americans With Disabilities Act of 1990; 42 USC 12101ff; including 42 USC 12181 et seq. Brief description of cause: Public accommodation denying access to physically disabled persons

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) [ ] SAN FRANCISCO/OAKLAND [X] SAN JOSE [ ] EUREKA-MCKINLEYVILLE

DATE: 10/03/2017

SIGNATURE OF ATTORNEY OF RECORD: /s/ Paul L. Rein