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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 CONRAD REYNOLDSON, STUART PIXLEY,
9 and DAVID WHEDBEE, on behalf of themselves
10 and all others similarly situated,

11 Plaintiffs,

12 v.

13 CITY OF SEATTLE, a public entity,

14 Defendants.

No. 15-1608

COMPLAINT

CLASS ACTION

15 Plaintiffs Conrad Reynoldson, Stuart Pixley, and David Whedbee, on behalf of
16 themselves and all other persons similarly situated, complain of Defendant City of Seattle
17 (“Defendant” or “the City”) herein and allege as follows:

18 **INTRODUCTION**

19 1. This lawsuit is brought against Defendant to redress its systemic, pervasive, and
20 continuing policy, pattern, or practice of unlawfully discriminating against Plaintiffs and
21 similarly situated individuals with mobility disabilities. As alleged further below, the City has
22 failed and continues to fail to install and maintain curb ramps that are necessary to make its
23 pedestrian right of way readily accessible to people with mobility disabilities, and to comply
with its obligation to install and/or remediate curb ramps when it engages in alterations or new

1 construction of streets, bus stops, and sidewalks. A substantial number of the street crossings
2 within the City's pedestrian right of way do not comply with applicable state and federal
3 regulations addressing accessibility for people with disabilities because, for example, they lack
4 curb ramps entirely, have curb ramps on only one side of a corner, have curb ramps that are too
5 narrow, too steep, or too cracked, broken, or uplifted to be used by people with mobility
6 disabilities.

7 2. The City's pedestrian right of way is a fundamental public program, service,
8 and/or activity that the City provides for the benefit of its residents and visitors. Accessible curb
9 ramps are necessary to permit people with mobility disabilities who use mobility aids such as
10 wheelchairs, scooters, canes, walkers, or crutches to access the City's pedestrian right of way.
11 Because the City's pedestrian right of way constitutes a core mode of transportation, the absence
12 of accessible curb ramps prevents people with mobility disabilities from independently, fully,
13 and meaningfully participating in all aspects of society, including employment, housing,
14 education, transportation, public accommodations, and recreation, among others. Accordingly,
15 an accessible pedestrian right of way is essential to realizing the integration mandate of disability
16 non-discrimination laws, including the ADA, the Rehabilitation Act, and the Washington Law
17 Against Discrimination.

18 3. Named Plaintiffs Conrad Reynoldson, Stuart Pixley, and David Whedbee are
19 three individuals with mobility disabilities who bring this action on behalf of themselves and all
20 persons with mobility disabilities who, like Named Plaintiffs, live in, work in, or visit Seattle and
21 are being discriminated against and subjected to unlawful or hazardous conditions due to the
22 absence of accessible curb ramps within the City's pedestrian right of way.
23

1 4. Federal and state disability access laws were enacted to provide persons with
2 disabilities an equal opportunity to participate fully in civic life. *See* 29 U.S.C. § 794 (Section
3 504 of the Rehabilitation Act of 1973 (“Section 504”)); 42 U.S.C. § 12101(a)(7) (Americans
4 with Disabilities Act (“ADA”)); Wash. Rev. Code § 49.60.010 (Washington Law Against
5 Discrimination). Under the ADA and Section 504, a public entity’s sidewalks, crosswalks and
6 paved paths—collectively referred to as a public entity’s “pedestrian right of way”—are a
7 “program,” “service,” or “activity” that must be readily accessible to persons with mobility
8 disabilities. *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002). As detailed
9 further below, Defendant has excluded Plaintiffs and all other similarly situated individuals with
10 mobility disabilities from participation in or denied them the benefits of Defendant’s pedestrian
11 right of way program, service, or activity, or subjected them to discrimination by: a) failing to
12 install and remediate curb ramps in newly-constructed or altered portions of the City’s pedestrian
13 right of way; and, b) failing to install, remediate and maintain curb ramps where necessary to
14 provide people with mobility disabilities meaningful access to the City’s pedestrian right of way,
15 when viewed in its entirety.

16 5. Both the ADA (since January 27, 1992) and Section 504 (since June 3, 1977)
17 have mandated that whenever a government entity newly constructs a bus stop pad or newly
18 constructs or alters streets, roads, or highways, it must install curb ramps at any intersection
19 having curbs or other barriers to entry from a street level pedestrian walkway, to ensure that
20 newly constructed or altered pedestrian right of way programs and facilities are readily
21 accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.151(a)(1), (b)(1),
22 (b)(4)(i)(1), (b)(4)(i)(2); 28 C.F.R. pt. 36, app. D § 10.2.1; 45 C.F.R. § 84.23(b); 36 C.F.R. pt.
23 1191, app. D § 810.2.3. Since September 21, 1977, Washington law has also required

1 installation of curb ramps at intersections and crosswalks. Wash. Rev. Code § 35.68.075. The
2 ADA and Section 504 also mandate that a public entity operate each program, service, or activity
3 so that the program, service, or activity, when viewed in its entirety, is readily accessible to and
4 usable by individuals with disabilities. 28 C.F.R. § 35.150(a), (b)(1); 45 C.F.R. § 84.22(a), (b).
5 To the extent structural changes to facilities existing as of the effective date of the ADA or
6 Section 504 are necessary to achieve this “program access” mandate, such changes were to have
7 been made by no later than January 26, 1995 under the ADA, and by no later than June 3, 1980
8 under Section 504. 28 C.F.R. § 35.150(c); 45 C.F.R. § 84.22(d).

9 6. The City’s pedestrian right of way, when viewed in its entirety, is not readily
10 accessible to and usable by persons with mobility disabilities due to the City’s failure to install
11 and maintain accessible curb ramps. In addition, the City has failed to install accessible curb
12 ramps or remediate existing curb ramps as part of new construction or alterations of its streets,
13 roadways, and highways. As a result, Plaintiffs and other persons with mobility disabilities must
14 forgo participation in daily activities — including visiting public facilities, places of public
15 accommodation, or friends — or risk injury or damage to their mobility devices by traveling on
16 or around inaccessible portions of the pedestrian right of way. At times, Plaintiffs are able to use
17 the pedestrian right of way, but only by taking circuitous routes to avoid barriers to accessibility,
18 which wastes their time and energy. As a result of the many missing and noncompliant curb
19 ramps in the City, people with mobility disabilities do not have full and equal access to the
20 pedestrian right of way.

21 7. The discrimination and denial of meaningful, equal and safe access to the City’s
22 pedestrian right of way for persons with mobility disabilities complained of herein is the direct
23

1 result of Defendant's policies, procedures, and practices with regard to pedestrian walkways and
2 disability access, including, but not limited to the following:

- 3 a. The failure to install accessible curb ramps at locations where no curb
4 ramps exist, or where inaccessible curb ramps exist, within the time
5 required by applicable federal disability access laws or on any other
6 reasonable schedule;
- 7 b. The failure to install accessible curb ramps, or remediate existing
8 noncompliant curb ramps, at street corners or sidewalks that are newly
9 constructed, resurfaced or otherwise altered;
- 10 c. The failure to install curb ramps at intersections in the City that are
11 necessary to provide meaningful, equal and safe access to the pedestrian
12 right of way;
- 13 d. The failure to develop and implement a process for identifying
14 intersections and corners throughout the City at which curb ramps are
15 necessary to provide meaningful, equal, and safe access to the pedestrian
16 right of way;
- 17 e. The failure to adopt and utilize or require and enforce the utilization of a
18 curb ramp design that complies with applicable federal and state design
19 standards or guidelines;
- 20 f. The failure to install accessible curb ramps within a reasonable time frame
21 after receiving a request to do so or otherwise being notified of the need
22 for an accessible curb ramp at a particular location;
- 23

- 1 g. The failure to adopt or implement reasonable administrative methods,
2 policies, and procedures for inspecting, repairing, and maintaining the
3 pedestrian right of way, including curb ramps, as required by Title II of
4 the ADA and its implementing regulations including 28 C.F.R. § 35.133
5 (maintenance of accessible features);
- 6 h. The failure to remediate corners with no curb ramps or with curb ramps
7 that are not properly positioned such that they require pedestrians with
8 mobility disabilities to travel around the corner in the street alongside
9 vehicular traffic in order to access a crossing, or cause pedestrians with
10 mobility disabilities to roll or fall into the roadway;
- 11 i. The failure to remediate curb ramps that are designed and/or constructed
12 in a noncompliant manner such that people with mobility disabilities are
13 denied meaningful access to the pedestrian right of way as a whole. These
14 deficiencies often include one or more of the following:
- 15 i. Running, cross, and side slopes of curb ramps that are excessively
16 steep;
- 17 ii. Ramps that are too narrow to accommodate wheelchairs or
18 scooters;
- 19 iii. Landings at the top of curb ramps that do not provide enough space
20 for a wheelchair to maneuver onto or off the ramp, forcing persons
21 with mobility disabilities to use the much steeper side flares or roll
22 off the sidewalk entirely;
- 23

1 504 in this manner also constitutes a policy or practice that denies program access to and
2 discriminates against persons with mobility disabilities. This lawsuit seeks a court order
3 requiring Defendant to comply with these laws and to provide people with mobility disabilities
4 meaningful access to the City's pedestrian right of way over 25 years after the enactment of the
5 ADA, and many more years after enactment of Section 504 and Washington's disability rights
6 protections.

7 10. Plaintiffs made efforts to resolve this dispute without litigation. In a letter dated
8 January 17, 2014, Plaintiffs identified multiple deficiencies and offered to enter into negotiations
9 to resolve the claims alleged therein, requesting that Defendant remedy or make plans to remedy
10 the violations. The parties engaged in negotiations over a period of more than a year but have
11 been unable to resolve their dispute.

12 11. Plaintiffs thus bring this action to remedy violations of Title II of the ADA, 42
13 U.S.C. § 12131, *et seq.*, and its accompanying regulations, Section 504 of the Rehabilitation Act,
14 29 U.S.C. § 794, *et seq.* and its accompanying regulations, and the Washington Law Against
15 Discrimination, Wash. Rev. Code §§ 49.60.010 *et seq.* Plaintiffs seek declaratory and injunctive
16 relief pursuant to the above statutes and an award of reasonable attorneys' fees and costs under
17 applicable law.

18 **JURISDICTION AND VENUE**

19 12. This is an action for declaratory and injunctive relief, brought pursuant to Title II
20 of the ADA, 42 U.S.C. § 12101 to 12213; Section 504 , 29 U.S.C. § 794, *et seq.*; and the
21 Washington Law Against Discrimination, Wash. Rev. Code §§ 49.60.010 *et seq.* to redress
22 systemic civil rights violations against people with mobility disabilities by the City of Seattle.
23

1 25. Hereafter, an “Inaccessible” curb ramp shall refer to a curb ramp that did not
2 comply with applicable standards for accessible design (i.e., the Uniform Federal Accessibility
3 Standards (“UFAS”), 1991 ADA Standards for Accessible Design (“ADAAG”) or the 2010
4 ADA Standards for Accessible Design (“2010 ADAAG”)), at the time it was constructed or
5 altered.

6 26. Defendant has failed and is failing to install, remediate, repair, and maintain curb
7 ramps as required by law. For example, thousands of intersections in the City have no curb
8 ramps or an inadequate number of curb ramps. Even where curb ramps exist, many are
9 improperly installed and/or maintained, lack a flush transition to the street, have excessively
10 steep running, cross, and side slopes, are too narrow, and/or are otherwise noncompliant. Many
11 other curb ramps are not maintained; they are broken, cracked, crumbled, sunken, and/or caved.

12 27. As a result of Defendant’s policies and practices with regard to curb ramps, large
13 segments of the City’s pedestrian right of way do not comply with new construction or alteration
14 accessibility requirements. For example, the City has consistently failed to install curb ramps
15 and remediate existing curb ramps when it alters or constructs sidewalks and streets.

16 28. As a result of the many missing and noncompliant curb ramps at intersections
17 throughout the City, the pedestrian right of way, viewed in its entirety, is inaccessible to persons
18 with mobility disabilities. Plaintiffs and others with mobility disabilities are therefore denied
19 meaningful access to the City’s pedestrian right of way, public buildings, parks, transportation,
20 and/or places of employment and public accommodation, either through complete denials of
21 access or through delay of travel or unsafe conditions.

22 29. This lack of accessible curb ramps is not isolated or limited. Rather, these
23 barriers to full and equal access to the pedestrian right of way exist throughout the City, thus

1 denying individuals with mobility disabilities full, equal, and meaningful access to the pedestrian
2 right of way City-wide. Persons with mobility disabilities encounter missing or Inaccessible
3 curb ramps throughout the City, including in such areas as Downtown Seattle, Pioneer Square,
4 the University District, Wallingford, Fremont, Columbia City, Hillman City, Rainier Beach,
5 Central District, Queen Anne, Capitol Hill, Ballard, Crown Hill, Magnolia, West Seattle, and
6 Mount Baker. As a result, persons with mobility disabilities have been denied access to the
7 accommodations and services available to the general public. Furthermore, these barriers deter
8 persons with mobility disabilities from exploring or visiting areas of the City. Missing and
9 Inaccessible curb ramps also delay travel and cause persons with mobility disabilities to fear for
10 their safety, as these conditions often create dangerous situations.

11 30. Defendant has not provided and does not provide persons with mobility
12 disabilities with any map (whether paper or electronic), signage or other form of notice of any
13 routes, or parts of routes, in the City's pedestrian right of way that are accessible to persons with
14 mobility disabilities. Notice of completed accessibility improvements and plans for scheduled
15 accessibility improvements are not posted on the City websites, and notice of such information is
16 not made otherwise available to persons with mobility disabilities. As a result of the lack of any
17 notice, maps, or signage regarding the location of accessible routes within the City's pedestrian
18 right of way, persons with mobility disabilities have been and continue to be deterred from and
19 impeded in travelling to various parts of the City, thus denying them meaningful and equal
20 access to the City's pedestrian right of way and its other facilities, programs, services, and
21 activities.

22 31. Defendant failed to prepare and implement a timely Self Evaluation relating to the
23 construction and maintenance of curb ramps as required by federal law. The federal regulations

1 of Section 504 of the Rehabilitation Act and the ADA require that public entities create a Self
2 Evaluation by June 3, 1978 and July 26, 1992, respectively. 45 C.F.R § 84.6; 28 C.F.R. §
3 35.105. A Self Evaluation must include an evaluation of whether current services, policies, and
4 practices discriminate on the basis of disability. The City made no efforts to evaluate its
5 pedestrian right of way for accessibility until 2008 when it undertook a survey to determine the
6 existence of curb ramps at intersections within the City. This initial evaluation occurred
7 approximately thirty-years after the deadline established by Section 504, and sixteen years after
8 the deadline established by the ADA.

9 32. Defendant has failed and is failing to prepare and implement a Transition Plan
10 relating to the construction and maintenance of curb ramps in the pedestrian right of way as
11 required by federal law. The regulations implementing Section 504 of the Rehabilitation Act
12 required public entities that receive federal financial assistance to create a Transition Plans by
13 June 3, 1978. *See* 45 C.F.R. § 84.22(e). The regulations implementing Title II of the ADA
14 required local governmental entities to create Transition Plans by July 26, 1992. *See* 28 C.F.R. §
15 35.150(d). A Transition Plan must include, among other things, an up-to-date schedule for
16 providing curb ramps or other sloped areas where the pedestrian right of way crosses streets. *See*
17 28 C.F.R. § 35.150(d)(3); 45 C.F.R. § 84.22(e). To date, Defendant has not prepared a compliant
18 Transition Plan pursuant to either Section 504 or the ADA.

19 33. Defendant's failure to conduct a timely Self Evaluation and prepare and
20 implement a compliant Transition Plan relating to the pedestrian right of way, including curb
21 ramps, as required by Section 504 and the ADA, is further evidence of Defendant's failure to
22 comply with the "program access" requirements of both statutes.
23

1 37. Plaintiff Reynoldson also encounters many barriers to accessibility in the
2 Wallingford neighborhood of Seattle. For example, along Northeast 44th Street, almost no
3 intersections for approximately half a mile have any curb ramps at any corner. Specifically,
4 there are no curb ramps on any corner of the intersections of Northeast 44th Street with Latona
5 Avenue, 1st Avenue Northeast, Sunnyside Avenue North, Corliss Avenue North, Bagley Avenue
6 North, and Burke Avenue North. Additionally, at the intersections of Northeast 44th Street and
7 Eastern Avenue North and at Northeast 44th Street and Wallingford Avenue North, the only
8 ramps that exist are on the northwest corners facing south and the southwest corners facing
9 north, allowing only travel north and south on the west side of the intersections. Similar barriers
10 exist along Northeast 43rd Street where no intersections for approximately one-third mile have
11 any curb ramps at any corner except for two intersections that only allow travel north and south
12 on one side of the intersection. Specifically, there are no curb ramps on any corner of the
13 intersections of Northeast 43rd Street with 1st Avenue Northeast, Sunnyside Avenue North,
14 Corliss Avenue North, Bagley Avenue North, and Burke Avenue North. Additionally, at the
15 intersections of Northeast 43rd Street and Eastern Avenue North and at Northeast 43rd Street and
16 Meridian Avenue North, the only ramps that exist are on the northwest corners facing south and
17 the southwest corners facing north, allowing only travel north and south on the west side of the
18 intersection. Plaintiff Reynoldson frequently travels to Wallingford for social engagements. In
19 order to travel down 43rd Street or 44th Street, Plaintiff Reynoldson must use driveways to
20 descend to street level and then ride in the street along with cars, which is dangerous. Plaintiff
21 Reynoldson can only avoid this result by making sure he parks on 45th Street, but 45th Street is
22 very busy and does not always have parking available.

1 38. Due to the many barriers to accessibility in the University District, Wallingford,
2 and many other areas of Seattle, Plaintiff Reynoldson's ability to travel throughout Seattle is
3 compromised. He frequently has to allow a great deal of extra time to reach his destination just
4 so that he will be able to find parking in a location near a route that he knows to be accessible.
5 Other times, Plaintiff Reynoldson is forced to pay extra money for a parking spot close to his
6 destination, such as when he attends professional sports events downtown, in order to avoid the
7 great dangers involved in trying to navigate the pedestrian right of way while having to use the
8 vehicular roadway. In addition, the inaccessibility of the pedestrian right of way in the City has
9 become a factor in his major life decisions. For example, in deciding where to locate the office
10 of the business he is starting, Plaintiff Reynoldson is taking into account whether he will be able
11 to reach his office safely via the pedestrian right of way.

12 39. As a result of the foregoing, Plaintiff Reynoldson has been and continues to be
13 denied equal access to his neighborhood and other parts of his community that persons without
14 mobility disabilities enjoy. He is often deterred from using his wheelchair to visit public
15 facilities, places of public accommodation, and friends because he chooses instead to remain safe
16 from the serious risks involved in navigating the inaccessible pedestrian right of way. He is also
17 forced to risk his safety by traveling in the street because there are insufficient accessible curb
18 ramps to allow him to travel freely on City sidewalks.

19 40. Named Plaintiff Stuart Pixley has cerebral palsy and uses an electric wheelchair
20 for mobility. He lives in Bellevue, Washington but travels to Seattle on a weekly basis for social
21 engagements, entertainment events, professional meetings, and functions at the school that his
22 children attend. He has encountered numerous obstacles to using portions of the pedestrian right
23 of way throughout the City. This includes, but is not limited to, those described below.

1 41. In particular, Plaintiff Pixley encounters many barriers to accessibility in
2 downtown Seattle. For example, at the intersection of Yesler Way and Terrace Street, there is no
3 curb ramp at either corner for crossing Terrace Street. At the intersection of 4th Avenue South
4 and South Main Street, there is no curb ramp at the northwest corner. At the intersection of 1st
5 Avenue South and South Columbia Street, the curb ramps at the northeast, southeast, and
6 southwest corners are not aligned with the crosswalks, forcing Plaintiff Pixley into the path of
7 vehicular traffic before reaching a crosswalk.

8 42. Due to these and other barriers, Plaintiff Pixley must choose between his time and
9 his safety when he travels on the pedestrian right of way in the City. He sometimes travels three
10 times the distance of a direct route in order to find usable curb ramps, while also avoiding other
11 obstacles, such as the naturally hilly terrain. When Plaintiff Pixley encounters corners that are
12 missing curb ramps, he must use a driveway in the middle of the street, if one is even available,
13 to descend to street level and then ride in the street along with vehicular traffic until he reaches
14 the intersection, which endangers his safety. Corners with curb ramps that do not align with the
15 crosswalk are also dangerous, because he is forced into the line of traffic. On several occasions,
16 he has nearly been hit by a car at intersections with missing or unsafe curb ramps. If Plaintiff
17 Pixley attempts to ride over a curb with no curb ramp, he risks falling out of his wheelchair or
18 damaging his wheelchair. He often finds that his wheelchair batteries become depleted due to
19 the longer routes he must take to reach his destination. If his wheelchair were to break down due
20 to overuse or damage, Plaintiff would be stranded and vulnerable. Thus, Plaintiff Pixley
21 experiences a great deal of stress and fear because of the many access barriers that he encounters
22 in the City's pedestrian right of way.

1 43. As a result of the foregoing, Plaintiff Pixley is deterred from visiting Seattle as
2 frequently as he would like to. When he does attempt to navigate the pedestrian right of way in
3 the City, he experiences stress and great inconvenience. He also faces serious risks to his safety
4 when he encounters missing or inadequate curb ramps and is forced to ride into the street.

5 44. Named Plaintiff David Whedbee is paraplegic and uses an electric wheelchair for
6 mobility. He lives in the Columbia City neighborhood and works in Downtown Seattle. He also
7 regularly travels throughout Seattle on the weekends for both entertainment and professional
8 activities. Plaintiff Whedbee routinely experiences inconvenience and potential risk to his safety
9 in Seattle because of missing or deficient curb ramps in the City's pedestrian right of way. He is
10 often unable to find a curb ramp and is forced to travel into traffic lanes until he can find an
11 accessible curb ramp or a mid-block driveway to use instead. The barriers he has encountered
12 include, but are not limited to, those described below.

13 45. In Downtown Seattle, Plaintiff Whedbee has encountered a number of
14 intersections with missing curb ramps, as well as curb ramps that are dangerous to use because
15 they are too far from the crosswalk or positioned in a manner that forces him into the flow of
16 vehicular traffic before reaching the curb ramp. For example, at the intersection of Jackson
17 Street and 4th Avenue, the northwest curb ramp is outside of the crosswalk and in the bus lane,
18 so Plaintiff Whedbee is forced to travel in the bus lane in order to reach the crosswalk. At the
19 intersection of Bellevue Avenue and East Pike Street, there is no curb ramp at the southwest
20 corner, and at the southeast and northeast corners, the ramp is outside the crosswalk, again
21 forcing him to travel in the bus lane. As a result of these barriers to accessibility, Plaintiff
22 Whedbee is limited in his ability to travel around Downtown Seattle. He must plan additional
23 time for his travel, often taking a more circuitous route in order to avoid missing or dangerous

1 curb ramps. Otherwise, he is forced to travel in the street with vehicular traffic and risk his
2 safety. The corners at the intersection of Jackson Street and 5th Avenue are a particular concern
3 to Plaintiff Whedbee, because he travels through this intersection nearly every day, and it is
4 located in a high-traffic area of the City.

5 46. In the Columbia City neighborhood, Plaintiff Whedbee has also encountered a
6 number of intersections with missing curb ramps. For example, at the intersection of 42nd
7 Avenue South and South Dawson Street, each corner is missing a curb ramp in at least one
8 direction. At the intersection of 48th Avenue South and South Hudson Street, there are no curb
9 ramps on the southeast, southwest, and northwest corners. As a result of these and other missing
10 curb ramps in his neighborhood, Plaintiff Whedbee is limited in his ability to travel the sidewalks
11 and thoroughfares of his own neighborhood. When he does use the pedestrian right of way,
12 Plaintiff Whedbee is often forced to use unpredictable driveways to descend to street level,
13 which can be dangerous because it puts him in the line of vehicular traffic.

14 47. As a result of the foregoing, Plaintiff Whedbee has been and continues to be
15 limited in his ability to use much of the pedestrian right of way in the City due to poorly
16 positioned, steep, or missing curb ramps. The need to use circuitous routes can cause delay and
17 unsafe situations for wheelchair use. Traveling in the street causes Plaintiff Whedbee stress,
18 great inconvenience, and undue risk to his safety.

19 48. These experiences are typical of those experienced by persons with mobility
20 disabilities in the City and demonstrate the inaccessibility, fear, humiliation, and isolation that
21 people with mobility disabilities experience while trying to navigate the City's pedestrian right
22 of way.

1 **OTHER SPECIFIC BARRIERS**

2 49. Exhibit A to this Complaint identifies missing and Inaccessible curb ramps at
3 various locations within the City’s pedestrian right of way. Plaintiffs incorporate by reference
4 the entire contents of Exhibit A into this Complaint as though fully alleged herein. The barriers
5 listed in Exhibit A require some form of remediation to meet the City’s program access
6 obligations, and/or its obligations to perform new construction and/or alterations in full
7 compliance with federal and state disability access design standards. Some of the barriers
8 identified in Exhibit A are so severe that they constitute safety hazards to persons with mobility
9 disabilities, including curb ramps with running slopes greater than 8.3%.

10 50. Exhibit A does not represent an exhaustive list of missing and Inaccessible curb
11 ramps. Exhibit A merely provides a partial list of such barriers facing the Named Plaintiffs and
12 class members throughout the City as they attempt to navigate the City’s pedestrian routes.
13 Neither the ADA, Section 504, nor state law requires Plaintiffs to identify each and every barrier
14 limiting access to the City’s pedestrian routes. Rather, the ADA and Section 504 require the City
15 to complete a transition plan identifying barriers at existing facilities, including those barriers
16 involving curb ramps, crosswalks, and mid-block barriers on sidewalks. The City has failed to
17 comply with these requirements as alleged herein.

18 **CLASS ACTION ALLEGATIONS**

19 51. Plaintiffs bring this action individually, and on behalf of all persons with mobility
20 disabilities who use or will use the pedestrian right of way in the City of Seattle, as a class action
21 under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

22 52. Each member of the class is a “qualified person with a disability” and/or a person
23 with a “disability” pursuant to 42 U.S.C. § 12131(2), Section 504 of the Rehabilitation Act, 29

1 U.S.C. § 794, *et seq.*, and the Washington Law Against Discrimination, Wash. Rev. Code §§
2 49.60.010 *et seq.* The persons in the class are so numerous that the joinder of all such persons is
3 impracticable and that the disposition of their claims in a class action rather than in individual
4 actions will benefit the parties and the Court. The class consists of tens of thousands of persons
5 with mobility disabilities.

6 53. Defendant has failed and continues to fail to comply with the ADA, Section 504,
7 and the Washington Law Against Discrimination in its implementation of the City's
8 administrative methods, policies, procedures, and practices with regard to the construction,
9 remediation, and maintenance of curb ramps that provide access to the City's pedestrian right of
10 way.

11 54. Defendant has not adopted and does not enforce appropriate administrative
12 methods, policies, procedures, and/or practices to ensure that it is in compliance with the ADA,
13 Section 504, and the Washington Law Against Discrimination to ensure nondiscrimination
14 against persons with mobility disabilities and equal access to facilities, programs, services, and
15 activities for persons with mobility disabilities.

16 55. The violations of the ADA, Section 504, and the Washington Law Against
17 Discrimination set forth in detail herein have injured all members of the proposed class and
18 violated their rights in a similar way.

19 56. Defendant has acted or refused to act on grounds generally applicable to the class,
20 thereby making appropriate final injunctive or declaratory relief with respect to the class as a
21 whole. Class claims are brought for the purposes of obtaining declaratory and injunctive relief
22 only.

1 57. The claims of the Named Plaintiffs are typical of those of the class in that they
2 arise from the same course of conduct engaged in by Defendant. The relief sought herein will
3 benefit all class members alike.

4 58. Named Plaintiffs will fairly and adequately represent the interests of the class.
5 They have no interests adverse to the interests of other members of the class and have retained
6 counsel who are competent and experienced in litigating complex class actions, including large-
7 scale disability rights class action cases.

8 59. The requirements of Rule 23 of the Federal Rules of Civil Procedure are met with
9 regard to the proposed class in that:

- 10 a. The class is so numerous that it would be impractical to bring all class
11 members before the Court;
- 12 b. There are questions of law and fact which are common to the class;
- 13 c. The Named Plaintiffs' claims for declaratory and injunctive relief are
14 typical of the claims of the class;
- 15 d. The Named Plaintiffs will fairly and adequately represent common class
16 interests and are represented by counsel who are experienced in law
17 reform class actions and the disability rights issues in this case; and
- 18 e. Defendant has acted or refused to act on grounds generally applicable to
19 the class.

20 60. The common questions of law and fact, shared by the Named Plaintiffs and all
21 class members, include but are not limited to:

- 22 a. Whether Defendant is violating Title II of the ADA, 42 U.S.C. sections
23 12131, *et seq.*, by failing to install or remediate curb ramps that make the

1 City's pedestrian right of way program, service, or activity accessible to
2 and useable by persons with mobility disabilities, and otherwise
3 discriminating against persons with mobility disabilities, as set forth
4 above;

5 b. Whether Defendant is violating Section 504 of the Rehabilitation Act, 29
6 U.S.C. section 794 *et seq.*, by failing to install or remediate curb ramps
7 that make the City's pedestrian right of way program, service, or activity
8 accessible to and useable by persons with mobility disabilities, and
9 otherwise discriminating against people with mobility disabilities, as set
10 forth above;

11 c. Whether Defendant is violating the Washington Law Against
12 Discrimination, Wash. Rev. Code § 49.60.010 *et seq.*, by failing to install
13 or remediate curb ramps that make the City's pedestrian right of way
14 program, service, or activity accessible to and useable by persons with
15 mobility disabilities, and otherwise discriminating against persons with
16 mobility disabilities, as set forth above;

17 d. Whether Defendant has performed "new construction" and/or "alterations"
18 to the City's pedestrian right of way within the meaning of 28 C.F.R.
19 § 35.151, triggering an obligation to construct or retrofit curb ramps;

20 e. Whether Defendant has performed "new construction" and/or "alterations"
21 to the City's pedestrian right of way within the meaning of 45 C.F.R.
22 § 84.23, triggering an obligation to construct or retrofit curb ramps;
23

1 f. Whether Defendant has “built” and/or “remodeled” any portion or
2 portions of the City’s pedestrian right of way, within the meaning of
3 Wash. Admin. Code § 162-26-100(3), triggering an obligation to construct
4 or retrofit curb ramps;

5 g. Whether Defendant, by its actions and omissions alleged herein, has
6 engaged in a pattern or practice of discriminating against Plaintiffs and
7 other persons with mobility disabilities in violation of applicable federal
8 and state disability access laws.

9 **FIRST CAUSE OF ACTION**
10 **Title II of the Americans with Disabilities Act of 1990**
11 **42 U.S.C. § 12101 *et seq.***

12 61. Plaintiffs incorporate by reference each and every allegation contained in the
13 foregoing paragraphs.

14 62. Title II of the ADA provides in pertinent part: “[N]o qualified individual with a
15 disability shall, by reason of such disability, be excluded from participation in or be denied the
16 benefits of the services, programs, or activities of a public entity, or be subjected to
17 discrimination by any such entity.” 42 U.S.C. § 12132.

18 63. At all times relevant to this action, the City was and is a “public entity” within
19 the meaning of Title II of the ADA and provides a pedestrian right of way program, service, or
20 activity to the general public.

21 64. At all times relevant to this action, Plaintiffs were and are qualified individuals
22 with disabilities within the meaning of Title II of the ADA and meet the essential eligibility
23 requirements for the receipt of the services, programs, or activities of the City. 42 U.S.C. §
12131.

1 65. Defendant is mandated to operate each program, service, or activity “so that,
2 when viewed in its entirety, it is readily accessible to and useable by individuals with disabilities.”
3 28 C.F.R. § 35.150; *see also* 28 C.F.R. §§ 35.149. This requirement applies to all programs,
4 services, and activities that a public entity offers, whether or not they are carried out in facilities that
5 have been constructed or altered since January 26, 1992. Pedestrian rights of way themselves
6 constitute a vital public program, service, or activity under Title II of the ADA. 28 C.F.R. §
7 35.104; *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002).

8 66. Furthermore, the regulations implementing Title II of the ADA specifically
9 provide that a public entity must install curb ramps at intersections whenever it newly constructs
10 or alters sidewalks, streets, roads, and/or highways at any time after January 26, 1992 and must
11 comply with Uniform Federal Accessibility Standards (UFAS) or with the Americans with
12 Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). 28 C.F.R. §
13 35.151. A street resurfacing project by a public entity is one example of an alteration under the
14 meaning of the regulation. *Kinney v. Yerusalim*, 9 F.3d 1067, 1073-74 (3rd Cir. 1993); *Lonberg*
15 *v. City of Riverside*, No. 97-CV-0237, 2007 WL 2005177, at * 6 (C.D. Cal. 2007).

16 67. The regulations implementing Title II of the ADA provide that a public entity
17 must maintain the features of all facilities required to be accessible by the ADA. 28 C.F.R. §
18 35.133. Facilities required to be accessible include roads, walks, and passageways. 28 C.F.R. §
19 35.104.

20 68. Due to the lack of accessible curb ramps as alleged above, as well as Defendant’s
21 failure to conduct a timely Self Evaluation and implement a Transition Plan for the pedestrian right
22 of way, the City’s pedestrian right of way is not fully, equally, or meaningfully accessible to
23 Plaintiffs when viewed in its entirety. Defendant has therefore violated the “program access”

1 obligation applicable to pedestrian right of way facilities that have not been newly constructed or
2 altered since January 26, 1992.

3 69. Additionally, the sidewalks, cross walks, and other walkways at issue constitute
4 facilities within the meaning of ADAAG and UFAS. Plaintiffs are informed, believe, and
5 thereon allege that since January 26, 1992, Defendant has constructed, altered, or repaired parts
6 of these facilities within the meaning of the ADAAG and the UFAS, and that Defendant, through
7 its administrative methods, policies, and practices, has failed to make such facilities readily
8 accessible to and usable by persons with disabilities through the construction and retrofit of curb
9 ramps as required under federal accessibility standards and guidelines.

10 70. Plaintiffs are informed, believe, and thereon allege that since March 15, 2012,
11 Defendant has constructed, altered, or repaired parts of these facilities within the meaning of the
12 ADAAG and the UFAS, and that Defendant, through its administrative methods, policies, and
13 practices, has failed to make such facilities compliant with the ADAAG and the UFAS as
14 updated in 2010, as required under 28 C.F.R. 35.151(c)(5).

15 71. Plaintiffs are informed, believe, and thereon allege that Defendant and its agents
16 and employees have violated and continue to violate Title II of the ADA by failing to maintain
17 the features of the City's walkways and curb ramps that are required to be accessible.

18 72. Plaintiffs are informed, believe, and thereon allege that Defendant and its agents and
19 employees have violated and continue to violate Title II of the ADA by failing to timely respond to
20 and remedy complaints regarding the lack of accessible curb ramps necessary to ensure access to the
21 City's pedestrian right of way.

22 73. The ADA's regulations at 43 C.F.R. §17.550(a)(3) prevent public entities from
23 refusing to comply with their obligations to provide persons with disabilities meaningful access

1 to their programs and services by claiming that doing so would impose an undue financial or
2 administrative burden, unless such a determination is made by an agency head or his or her
3 designee after consulting all agency resources available for use in the funding and operation of
4 the conducted program or activity and the determination is accompanied by a written statement
5 of the reasons for reaching that conclusion. On information and belief, the City, through its
6 agency heads and/or designees, has failed to make such a determination accompanied by the
7 required written statement and has, therefore, failed to demonstrate that providing the access
8 Plaintiffs seek to its pedestrian right of way would impose an undue financial or administrative
9 burden.

10 74. As a direct and proximate result of the aforementioned acts, Plaintiffs have
11 suffered and continue to suffer difficulty, hardship, anxiety, and danger, due to Defendant's
12 failure to remediate missing, defective, Inaccessible curb ramps throughout the City's pedestrian
13 right of way. These failures have denied and continue to deny Plaintiffs the full, equal, and
14 meaningful access to the pedestrian right of way that the ADA requires.

15 75. Because Defendant's discriminatory conduct presents a real and immediate threat
16 of current and continuing future violations, declaratory and injunctive relief are appropriate
17 remedies.

18 76. Pursuant to 42 U.S.C. § 12133 and 12205, Plaintiffs are entitled to declaratory and
19 injunctive relief as well as reasonable attorneys' fees, expert expenses, and costs incurred in
20 bringing this action.

21 WHEREFORE, Plaintiffs pray for relief as set forth below.
22
23

1 by failing to construct or install such compliant curb ramps at intersections throughout the City
2 where it has newly constructed or altered streets, roads, and/or highways since June 3, 1977.

3 83. As a direct and proximate result of the aforementioned acts, Plaintiffs suffered
4 and continue to suffer difficulty, hardship, anxiety, and danger due to Defendant's failure to
5 remediate missing, defective, Inaccessible curb ramps throughout the City's pedestrian right of
6 way. These failures have denied Plaintiffs the full, equal, and meaningful access to the
7 pedestrian right of way that Section 504 requires.

8 84. Because Defendant's discriminatory conduct presents a real and immediate threat
9 of current and continuing violations, declaratory and injunctive relief are appropriate remedies.

10 85. Pursuant to 29 U.S.C. § 794a, Plaintiffs are entitled to declaratory and injunctive
11 relief, and to recover from Defendant the reasonable attorneys' fees and costs incurred in
12 bringing this action.

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

14 **THIRD CAUSE OF ACTION**
15 **Washington Law Against Discrimination**
Revised Code of Washington §§ 49.60.010-49.60.505

16 86. Plaintiffs incorporate by reference each and every allegation contained in the
17 foregoing paragraphs.

18 87. Section 49.60.030(1) of the Revised Code of Washington provides in pertinent
19 part:

20 The right to be free from discrimination because of . . . the presence
21 of any sensory, mental, or physical disability . . . is recognized as
22 and declared to be a civil right. This right shall include, but not be
23 limited to: . . . (b) The right to the full enjoyment of any of the
accommodations, advantages, facilities, or privileges of any place
of public resort, accommodation, assemblage, or amusement

1 88. The City’s pedestrian right of way is a “place of public resort, accommodation,
2 assemblage, or amusement” within the meaning of the Washington Law Against Discrimination,
3 Wash. Rev. Code § 49.60.040.

4 89. Other examples of a “place of public resort, accommodation, assemblage, or
5 amusement” within the meaning of the Washington Law Against Discrimination, Wash. Rev.
6 Code § 49.60.040, include but are not limited to courthouses, businesses, and transportation
7 terminals.

8 90. Many places of public resort, accommodation, assemblage, or amusement within
9 the City are adjacent to or otherwise joined with the pedestrian right of way, such that equal
10 access to those places depends on equal access to the pedestrian right of way.

11 91. Plaintiffs are individuals with disabilities within the scope of the Washington Law
12 Against Discrimination.

13 92. Plaintiffs are informed, believe, and thereon allege that Defendant and its agents
14 and employees have violated and continue to violate sections 49.60.010 *et seq.* of the Revised
15 Code of Washington by unlawfully denying Plaintiffs full and equal access to the City’s
16 pedestrian right of way comparable to the access that it offers to others and for the reasons set
17 forth above, including violating the ADA.

18 93. Furthermore, Plaintiffs are informed, believe, and thereon allege that Defendant
19 and its agents and employees have violated and continue to violate sections 49.60.010 *et seq.* of
20 the Revised Code of Washington by unlawfully denying Plaintiffs full and equal access to other
21 places of public resort, accommodation, assemblage, or amusement, including but not limited to
22 courthouses, businesses, and transportation terminals, equal access to which depends on access
23 to the pedestrian right of way.

1 Rehabilitation Act of 1973, the Washington Law Against Discrimination, and the regulations
2 promulgated under those statutes;

3 B. Issuance of permanent injunction requiring Defendant to undertake remedial
4 measures to mitigate the effects of Defendant's past and ongoing violations of Title II of the
5 ADA, Section 504 of the Rehabilitation Act, and the Washington Law Against Discrimination,
6 the regulations promulgated under those statutes. At a minimum, Defendant must be enjoined to
7 take the following actions:

- 8 1. Ensure that the City install, remediate, repair, and maintain curb ramps
9 such that, when viewed in its entirety, the City's pedestrian right of way is
10 readily accessible to and useable by individuals with mobility disabilities;
- 11 2. Ensure prompt remedial measures to cure past violations of the City's
12 requirements to construct or alter curb ramps as required by the new
13 construction and alteration obligations of Title II of the ADA, 28 C.F.R.
14 §§ 35.151(a), (b), (c) or (i), and Section 504, 45 C.F.R. §§ 84.22, and the
15 curb ramp design standards in effect at the time of such new construction or
16 alterations;
- 17 3. Ensure that all future new construction and alterations to the City's curb
18 ramps fully comply with the 2010 ADA Standards for Accessible Design,
19 or other federal and Washington disability access design standards,
20 whichever is most stringent in its disability access requirements;
- 21 4. Ensure that Defendant adopts and implements administrative methods,
22 policies, and practices to maintain accessible curb ramps; and
23

