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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 ABDUL NEVAREZ and PRISCILLA NEVAREZ,
and on behalf of themselves and all others similarly
18 situated, and SEBASTIAN DEFRANCESCO,

19 Plaintiffs,

20 vs.

21
22 FORTY NINERS FOOTBALL COMPANY, LLC,
23 a Delaware limited liability company, *et al.*,

24 Defendants.
25
26

Case No.: 5:16-cv-07013 LHK-SVK

Civil Rights

CLASS ACTION

**FOURTH AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND DAMAGES**

1. Violation of Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*)
2. Violation of Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*)
3. Violation of California’s Unruh Civil Rights Act (Cal. Civil Code § 51 *et seq.*)

1 COME NOW Plaintiffs ABDUL NEVAREZ and PRISCILLA NEVAREZ on behalf of
2 themselves and all other similarly situated persons with mobility disabilities and associated persons,
3 and SEBASTIAN DEFRANCESCO (collectively “Plaintiffs”), and hereby complain of Defendants
4 FORTY NINERS FOOTBALL COMPANY, LLC; FORTY NINERS SC STADIUM COMPANY,
5 LLC; FORTY NINERS STADIUM MANAGEMENT COMPANY LLC; CITY OF SANTA
6 CLARA; SANTA CLARA STADIUM AUTHORITY; and DOES 1-25 (together “Defendants”) as
7 follows:

8 **I. INTRODUCTION**

9 1. This is a civil rights action involving the lack of access for individuals with mobility
10 disabilities to the building, structure, facility, complex, property, land, development, and/or
11 surrounding business complex known as “Levi’s Stadium,” located at or about 4900 Marie P
12 DeBartolo Way, Santa Clara, California 95054 (hereinafter the “Stadium”), and the parking lots and
13 pedestrian right of way that serve the Stadium (sometimes “the subject premises”).

14 2. Plaintiff ABDUL NEVAREZ (sometimes “Mr. NEVAREZ”) is a person with a
15 mobility disability and uses a wheelchair for mobility. He and his wife, Plaintiff PRISCILLA
16 NEVAREZ (sometimes Ms. NEVAREZ”) have been long-time fans of the San Francisco Forty-
17 Niners football team (“Niners”). Mr. and Ms. NEVAREZ attend as many Niners games as possible at
18 the Stadium with their family. They also attend other events at the Stadium, such as Supercross.
19 Plaintiff SEBASTIAN DEFRANCESCO is a quadriplegic, and requires the use of a wheelchair for
20 mobility. Mr. DEFRANCESCO is a fan of the Niners, and is a season ticket holder.

21 3. Defendants’ configuration of the Stadium and its related facilities, and their ticketing
22 policies, deny full and equal access to individuals with mobility disabilities and to their companions,
23 in violation of Titles II and III of the Americans with Disabilities Act of 1990 (“ADA”), and
24 California’s Unruh Civil Rights Act (“Unruh Act”). As a result, Plaintiffs have been continuously
25 denied full and equal access and/or deterred from visiting the Stadium during the three years
26 preceding the filing of this Complaint, have been embarrassed and humiliated, and suffered damages.
27 Plaintiffs seek injunctive relief requiring provision of access under the ADA, and injunctive relief for
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1 full and equal access and statutory damages under the Unruh Act. Plaintiffs also seek recovery of
2 reasonable attorneys' fees, litigation expenses and costs under federal and state law.

3 **II. JURISDICTION AND VENUE**

4 4. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 for violations of
5 the ADA, 42 U.S.C. §§ 12101 *et seq.* Pursuant to supplemental jurisdiction, attendant and related
6 claims arising from the same facts are also brought under the Unruh Civil Rights Act, California Civil
7 Code §§ 51, 52.

8 5. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact
9 that the real property which is the subject of this action is located in this District and that Plaintiffs'
10 causes of action arose in this District.

11 6. This case has been assigned to the San Jose Division of the Northern District of
12 California, as the real property which is the subject of this action is located in this intradistrict and
13 Plaintiffs' claims arose in this intradistrict.

14 **III. PARTIES**

15 7. At all times relevant to this Complaint, Plaintiff ABDUL NEVAREZ is a qualified
16 "person with a disability" within the meaning of the ADA and the Unruh Civil Rights Act. Mr.
17 NEVAREZ's right leg is amputated above the knee, and he has significant nerve damage in his left leg
18 and left arm. He requires use of a wheelchair for mobility. He also possesses a disabled parking
19 placard and/or license plate issued by the State of California, entitling him to park in designated
20 accessible and van-accessible parking spaces. Mr. NEVAREZ's wife, Plaintiff PRISCILLA
21 NEVAREZ, who does not have a disability, assisted Mr. NEVAREZ with and accompanied him to all
22 the events described in this Complaint.

23 8. At all times relevant to this Complaint, Plaintiff SEBASTIAN DEFRANCESCO is a
24 qualified person with a disability within the meaning of the ADA and the Unruh Civil Rights Act.
25 Mr. DEFRANCESCO is a quadriplegic and uses a wheelchair for mobility. He also possesses a
26 disabled parking placard and/or license plate issued by the State of California, entitling him to park in
27 designated accessible and van-accessible parking spaces.

1 9. Defendants FORTY NINERS FOOTBALL COMPANY, LLC (“49ERS LLC”);
2 FORTY NINERS SC STADIUM COMPANY, LLC (“STADCO”); CITY OF SANTA CLARA
3 (“CITY”); SANTA CLARA STADIUM AUTHORITY (“STADIUM AUTHORITY”); FORTY
4 NINERS STADIUM MANAGEMENT COMPANY LLC (“NINERS MGMT”); and DOES 1-25 are
5 the owners, operators, lessors, and/or lessees, of the businesses, properties, facilities, and/or portions
6 thereof located at or about 4900 Marie P. DeBartolo Way, Santa Clara, California 95054 (“the
7 Stadium”) and of the parking facilities serving the Stadium and the pedestrian right of way between
8 those parking facilities and the stadium. Defendant 49ERS LLC owns and operates the Niners, for
9 which the Stadium was built. Defendants CITY and STADIUM AUTHORITY own and operate the
10 Stadium and the property on which the Stadium was constructed. Defendant NINERS MGMT
11 operates and manages the Stadium on behalf of Defendant STADIUM AUTHORITY. Defendant
12 STADCO leases all or portions of the Stadium from Defendant STADIUM AUTHORITY, and
13 STADCO then subleases these areas of the Stadium to Defendant 49ERS LLC. Defendant CITY
14 owns, maintains, and exercises control and authority over the pedestrian right of way and the path of
15 travel between the Stadium and the parking facilities serving the Stadium, which right of way is a
16 service, program and/or activity of Defendant CITY. Defendant CITY also owns and/or exercises
17 control over the parking facilities serving the Stadium, which also constitute a service, program and/or
18 activity of Defendant CITY.

19 10. The true names or capacities, whether individual, corporate, associate, or otherwise, of
20 Defendants DOES 1-25 are unknown to Plaintiffs, who therefore sue said Defendants by such
21 fictitious names. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously
22 named Defendants is in some manner legally responsible for the events and happenings herein
23 referred to, which caused injury and damages to Plaintiffs as herein alleged. Plaintiffs pray leave of
24 Court to amend this Complaint to show such true names and capacities when the same have been
25 ascertained.

26 11. Plaintiffs are informed and believe, and on such information allege, that at all times
27 mentioned herein, Defendants, and each of them, were the agents, servants, employees, and
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1 representatives of each of the other Defendants, and performed all acts and omissions stated herein
2 within the scope of such agency or employment or representative capacity, and/or as part of a joint
3 venture and common enterprise with one or more of the other Defendants, and are responsible in some
4 manner for the acts and omissions of the other Defendants in proximately causing the damages
5 complained of herein. All actions alleged herein were done with the knowledge, consent, approval
6 and ratification of each of the Defendants herein, including their managing agents, owners, and
7 representatives.

8 **IV. FACTUAL ALLEGATIONS**

9 12. The subject Stadium and its related facilities, including but not limited to its
10 entrances/exits, wayfinding signage, seating, interior and exterior paths of travel, suites, concessions,
11 parking facilities, and ticketing procedures are each a “public accommodation” and part of a “business
12 establishment,” subject to the requirements of multiple categories of § 301(7) of the ADA (42 U.S.C.
13 § 12181(7)), Title II of the ADA (42 U.S.C. § 12132), and California Civil Code §§ 51 *et seq.*

14 13. Defendants have discriminated against Plaintiffs by violating the new construction
15 requirements of the ADA and the Unruh Civil Rights Act. The Stadium was constructed after March
16 15, 2012 and was therefore required to comply with the 2010 ADA Standards for Accessible Design
17 and the 2010 iteration of the California Building Code, whichever provides greater accessibility for
18 persons with mobility disabilities. The Stadium would violate the ADA and Unruh Civil Rights Act,
19 even if the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) applied. As
20 alleged herein, the Stadium contains numerous barriers that violate applicable federal and California
21 disability access design standards. Further, the Stadium lacks many of the legally-required
22 architectural features that make facilities accessible to individuals with mobility disabilities. As
23 discussed below, the Stadium is characterized by inaccessible suites, a lack of sufficient accessible
24 seating, inaccessible entrances, inaccessible restrooms, inaccessible and inadequate signage, and other
25 physical barriers.

26 14. Defendants have also discriminated against Plaintiffs in that the parking facilities
27 serving the Stadium do not comply with the requirements of the ADA and the Unruh Civil Rights Act.

1 The parking facilities that are newly constructed or altered, including those known as Red Lot 1,
2 Green Lot 1, Yellow Lots 1, 2 and 3, and Blue Lot 1, do not comply with applicable federal and
3 California disability access standards for new construction and alterations and lack the requisite
4 number of compliant accessible parking spaces. Other parking facilities serving the Stadium are also
5 non-compliant with federal and California disability access standards, lack the required number of
6 designated accessible spaces and fail to provide full and equal access to persons with mobility
7 disabilities. The Stadium itself lacks a sufficient number of parking spaces adjacent to the Stadium to
8 serve the population of persons with mobility disabilities who attend public events at the Stadium.
9 Defendants have routinely failed to make the limited number of accessible spaces at that facility
10 available to persons with mobility disabilities.

11 15. To address the lack of parking and accessible parking serving Levi's Stadium,
12 Defendants have established a parking program through which Defendant CITY and Defendant
13 NINERS MGMT makes parking for Stadium events available to the public at multiple parking lots in
14 the City of Santa Clara, referred to as "off-site" parking. These lots are not adjacent to the Stadium.
15 Most of them are a mile or more away, contain physical access barriers, and lack an accessible path of
16 travel from the parking lot to an accessible primary entrance to the Stadium. The City's pedestrian
17 right of way from these parking lots to the Stadium contains numerous access barriers, including
18 broken, cracked and uplifted pavement, excessive cross slopes, inaccessible curbs and curb ramps, and
19 inaccessible crosswalks. In addition, Defendants have failed to provide accessible transportation from
20 these parking lots to the Stadium. As a result of these barriers, Plaintiffs and the class members have
21 been denied meaningful and equal access to Defendants' parking facilities as well as to the Stadium,
22 in violation of the ADA and the Unruh Civil Rights Act. In particular, they have been discriminated
23 against by Defendants, on the basis of their disabilities, in the full and equal enjoyment of the goods,
24 services, facilities, privileges, advantages and accommodations, in violation of 42 U.S.C. § 12182 and
25 have, by reason of their disability, been excluded from participation in and denied the benefits of the
26 services, programs and activities of a public entity and subjected to discrimination in violation of 42
27 U.S.C. § 12132. Defendants have failed and refused to provide sufficient accessible parking and
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1 accessible paths of travel to the Stadium even though doing so is feasible and readily achievable.

2 16. Defendants have engaged in a systemic policy and practice of discriminating against
3 persons with mobility disabilities in violation of the ADA and the Unruh Civil Rights Act because
4 they have (a) failed and refused to provide full and equal access to seating services for accessible
5 seating for persons with mobility disabilities; (b) failed and refused to provide full and equal access to
6 the services, privileges, benefits and advantages that they provide to nondisabled persons; and (c) have
7 repeatedly solicited, entered and renewed contracts, contractual relationships, business practices,
8 licenses and/or other arrangements that deny full and equal access to ticketing services to persons with
9 mobility disabilities. Defendants knowingly and intentionally have denied persons with mobility
10 disabilities the full and equal enjoyment of their businesses, services, privileges, advantages and
11 accommodations. Defendants have engaged in this discriminatory conduct despite the fact that
12 Defendants' services, business practices, contracts and contractual relationships could easily be
13 brought into compliance with the ADA and the Unruh Civil Rights Act, and despite the fact that
14 Defendants are and have been fully aware that their conduct and business practices were causing harm
15 to persons with mobility disabilities including segregation and exclusion from public events.

16 17. Defendants' businesses and services as operated do not comply with the ADA or the
17 Unruh Civil Rights Act, and discriminate against persons with mobility disabilities, in that, *inter alia*,
18 Defendants do not provide full and equal access to ticketing services for persons with mobility
19 disabilities by, *inter alia*:

- 20 a. failing to provide persons with mobility disabilities with full and equal access to their
21 ticketing services, including the opportunity to purchase tickets for accessible seating
22 during the same hours, methods of distribution, the same types and numbers of ticketing
23 sales outlets (including telephone service, in-person ticket sales at a facility, and its
24 website) as nondisabled persons as required by 28 C.F.R. § 36.302(f)(1)(ii) and
25 28 C.F.R § 35.138(a)(2);

- b. failing to provide persons with mobility disabilities with an equal opportunity to purchase tickets for accessible seating at all price levels for events or series of events as required by 28 C.F.R. § 36.302(f)(3) and 28 C.F.R § 35.138(c);
- c. failing to provide persons with mobility disabilities with an equal opportunity to purchase group seating, including the ability to purchase the same number of total tickets as are permitted to a group of nondisabled persons as required by 28 C.F.R. § 36.302(f)(4) and 28 C.F.R § 35.138(d)(4);
- d. failing to provide persons with mobility disabilities the opportunity to purchase group seating so that the group contains accessible seating with nondisabled seating nearby so that, if possible, the entire group can sit together as required by 28 C.F.R. § 36.302(f)(4)(v); and 28 C.F.R § 35.138(d)(5);
- e. failing and refusing to provide persons with mobility disabilities with access to ticketing services through the Levi's Stadium website or by telephone from the Levi's Stadium Box Office violates the ADA; and
- f. failing and refusing to make reasonable modifications in their policies and practices regarding ticketing so as to ensure that persons with mobility disabilities have an equal opportunity to purchase tickets for accessible seating, and full and equal access to, and enjoyment of, events at Levi's Stadium.

18. Defendants' policy and practice of refusing to permit sales or exchanges of tickets for accessible or companion seating by phone or online, means that Plaintiffs are forced to travel to Defendants' Visa Box Office to purchase or obtain accessible seating, often on the day of the event, which places disproportionate burdens on persons with mobility disabilities. Defendants have also failed and refused to provide persons with mobility disabilities with full and equal access to the same range of ticketing services and seating options as provided to nondisabled persons, including equal access to group seating, ticket exchanges, discounts and promotions. Finally, as alleged herein, Defendants have sold inaccessible seating to persons with mobility disabilities, and then failed and refused to correct such errors in a prompt and courteous manner. Defendants could easily remedy all

1 of the foregoing violations of federal and state disability nondiscrimination law, but have refused to
2 do so. The foregoing violations of the ADA and the Unruh Civil Rights Act are illustrated by the
3 experiences of Mr. NEVAREZ, Ms. NEVAREZ, and Mr. DEFRANCESCO, which are set forth in the
4 paragraphs below and in the Declarations submitted in connection with Plaintiffs' Motion for Class
5 Certification.

6 19. Plaintiff ABDUL NEVAREZ has visited the Stadium as a paying customer multiple
7 times in the last two years and encountered numerous barriers (both physical and intangible) that
8 interfered with (and sometimes outright denied) his ability to use and enjoy the goods, services,
9 privileges and accommodations offered at the Stadium.

10 20. Plaintiff PRISCILLA NEVAREZ assisted and accompanied Mr. NEVAREZ on all his
11 visits to the Stadium. Plaintiff PRISCILLA NEVAREZ seeks relief based on her association with her
12 husband, Mr. NEVAREZ. She has been discriminated against and suffered an injury within the
13 meaning of the ADA that is separate, direct, and independent from that suffered by Mr. NEVAREZ as
14 a result of her attempts to obtain Stadium tickets for herself and Mr. NEVAREZ, as well as to
15 attend events at the Stadium with Mr. NEVAREZ. Ms. NEVAREZ experienced frustration,
16 emotional distress and discrimination when the Stadium refused her requests for the reasonable
17 modification in policy and practice of allowing her to purchase and/or exchange accessible seating and
18 companion seating tickets over the phone. Ms. NEVAREZ also experienced frustration, emotional
19 distress, physical exhaustion, and discrimination as a result of being forced to assist Mr. NEVAREZ
20 to traverse and/or overcome numerous physical access barriers in connection with the Stadium's
21 inaccessible parking facilities, inaccessible paths of travel from those facilities to the Stadium, and
22 other inaccessible features of the Stadium itself as alleged herein. Ms. NEVAREZ also experienced
23 discrimination and distress when she was unable to purchase accessible event tickets in the same
24 manner as she would be able to purchase general admission tickets. These injuries are specific to her
25 independent right to access the Stadium, its ticketing, its parking facilities, and its surrounding paths
26 of travel with her husband. Ms. NEVAREZ has repeatedly been denied full and equal access to the
27 Stadium's goods, services, privileges and accommodations because of her association with a person

1 with a mobility disability.

2 21. The first Niners game that Mr. and Ms. NEVAREZ attempted to attend at the Stadium
3 was an August 24, 2014 game against the San Diego Chargers. In or about early August 2014, they
4 called the Stadium's Box Office ("Box Office") to purchase tickets but were told that the Stadium did
5 not sell tickets over the phone and that they had to buy them in person. Ms. NEVAREZ told the Box
6 Office representative that Mr. NEVAREZ is an amputee in a wheelchair and that they needed to
7 purchase tickets in advance so they could plan accordingly. However, the Box Office refused to make
8 any type of accommodation for them. They were referred to the Stadium's "legal department" and
9 explained the situation to a man on the phone. He also refused to make an accommodation for them.

10 22. Mr. and Ms. NEVAREZ were able to attend the August 24, 2014 game after a friend
11 gave them her season tickets for the game. This friend called the Stadium and was able to exchange
12 her season tickets for accessible seats. Mr. and Ms. NEVAREZ were shocked that the Stadium had no
13 problem exchanging tickets for a season ticket holder but refused to assist them earlier on the phone.

14 23. Since the Box Office refused to assist them for the August 24, 2014 game, Mr. and Ms.
15 NEVAREZ tried a different approach for an April 18, 2015 Supercross event at the Stadium. They
16 purchased four accessible seats online using the Stadium website.

17 24. On April 18, 2015, Mr. and Ms. NEVAREZ parked in the Stadium's main lot in
18 designated accessible parking. Upon entering the Stadium, they tried to find an elevator, but could not
19 find one, nor could they find a staff person who could assist them. The Stadium had no signs
20 indicating where the elevators are located. Mr. and Ms. NEVAREZ traveled back and forth alongside
21 the Stadium trying to locate an elevator or knowledgeable staff, which exhausted them. Only after
22 speaking with numerous employees, one of whom radioed for assistance, were Mr. and Ms.
23 NEVAREZ able to locate an elevator.

24 25. While Mr. and Ms. NEVAREZ were watching the races at the April 18, 2015
25 Supercross event, a friend of theirs invited them up to his suite at the Stadium. Mr. NEVAREZ was
26 able to enter the suite, but was then met by a flight of stairs leading down to the suite's stadium-view
27 seating, and a bar/table behind the stadium-view seats, at which people were sitting. Because of the
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1 lack of accessible seating, Mr. NEVAREZ could not watch the races. The only area within the suite
2 where Mr. NEVAREZ could watch the races was in a tight space near the door at the top of the stairs
3 leading down to the stadium-view seats, but this area was small and highly trafficked with people
4 coming in and out to get food. This required Mr. and Mrs. NEVAREZ to continually move out of
5 everyone else's way, which made them feel extremely uncomfortable, awkward and embarrassed, and
6 prevented them from enjoying the event.

7 26. A friend of Mr. and Ms. NEVAREZ had two extra standard tickets to the November 29,
8 2015 game against the Arizona Cardinals, so she invited them to attend the game and a pre-game
9 tailgate party. Because they had been told that they could not exchange standard tickets for accessible
10 and companion seating tickets over the telephone, Mr. and Ms. NEVAREZ intended to go to the Visa
11 Box Office on game day to exchange them. They attempted to purchase an accessible parking pass
12 for the game on the website for Ticketmaster.com, with whom Defendants have an exclusive contract
13 to sell tickets and parking passes to Levi's Stadium events online. Ticketmaster.com did not have any
14 accessible parking available at the standard price so Ms. NEVAREZ was forced to purchase a VIP
15 parking pass in Green Lot 1 which is adjacent to the Stadium gates at an extra cost of \$10. On the day
16 of the game, Mr. and Mrs. NEVAREZ used the VIP parking pass, but parked in Blue Lot 1, because
17 that was where their group, Niners Empire, was tailgating. Mr. and Ms. NEVAREZ noticed that,
18 despite their inability to purchase a standard-price accessible parking space on Ticketmaster.com,
19 there were many empty accessible spaces in Blue Lot 1. They arrived early for the 1:05 p.m. kick off
20 because they had been advised by the Stadium that accessible tickets must be purchased in person on a
21 first-come, first-served basis. The lot did not open until 10:00 a.m., however, which meant that they
22 could enjoy the tailgate party for a short time only before they had to travel to the Visa Box Office,
23 which was approximately one mile away, to exchange their tickets. As discussed above, the Box
24 Office can and has exchanged standard tickets for accessible seating tickets over the phone, but
25 nevertheless failed and refused to make this reasonable modification in policy for Mr. and Ms.
26 NEVAREZ.

1 27. Ms. and Mr. NEVAREZ parked close to the entrance of Blue Lot 1. From the entrance
2 of Blue Lot 1, there was no signage indicating the location of the shuttle service or the designated
3 pedestrian path of travel from Blue Lot 1 to the Stadium. Ms. NEVAREZ approached a male parking
4 attendant to ask for a shuttle to the Visa Box Office to exchange Mr. NEVAREZ's ticket for an
5 accessible seat. The parking attendant directed them to the far end of Blue Lot 1, which was farther
6 away from the Stadium, and told them the shuttle was located there. This was burdensome since the
7 Visa Box Office is already quite far from Blue Lot 1. They had to leave the tailgate early to give
8 themselves enough time to push Mr. NEVAREZ's wheelchair across the entire parking lot, take the
9 shuttle, and get to the Visa Box Office before it ran out of accessible seating tickets.

10 28. A friend of Mr. and Ms. NEVAREZ joined them since he also had to exchange his
11 ticket for an accessible seat. They left the tailgate to head across Blue Lot 1 to the shuttle station and
12 arrived at a table with a flag with a wheelchair symbol. However, the employees stationed there were
13 unable to assist them with getting a shuttle. Ms. and Mr. NEVAREZ and their friend walked to
14 another area where a "Bauer's Transportation" bus was parked. The Stadium has a contract with
15 Bauer's Transportation to provide shuttle services. The employees there told them that the ramp/lift
16 for the bus was broken. Ms. and Mr. NEVAREZ then requested a golf cart for transport to the Visa
17 Box Office. After radioing for assistance, an employee advised them that a golf cart was on its
18 way. After waiting for approximately 30 minutes, Ms. NEVAREZ went back to the employee to find
19 out the status of the golf cart. After radioing for assistance again, the employee advised Ms.
20 NEVAREZ that there was no golf cart coming, because golf carts cannot cross Tasman Drive to
21 access the parking lot they were in.

22 29. By this point, Mr. and Ms. NEVAREZ were extremely upset by the lack of shuttle
23 access or any Stadium employees able to assist them. When another Bauer's bus showed up,
24 employees operating this bus said they could take the NEVAREZES and their friend to a certain
25 parking lot but not all the way to the Visa Box Office. Additionally, the bus would not leave until it
26 was full. By then, the NEVAREZES had spent 45 minutes trying to find accessible transportation to
27 the Visa Box Office, but had not even succeeded in leaving the parking lot.

1 30. Concerned that if they waited any longer they might miss their opportunity to exchange
2 their tickets for accessible seating, the NEVAREZES started walking/rolling towards the Stadium
3 along Democracy Way. The sidewalk was uphill and curvy, with multiple cracks and split concrete,
4 which is very dangerous for a wheelchair user. Ms. NEVAREZ proceeded to push Mr. NEVAREZ in
5 his wheelchair to the next main intersection, Old Ironsides Drive. At that intersection a pedicab
6 tricycle driver said he could take all three of them and the wheelchair for \$40. This pedicab was the
7 only way they could get to the Visa Box Office, as it was still almost a mile away of pushing the
8 wheelchair on the unsafe sidewalks. Ms. NEVAREZ and the friend helped Mr. NEVAREZ get into
9 the pedicab which was inaccessible and lacked a wheelchair lift, and Ms. NEVAREZ took apart Mr.
10 NEVAREZ's wheelchair to fold it up and load it. Their friend got in, Ms. NEVAREZ loaded Mr.
11 NEVAREZ's wheelchair, and Ms. NEVAREZ squeezed in on Mr. NEVAREZ's lap. It distressed Mr.
12 and Ms. NEVAREZ to have to pay \$40 to use an inaccessible pedicab due to the distance between the
13 parking lot and the Stadium box office. They were also worried that they would not arrive on time to
14 exchange their tickets. The driver told them he could only take them to the entrance of the main
15 parking lot, Red Lot 1, and left them there. Ms. NEVAREZ struggled to put Mr. NEVAREZ's
16 wheelchair back together and rush to the Visa Box Office, which was still some distance away.

17 31. Once they made it through Red Lot 1, they had to get through the metal detectors at
18 Gate A. They approached a flag with the wheelchair symbol. However, Mr. NEVAREZ's wheelchair
19 would not fit through the metal detector at this marked wheelchair "accessible" entrance. Mr. and Ms.
20 NEVAREZ asked Stadium employees stationed at the gate where they were supposed to go, but none
21 of them provided help, making navigating more frustrating and embarrassing. A female employee
22 eventually told them to go all the way to the end of the metal detectors to get in.

23 32. Having endured such difficulty getting to the Stadium, entering through security, and
24 finally getting seated, Ms. and Mr. NEVAREZ decided to leave in the third quarter of the game
25 because they feared similar difficulties getting back to their car in Blue Lot 1. As they were walking
26 toward the parking lot, they asked an employee about the shuttle. The employee stated that
27 passengers would need to wait until the shuttle was full before it would take off. Waiting for the
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1 shuttle would therefore defeat their purpose in leaving the game early, further hinder their exit and
2 make departure difficult. As such, they continued walking/rolling toward Blue Lot 1 and hailed
3 another pedicab, also inaccessible, for which they paid \$30. Ms. NEVAREZ again needed to
4 dismantle her husband's wheelchair to put it in the cab. They finally got to their car and exited Blue
5 Lot 1, emotionally and physically exhausted from their struggles with physical access barriers and
6 discrimination.

7 33. On or about March 15, 2016, Ms. NEVAREZ attempted to buy a block of tickets for
8 Mr. NEVAREZ, herself, their children, and a few friends to go to Supercross 2016, scheduled to take
9 place on April 2, 2016 at the Stadium. The Stadium website automatically directed her to the
10 Ticketmaster.com website to buy tickets. However, there were no accessible seats available on the
11 Ticketmaster.com website for the event. Defendants do not provide to persons with mobility
12 disabilities the opportunity to purchase tickets for accessible seating during the same hours, methods
13 of distribution, or the same types and numbers of ticketing sales outlets (including telephone service,
14 in-person ticket sales at a facility, and their website) as they do to nondisabled persons. On
15 information and belief, Plaintiffs allege that, instead of making all accessible seating available for sale
16 online or by phone, Defendants hold back some or all accessible seating to be purchased in person at
17 the box office, often on the day of the event. On information and belief, Plaintiffs allege that
18 Defendants do not have a similar policy or practice for standard, nondisabled seating.

19 34. Ms. NEVAREZ called the box office on or about March 28, 2016 to buy an accessible
20 seat for Mr. NEVAREZ and to coordinate seats for the rest of their family and friends. They were
21 planning to use a discount code provided to them by a local radio station to purchase \$20 tickets for
22 everyone. The box office representative told Ms. NEVAREZ that the Stadium had accessible seats
23 available for \$49/seat, which were the least expensive accessible seats available, but that she could not
24 sell them the seats over the phone. They had to buy the accessible seat in person at the box office.
25 When Ms. NEVAREZ explained the difficulties involved in driving all the way from their home in
26 Antioch to the box office just to purchase tickets in advance, she was told that it was the only way to
27 buy an accessible seat. Unless they were willing to make a separate trip to Santa Clara, their only
28

1 option was to wait until the day of the event to buy tickets in person and hope that there would still be
2 accessible seats available and that their family and friends could be seated together. The box office
3 representative also alerted Ms. NEVAREZ that she would not be able to use her discount code if she
4 did not book online. Fearing that they would not be able to attend the event if they did not buy tickets
5 in advance, Ms. and Mr. NEVAREZ decided to buy a block of standard tickets online and exchange
6 Mr. NEVAREZ's ticket for an accessible seat on the day of the event.

7 35. On April 2, 2016, Mr. and Ms. NEVAREZ arrived at the Stadium in the mid-afternoon.
8 Their children were arriving separately with their friends and planned to meet them at the Stadium.
9 Mr. and Ms. NEVAREZ went to a trailer set up as the Stadium's box office for the event to exchange
10 Mr. NEVAREZ's ticket for an accessible seat and to ensure that the Nevarez family and friends could
11 sit together. However, the box office trailer set-up made it impossible for Mr. NEVAREZ or any
12 wheelchair user to get to the ticket windows. The Stadium had erected barriers creating paths of travel
13 too narrow for a wheelchair. Mr. and Ms. NEVAREZ asked the Stadium employee standing in front
14 of the trailer how Mr. NEVAREZ would have been expected to access the ticket window on his own.
15 The employee said that he would run between Mr. NEVAREZ and the ticket window to complete the
16 transaction or move stuff around to "get him in there."

17 36. Ms. NEVAREZ was forced to go to the ticket window without Mr. NEVAREZ. He
18 stayed behind the barriers, which was embarrassing and humiliating. The female employee at the
19 ticket window advised Ms. NEVAREZ that she could get no more than four seats together (one
20 accessible seat and three companion seats). After the many obstacles Ms. and Mr. NEVAREZ
21 endured to get to this point, only to be told that their party would not be able to be seated next to Mr.
22 NEVAREZ, Ms. NEVAREZ expressed her frustration with the representative at the window. The
23 representative finally capitulated and reissued the tickets so that the entire party was seated together
24 with the accessible seat for Mr. NEVAREZ, noting that she was doing this as a "one-time
25 accommodation."

26 37. When the box office trailer representative reissued the tickets, Ms. NEVAREZ asked
27 whether her children and their friends, whose seats were part of the original block of tickets they had
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1 purchased online but who were arriving later, would be able to enter the Stadium with their original
2 tickets or if she and Mr. NEVAREZ needed to track them down to give them new tickets. The woman
3 at the ticket window assured Ms. NEVAREZ that there would be no problem for the other members of
4 the party to get in with their original tickets.

5 38. When Mr. and Ms. NEVAREZ tried to enter the Stadium, they experienced the same
6 entry problems as before. Gate entries marked with the wheelchair symbol were not actually
7 accessible, as the metal detectors were too narrow for a wheelchair. They sought assistance from
8 several Stadium employees who did not know where Mr. NEVAREZ could gain entry and found a
9 male employee who directed Mr. NEVAREZ to a gate where he could enter after being patted down.

10 39. After getting through security, Ms. and Mr. NEVAREZ noticed a team of Stadium
11 employees standing around with empty wheelchairs. A woman who appeared to be the “lead” of this
12 team approached them and asked if they needed any assistance. Ms. NEVAREZ told her that they
13 did, in fact, need assistance confirming that their children and their friends would be able to access the
14 Stadium despite the tickets being reissued by the box office trailer. This woman also assured Ms. and
15 Mr. NEVAREZ that their children and friends would be able to get in with their original tickets.

16 40. Unfortunately, after Mr. and Ms. NEVAREZ had already gone inside to explore the
17 vendors for the event (referred to as the “pit”), their daughter and her friend called Ms. NEVAREZ
18 because they were being refused entrance to the Stadium. Ms. and Mr. NEVAREZ were forced to
19 travel all the way to the opposite side of the Stadium (near the Visa Box Office) to get their daughter
20 and her friend into the Stadium.

21 41. Like all other times they have been at the Stadium, Mr. and Ms. NEVAREZ had
22 difficulty locating the elevator, as it was still not marked/signed appropriately. The elevator they
23 finally found and used on this occasion was located through an unmarked double-door entrance. One
24 of the entrance doors was locked and the other door was extremely heavy to open, making it virtually
25 impossible for Mr. NEVAREZ to enter without assistance. Once through the doors, the elevator was
26 hard to locate, because the path leading to it was unlit and dark, making it look like an area closed to
27 patrons. Additionally, the elevator alcove was blocked by what looked like extra tables from
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1 concessions, making it difficult for them to enter and exit the elevator. When they complained to the
2 elevator attendant about how difficult it always is to find an elevator, the attendant conceded, “It’s like
3 an Easter egg hunt to find the elevator. It’s like ‘Where’s Waldo?’”

4 42. When Mr. and Ms. NEVAREZ finally got to their seats, the concession booths near
5 their seats were closed. When they tried to access the indoor concession booths, there were no
6 accessible seating areas and the bar did not have a lowered section for Mr. NEVAREZ to order from.
7 They left the event frustrated, exhausted, and upset again at how badly the Stadium treats disabled
8 patrons and their families.

9 43. Plaintiffs ABDUL NEVAREZ and PRISCILLA NEVAREZ allege continuous and
10 ongoing discrimination. They want to—and plan to—attend numerous future events at the Stadium,
11 and they are frustrated and anxious for Defendants to remediate the access barriers and to provide
12 reasonable modifications in policies, practices and procedures, as alleged herein.

13 44. The barriers described above are only a portion of those that Plaintiff ABDUL
14 NEVAREZ and PRISCILLA NEVAREZ personally encountered. There are thousands of other
15 barriers, as described herein, that exist at the Stadium and relate to Mr. NEVAREZ’s disabilities.
16 Plaintiffs seek to enjoin Defendants to remove all barriers at the Stadium, the related parking lots and
17 the pedestrian right of way serving the Stadium that limit full and equal access for persons with
18 mobility disabilities.

19 45. Plaintiff SEBASTIAN DEFRANCESCO is a Niners season tickets holder. Prior to
20 purchasing his 2016 season tickets, Plaintiff DEFRANCESCO specifically informed Defendants,
21 including the Account Executive handling the transaction, Craig Sargent, that he was a wheelchair
22 user, and that he needed accessible seating. Mr. Sargent assured Plaintiff DEFRANCESCO that he
23 would receive accessible seating in connection with the purchase of his season tickets. Accordingly,
24 on June 23, 2016, Plaintiff DEFRANCESCO entered into a “Stadium Builders License Agreement.”
25 This agreement guaranteed Plaintiff DEFRANCESCO the right to purchase seats 14 and 15 in row 3
26 of Section 207 for Niners home games and other events hosted at Levi’s Stadium. The seat licenses
27 cost Mr. DEFRANCESCO \$5,000 per seat for a total of \$10,000. Plaintiff DEFRANCESCO made a
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1 \$1,000 down payment toward the seat licenses, and financed the remaining \$9,000, which required
2 additional *pro rata* payments due on March 1 of the period 2017 through 2023. In addition to the cost
3 of the seat licenses, Plaintiff DEFRANCESCO was also required to pay approximately \$1,000 for the
4 actual season tickets.

5 46. The first game attended by Plaintiff DEFRANCESCO was a pre-season game between
6 the Niners and the Green Bay Packers on August 26, 2016. When Plaintiff DEFRANCESCO arrived
7 at his assigned seats, he discovered that Defendants had not, in fact, sold him tickets for accessible
8 seats. Row 3 of Section 207 is located up a flight of stairs. Thus, the seats that Defendants sold to
9 DEFRANCESCO were impossible for him to access. After informing a stadium usher that
10 DEFRANCESCO could not access his seats, Plaintiff DEFRANCESCO was directed to guest
11 services. Guest services exchanged his tickets for accessible seats located in a different section of the
12 stadium. Plaintiff DEFRANCESCO suffered significant emotional distress and frustration when he
13 discovered that Defendants had sold him inaccessible seating.

14 47. Plaintiff DEFRANCESCO has made numerous complaints to Defendants regarding
15 their failure to sell him accessible season tickets. Immediately following the Green Bay game,
16 Plaintiff DEFRANCESCO contacted Mr. Sargent by email to inform him that his seats were
17 inaccessible. On August 29, 2016, Ryan Scarlett, a Premium Member Services Representative,
18 provided the following response:

19
20 Ada accessible seating will be provided on a game by game basis. To do the seat
21 exchange please log into your account manager and transfer the seats to
22 memberservices@49ers.com and request wheelchair accessible seating in the
comment section. You will need to do this transfer the week of each home game as
our inventory changes game by game.

23 48. Rather than provide Plaintiff DEFRANCESCO with permanent accessible seats,
24 Defendants required him to request a ticket exchange before every 2016 Season Niners home game,
25 something that other, non-disabled seat license holders do not have to endure. Moreover, given that
26 Defendants' "inventory changes game by game," Plaintiff DEFRANCESCO received no guarantee
27 that he would be allowed to exchange his inaccessible seats for accessible ones. Although Mr.

1 DEFRANCESCO found this process to be burdensome, he followed Defendants' instructions and
2 requested accessible seating approximately one week before each game.

3 49. Prior to March 1, 2017—the date by which Plaintiff DEFRANCESCO was required to
4 make his first installment payment pursuant to the Stadium Builders License Agreement—Plaintiff
5 DEFRANCESCO informed Defendants that he would not make any additional payments unless he
6 was provided with accessible seating. In response, Defendants informed him that there were no
7 available accessible seats in Section 207. Defendants further informed him that he would be required
8 to apply for seat relocation through guest services in April 2017. Thus, Defendants expected Plaintiff
9 DEFRANCESCO to make his next seat license payment and purchase 2017 season tickets without
10 any guarantee that he would receive accessible seats. Defendants further informed Plaintiff
11 DEFRANCESCO that the only permanent accessible seats available for purchase were priced at
12 approximately \$6,000 for the 2017 season. Thus, Plaintiff DEFRANCESCO would be required to
13 spend an additional \$5,000 in order to receive the accessible seats he should have been provided for
14 the 2016 season.

15 50. Plaintiff DEFRANCESCO has also encountered numerous physical access barriers that
16 have limited his ability to have full and equal access to Levi's Stadium, and that have caused him
17 difficulty, discomfort and/or embarrassment. Specifically, he has encountered a lack of accessible
18 signage directing him to the designated accessible elements of the Stadium, including but not limited
19 to a lack of accessible signage regarding accessible parking, entrances and elevators.

20 51. Plaintiff DEFRANCESCO has encountered access barriers when attempting to use the
21 Stadium's restrooms, including but not limited to restroom stalls that lacked accessible door hardware
22 that could be used by someone with limited manual function and dexterity such as Plaintiff
23 DEFRANCESCO. In addition, Plaintiff DEFRANCESCO has encountered lavatories which lacked
24 pipe insulation to protect the legs of wheelchair users from injury.

25 52. Plaintiff DEFRANCESCO has also encountered access barriers when attempting to pass
26 through Stadium doorways. Plaintiff DEFRANCESCO encountered severe difficulty opening several
27 Stadium doors due to the amount of force required to move them. Moreover, no automatic or power-

1 assisted doors were provided at these locations.

2 53. Plaintiff DEFRANCESCO has also encountered access barriers when attempting to use
3 the Stadium's food service areas and merchandise stores. Among other things, Plaintiff
4 DEFRANCESCO has encountered condiment counters that were too high and lacked adequate clear
5 space underneath, thus rendering them inaccessible to wheelchair users. Moreover, Plaintiff
6 DEFRANCESCO encountered aisles in the merchandise stores that were too narrow to accommodate
7 his wheelchair.

8 54. Plaintiff DEFRANCESCO has encountered the foregoing types of access barriers on
9 numerous occasions when attending football games at Levi's Stadium. The inaccessibility is ongoing,
10 and he will continue to encounter these and other access barriers each time he attends a football game
11 as a season ticket holder of the Niners.

12 55. Plaintiff DEFRANCESCO has also encountered Stadium staff who were not adequately
13 trained on disability access issues. For example, Plaintiff DEFRANCESCO has encountered Stadium
14 security staff who were not properly trained on how to search a wheelchair user at the entrance of the
15 Stadium safely and courteously. Specifically, on November 6, 2016, at the game between the Niners
16 and the New Orleans Saints, Plaintiff DEFRANCESCO was instructed by Stadium security staff to
17 lean to the right and left so that he could be searched on each side of his body. While leaning as
18 directed, Plaintiff DEFRANCESCO was nearly thrown from his chair by the staff member searching
19 him.

20 56. Plaintiffs' numerous complaints to Stadium employees and Defendants' representatives
21 have been ignored. Plaintiffs allege that it would be a futile gesture to provide further notices of
22 violations relating to Plaintiffs' continuous visits and deterrence, which are certain to occur on a
23 regular basis following the filing of this Complaint. Therefore, Plaintiffs will seek to supplement this
24 Complaint at the time of trial as to subsequent events, according to proof.

25 57. Defendants knew, or should have known, that these elements and areas of the Stadium
26 and its supporting parking facilities were inaccessible, and that these barriers and Defendants' policies
27 regarding ticketing and accessible seating, and failure to adequately train staff in providing full and
28

1 equal services and accommodations to patrons with disabilities violate state and federal law, and
2 interfere with or deny access to individuals with mobility disabilities. To date, however, Defendants
3 refuse to remove those barriers or to provide full and equal access to ticketing and seating services.

4 58. GOVERNMENT CLAIM FILED – On or about July 8, 2016, Plaintiffs ABDUL and
5 PRISCILLA NEVAREZ served a claim on Defendant CITY. In a notice dated July 20, 2016, the
6 CITY returned plaintiff ABDUL NEVAREZ’S claims related to the December 20, 2014, April 16,
7 2015, and November 29, 2015 events at the Stadium as untimely. In a notice dated August 17, 2016,
8 the CITY returned plaintiff PRISCILLA NEVAREZ’S claims related to the December 20, 2014, April
9 16, 2015, and November 29, 2015 events at the Stadium as untimely. In notices dated September 13,
10 2016 and September 26, 2016, the CITY rejected Plaintiffs’ claims related to the April 2, 2016 event.

11 59. On March 29, 2017, Plaintiff DEFRANCESCO served a claim on Defendant CITY. In
12 a notice dated April 25, 2017, the CITY returned Plaintiff DEFRANCESCO’S claim as untimely with
13 respect to his claims related to the August 26, 2016, September 12, 2016, October 2, 2016, October
14 23, 2016, November 6, 2016, November 20, 2016, and December 11, 2016 Niners games. In
15 response, Plaintiff DEFRANCESCO sent correspondence to the CITY on May 16, 2017, explaining
16 that Plaintiffs’ claims with respect to the October 2, 2016, October 23, 2016, November 6, 2016,
17 November 20, 2016, and December 11, 2016 Niners games were timely, and submitting an
18 application pursuant to California Government Code sections 911.4 and 915 to present a late claim for
19 the August 26, 2016 and September 12, 2016 Niners games. By letter dated May 23, 2017, the CITY
20 informed Plaintiff DEFRANCESCO that his application to present a late claim would likely be denied
21 unless he submitted further supporting information by June 12, 2017. Plaintiff DEFRANCESCO
22 declined the CITY’S invitation to provide further information as his May 16, 2017 application was
23 complete at the time of submission. The CITY’S position regarding the timeliness of Plaintiff
24 DEFRANCESCO’S claims arising from the October 2, 2016, October 23, 2016, November 6, 2016,
25 November 20, 2016, and December 11, 2016 Niners games is incorrect, as he presented those claims
26 within six months of their occurrence.

1 60. Plaintiffs’ goal in this suit is a positive one: to make the recently-constructed Stadium,
2 the related parking lots and the pedestrian right of way serving the Stadium, as well as its ticketing
3 policies and procedures, fully accessible to persons with mobility disabilities and their families and
4 friends who accompany them to events at the Stadium.

5 **V. OTHER SPECIFIC BARRIERS**

6 61. In addition to the experiences described herein, Plaintiffs identified thousands of
7 barriers to safe and independent use of the Stadium, its related facilities, and pedestrian routes serving
8 the Stadium by persons with mobility disabilities. Those barriers are documented in Exhibits A-D.
9 Plaintiffs incorporate the entire contents of Exhibits A-D into this Fourth Amended Complaint as
10 though fully alleged herein. The barriers contained in Exhibits A-D include barriers that the named
11 Plaintiffs directly encountered and barriers identified by access experts who conducted in-person
12 accessibility surveys of the Stadium, parking lots, shuttle, and sidewalks/pedestrian routes serving the
13 Stadium.

14 62. Exhibit A is a spreadsheet of all barriers at the Stadium, its related facilities, and
15 sidewalks/pedestrian routes serving the Stadium. Exhibit A is comprised of three sheets: “Stadium,”
16 “Parking,” and “Public Right of Way.” A description of each access barrier, its location, and relevant
17 authority are included in Exhibit A.

18 63. Exhibit B includes the findings of Plaintiffs’ consultant, Gary Waters. Exhibit B was
19 originally filed in support of Plaintiffs’ Motion for Class Certification (ECF 136, 136-1, 136-2, 136-3,
20 136-4, 136-5, and 136-6).

21 64. Exhibit C includes the findings of Plaintiffs’ consultant, Jeffrey Scott Mastin. Exhibit C
22 was originally filed in support of Plaintiffs’ Motion for Class Certification (ECF 137 and 137-1).

23 65. Exhibit D includes the findings of Plaintiffs’ consultant, W. Scott McBryer. Exhibit D
24 was originally filed in support of Plaintiffs’ Motion for Class Certification (ECF 138).

25 66. Significant barriers to access were identified by Mr. Waters, Mr. Mastin, and Mr.
26 McBryer (together “Plaintiffs’ Consultants”) throughout the Stadium, parking lots used for events at
27 the Stadium, pedestrian routes serving the Stadium, and in an exemplar shuttle vehicle used to
28 transport patrons from parking lots to the Stadium. Subsequent to the filing of Exhibits B-D,
Plaintiffs’ Consultants identified additional barriers which have been included in Exhibit A.

1 67. While Exhibit A contains all of the illegal barriers Plaintiffs have identified, Plaintiffs
2 highlight below examples of the many barriers that pervade and characterize the Stadium, all of which
3 are included in Exhibits A and/or Exhibits B through D:

- 4 a. Main Entrance: Excessive cross slopes throughout the plaza at Intel Gate A. This area
5 has cross slopes up to 4%, whereas the entire plaza must not exceed 1:48 slope in any
6 direction.
- 7 b. Security Checkpoints at Entrances:
- 8 ▪ Lack of any accessible security checkpoints at certain gate locations (e.g. Gate
9 F- Suite and Club Entry).
 - 10 ▪ Large holes (some up to 1” in diameter) in the walking surfaces in front of
11 accessible entry lanes to accessible security gates.
 - 12 ▪ Lack of signage directing guests where the accessible security checkpoints are
13 located and to accessible routes.
 - 14 ▪ Excessive cross slopes at accessible security checkpoints (e.g. up to 5.6%
15 measured, where maximum allowed is 2.083%).
 - 16 ▪ Excessive running slopes (up to 6.1% measured, whereas running slopes in this
17 area should not exceed 5%).
 - 18 ▪ Numerous obstructions in the walking surface in pedestrian routes, for example:
 - 19 ▪ Security fence barriers referred to as “bike racks” that have
20 perpendicular support bases that project approximately 10-3/4” from the
21 barrier and are 7/8” high above the walking surface (maximum allowable
22 vertical change in level is 1/4”).
 - 23 ▪ Eye bolts of security bollards project into the path of travel 2-1/2” from
24 the face of the bollard and were measured up to 1-5/8” high above the
25 walking surface (maximum allowable vertical change in level is 1/4”).
 - 26 ▪ Metal detectors are too narrow.
 - 27 ▪ Ticket services booths are too high (measured up to 35-3/16” AFF, but 34” AFF
28 maximum allowed)

- 1 ▪ Sales counters for bag sales area too small and do not allow for a parallel
2 approach in a wheelchair (measured at 20”, but a minimum length of 36” is
3 required).
- 4 ▪ Width of lanes at queuing lanes are too narrow and not configured properly (e.g.
5 lanes as narrow as 38-3/4” measured, but a minimum of 42” required; and width
6 of turns as narrow as 42-1/2” measured, but a minimum of 48” required).
- 7 c. Ticket windows: Excessive slope at the ticket windows, preventing a wheelchair side-
8 approach. Slopes were measured up to 2.5%, whereas slopes in this area should not
9 exceed 1:48. Additionally, if there is a designated accessible window, it is not properly
10 marked.
- 11 d. Signage/Wayfinding: Lack of signage throughout the Stadium alerting patrons of the
12 locations of elevators.
- 13 e. Designated “Accessible” Seating:
- 14 ▪ Dangerous slopes in accessible seating areas, forcing a wheelchair user to hang
15 on to the rail or keep her/his/their wheelchair brake on at all times to remain in
16 place and not roll away (maximum 1:48 allowed, but up to 5.4% measured).
- 17 ▪ The width of wheelchair viewing positions is too narrow (measured as 33”
18 although 36” is required).
- 19 ▪ Non-complaint handrails at stairs and ramps.
- 20 ▪ Excessive slopes at ramps leading to accessible seating (maximum 1:12 allowed,
21 but up to 9.2% measured).
- 22 ▪ Excessive slopes at the aisle behind accessible seating and companion seat
23 locations (maximum 1:48 allowed, but up to 5.0% measured).
- 24 ▪ Obstructions encroach into the path of travel to access accessible seating.
- 25 ▪ Excessive pressure required to open doors that lead to wheelchair lifts
26 (maximum 5 lbs. allowed, but up to 8.5 lbs. measured).
- 27
- 28

1 f. Restrooms:

- 2 ▪ Excessive force required to operate entry doors, more than the maximum 5 lbs.
3 allowed (up to 14 lbs. measured).
- 4 ▪ Accessible restroom stall doors do not close automatically.
- 5 ▪ Designated accessible stalls (both wheelchair-accessible and semi-ambulatory)
6 require two hands to close and latch the stall door.
- 7 ▪ Door latches of accessible stalls require excessive force to operate.
- 8 ▪ Toilets are too low (as low as 16” measured, where 18” is required) and too far
9 from the side wall (as far as 19.5” measured, where 16-18” allowed).
- 10 ▪ Toilet paper dispensers are located too far from the front of the toilet, creating a
11 dangerous condition in a restroom for a mobility-disabled person – forcing them
12 to reach for toilet paper out of range.
- 13 ▪ Floor slopes in wheelchair-accessible stalls are dangerously excessive
14 (maximum 1:48 allowed, but up to 7.3% measured).
- 15 ▪ At several wheelchair-accessible stalls, the door opening is more than the 4”
16 maximum allowed from the side wall farthest from the toilet – up to 5”
17 measured.
- 18 ▪ Baby changing stations do not provide adequate knee clearance for a forward
19 approach by wheelchair users. Several of these changing stations also encroach
20 into and prevent entry into wheelchair-accessible stalls when the tables are open,
21 rendering the stalls unusable by wheelchair users.
- 22 ▪ Restrooms lack signs including the International Symbol of Accessibility.

22 g. Concessions:

- 23 ▪ Service counters are too high (maximum 36” allowed, but counters up to 40-
24 7/8” measured).
- 25 ▪ The widths of lanes in queue areas are as narrow as 30” at the 180 degree turns,
26 less than the required 42” minimum width where there is 48” at the turn or 36”
27 minimum width where there is 60” at the turn.

- 1 ▪ Handles for dispensers at portable condiment stations are too high (48”
- 2 maximum allowed, but measured at 51”).
- 3 ▪ Sales counters lack the required clear space for disabled patrons to complete
- 4 payment.

5 h. Clubs:

- 6 ▪ Bars do not have accessible-height sections for wheelchair users (no more than
- 7 34” above the finished floor allowed, but up to 42” measured).
- 8 ▪ No accessible-height dining surfaces with a forward approach for a person in a
- 9 wheelchair.
- 10 ▪ No unobstructed accessible portion of sales counter (36” minimum clear length
- 11 required that extends the same depth of the counter, but point-of-sale, beer taps,
- 12 and soda dispensers occupy the countertop).

13 i. Restaurants and Loft Meeting Rooms:

- 14 ▪ Excessive pressure required to open entry doors (maximum 5 lbs. allowed, but
- 15 up to 18 lbs. measured), and restroom doors.
- 16 ▪ Entry doors close too fast (fastest time allowed is 5 seconds, but as fast as 3.69
- 17 seconds measured).
- 18 ▪ Push side maneuvering space is not provided at the entry door (minimum 48”
- 19 required, but maneuvering space as low as 34-1/2” measured).
- 20 ▪ Inadequate accessible seating (4 accessible tables are required in Bourbon Pub
- 21 but only 1 is provided, 4 accessible tables are required in Bourbon Steak but
- 22 only 1 is provided, accessible seating not properly dispersed in the Tailgate, and
- 23 no accessible tables are provided at all in the exterior seating area of the
- 24 Tailgate).
- 25 ▪ A lift that is used as part of the accessible route of travel from Bourbon Pub to
- 26 Tailgate: (1) does not comply with specified conditions allowing the lift; and (2)
- 27 is inappropriately used by staff to move freight between levels.
- 28 ▪ Non-compliant, loose floor mats are a tripping hazard.
- Non-compliant handrails at stairs and ramps.

- 1 ▪ Clear knee space is not provided at lavatories and lavatories have uninsulated
2 hot water and waste lines, which pose a significant danger to wheelchair users.
- 3 ▪ Wheelchair accessible stalls have no door pulls on the inside, or if inside door
4 pulls are provided, they are not located below the latch, making it difficult if not
5 impossible for many persons with mobility disabilities to lock the stall doors
6 once inside.
- 7 ▪ Baby changing stations in restrooms encroach and prevent entry into
8 wheelchair-accessible stalls when the tables are open, rendering the stalls
9 unusable by wheelchair users.
- 10 ▪ Wheelchair accessible stall has inadequate toe space beyond the toilet partition
11 (9” of clearance is required, but only 6” measured).
- 12 ▪ Elevator that provides the accessible route of travel to the Loft Meeting Rooms
13 is accessed through the working kitchen, which is specifically prohibited.
- 14 j. Luxury Suites are largely inaccessible, including the following barriers in virtually *all*
15 suites, without limitation:
- 16 ▪ Sightlines are non-compliant (i.e. a person in a wheelchair does not have a clear
17 view of the field when people are seated in front of the wheelchair space).
- 18 ▪ Excessive force required to open door.
- 19 ▪ Accessible seating at exterior seating areas is not wide enough.
- 20 ▪ Accessible seating at exterior seating area obstructs circulation routes (i.e.
21 wheelchair will block other patrons from exiting).
- 22 ▪ Companion seats at exterior seating area do not provide shoulder alignment with
23 the corresponding wheelchair space.
- 24 ▪ Dining counter at window inside suites is too high.
- 25 ▪ No accessible-height dining surfaces.
- 26 ▪ No forward-approach at sinks or ice-sinks.
- 27 ▪ Clothes rods and shelves in closets are not at accessible heights (maximum 48”
28 allowed, but up to 64” measured).

- 1 ▪ Touch screen catering ordering stations are too high (maximum 48” allowed, but
2 up to 50-1/2” measured).
- 3 ▪ Telephones are too high (maximum 48” allowed, but up to 50-3/8” measured).
- 4 k. Drinking Fountains are not high enough to allow enough knee clearance for wheelchair
5 users and the water stream is not high enough.
- 6 l. Team Stores:
- 7 ▪ Large gaps at the walking surface just at the exterior of the entrances to the
8 stores.
- 9 ▪ Checkout queue line in the satellite Team Store located on the Main Concourse
10 (Level 300) does not provide the required clearance at turns.
- 11 ▪ Inaccessible dressing room in Main Team Store.
- 12 68. Numerous barriers prevent patrons with mobility disabilities from having full and equal
13 access to and enjoyment of parking, including the following, without limitation:
- 14 a. Inadequate number of designated accessible spaces (“DAS”), including van-accessible
15 stalls provided in parking lots (33 van stalls required, but only 15 provided), and in
16 some cases, no DAS provided at all.
- 17 b. Excessive slopes at DAS and access aisles. Maximum 1:48 slope allowed, but up to
18 7.8% measured in stalls and up to 18.5% at tail end of stalls and access aisles.
- 19 c. Holes and other gaps and excessive changes in level at DAS.
- 20 d. No access aisles provided for DAS.
- 21 e. Access aisles provided are too narrow (60” minimum width required, but 58”
22 measured).
- 23 f. Unnecessary detectable warnings obstruct access aisles for DAS.
- 24 g. Severe changes in level (maximum 1/2” allowed, but up to 4” high vertical edges of
25 concrete measured).
- 26 h. Excessive running slopes at walkways (5.0% maximum allowed, but up to 17.7%
27 measured) and dangerously narrow landings (60” minimum required, but only 48”
28 measured).

- 1 i. Dangerously excessive cross slopes at ramps and other walkways (1:48 (2.08%)
- 2 maximum allowed, but up to 5.4% measured).
- 3 j. DAS located far from entrances or paths of travel to entrances.
- 4 k. Surfaces of parking spaces and access to the public right of way from parking are
- 5 composed of loose rocks, sand, and gravel (i.e. not firm, stable, or slip-resistant),
- 6 making it extremely difficult for wheelchair users to navigate in these areas.
- 7 l. Wheelchair users forced to pass behind other parked vehicles.
- 8 m. Dangerous gaps/openings in the ground do not allow the passage of a sphere more than
- 9 $\frac{1}{2}$ " in diameter (e.g. front tire of a wheelchair).
- 10 n. No accessible hand-washing stations or hand sanitizer dispensers are provided near
- 11 porta-potties.

12 69. There are many barriers in the pedestrian right of way serving the Stadium, including
the following, without limitation:

- 13 a. Excessive running slopes of walking surfaces (1:20 (5%) allowed, but up to 26.4%
- 14 measured).
- 15 b. Counter slopes of adjoining gutters and road surfaces immediately adjacent to and
- 16 within 24" of curb ramps are too steep (1:20 (5.0%) maximum allowed, but up to 25.0%
- 17 measured).
- 18 c. Excessive running slopes of ramps (1:12 (8.33%) maximum allowed, but up to 25.6%
- 19 measured).
- 20 d. Surfaces of ramps and ramp landings are composed of sand and debris (i.e. not firm,
- 21 stable, or slip-resistant), making it extremely difficult for persons with mobility
- 22 disabilities to navigate in these areas.
- 23 e. Dangerous vertical edges at transitions to walks, gutters, or streets (must be flush and
- 24 free of abrupt changes, but up to 2" measured).
- 25 f. Excessive changes in level ($>$ the $\frac{1}{2}$ " allowed) near the North crossing of Great America
- 26 Parkway and Tasman Drive force users who cannot step up the curb to wait in traffic
- 27 lanes.
- 28

- 1 g. Inadequate landings at the top of curb ramps (48" long x 36" wide level landing
- 2 required, but as little as 3" measured).
- 3 h. Sidewalks are too narrow (48" required, but as narrow as 39" measured).

4 **VI. CLASS ALLEGATIONS**

5 70. Plaintiffs Abdul and Priscilla Nevarez, as representatives of the Class, bring this action
6 on behalf of themselves and all persons similarly situated and seek class certification pursuant to
7 Federal Rule of Civil Procedure 23(b)(2) and/or (b)(3) as set forth below.

8 71. **Class Definitions.** The three classes that Plaintiffs seek to represent are comprised of
9 the following:

10 72. **Injunctive Relief Class:** All persons with mobility disabilities who use wheelchairs,
11 scooters, or other mobility aids who will attempt to purchase accessible seating for a public event at
12 Levi's Stadium and who will be denied equal access to the Stadium's facilities, services, accessible
13 seating, parking, amenities, and privileges, including ticketing, during the three years prior to the
14 filing of the Complaint herein through the conclusion of this action.

15 73. **Companion Injunctive Relief Class:** All persons who are companions of persons with
16 mobility disabilities who use wheelchairs, scooters or other mobility aids and who have used or will
17 use companion seating for public events located at Levi's Stadium during the three years prior to the
18 filing of the Complaint herein through the conclusion of this action.

19 74. **Damages Class:** All persons with mobility disabilities who use wheelchairs, scooters
20 or other mobility aids who have purchased, attempted to purchase, or for whom third parties
21 purchased accessible seating and who have been denied equal access to Levi's Stadium's facilities,
22 services, accessible seating, parking, amenities, and privileges at an event controlled by the Forty
23 Niners Football Company, LLC, Forty Niners SC Stadium Company, LLC, or Forty Niners Stadium
24 Management Company, LLC, during the two years prior to the filing of the Complaint herein through
25 the conclusion of this action. Excluded from the above-referenced class definitions are the officers,
26 directors, and employees of Defendants, and any of Defendants' shareholders or other persons who
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1 hold a financial interest in Defendants. Also excluded is any judge assigned to hear this case (or any
2 spouse or family member of any assigned judge), or any juror selected to hear this case.

3 75. This action is brought as a class action and may properly be so maintained pursuant to
4 Federal Rule of Civil Procedure 23 and applicable case law. In addition to declaratory and injunctive
5 relief, this action seeks classwide damages pursuant to California Civil Code § 52(a) in the amount of
6 \$4,000 per class member based on Defendants' unlawful conduct as alleged herein. The Class
7 Representatives, Plaintiff DeFrancesco and the class members seek minimum statutory damages
8 under the Unruh Act as set forth in the Court's Order Granting in Part and Denying in Part Motion for
9 Class Certification (ECF 186).

10 76. **Impracticability of Joinder (Numerosity of the Class).** The members of the proposed
11 classes are so numerous that joinder of all such persons is impracticable and the disposition of their
12 claims in a class action is a benefit both to the parties and to this Court. The number of persons in this
13 case exceeds 3,000 persons. The number of persons in the class and their identities and addresses
14 may be ascertained from Defendants' records.

15 77. **Questions of Fact and Law Common to the Class.** All members of the classes have
16 been and continue to be denied their civil rights to full and equal access to, and use and enjoyment of,
17 the services and facilities operated by the Defendants because of the violations of disability
18 nondiscrimination laws alleged herein. There are numerous questions of law and fact common to the
19 class, including, but not limited to, the following:

- 20 a. Whether Defendants 49ERS LLC, STADCO, and NINERS MGMT are the owners,
21 operators or lessors of a public accommodation within the meaning of Title III of the
22 ADA;
- 23 b. Whether Defendants are business establishments within the meaning of the Unruh Civil
24 Rights Act;
- 25 c. Whether Defendants constructed Levi's Stadium and its related facilities and parking
26 facilities after March 15, 2012;
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- 1 d. Whether Levi’s Stadium and its parking and other facilities comply with the Americans
2 with Disabilities Act Accessibility Guidelines of 1991 (“ADAAG”);
- 3 e. Whether Levi’s Stadium and its parking and other facilities comply with the 2010 ADA
4 Standards for Accessible Design;
- 5 f. Whether Levi’s Stadium and its parking and other facilities comply with the 2010
6 iteration of the California Building Code as it pertains to disability access;
- 7 g. Whether the CITY’s facilities, sidewalks, crosswalks, curbs and curb ramps owned and
8 operated by the CITY contain physical barriers that limit or deny access to Levi’s
9 Stadium by persons with mobility disabilities;
- 10 h. Whether Defendants CITY and STADIUM AUTHORITY are discriminating against
11 Plaintiffs and members of the proposed classes in violation of Title II of the ADA, 42
12 U.S.C. sections 12131, *et seq.*, by failing to make their facilities, programs, services and
13 activities accessible to and usable by persons with mobility disabilities;
- 14 i. Whether Defendants provide ticketing services to public events held at Levi’s Stadium;
- 15 j. Whether Defendants provide persons with mobility disabilities with full and equal
16 access to their ticketing services, including the opportunity to purchase tickets for
17 accessible seating during the same hours, methods of distribution, the same types and
18 numbers of ticketing sales outlets (including telephone service, in-person ticket sales at
19 a facility, and its website) as nondisabled persons as required by 28 C.F.R.
20 § 36.302(f)(1)(ii) and 28 C.F.R § 35.138(a)(2);
- 21 k. Whether Defendants provide persons with mobility disabilities with an equal
22 opportunity to purchase tickets for accessible and companion seating at all price levels
23 for events or series of events as required by 28 C.F.R. § 36.302(f)(3) and
24 28 C.F.R § 35.138(c);
- 25 l. Whether Defendants permit persons with mobility disabilities with an equal opportunity
26 to purchase group seating, including the ability to purchase the same number of total
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1 tickets as are permitted to a group of nondisabled persons as required by

2 28 C.F.R. § 36.302(f)(4) and 28 C.F.R § 35.138(d)(4);

3 m. Whether Defendants permit persons with mobility disabilities the opportunity to
4 purchase group seating so that the group contains accessible seating with nondisabled
5 seating nearby so that, if possible, the entire group can sit together as required by
6 28 C.F.R. § 36.302(f)(4)(v); and 28 C.F.R § 35.138(d)(5);

7 n. Whether Defendants' policy and practice of failing and refusing to provide persons with
8 mobility disabilities with full and equal access to its ticketing services violates the
9 ADA;

10 o. Whether Defendants' policy and practice of failing and refusing to provide persons with
11 mobility disabilities with access to ticketing services through the Levi's Stadium
12 website or by telephone from the Levi's Stadium Box Office violates the ADA;

13 p. Whether Defendants' policy and practice of failing and refusing to provide equal access
14 to ticketing has the effect of denying persons with mobility disabilities with full and
15 equal access to ticketing services, and full and equal access to and enjoyment of the
16 public events offered at Defendants' venues;

17 q. Whether Defendants' have made reasonable modifications in their policies and practices
18 regarding ticketing so as to ensure that persons with mobility disabilities have an equal
19 opportunity to purchase tickets for accessible seating, and full and equal access to, and
20 enjoyment of, Defendants' public events;

21 r. Whether Defendants are violating California Civil Code § 51, *et seq.*, by failing to
22 provide full and equal access to people with mobility disabilities;

23 s. Whether Defendants, by their actions and omissions alleged herein, have engaged in a
24 pattern and practice of discriminating against Plaintiffs and other persons with mobility
25 disabilities in violation of applicable state and federal disability civil rights laws;

26 t. Whether the Plaintiffs and the members of the putative class are entitled to damages,
27 and the nature of such damages; and,

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1 u. Whether the Plaintiffs and the members of the putative class are entitled to declaratory
2 and/or injunctive relief, and the nature of such relief.

3 78. **Typicality.** The claims of the Class Representatives are typical of those of the classes.
4 The Class Representatives' claims are typical of the claims of the classes in the following ways: 1) the
5 Class Representatives are members of the proposed class; 2) their claims arise from the same physical
6 barriers, uniform corporate policies, procedures, practices and course of conduct on the part of
7 Defendants; 3) their claims are based on the same legal and remedial theories as those of the proposed
8 class and involve similar factual circumstances; 4) the injuries suffered by the Class Representatives
9 are similar to the injuries suffered by the class members; and 5) the relief sought herein will benefit
10 the Class Representatives and all class members alike. The claims of Plaintiff ABDUL NEVAREZ
11 are typical of those of the proposed class of persons with mobility disabilities. The claims of Plaintiff
12 PRISCILLA NEVAREZ are typical of those of the proposed class of companions of persons with
13 mobility disabilities.

14 79. **Adequacy.** The Class Representatives will fairly and adequately represent the interests
15 of their respective classes. They have no interests adverse to the interests of other members of the
16 proposed classes, and have retained counsel who are competent and experienced in litigating complex
17 class actions, including large-scale disability rights class action cases.

18 80. **Predominance.** With respect to Plaintiffs' claims under the ADA and the Unruh Civil
19 Rights Act, class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because
20 questions of law or fact common to the class members predominate over any questions affecting only
21 individual members of the proposed classes.

22 81. **Superiority.** A class action is superior to other methods for the fair and efficient
23 adjudication of this controversy because, inter alia: 1) individual claims by the class members would
24 be impracticable because the costs of pursuit of such claims would far exceed what any individual
25 class member has at stake; 2) relatively little individual litigation has been commenced over the
26 controversies alleged in this Complaint and individual class members are unlikely to have an interest
27 in separately prosecuting and controlling individual actions; 3) the concentration of litigation of these
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1 claims in one forum will achieve efficiency and promote judicial economy; 4) the classes are
2 manageable, and no difficulties are likely to be encountered in the management of this class action
3 that would preclude its maintenance as a class action; 5) the class members are readily identifiable
4 from Defendants’ own records; and 6) prosecution of separation actions by individual members of the
5 classes would create the risk of inconsistent or varying adjudications with respect to individual
6 members of the classes that would establish incompatible standards of conduct for Defendants.

7 **82. The Class Meets the Requirements of Federal Rule of Civil Procedure 23(b)(2).**

8 Defendants have acted and refused to act on grounds generally applicable to the class, making the
9 declaratory and injunctive relief sought on behalf of the class as a whole appropriate.

10 83. Without a class action, Defendants will likely retain the benefit of their wrongdoing and
11 will continue in their illegal course of conduct which will result in further damages and injuries to the
12 Plaintiffs and the classes.

13 **FIRST CLAIM:**
14 **VIOLATION OF THE ADA, TITLE III**
15 **[42 U.S.C. §§ 12101 *et seq.*]**
16 **(Against all Defendants except the City of Santa Clara**
17 **and the Santa Clara Stadium Authority)**

18 84. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
19 allegations contained in all paragraphs of this Complaint, and incorporate them herein as if separately
20 repled.

21 85. In 1990 the United States Congress made findings that laws were needed to more fully
22 protect “some 43,000,000 Americans [with] one or more physical or mental disabilities”; that
23 “historically, society has tended to isolate and segregate individuals with disabilities”; that “such
24 forms of discrimination against individuals with disabilities continue to be a serious and pervasive
25 social problem”; that “the Nation’s proper goals regarding individuals with disabilities are to assure
26 equality of opportunity, full participation, independent living, and economic self-sufficiency for such
27 individuals”; and that “the continuing existence of unfair and unnecessary discrimination and
28 prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue
those opportunities for which our free society is justifiably famous” 42 U.S.C. § 12101.

1 86. In passing the ADA, Congress stated as its purpose:

- 2 v. to provide a clear and comprehensive national mandate for the elimination of
3 discrimination against individuals with disabilities;
4 w. to provide clear, strong, consistent, enforceable standards addressing discrimination
5 against individuals with disabilities;
6 x. to ensure that the Federal Government plays a central role in enforcing the standards
7 established in this Act on behalf of individuals with disabilities; and
8 y. to invoke the sweep of congressional authority, including the power to enforce the
9 fourteenth amendment and to regulate commerce, in order to address the major areas of
10 discrimination faced day-to-day by people with disabilities. 42 U.S.C. § 12101(b).

11 87. As part of the ADA, Congress passed “Title III - Public Accommodations and Services
12 Operated by Private Entities.” 42 U.S.C. § 12181 *et seq.* The Stadium and its ticketing operations are
13 among the “private entities” which are considered “public accommodations” for purposes of this title,
14 which includes but is not limited to a “. . . stadium or other place of exhibition or entertainment” (see
15 42 U.S.C. § 12181(7)(C)) and “a restaurant, bar, or other establishment serving food or drink,” (see 42
16 U.S.C. § 12181(7)(B)).

17 88. The ADA states that “No individual shall be discriminated against on the basis of
18 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or
19 accommodations of any place of public accommodation by any person who owns, leases, or leases to,
20 or operates a place of public accommodation.” 42 U.S.C. § 12182. The specific prohibitions against
21 discrimination include, but are not limited to the following:

22 § 12182(b)(1)(A)(ii): “Participation in Unequal Benefit. - It shall be discriminatory to afford an
23 individual or class of individuals, on the basis of a disability or disabilities of such individual or class,
24 directly, or through contractual, licensing, or other arrangements, with the opportunity to participate
25 in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to
26 that afforded to other individuals”;

1 § 12182(b)(2)(A)(ii): “a failure to make reasonable modifications in policies, practices, or procedures
2 when such modifications are necessary to afford such goods, services, facilities, privileges,
3 advantages, or accommodations to individuals with disabilities...”;

4 § 12182(b)(2)(A)(iii): “a failure to take such steps as may be necessary to ensure that no individual
5 with a disability is excluded, denied service, segregated, or otherwise treated differently than other
6 individuals because of the absence of auxiliary aids and services...”;

7 § 12182(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication barriers that are
8 structural in nature, in existing facilities [those constructed before the effective date of the ADA and
9 not altered since then] ... where such removal is readily achievable”; and

10 § 12182(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier under clause (iv)
11 is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or
12 accommodations available through alternative methods if such methods are readily achievable.”

13 The acts and omissions of Defendants set forth herein were in violation of Plaintiffs’ rights
14 under the ADA and the regulations promulgated thereunder, 28 CFR Part 36 *et seq.*

15 89. The Stadium was designed and constructed (or both) after January 26, 1993, thus
16 triggering access requirements under Title III of the ADA. The ADA prohibits designing and
17 constructing facilities for first occupancy after January 26, 1993 that are not readily accessible to, and
18 usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. §
19 12183(a)(1). Here, Defendants violated the ADA by designing and constructing (or both) the Stadium
20 in a manner that did not comply with federal disability access design standards even though it was
21 structurally practicable to do so.

22 90. The ADA also requires reasonable modifications in policies, practices, or procedures,
23 when necessary to afford such goods, services, facilities, or accommodations to individuals with
24 disabilities, unless the entity can demonstrate that making such modifications would fundamentally
25 alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii). Here, Defendants violated the ADA by failing to
26 make reasonable modifications in policies, practices, or procedures at the Stadium and for ticketing to
27 events at the Stadium, when these modifications were necessary to afford (and would not
28

1 fundamentally alter the nature of) these goods, services, facilities, and accommodations to persons
2 with mobility disabilities.

3 91. As of the dates of Plaintiffs' attendance of events at the Stadium and the filing of this
4 Complaint, the Stadium, the related parking lots and the pedestrian right of way that serves them have
5 denied and continue to deny full and equal access to Plaintiffs and to other mobility disabled persons
6 in other respects, which violates Plaintiffs' rights to full and equal access and which discriminates
7 against them on the basis of disability, thus wrongfully denying to them the full and equal enjoyment
8 of the goods, services, facilities, privileges, advantages and accommodations, in violation of §§ 12182
9 and 12183 of the ADA. 42 U.S.C. §§ 12182 and 12183.

10 92. Pursuant to the ADA, 42 U.S.C. 12188 *et seq.*, Plaintiffs are entitled to the remedies and
11 procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as they are
12 being subjected to discrimination based on disability in violation of the ADA or have reasonable
13 grounds for believing that they are about to be subjected to discrimination. Pursuant to § 12188(a)(2),
14 "Injunctive relief. In the case of violations of sections 12182(b)(2)(A)(iv) and section 12183(a) of
15 this title, injunctive relief shall include an order to alter facilities to make such facilities readily
16 accessible to and usable by individuals with disabilities to the extent required by this subchapter.
17 Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or
18 service, modification of a policy, or provision of alternative methods, to the extent required by this
19 subchapter."

20 93. Plaintiffs seek relief pursuant to remedies set forth in § 204(a) of the Civil Rights Act of
21 1964, 42 USC 2000(a)-3(a), and pursuant to Federal Regulations adopted to implement the ADA.
22 Plaintiffs NEVAREZ and DEFRANCESCO are qualified disabled persons for purposes of § 12188(a)
23 of the ADA who are being subjected to discrimination based on disability in violation of Title III and
24 who have reasonable grounds for believing they will be subjected to such discrimination each time
25 that they may attempt to use the Stadium, its related parking lots and the pedestrian right of way
26 serving them.

1 94. Plaintiff PRISCILLA NEVAREZ seeks relief based on her association with Mr.
2 NEVAREZ. She has been discriminated against and suffered injury within the meaning of the ADA
3 as a result of her attempts to assist Mr. NEVAREZ with obtaining tickets for and attending events at
4 the Stadium, and as a result of the being forced to assist Mr. NEVAREZ to traverse and/or overcome
5 physical access barriers in connection with the Stadium’s inaccessible parking facilities, inaccessible
6 path of travel from those facilities to the Stadium, and other inaccessible features of the Stadium itself
7 as alleged herein.

8 WHEREFORE, Plaintiffs request additional relief as outlined below.

9
10 **SECOND CLAIM:**
11 **VIOLATION OF THE ADA, TITLE II [42 USC §§ 12201 et seq.]**
12 **(Against the City of Santa Clara and the Santa Clara Stadium Authority)**

13 95. Plaintiffs replead and incorporate by reference, as if fully set forth hereafter, the
14 allegations contained in all paragraphs of this Complaint and incorporate them herein as if separately
15 repled.

16 96. Pursuant to Title II of the ADA, 42 U.S.C. § 12132, no qualified individual with a
17 disability shall, by reason of such disability, be excluded from participation in or be denied the
18 benefits of the services, programs or activities of a public entity, or be subjected to discrimination by
19 any such entity.

20 97. Plaintiffs ABDUL NEVAREZ and SEBASTIAN DEFRANCESCO were at all times
21 relevant herein qualified individuals with a disability as defined under 42 U.S.C. § 12132(2).

22 98. Defendants CITY and STADIUM AUTHORITY were at all relevant times “public
23 entities” covered by Title II of the ADA and its accompanying regulations.

24 99. The premises owned, operated or administered by Defendants CITY and STADIUM
25 AUTHORITY include buildings, structures, pedestrian rights of way and other facilities within the
26 meaning of the 2010 Americans with Disabilities Act Accessibility Standards. Since March 15, 2012,
27 Defendants CITY and STADIUM AUTHORITY have constructed, altered, and/or repaired parts of
28 these premises within the meaning of the 2010 ADA Standards, and that Defendants have failed to

1 make their facilities readily accessible to and usable by persons with mobility disabilities as required
2 under federal accessibility standards. Since January 26, 1992, Defendants CITY and STADIUM
3 AUTHORITY have constructed, altered, and/or repaired parts of these premises within the meaning
4 of the 1991 ADAAG, and Defendants have failed to make their facilities readily accessible to and
5 usable by persons with mobility disabilities as required under federal accessibility standards

6 100. Public entity Defendants CITY and STADIUM AUTHORITY have failed to provide
7 meaningful and equal access to the benefits of their services, programs and activities to persons with
8 mobility disabilities as described herein, including failing to ensure that the Stadium and other public
9 facilities located on the property owned and operated by Defendants CITY and STADIUM
10 AUTHORITY are readily accessible to disabled persons; failing to ensure that related public facilities
11 and public accommodations, as described herein, including the Stadium's related parking programs
12 and facilities, and the paths of travel and pedestrian rights of way leading from those parking lots to
13 the Stadium entrances, are readily accessible to persons with mobility disabilities; and failing to
14 remove known architectural barriers at the subject facilities so as to be accessible to disabled persons,
15 and/or modify its programs, services and activities to make them readily accessible to disabled
16 persons, including Plaintiffs. As a proximate result of Defendants CITY and STADIUM
17 AUTHORITY's actions and omissions, Plaintiffs were discriminated against in violation of Title II of
18 the ADA and the regulations adopted to implement the ADA.

19 101. To the date of filing this Complaint, Plaintiffs and the class members have been and are
20 being denied full and equal access to the Stadium and its services, programs and activities. Abdul
21 Nevarez continues to attend events at the Stadium and Sebastian DeFrancesco intends to return to the
22 Stadium. They will be denied full and equal access to its programs, services and activities until
23 Defendants make the Stadium, its parking and its pedestrian right of way readily accessible to persons
24 with mobility disabilities. The acts of Defendants CITY and STADIUM AUTHORITY have
25 proximately caused and will continue to cause irreparable injury to Mr. NEVAREZ and Mr.
26 DEFRANCESCO if not enjoined by this Court.

1 102. Plaintiff PRISCILLA NEVAREZ seeks relief pursuant to remedies set forth in 42
2 U.S.C. § 12203. She has been discriminated against in her attempts to assist Mr. NEVAREZ with
3 obtaining tickets for accessible seating and companion seating for public events at the Stadium. In
4 addition, she has herself experienced discrimination as a result of struggling to assist Mr. NEVAREZ
5 with physical access barriers that limit or deny access to Defendants' programs, services, activities
6 and facilities, including but not limited to barriers that limit access to the Stadium, its related parking
7 program and facilities, and the pedestrian right of way from those parking facilities to the Stadium.

8 103. Per § 12133 of the ADA, as a result of such discrimination in violation of § 12132 of
9 the ADA, Plaintiffs are entitled to the remedies, procedures and rights set forth in Section 505 of the
10 Rehabilitation Act of 1973 (29 USC § 794a).

11 WHEREFORE, Plaintiffs request relief as outlined below.

12
13 **THIRD CLAIM:**
14 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**
15 **[Cal. Civil Code §§ 51 et seq.]**
16 **(Against All Defendants)**

17 104. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
18 factual allegations contained in all paragraphs of this Complaint, and incorporate them herein by
19 reference as if separately repled hereafter.

20 105. The Unruh Civil Rights Act, California Civil Code 51(b), provides that:
21 All persons within the jurisdiction of this state are free and equal, and no matter what their sex,
22 race, color, religion, ancestry, national origin, disability, or medical condition are entitled to
23 the full and equal accommodations, advantages, facilities, privileges, or services in all business
24 establishments of every kind whatsoever.

25 106. Defendants are business establishments within the meaning of the Unruh Act.
26 Defendants are the owners and operators of business establishments.

27 107. Defendants violated the Unruh Act by their acts and omissions, as follows:
28

- 1 a. Failure to modify their policies and procedures as necessary to ensure Plaintiffs full and
- 2 equal access to their accommodations, advantages, facilities, privileges, or services at
- 3 the Stadium, and ticketing for accessible seating at the Stadium;
- 4 b. Failure to construct and/or alter the Stadium in compliance with state building code and
- 5 state architectural requirements;
- 6 c. Violation of the ADA, a violation of which is a violation of the Unruh Act. Cal. Civil
- 7 Code § 51(f).

8 108. Plaintiffs and other similarly situated persons with mobility disabilities are unable to use
9 public facilities on a full and equal basis unless each such facility is in compliance with the provisions
10 of California Health & Safety Code §§ 19955 *et seq.* Plaintiffs are members of that portion of the
11 public whose rights are protected by the provisions of Health & Safety Code §§ 19955 *et seq.*

12 109. California Health & Safety Code §§ 19955 and 19955.5 were enacted “[t]o ensure that
13 public accommodations or facilities constructed in this state with private funds adhere to the
14 provisions of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government
15 Code.” The provisions of both Health and Safety Code §§ 19955 and 19955.5, apply to the Stadium.
16 Title 24, California Code of Regulations, formerly known as the California Administrative Code, was
17 in effect at the time of construction and alterations which, occurred at such public facility decades
18 after January 1, 1982, thus requiring access complying with the specifications of Title 24 whenever
19 each such “alteration, structural repair or addition” was carried out. Defendants and/or their
20 predecessors in interest carried out new construction and/or alterations, structural repairs, and/or
21 additions to such buildings and facilities during the period since Title 24 has been in effect. By failing
22 to comply with Health and Safety Code §§ 19955 and 19955.5 and with the requirements of Title 24
23 as set forth in the California Building Code (CBC), Defendants have denied full and equal access to
24 the Stadium for individuals with mobility disabilities, in violation of the Unruh Act.

25 110. Plaintiffs have experienced numerous barriers to access at the Stadium, its related
26 parking facilities and the pedestrian right of way leading from those facilities to the Stadium, as well
27 as in ticketing services for events at the Stadium, all of which have caused them major difficulty,
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1 discomfort and embarrassment. Plaintiffs are entitled to statutory damages.

2 111. On information and belief, the access features of the Stadium and its ticketing policies
3 and procedures have not been improved since Plaintiffs' most recent visits to the Stadium.

4 112. These barriers to access render the Stadium and its premises, as well as its related
5 parking facilities and pedestrian rights of way, inaccessible to and unusable by persons with mobility
6 disabilities. All facilities must be brought into compliance with all applicable federal and state code
7 requirements, according to proof.

8 113. Further, each violation of the ADA (as pled in the First and Second Claims, *supra*, the
9 contents of which are repled and incorporated herein as if separately repled), also constitutes a
10 separate and distinct violation of California Civil Code § 51(f), thus independently justifying an award
11 of damages and injunctive relief pursuant to California law, including but not limited to Civil Code §
12 52(a).

13 114. With respect to Defendants' violations of the Unruh Act that are not predicated on
14 violations of the ADA, Defendants' behavior was intentional: Prior to the construction of the Stadium,
15 Defendants were aware of and/or were made aware of their duties to refrain from establishing or
16 creating discriminatory policies and barriers that prevent persons with mobility disabilities from
17 obtaining full and equal access to their programs and facilities. For example, Defendants were aware
18 of their obligations to provide accessible features as required by the California Building Code (CBC),
19 but willfully failed to construct the Stadium in compliance with the CBC. Defendants did so with full
20 knowledge that their failure to comply with the CBC would result in the denial of full and equal
21 access to persons with mobility disabilities, thus denying them their civil rights and discriminating
22 against them in violation of the Unruh Civil Rights Act. Additionally, Plaintiffs have complained on
23 numerous occasions to Defendants to rectify their discriminatory policies and inaccessible facilities to
24 no avail. Accordingly, Defendants have engaged in willful affirmative misconduct in violating the
25 Unruh Civil Rights Act.

1 115. Plaintiffs' injuries are ongoing and will continue so long as Defendants do not modify
2 their policies and procedures and provide fully-accessible facilities for Plaintiffs and other persons
3 with mobility disabilities.

4 116. Defendants have continued their illegal and discriminatory policies and practices
5 despite actual knowledge that people with mobility disabilities, including Plaintiffs ABDUL
6 NEVAREZ and SEBASTIAN DEFRANCESCO, attempt to patronize the Stadium and encounter
7 illegal barriers that limit or deny full and equal access when they do so. Although Plaintiffs have
8 complained to several different employees (including, on information and belief, managerial
9 employees of Defendants) about the lack of accessible ticketing procedures and facilities, on
10 information and belief, no access improvements were made as a result of complaints made by
11 Plaintiffs. The "Scope of Development" for the Stadium ("Exhibit D" to the ground lease between
12 Defendants CITY and STADIUM AUTHORITY, attached to this Complaint as Exhibit E) mandates
13 the inclusion of the following at the Stadium:

14 curbs, gutters, sidewalks, entry gates, retaining walls, and ramps, including ramps
15 compliant with the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*,
16 as amended ("ADA"); ADA seating platforms and camera platforms; on-site Stadium
17 parking stalls (including ADA stalls); signage, including, pavement markings, banners,
18 advertising signs, wayfinding signs and monument signs; handrails; railings

19 However, Defendants failed to meet these obligations in constructing the Stadium. Defendants have
20 continued their illegal and discriminatory policies and practices at the Stadium and in their ticketing
21 procedures for the Stadium despite actual knowledge that people with mobility disabilities encounter
22 physical barriers and policies and practices that deny them full and equal access to the Stadium.

23 117. At all times herein mentioned, Defendants knew, or in the exercise of reasonable
24 diligence should have known, that their barriers, policies and practices at their facilities violated
25 disability access requirements and standards, and discriminated against Plaintiffs and upon other
26 persons with mobility disabilities, but Defendants have failed to rectify the violations, and presently
27 continue a course of conduct in maintaining policies, practices and physical access barriers that
28

1 discriminate against Plaintiffs and similarly situated persons with mobility disabilities.

2 WHEREFORE, Plaintiffs request relief as outlined below.

3 **PRAYER**

4 1. Plaintiffs have no adequate remedy at law to redress the wrongs suffered as set forth in
5 this Complaint. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the
6 unlawful acts, omissions, policies, and practices of Defendants as alleged herein, unless Plaintiffs are
7 granted the relief they request. Plaintiffs and Defendants have an actual controversy and opposing
8 legal positions as to Defendants' violations of the laws of the United States and the State of
9 California. The need for relief is critical because the rights at issue are paramount under the laws of
10 the United States and the State of California.

11 WHEREFORE, Plaintiffs pray for judgment and the following specific relief against
12 Defendants:

13 2. Issue a declaratory judgment that Defendants' actions, omissions, and failures,
14 including but limited to: failing to construct and modify the premises in compliance with the 2010
15 ADA Standards for Accessible Design, the ADAAG and the applicable iteration of the CBC, failing to
16 operate accessible ticketing procedures, and failing to make reasonable modifications in policy and
17 practice for Plaintiffs and other persons with mobility disabilities, violate the rights of Plaintiffs and
18 other similarly situated persons under 42 U.S.C. §§ 12101 *et seq.* and the regulations promulgated
19 thereunder; and California Civil Code §§ 51 *et seq.*

20 3. Issue an order enjoining Defendants, their agents, officials, employees, and all persons
21 and entities acting in concert with them:

- 22 a. From continuing the unlawful acts, conditions, and practices described in this
23 Complaint;
- 24 b. To provide reasonable modifications in policies and practices for persons with
25 mobility disabilities in all its programs, services and activities at the Stadium;
- 26 c. To ensure that persons with mobility disabilities are not denied the benefits of, or
27 participation in, programs, services, and activities at the Stadium;

- 1 d. To modify the above-described facilities to provide full and equal access to persons
2 with mobility disabilities, including without limitation the removal of all barriers
3 that violate the 2010 ADA Standards for Accessible Design and/or the 2010
4 iteration of the CBC, whichever provides greater access to persons with mobility
5 disabilities;
- 6 e. To maintain such accessible facilities once they are provided;
- 7 f. To train Defendants' employees and agents in how to provide full and equal access
8 to Defendants' services, facilities, programs and benefits, including but not limited
9 to ticketing and accessible seating; and,
- 10 g. To implement nondiscrimination protocols, policies, and practices to ensure full and
11 equal access for persons with mobility disabilities.

12 4. Retain jurisdiction over Defendants until the Court is satisfied that Defendants'
13 unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as
14 complained of herein no longer occur, and cannot recur;

15 5. Award to the members of the Plaintiff class statutory damages in accordance with
16 California Civil Code § 52(a);

17 6. Award to Plaintiffs all reasonable statutory attorneys' fees, litigation expenses, and
18 costs of this proceeding as provided by law, including but not limited to the ADA, 42 U.S.C. § 12205;
19 the Unruh Civil Rights Act, Cal. Civil Code § 52; and "public interest" attorney fees pursuant to the
20 provisions of California Code of Civil Procedure § 1021.5.

21 7. Award prejudgment interest pursuant to California Civil Code § 3291; and,

22 8. Grant such other and further relief as this Court may deem just and proper.

23
24 Dated: July 27, 2018

PEIFFER WOLF CARR & KANE

25 /s/ Catherine Cabalo
26 BY: CATHERINE CABALO

27 Attorneys for Plaintiffs and the Plaintiff Classes

DEMAND FOR JURY

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: July 27, 2018

PEIFFER WOLF CARR & KANE

/s/ Catherine Cabalo

BY: CATHERINE CABALO

Attorneys for Plaintiffs and the Plaintiff Classes

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