

1 **I. INTRODUCTION**

2 1. Plaintiffs Ian Smith, Sunday Parker, and  
3 Mitch Jeserich bring this lawsuit on  
4 behalf of themselves and other Oakland renters  
5 with mobility disabilities who need accessible  
6 housing. Plaintiffs, and all other Oakland renters  
7 who need accessible housing, are  
8 discriminatorily excluded from the benefit of  
9 Defendant City of Oakland's ("City") Rent  
10 Adjustment Program ("Program"), because few  
if any of the more than 64,000 rental units  
covered by that Program are accessible.

1 2. In failing to ensure that Plaintiffs and  
2 other people who need accessible rental  
3 housing have the same opportunity to benefit  
4 from its Rent Adjustment Program that  
5 nondisabled renters enjoy, on the same terms, the  
6 City of Oakland is violating the Americans

11 with Disabilities Act (“ADA”)<sup>1</sup> and analogous  
state law.

12 3. Oakland’s Rent Adjustment Program,  
which applies to over 60% of the City’s

13 private rental housing, provides substantial  
benefits to the large number of Oakland renters  
who

14 live in units that it covers. Most importantly, the  
Program sets and enforces limits on allowable

15 annual rent increases (currently set at 3.5%) for  
covered units, thus shielding the people living in

16 those units from the City’s rapidly rising rents,  
and helping to ensure that they can continue to

17 live in their homes and communities.

18 4. These benefits are more necessary now  
than ever, because the City of Oakland is

19 experiencing a severe housing affordability and  
displacement crisis. The Rent Adjustment

20 Program gives most Oakland renters some  
protection from this general trend. While the  
Program

21 allows landlords to bring the asking rent for

covered units up to market rate whenever an existing

22 tenant leaves, it provides stability for each new  
tenant over time, by ensuring that subsequent  
23 rent increases will be governed by the Program's  
set limits and restrictions for as long as they  
24 remain in  
their unit. \_\_\_\_\_

25

<sup>1</sup> Title II of the Americans with Disabilities Act prohibits public entities like Oakland from  
26 discriminating against people with disabilities, and demands that they not be “excluded from  
27 participation in” or “denied the benefits of the services, programs, or activities” such entities offer. *See* 42 U.S.C. § 12132. This broad prohibition against discrimination applies to  
“anything  
28 a public entity does.” *Cohen v. City of Culver City*, 754 F.3d 690, 695 (9th Cir. 2014).

1       5. A majority of Oakland renters live in  
units that are subject to the City's Rent  
2 Adjustment Program, and its protections apply  
regardless of household income.

3       6. However, Plaintiffs and other people  
who need accessible housing are uniquely  
4 barred from the Program's benefits because the  
Program excludes all rental housing built after  
5 January 1, 1983, from its coverage, and all or  
nearly all of Oakland's accessible rental units were  
6 built well after that date.

7       7. Since the mid-1980s, various laws and  
regulations have mandated that at least  
8 some new private rental units be built with  
accessibility in mind. Under these laws and  
9 regulations, a unit is accessible if it has (among  
other things): at least one stair-free route into and  
10 through the unit and to common areas of the  
building; doorways that are wide enough for

11 wheelchairs to get through; light switches,  
environmental controls, and outlets that are  
reachable

12 from a wheelchair; reinforcements in the  
bathroom walls to allow a tenant to install grab  
bars;

13 and enough space in the kitchen and bathroom to  
maneuver a wheelchair.<sup>2</sup> However, none of

14 these laws or regulations went into effect until  
after the Rent Adjustment Program's current

15 cutoff date of January 1, 1983, meaning that the  
units it covers will almost always lack such

16 essential accessibility features.

17       8. The need for accessible housing is not  
abstract: when a rental unit is not

18 accessible, people with mobility disabilities may  
be barred from entering it entirely, or they may

19 be able to get through the front door only to  
encounter doorways they can't pass, switches and

20 outlets they can't reach, a kitchen they can't  
effectively use, or a bathroom that they have to

21 crawl on their hands and knees to enter.

22 9. For many renters with mobility  
disabilities—including Plaintiffs Smith and  
23 Parker—living in an inaccessible unit is simply  
not an option. People in this position have no  
24 choice but to live in accessible rental units that  
were built after the Rent Adjustment Program’s  
25 current cutoff. As a result, they are excluded from  
the City’s Program entirely, and from the  
26 protection against rising rents that nondisabled  
Oakland tenants have the opportunity to enjoy.

27

<sup>2</sup> These are the basic requirements of  
accessibility under the Fair Housing Act  
effective March

28 13, 1991. *See* 42 U.S.C. § 3604(f)(3)(C).

1        10. The consequences of this exclusion can  
2        be extreme. For example, since moving to  
3        his accessible Oakland apartment in 2012, Mr.  
4        Smith's monthly rent has increased by over 70%,  
5        including a 37% jump in 2015 alone. Mr. Smith  
6        now pays over \$1,200 more per month than he  
7        paid in 2012 for the exact same apartment.

8        11. If Mr. Smith had been able to rent an  
9        accessible apartment that was covered by  
10       the City's Rent Adjustment Program, his rent  
11       could have gone up by a maximum of about 14%  
12       during this period. This would amount to an  
13       increase of only \$233, or roughly \$980 less per  
14       month than he pays now. In other words, the lack  
15       of accessible units in the City's Rent  
16       Adjustment Program—and Mr. Smith's  
17       consequent inability to participate in that  
18       Program—is

10 now costing him almost \$12,000 a year.

11 12. Plaintiff Sunday Parker has faced similar  
rent increases since moving to Oakland  
12 in 2014. Like Mr. Smith, Ms. Parker has been  
unable to find an accessible apartment covered  
by  
13 Oakland's Rent Adjustment Program, and she  
has repeatedly been forced to find new housing  
14 because the accessible apartment she was living  
in became unaffordable. Though she would  
15 prefer to live alone, Ms. Parker now lives with a  
roommate to offset the high and ever-rising cost  
16 of living in accessible apartment that is not  
covered by the City's Program.

17 13. Because they cannot afford the rapid rent  
increases that exclusion from the Rent  
18 Adjustment Program entails, other people with  
mobility disabilities choose to "make do" with  
19 inaccessible but rent-stabilized apartments, even  
if doing so means struggling every day to do  
20 simple things like entering and exiting their



home, using the bathroom, cooking a meal, or  
21 turning on the lights. These are all harms that  
Oakland's nondisabled renters need not endure  
as a  
22 condition of enjoying the benefit of the  
Program's protections.

23 14. Plaintiff Mitch Jeserich—who needs an  
accessible unit but has lived in an  
24 inaccessible rent-stabilized apartment since  
2015—falls into this latter camp. Mr. Jeserich's  
25 apartment is covered by the Rent Adjustment  
Program but is inaccessible in ways that impact  
his  
26 dail  
  
y life.

27

1        15. By excluding all or nearly all of  
Oakland's accessible units from its Rent  
2 Adjustment Program, the City places people with  
disabilities who need such units in a  
3 discriminatory double-bind: either they can rent  
an apartment that meets their access needs but  
4 leaves them outside the Program's protections,  
or—if the nature of their disability allows it—  
5 they can attempt to get by in an inaccessible unit  
that is covered by the Program, but that forces  
6 them to endure the daily indignities,  
inconveniences, and potential dangers that living  
in an  
7 inaccessible unit inevitably entails. In either  
circumstance, people with disabilities are denied  
the  
8 same opportunity to participate in and benefit  
from Oakland's Rent Adjustment Program that  
the

9 City's nondisabled tenants enjoy.<sup>3</sup>

10 16. Under the ADA, Oakland must  
reasonably modify its Rent Adjustment  
Program

11 to avoid this discriminatory impact. And,  
because the ADA preempts conflicting state and  
local

12 laws, this obligation applies even if the  
necessary changes would otherwise be barred by  
the

13 Costa-Hawkins Rental Housing Act or the City's  
own ordinances.

14 17. On June 6, 2019, Plaintiffs sent a letter  
requesting that the City of Oakland

15 modify its Rent Adjustment Program to  
encompass accessible units, so that people with  
16 disabilities who need such units have the same  
opportunity to access the Program's benefits that  
17 the City's nondisabled tenants currently enjoy.  
However, the City has not made the necessary  
18 changes, leaving Plaintiffs no choice but to file

this lawsuit.

19       18. In filing this case, Plaintiffs are asking  
20 only for what the City's nondisabled  
21 renters already have: a meaningful opportunity  
22 to enjoy the benefit of Oakland's Rent  
23 Adjustment Program, without any burdensome  
24 administrative requirements or risk of retaliation,  
25 and without having to endure the hardship of life  
26 in an inaccessible unit as a condition of  
27 coverage.

24<sup>3</sup> This City-caused discrimination adds insult to  
25 injury, as renters with mobility disabilities are  
26 already subjected to private housing  
27 discrimination at far-greater rates than their  
nondisabled peers. *See* Dept. of Housing and  
Urban Dev., *Discrimination in the Rental  
Housing Market  
Against People Who Are Deaf and People Who  
Use Wheelchairs: National Study Findings* at 1  
(2015), available a



# INTRODUCTION

1  
2 1. Plaintiffs bring this action on behalf of  
3 themselves and a proposed class of  
4 similarly situated persons with mobility disabilities  
5 to redress the systemic and pervasive  
6 discrimination against them and members of the  
7 proposed class by the City of Oakland (hereafter  
8 “the City” or “Defendant”). Specifically, through the  
9 policies and practices described herein,  
10 Defendant has denied persons with mobility  
disabilities full and equal access to the City’s  
pedestrian rights of way, including sidewalks, curb  
ramps, crosswalks, pedestrian crossings and  
other public walkways within the boundaries of the  
City (hereafter “pedestrian rights of way”).  
These public facilities are owned, operated or  
controlled by the City, and are characterized by  
multiple, pervasive and hazardous disability access

barriers. By its conduct, Defendant has  
11 violated Title II of the Americans with Disabilities  
Act of 1990 (42 U.S.C. §§ 12131, *et seq.*)  
12 (“ADA”), Section 504 of the Rehabilitation Act of  
1973 (29 U.S.C. §§ 794, *et seq.*) (“Section  
13 504”), California Government Code §§ 11135, *et*  
*seq.* (“Cal. Govt. Code § 11135”), and their  
14 implementing regulations. Plaintiffs seek and are  
entitled to declaratory and injunctive relief  
15 prohibiting such continued discrimination.

16 2. At all times relevant to this action, Defendant  
has engaged in the following  
17 discriminatory and illegal policies and practices with  
respect to the pedestrian right of way and  
18 persons with mobility disabilities:

19 a. Constructing sidewalks, curb ramps,  
crosswalks and other elements of the  
20 pedestrian right of way that do not comply  
with applicable federal or state  
21 disability access standards including, *inter*  
*alia*, the 2010 Americans with

22 Disabilities Act Standards for Accessible  
Design (“2010 ADAS”), the 1991  
23 Americans with Disabilities Act Accessibility  
Guidelines (“ADAAG”), the  
24 Uniform Federal Accessibility Standards  
 (“UFAS”) and the applicable iteration of  
25 the California Building Code (“CBC”).

26 b. Altering or repairing sidewalks, curb ramps,  
crosswalks and other elements of the  
27 pedestrian right of way in a manner that fails  
to comply with federal and state  
28 access standards, including 2010 ADAS,  
ADAAG, UFAS and/or the CBC.



1 c. Allowing the construction or alteration by  
other entities of sidewalks, curb ramps,  
2 crosswalks and other elements of the  
pedestrian right of way in a manner that fails  
3 to comply with applicable federal and state  
disability access standards, including  
4 *inter alia*, the 2010 ADAS, ADAAG and/or  
the CBC.

5 d. With respect to intersections on streets that  
are resurfaced or otherwise altered or  
6 newly constructed, failing to install curb  
ramps at those locations that comply with  
7 applicable federal and state disability access  
standards, as required by federal and  
8 state law.

9 e. Failing to maintain its pedestrian rights of  
way in a condition that is readily  
10 accessible to persons with mobility

disabilities by preventing or eliminating access

11 barriers caused by damaged or deteriorated  
sidewalks, curb ramps, cross walks and  
12 other elements of the pedestrian right of way,  
as required by federal and state law.

13 f. With respect to newly constructed curb  
ramps, failing to utilize or require the  
14 utilization of designs that comply with  
federal and state accessibility standards,  
15 including the 2010 ADAS, ADAAG, UFAS  
and/or the CBC.

16 g. Failing to remediate newly constructed or  
altered sidewalks, curb ramps, streets or  
17 other elements of the pedestrian right of way  
that do not comply with federal  
18 and/or state accessibility standards as  
required by 28 C.F.R. § 35.151(c)(5) and  
19 California Government Code § 4452.

20 h. Failing to adopt, implement or enforce  
ordinances or other requirements necessary  
21 to ensure that pedestrian rights of way are

kept free of temporary or permanent  
22 obstructions resulting in access barriers for  
people with mobility disabilities.

23 i. Failing to ensure the remediation of mid-  
block access barriers on sidewalks and  
24 other pedestrian walkways including, *inter*  
*alia*, broken, cracked, crumbled, steep,  
25 sunken, uneven or otherwise inaccessible  
surfaces, as well as obstacles placed in  
26 the path of travel, such as bus stop benches,  
utility boxes, or light poles, when  
27 necessary to provide access  
to the pedestrian rights of way. 28

1 j. Failing to adopt or implement any adequate  
policy or procedure for inspecting,

2 repairing and maintaining the pedestrian  
rights of way so that they are readily

3 accessible to persons with mobility  
disabilities.

4 3. As a result of the above policies and practices  
and Defendant's acts and omissions  
5 alleged herein, the City's pedestrian rights of way  
are characterized by numerous physical access  
6 barriers to persons with mobility disabilities,  
including but not limited to the following:

7 a. Missing, unsafe and/or inaccessible curb  
ramps that do not comply with

8 federal and/or state access standards (*e.g.*, slopes  
too steep, hazardous cross-slopes, curb  
9 ramp lips);

10 b. Pedestrian rights of way that are cracked,

crumbled, steep, sunken, or uneven

11 or that have excessive slopes or broken and  
inaccessible surfaces; and,

12 c. Physical obstacles on the sidewalk  
between intersections, such as improperly  
13 placed signs, poles, trash receptacles, utility  
boxes, and bus stop benches.

14 4. Defendant has constructed, caused and/or  
failed to remediate or eliminate these  
15 barriers. As a result of Defendant's discriminatory  
conduct, Plaintiffs and the members of the  
16 putative class have been injured. Specifically,  
Plaintiffs and the members of the putative class  
17 have been denied full and equal access to the City's  
pedestrian rights of way as required by federal  
18 and state law.

19 5. The inaccessibility of the City's pedestrian  
right of way results in Plaintiffs and the  
20 members of the putative class being denied full and  
equal access to places of public  
21 accommodation, places of employment, and other  
places to which the general public is invited.

22 Further, the inaccessibility of the City's pedestrian  
right of way contributes to the isolation and  
23 segregation of persons with mobility disabilities by  
making it impossible or more difficult for them  
24 to visit or socialize with family members and  
friends. Moreover, as a result of Defendant's  
25 discriminatory conduct as alleged herein, Plaintiffs  
and the members of the putative class are  
26 forced to struggle with access barriers in the City's  
pedestrian rights of way on a daily basis,  
27 resulting in fatigue, physical injury, emotional  
distress, and/or damage to wheelchairs and other  
28 mobility devices.

1           6. The lack of access to the City's system of  
pedestrian rights of way and the existence  
2 of access barriers therein deprives people with  
mobility disabilities of their independence, prevents  
3 them from traveling throughout the City without  
difficulty and essentially relegates them to  
4 second-class citizen status. The injuries alleged  
herein are ongoing, and Plaintiffs and the  
5 members of the putative class are certain to face the  
imminent threat of further injuries including  
6 the denial of full and equal access to the City's  
pedestrian rights of way, struggling with access  
7 barriers, physical exhaustion and injuries (including  
the risk of death from being forced to roll in  
8 the street with cars and buses because of missing  
curb ramps), as well as isolation, segregation,  
9 humiliation, hardship, anxiety, indignity and  
embarrassment.

10       7. The discrimination and denial of full and  
equal access to Defendant's pedestrian  
11 rights of way for persons with mobility disabilities  
complained of herein are the direct result of  
12 Defendant's policies and practices with regard to the  
City's pedestrian walkways and disability  
13 access. These policies and practices, or lack thereof,  
have resulted in discrimination against  
14 persons with disabilities in the form of denial of  
access to the City's pedestrian rights of way that  
15 manifests in common ways throughout the City.  
Substantial portions of the City's more than  
16 one-thousand miles of sidewalks do not comply with  
federal and state access standards and are in  
17 need of repair.

18       8. The accessibility of pedestrian rights of way  
to persons with mobility disabilities  
19 goes to the heart of the purpose of the ADA and  
other disability rights laws, including providing  
20 full and equal access to public facilities, as well as  
promoting independence and social and  
21 economic integration for persons with disabilities.



Defendant provides and is responsible for  
22 maintaining these public pedestrian rights of way,  
which constitute essential public facilities for  
23 residents and visitors alike. Yet this system of  
pedestrian rights of way is not accessible to  
24 persons with mobility disabilities in violation of the  
ADA, Section 504 and Cal. Govt. Code §  
25 11135. This lawsuit seeks to require Defendant to  
comply with these critical federal and state  
26 civil rights laws. By its conduct as alleged herein,  
Defendant harmed and continues to harm  
27 people with mobility disabilities by Defendant's  
unlawful conduct in failing to make its  
28 pedestrian rights of way accessible as required by  
federal and state law.

1        9. Plaintiffs seek declaratory and injunctive  
relief against Defendant for violating the  
2 ADA, Section 504 and Cal. Govt. Code § 11135 and  
their accompanying regulations, as well as  
3 an award of reasonable attorneys' fees, litigation  
expenses, and costs under applicable law.  
4 Plaintiffs have no adequate remedy at law, and  
unless Defendant is preliminarily and  
5 permanently enjoined, Plaintiffs will continue to  
suffer irreparable harm as a result of being  
6 denied full and equal access to these public  
facilities. In addition, the named Plaintiffs seek  
7 compensatory damages on an individual basis  
pursuant to the ADA, as Defendant has acted with  
8 deliberate indifference to the named Plaintiffs'  
federally protected civil rights.