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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

6 IVANA KIROLA, et al.

7 Plaintiffs,

8 vs.

9 THE CITY AND COUNTY OF SAN
FRANCISCO, et al.,

10 Defendants.

CASE NO. 3:07-cv-03685-AMO

CLASS ACTION

**ORDER GRANTING INJUNCTIVE
RELIEF**

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ORDER GRANTING INJUNCTIVE RELIEF

17 The Ninth Circuit Court of Appeals, in its opinion dated April 10, 2023, concluded that
18 this Court should determine injunctive relief with respect to violations of the Americans with
19 Disability Act (“ADA”); namely, the ADA Accessibility Guidelines for Buildings and Facilities
20 (“ADAAG”) proven at the City and County of San Francisco’s Main Library, St. Mary’s
21 Playground, and a restroom in Golden Gate Park. The Ninth Circuit directed this Court on remand
22 to “first issue injunctive relief as to the ADAAG violations it found in its 2021 order.” *Kirola v.*
23 *City and County of San Francisco*, No. 21-15621, 2023 WL 2851368, at *3 (9th Cir. Apr. 10,
24 2023), *cert. denied sub nom. City & Cnty. of San Francisco, California v. Kirola*, 144 S. Ct. 185
25 (2023).

26 **I. PROCEDURAL BACKGROUND**

27 On July 17, 2007, Plaintiffs commenced a class action in the United States District Court
28 for the Northern District of California, Case No. C-07-3685 SBA (the “Lawsuit”), against the City

1 and County of San Francisco (“City”), alleging *inter alia*, discrimination in violation of Title II of
2 the ADA, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), California Government
3 Code § 11135, *et seq.*, the California Disabled Persons Act, California Civil Code § 54, *et seq.*,
4 and the Unruh Civil Rights Act, California Civil Code § 51, *et seq.* Plaintiffs filed their First
5 Amended Complaint on June 24, 2010. The City filed its Answer to Plaintiffs’ Complaint on
6 September 15, 2010.

7 On June 7, 2010, this Court granted Plaintiffs’ motion for class certification pursuant to
8 Federal Rule of Civil Procedure 23(b)(2), and certified the following class of persons for
9 declaratory and injunctive relief only:

10 All persons with mobility disabilities who are allegedly being denied access under Title
11 II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act
12 of 1973, California Government Code Section 11135, *et seq.*, California Civil Code § 51
13 *et seq.*, and California Civil Code § 54 *et seq.* due to disability access barriers to the
14 following programs, services, activities and facilities owned, operated and/or maintained
15 by the City and County of San Francisco: parks, libraries, swimming pools, and curb
16 ramps, sidewalks, cross-walks, and any other outdoor designated pedestrian walkways in
17 the City and County of San Francisco.

18 This Court conducted a bench trial over 14 days between April 4, 2011 and May 5, 2011.
19 On November 26, 2014, the Court issued its Findings of Fact and Conclusions of Law and
20 entered judgment in favor of the City on all claims. *Kirola v. City and County of San Francisco*,
21 74 F. Supp. 3d 1187 (N.D. Cal. 2014). On December 23, 2014, Plaintiffs appealed the Judgment
22 and Findings of Fact and Conclusions of Law. Notice of Appeal, Dec. 23, 2014, ECF 689.

23 On June 22, 2017, the Ninth Circuit affirmed the district court in part, reversed in part, and
24 remanded. *Kirola v. City and County of San Francisco*, 860 F.3d 1164, 1182 & 1185 (9th Cir.
25 2017). On August 16, 2018, Defendants filed a Motion for Judgment as a Matter of Law, ECF
26 751, which the Court granted on March 12, 2021. *Kirola v. City and County of San Francisco*,
27 No. C 07-3685 SBA, 2021 WL 1334153, at *28 (N.D. Cal. Mar. 12, 2021). Plaintiffs again
28 appealed. Notice of Appeal, Apr. 5, 2021, ECF 779.

On April 10, 2023, the Ninth Circuit issued its second decision in this case. The Ninth
Circuit reversed in part and affirmed in part, and remanded with instructions. *Kirola*, 2023 WL
2851368, at *1-3.

1 This Order addresses only the portion of the Ninth Circuit’s second remand order
2 instructing this Court “to determine injunctive relief” tailored to the ADAAG violations that this
3 Court found at the Main Library, St. Mary’s Playground, and a restroom in Golden Gate Park.
4 *Kirola*, 2021 WL 2851368, at *1.

5 **II. ADAAG VIOLATIONS AT THE MAIN LIBRARY, ST. MARY’S PLAYGROUND,
6 AND A RESTROOM IN GOLDEN GATE PARK**

7 The following ADAAG violations were found in this Court’s Order of March 12, 2021:

8 • **Main Library**

- 9 ○ The lavatories in the third floor restroom lack insulation on supply and drain lines
10 in violation of ADAAG § 4.19.4. *Kirola v. City & Cnty. of San Francisco*, No. C
11 07-3685 SBA, 2021 WL 1334153, at *21 (N.D. Cal. Mar. 12, 2021).
- 12 ○ The first lower level women’s restroom, the first floor woman’s restroom and the
13 first floor men’s restroom lack semi-ambulatory stalls in violation of ADAAG
14 §§ 4.22.4 and 4.23.4. *Id.*
- 15 ○ The lavatory in the Latino/Hispanic meeting room does not have the required
16 minimum 8 inches of knee clearance in violation of ADAAG § 4.19.2. *Id.*
- 17 ○ Restroom door pressures throughout the Library require more than 5 pounds of
18 force to open in violation of ADAAG § 4.13.11. *Id.* at *22.
- 19 ○ Non-restroom door pressures throughout the Library require more than 5 pounds
20 of force to open in violation of ADAAG § 4.13.11. *Id.*
- 21 ○ A toilet stall door in the women’s ground floor restroom opens in front of the toilet
22 rather than in front of a clear space in violation of ADAAG § A4.17.3. *Id.*
- 23 ○ There is no companion seating adjacent to the wheelchair seating spaces in the
24 Koret Auditorium in violation of ADAAG §§ 4.1.3(19)(a) and 4.33.3. *Id.* at *23.
- 25 ○ The doorway to the video booth in the Deaf Services Center has too little clear
26 opening width in violation of ADAAG § 4.13.5. *Id.*
- 27 ○ The interior of the video booth has a landing that is 31 inches deep instead of the
28 minimum 48 inches depth in violation of ADAAG § 4.31.2. *Id.*

1 • **St. Mary’s Playground**

- 2 ○ The playground lacks an ADAAG compliant accessible route. The “accessible
3 pedestrian path of travel to get down into the park” is an “elevated bridgeway
4 system” that contains multiple ADAAG violations, including excessive running
5 slopes and widths that are too narrow. The only alternative to the bridge is a
6 service road with 13 to 15 percent slopes, rendering the new playground “highly
7 inaccessible.” *Id.* at *13.

8 • **Restrooms at Golden Gate Park**

- 9 ○ There is a missing grab bar in one of the accessible restrooms in the ballpark area
10 in violation of ADAAG § 4.17.3 & Fig. 30. *Id.* at *17.

11 **III. ORDER GRANTING INJUNCTIVE RELIEF**

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

13 1. Within 180 days of the date of this Order, the City shall correct the ADAAG
14 violations identified above at the Main Library, St. Mary’s Playground, and one of the accessible
15 restrooms at Golden Gate Park in the ballpark area.

16 2. Within 30 days of the date of this Order the City shall provide to this Court and
17 Plaintiffs’ counsel a schedule for correcting the foregoing ADAAG violations by the deadline
18 established in this Order.

19 3. No later than 60 days before the commencement of any corrective work not already
20 completed and required by this Order, the City shall give Plaintiffs written notice of its intention to
21 commence corrective work and a description of the planned work. Plaintiffs may provide
22 comments to the City within 15 days, after which the City shall proceed with its corrective work
23 as it deems appropriate to meet the 2010 Americans with Disabilities Act Accessibility Standards.

24 4. Within 30 days of the conclusion of corrective work performed pursuant to this
25 Order, the City shall provide notice to Plaintiffs, through its counsel, of the completion of the
26 work. If requested by Plaintiffs, the City shall provide an opportunity for Plaintiffs to jointly
27 observe the completed work. Thereafter, if Plaintiffs and the City dispute whether the corrective
28 work satisfies the applicable requirements, the parties shall engage in good faith meet and confer

1 efforts to define the dispute and attempt resolution. If those meet and confer efforts fail, the parties
2 may then bring the issue to the Court for resolution.

3 5. Also within 30 days of the completion of all corrective work required by this
4 Order, and in addition to the notice described to Plaintiffs described in paragraph two, the City
5 shall file with this Court and serve on Plaintiffs' counsel a certification sworn under penalty of
6 perjury by a City official with personal knowledge of the completion of all corrective work. For
7 work already performed by the City before the date of this Order, the City shall file with this
8 Court and serve on Plaintiffs' counsel such a certification as to that work within 30 days of the
9 date of entry of this Order.

10 6. In accordance with 28 C.F.R. § 35.151(c)(5)(ii), all work performed to remediate
11 violations found in the Court's 2021 Order shall fully comply with the accessibility requirements
12 of the 2010 Americans with Disabilities Act Accessibility Standards and the current iteration of
13 the California Building Code, whichever is more protective in its requirements for accessibility.

14
15 This Court retains jurisdiction over the matter to enforce the terms of this Order or to
16 resolve any disputes arising from this Order. The Court also reminds the parties of the briefing
17 schedule set in the Court's February 20, 2024 Order regarding the "Phase Two" facilities. ECF
18 819.

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20 **IT IS SO ORDERED.**

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22 DATED: March 28, 2024

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25 ARACELI MARTÍNEZ-OLGUÍN
26 United States District Judge