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27 Attorneys for Defendant
28 TOWN OF LOS GATOS

19 IN THE UNITED STATES DISTRICT COURT
20 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

22 SEBASTIAN DEFRANCESCO,
23 Plaintiff,

CASE NO. C09-2123 JL
Civil Rights

24 v.

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

25 SRI OLD TOWN, LLC; FEDERAL
26 REALTY INVESTMENT TRUST;
27 TOWN OF LOS GATOS; and DOES
28 1-10, Inclusive,

Date: May 12, 2010

Defendants.

1 The parties submit this joint Case Management Conference, along with a request
2 that the Conference be continued until after mediation under General Order 56 is
3 complete:

4
5 **1. Jurisdiction and Service:**

6 The Court has jurisdiction over the federal claims pursuant for violations
7 of the Americans with Disabilities Act of 1990, 42 USC 12101, *et seq.* to 28
8 U.S.C. § 1331 It has pendant jurisdiction over the state claims. 28 U.S.C. § 1367.
9 All named parties have been served. There is a possibility defendants may need
10 to add another party, as explained in further detail below.

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12 **2. Facts:**

13 **a. Plaintiff's Factual Allegations**

14 Plaintiff Sebastian DeFrancesco is a physically disabled person, a
15 quadriplegic who drives a hand-controlled van. His Complaint alleges that he
16 drove to the Los Gatos Town Parking Lot 5 on August 28, 2008, in order to visit
17 Steamer's Grillhouse a restaurant, located at 50 University Avenue adjacent to the
18 parking lot. He alleges there were no actually accessible parking places, though
19 certain spaces were designated accessible. He did manage to park and using
20 sidewalks and walkways, proceeded downhill, despite a steep slope, and
21 eventually reached and patronized the restaurant.

22 After eating, plaintiff left the restaurant and attempted to use the
23 wheelchair lift adjacent to the rear of the restaurant to ascend to the level of
24 Parking Lot 5, because he could not climb the 12 stairs next to the lift to reach
25 the parking lot directly. He entered and activated the lift and proceeded upward,
26 but the lift became stuck near the top level, and plaintiff found that he could not
27 get out of the lift. He tried three or four times to get it to work but did not
28 succeed, and he could not exit the lift. He was trapped in the lift for

1 approximately fifteen minutes until friends found him and rescued him: His
2 friends had to lift plaintiff bodily out of his wheelchair, then lift the wheelchair
3 out of the lift, and place plaintiff back in his wheelchair. As a result of the
4 malfunctioning lift, plaintiff suffered physical, mental and emotional damages,
5 and has been deterred from returning. Plaintiff further alleges that, instead of
6 promptly repairing the lift defendants locked it off and/or allowed it to be locked
7 off to use for all disabled persons for more than eight months.

8 Defendants SRI OLD TOWN, LLC; FEDERAL REALTY INVESTMENT
9 TRUST; and DOES 1-5 are the owners, operators, lessors, and lessees of the
10 businesses, properties, facilities and/or portions thereof comprising the Old Town
11 Center shopping center located at University Ave. and Elm St. in the Town of
12 Los Gatos, and of the access lift between these properties and the upper level of
13 Parking Lot No. 5. The TOWN OF LOS GATOS and DOES 5-10 are the
14 owners, operators, lessors, and lessees of the properties, facilities and/or portions
15 thereof comprising Parking Lot No. 5.

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17 **b. Defendants' Factual Issues**

- 18 (1) Was Plaintiff injured as a result of the incident?
19 (2) What are the extent of Plaintiff's injuries?
20 (3) Did plaintiff receive any medical treatment?
21 (4) Did Plaintiff incur any costs associated with any medical
22 treatment he may have received?
23 (5) Was Plaintiff denied equal benefits of the Defendants' services
24 by reason of his disability?
25 (6) Did the Defendants have notice that an accommodation was
26 required?

1 **3. Legal Issues:**

2 **a. Plaintiff's Position:**

3 Defendants are liable for their failure to provide accessible parking under
 4 the Americans with Disabilities Act (ADA). Defendant City of Los Gatos is
 5 liable under Title II for failure to provide equal access to its programs, services
 6 and activities comprising the parking lot, path of travel, and lift at issue. 42
 7 U.S.C. §12132. Defendants SRI Old Town and Federal Realty Investment Trust
 8 are liable under Title III for failure to provide full and equal access to their public
 9 accommodations. 42 U.S.C. § 12182. The private defendants are liable for any
 10 new construction or for alterations since 1992 which triggered the obligation to
 11 make the path of travel accessible, and regardless of any such construction or
 12 alteration, for any alterations which have been readily achievable. Plaintiff is
 13 informed and believed the facilities at issue here were constructed in 1999.

14 Removal of the architectural barriers complained of is also required under
 15 California law. Any alterations, structural repairs or additions since July 1, 1982,
 16 were required to comply with CCR Title 24. The City is liable for failure to meet
 17 those standards under Government Code section 4450. The private defendants
 18 are liable under Health & Safety Code sections 19955 *et seq.* Furthermore, each
 19 violation of the ADA also constitutes a separate violation of California Civil
 20 Code sections 54(c) and 54.1(d), independently justifying injunctive relief and
 21 damages pursuant to California law. As to maintaining the lift in operable order,
 22 since 1994 the California Building Code has required public accommodations to
 23 “maintain in operable working condition those features of facilities and
 24 equipment that are required to be accessible to and usable by persons with
 25 disabilities.” § 1101B.3.

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 27 **b. Defendants' Legal Issues**

28 (1) Did the Defendants violate title II of the ADA?

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- (2) Is plaintiff entitled to injunctive relief?
- (3) Does Plaintiff have standing to assert his claims?
- (4) Did the Defendants show deliberate indifference to Plaintiff?
- (5) Has Plaintiff produced evidence to establish a violation of Civil Code sections 51 and 52 (Unruh Act)?

4. Motions/ADR:

This case has been assigned to the ADR Department under General Order 56. The parties have been working cooperatively and are motivated to resolve the case at mediation. Mediation is set for May 14, 2010, two days after the Case Management Conference in this case . The parties jointly request the Court continue the Case Management Conference for at least two months to allow the parties to use the mediation process to best advantage.

5. Amendment of Pleadings:

It appears that remediating the facilities to create the most appropriate, direct path of travel would include a sidewalk owned and controlled by another private entity not a party to this case. Plaintiff does not have standing to sue that entity because he did not encounter that sidewalk. Plaintiff has suggested that defendant City of Los Gatos bring that entity into the suit.

Dated: May 5, 2009

LAW OFFICES OF PAUL L. REIN

/s/ Celia McGuinness
By CELIA MCGUINNESS
Attorneys for Plaintiff
SEBASTIAN DEFRANCESCO

1 Dated: May 5, 2010

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JONATHAN S. KITCHEN
ALI P. HAMIDI

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3

/s/ Ali Hamidi

4

Attorneys for Defendants
SRI OLD TOWN, LLC and
FEDERAL REALTY INVESTMENT
TRUST

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6

7 Dated: January 14, 2010

LOW, BALL & LYNCH

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/s/ Mark Hazelwood

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MARK F. HAZELWOOD
Attorneys for Defendants
TOWN OF LOS GATOS

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13 The Case Management Conference is continued to July 14, 2010 at 10:30 a.m.

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16 May 11, 2010

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