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FILED/ENDORSED
Clerk of the Superior Court
DEC 14 2023
By D. CIMMINO
DEPUTY CLERK

4 SUPERIOR COURT OF THE STATE OF CALIFORNIA
5 SOLANO COUNTY

ASSIGNED TO
JUDGE STEPHEN GIZZI
FOR ALL PURPOSES

7 MARK BAKER,
8 Plaintiff,
9 vs.
10 CITY OF FAIRFIELD,
11 Defendant

Case No.: CL23-05929
COMPLAINT PURSUANT TO:
1. THE AMERICANS WITH DISABILITIES
ACT 42 U.S.C. §§ 12131 – 12134;
2. THE UNRUH CIVIL RIGHTS ACT,
California Civil Code §§ 51; and
3. CALIFORNIA’S DISABLED PERSONS
ACT, Cal. Civ. Code §§ 54.
Under \$10,000

12 **I. INTRODUCTION**

- 13
14 1. Plaintiff Mark Baker (“Plaintiff”), an individual with a qualified disability, alleges that the
15 city of Fairfield, California (“Defendant” and “City”) has discriminated against Plaintiff
16 based on Plaintiff’s disability, in violation of federal and state anti-discrimination statutes.
17 2. Specifically, Plaintiff alleges that Defendant discriminates against Plaintiff by operating an
18 unregulated, unapproved Light Emitting Diode strobe light device called a Rectangular
19 Rapid Beacon (RRFB) that prevents safe and equal access to the city’s public streets and
20 sidewalks; failed to engage in the Interactive Process to find a mutually agreeable
21 accommodation; and failed to provide a reasonable, mutually agreeable accommodation
22 that would allow Plaintiff safe and equal access to the city’s streets and sidewalks.

23 COMPLAINT PURSUANT TO: 1. THE AMERICANS WITH DISABILITIES ACT 42 U.S.C. §§ 12131 – 12134; 2.
THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE §§ 51; AND 3. CALIFORNIA’S DISABLED
PERSONS ACT, CAL. CIV. CODE §§ 54. - 1

1 3. As a result of Defendant’s discriminatory actions and omissions as alleged herein, Plaintiff
2 has suffered significant neurological and psychological trauma and will continue to suffer
3 such trauma and will continue to be unable to safely and equally access the city’s streets
4 and sidewalks so long as Defendant continues to operate the RRFB device.

5 4. Through this lawsuit, Plaintiff seeks declaratory relief and coercive relief requiring
6 Defendant to provide Plaintiff with safe, full, and equal access to city streets and sidewalks
7 by replacing, modifying, or removing the RRFB device, and requiring Defendant to adopt a
8 non-discrimination policy for flashing lights. Plaintiff also seeks damages and court costs.

9
10 **II. THE PARTIES**

- 11 5. Plaintiff is Mark Baker, a resident of California.
12 6. Defendant is Fairfield, California, a “public entity” within the meaning of the ADA, 42
13 U.S.C. § 12131(1)(A), and is therefore subject to the ADA.
14 7. Defendant is a “business establishment” within the meaning of Unruh Civil Rights Act,
15 Cal. Civ. Code 51.¹ and is therefore subject to the Unruh Civil Rights Act.

16 **III. JURISDICTION AND VENUE**

17 8. This Court has jurisdiction of this action under Cal. Civ. Code 51 and 28 U.S.C. §§ 1331
18 and 42 U.S.C. § 12133. The Court may grant declaratory and other relief pursuant to 28
19 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 12133.

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23 ¹ https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/12/DFEH_UnruhFactSheet.pdf
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1 9. Venue is proper because City is located in this county and all the claims and events giving
2 rise to this action occurred in this county.

3 10. Plaintiff made multiple attempts to resolve this matter with Defendant; however, Defendant
4 failed to provide a reasonable, mutually agreeable accommodation, as per the letter dated
5 December 1, 2023, from the Defendant to Plaintiff.

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7 **IV. STANDING**

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9 11. To demonstrate standing, a plaintiff must (1) have suffered a concrete and particularized
10 injury-in-fact, which is actual or imminent, not conjectural or hypothetical; (2) there must
11 be a causal connection between the injury and the defendant's conduct; and (3) it must be
12 likely that the injury will be redressed by a favorable decision.²

13 12. Plaintiff meets standing requirements because (1) Plaintiff suffered neurological and
14 psychological trauma and was prevented from achieving safe and equal access to
15 Defendant's streets and sidewalks; (2) Defendant's use of the RRFB strobe light device
16 caused the trauma and prevented safe and equal access to the city's streets and sidewalks;
17 and (3) a favorable decision will redress the injury.

18 **V. STATEMENT OF FACTS**

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23 ² <https://casetext.com/case/hernandez-v-welcome-sacramento-llc>
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A. Qualified Disability

13. Mark Baker (Plaintiff) has been diagnosed with Autism Spectrum Disorder which is a qualified ADA disability and is therefore protected under the ADA and Unruh Civil Rights Act.

B. Rectangular Rapid Flashing Beacons

14. City streets and sidewalks are public services.³

15. Defendant operates an RRFB on Travis Blvd.

16. Figure 1 shows the intense light emitted by an RRFB.



Figure 1 – Rectangular Rapid Flashing Beacon

³ <https://caselaw.findlaw.com/court/us-9th-circuit/1375815.html>
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1 17. An RRFB shines an exceedingly high intensity, rapidly strobing light into the eyes of
2 drivers and pedestrians. On numerous occasions, Plaintiff has been subjected to these
3 flashing and strobing lights, causing Plaintiff to become disoriented, visually impaired,
4 agitated, anxious, and fearful and has suffered debilitating panic attacks.

5 18. The impact from the RRFB strobe lights creates long-lasting psychological trauma and
6 greatly increased sensitivity to environmental stimuli, meaning that exposure to lights or
7 sounds that might otherwise have been tolerable are now intolerable due to the trauma
8 caused by exposure to the RRFB strobe lights.

9 19. The use of RRFB flashing lights create a discriminatory barrier that prevents Plaintiff
10 from safe, full and equal access to public services such as streets and sidewalks.
11

12 **C. Dangers of LED Strobe Lights**

13 20. Manufacturers acknowledge that their LED products are dangerous.

14 21. Whelen Engineering states that LEDs can cause momentary blindness or eye damage.⁴
15

16 **IMPORTANT WARNING!**


17 **CAUTION! DO NOT LOOK DIRECTLY AT THESE LED'S WHILE THEY ARE ON.
18 MOMENTARY BLINDNESS AND/OR EYE DAMAGE COULD RESULT!**

19 22. Gear Light states that a person should not stare directly into an LED light beam.
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23 ⁴ <https://www.whelen.com/wp-content/uploads/2020/08/14555.pdf>

WARNING: To avoid eye injury, do not stare directly into the light beam or shine the beam directly into anyone's eyes. This product is not designed, intended, or recommended for children or hazardous environments.

23. Ryobi states that LED light beams are dangerous even at a distance and may result in serious injury or vision loss.

 **WARNING:**
Do not direct the light beam at persons or animals and do not stare into the light beam yourself (not even from a distance). Staring into the light beam may result in serious injury or vision loss.

24. RRFB LED strobe lights are aimed directly at the driver, risking momentary blindness, eye damage, serious injury, or vision loss. Yet, Defendant insists on using an RRFB device despite these serious dangers.

25. The Epilepsy Foundation funded a review study of the impacts of strobe lights on people with epilepsy which was published in the journal *Epilepsia* on February 7, 2022.⁵ The abstract states that any flash with a luminance higher than 20 candela per square meter creates a high risk of photosensitive seizure. RRFB LED strobe lights are likely at least 100,000 candela per square meter, far exceeding the 20 cd/m² safety threshold. Plaintiff has suffered seizure-like symptoms when exposed to the high luminance flashing lights on RRFBs.

⁵ <https://onlinelibrary.wiley.com/doi/10.1111/epi.17175>

1 26. The Institute of Electrical and Electronics Engineers document titled IEEE
2 Recommended Practices for Modulating Current in High-Brightness LEDs for Mitigating
3 Health Risks to Viewers⁶ contains a diagram showing that any luminance exceeding 20
4 candela per square meter is at least medium risk of causing seizure and high risk if the
5 pulse rate is between 1 Hz and 65 Hz. RRFB LED strobe lights are approximately 5 Hz,
6 with asynchronous flash patterns, and likely 100,000+ candela per square meter. These
7 extreme values are off-the-charts when compared to the values documented in the IEEE
8 paper and the risk of adverse neurological reaction is exceedingly high.

9 27. In a study funded by the Emergency Responder Safety Institute titled Effects of
10 Emergency Vehicle Lighting Characteristics on Driver Perception and Behavior⁷, the
11 author states that high intensity lights were consistently judged as more glaring than
12 lower intensity lights and that “*When lights flash and turn completely off during the flash*
13 *cycle, it can be difficult for drivers to accurately judge their location, speed and direction*
14 *of motion.*” Thus, the idea of pulsing high intensity, glaring LED light into the eyes of
15 drivers that reduces driver vision is the antithesis of a safety device. When combined
16 with the knowledge that RRFB LED strobe lights cause certain individuals to suffer
17 seizure, migraines, panic attacks, anxiety, nausea, and vomiting, it is obvious that and
18 RRFB device is too dangerous for use.

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22 ⁶ https://www.bio-licht.org/02_resources/info_ieee_2015_standards-1789.pdf

23 ⁷ <https://www.respondersafety.com/Download.aspx?DownloadId=f31a5f73-7b95-44c7-bd25-1e4cdfce5229>
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1 **D. Website Flashing**

2 28. The US Access Board and the World Wide Web Consortium have already developed
3 guidelines to protect against seizures on websites due to flashing lights and images.⁸ The
4 fact that the Access Board has not published similar guidelines for flashing lights in the
5 built environment is a failure of the Access Board, but cannot be used as the basis for a
6 claim that flashing lights in the built environment do not discriminate.

7 29. As per the Web Accessibility Guidelines, web pages that may cause seizures or physical
8 reactions should be avoided and using more than 3 flashes per second should be also
9 avoided. An RRFB device has been documented to trigger seizures, migraines, and panic
10 attacks, the device flashes faster than 3 flashes per second and the device has multiple
11 emitters. As per the Access Board, *Multiple, unsynchronized visual signals within a*
12 *single space may produce a composite flash rate that could trigger a photoconvulsive*
13 *response in such persons.*⁹

14 30. The Web Accessibility Guidelines are generally for computer displays, which have
15 luminance values of around 300 candela per square meter. The intensity of an RRFB
16 may exceed 100,000 candela per square meter, and thus is hundreds of times more
17 intense than a computer screen and thus far more dangerous.

18 31. Given that government officials and standards bodies have already recognized the hazard
19 of flashing lights for individuals with a neurological intolerance to flashing lights, it
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22 ⁸ <https://www.w3.org/TR/WCAG21/#seizures-and-physical-reactions>

23 ⁹ <https://www.access-board.gov/advisory-committee-reports/passenger-vessels/pvaac-report-ch04/>

1 defies common sense that Defendant has chosen to use these same types of hazardous
2 flashing lights on Travis Blvd.

3
4 **E. Documented Injury from LED Strobe Lights**

5 32. LED flashing lights have been documented to cause numerous injuries, including life-
6 threatening injuries to Plaintiff and people other than Plaintiff. The stories are presented in
7 Appendix A.

8 33. Individual 1: Plaintiff – Plaintiff has suffered numerous panic attacks and several
9 complete psychological breakdowns due to being subjected to LED strobe lights used in
10 RRFBs and emergency vehicles.

11 34. Individual 2: This person suffered a severe seizure due to exposure to RRFB LED strobe
12 lights that resulted in a severe concussion and months of at-home rehabilitation, and
13 additional seizures from exposure to LED strobe lights on emergency vehicles.

14 35. Individual 3: This person has suffered nausea and vomiting as a result of exposure to
15 RRFB LED strobe lights.

16 36. Individual 4: This person states that LED strobe lights cause her to enter an overloaded
17 state.

18
19 **F. Federal Authority**

20 37. No federal agency other than the Food and Drug Administration has claimed that they
21 have Congressional authority to regulate LED products. All responses sent to the Soft
22 Lights Foundation from federal agencies have indicated the same position, which is that

1 the only federal agency with Congressional authority to regulate LED products is the
2 FDA.

3 38. **FHWA** - In a letter to the Soft Lights Foundation on October 19, 2022, the Federal
4 Highway Administration Office of Civil Rights stated, “*The allegations you have raised*
5 *about the health impacts of RRFBs raise complex issues related to the regulation of all*
6 *Light Emitting Diode (LED) lights, not just those used in RRFBs, that extend beyond*
7 *FHWA’s authority.*”¹⁰

8 39. **EPA** – In a letter dated October 7, 2022, the Environmental Protection Agency stated,
9 “*Congress has not granted the EPA any statutory authority to regulate visible light or*
10 *non-ionizing radiation that is emitted from electrical devices, including LEDs.*”¹¹

11 40. **NHTSA** - The National Highway Traffic Safety Administration wrote to the Soft Lights
12 Foundation on December 2, 2022, stating, “*NHTSA, as an agency focused on automotive*
13 *safety, also recognizes the expertise of its sister agencies that are health-focused, such as*
14 *the FDA.*”¹²

15 41. **Access Board** - The Access Board sent a letter to the Soft Lights Foundation on August
16 21, 2023, stating “*The Access Board must deny this petition as the Board has no*
17 *authority under 21 U.S.C. §360ii either to initiate rulemaking or to require the FDA,*
18 *were they to do so, to coordinate with the Access Board.*”¹³

21 ¹⁰ <https://www.softlights.org/wp-content/uploads/2022/10/Baker-CL-2022-0375.pdf>

22 ¹¹ <https://www.softlights.org/wp-content/uploads/2022/10/CMS-AX-22-000-1287-Response.pdf>

23 ¹² https://www.softlights.org/wp-content/uploads/2022/12/NHTSA-220815-006_ND.pdf

¹³ https://www.softlights.org/wp-content/uploads/2023/08/Response-to-Petition-for-Rulemaking_8-21-23.pdf

1 42. **CPSC** – The letter from the Consumer Product Safety Commission to the Soft Lights
2 Foundation on November 7, 2022, states, “*The Commission shall have no authority under*
3 *this chapter to regulate any risk of injury associated with electronic product radiation*
4 *emitted from an electronic product.*”¹⁴

5 43. **OSHA** – The Occupational Safety and Health Administration wrote, “*DSG staff will also*
6 *continue to stay apprised of this topic and any new scientific developments on hazards*
7 *posed by LED devices in the workplace.*”¹⁵ This letter indicates that OSHA is waiting for
8 the FDA to notify OSHA of the hazards posed by LED devices.

9 44. **FAA** – On November 9, 2022, the Federal Aviation Administration wrote “*We would*
10 *defer to the FDA for comfort, health, and safety regulations and to OSHA for specific*
11 *topics like cockpit lighting, in regard to LED products.*”¹⁶

13 **G. Food and Drug Administration**

14 45. In 1968, Congress passed the Radiation Control for Health and Safety Act which directed
15 the Food and Drug Administration to regulate the electromagnetic radiation emitted by
16 electronic products. This Act is codified as 21 U.S.C. 360hh – 360ss. This radiation
17 includes visible radiation such as that emitted by lasers and Light Emitting Diodes. (See
18 21 C.F.R Part 1040).

22 ¹⁴ <https://www.softlights.org/wp-content/uploads/2022/11/CPSC-Jurisdiction-Response.pdf>

23 ¹⁵ <https://www.softlights.org/wp-content/uploads/2022/10/Letter-From-OSHA.pdf>

¹⁶ <https://www.softlights.org/wp-content/uploads/2023/09/Jurisdiction-Letter-from-FAA.pdf>

1 46. However, despite this authorization and mandate from Congress, the FDA has failed to
2 publish performance standards, as required by 21 U.S.C. 360ii, to ensure the comfort,
3 health, safety, and civil rights of the public for LED products, including RRFBs.

4 47. This failure by the FDA to comply with federal law has had catastrophic consequences.
5 Devices such as RRFBs have been sold and operated without federal oversight. No
6 studies have been performed to ensure that LED RRFB strobe light devices do not cause
7 harm. No entity has authorization to use RRFB devices because the FDA has not vetted
8 or approved RRFB devices.

9 48. The Administrative Procedure Act of 1946 (5 U.S.C. 551-559) details the process by
10 which a federal agency develops, modifies, or repeals a rule. This procedure requires a
11 manufacturer to submit a petition to the FDA for authorization and approval to sell a
12 product which emits electromagnetic radiation. For a new device, such as the RRFB, the
13 FDA would study and/or vet the device to ensure that is safe and would develop rules to
14 ensure that the device does not exceed certain unsafe thresholds. In the case of RRFBs,
15 no manufacturer has petitioned the FDA, the FDA has not approved any RRFB device,
16 and no manufacturer has been granted authority to sell their RRFB device.

18 **H. Federal Highway Administration**

19 49. The FHWA issued an Interim Approval for RRFBs on March 20, 2018.¹⁷ The Interim
20 Approval authorized “*the optional use of Rectangular Rapid-Flashing Beacons (RRFB)*”
21

22
23 ¹⁷ https://mutcd.fhwa.dot.gov/resources/interim_approval/ia21/

1 *as pedestrian-actuated conspicuity enhancements for pedestrian and school crossing*
2 *warning signs under certain limited conditions.”* Note that RRFBs are ‘optional’ and
3 subject to conditions.

4 50. However, despite this Interim Approval, the FHWA wrote in a letter to Plaintiff on
5 October 19, 2022, “*The allegations you have raised about the health impacts of RRFBs*
6 *raise complex issues related to the regulation of all Light Emitting Diode (LED) lights,*
7 *not just those used in RRFBs, that extend beyond FHWA’s authority.”*¹⁸ While not
8 explicitly stated by the FHWA, the phrase “extend beyond FHWA’s authority” is a
9 reference to fact that the only federal agency with Congressional authority to regulate
10 products using LEDs is the Food and Drug Administration. In the FHWA’s statement,
11 the FHWA is acknowledging that they have no Congressional authority to issue the
12 Interim Approval for the use of RRFBs because the FDA has not yet vetted or approved
13 RRFB devices.

14 51. 21 U.S.C. 360ii(a)(6) states that the FDA shall consult and liaise with other federal
15 agencies (such as the FHWA) to test, evaluate, and publish performance standards for
16 radiation emitting products. This statute does not authorize the FHWA to vet and
17 approve RRFBs on its own, but rather requires the FHWA to collaborate with the FDA
18 on such matters and then the FDA would approve the RRFB product with the proper
19 safeguards. The FHWA has no authority to issue the Interim Approval for RRFBs
20 without collaborating with the FDA and going through the FDA vetting and approval

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23 ¹⁸ <https://www.softlights.org/wp-content/uploads/2022/10/Baker-CL-2022-0375.pdf>

1 process. Because the FHWA has no authority to issue the Interim Approval for RRFBs,
2 Defendant has no legal authority from any federal agency to operate RRFB devices.

3 52. The Soft Lights Foundation submitted a citizen petition to the FHWA to repeal the
4 Interim Approval, since the FHWA has acknowledged that the approval of RRFBs
5 “*extends beyond FHWA’s authority.*” The FHWA has not yet issued the repeal, but this
6 action is expected.

7 8 **I. Americans with Disabilities Act**

9 53. LED flashing lights create discriminatory conditions that prevent a class of individuals,
10 including Plaintiff, from safely and comfortably accessing public services. RRFB
11 devices are unvetted, unregulated, unapproved, dangerous, and discriminatory. The
12 information provided below is an analysis of key paragraphs of the Americans with
13 Disabilities Act Title II statutes.¹⁹

14 **Subpart B—General Requirements**

15 54. **§ 35.130 General prohibitions against discrimination** - *“(a) No qualified individual*
16 *with a disability shall, on the basis of disability, be excluded from participation in or be*
17 *denied the benefits of the services, programs, or activities of a public entity, or be*
18 *subjected to discrimination by any public entity.”* --- The use of the RRFB device
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23 ¹⁹ https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#supinfo

1 excludes Plaintiff from benefits of city services, specifically the street and sidewalk on
2 Travis Blvd.

3
4 55. **§ 35.130 General prohibitions against discrimination - "(b) (1) A public entity, in**
5 *providing any aid, benefit, or service, may not, directly or through contractual, licensing,*
6 *or other arrangements, on the basis of disability— (i) Deny a qualified individual with a*
7 *disability the opportunity to participate in or benefit from the aid, benefit, or service;" ---*
8 Defendant's use of the RRFB device denies Plaintiff the opportunity to use the public
9 service of the road and sidewalks of Travis Blvd without undue harm.

10 56. **§ 35.130 General prohibitions against discrimination - "(b)(7) (i) A public entity shall**
11 *make reasonable modifications in policies, practices, or procedures when the*
12 *modifications are necessary to avoid discrimination on the basis of disability, unless the*
13 *public entity can demonstrate that making the modifications would fundamentally alter*
14 *the nature of the service, program, or activity." ---* Removing the RRFB device to restore
15 Travis Blvd. to its previous non-discriminatory implementation of the city's programs
16 and services is a reasonable policy change. The use of an RRFB is not fundamental to
17 the operation of Travis Blvd. and is clearly listed as an optional device by the FHWA.

18
19 57. **§ 35.130 General prohibitions against discrimination - "(d) A public entity shall**
20 *administer services, programs, and activities in the most integrated setting appropriate to*
21 *the needs of qualified individuals with disabilities." ---* Directing Plaintiff to use a different
22 street that does not have an RRFB or to wear special glasses would not be the most
23 integrated setting. The most integrated setting is one in which Plaintiff can drive or walk

1 without being subjected to intense, rapidly flashing light which causes Plaintiff to suffer
2 psychological and neurological trauma. An integrated setting would be one without the
3 RRFB device.

4 58. **§ 35.130 General prohibitions against discrimination - "(e) (1) Nothing in this part shall**
5 *be construed to require an individual with a disability to accept an accommodation, aid,*
6 *service, opportunity, or benefit provided under the ADA or this part which such individual*
7 *chooses not to accept." --- Just because a city suggests an accommodation such as avoiding*
8 *Travis Blvd. or wearing special glasses or taking medication does not mean that a person*
9 *with a disability must accept the city's suggestion or that the city is allowed to dictate the*
10 *accommodation if the suggested accommodation does not provide equal access. Defendant*
11 *attempted to dictate to Plaintiff that Plaintiff must accept the operation of a "pedestrian*
12 *hybrid beacon/Highway intensity activated crosswalk signal" while giving no opportunity*
13 *to Plaintiff to engage with Defendant as to what this device is or whether it is safe, and thus*
14 *this is not a mutually agreeable accommodation.*

15
16 59. **§ 35.130 General prohibitions against discrimination - "(h) A public entity may impose**
17 *legitimate safety requirements necessary for the safe operation of its services, programs, or*
18 *activities. However, the public entity must ensure that its safety requirements are based on*
19 *actual risks, not on mere speculation, stereotypes, or generalizations about individuals*
20 *with disabilities." --- A city may claim that an RRFB is necessary for the safe operation of*
21 *streets or sidewalks, but these claims must be justified. The city has the burden of proof to*
22 *show that the RRFB device is a necessity and that RRFB device does do not create a*

1 discriminatory barrier. In this case, Defendant has not shown any proof that the RRFB
2 device is necessary for safety. In fact, since the RRFB device triggers life-threatening
3 seizures, multi-day migraines, psychological trauma, impaired vision, and reduced
4 cognitive functioning, the RRFB device is the antithesis of safety.

5 **Subpart D—Program Accessibility**

6 60. **§ 35.149 Discrimination prohibited.** - *"Except as otherwise provided in § 35.150, no*
7 *qualified individual with a disability shall, because a public entity's facilities are*
8 *inaccessible to or unusable by individuals with disabilities, be excluded from participation*
9 *in, or be denied the benefits of the services, programs, or activities of a public entity, or be*
10 *subjected to discrimination by any public entity." --- The RRFB device excludes Plaintiff*
11 *from benefits of city services and programs.*

12 61. **§ 35.150 Existing facilities** - *"(a) General. A public entity shall operate each service,*
13 *program, or activity so that the service, program, or activity, when viewed in its entirety, is*
14 *readily accessible to and usable by individuals with disabilities. This paragraph does not—*
15 *(3) Require a public entity to take any action that it can demonstrate would result in a*
16 *fundamental alteration in the nature of a service, program, or activity or in undue financial*
17 *and administrative burdens. In those circumstances where personnel of the public entity*
18 *believe that the proposed action would fundamentally alter the service, program, or*
19 *activity or would result in undue financial and administrative burdens, a public entity has*
20 *the burden of proving that compliance with §35.150(a) of this part would result in such*
21 *alteration or burdens. The decision that compliance would result in such alteration or*
22 *burdens must be made by the head of a public entity or his or her designee after*

1 *considering all resources available for use in the funding and operation of the service,*
2 *program, or activity, and must be accompanied by a written statement of the reasons for*
3 *reaching that conclusion. If an action would result in such an alteration or such burdens, a*
4 *public entity shall take any other action that would not result in such an alteration or such*
5 *burdens but would nevertheless ensure that individuals with disabilities receive the benefits*
6 *or services provided by the public entity." --- Defendant's operation of its roadways and*
7 *sidewalks previously did not include the use of RRFB devices. It was only after Defendant*
8 *installed the RRFB device that this new discriminatory barrier was created. Defendant*
9 *cannot now claim removing the RRFB would be a fundamental alteration to its roadway or*
10 *sidewalk programs because these programs were already functioning for decades without*
11 *the RRFB device. As well, any claim that removing the RRFB device poses a fundamental*
12 *alteration to the city services such as streets or sidewalks, or that removing the RRFB*
13 *device would be an undue financial or administrative burden, must be proven by the*
14 *Defendant. In addition, Defendant must still ensure that Plaintiff still receives all the*
15 *benefits of the city's services such as streets and sidewalks just as equally as those who can*
16 *neurologically tolerate the intense, rapidly flashing light from an RRFB.*

17 **62. § 35.151 New construction and alterations - "(b) Alterations.(1) Each facility or part of a**
18 *facility altered by, on behalf of, or for the use of a public entity in a manner that affects or*
19 *could affect the usability of the facility or part of the facility shall, to the maximum extent*
20 *feasible, be altered in such manner that the altered portion of the facility is readily*
21 *accessible to and usable by individuals with disabilities, if the alteration was commenced*
22 *after January 26, 1992." ---- Defendant's decision to alter the design of the city's streets*

1 and sidewalks by using an RRFB device requires that Defendant ensure that the streets and
2 sidewalks are readily accessible and usable by the class of individuals who are disabled by
3 intense, rapidly flashing lights, including Plaintiff. Defendant has made the city's streets
4 and sidewalks inaccessible and unusable to Plaintiff and others by installing RRFB devices.

5 63. **§ 35.164 Duties** - *"This subpart does not require a public entity to take any action that it*
6 *can demonstrate would result in a fundamental alteration in the nature of a service,*
7 *program, or activity or in undue financial and administrative burdens. In those*
8 *circumstances where personnel of the public entity believe that the proposed action would*
9 *fundamentally alter the service, program, or activity or would result in undue financial and*
10 *administrative burdens, a public entity has the burden of proving that compliance with this*
11 *subpart would result in such alteration or burdens. The decision that compliance would*
12 *result in such alteration or burdens must be made by the head of the public entity or his or*
13 *her designee after considering all resources available for use in the funding and operation*
14 *of the service, program, or activity and must be accompanied by a written statement of the*
15 *reasons for reaching that conclusion. If an action required to comply with this subpart*
16 *would result in such an alteration or such burdens, a public entity shall take any other*
17 *action that would not result in such an alteration or such burdens but would nevertheless*
18 *ensure that, to the maximum extent possible, individuals with disabilities receive the*
19 *benefits or services provided by the public entity."* --- Defendant has the burden of proof to
20 show that removing the RRFB device would fundamentally alter the nature of the service
21 provided by the city's streets and sidewalks, or that removing the LED flashing lights
22 would be an undue financial or administrative burden. Regardless, Defendant must provide

1 equal access. Defendant has not proven that removing the RRFB would fundamentally
2 alter the nature of the roadway or sidewalk service and has not provided the required equal
3 access to Travis Blvd.

4 64. **§ 35.176 Alternative means of dispute resolution.** - "*Where appropriate and to the extent*
5 *authorized by law, the use of alternative means of dispute resolution, including settlement*
6 *negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is*
7 *encouraged to resolve disputes arising under the Act and this part.*" --- The federal
8 government encourages negotiations between the class of individuals being discriminated
9 against and the city. The federal government does not support the concept of a city simply
10 dictating outcomes to the disabled individuals. Defendant refused to enter into the
11 Interactive Process with Plaintiff, which necessitated that Plaintiff file this lawsuit.
12 Defendant has shown no interest in accommodating Plaintiff or providing equal access.

13
14 **J. O’Leary vs. Little Canada**

15 65. The Minnesota Department of Human Rights investigated the use of an RRFB device in
16 the case O’Leary vs. Little Canada. In this case, the city of Little Canada installed and
17 operated an RRFB which caused Ms. O’Leary to suffer seizure-like symptoms when
18 subjected to the intensely, rapidly flashing light. Ms. O’Leary requested an
19 accommodation from the city of Little Canada, but the city failed to provide an
20 accommodation. On June 15, 2023, the MDHR issued a Finding of Probable Cause of

1 Discrimination against the city of Little Canada for failing to provide an accommodation
2 for the RRFB device.²⁰

3 66. The Finding of Probable Cause of Discrimination by the MDHR establishes that the use
4 of an RRFB requires accommodation. Defendant in this case has failed to provide the
5 required accommodation, and thus Plaintiff alleges that Defendant has discriminated
6 against Plaintiff without providing the required accommodation or recourse.

7 67. In O’Leary vs. Little Canada, the MHDR’s primary reasonings for issuing the Finding of
8 Probable Cause of Discrimination were Little Canada’s failure to make more than
9 performative gestures, failure to take any meaningful steps to determine what
10 accommodations could be made, and failure to act in good faith. These reasonings apply
11 equally well in this case. Defendant failed to take any meaningful steps to provide an
12 accommodation, failed to make more than performative gestures, failed to act in good
13 faith, failed to engage in the Interactive Process to find a mutually agreeable
14 accommodation, and failed to provide any recourse for Plaintiff.

15
16 **K. Olmstead vs. L.C.**

17 68. The case Olmstead vs. L.C. of 1999 is based on the “Integration Mandate” rule created by
18 the US Department of Justice. This case established that government entities must not
19 segregate or isolate people with disabilities. Defendant may not force Plaintiff to take
20

21
22
23 ²⁰ <https://www.softlights.org/wp-content/uploads/2023/06/74059-6-15-2023-ECP-Memorandum-.pdf>
COMPLAINT PURSUANT TO: 1. THE AMERICANS WITH DISABILITIES ACT 42 U.S.C. §§ 12131 – 12134; 2.
THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE §§ 51; AND 3. CALIFORNIA’S DISABLED
PERSONS ACT, CAL. CIV. CODE §§ 54. - 21

1 alternate roads or wear special glasses due to the requirements of the Integration
2 Mandate.

3 69. By failing to provide an accommodation to Plaintiff or any recourse at all, Defendant has
4 excluded Plaintiff from equal access to city services, in violation of the Integration
5 Mandate established in Olmstead vs. L.C.

6
7 **L. Willits et al. v. City of Los Angeles**

8 70. In this discrimination case, the city of Los Angeles was ordered on August 26, 2016, to
9 expend \$1,367,142,684 for Program Access Improvements.²¹ These improvements
10 include installing missing curb cuts for wheelchair access, repairing of uneven sidewalks,
11 and remediating other non-compliant issues for persons with mobility disabilities.

12 71. This case demonstrates that 1) the need to spend a large sum of money to eliminate
13 discriminatory barriers does not, on its own, create an undue burden for a city; and 2)
14 sidewalks must be free of discriminatory barriers. For a wheelchair user, discriminatory
15 barriers include lack of curb cuts and tree roots. For a person who cannot neurologically
16 tolerate intense, rapidly flashing light, an RRFB creates a discriminatory barrier that must
17 be eliminated.

18
19 **VI. CAUSES OF ACTION UNDER TITLE II OF THE ADA**

20
21
22
23 ²¹ <https://gbdhlegal.com/wp-content/uploads/cases/Settlement-Agreement-and-Release-of-Claims.pdf>
COMPLAINT PURSUANT TO: 1. THE AMERICANS WITH DISABILITIES ACT 42 U.S.C. §§ 12131 – 12134; 2.
THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE §§ 51; AND 3. CALIFORNIA'S DISABLED
PERSONS ACT, CAL. CIV. CODE §§ 54. - 22

1 72. The allegations of the paragraphs above are hereby realleged and incorporated by
2 reference.

3 73. Defendant has discriminated against Plaintiff in violation of the following Codes of Federal
4 Regulation:

5 A. Denial of benefits. 28 C.F.R. §§ 35.130(a)

6 B. Unequal opportunity. 28 C.F.R. §§ 35.130(b)(1)(ii) and 28 C.F.R. §§ 35.130(b)(1)(iii)
7 and 28 C.F.R. §§ 35.130(b)(1)(vii)

8 C. Failure to accommodate. 28 C.F.R. §§ 35.130(b)(7)(i)

9 D. Failure to provide the most integrated setting. 28 C.F.R. §§ 35.130(d)

10 E. Failure to make Travis Blvd. readily accessible. 28 C.F.R. §§ 35.151

11 VII. Relief Requested

12
13 74. Therefore, Plaintiff requests that the Court enter judgment:

14 A. Declaring that Defendant has violated Title II of the ADA and its implementing
15 regulation;

16 B. Ordering Defendant to modify, replace, or remove the RRFB device, and provide full
17 and equal access to Travis Blvd in the most integrated setting. 28 C.F.R. § 35.107(b);

18 C. Ordering Defendant to adopt a policy substantially similar to the following: "*A*
19 *flashing light in a public location that causes a seizure, migraine, panic attack or*
20 *other adverse neurological effect is deemed to be a discriminatory barrier requiring*
21 *accommodation, modification, or removal*";

22 D. Granting damages as authorized by the Unruh Civil Rights Act; and

23 COMPLAINT PURSUANT TO: 1. THE AMERICANS WITH DISABILITIES ACT 42 U.S.C. §§ 12131 – 12134; 2.
THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE §§ 51; AND 3. CALIFORNIA'S DISABLED
PERSONS ACT, CAL. CIV. CODE §§ 54. - 23

1 E. Granting court costs and legal fees. 28 C.F.R. § 35.175, Christianburg Garment
2 Company vs. Equal Employment Opportunity Commission.
3

4 Dated: December 6, 2023

5 Respectfully Submitted,

6 By: /s/ Mark Baker
7 9450 SW Gemini Drive PMB 44671
8 Beaverton, OR 97008
9 mbaker@softlights.org



1 APPENDIX A

2 These are case histories of individuals who have suffered harm and discrimination due to
3 being subjected to LED strobe lights.

4
5 Individual 1

6 Event 1: September 9, 2021 – Email to Oregon Department of Transportation - “LED
7 lights are now so intense, they are causing injury. I personally have suffered repeated
8 psychological trauma from being poked in the eyes by LED lights. Many times, when I drive on
9 Highway 101, I am attacked by these devices and poked in my eyes by the light. My nervous
10 system is now completely frazzled by having been assaulted by these strobing lights so many
11 times. I most likely have Complex PTSD. LED lights have such an intense peak luminance and
12 peak radiance that they overwhelm my central nervous system. I cannot properly see, think, or
13 concentrate. I have mild autism, so these RRFBs are illegal barriers to access and are
14 discriminatory.”

15 Event 2: September 3, 2021 – Incident in Yachats, Oregon - “On September 3, 2021, at
16 approximately 8:00pm, my partner and I were driving south on Highway 101 at Yachats when
17 we came across an emergency vehicle that was attacking us with high luminance LED flashing
18 lights. Neither of us could see properly, and my partner, the driver, started swearing because of
19 the assault and because she was afraid for my life. I have been diagnosed with Autism Spectrum
20 Disorder. LED flashing lights exceed my tolerance level and cause sensory overload. I tried to
21 leap out of the car, but my partner grabbed onto me, trying to protect me. Eventually I freed
22 myself and ran to the emergency vehicle and told them to stop assaulting us, that we couldn't

23 COMPLAINT PURSUANT TO: 1. THE AMERICANS WITH DISABILITIES ACT 42 U.S.C. §§ 12131 – 12134; 2.
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PERSONS ACT, CAL. CIV. CODE §§ 54. - 25

1 see, and that their flashing lights were killing us. They refused to turn off the assault weapons.
2 Here is a link to the video I took just as I suffered my sensory overload panic attack. WARNING:
3 MAY CAUSE SEIZURES: <https://youtu.be/GULzdBENYqA> I could not get immediately up to the
4 truck because the light weapons were overpowering. I ran to the front of the truck and closed
5 my eyes and waved my arms around to try and get them to stop, but they kept attacking me.
6 Every time I opened my eyes I was stabbed by the lights. I finally ended up rolling around on the
7 street in front of the emergency vehicle, screaming my head off and telling them to stop
8 assaulting us. My partner came over and got me off the road, and another woman came over to
9 try and help. I was crawling around on the ground, pulling the grass, pulling my hair, screaming.
10 I eventually ran away from the scene. I began hyperventilating and could not stop. My partner
11 eventually found me, and we took a number of side streets to get home.”

12
13 Event 3: April 7, 2022 - Letter from Attorney for Mark Baker to Ashland City Attorney

14 Katrina Brown – “The city of Ashland has installed several devices along Siskiyou Blvd., and
15 possibly other locations, called Rectangular Rapid Flashing Beacons. These devices rapidly flash
16 exceedingly intense surface source LED light directly into the eyes of drivers, pedestrians, and
17 bicyclists as they are navigating the roadway. In addition to the greatly reduced vision this
18 causes most people, the rapidly flashing surface source light disables Mr. Baker. Mr. Baker is
19 unable to neurologically process the non-uniform energy, extreme peak luminance, and rapid
20 flashing which results in a panic attack. When Mr. Baker has been exposed to these RRFBs, he
21 has lost situational awareness, smashed his hand into his face, screamed, and has stopped his
22 car, failing to continue even after the lights stopped flashing. The short-term recovery period

1 can take minutes, but the long-term effects are essentially permanent. Mr. Baker likens his
2 experiences with the LED flashing lights to torture.”

3 Event 4 – January 17, 2023 Email to Ashland Outside Counsel Casey Murdock – “Mr.
4 Murdock, As you know, I am forced to avoid Siskiyou Blvd. due to the assaulting RRFB LED
5 strobe lights, although I am not always successful. Today I attempted to drive to my dentist but
6 found myself on Siskiyou Blvd. headed north. As I drove, the RRFB punishment devices began
7 strobing, causing me to put both hands over my face, preventing me from seeing, so I stopped
8 my car. When I am in this situation, I have no way of knowing when to proceed. The strobes
9 also cause significant anxiety.”

11 Individual 2 – July 8, 2022 – Email to Williamstown, Massachusetts
12 “This incident occurred on Friday, July 8th of 2022 in Williamstown Massachusetts
13 around 3:50 in the afternoon. My mother and I were driving west on Rt. 2 through Williamstown
14 MA, as we approached the intersection of Park St and Rt. 2, a pedestrian approached the
15 crosswalk positioned on the west side of the intersection which triggered the strobe lights on the
16 crosswalk sign. There were no other visible strobe lights in the area and there is a small rise in
17 the road just before the intersection, so the crosswalk came into view suddenly. My mother, a
18 photosensitive epileptic, had an immediate and violent seizure in the passenger seat sitting next
19 to me. Her head and her right arm smashed against the passenger side window a couple of
20 times and her left hand hit my arm a few times while her limbs flailed. Thankfully, I was able to
21 maintain control of my car and rapidly decided to turn right (north) onto park street, to reduce
22 any prolonged exposure to the strobe light facing Rt. 2. There is no curb on Rt. 2 to pull over and

1 I did not want to risk my mother coming into contact with another strobe light, so I felt it best to
2 take this course of action. The crosswalk is positioned to the west of the intersection so I was
3 able to make the turn immediately without needing to wait for the pedestrian to cross. After
4 turning down park street, I turned right again into the first available driveway to get myself and
5 my mother off the road. That entire maneuver, from contact with the strobe light to when I
6 ultimately pulled into the driveway off of Park St. took about 20-25 seconds, and my mother's
7 seizure was ongoing this entire time. I turned the car off in the driveway and put my arms
8 around my mother to help prevent any further physical injury to her limbs which are still flailing
9 around the cabin of the car. Her seizure progressed for another 60 seconds before she began
10 choking, so I tilted her head forward a bit. Her body stopped seizing after another 30 seconds
11 and then she remained unresponsive for another 2 minutes. I could tell she was breathing so I
12 remained in the driveway until she recovered. I had no ability to administer actual first aid and I
13 could not take her to a hospital without risking further exposure to strobe lights or other seizure
14 triggers. She finally recovered enough to talk to me and asked me for some water/milk to drink.
15 I helped her get a drink of water and I decided to remain on the driveway for another 10
16 minutes while she regained some strength. We exited Williamstown by heading north on Park
17 St. until it eventually meets up with Rt. 7 north. We had no further incidents on our drive home
18 to Cambridge NY however, my mother was in visible pain the entire ride home. This was one of
19 the most violent seizures I had ever witnessed my mother having and my ability to respond
20 would have been even more limited if it weren't for the position of Park St being east of the
21 strobe light."
22

1
2 Individual 3 - March 17, 2022 – Email to Little Canada, Minnesota

3 *"I have photosensitive epilepsy and experience epileptic auras. One day I was driving*
4 *home from work and I encountered an RRFB (Rectangular Rapid Flashing Beacon). A pedestrian*
5 *pushed the button on the RRFB and the strobing RRFB was so distracting and blinding that I*
6 *almost drove into the pedestrian. My epileptic auras began and I was immediately nauseous,*
7 *my left leg started to twitch, and I felt pain in my eyes. My legs were wobbly, and I felt*
8 *physically unstable. I drove to my apartment, stepped inside, and then felt like I was losing*
9 *control of my bladder. Instead, I vomited. I then did almost nothing but sleeping for the next*
10 *two days and missed work."*

11
12 Individual 4 – February 11, 2022 – LED Strobe Lights on Utility Vehicles

13 *"It's hard to tell exactly how much of my sensitivity to LED lights comes from my*
14 *autoimmune condition (Sjogren's – which is known to cause photophobia in some patients), and*
15 *how much comes from having the innate trait of high sensitivity. I get very stressed now when I*
16 *drive to work and sometimes, I have to work from home to have a break from driving. Even the*
17 *daytime running lights on cars are nauseating for me. And the only tinted lenses that work for*
18 *me are amber ones, which create other safety issues in that it's harder to spot the traffic light*
19 *color changes etc. Strobing LED lights are becoming so common on utility vehicles and they*
20 *actually cause me to go into a completely overloaded state where I can't think straight. So, I*
21 *have to block them with my arm – also a hazard as I might not see a cyclist or pedestrian. I have*
22 *friends and acquaintances who tell me about their aversion to LEDs also. They have a range of*

1 *conditions that make LEDs harder to bear. E.g., post-concussion syndrome, migraines, high*
2 *sensory sensitivity, PTSD and more. If you add up all the people in society who have one of these*
3 *disorders or inherited traits then there are A LOT of people who have a reduced quality of life*
4 *due to LEDs.”*