

DOE DANIELS

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

CENTER FOR INDEPENDENCE OF THE DISABLED, NEW YORK, a nonprofit organization; DUSTIN JONES, an individual; MYRNA DRIFFIN, an individual; on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, and POLLY TROTTEBERG, in her official capacity as Commissioner of the New York City Department of Transportation,

Defendants.

No. _____

COMPLAINT



INTRODUCTION

1. This class action lawsuit seeks to end decades of civil rights violations committed by the City of New York against persons who use wheelchairs, walkers, and other mobility aids, and persons with vision impairments, who seek to use the sidewalks and pedestrian routes of what is arguably, for non-disabled residents, the most pedestrian-friendly large city in the United States.

2. As the nation celebrates the twenty-fourth anniversary of the Americans with Disabilities Act, more than 600,000 New Yorkers with mobility and vision disabilities continue to be excluded from the pedestrian culture that is so critical to community life in New York City because many of the City's sidewalks and pedestrian routes are too dangerous for use by persons with disabilities. Dangers include curbs at pedestrian crossings without curb ramps for wheelchair users or curbs with hazardous curb ramps that are extremely steep or are broken. The

City's sidewalks also contain mid-block barriers such as raised concrete, broken surfaces and other obstacles that block the path of travel for wheelchair and cane users.

3. The prevalence of dangerous curb ramps and inaccessible pedestrian routes is particularly troubling in lower Manhattan, below Fourteenth Street, which is the subject of this lawsuit. This area is the hub of the government services and commerce in the City and is visited by hundreds of thousands of pedestrians daily.

4. A curb ramp, also referred to in this Complaint as a curb cut, is a concrete ramp in a street curb that connects the sidewalk to a pedestrian crossing of a street or avenue, and allows wheelchair users to safely and independently enter and exit pedestrian crossings when traveling on the City's sidewalks.

5. The slope, landing, and surface requirements for curb ramps under the Americans with Disabilities Act ("ADA") are minimum safety standards that are critical to maintaining a safe and accessible street scape. When these standards are not followed consistently and accurately, persons with disabilities are put at risk of entering traffic involuntarily, falling, or being unable to cross from one pedestrian sidewalk to another. Without code-compliant curb ramps, individuals who use wheelchairs or other mobility devices cannot navigate safely between sidewalks and pedestrian crosswalks. When faced with a non-compliant curb ramp, such persons must often either travel significant distances out of their way to search for another crossing or forego using the sidewalks entirely and navigate the streets alongside the hazards of vehicular traffic.

6. Though the City has placed curb ramps at many intersections, many of them have dangerously steep slopes, broken pavement, a lack of level landing and turning space for safe

entrance onto the sidewalk at the top of the ramp, and lips at the bottom of ramp, among other barriers that impede wheelchair access.

7. The City has also failed to ensure that the paths of travel along its sidewalks and pedestrian routes have a level surface wide enough for wheelchair users and are free of obstacles, such as signposts, benches, trash receptacles, and newspaper stands that impede the access of wheelchair and cane users.

8. For over 30 years, first under Section 504 of the Rehabilitation Act and later under the Americans with Disabilities Act (“ADA”), cities have been required to take affirmative steps to make their sidewalks and pedestrian routes accessible to persons with disabilities. These laws recognize that the provision of safe, accessible sidewalks and pedestrian routes is a critical program and service of city government. The federal disability access laws also require cities to provide ADA-compliant curb cuts and accessible pedestrian routes every time they resurface streets and sidewalks.

9. Despite the longstanding nature of these requirements, the City has largely ignored them. Indeed, the City has yet to conduct a complete self-evaluation of its sidewalk and pedestrian route program or to create a publicly available transition plan focused on improving the accessibility of its existing sidewalks and pedestrian routes, despite being required to do so since 1992 under federal law. The City also fails to construct compliant curb ramps when it resurfaces streets and sidewalks – choosing instead to rely on patchwork repairs that have resulted in horribly inconsistent curb ramps at intersections throughout the City, including many intersections where none of the corners have consistent curb ramps.

10. Pedestrian safety is at the forefront of a wave of City spending, including Mayor de Blasio’s “Vision Zero” project, which implements a variety of City-funded programs

designed to bring the number pedestrian fatalities in New York City to zero. While these efforts have cost hundreds of millions of dollars and have helped make the area one of the most walkable urban centers in the world for non-disabled people, the City has largely ignored its legal obligations to the most vulnerable group of pedestrians – persons with disabilities.

11. A recent survey conducted by the Center for Independence of the Disabled (“CIDNY”) of 1066 curbs in Lower Manhattan found that more than seventy-five percent of the corners surveyed had barriers presenting safety hazards to persons with mobility and vision impairments, including nearly a quarter of the curbs surveyed having no curb ramps whatsoever.

12. As a result, persons such as Plaintiff Dustin Jones, who uses a wheelchair and travels frequently to downtown neighborhoods for work and civic activities, have no choice but to put their lives at risk on a daily basis due to defective curb ramps and barriers blocking the path of travel on City sidewalks.

13. Additionally, the lack of detectable warnings at curb ramps in Lower Manhattan often causes blind pedestrians, such as Plaintiff Myrna Driffin, to be unable to tell when they are leaving the sidewalk and entering the street where there is vehicle traffic.

14. This lawsuit focuses on the pedestrian routes, referred to as “pedestrian rights-of-way,” in all parts of the borough of Manhattan south of 14th Street, including 14th Street itself (hereafter, “Lower Manhattan”). This section of New York City corresponds to Manhattan Community Boards 1, 2, and 3, which include the neighborhoods of Battery Park City, the Financial District, the Civic Center, Seaport, Tribeca, Greenwich Village, West Village, NoHo, SoHo, Lower East Side, Chinatown, Little Italy, East Village, and Alphabet City. This section of the City contains numerous government buildings, including City Hall, the offices of many city

agencies, and the state and federal courthouses. It also contains approximately 38 subway stations and many places of public accommodation.

15. Defendants' consistent failure to construct accessible sidewalks, curb ramps, and pedestrian crossings in these New York City neighborhoods denies persons with mobility and/or vision disabilities meaningful access to the City's program of public sidewalks and pedestrian routes in these neighborhoods in violation of the Title II of the Americans with Disabilities Act (the "ADA"), Section 504 of the Rehabilitation Act of 1973 ("Section 504") and the New York City Human Rights Law.

16. Plaintiffs attempted to resolve these issues without litigation, requesting that Defendants make a commitment to provide meaningful access to their sidewalks and pedestrian routes by making improvements to curb ramps and sidewalks over a reasonable period of time. Plaintiffs also offered to participate in structured settlement negotiations to discuss these proposed improvements. Defendants, however, refused to make such a commitment or participate in structured negotiations. Plaintiffs therefore had no choice but to file this Complaint.

17. Plaintiffs sue on behalf of themselves and all New Yorkers with mobility and vision disabilities who are being discriminated against and subjected to hazardous conditions due to the access barriers at sidewalks and pedestrian rights-of-way in Lower Manhattan.

JURISDICTION

18. This is an action for declaratory and injunctive relief, brought pursuant to the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* ("Section 504"), and the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-101 *et seq.*

19. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343 for claims arising under the ADA and Section 504.

20. This Court has supplemental jurisdiction over the NYCHRL claim pursuant to 28 U.S.C. § 1367.

21. This Court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

VENUE

22. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b), because Defendants are located within this District and a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this District.

PARTIES

23. Plaintiff CIDNY is an independent living center that serves persons with disabilities throughout New York City. CIDNY's Manhattan offices are within the boundaries of Community Board 2 in lower Manhattan.

24. Founded in 1978, CIDNY is a consumer-based, non-profit organization, providing services and advocacy toward independent living for individuals with disabilities. The majority of CIDNY's board members and staff are persons with disabilities. In 2013, CIDNY served approximately 18,000 persons with disabilities, family members and partners of persons with disabilities in New York City. CIDNY's mission is to ensure full integration, independence and equal opportunity for all people with disabilities by removing barriers to the social, economic, cultural, and civic life of the community. The inability of persons with disabilities to safely use New York City sidewalks impacts almost all of CIDNY's programs and impairs its mission.

25. Since its inception, CIDNY has worked to provide persons with disabilities a safe and accessible way to move freely around New York City. As far back as 1979, CIDNY was

surveying trends in requests for service to identify the need New Yorkers had in accessing New York City's public transit services. In 1980, CIDNY lead the coalition of persons requesting that MTA trains and busses be made accessible to persons who use wheelchairs. In 1983, CIDNY helped convince legislators in New York City to make a fiscal commitment to curb-cut installation called the "Freedom Train." In 1987, CIDNY was part of a coalition that achieved new building codes for city buildings that required accessibility and adaptability in all new public and private buildings and when existing structures undergo renovation. In 1999, CIDNY helped negotiate a settlement of a federal lawsuit guaranteeing improvements to the Access-a-Ride program, which provided transportation for more than 40,000 people with disabilities in New York City.

26. The motivation for CIDNY's campaigns for subway, bus, taxi, paratransit, and public building access, was to make it possible for people with disabilities to travel independently and safely in New York City. CIDNY's work on sidewalk accessibility is a continuation of this longstanding commitment. Indeed, access to New York City sidewalks is a prerequisite for using public transit and getting around the City independently.

27. Because sidewalk and pedestrian-route access is critical to CIDNY's mission, CIDNY has and continues to expend extensive time and resources evaluating and addressing barriers that limit access to sidewalks and pedestrian routes for CIDNY's constituents. For example, in June 2014, CIDNY conducted a survey of approximately 150 intersections in Community Boards 1, 2, and 3 to determine whether curb ramps were accessible to persons with disabilities.

28. CIDNY is presently being harmed by the inaccessibility of the sidewalks and pedestrian routes in Lower Manhattan. For example, CIDNY staff members and volunteers with

mobility disabilities often have to travel to public buildings and other locations throughout Lower Manhattan for policy advocacy work, client visits, outreach and a host of other activities core to CIDNY's mission. The lack of accessible sidewalks and pedestrian routes in Lower Manhattan makes these activities much more difficult for CIDNY, its staff, and volunteers as well as the constituents being served by such work.

29. Plaintiff Dustin Jones is a qualified person with a disability under all applicable statutes. Mr. Jones uses a manual wheelchair for mobility. He regularly travels to Manhattan Community Boards 1, 2, and 3, where he uses the pedestrian rights-of-way that comprise New York City's sidewalk program in those neighborhoods. Mr. Jones has experienced and continues to experience barriers along these pedestrian rights-of-way because of Defendants' ongoing, continuous violations of the disability access laws.

30. Plaintiff Myrna Driffin is blind and a qualified person with a disability under all applicable statutes. She frequently uses the sidewalks to navigate to and from her apartment in Chelsea and locations in Lower Manhattan. When crossing the street and walking on sidewalks, she routinely encounters curb ramps without detectable warnings, making it difficult for her to determine if she is walking safely on the sidewalk or in danger on the street.

31. The Plaintiff class consists of all persons with mobility and/or vision disabilities who have been and are being denied the benefits and advantages of New York City's pedestrian rights-of-way in Lower Manhattan because of Defendants' continuing failure to design, construct, and maintain pedestrian rights-of-way that are accessible to persons with mobility and/or vision disabilities.

32. Defendants New York City and the Department of Transportation, as defined by the laws of the City of New York, are government entities. As such, Defendants qualify as

“public entities” within the meaning of Title II of the ADA, as that term is defined under 42 U.S.C. § 12131(l) and 28 C.F.R. § 35.104. Defendants New York City and the Department of Transportation are also recipients of federal funds subject to the accessibility requirements of Section 504 of the Rehabilitation Act.

33. Defendants New York City and the Department of Transportation are the public entities responsible for installing, repairing, and maintaining all pedestrian rights-of-way along New York City sidewalks and crosswalks.

34. Defendant Trottenberg, sued in her official capacity, is the Commissioner of the Department of Transportation.

35. Under the New York City Charter, the Commissioner of the Department of Transportation is in charge of building curbs and flags on streets; laying crosswalks; designing, constructing, maintaining, and repairing public roads and streets; and paving and resurfacing all public roads. N.Y.C. Charter §§ 2903(b)(1)-(3).

CLASS ALLEGATIONS

36. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiffs bring this action, for injunctive and declaratory relief purposes only, on their own behalf and on behalf of all persons similarly situated. The class that Plaintiffs seek to represent consists of all persons with mobility and/or vision disabilities who use and/or will use New York City pedestrian rights of-way in Lower Manhattan. The claims asserted herein are solely for injunctive and declaratory relief for the class; damage claims are not included in this complaint.

37. The persons in the class are so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action is a benefit to the parties and to the Court. Indeed, data from the United States Census American Community Survey conducted in 2008 indicate that more than 535,000 non-institutionalized New York City residents have a

mobility disability and more than 210,000 non-institutionalized New York City residents have a vision disability. In addition, hundreds of thousands of persons with vision and mobility disabilities visit the City annually.

38. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented in that they are all being denied, or will be denied, their civil rights and access to Defendants' pedestrian facilities in Lower Manhattan, due to the barriers described herein.

39. Common questions of law and fact predominate, including questions raised by Plaintiffs' allegations that Defendants have failed to provide meaningful access to New York City's program of pedestrian rights-of-way to persons with mobility and vision impairments in violation of Title II of the ADA and Section 504. Common questions also include whether Defendants' system-wide policy failures have resulted in their failure to provide compliant, accessible curb ramps whenever they have resurfaced or altered streets and sidewalks and their failure to ensure that their sidewalk program is kept free of obstacles impeding the access of wheelchair and cane users throughout Lower Manhattan.

40. Plaintiffs are adequate class representatives because they, or the persons they serve, are directly impacted by Defendants' failure to provide program access to New York City's sidewalks and pedestrian rights-of-way. The interests of the Plaintiffs are not antagonistic, or in conflict with, the interests of the class as a whole. The attorneys representing the class are highly trained, duly qualified, and very experienced in representing plaintiffs in civil rights class actions for injunctive relief.

41. Plaintiffs' claims are typical of the claims of the class as a whole because the Plaintiffs are similarly affected by Defendants' failure to provide access to New York City sidewalks and pedestrian rights-of-way.

42. Defendants have acted and/or failed to act on grounds generally applicable to the class as a whole, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

43. References to Plaintiffs shall include each Plaintiff and each member of the class, unless otherwise indicated.

FACTS COMMON TO ALL ALLEGATIONS

44. Defendants provide an extensive network of pedestrian routes in New York City for public use. These facilities include sidewalks, crosswalks, pedestrian crossings, and other walkways (referred to as "pedestrian rights-of-way"). There are approximately 42.1 miles of sidewalks per square mile in New York City. In Manhattan Community Boards 1, 2, and 3 (the portions of Manhattan at issue in this lawsuit), New York City manages approximately 1,000 intersections with about 4,000 corners.

45. Providing and maintaining this extensive network of pedestrian rights-of-way is a critical public program and service that Defendants provide to residents of and visitors to New York City. However, Defendants have failed to make this network of pedestrian rights-of-way safe for and usable by persons with mobility and vision impairments, thereby denying such individuals meaningful access to this critical public program and service, in violation of federal and New York City law.

46. Defendants have also failed on a systemic basis to construct safe and compliant curb ramps when the City resurfaces streets and sidewalks in Lower Manhattan, in violation of federal law.

47. Barriers such as missing or hazardous curb ramps are pervasive throughout Lower Manhattan. Though not exhaustive, CIDNY's June 2014 survey of the accessibility features of 1066 corners at intersections in Lower Manhattan demonstrates the widespread nature of these hazardous barriers. Seventy-five percent of corners surveyed were identified as hazardous to persons with mobility and vision impairments due to missing or defective curb cuts. Twenty-two percent of corners surveyed had no curb cut at all, leaving persons using wheelchairs or other mobility devices no choice but to travel alongside vehicle traffic in the street. Twenty-eight percent of corners surveyed had curb ramps with incorrect slopes, putting wheelchair users at risk of rolling into the street. Approximately twenty percent of corners surveyed had raised lips at the base of the curb cuts, making it difficult for wheelchair users to pass safely. Additionally, more than half of the curb ramps surveyed had no detectable warnings for blind and low-vision pedestrians. Other barriers identified included crumbling concrete, curb ramps leading to dangerous potholes, and obstructions blocking the path of travel for wheelchair users.

48. Safe and accessible curb ramp design has become uniform throughout the Country due to the development of federal accessibility guidelines for curb ramps. These guidelines are the product of years of debate and compromise between disability groups and city governments. The result of this compromise, reflected in the ADA Accessibility Guidelines ("ADAAG"), is a set of minimum safety standards for curb ramps. Curb ramps that deviate from such standards, including the majority of curb ramps in Lower Manhattan, are hazardous for persons with mobility and vision impairments.

49. According to ADAAG, A safe and compliant curb ramp must have the features listed below.

- The curb ramp must be at least 36 inches wide.

- The curb ramp's running slope can be no steeper than one inch up for every 12 inches across (1:12).
- Its cross slope can be no steeper than one inch up for every 48 inches across (1:48).
- There cannot be any other changes in level on the curb ramp.
- At the top of the curb ramp, there must be a landing with the same width as the curb ramp and a minimum length of 36 inches.
- There cannot be any abrupt changes in level between the curb ramp and the surface of the street.
- The surface of the street adjacent to the curb ramp cannot be steeper than one inch up for every 20 inches across (1:20).
- The two sloped areas on either side of the curb ramp, known as "flares," cannot be steeper than one inch up for every 10 inches across (1:10).

50. The U.S. Department of Transportation regulations, which apply to recipients of federal financial assistance, also require curb ramps to contain detectable warning surfaces that signal to blind and low-vision pedestrians that they are about to enter a street or a crosswalk. Detectable warning surfaces are small, truncated domes applied to the surface of the curb ramp.

51. In addition to hazards presented by missing and non-compliant curb ramps, sidewalks throughout Lower Manhattan are difficult to navigate or impassable for persons with disabilities due to pervasive mid-block barriers that Defendants have failed to remedy. For example, many sidewalks have abrupt changes in level that are hazardous to persons using wheelchairs, walkers and other mobility devices. Sidewalks also contain obstacles such as light poles, benches, and trash cans that impede the path of travel for wheelchair users. Protruding objects, such as haphazardly placed signage, further narrow the path of travel and present serious dangers to blind pedestrians using canes who cannot detect such objects and risk colliding with them.

52. Furthermore, Defendants have failed and are failing to prepare and implement a compliant Self-Evaluation regarding existing pedestrian right-of-way facilities and a compliant Transition Plan for making the City's existing pedestrian rights-of-way accessible, in violation of Title II of the ADA and Section 504. A compliant Self-Evaluation must include an evaluation of whether current services, policies and practices discriminate on the basis of disability. A compliant Transition Plan must include a schedule for making accessibility improvements to Defendants' facilities, including a schedule for providing compliant curb ramps where pedestrian areas cross streets. Federal law requires that the Transition Plan, once prepared, be made available to the public. Defendants have failed both to complete and make available to the public a compliant Self-Evaluation and a compliant Transition Plan.

EXPERIENCES OF PLAINTIFFS

53. Plaintiff CIDNY has constituents with mobility and vision disabilities who reside in, work in, and/or travel to Manhattan Community Boards 1, 2, and 3. CIDNY also has many staff members, board members, and volunteers who have mobility and/or vision disabilities.

54. CIDNY's constituents, staff members, board members and volunteers have used, and will continue to use, the sidewalks, curb ramps, and pedestrian crossings that comprise New York City's sidewalk program in Community Boards 1, 2, and 3.

55. As described above, New York City's sidewalks and pedestrian rights-of-way in the areas covered by this Complaint are riddled with access barriers. These barriers cause frustration and anxiety to CIDNY's constituents and require them to expend substantially more effort to navigate to and from CIDNY-related events than would be required if the sidewalk and pedestrian right-of-way program was accessible.

56. CIDNY's Manhattan offices are located at 841 Broadway, within the boundaries of Manhattan Community Board 2. The failure of New York City's sidewalk program to serve

persons with disabilities impairs CIDNY's ability to serve its constituents. CIDNY employees cannot do their jobs as effectively because it takes extra time and effort for them to navigate Lower Manhattan. Likewise, constituents of CIDNY struggle to safely reach CIDNY's advocacy and community events at City Hall and other government sites. CIDNY's constituents also report that they find it unduly difficult to travel safely around Lower Manhattan to get to meetings, medical appointments, and cultural activities, all of which CIDNY encourages its consumers to attend. The failure of the City to design and maintain accessible sidewalks and pedestrian routes thus impairs CIDNY's mission.

57. Plaintiff Dustin Jones has a mobility disability, which requires him to use a manual wheelchair. He travels to the Manhattan neighborhoods at issue in this lawsuit approximately 4-5 times per week to conduct his disability advocacy work and to visit friends. For example, Mr. Jones travels to City Hall to testify about legislation that will affect people with disabilities in his capacity as a board member of Disabled in Action of Metropolitan New York.

58. Mr. Jones prefers to travel along the pedestrian rights-of-way owned and maintained by Defendants instead of taking buses, subways, or paratransit.

59. The inaccessibility of Defendants' pedestrian rights-of-way in Lower Manhattan impairs Mr. Jones's ability to navigate the sidewalks, curb ramps, and pedestrian crossings independently. Mr. Jones often has to identify alternate routes when traveling in Lower Manhattan due to the inaccessibility of the sidewalks and curb ramps

60. When Mr. Jones was at the intersection of 1st Street and 2nd Avenue in June 2014, the curb ramps were in such poor condition that Mr. Jones doubted he could cross the

street safely. To cross the street, he had to flag down an ambulatory pedestrian and ask for assistance.

61. Mr. Jones has also confronted improperly constructed and noncompliant diagonal curb ramps at 14th Street and 2nd Avenue, as well as at 14th Street and 1st Avenue. The diagonal curb ramps have forced Mr. Jones to enter the path of vehicle traffic while he was attempting to use the pedestrian crosswalk.

62. Sometimes Mr. Jones is deterred from traveling to events in Lower Manhattan because he does not feel safe using the sidewalks.

63. Plaintiff Myrna Driffin is a blind resident of Manhattan who frequently uses the sidewalks to navigate between her apartment in Chelsea and Lower Manhattan. When crossing the street and walking on sidewalks, Ms. Driffin routinely encounters curb ramps without detectable warnings, making it difficult for her to determine if she is walking safely on the sidewalk or in danger on the street.

64. Ms. Driffin works at CIDNY's offices in Lower Manhattan. She regularly walks to and from work along the same route. When walking home, she walks north on Broadway to 14th Street, travels west on 14th Street until reaching 6th Avenue, then travels north on 6th Avenue.

65. During her walk home from work, Ms. Driffin regularly encounters two dangerous intersections that do not consistently have detectable warnings: 14th Street and University Place, and 14th Street and 5th Avenue. Because the curbs do not consistently have detectable warnings, she cannot determine if she is walking on the sidewalk or if she has crossed into the path of traffic.

66. When Ms. Driffin travels for reasons other than going to work, she considers whether the sidewalks are safe for her to use when planning her route. If the sidewalks in a particular neighborhood are too dangerous, she prefers not go to that neighborhood, unless she has help.

67. Ms. Driffin traveled to the neighborhoods below 14th Street in the summer of 2013 with her nieces and her grandchildren to visit the 9/11 Memorial and to take a trip on the Staten Island Ferry. During that visit, she relied on her 15-year-old grandchild to make sure she was safe when walking around. However, Ms. Driffin avoids those parts of the City when she needs to travel by herself due to the inaccessibility of the sidewalks and pedestrian routes.

FIRST CAUSE OF ACTION
VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT
(42 U.S.C. § 12131, ET SEQ.)

68. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

69. Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, prohibits a public entity from excluding a person with a disability from participating in, or otherwise benefitting from, a program of the public entity, or otherwise discriminating against a person on the basis of disability: “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

70. The term “disability” includes physical and mental impairments that substantially limit one or more major life activities. 42 U.S.C. § 12102(2). A “qualified individual with a disability” means an “individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation

barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

71. The Plaintiffs, the board members and constituents of the organizational Plaintiff, and the class are persons with disabilities within the meaning of the statute in that they have impairments which substantially limit one or more major life activities, such as walking or seeing. They are also qualified in that they are located in New York City and thus are eligible to benefit from the City’s program of public pedestrian rights-of-way. Plaintiffs, the board members and constituents of the organizational Plaintiff, and the class are qualified individuals with disabilities within the meaning of 42 U.S.C. §§ 12102, 12131 and 28 C.F.R. § 35.104.

72. A “public entity” includes state and local governments, their agencies, and their instrumentalities. 42 U.S.C. § 12131(1). Defendants New York City and New York City Department of Transportation are public entities within the meaning of 42 U.S.C. § 12131 and 28 C.F.R. § 35.104.

73. Title II of the ADA requires public entities, including Defendants, to operate each of their programs, services or activities “so that, when viewed in its entirety, it is readily accessible to and useable by individuals with disabilities.” 28 C.F.R. § 35.150; *see also* 28 C.F.R. §§ 35.149 & 35.151. Pedestrian rights-of-way themselves constitute a vital program, service or activity under Title II of the ADA. 28 C.F.R. § 35.104; *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002).

74. Defendants have failed to provide persons with mobility and vision impairments meaningful access to their pedestrian rights-of-way program in Lower Manhattan, in violation of Title II of the ADA. Defendants have also failed to operate their pedestrian rights-of-way

program in Lower Manhattan so that it is readily accessible and usable by persons with mobility and vision impairments when viewed in its entirety, in violation Title II of the ADA.

75. Title II of the ADA requires that when a public entity newly constructs facilities or alters any existing facilities in any manner that affects the usability of such facilities, the newly constructed or altered portions must be made accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.151(b). Title II's implementing regulations specifically require a public entity to install compliant curb ramps at intersections whenever it newly constructs or alters sidewalks, streets, roads, and/or highways at any time after January 26, 1992. 28 C.F.R. § 35.151(e). A street resurfacing project by a public entity is an alteration triggering sidewalk and pedestrian route accessibility requirements under the meaning of the regulation. *Kinney v. Yerusalim*, 9 F.3d 1067, 1073-74 (3rd Cir. 1993).

76. Defendants have failed to install adequate and compliant curb ramps when newly constructing or altering sidewalks, streets, roads, and/or highways within Lower Manhattan, in violation of Title II of the ADA.

77. The regulations implementing Title II of the ADA also require a public entity to maintain the features of all facilities required to be accessible under the ADA. 28 C.F.R. § 35.133. Facilities required to be accessible include roads, walks, and passageways. *See* 28 C.F.R. § 35.104.

78. Defendants have failed and continue to fail to maintain accessible features on pedestrian rights-of-way throughout Lower Manhattan, including failing to fix uneven, and/or crumbling pavement, failing to remove protruding and/or moveable obstructions, failing to ensure a sufficiently wide path of travel, and failing to correct excessive slopes and cross-slopes,

among other failures to maintain accessible features of such facilities, in violation of Title II of the ADA.

79. The regulations implementing Title II of the ADA further require public entities to provide and maintain accessibility for temporary facilities, including but not limited to, “temporary safe pedestrian passageways around a construction site.” 28 C.F.R. 36 App. A. 4.1.1(4). Defendants have violated Title II of the ADA by failing to provide safe and usable alternate accessible routes for pedestrians with mobility and vision impairments when providing temporary pedestrian routes due to construction that limits access to existing pedestrian routes.

80. Moreover, the regulations implementing Title II of the ADA require public entities to prepare and implement a Self-Evaluation and a Transition Plan to evaluate and improve the accessibility of their existing facilities. Public entities that have authority over streets, roads, or walkways, must include in their Transition Plan “a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs.” 28 C.F.R. § 35.150(d)(1)-(2). Public entities must also make a copy of the complete Transition Plan available for public inspection. See 28 C.F.R. § 35.150(d)(1). Defendants have violated Title II of the ADA by failing to prepare a Self-Evaluation of their existing pedestrian rights-of-way facilities in Lower Manhattan and by failing to prepare a complete and publicly available Transition Plan to improve the accessibility of such facilities, including a schedule for providing compliant curb ramps where pedestrian walks cross curbs.

81. As a direct and proximate result of the aforementioned acts, Plaintiffs have been and continue to be injured.

82. Defendants' conduct constitutes an ongoing and continuous violation of Title II of the ADA and, as a result, Plaintiffs are entitled to declaratory and injunctive relief as well as reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CAUSE OF ACTION
VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973
(29 U.S.C. § 794, ET SEQ.)

83. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

84. Section 504 of the Rehabilitation Act provides in pertinent part: “[N]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . .” 29 U.S.C. § 794.

85. The Plaintiffs, the board members and constituents of the organizational Plaintiff, and the class are otherwise qualified individuals with disabilities within the meaning of the statute in that they have impairments which substantially limit one or more major life activities, such as walking or seeing, and have reason to and are otherwise eligible to participate in Defendants' pedestrian rights-of-way program in Lower Manhattan. *See* 29 U.S.C. § 705(20)(B) (referencing 42 U.S.C. § 12102); *See also* 28 C.F.R. § 39.103.

86. Defendants New York City and Department of Transportation are recipients of federal financial assistance sufficient to invoke the coverage of Section 504 and have received such federal financial assistance at all times relevant to the claims asserted in this Complaint.

87. Defendants and their agents and employees have and continue to violate the Section 504 and the regulations promulgated thereunder by excluding Plaintiffs from

participation in, denying Plaintiffs the benefits of, and subjecting Plaintiffs based solely by reason of their disabilities, to discrimination in the benefits and services of Defendants' pedestrian rights-of-way programs in Lower Manhattan.

88. Under Section 504, a recipient of federal financial assistance must install compliant curb ramps at intersections whenever it newly constructs or alters sidewalks, streets, roads and/or highways any time after June 3, 1977. Defendants have additionally violated Section 504 by failing to construct compliant curb ramps at intersections throughout Lower Manhattan, where they have newly constructed or altered sidewalks, streets, roads or highways since June 3, 1997.

89. As a direct and proximate cause of the aforementioned acts, Plaintiffs have been and continue to be injured.

90. Defendants' conduct constitutes an ongoing and continuous violation of Section 504 and, as a result, Plaintiffs are entitled to declaratory and injunctive relief as well as reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CAUSE OF ACTION
VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW
(N.Y.C. ADMIN. CODE § 8-101 ET. SEQ.)

91. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs in this Complaint.

92. The New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-107(4)(a), provides that "[i]t shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation because of the actual or perceived . . . disability . . . status of

any person directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof . . .”

93. The term “person” includes governmental bodies or agencies. N.Y.C. Admin. Code § 8-102(1). New York City is a governmental body or agency and thus is a person within the meaning of N.Y.C. Admin. Code § 8-102(1). The Department of Transportation is also a governmental body or agency and thus is also a person within the meaning of the statute. As Commissioner of the Department of Transportation, Defendant Trottenberg is being sued in her official capacity as the chief executive of a governmental body or agency.

94. The term “place or provider of public accommodation” includes “providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold or otherwise made available.” N.Y.C. Admin Code § 8-102(9). The City’s pedestrian rights-of-way program in Lower Manhattan constitutes a public accommodation as it is a service, accommodation, advantage, or privilege offered to the general public and thus falls within the meaning of N.Y.C. Admin Code § 8-102(9).

95. Defendants, as persons under the statute, act as the “managers” of the City’s pedestrian rights-of-way program in Lower Manhattan, a public accommodation. In so doing, the City, the Department of Transportation, and Trottenberg directly and indirectly deny to persons with disabilities the accommodations, advantages, facilities or privileges of the pedestrian rights-of-way program for the reasons set forth herein.

96. The NYCHRL additionally requires that any person prohibited from discriminating under Section 8-107 on the basis of disability “shall make reasonable

accommodation to enable a person with a disability to . . . enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.” N.Y.C. Admin. Code § 8-107(15). The term “covered entity” is defined as a person required to comply with any provision of Section 8-107, which includes Defendants under N.Y.C. Admin. Code § 8-102(1).

97. The City of New York, Department of Transportation and Trottenberg in her official capacity qualify as covered entities and must make the reasonable accommodations necessary to allow persons with disabilities the opportunity to enjoy the right of benefiting from the City’s pedestrian rights-of-way program pursuant to N.Y.C. Admin. Code § 8-107(15). Defendants have made inadequate or no reasonable accommodations to allow persons with disabilities the opportunity to enjoy the right of benefiting from the City’s pedestrian rights-of-way program.

98. As a direct and proximate result of Defendants’ violations of the NYCHRL, Plaintiffs have been injured as set forth herein.

99. Defendants’ conduct constitutes an ongoing and continuous violation of the NYCHRL and, unless restrained from doing so, Defendants will continue to violate said law. This conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs have no adequate remedy at law. Plaintiffs will suffer irreparable harm in that they will continue to be discriminated against and denied the accommodations, advantages, facilities or privileges of the City’s pedestrian rights-of-way program in Lower Manhattan as well as reasonable accommodations which would provide them the opportunity to benefit from the City’s pedestrian rights-of-way program in Lower Manhattan. Consequently, Plaintiffs are entitled to injunctive relief and reasonable attorneys’ fees and costs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

FOURTH CAUSE OF ACTION
DECLARATORY RELIEF

100. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of this Complaint.

101. Plaintiffs contend that Defendants have failed and are failing to comply with applicable laws prohibiting discrimination against persons with disabilities in violation of Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, *et seq.*, and the NYCHRL, N.Y.C. Admin. Code §8-101 *ET. seq.*

102. Defendants disagree with Plaintiffs' contention.

103. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows, including but not limited to:

102. A declaration that Defendants' conduct as alleged herein has violated and continues to violate Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act and the NYCHRL.

103. An order and judgment enjoining Defendants from violating Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the NYCHRL, and requiring Defendants to develop and implement a remedial plan to remedy such failures in order

to provide meaningful access to New York City's pedestrian rights-of-way, including sidewalks, curb ramps and pedestrian crossings, in Lower Manhattan. At a minimum, Plaintiffs request that Defendants be enjoined to take the following actions:

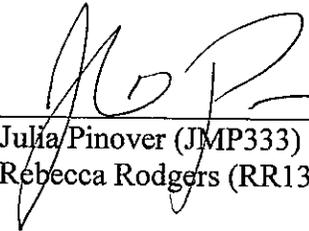
- a. Ensure that pedestrian rights-of-way, when viewed in their entirety, are readily accessible and usable by persons with vision and mobility impairments;
- b. Undertake prompt remedial measures to eliminate physical barriers to access to pedestrian rights-of-way to make such facilities accessible to Plaintiffs in accordance with federal accessibility standards.
- c. Maintain any existing accessible features of Defendants' pedestrian rights-of-way so that such features provide full usability for persons with vision and mobility impairments.
- d. Ensure that all future new construction and alterations to sidewalks and streets results in the provision of pedestrian rights-of-way that are fully compliant with federal accessibility standards;
- e. Prepare a complete Self-Evaluation and a complete and publicly available Transition Plan regarding the accessibility of existing pedestrian rights-of-way in compliance with Title II of the ADA and Section 504.

104. Plaintiffs' reasonable attorneys' fees and costs.

105. Such other and further relief as the Court deems just and proper.

Dated: July 29, 2014
New York, New York

Respectfully submitted,
DISABILITY RIGHTS ADVOCATES



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