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4 SUPERIOR COURT OF THE STATE OF CALIFORNIA

5 SOLANO COUNTY

7 MARK BAKER,

8 Plaintiff,

9 vs.

10 CITY OF FAIRFIELD,

11 Defendant

Case No.: CL23-05929

FIRST AMENDED COMPLAINT
PURSUANT TO:

1. THE AMERICANS WITH DISABILITIES
ACT 42 U.S.C. §§ 12131 – 12134

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 solely on Plaintiff’s disability, in violation of federal anti-discrimination statutes.
- 17 2. Specifically, Plaintiff alleges that Defendant made an alteration to Travis Boulevard that
- 18 created a new discriminatory barrier where none existed previously. The alteration was the
- 19 addition of a device called a Rectangular Rapid Flashing Beacon (RRFB) that digitally
- 20 pulses intense, high-energy, light into the eyes of Plaintiff and prevents Plaintiff’s full and
- 21 equal access to Travis Blvd.
- 22 3. Defendant declined to engage in an Interactive Grievance Process to find a mutually
- 23 agreeable accommodation.

1 4. As a result of Defendant’s discriminatory actions as alleged herein, Plaintiff is unable to
2 access Travis Blvd. safely, fully, and equally due to Plaintiff’s disability.

3 5. Through this lawsuit, Plaintiff seeks coercive relief requiring Defendant to restore Travis
4 Blvd. to its non-discriminatory state by replacing, modifying, or removing the RRFB
5 device on Travis Blvd.

6 **II. THE PARTIES**

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8 6. Plaintiff is Mark Baker, a resident of California.

9 7. Defendant is Fairfield, California, a “public entity” within the meaning of the Americans
10 with Disabilities Act (“ADA”), 42 U.S.C. § 12131(1)(A), and is therefore subject to the
11 ADA.

12 **III. JURISDICTION AND VENUE**

13 8. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and
14 42 U.S.C. § 12133. The Court may grant declaratory and other relief pursuant to 28
15 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 12133.

16 9. Venue is proper because City is located in this county and all the claims and events giving
17 rise to this action occurred in this county.

18 10. Plaintiff exhausted all administrative remedies prior to filing this claim.

19 **IV. STANDING**

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22 11. To demonstrate standing, a plaintiff must (1) have suffered a concrete and particularized
23 injury-in-fact, which is actual or imminent, not conjectural or hypothetical; (2) there must

1 be a causal connection between the injury and the defendant's conduct; and (3) it must be
2 likely that the injury will be redressed by a favorable decision.¹

- 3 12. Plaintiff meets standing requirements because (1) Plaintiff has suffered neurological and
4 psychological trauma when exposed to the LED flashing lights emitted by the RRFB
5 device on Travis Blvd.; (2) Defendant's use of the RRFB flashing light device prevents
6 full, safe, and equal access to Travis Blvd. and the services located on Travis Blvd.; and (3)
7 a favorable decision will allow Plaintiff access to Travis Blvd. without the imminent threat
8 of psychological trauma and neurological injury.

9 **V. BACKGROUND**

10 **A. Qualified Disability**

- 11 13. Mark Baker (Plaintiff) has been diagnosed with autism spectrum disorder which is a
12 qualified ADA disability and is therefore protected under the ADA.
13

14 **B. Rectangular Rapid Flashing Beacons**

- 15 14. An RRFB is an electronic product that emits Visible Light radiation. RRFBs emit an
16 intense, asynchronous, rapid, and digitally pulsing light using multiple Light Emitting
17 Diodes.
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19 15. RRFBs are installed and operated at pedestrian crossings.
20 16. Figure 1 shows the intense light emitted by an RRFB.

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23 ¹ <https://casetext.com/case/hernandez-v-welcome-sacramento-llc>



10 *Figure 1 – Rectangular Rapid Flashing Beacon*

11 17. Defendant operates an RRFB on Travis Blvd.

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13 **C. Regulatory Framework for RRFBs**

14 18. The US Food and Drug Administration has not vetted or approved the RRFB LED
15 flashing light device and has not published the required performance standards for
16 RRFBs as required by 21 U.S.C. 360ii and thus there are no standards to limit the
17 intensity or to restrict the digital pulsing of the LED lights.
18

- 1 19. The US Federal Highway Administration (FHWA) has approved the use of the RRFB
2 device but has deferred to the FDA for performance standards to protect public health and
3 safety.² These FDA performance standards do not exist.
- 4 20. The California Department of Transportation (CalTrans) has approved the RRFB device
5 based on the FHWA approval.
- 6 21. The city of Fairfield operates the RRFB device under the belief that the RRFB device has
7 been approved by CalTrans. CalTrans approves the RRFB device under the belief that
8 the RRFB device has been approved by the FHWA. The FHWA has approved the RRFB
9 device, while knowing that the RRFB has not received FDA approval.
- 10 22. The US Access Board approved the use of the RRFB device, knowing that the RRFB has
11 not been vetted for safety for individuals diagnosed with autism spectrum disorder and
12 knowing that RRFBs can trigger seizure-like symptoms in individuals diagnosed with
13 autism spectrum disorder. The Access Board defers to the FDA for performance
14 standards to protect public health.³ These FDA performance standards do not exist.
- 15 23. In summary, the failure of the FDA to comply with 21 U.S.C. 360ii and publish
16 performance standards for the RRFB LED flashing light device has led to a downstream
17 cascade of approvals by government agencies at all levels, without any agency ensuring
18 that RRFBs are safe for individuals diagnosed with autism spectrum disorder.

22 ² <https://www.softlights.org/wp-content/uploads/2022/10/Baker-CL-2022-0375.pdf>

23 ³ https://www.softlights.org/wp-content/uploads/2024/01/Petition-to-Amend-PROWAG-Final-Rule_Access-Board-Response_final_10262023.pdf

1 **D. Research on Autism and Lights**

2 24. The research article Visual Sensory Experiences From the Viewpoint of Autistic Adults
3 describes the impacts of light on individuals diagnosed with autism spectrum disorder.⁴

4 Below are several quotes from this research article:

5 25. Quote: *“including difficulties tolerating a range of stimuli such as bright environments,*
6 *artificial lighting, patterns, unpredictable movements, visual distractions, fine detail, and*
7 *particular colors.”*

8 26. Quote: *“Bogdashina (2003) provided a list of visual hypersensitivity issues, such as*
9 *focusing on fine detail and a dislike for extreme or flashing lights...”*

10 27. Quote: *“Light alterations increased participants’ ability to cope in artificially lit*
11 *environments. Reducing light levels can improve visual ability.”*

12
13 **E. Impacts of RRFB Flashing Lights on Plaintiff**

14 28. Plaintiff has been subjected to RRFB flashing lights numerous times and at numerous
15 locations over the past several years. Plaintiff reacts with terror, fear, and anxiety. The
16 intense, digitally pulsing light triggers suicidal ideations.

17 29. Plaintiff’s attempts to survive the barrage of LED flashing lights from an RRFB include
18 covering his eyes with his hands, closing his eyes, yelling profanity, and stopping the car.
19 Plaintiff describes the effects of the lights as akin to torture.

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23 ⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8217662/>

1 30. Plaintiff has encountered RRFB flashing lights many times with his partner. Plaintiff's
2 partner has seen Plaintiff's reactions to the RRFB lights and now warns Plaintiff to cover
3 his eyes whenever they encounter an RRFB.

4 31. Plaintiff's reactions to the RRFB flashing lights are a direct result of his disability.
5 Typical individuals without Plaintiff's disability do not react to the RRFB light in this
6 way. It is solely due to Plaintiff's disability of autism spectrum disorder that the RRFB
7 flashing lights cause such severe adverse neurological and psychological reactions.

8 32. An assault is a non-accidental act that causes the victim to reasonably believe that the act
9 will cause imminent harm.⁵ Plaintiff does not assert in this claim that Defendant is
10 legally assaulting Plaintiff with the RRFB device but raises the point to show the
11 similarity between Plaintiff's reactions to the RRFB light and the legal definition of
12 assault. Plaintiff has frequently described the impacts of RRFB light as an assault.

13 33. Plaintiff lives near Fairfield, California. On November 25, 2023, Plaintiff was traveling
14 on Travis Boulevard when Plaintiff was struck by the LED flashing light from an RRFB
15 device. Plaintiff was forced to cup his hands over his eyes to protect himself, cursed, and
16 slowed the car to a snail's pace due to Plaintiff's limited vision.

17 34. Due to Plaintiff's numerous repeated exposures to RRFB LED flashing lights, Plaintiff
18 suffers an increasing level of psychological trauma from each subsequent exposure to
19 LED flashing lights due to reliving past anxiety, panic attacks, and suicidal ideations
20 associated with the LED flashing lights.

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23 ⁵ <https://www.law.cornell.edu/wex/assault>

1 35. Plaintiff has a fear of returning to or travelling in Fairfield due to the imminent threat of
2 being struck by the RRFB LED light.

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4 **F. Request for Accommodation**

5 36. Plaintiff submitted a request for accommodation to the city of Fairfield on November 26,
6 2023. The accommodation request was to begin an interactive process with the city to
7 find mutually agreeable accommodation.

8 37. On November 29, 2023, only three days after the accommodation request, the city of
9 Fairfield denied Plaintiff's request to begin an interactive process to find a mutually
10 agreeable accommodation and referred Plaintiff to CalTrans and the FHWA.

11 38. In a separate, but similar situation, the Minnesota Department of Human Rights
12 investigated a discrimination claim involving an RRFB device. One June 15, 2023, after
13 a one-and-a-half-year investigation, the MDHR determined that that the city involved in
14 the case had violated the civil rights of the individual that filed the case and issued a
15 Finding of Probable Cause of Discrimination against the city.⁶

16 39. The primary reason that the MDHR issued the Finding of Probable Cause of
17 Discrimination is because the city in that case failed to take more than performative steps
18 and failed to make a good faith effort to find an accommodation for the RRFB device for
19 the individual.

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23 ⁶ <https://www.softlights.org/wp-content/uploads/2023/06/74059-6-15-2023-ECP-Memorandum-.pdf>

1 40. The situation is the same in this case. The city of Fairfield did not make a good faith
2 effort to engage with the Plaintiff to find a mutually agreeable accommodation, failed to
3 meet with the Plaintiff, failed to offer a mutually agreeable accommodation, and left
4 Plaintiff with no recourse to access Travis Blvd. safely, fully, and equally.

5 6 **VI. Americans with Disabilities Act**

7 **A. Discriminatory Barrier**

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9 41. The reason for this legal action is due to the city of Fairfield's creation of a new
10 discriminatory barrier and the city's failure to then provide an accommodation for
11 Plaintiff, leaving Plaintiff with no recourse for safely, fully, and equally accessing Travis
12 Blvd.

13 42. The city of Fairfield does not deny that the RRFB creates a discriminatory barrier nor
14 does the city deny that accommodation is required.

15 43. A barrier does not need to completely deny Plaintiff's access to Travis Blvd. to be a
16 violation of the Americans with Disabilities Act, but the barrier need only interfere with
17 Plaintiff's full and equal use of Travis Blvd.⁷ (Chapman vs. Pier 1 Imports (2010)).

18 44. The approval of the RRFB device by the FHWA, the Access Board, and CalTrans does
19 not relieve Defendant of their duty to provide accommodation for three reasons: 1) The
20 FDA has not vetted the RRFB device for its impacts on individuals with disabilities; 2)

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23 ⁷ <https://casetext.com/case/chapman-v-pier-1-imports-us-inc>

1 The FDA has not published the Congressionally required performance standards for the
2 RRFB device; 3) The Americans with Disabilities Act requirements cannot be nullified
3 by other federal and state agency regulations. Discrimination is prohibited, regardless of
4 other agency rulemaking.

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6 **B. Alteration**

7 45. For any alteration, a city is required to ensure that the facility is accessible to people with
8 disabilities. The US Department of Justice Civil Rights Division writes on their website,
9 "*When state/local governments build or alter facilities, they must make them accessible to people*
10 *with disabilities.*"⁸ A facility is broadly interpreted as any program, service, or activity
11 provided by a city and includes all the operations of a city.⁹ (Barden vs. City of
12 Sacramento (2002)).

13 46. 28 C.F.R. 35.151(a)(1) states, "*Each facility or part of a facility constructed by, on behalf*
14 *of, or for the use of a public entity shall be designed and constructed in such manner that*
15 *the facility or part of the facility is readily accessible to and usable by individuals with*
16 *disabilities, if the construction was commenced after January 26, 1992.*"¹⁰

17 47. 28 C.F.R. 35.130(a) states, "*No qualified individual with a disability shall, on the basis of*
18 *disability, be excluded from participation in or be denied the benefits of the services,*

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22 ⁸ <https://www.ada.gov/topics/title-ii/>

⁹ <https://caselaw.findlaw.com/court/us-9th-circuit/1375815.html>

¹⁰ <https://www.ada.gov/law-and-regs/design-standards/2010-stds/#206-accessible-routes>

1 *programs, or activities of a public entity, or be subjected to discrimination by any public*
2 *entity."*

3 48. 28 C.F.R. 35.130(b)(7)(i) states, "A public entity shall make reasonable modifications in
4 *policies, practices, or procedures when the modifications are necessary to avoid*
5 *discrimination on the basis of disability, unless the public entity can demonstrate that*
6 *making the modifications would fundamentally alter the nature of the service, program,*
7 *or activity.*

8 49. 28 C.F.R. § 35.130(d) states, "A public entity shall administer services, programs, and
9 *activities in the most integrated setting appropriate to the needs of qualified individuals*
10 *with disabilities."*

11 50. 28 C.F.R. 35.164 states that a public entity is not required to take any action that it can
12 demonstrate would result in a fundamental alteration in the nature of a service or that
13 would result in an undue financial burden to the public entity. This section is not a viable
14 excuse for the city in this case because the RRFB device itself is the fundamental
15 alteration to the nature of Travis Blvd. Whereas Travis Blvd. is accessible to Plaintiff
16 where RRFBs do not exist, Travis Blvd. became inaccessible to Plaintiff because of the
17 fundamental alteration of adding the RRFB LED flashing light device.

18 51. Defendant cannot claim an undue financial burden of restoring Travis Blvd. to its non-
19 discriminatory state because Defendant failed to comply with 28 C.F.R. 35.151 and the
20 financial burden of eliminating the discriminatory barrier that Defendant created is the
21 responsibility of Defendant and not a justification for inaction. In addition, as per 28
22 C.F.R. 35.164, Defendant has the burden of proof to show that restoring Travis Blvd. to
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1 an accessible state for Plaintiff is an undue burden. In any case, Defendant must make
2 Travis Blvd. readily accessible to Plaintiff.

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4 **VII. CAUSES OF ACTION UNDER TITLE II OF THE ADA**

5 52. The allegations of the paragraphs above are hereby re-alleged and incorporated by
6 reference. Defendant has discriminated against Plaintiff in violation of the following
7 Codes of Federal Regulation:

8 53. A) Defendant failed to ensure that the RRFB alteration did not create a new discriminatory
9 barrier where none had previously existed, and Defendant failed to ensure that Travis Blvd.
10 would still be readily accessible by individuals with disabilities with the addition of the
11 RRFB device. 28 C.F.R. § 35.151(a)(1).

12 54. B) The operation of the RRFB device denies Plaintiff the full benefits of Travis Blvd. and
13 subjects Plaintiff to discrimination. 28 C.F.R. § 35.130(a), 28 C.F.R. § 35.130(b)(1)(i)

14 55. C) Defendant failed to engage with Plaintiff to find a mutually agreeable accommodation
15 and failed to modify its practices related to the RRFB device to avoid discrimination. 28
16 C.F.R. § 35.130(b)(7)(i)

17 56. D) Defendant failed to provide the most integrated setting, which would be the use of
18 Travis Blvd. without suffering neurological or psychological trauma caused by the RRFB
19 device. 28 C.F.R. § 35.130(d)

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22 **VIII. Relief Requested**

23 57. Therefore, Plaintiff requests that the Court enter judgment:

1 A. Declaring that Defendant has violated Title II of the ADA, 42 U.S.C. §§ 12131-34,
2 and its implementing regulations, 28 C.F.R. Part. 35.

3 B. Ordering Defendant to modify, replace, or remove the RRFB device within 60 days
4 of the judgment and provide safe, full, and equal access to Travis Blvd. in the most
5 integrated setting.

6 C. Granting court costs and legal fees. 28 C.F.R. § 35.175 and Christiansburg Garment
7 Company vs. Equal Employment Opportunity Commission.

8
9 Dated: March 16, 2024

10 Respectfully Submitted,

11 By: /s/ Mark Baker
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