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10 **NOTE: Defendants disconnected**
11 **This Plaintiffs telephone**

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 SALMA MERRITT, DAVID MERRITT and
16 BEATRICE PACHECO-STARKS,

17 Plaintiffs,

18 v.

19 KEVIN E. MCKENNEY, THOMAS W.
20 CAIN, MARK H. PIERCE, SOCRATES P.
21 MANOUKIAN, SANTA CLARA
22 SUPERIOR COURT, LYNN SEARLE,
23 MICHAEL DESMERAIS, DOES 1-20,

24 Defendants.

Case No. _ CV13-01391-PSG

**FIRST AMENDED COMPLAINT By
Individuals With Disabilities—For
Declaratory, Injunctive and Damages
Relief—Person With Physical & Mental
Limitations Precluded From Participating In
State Court Litigation And Punished Them
For Being Disabled and Aide for Aiding and
Encouraging Them Against American with
Disabilities Act; Unruh Civil Rights Act;
California Disabled Persons Act**

Demand For Jury

25 **COMPLAINT**

26 This action arises under the Americans With Disabilities Act, to correct the unlawful policies and
27 practices imposed by Defendants Kevin Mckenney, Mark Pierce, Peter Manoukian, Cain, Searle,
28 Desmerais and Santa Clara Superior Court; and Does 1-20 (“Defendants”) and alleges as follows:

I. INTRODUCTION

1
2 1. Plaintiff Salma Merritt is a married Medical Doctor with serious physical disabilities,
3 brings this action by her husband and principle Caretaker, David Merritt, to enjoin defendants'
4 refusal to provide accommodations' for her disabilities, so that she and her husband can properly
5 prepare for trials, Opposition to motions, not be subject to mental abuses and other litigation
6 matters that was and is pending before California Superior Court in Santa Clara County, and to
7 which she is being precluded from fully participating in, in part, due to her disabilities.

8 2. Under the Americans with Disabilities Act, and corresponding State of California laws,
9 the Federal and State Governments mandates for Defendants to provide accommodations to court
10 proceedings where such accommodations are reasonable.

11 3. Since the Plaintiffs have prevailed in State of California Court of Appeals in
12 disqualifying one of Defendants' state court judges from their case, the Defendants have
13 repeatedly implemented a practice and routine which denies Plaintiffs any accommodations for her
14 disabilities.

15 4. The Defendants also have a practice or policy of requiring the Plaintiffs to reapply for
16 accommodations over-and-over, each time that they need to have accommodations for upcoming
17 proceedings, even though Mrs. Merritts disabilities are permanent and not temporary in nature.

18 5. Even though evidence form treating physicians have been presented and represented to
19 Defendants regarding Plaintiffs limitations needs which makes her eligible for court
20 accommodations due to her disabilities alone, Mrs. Merritt's requests for accommodations led
21 defendants to terminate one case (refusing to continue trial date and issuance of vexatious litigant
22 order for requesting accommodations several times in two days); as well as refusing to continue
23 hearing dates to give time to research and provide proper and adequate opposition pleadings and
24 granting Defendants in another action more than 3 days of time to depose Mrs. Merritt after they
25 exerted violence at first date and committed other abuses upon her person during more than 24
hours collectively of her time which led to a collapse.

26 6. Defendants' refusal to provide accommodations to Mrs. Merritt, and retaliation thereof,
27 due to her disabilities violates Title II of the Americans With Disabilities Act, (ADA), 42 USC §
28 12131 et seq. ADA §§202 et seq.

II. JURISDICTION AND VENUE

1
2 7. This Court has subject matter jurisdiction pursuant to 28 USC § 1331. Plaintiffs' claims
3 are authorized by 28 USC §§ 2201, 2202 and by 42 USC §§12101 et seq. (including § 12181 et
4 seq.) ADA §§ 2 et seq. Pursuant to pendant jurisdiction, an attendant and related causes of action,
5 arising from the same nucleus of operative facts and arising out of the same transactions, is also
6 brought under California's Unruh Civil Rights Act and Disabled Persons Act. Venue is
7 appropriate because the events took place in Santa Clara County.

III. PARTIES

8
9 8. Plaintiff Salma Merritt is a resident of Sunnyvale California. She brings this action
10 through her husband, David Merritt, who is also a resident of Sunnyvale California.

11 9. Plaintiff David Merritt is a resident of Sunnyvale, California. He brings this action on
12 behalf of his wife, Salma Merritt, who is a qualified person with disabilities under ADA in need of
13 Aide.

14 10. Plaintiff Beatrice Pacheco-Starks is a resident of Mt View, California. Mr. Merritt
15 brings this action on behalf of Mrs. Pacheco-Starks, who is a qualified person with disabilities
16 under ADA in need of Aide.

17 11. Defendant Kevin E. Mckenney is a Santa Clara County judge. He is fully responsible
18 for his illegal conduct that violated U.S. Federal and State laws. He is sued in his individual and
19 official capacities. He currently works at 191 North First Street, San Jose, CA. Department 20.

20 12. Defendant Thomas W. Cain is a Santa Clara County judge. He is fully responsible for
21 his illegal conduct that violated U.S. Federal and State laws. He is sued in his individual and
22 official capacities. He is located/works at 191 North First Street, San Jose, CA. Department 3.

23 13. Defendant Mark H. Pierce is a Santa Clara County judge. He is fully responsible for
24 his illegal conduct that violated U.S. Federal and State laws. He is sued in his individual and
25 official capacities. He currently works at 191 North First Street, San Jose, CA. Department 9.

26 14. Defendant Socrates P. Manoukian is a Santa Clara County judge. He is fully
27 responsible for his illegal conduct that violated U.S. Federal and State laws. He is sued in his
28 individual and official capacities. He currently works at 191 North First Street, San Jose, CA.
Department 20.

1 15. Defendant Lynn Searle is a lawyer in San Francisco. She is fully responsible for her
2 illegal conduct that violated U.S. Federal and State laws. She is sued in her individual and official
3 capacities. Her business office is Law Offices of Lynn Searle, 220 Bush Street, Suite 1200, San
4 Francisco, CA 94104.

5 16. Defendant Michael G. Desmarais is a lawyer in San Jose. He is fully responsible for
6 his illegal conduct that violated U.S. Federal and State laws. He is sued in his individual and
7 official capacities. His business office is Law Office of Michael G. Desmarais, 16450 Los Gatos
8 Blvd, Los Gatos, CA 95032.

9 17. Defendant Santa Clara Superior Court is a California State Court. Under California
10 laws it provides public forum for citizens with litigation disputes, adjudicating civil and criminal
11 matters which are commenced by California state citizens.

12 18. Does 1-20 are Santa Clara Superior Court personnel whose identities are not fully
13 known at this time, but who have been involved in the ADA violations alleged herein.

14 **IV. FACTS**

15 19. Mrs. Merritt has fibromyalgia and other diagnosed disabilities, and as a consequence,
16 in part, is unable to attend, or participate in, certain matters which requires more than a few hours,
17 many times less, periods of time focus, energy, concentration, inability to think, or remain in
18 prolonged fixed positions. She suffers from cognitive impairment. She also requires certain
19 therapies during the course of each day should not be subjected to abnormal stresses such as
20 hostilities, verbal assaults and needs non-stressful environments, all of which leads to cognitive
21 limitations.

22 20. Mrs. Merritt resides with her husband who is her primary caretaker. She requires
23 assistance each day from him for certain daily living functions and self-care activities, including
24 but not limited to, getting out of bed, dressing children, making meals and other things.

25 21. From until 2005, Mrs. Merritt worked as a practicing Physician and was diagnosed
26 with her permanent disabilities starting in 2005 and in 2006 onward was declared as being unable
27 to work her own or similar profession.

28 22. From 2006 onward, Mr. Merritt had to relocate his office from San Francisco to,
initially, his home, in 2006 onward, close to his home in order to provide direct care for his wife.

1 23. In 2006, the Merritts were defrauded by predatory lending schemes of Countrywide
2 Home Loans et al and not until 2009 did they learn of the fraud.

3 24. From 2009 until now, the Merritts have been seeking redress in both the Federal and
4 State courts for this fraud by commencing civil actions against the perpetrators.

5 25. From 2010 onward, the Merritts Home Owner Association, to which Mr. Merritt was
6 previously the President and Secretary of, issued policies on behalf of the City of Sunnyvale
7 requiring him to forego the accommodations that he set up for his wife in the simple way of
8 ensuring that she could park in their home's garage with enough room to enter and exit vehicles.

9 26. In 2011, on behalf of his wife and himself, the Merritts commenced state lawsuit which
10 Defendant Santa Clara Superior Court became venue for.

11 27. In both actions the Merritts are moving *pro se* litigants with Mrs. Merritt being a
12 person with disabilities and no legal training.

13 28. Mr. Merritt is not a lawyer, and although he has prior experience in *pro se* actions; he
14 never had any formal training.

15 29. Mr. Merritt has only Mrs. Merritt to rely upon to "brainstorm," strategize, plan and
16 otherwise assist in preparing litigation.

17 30. Mrs. Merritt is physically and mentally unable to give any more time than 2 to 5 hours
18 per week (infrequently more) in assessing and working with their litigation specifically due to her
19 serious disabilities.

20 31. This has resulted in many deficiencies that would otherwise not be found in non-
21 disabled litigants, even *pro se*.

22 32. At some time before 2013, the Federal Government and State of California mandated
23 for state courts to provide accommodations for persons with disabilities.

24 33. At some time before 2013, Defendant Santa Clara Superior Court codified rules and
25 procedures for its judges to follow when a party, witness and other persons with disabilities
26 applied to them for accommodations regarding court proceedings.

27 34. Such rules and procedures permitted the Plaintiffs to proceed, to a certain degree, with
28 their prosecution of their civil actions against other defendants' unlawful practices and violations
of laws.

1 35. Specifically, another judge found doctors reports about Mrs. Merritts time-limitations
2 to be sufficient enough to issue ADA order to where no more than 3 hours of deposition could be
3 taken at any given time.

4 36. Nonetheless, Defendants do not have a practice or policy where once a limitation is
5 found to exist, that all other judges must follow that order, and Plaintiffs have been forced to file
6 ADA Request each and every time new proceedings or conditions arose where accommodations
7 had to be afforded due to Mrs. Merritts disabilities.

8 37. Under the ADA there are certain qualifications that persons seeking accommodations
9 must meet in order to be afforded such, and each and every time the Plaintiffs met that
10 requirement.

11 38. Defendants do have, and are cognizant of, federal and state guidelines on what
12 qualifies such a person, namely that the person is unable to perform one or more of life's major
13 activities.

14 39. Defendants are aware that they must not permit personal or any intolerance to enter
15 into the decision making process for affording disability accommodations.

16 40. In July 2012, Mrs. Merritt was subjected to some very serious and egregious verbal
17 assaults and attacks by Countrywide Defendants in another case which resulted on the third day in
18 her collapse into unconsciousness.

19 41. Defendants issued orders that would permit the attacks upon her and only by the grace
20 of God did the Plaintiffs learn that the judge who was condoning such was in the employ of the
21 Countrywide Defendants for a decade or so, which lead to Writ of Mandamus where California
22 Court of Appeal's ordered the judge's disqualification.

23 42. This Court of Appeal ruling produced a backlash from Defendants where they now
24 denied all requests' for disability accommodations.

25 43. Specifically, Mrs. Merritt was forced to spend a prolonged period of time overseas in
26 her homeland, where medical treatment and care cost are fraction of what they are in U.S.
27 Plaintiffs gave notice of such in both pending cases, and while they were some 8,000 plus miles
28 outside the U.S., the defendants in one case filed their third motion seeking vexatious litigant
status, after losing the first two, only this time scheduling hearing so that Plaintiffs would not have

1 time to work up opposition, knowing that it takes Mrs. Merritt weeks to review pleadings that
2 most can study in a day or two.

3 44. Defendant Pierce refused to continue the hearing pursuant to the ADA request that Mr.
4 Merritt Provided, which evidenced that Mrs. Merritt was in Pakistan undergoing daily therapies
5 and treatment, and that her doctors there advised her to continue such treatment since it was
6 unavailable to her in the States.

7 45. On March 13, 2013, after just being served with a motion for terminating sanctions
8 against both Plaintiffs, with only about a week to read through thousands of pages, perform 50
9 hours of legal research and other investigation, Mr. Merritt presented ADA request to Defendant
10 Pierce requesting that he accommodate Mrs. Merritt's disability due to the fact that she has her on-
11 going time limitation which restricts her cognitive abilities to function for hours at a time, but that
12 they could push to get it completed within 30-40 day period.

13 46. Defendants Pierce rejected the request out of hand and ordered Mr. Merritt to give
14 notice to Countrywide defendants so that they could be part of these confidential disability
15 proceedings, and Mr. Merritt complied.

16 47. The next day, Countrywide raised their objections, and Pierce decided to side with
17 them and not honor the ADA laws, doctors' reports or the need for accommodation

18 48. Defendant Pierce then had ADA coordinator Georgia Ku contact Mr. Merritt saying
19 that the information from doctors were older, and there was no way of knowing whether
20 conditions of disabilities still existed, so Pierce wanted him to update information from doctors.

21 49. Mr. Merritt contacted Stanford University treating physician and Pakistan treating
22 physician, both of who provided updated reports which demonstrated Mrs. Merritt being
23 permanently disabled and in need of time-limitation accommodations where the court permits her
24 more time than the average healthy adult in preparing and participating in litigation.

25 50. Plaintiff David presented ADA Request to defendants Manoukian, requesting that limit
26 deposition to 3 hours per session and that it take place either 7 to 10 AM or so PST or 6 to 9 PM
27 standard time since it was being conducted by way of videoconferencing upon Mrs. Merritt while
28 she was some 13 hours ahead of our Pacific time zone.

1 51. At first defendant Manoukian granted the accommodation until defendants were
2 allowed to present objections and enter into the confidential disability accommodation process,
3 resulting in them changing his mind to where he denied the accommodation.

4 52. Next, defendant Manoukian was assigned to hear the previous matters, which the now
5 disqualified judge Stoelker, had previously ruled upon regarding Countrywide Defendants.¹

6 53. Countrywide Defense lawyers had physically assaulted Deposition Attendees who had
7 come to assist in the care and support of Mrs. Merritt during July 2012 deposition, which forced
8 Mr. Merritt to physically restrain defense counsel from committing further assaults. Also, defense
9 lawyer then orally assaulted and attacked Mrs. Merritt during deposition for not providing answers
10 which would support their defense and for not permitting them to suborn perjury from her.

11 54. Plaintiffs moved to have the defendants protect Mrs. Merritt as a person with
12 disabilities who should not be subjected to such nasty and unprofessional attacks; however,
13 Stoelker refused to protect her which brought to light his biases that derived from being employed
14 by Countrywide for some ten or so years prior to becoming state judge.

15 55. When Defendant Manoukian was assigned to rehear Plaintiffs and Countrywide
16 defendants' motions, he appears to have not made his own independent evaluation and instead
17 relied on the biased findings of disqualified judge Stoelker.

18 56. Defendant Manoukian further refused to enforce ADA laws to accommodate Mrs.
19 Merritt disabilities so that she would not have to ever be subjected to further attacks by
20 Countrywide defense, refused to implement California code which limits depositions to 7 hours,
21 and ordered for her to be subjected to more than 12 hours of depositions, without taking into
22 account her disabilities.

23 57. Then there is the March 4, 2013 trial date that the Merritts had asked Defendant
24 Mckenney to schedule back in 2012, before they knew just how much disability medical therapy
25 Mrs. Merritt would need.

26 _____
27 ¹ California Court of Appeal's granted Plaintiffs Writ of Mandate in December 2012 ordering for defendants to disqualify Stoelker from Plaintiffs
28 case.

1 58. The Merritts were scheduled to return back to the U.S. January 20, 2013; however, the
2 therapies were having such a positive effect upon her that the doctors insisted and convinced Mr.
3 Merritt to permit her to stay there longer so as to be treated more and he returned to the U.S. alone.

4 59. HOA Defendants in another case filed a motion for belated motion for summary
5 judgment on the eve of trial; which pointed out some deficiencies that were made due to Mrs.
6 Merritts disabilities and Mr. Merritt's inability to perceive such without her input.

7 60. Since they had never filed an amended complaint, and California laws liberally granted
8 such to non-disabled persons, the Plaintiffs filed for leave to file first amended complaint of newly
9 found claims and informed Mckenney that postponement of trial was not only needed in order to
10 permit amended complaint, but in any event, Mrs. Merritt was undergoing disability therapy and
11 postponement of trial date would be needed.

12 61. Defendant McKenney denied the motion to amend, even in light of Mrs. Merritt's
13 disability status.

14 62. The Plaintiffs then filed a request for ADA accommodation on February 7, 2013,
15 requesting for the trial date to be continued for a few months to give Mrs. Merritt time to complete
16 therapy and return to U.S.

17 63. Defendant Mckenney wholly ignored the request and would not even see Mr. Merritt
18 who was presenting ADA request as his wife's representative.

19 64. On February 8, 2013, Mr. Merritt return, was told my Mckenney's deputy that he
20 should not have returned with the same requests and that Mckenney did not wish for him to even
21 enter his court room with the request.

22 65. Mr. Merritt left, called McKenney's clerk informing her that they judge was supposed
23 to process such requests, and in any event there were confidential medical records that had to be
24 reviewed in camera.

25 66. Mr. Merritt was turned away and later that afternoon learned from assistant clerk the
26 Mckenney was "infuriate at you for bringing that request to continue trial," and issued order that
27 enjoins Plaintiffs from filing new pleadings, motions etc. by finding that they are vexatious
28 litigants, when neither of them met that criteria.

1 67. Mckenney completely denied ADA accommodation request and punished the Plaintiffs
2 for presenting such by issuing vexatious litigant order and dismissing their lawsuit altogether in
3 place of continuing trial date until Mrs. Merritt's disability treatment overseas had concluded.

4 68. Prior to 2013, defendants Mckenney, Pierce, Manoukian and Santa Clara Superior
5 Court consistently granted motions for continuance of hearings and trials to lawyers who
6 requested such accommodations without them being disabled.

7 69. Lawyers typically have had to leave on vacations, had too much work load to contend
8 with, and other priorities which interfered with their litigation which was pending before
9 defendants.

10 70. Due to Mrs. Merritt being a disabled person petitioning the court as a pro se litigant,
11 who relies upon her husband representative, the defendants have treated her at a standard which is
12 higher than the standard defendants treat lawyers who practice law before them.

13 71. Likewise, defendants have a policy of not accepting or discrediting or not believing the
14 evidence provided by Plaintiffs precisely because of being disabled pro se Plaintiffs, and accepting
15 and believing lawyers evidence, no matter how clear misrepresentations are, because of Mrs.
16 Merritts pro se disability status and the lawyers non-disability non-pro se status.

17 72. Each of these actions that defendants Pierce, Manoukian and Mckenney took in
18 denying disability accommodation, when Mrs. Merritt meets all ADA criteria, was due to Mrs.
19 Merritt having a disability, her needing accommodations and defendants retaliation against them
20 for exercising their right to obtain accommodations after they caused one of their colleagues to be
21 disqualified from their case.

22 73. As a direct result of defendants on-going violations of ADA rights Mrs. Merritt was
23 forced to terminate her medical treatment and return to the U.S. to contend with failures to provide
24 accommodations.

25 **MRS. BEATRICE PACHECO-STARKS**

26 74. On or about March 2013, Mr. Marreon Starks contacted Mr. Merritt expressing an
27 urgent need to learn how he can learn what was needed to advocate for himself in a
28 conservatorship matter pending before defendant Cain and Santa Clara Superior court.

1 75. After explaining the impossibilities of learning such quickly and exhausting all
2 avenues regarding whether he could hire a lawyer, Mr. Merritt authorized Mr. Starks to come to
3 his office and when Mr. Starks could observe the things that he was doing as well as attend the
4 law library with him to study.

5 76. During March-April 2013, at various times during Mr. Starks visits, Mr. Merritt began
6 to overhear the phone calls that Mr. Starks received from his wife Beatrice and distinctly heard her
7 desperation to dissolve the conservatorship that was imposed upon her.

8 77. On or about April 14, 2013, Mr. Merritt interrupted one of Mr. Starks phone
9 discussions with his wife and began to interrogate her in order to determine whether she had any
10 problem in comprehending things; tested her memory recall abilities of things in the past and
11 present then began to ask her in varying ways what her wishes were.

12 78. She explained to Mr. Merritt that she had severe vision impairment and was weak from
13 her aging; that she was an 83 year old white woman who fell in love with a younger 58 year old
14 African American which her sons and others were against and have falsified court records to
15 wrongly designate her as incompetent and incapable of making sound decisions.

16 79. That she knows that there are some things that she forgets or has forgotten, but that she
17 still has her own mind, loves her husband and complains how her son repeatedly verbally abuses
18 her as being too old to have remarried or to be with her husband and needed to get back together
19 with him.

20 80. Mr. Merritt suggest to Mr. Starks that it may be helpful if he could build an audio data
21 base of recordings of his wife so that he could either present it to the court or otherwise have
22 evidence of the soundness of her mind and wishes.

23 81. On or about April 10, 2013, Mr. Merritt overheard Beatrice complaining about how she
24 has been trying to terminate Defendant Desmerais from being her lawyer or otherwise
25 representing her before defendant Cain; how defendant Desmerais is refusing to help her or
26 represent to the court what her desires and needs are in needed to have contacts with her husband
27 Mr. Starks, that she wanted the TRO dissolved against her husband because he never abused her,
28 that she does not want annulment; how her son Stephen Pacheco has “fabricated lies” to the court,
hates Mr. Starks due to him being African American, told her that she could not get permission to

1 go anywhere or speak with anyone other than those who Stephen decided because he was the
2 parent now and she the child; how she has spoken to conservatorship investigators about how she
3 needs to be back together with Mr. Starks and needed to speak with the court directly to “get rid
4 of” conservatorship and other statements.

5 82. On April 10, 2013, Mr. Merritt visited with Beatrice and had her dictate to him, face-
6 to-face, what her wishes were related to defendant Desmerais and he returned with enlarge typed
7 version, read it to her and left copy for her to read.

8 83. He then filed it in the family law case related to Stephen’s petition in family law court
9 related to annulling Beatrice’s and Mr. Starks marriage, not knowing at the time that the
10 annulment case involved another lawyer.

11 84. On or about April 17, 2013, while overhearing Beatrice’s despair during another talk
12 with Mr. Starks, Mr. Merritt asked to speak with her and told her that she needed to get an
13 attorney of her own so that they could terminate defendant Desmerais and honestly represent her
14 interests’ before defendant Cain.

15 85. Beatrice informed Mr. Merritt that her son had terminated any access to her funds and
16 taken control of all her assets.

17 86. Mr. Merritt asked what types of things did she have which she could sale or give to
18 lawyer for hiring one, and she told him her car to which Mr. Merritt stated that if she could sale
19 the car, then it should be sufficient for hiring lawyer.

20 87. Mr. Merritt also reviewed the case files that Mr. Starks had gathered and read the court
21 transcript regarding his TRO hearing which was imposed upon him and after further investigation,
22 began to ascertain that defendant Superior Court records under In Re Conservatorship of Beatrice
23 K. Pacheco, 1-12-PR-171580, was not reflecting the reality of the person whom Mr. Merritt had
24 been communicating with.

25 88. On April 22, 2013, while Mr. Starks was working on his case file by Mr. Merritt,
26 Beatrice called him in frantic despair saying how she was assaulted and battered by her son and
27 was in desperate fear.

28 89. After Mr. Merritt spoke to her, he reported to Mt. View police the incident and
physically went there to file report with Mr. Starks.

1 90. Instead of arresting Stephen Pacheco, Mr. Starks was arrested for accepting phone calls
2 from his wife against conservatorship TRO.

3 91. Mr. Merritt visited Beatrice, photographed her injury, told her what her options were
4 and asked what she wanted him to do for her.

5 92. Beatrice asked Mr. Merritt to do whatever he could to “get rid of Stephen and this
6 conservatorship and this Michael Desmerais.”

7 93. Beatrice impressed upon Mr. Merritt that she needed someone to interpret and present
8 to defendant Santa Clara Superior Court her true wishes and needs and to get her back together
9 with her husband, Mr. Starks.

10 94. Mr. Merritt learned from Beatrice that she was a person with disabilities in very poor
11 vision; recently underwent heart surgery due to the stress; natural feebleness from her age;
12 depressed and no understanding or knowledge of the law or court processes or her rights.

13 95. Mr. Merritt then researched and learned what rights she had under to law to get
14 married, control her finances etc., called her and asked whether she was ever notified orally about
15 these rights, and she stated neither Stephen, his lawyer, her lawyer or defendants Cain and Santa
16 Clara Superior court notified her about what she had a right to.

17 96. Mr. Merritt typed up a petition remove and replace Conservator and terminate legal
18 services of defendant Desmarais, as well as petition to disqualify defendant Cain from hearing or
19 being involved in this new petition, then visited Beatrice, read it to her and left enlarge font copies
20 confirmed that she wanted him to present it to the defendants on her behalf.

21 97. Once Beatrice confirmed that she wished for Mr. Merritt to present these filings to the
22 court and signed them, told Mr. Merritt filed them with defendant Cain and Superior Court.

23
24 **CONSPIRACY TO RETALIATE AGAINST MR. MERRITT**

25 98. On April 23, 2013, Mr. Merritt visited Beatrice in order to have more discussion with
26 her, to bring larger font copies of what was being filed so that she could read them herself.

27 99. Beatrice informed him that defendant Desmerais had visited her and was refusing to
28 honor her request to quit her case so that she could apply for honest lawyer.

1 100. Mr. Merritt explained ADA Accommodation requests, told her that she had a right to
2 get her voice heard in court and that she could ask defendants Cain and Superior Court to permit
3 me to present her wished.

4 101. He explained that he could ask the court to make the accommodation of allowing him
5 to be a kind of temporary interpreter who would communicate her wishes and needs to the court
6 until an honest and impartial lawyer could be found for her to represent and protect only her
7 interests’.

8 102. She told him that she wanted that and to have her lawyer terminated, and so Mr.
9 Merritt typed up two ADA requests’ and returned.

10 103. He read two requests’ to her in which he typed up to: 1) Authorize him to present her
11 wishes to the court; 2) Stop Stephan from interfering with her contacts with Mr. Merritt.

12 104. While visiting with her, Stephen Pacheco guard “care-taker” called him and he
13 instructed her to terminate the visit and inform Mr. Merritt that his mother could not visit with
14 anyone outside of his approval.

15 105. When Beatrice told her to go away, that it was her home, the care-taker called police
16 and Mr. Merritt stated that it was best to keep tensions down.

17 106. On April 24, 2013, Mr. Merritt was on his way to court, but decided to call Beatrice,
18 however, her phone was disconnected by Defendants.

19 107. He typed up a third ADA request, and as she attempted to leave her front door to
20 speak with him her care-taker stated that Stephen said that she could neither receive any visitors
21 nor go outside her home.

22 108. Beatrice told her to leave and came out, Mr. Merritt explained that Stephen had
23 apparently terminated her phone and the third ADA request asking defendants to prohibited
24 Stephen from interfering with her communications with Mr. Merritt and she signed it.

25 109. As they were talking, they were accosted by a man telling her that she was not
26 allowed outside her home and had to return inside; she asked who he was and told him to leave off
27 her property; he then ordered Mr. Merritt to leave and Mr. Merritt pulled out his phone to record
28 asking them both whether he had their permission to record them and the man again ordered her to
get in her home and for Mr. Merritt to leave.

1 110. Mr. Merritt then rushed to court and filed Beatrice's petition for removal of
2 conservatorship and asked clerk what the procedure was on processing ADA request in
3 conservatorship court and was told to see defendant Cain's clerk.

4 111. Defendant Cain's clerk stated that she could take the request and put it on Cain's
5 desk; however, Mr. Merritt informed her that they were confidential and needed to be presented *in*
6 *camera* without notice to defendants Searle and Desmerais.

7 112. The Clerk then told him that she would ask Cain for instruction on what to do and call
8 Mr. Merritt later that day.

9 113. Based on statements from defendants Cain, Desmerais and Searle, as well as court
10 records, Plaintiffs allege on information and belief that Cain called co-defendants Searle and
11 Desmerais, from his Superior Court office speaking to them each on their cell phones in this
12 district; informed them about Mr. Merritt's actions to encourage Beatrice to assert her ADA rights
13 and have him present and interpret her wishes to the court; to disqualify him (i.e. Cain) from
14 hearing the Petition for Removal; to dissolve the conservatorship against her and that they needed
15 to act in order to intimidate and interfere with Mr. Merritt and Beatrice's activities.

16 114. Defendants Cain, Searle and Desmerais talked about what their options were after
17 getting details about Beatrice's court filings and wishes, stated to each other that they needed to
18 cover up their past actions to, *inter alia*, strip her of our rights to be married, because she was a
19 European-American wishing to be with an African-American; she was 83 and he 58 and she
20 female and he male.

21 115. Additionally, defendants Cain, Searle and Desmerais talked about Mr. Merritt aiding
22 her and that they needed to discourage or otherwise stop him from doing so.

23 116. Cain asked them whether they would agree to him conducting a special hearing where
24 they summoned Mr. Merritt to his court and do whatever they could to intimidate him and if he
25 refused to cease all aid to Beatrice to issue an injunction against him which prohibited any further
26 communications so that they could cover up the fabrications in the record that they had created
27 and approved.

28 117. Defendants Searle and Desmerais agreed with Cain's idea and he ordered his clerk to
summon Mr. Merritt.

1 118. Mr. Merritt arrived at 2:30 PM on April 24, 2013, where Cain asked who he was, why
2 he was involved in case, his contacts with Beatrice and other things related to her.

3 119. Mr. Merritt repeatedly informed Cain that he was there to present ADA Requests', in
4 order to report that Beatrice was being abused by son; assaulted; illegally held prisoner in her
5 home; and otherwise in need of emergency court intervention and that she wished to speak directly
6 with the court and terminate the services of defendant Desmerais.

7 120. For more than 60 minutes defendant Cain browbeaten Mr. Merritt, falsely told him
8 that he could not present ADA request to the court for Beatrice; falsely stated that she did not
9 know what she was signing; stated that everything was proper and that his aiding her was not
10 needed.

11 121. When Mr. Merritt persisted, Cain heightened the attacks against him, telling him that
12 he was basically acting unlawfully, that he could get in trouble for criminal violations; attacked his
13 experience as pro se litigant, belittled his knowledge about the law, falsely told him that the law
14 does not permit anyone to aid Beatrice and ultimately yelled at Mr. Merritt that he was now
15 threatened with court order to cease all communications with Beatrice, to remain 100 yards from
16 her and otherwise enjoined from giving her any aid whatsoever.

17 122. Cain told Mr. Merritt to do whatever he wanted with the ADA Requests', but that he
18 (i.e. Cain) was rejecting even considering them.

19 123. Based on information and belief, Plaintiffs allege that Cain sought the pre-planned
20 supported of Searle and Desmerais, then asked co-defendants to speak up and Searle stated that
21 she supported Cain's action of issuing oral TRO fully, followed by Desmerais who stated that he
22 fully supported Cain's actions.
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V. CLAIMS**COUNT-I**

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3 124. Plaintiffs incorporate and reassert paragraphs 1 to 122 as if they were fully set forth
4 herein.

5 125. This Count is asserted pursuant to the ADA, 42 U.S.C. §§ 12101 et seq. [ADA §§ 2 et
6 seq.], against all defendants.

7 126. Plaintiff Salma Merritt is a qualified individual with disabilities as that term is defined
8 by Title II of the ADA, 42 U.S.C. § 12131(2) [ADA § 201(2)].

9 127. Plaintiff Beatrice Pacheco-Starks is a qualified individual with disabilities as that term
10 is defined by Title II of the ADA, 42 U.S.C. § 12131(2) [ADA § 201(2)].

11 128. The Santa Clara Superior Court is a public entity as that term is defined by Title II of
12 the ADA, 42 U.S.C. § 12131(1) [ADA § 201(1)].

13 129. Defendants Mckenney, Cain, Pierce, Manoukian and other judges therein, are
14 employees of this public entity with the responsibility of being charged with duties which
15 mandates for them to honor, enforce and uphold ADA and corresponding laws.

16 130. Defendants Desmerais and Searle are members of California Bar and officers of Santa
17 Clara Superior court.

18 131. Under defendants practices and unofficial policy, defendants are excluding Plaintiffs
19 from participating in litigation which they are both witness and parties to; denying them access to
20 effectively prosecute their claims and file oppositions as required, even though they have severe
21 physical disabilities and require certain accommodations.

22 132. Defendants have used retaliation against Plaintiffs for seeking and being in need of
23 ADA accommodations as a person with disabilities and interfering with Aide Mr. Merritt.

24 133. Defendants are constantly discriminating against Mrs. Merritt and Pacheco-Starks,
25 due to their disabilities, by not accommodating their need to have their Aid, Mr. Merritt, interpret
26 and communicate in hearings and other proceedings which were or are pending before defendants
27 and have sanctioned them precisely because of their disability limitations.

28 134. Defendants fail to provide reasonable accommodations for Mrs. Merritt and Pacheco-
Starks who has certain time-limitations which preclude her from attending to litigation full or even

1 half-time as a non-disabled person would be capable of doing, which produces cognitive
2 limitations; old age infirmities, near blindness, heart problems and more. For example, defendants
3 are refusing to continue trial and hearing dates to permit time for Mrs. Merritt to give her input
4 into preparations et cetera. Defendants are refusing to consider Mrs. Pacheco-Starks ADA requests
5 wholly and precluding anyone from helping her who is not part of defendants plans and team.

6 135. Defendants have violated Title II of the ADA, 42 U.S.C. § 12132 [ADA §202], by
7 excluding Plaintiffs Salma and David Merritt from participation in the trial scheduled under
8 *Merritt v. Gandhi, et al* 1-11-CV-195455 and from participating in proceedings set in *Merritt v.*
9 *Mozilo et al* 1-09-CV-159993; and Mrs. Pacheco-Starks from In Re Conservatorship of Beatrice
10 Pacheco, 1-12-PR-171580 (Each Santa Clara Superior Court), and denying them ADA
11 accommodations due to their physical, and consequential cognitive, visual and age impairments,
12 and by failing to otherwise permit a reasonable accommodation, to wit, permitting them additional
13 time to undergo medical treatment, protected from unprofessional and hostile attacks, adequate
14 time to prepare opposition to motions, terminate services of defendant Desmerais, remain together
15 with husband Mr. Starks and permit their Aid David Merritt, to act as surrogate (as needed when
16 they need to have interpreter/communicator of their wishes and needs in order to enable them to
17 take part in petitions before Superior Court cited *ibid*.

18 **COUNT-II**

19 136. Plaintiffs incorporate and reassert paragraphs 1 to 34 as if they were fully set forth
20 herein.

21 137. This Count is asserted pursuant to the ADA, 42 U.S.C. § 12203, against all the
22 defendants.

23 138. The Plaintiffs have repeatedly been compelled to file multiple requests for ADA
24 accommodations throughout the history of their civil prosecutions that were and are pending
25 before defendants, and more recently in Conservatorship matter; however, defendants has a policy
26 or practice of not recognizing ADA accommodations from one defendant to the next so as to force
27 disabled persons to have additional barriers to gain accommodations.

28 139. Mr. Merritt has been compelled to aid and articulate Mrs. Merritt's disabilities needs
and witnessed Pierce and Manoukian statement expressing that they do not appreciate him

1 bringing such disability needs before them; do not particularly care for the ADA requirements that
2 mandates that ADA requests' be made *in camera* and without defense counsel ability to state their
3 opposition and that it is not a good law.

4 140. Defendants have compelled Mr. Merritt to air Mrs. Merritt's disability needs and
5 disability itself in open public court, without confidentiality protections, and has criticized the
6 Plaintiffs for needing accommodations which are based on Mrs. Merritt's disabilities.

7 141. Defendant Mckenney has expressed his disdain for the Plaintiffs disability requests by
8 refusing to answer them and by dismissing their lawsuit and designating them as vexatious for
9 pursuing disability accommodations.

10 142. Defendant Cain has been violently hostile against Aid Mr. Merritt, for aiding Mrs.
11 Pacheco-Starks in presenting ADA requests' and seeking her rights under Federal ADA laws. He
12 punished Mr. Merritt by ordering him to stay 100 yards away from Mrs. Pacheco-Starks or face
13 criminal arrest and proceedings for aiding her; falsified the ADA and conservatorship laws to him
14 with the intent that Mr. Merritt should rely upon them as the truth, so that Cain, Desmerais and
15 Searle could cover-up the fraudulent conduct that they and others committed against Mrs.
16 Pacheco-Starks.

17 143. Defendants Cain, Desmerais and Searle have acted to imprison Mrs. Pacheco-Starks
18 against her will, in her home with guards charged with preventing her from leaving home on her
19 own; turning off phone service so that she cannot make any external contacts, falsifying reports to
20 police, threatening and intimidating Aid Mr. Merritt from trying to encourage or help her in any way
21 or manner, all to her mental and physical detriment.

22 144. All defendants have retaliated against the Plaintiffs for seeking to enforce and assist
23 in the enforcement of ADA laws and rights, and have interfered with their exercising the rights
24 granted by the ADA laws.

25 145. Defendants have violated Title II of the ADA, 42 U.S.C. § 12203, by retaliating and
26 interfering against Plaintiffs exercising ADA rights and laws, by dismissing lawsuit instead of
27 continuing trial date, issuing order that they are vexatious litigants for pursuing, *inter alia*,
28 disability accommodations, not continuing hearing dates, not protecting Mrs. Merritt from clearly
abusive defense counsel practices and behavior, not protecting Mrs. Pacheco-Starks from physical

1 and mental abuses from her Stephen and not protecting her from their own fraud that they and
2 others are perpetrating upon her estate; and otherwise failing to permit them the freedom to enjoy
3 accessibility to court proceedings and activities that non-disabled persons would enjoy.

4 **COUNT-IV**

5 146. This Court is asserted pursuant to California Unruh Civil Rights Act (on behalf of
6 Mrs. Merritt and against all defendants) (Cal.Civ. § 51 et seq.)

7 147. Plaintiffs incorporate and reassert paragraphs 1 to 144 as if they were fully set forth
8 herein.

9 148. Under the Unruh Civil Rights Act, a violation of the ADA is a violation of the Unruh
10 Act.

11 149. The failure to comply with the ADA and the Unruh Civil Rights Act as alleged above
12 created difficulties, interferences and retaliations against Plaintiffs which resulted in significant
13 frustrations for them and attacks upon their rights.

14 **COUNT-V**

15 150. This Court is asserted pursuant to California Disabled Persons Act (on behalf of Mrs.
16 Merritt and Mrs. Pacheco-Starks and against all defendants) (Cal.Civ. § 54 et seq.)

17 151. Plaintiffs incorporate and reassert paragraphs 1 to 149 as if they were fully set forth
18 herein.

19 152. Under the Disabled Persons Act, a violation of the ADA is a violation of the Disabled
20 Persons Act.

21 153. The failure to comply with the ADA and the Disabled Persons Act as alleged above
22 created difficulties, interferences and retaliations against Plaintiffs which resulted in significant
23 frustrations for them and attacks upon their rights and attempts to exercise thereof.

24 **COUNT-VI—Conspiracy to Retaliate Against Person Aiding Disabled Person**

25 154. Plaintiffs incorporate and reassert paragraphs 1 to 153 as if they were fully set forth
26 herein.

27 155. This Count is asserted pursuant to the ADA, 42 U.S.C. § 12203, against defendants
28 Cain, Searle and Desmerais and Santa Clara Superior Court.

1 156. Mr. Merritt was enlisted and asked by Mrs. Pacheco-Starks to present her wishes and
2 needs to the defendants.

3 157. Defendants Cain, Desmerais and Searle refused and failed to accept Mr. Merritt
4 aiding Mrs. Pacheco-Starks, and joined in to a conspiracy to intimidate and threaten him so as to
5 interfere with his attempts to aid her.

6 158. Defendants Cain, Desmerais and Searle then planned on how they would accomplish
7 their intimidation, threats and interference, and agreed among themselves to do so.

8 159. In addition to the intimidating and threatening tactics employed by defendant Cain
9 against Mr. Merritt in open court, Cain signaled to his deputy to summon six or so more deputies
10 to court room to give the appearance that he could have Mr. Merritt taken into custody if he
11 persisted on aiding Mrs. Pacheco-Starks.

12 160. Mr. Merritt finally ceased further effort to present ADA requests to defendants, and
13 upon leaving court simply filed them with the clerk.

14 161. Mrs. Pacheco-Starks is a person who is qualified as a disabled person under the ADA
15 and her disability compels her to seek and obtain the aid of others who would interpret and
16 otherwise present her desires in needs to any court of law.

17 162. Defendants Cain, Desmerais and Searle, pursuant to defendant Superior Court policy
18 or practice, refused and failed to accept Mr. Merritt aiding Mrs. Pacheco-Starks and acted to
19 intimidate, threaten and punish him for doing so, as alleged herein.

20 163. All defendants have retaliated against the Plaintiffs for seeking to enforce and assist
21 in the enforcement of ADA laws and rights, and have interfered with their exercising the rights
22 granted by the Federal and State ADA laws.

23 164. Defendants have violated Title II of the ADA, 42 U.S.C. § 12203, by retaliating and
24 interfering against Mr. Merritt's exercising ADA rights and laws to aid disabled persons, by
25 dismissing lawsuit instead of continuing trial date, issuing order that they are vexatious litigants
26 for pursuing, *inter alia*, disability accommodations, not continuing hearing dates, not protecting
27 Mrs. Merritt from clearly abusive defense counsel practices and behavior, and otherwise failing to
28 permit them the freedom to enjoy accessibility to court proceedings and activities that non-
disabled persons would and do enjoy.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs' prays that this Court:

1. Assume jurisdiction over this case.
2. Send case to Jury trial.
3. Declare that defendants' exclusion of persons with physical disabilities such as Mrs. Merritt and Mrs. Pacheco-Starks, with corresponding cognitive and chronic pain disabilities, physical limitations, near blindness, old age infirmities, from participation in court proceedings, hearings, preparations, and other litigation matters, violates the ADA.
4. Declare that defendants' retaliation against persons with disabilities such as Mrs. Merritt and Mrs. Pacheco-Starks with corresponding cognitive and chronic pain disabilities, physical limitations, near blindness, old age infirmities, and need to have their Aid, Mr. Merritt interpret their rights diligently, then punished for such attempts to enforce rights, or interfering with attempts to enforce such rights, violates the ADA.
5. Declare that Cain, Desmerais, Searle et al did conspire to retaliate, intimidate and interfere against Mr. Merritt and Mrs. Pacheco-Starks for Mr. Merritt aiding and encouraging her how to exercise her ADA rights, and that such violates the ADA.
6. Order injunctive relief requiring defendants to undo any and all orders which are found to have derived from retaliation, interference with or failures to provide disability accommodations.
7. Order injunctive relief requiring defendants to cease and desist from further interference or retaliation against Plaintiffs.
8. Order injunctive relief requiring defendants to implement a policy whereby Plaintiffs, and other persons with disabilities only need make one request for accommodations, one time, and that all state judges will need to abide to the accommodation that is needed and for there not be a requirement for persons with disabilities who are litigants, need to make repeated requests'.
9. Order injunctive relief requiring defendants to not hold persons with disabilities and their representative to some higher standard than defendants hold lawyers to, and to in fact hold such litigants to less stringent standard than lawyers, per ADA and other Federal laws and practice.
10. Order any other injunctive relief that the Court deems proper which compels defendants to comply with the ADA and Unruh Civil Rights and Disabilities Acts. **NOTE:** Plaintiffs are not

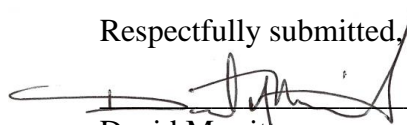
1 invoking section 55 of the California Civil Code and not seeking injunctive relief under the
2 Disabled Persons Act.

3 11. Award monetary damages under the Unruh Civil Rights Act and/or the California Disabled
4 Persons Act which damages provide for actual damages and a statutory minimum of \$4,000 from
5 each defendant separately. **NOTE:** Plaintiffs are not attempting to recover damages under both
6 acts, simultaneously, and an election will be made prior to or at trial.

7 12. Award any litigation expenses and costs of suit which may occur, pursuant to 42 U.S.C. §
8 12205; Cal.Civ. Code. §§ 52 and 54.3 and Cal. Civ. Proc. § 102.5.

9 Respectfully submitted,

10 Dated: April 25, 2013


11 David Merritt

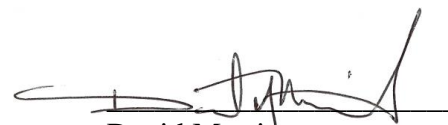
12 Dated: April 25, 2013


13 Salma Merritt

14 Verification

15 We, David and Salma Merritt hereby declare, to the best of our knowledge and abilities,
16 under the penalties of perjury for the State of California that the foregoing is true and correct
17 except to those things based on information and belief and to those things we alleged based on
18 actions and documents of defendants and other persons to be true.


19 Executed in Santa Clara County, CA on April 25 2013.


20 David Merritt

21 Executed in Santa Clara County, CA on April 25 2013.


22 Salma Merritt

23 Executed in Santa Clara County, CA on April 25, 2013.


24 By:
25 David Merritt on behalf of
26 Beatrice Pacheco-Starks
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CERTIFICATE OF SERVICE

I, Marreon G. Starks, am over 18 years of age, not a professional process server and I hereby certify that I sent

First Amended Complaint By Persons with Disabilities to Santa Clara Superior Court (Brian Walsh), Kevin Mckenney, Mark Pierce and Socrates Manoukian

On April 25, 2013, by addressing envelope to them and hand delivering the copy to their superior Brian C. Walsh clerk and clerks of their respective departments 20, 9 and 19 located at 191 first street, San Jose, CA.

M. G. Starks
Marreon Gene Starks
600 Wedell
Sunnyvale, CA 90489