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10

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

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

16 Plaintiffs,

17 v.

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

23 Defendants.

Case No. \_ CV13-01391-JSW

**SECOND AMENDED COMPLAINT By  
Individuals With Disabilities—For  
Declaratory, Injunctive and Damages  
Relief—Americans With Disabilities Act  
Amendment Act; 42 U.S.C. §§ 1983, 1985(2)  
& 1985(3); 42 USC § 12131 et seq With  
Supplemental State Jurisdiction for Disability  
Discrimination and Retaliation**

**Demand For Jury**

24 **COMPLAINT**

25 This action arises under the Americans with Disabilities Act and 42 USC § 1983, to correct the  
26 unlawful policies and practices imposed by Defendants Kevin Mckenney, Mark Pierce, Peter  
27 Manoukian, Cain, Searle, Desmerais, GEORGIA KU and Santa Clara Superior Court; and Does 1-  
28 20 (“Defendants”) and alleges as follows:

**I. INTRODUCTION**

1. Plaintiff Salma Merritt is a married Medical Doctor with serious physical disabilities,  
brings this action by her husband and principle Caretaker, David Merritt, to enjoin defendants’

1 refusal to provide accommodations' for her disabilities, so that she and her husband can properly  
2 prepare for trials, Opposition to motions, not be subject to mental abuses and other litigation  
3 matters that was and is pending before California Superior Court in Santa Clara County, and to  
4 which she is being precluded from fully participating in, in part, due to her disabilities.

5 2. Under the Americans with Disabilities Act, and corresponding State of California laws,  
6 the Federal and State Governments mandates for California State Courts to process ADA requests  
7 "purely" as administrative requests' through court personnel hired as "ADA Coordinator" who  
8 will determine whether to grant or deny accommodations to court proceedings where such  
9 accommodations are reasonable.

10 3. The California legislature has mandated California Rules of Court 1.100 as the law  
11 governing ADA requests and designating it in the hands of court administration.

12 4. The California Judicial Council has confirmed in its independent holdings that ADA  
13 requests' are "purely administrative" and non-judicial.

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

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

21 7. Even though evidence form treating physicians have been presented and represented to  
22 Defendants regarding Plaintiffs limitations needs which makes her eligible for court  
23 accommodations due to her disabilities alone, Mrs. Merritt's requests for accommodations led  
24 defendants to terminate one case (refusing to continue trial date and issuance of vexatious litigant  
25 order for requesting accommodations several times in two days); as well as refusing to continue  
26 hearing dates to give time to research and provide proper and adequate opposition pleadings and  
27 granting Defendants in another action more than 3 days of time to depose Mrs. Merritt after they  
28 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.

1 8. Defendants' refusal to provide accommodations to Mrs. Merritt, and retaliation thereof,  
2 due to her disabilities violates Title II of the Americans With Disabilities Act, (ADA), 42 USC §  
3 12131 et seq. ADA §§202 et seq.

## 4 II. JURISDICTION AND VENUE

5 9. This Court has subject matter jurisdiction pursuant to 28 USC § 1331 & 42 USC §  
6 1983. Plaintiffs' claims are authorized by 28 USC §§ 2201, 2202 and by 42 USC §§12101 et seq.  
7 (including § 12181 et seq.) ADA §§ 2 et seq. Pursuant to pendant jurisdiction, an attendant and  
8 related causes of action, arising from the same nucleus of operative facts and arising out of the  
9 same transactions, is also brought under California's Unruh Civil Rights Act and Disabled Persons  
10 Act. Venue is appropriate because the events took place in Santa Clara County.

## 11 III. PARTIES

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

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

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

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

23 14. Defendant Thomas W. Cain 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 capacity.  
25 He is located/works at 191 North First Street, San Jose, CA. Department 3.

26 15. Defendant Mark H. Pierce is a Santa Clara County judge. He is fully responsible for  
27 his illegal conduct that violated U.S. Federal and State laws. He is sued in his individual capacity.  
28 He currently works at 191 North First Street, San Jose, CA. Department 9.

1 16. Defendant Socrates P. Manoukian is a Santa Clara County judge. He is fully  
2 responsible for his illegal conduct that violated U.S. Federal and State laws. He is sued in his  
3 individual capacity. He currently works at 191 North First Street, San Jose, CA. Department 20.

4 17. Defendant Lynn Searle is a lawyer in San Francisco. She is fully responsible for her  
5 illegal conduct that violated U.S. Federal and State laws. She is sued in her individual capacity.  
6 Her business office is Law Offices of Lynn Searle, 220 Bush Street, Suite 1200, San Francisco,  
7 CA 94104.

8 18. Defendant Michael G. Desmarais is a lawyer in San Jose. He is fully responsible for  
9 his illegal conduct that violated U.S. Federal and State laws. He is sued in his individual capacity.  
10 His business office is Law Office of Michael G. Desmarais, 16450 Los Gatos Blvd, Los Gatos,  
11 CA 95032.

12 19. Defendant Georgia Ku is the official ADA Coordinator for Santa Clara Superior Court.  
13 She is fully responsible for her illegal acts/omissions that violated U.S. Federal and State of  
14 California Laws. She is sued in her individual capacity. Her current work address is 111 West St  
15 Johns, San Jose, CA 95113.

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

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

#### 21 **IV. FACTS—QUALIFIED PERSONS WITH DISABILITIES**

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

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

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

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

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

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

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

17           29. In 2011, on behalf of his wife as her Aide, and himself, the Merritts commenced state  
18 lawsuit charging disability discrimination, in-home and medical privacy violations which  
19 Defendant Santa Clara Superior Court became venue for.

20           30. In both actions the Merritts are moving *pro se* litigants with Mrs. Merritt being a  
21 person with disabilities.

22           31. Mrs. Merritts disabilities precludes her from being able to participate in court

23           32. Mr. Merritt has only Mrs. Merritt to rely upon to "brainstorm," strategize, plan and  
24 otherwise assist in preparing litigation.

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

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

**ADA REQUESTS' ARE ADMINISTRATIVE FUNCTIONS NOT JUDICIAL**

1  
2 35. At some time before 2013, the Federal Government and State of California mandated  
3 for state courts to provide accommodations for persons with disabilities by allowing persons with  
4 disabilities to invoke administrative, non-judicial, requests' for accommodations in order to  
5 participate in judicial proceedings.

6 36. At some time before 2013, Defendant Santa Clara Superior Court codified rules and  
7 procedures for its judges to follow when a party, witness and other persons with disabilities  
8 applied to them for accommodations regarding court proceedings by way of administrative  
9 requests' processed and decided by court ADA administrators.

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

13 38. At some time prior to 2012, defendant Superior Court hired Georgia Ku to be its ADA  
14 Coordinator who would be the principle and ultimate person reasonable for processing, approving  
15 and denying ADA Accommodation requests'.

16 39. The job of ADA Coordinator has the responsibility of making determinations regarding  
17 disabled persons disability accommodation needs, independent of anyone else, including state  
18 court judges.

19 40. The position of ADA Coordinator is "purely administrative" and required defendant  
20 Ku to not permit others to interfere or control what decision she makes, including judges.

21 41. Specifically, prior to 2013, Superior Court and ADA Coordinator Ku found doctors  
22 reports about Mrs. Merritts time-limitations and other limitations to be sufficient enough to issue  
23 ADA accommodations to where no more than 3 hours of deposition could be taken at any given  
24 time, for certain court hearing times to take place at hours different than what they were scheduled  
25 for, as well as other accommodations had to be made during 2011 and 2012 court proceedings.

26 42. These accommodations gave Mrs. Merritt direct access to proceedings in which she  
27 was able to adequately participate therein.  
28

1           43. The judges, to whom the proceedings were before from 2010 to 2012, Stoelker and  
2 Monahan, did not interfere with or otherwise direct the ADA Coordinator to deny or not support  
3 the approval of the repeated accommodations.

4           44. Nonetheless, Defendants do not have a policy where once a limitation is found to exist,  
5 and accommodation thereby granted that all other judges must follow that order.

6           45. Instead, the Plaintiffs have been forced to file Administrative ADA Requests' each  
7 time new or different proceedings or conditions arose where accommodations had to be afforded  
8 due to Mrs. Merritts disabilities.

9           46. Under the ADA there are certain qualifications that persons seeking accommodations  
10 must meet in order to be afforded such, and each and every time from 2011 to March 2013, the  
11 Plaintiffs met that requirement.

12           47. Defendants Mckenney, Pierce, Manoukian, Cain and Superior Court, do have, and are  
13 cognizant of, federal and state guidelines on what qualifies such a person, namely that the person  
14 is unable to perform one or more of life's major activities.

15           48. Before 2013, these Defendants *ibid.* were aware that the State of California mandates  
16 under California Rules of Court 1.100, that ADA requests' are court administrative requests'  
17 which are administratively, not judicially, processed.

18           49. These Defendants *ibid.* were aware before 2013, that California law orders and  
19 requires them to send any and all ADA requests' to ADA coordinator and that whoever makes  
20 decisions regarding a disabled person's request, when decided pursuant to official ADA request  
21 forms versus motion, is not acting in judicial role but in ADA administrative role.

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

25           51. Defendants issued orders that would permit the attacks upon her and only by the grace  
26 of God did the Plaintiffs learn that the judge who was condoning such was in the employ of the  
27 Countrywide Defendants for a decade or so, which lead to Writ of Mandamus where California  
28 Court of Appeal's ordered the judge's disqualification in *Merritt v. Superior Court* (6<sup>th</sup>  
Dist.Nov.2012) H03883.



1           52. From November 2012 to January 2013, defendants Pierce, Mckenney, Manoukian,  
2 Superior Court and Cain, learned of this Court of Appeal's order to disqualify the discovery judge  
3 from Plaintiffs case.

4           53. In January, February April and May 2013, these same defendants *ibid.* each decided to  
5 not send Plaintiffs January, February and April 2013 Administrative ADA Requests' forms to the  
6 ADA coordinator and instead took on the role and actions of ADA Coordinator, ignored Plaintiffs  
7 presented proof showing that they were qualified disabled persons, and denied each requests as  
8 cited herein.

9           54. In January, February April and May 2013, these same defendants *ibid.* each decided to  
10 not send Plaintiffs January, February and April 2013 Administrative ADA Requests' forms to the  
11 ADA coordinator and instead took on the role and actions of ADA Coordinator, ignored Plaintiffs  
12 presented proof showing that they were qualified disabled persons, and punished Mr. Merritt for  
13 aiding Mrs. Merritt and Mrs. Pacheco-Starks.

14           55. In January, February, March and April 2013, defendants Mckenney, Pierce,  
15 Manoukian, Santa Clara Court and Cain, instructed Santa Clara Court personnel to not process  
16 Plaintiffs' Administrative ADA Request forms through the official ADA Coordinator Georgia ku,  
17 but to permit defendants to insert themselves into the ADA Administrative process, take on the  
18 role as ADA Coordinator and accept their decisions on denying Plaintiffs ADA requests' as they  
19 would accept the ADA Coordinator.

#### 20                           **DEFENDANTS TAKING ADMINISTRATIVE ACTS**

21           56. The Plaintiffs did not present their ADA requests via motion, but presented  
22 Administrative ADA requests' per CRC Rule 1.100 on Form MC-410s.

23           57. Prior to 2013, defendant Superior Court, through other judges, accepted medical-  
24 disability information that was produced by Mrs. Merritt's physicians and repeatedly granted  
25 ADA accommodations for Mrs. Merritt of all sorts so that she could participate in court  
26 proceedings.

27           58. In November 2012, the California Court of Appeals issued a Writ of Mandate which  
28 commanded defendant Superior Court to disqualify one of its judges from the Merritts principle



1 litigation, who had actually worked for Countrywide Home Loans and other Defendants being  
2 sued by the Merritts, and concealed it from them during 2012.

3 59. After this Court of Appeals ruling, Defendants began taking on the role as ADA  
4 Coordinator and denying Mrs. Merritt's request for accommodations.

5 **Defendant Ku**

6 60. During on or about 2012, Defendants Superior Court, Mckenney, Pierce, Manoukian,  
7 Cain and others, conducted several meetings among themselves, regarding the implementation of  
8 the ADAAA and during these meetings they spoke about whether they wished to permit their  
9 ADA coordinator to make decisions on granting or denying disability accommodations, or  
10 whether they wished to handle the administrative role themselves.

11 61. Each of these defendants reviewed California Rules of Court § 1.100, and other rules  
12 promulgated by the California Legislature and Judicial Council; learned that the processing of  
13 ADA requests were all "purely administrative" acts which would be outside of their judicial role.

14 62. At this point, during these 2012 talks, these defendants told one another that they  
15 wished to have the authority to make such decisions for certain litigants, instead of letting an ADA  
16 Coordinator due so.

17 63. From on or about 2012 to March 2013, Defendants Mckenney, Pierce, Cain,  
18 Manoukian, Superior Court and Does 1 to 10, held a series of talks with defendant Ku where they  
19 explained to her that there were certain litigants who they did not wished to grant disability  
20 accommodations to freely, and that wished for her to relinquish some of her authority as ADA  
21 Coordinator, and permit them and other court personnel to act in her stead.

22 64. Defendant Ku told these defendants that she agreed to their requests and would permit  
23 them to take on her role as ADA Coordinator whenever they wished to do so and communicated  
24 such to her.

25 65. Defendants Superior Court, Ku, Mckenney, Pierce, Manoukian, Cain et al,  
26 promulgated to all court personnel that whenever the Plaintiffs, or any disabled person, presented  
27 an ADA request to any court personnel for processing, that they were to never process the request  
28 themselves, nor send it directly to defendant Ku, but to always, send it to one of them so that they  
could act as ADA coordinator and process the request themselves.

1       66. Each time the Plaintiffs made ADA request before Superior Court, defendant Ku failed  
2 to perform the duties in which she was hired to perform as ADA Coordinator for Santa Clara  
3 Superior Court, as specifically alleged infra.

4       **Defendant MANOUKIAN**

5       67. Mrs. Merritt had to spend a prolonged period of time overseas to undergo medical  
6 treatment and care related to her disabilities.

7       68. Plaintiffs gave notice of this medical absence in their pending cases.

8       69. The Merritts were scheduled to return back to the U.S. on or about January 20, 2013;  
9 however, the therapies were having such a positive effect upon her that the doctors insisted, and  
10 convinced Mr. Merritt to permit her to stay there longer so as to be treated more and he returned to  
11 the U.S. alone.

12       70. On or about January 28, 2013, Mrs. Merritt had Mr. Merritt present defendant Superior  
13 Court an ADA accommodation request regarding scheduling all deposition times upon her and  
14 others during hours in which she could be present to give her deposition and to participate in  
15 depositions of Mr. Merritt and others.

16       71. This request for ADA accommodation was being made due to Mrs. Merritts need to be  
17 part of these litigation proceedings and still be able to undergo her disability medical treatment  
18 and care without exacerbating her disabilities.

19       72. When Mr. Merritt presented this Administrative ADA request on January 28, the clerk  
20 directed him to take it to defendant Manoukian, per defendant Superior Court procedures.

21       73. Defendant Ku refused to accept the ADA request directly.

22       74. Mr. Merritt was told by the clerk that ADA requests' were always taken to the judge  
23 who was managing the case, and that the judge was then obligated to send the ADA request to  
24 ADA Coordinator Georgia Ku.

25       75. Mr. Merritt followed this instruction by presenting the Administrative ADA request  
26 (Form MC-410) to defendant Manoukian before normal court hours.

27       76. Defendant Manoukian, per the agreement he entered into with co-defendants regarding  
28 the processing of ADA requests', refused to forward the request to defendant Ku, and decided to  
take on the role as ADA coordinator versus judge.

1 77. Defendant Manoukian processed this ADA request administratively outside of normal  
2 court hours and without any hearing or other judicial proceeding taking place, granted and sent it  
3 to the ADA Coordinator for final processing January 28, 2013.

4 78. On or about January 29, 2013, 8:15 am, the defendants in HOA case went to Defendant  
5 Manoukian before normal court hours, requested to be part of the Administrative ADA process,  
6 Defendant Manoukian accepted this, they then raised a protest to Manoukian about Mrs. Merritt  
7 being granted the ADA accommodation, then asked him to re-enter his administrative role under  
8 Rule 1.100 and deny her any accommodations for her disabilities.

9 79. Defendant Manoukian then took on the role as ADA Coordinator, accepted their  
10 adversarial argument, disregarded ADA confidentiality and laws regarding doctor-patient and  
11 disability information privacy by airing such information publicly, and then countered the ADA  
12 accommodation approval that was approved the day before, January 28, and denied request.

13 80. Additionally, Countrywide Defendants brought a motion before defendant Manoukian  
14 seeking for him to not only override the new California discovery law which limited depositions to  
15 seven hours, but to countermand or override then existing ADA accommodations already granted  
16 which limited how much time depositions could be conducted against Mrs. Merritt.

17 81. On or about February 26, 2013, defendants Manoukian issued an order relating to  
18 deposition to be conducted upon Mrs. Merritt, disregarded the existing ADA accommodations  
19 granted by other judges related to Mrs. Merritt disability and limitations, and issued an order that  
20 directly interfered with and overrode the existing ADA accommodation orders by authorizing  
21 Countrywide Defendants to conduct six additional deposition hours upon Mrs. Merritt, beyond the  
22 five hours already performed upon her, without any regard to her disabilities.

### 23 **DEFENDANTS PIERCE**

24 82. While the Merritts were some 8,000 plus miles outside the U.S., undergoing disability  
25 medical care and treatment, the defendants in one case (HOA-defendants), filed their third motion  
26 seeking vexatious litigant status against the Merritts before defendant Mckenney who had  
27 previously denied their first two motions for the same.

28 83. On or about January 25, 2013, Mrs. Merritt requested Mr. Merritt to aid her in  
presenting Administrative ADA request (Form MC-410), with medical proof that she met ADA

1 qualifications for accommodations; to Defendants Mckenney and Santa Clara Superior Court, in  
2 order to continue the February 5, 2013, hearing regarding HOA defendants' third motion to  
3 declare her and Mr. Merritt as vexatious litigants.

4 84. During this period, Mrs. Merritt was undergoing intensive medical treatment some  
5 8,000 miles outside of the U.S. concerning her disabilities.

6 85. Mrs. Merritt was requesting for an ADA accommodation of having the February 5,  
7 2013, hearing date to be continued until February 28, 2013, so that she could participate in the  
8 proceeding by being part of the research, planning and preparation of her opposition to the motion  
9 in conjunction with Mr. Merritt, and to participate in the hearing by receiving enough time to  
10 produce her declaration in lieu of her being physically present at the hearing which would count as  
11 evidence in opposition.

12 86. Due to her undergoing medical treatment and being in a time zone some 12 hours  
13 ahead of California, it was not physically possible for Mrs Merritt to participate in the proceeding  
14 by being physically present, but she could only be part of the proceeding if an ADA accommo-  
15 dation was approved which allowed approximately two additional weeks in which to produce her  
16 opposition thereto.

17 87. On or about January 28, 2013, before normal court hours, Mr Merritt presented Form  
18 MC-410 to Defendant Superior Court assistant clerk, was directed to present it to Defendant  
19 Pierce, who did not have this matter before him.

20 88. When Mr Merritt presented the request to Pierce, he told Mr. Merritt that requests' for  
21 continuance cannot be granted through Administrative ADA request process and that such  
22 requests' had to be presented via motion.

23 89. Mr. Merritt questioned this, but was assured that such request could only be handled by  
24 motion and that only if Mr. Merritt gave *ex parte* notice to HOA-defendants' would he entertain  
25 such request.

26 90. Defendant Mckenney Pierce this to Mr. Merritt as one having full authority as an ADA  
27 Coordinator.  
28

1           91. Mr. Merritt returned to the clerk's office with the ADA request, asked whether there  
2 was any other way to have it reviewed, and was informed that the court procedure was to present  
3 the ADA request to the judge who would then forward it to the ADA Coordinator.

4           92. Based on this, Mr. Merritt accepted defendant Pierce's assertion as one with full  
5 authority as an ADA Coordinator.

6           93. Mr. Merritt then gave notice of ex parte to defendants and on or about January 29,  
7 2013, Mr. Merritt returned to clerk at 8:15am, presented ex parte and same ADA request to clerk  
8 who directed him and HOA-defense to defendant Pierce.

9           94. Mr. Merritt then presented requests' to Pierce's clerk and Pierce came out into the  
10 corridor by elevators summoned Mr. Merritt and HOA-defense to the side by copier machine, then  
11 heard the Merritts reason for continuing February 5, 2013 hearing date, then permitted HOA-  
12 defense to present adversarial counter.

13           95. Defendant Pierce then denied Mrs. Merritts ADA request by stating that he would deny  
14 the request as he did not believe that continuance could be made with Form MC-410 would deny  
15 Mrs. Merritts ex parte application for same and would leave it up to defendant Mckenney whether  
16 or not accommodation should be made. Mr. Merritt went to Defendant Ku's office about this  
17 request, asked her to review the request and to grant it on or about January 29, 2013.

18           96. Defendant Ku stated that she would not grant the request in that she would support the  
19 decision that Pierce had made.

20           97. On or about January 2013, based on information and belief derived from discussions  
21 with Superior Court personnel, activities of Defendants and court records, Plaintiffs allege that  
22 defendant Pierce had communicated with Ku, informed her of his ADA decision, asked Ku  
23 whether she had any disagreement with his denial of Plaintiffs request and Ku told him no and that  
24 she would support such.

#### 24           **DEFENDANT MCKENNEY**

25           98. Mr. Merritt then conducted research into ADA accommodation requests' and learned  
26 that Mrs. Merritt did have right to request for such an accommodation via ADA MC-410.

27           99. Plaintiffs are informed and believe based on discussions with Superior Court  
28 personnel, court records and actions of defendants, and thereupon allege that on or about February

1 4, 2013, defendants McKenney and Pierce communicated about Plaintiffs attempts to secure  
2 disability accommodations for Mrs. Merritt in the upcoming proceedings.

3 100. Defendant Pierce explained to Mckenney how Mr. Merritt was persistently returning  
4 with ADA requests' before him and defendant Ku, then explained that he was able to thwart  
5 accommodations in the upcoming February 5, 2013 hearing which was before Mckenney and that  
6 the Plaintiffs also expressed desire for accommodation of continuance in upcoming trial of date of  
7 March 3, 2013.

8 101. On or about February 4, 2013, Defendant Mckenney then communicated with  
9 defendant Ku from his phone to her phone at 111 west St Johns, San Jose, CA, office, asked her if  
10 she would agree to ignore any and all attempts by Plaintiffs to secure ADA accommodations  
11 through her or her office.

12 102. Defendant Ku told Mckenney that she could agree to ignore any ADA requests that  
13 Plaintiffs made to her and her office.

14 103. On February 4, 2013, Mr. Merritt contacted defendant Ku by phone and by going to  
15 her office, explained that there was an urgent need to have accommodations provided for court  
16 hearing in order to ensure Mrs. Merritt's participation and he was told each time that was unable to  
17 speak with him or to accept any ADA requests directly.

18 104. On or about February 5, 2013, Mr. Merritt appeared before defendant Mckenney  
19 explaining that Mrs. Merritt was not able to participate in the hearing regarding vexatious litigant  
20 status because she needed the hearing to be continued so that she would have time to develop  
21 opposition and otherwise participate.

22 105. Mr. Merritt pointed out that Mrs. Merritt was outside the U.S. in a time-zone some 12  
23 hours ahead of California, and undergoing intensive medical treatment and care directly related to  
24 her disability.

25 106. Mr. Merritt further declared that he himself only recently returned to the U.S. and that  
26 the motion was filed and calendared intentionally to preclude even him from researching and  
27 putting together specific opposition and that all he could do was to simply file his past two  
28 oppositions which defeated the previous two motions for vexatious litigant status.

1           107. Defendant Mckenney took on the role as defendant Superior Court's ADA  
2 Coordinator final decision maker by rejecting Mrs. Merritt's invocation of the ADA  
3 Administrative accommodation process, thereat interfering with her ADA accommodation rights,  
4 feigning that she actually did not have any rights under the ADA to have hearing continued to a  
5 future date which would permit her to participate in hearing.

6           108. Defendant Mckenney conducted the hearing on vexatious litigant motion without  
7 involving the designated ADA Coordinator Georgia Ku, and wholly took over her role by  
8 determining Mrs. Merritt's request did not even qualify to be processed through Georgia Ku.

9           109. On or about February 7, 2013, Mr. Merritt returned to defendant Superior Court with  
10 a new ADA accommodation request of Mrs. Merritt where she sought the accommodation of  
11 having the actual trial date of March 4, 2013, continued until she completed her medical disability  
12 treatment and care overseas.

13           110. The clerk directed him to Defendant Mckenney; however, ignored the request and  
14 having his clerk and deputy not permit Mr. Merritt to present the ADA request and medical  
15 confirmation of disability before him.

16           111. On or about February 7, 2013, Mckenney contacted defendant Ku, explained to her  
17 that Plaintiffs were attempting to process another ADA request and he asked her whether she  
18 would agree to not process it and let him handle it in her behalf.

19           112. Defendant Ku told Mckenney that she would ignore any attempts by Mr. Merritt to  
20 present ADA requests to her and leave it entirely up to Mckenney to handle it.

21           113. Mr. Merritt went to defendant Ku's office with ADA request for continuing the  
22 March 3, 2013 trial date until Mrs. Merritt completed her disability medical treatment.

23           114. On February 8, 2013, Mr. Merritt return, was told by clerk to present it to Mckenney  
24 and this time Mckenney sent his deputy to inform Mr. Merritt that Mckenney did not wish to  
25 accept ADA request.

26           115. Mr. Merritt returned to the court clerk who insisted that she could not take ADA  
27 request and that he had to return to defendant Mckenney.  
28



1           116. Mr. Merritt called McKenney's clerk directly, informing her that Mckenney was  
2 obligated to process the ADA request, and in any event there were confidential medical records  
3 that had to be reviewed in camera.

4           117. Mr. Merritt finally demanded of the court clerk to file the ADA request on February  
5 8, 2013; however, once defendant Mckenney learned of this he was "infuriated at you for bringing  
6 that request to continue trial," and punished them for doing so by issuing an order that they were  
7 vexatious litigants so that they would have difficulties in the future in litigating any of their  
8 legitimate issues before courts.

9           118. By asking defendant Ku to ignore their ADA requests, and by he himself refusing to  
10 process the ADA request, defendant Mckenney denied ADA accommodation request to continue  
11 March 2013 trial date without affording Plaintiffs any of the procedures or review that is mandated  
12 under ADA.

13           119. Plaintiffs are informed and believe that Defendant Mckenney denied Mrs. Merritts  
14 request, in direct response to Mr. Merritts persistence in seeking processing for the ADA requests.

15           120. Defendant Mckenney also signed an order which held the Merritts to both be  
16 vexatious litigants also in direct response to Mr. Merritt being persistent to have Mrs. Merritt's  
17 ADA request processed so that she could participate in designated trial.

18           121. Plaintiffs are informed and believe and therefore allege that defendant Mckenney  
19 ignoring Mr. Merritt's attempts to have ADA requests' processed, and defendant McKenney  
20 ensuring that defendant Ku would not process requests, was Mckenney's idea in order to punish  
21 and retaliate against the Merritts for exercising their right to seek disability accommodations.

22           **DEFENDANT PIERCE**

23           122. On or about March 13, 2013, after just being served with a motion for terminating  
24 sanctions against both Plaintiffs, with only about a week to read through thousands of pages,  
25 perform 50 hours of legal research and other investigation, Mrs. Merritt wanted to be part of this  
26 proceeding and enlisted Mr. Merritt to aid her by seeking accommodation so that she could  
27 participate therein, by obtaining continuance of hearing date.

28           123. On March 13, 2013, Mr. Merritt presented Form MC-410 to clerk who directed him  
to take it to defendant Pierce.

1           124. Mr. Merritt followed this instruction by presenting the Administrative ADA request  
2 (Form MC-410) to defendant Pierce before normal court hours.

3           125. Defendant Pierce processed this ADA request administratively outside of normal  
4 court hours and without any hearing or other judicial proceeding taking place, then denied it.

5           126. This request presented medical and disability information showing that Mrs. Merritt's  
6 disability, in part, restricted the amount of time in which she could devote to preparing for hearing  
7 and opposition, due to the fact that she has her on-going time limitation which restricts her  
8 cognitive abilities to function beyond a certain number of hours at a time.

9           127. Defendants Pierce rejected the request out of hand and ordered Mr. Merritt to give  
10 notice to Countrywide defendants so that they could appear *ex parte*, be part of these confidential  
11 disability proceedings and Mr. Merritt complied.

12           128. The next day, Pierce held an ADA Coordinator review where he told the Countrywide  
13 defendants to raised their objections, reviewed medical reports and letters of Mrs. Merritts  
14 specialist physicians then rejected their reports/letters because they were not recently dated.

15           129. Mr. Merritt raised objections against defendant Pierce's holding ADA  
16 Accommodation review with defendants and against Rule 1.100.

17           130. Defendant Pierce then sent Mrs. Merritts MC-410 to Georgia Ku with instructions to  
18 inform the Mrs. Merritt to produce updated letters from her doctors.

19           131. Defendant Pierce took on Georgia Ku's role as ADA Coordinator in fact, ordered Ms.  
20 Ku to not exercise her authority as ADA Coordinator independent of him, but to burden the  
21 Merritts with requests' to provide additional doctor communiques about Mrs. Merritts disability.

22           132. Ms. Ku then contacted Mr. Merritt explaining that ADA accommodation would be  
23 denied unless they produced "updated" letters from doctors confirming Mrs. Merritt's continued  
24 disability.

25           133. Ms. Ku was not acting as ADA Coordinator herself, her designated official role, but  
26 as an assistant to defendant Pierce who took her role over.

27           134. Mr. Merritt contacted Stanford University treating physician and Pakistan treating  
28 physician, both of who provided updated reports which demonstrated Mrs. Merritt being  
permanently disabled and in need of time-limitation accommodations.

1 135. Specifically, the doctors pointed out that Mrs. Merritt needed more time, than the  
2 average healthy adult, in preparing herself in order to participate in court proceedings.

3 136. Defendants Pierce, Mckenney and Manoukian normally grant lawyers and non-  
4 disabled litigants accommodations such as continuances on hearings, without requiring them to  
5 provide any special information from doctors, but simply because they claim calendar conflicts,  
6 vacations or other human and work activities.

7 137. Each of these actions that defendants Pierce, Manoukian and Mckenney took in  
8 taking on ADA Coordinator roles and denying disability accommodations, when Mrs. Merritt  
9 meets all ADA criteria, was due to Mrs. Merritt having a disability, her desire and need to  
10 participate in proceedings, her needing accommodations to attend such and defendants retaliation  
11 against them for exercising their right to seek accommodations.

12 138. As a direct result of defendants on-going violations of ADA rights, Mrs. Merritt was  
13 forced to terminate her medical treatment and return to the U.S. to contend with failures to provide  
14 accommodations; nonetheless defendants denials has caused her to be completely unable to attend  
15 the aforementioned proceedings.

16 **MRS. BEATRICE PACHECO-STARKS**

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

20 140. After explaining the impossibilities of learning such quickly, and exhausting all  
21 avenues regarding whether he could hire a lawyer, Mr. Merritt authorized Mr. Starks to meet with  
22 him periodically so that Mr. Starks could observe the things that he was doing involving litigation  
23 as well as attend the law library with him to study.

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

27 142. On or about April 14, 2013, Mr. Merritt interrupted one of Mr. Starks phone  
28 discussions with his wife and began to interrogate her in order to determine whether she had any  
problem in comprehending things; tested her memory recall abilities of things in the past and

1 present then once he was convinced that she was capable of making her own decisions and that her  
2 behavior was opposite of what was being alleged, he began to ask her in varying ways what her  
3 wishes were.<sup>1</sup>

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

8 144. Mr. Merritt determined that she was a qualified person with disabilities as defined  
9 under the ADA, explained to Ms. Beatrice that he could not represent her, but he could convey her  
10 wishes to the defendant Superior Court and Cain.

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

15 146. Mr. Merritt suggested to Mr. Starks that it may be helpful if he could build an audio  
16 data base of recordings of his wife so that he could either present it to the court or otherwise have  
17 evidence of the soundness of her mind and wishes.

18 147. On or about April 10, 2013, Mr. Merritt overheard Beatrice complaining about how  
19 she has been trying to terminate Defendant Desmerais from being her lawyer or otherwise  
20 representing her before defendant Cain; how defendant Desmerais is refusing to help her or  
21 represent to the court what her desires and needs are in needed to have contacts with her husband  
22 Mr. Starks, that she wanted the TRO dissolved against her husband because he never abused her,  
23 that she does not want annulment; how her son Stephen Pacheco has “fabricated lies” to the court,  
24 hates Mr. Starks due to him being African American, told her that she could not get permission to  
25 go anywhere or speak with anyone other than those who Stephen decided because he was the  
26 parent now and she the child; how she has spoken to conservatorship investigators about how she

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27 <sup>1</sup> Her son alleged via conservatorship that Beatrice had severe dementia.  
28

1 needs to be back together with Mr. Starks and needed to speak with the court directly to “get rid  
2 of” conservatorship and other statements.

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

6 149. He then filed it in the family law case related to Stephen’s petition in family law court  
7 related to annulling Beatrice’s and Mr. Starks marriage.

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

12 151. Beatrice informed Mr. Merritt that her son had terminated any access to her funds and  
13 taken control of all her assets.

14 152. Mr. Merritt reviewed the court record and learned that her son was ordered to give her  
15 access to \$500 per week, but was not providing such.

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

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

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

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

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

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

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

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

10 161. 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.

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

17 163. After explaining her what options was open to her, she asked Mr. Merritt to be her  
18 ADA Aide and help her get rid of lawyer, prevent her son from severing ties between her and Mr.  
19 Merritt and to generally improve the adverse conditions that she was being held prisoner to.

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

24 165. Once Beatrice confirmed that she wished for Mr. Merritt to present these filings to  
25 defendant Superior Court and signed them, she told Mr. Merritt filed them with defendant Cain  
26 and Superior Court.

### 26 **CONSPIRACY TO RETALIATE AGAINST MR. MERRITT**

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

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

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

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

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

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

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

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

19 174. On April 24, 2013, Mr. Merritt was on his way to court, but decided to call Beatrice;  
20 however, her phone was disconnected by Defendants.

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

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

27 177. As they were talking, they were accosted by a man telling her that she was not  
28 allowed outside her home and had to return inside; she asked who he was and told him to leave off  
her property; he then ordered Mr. Merritt to leave and Mr. Merritt pulled out his phone to record



1 asking them both whether he had their permission to record them and the man again ordered her to  
2 get in her home and for Mr. Merritt to leave.

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

6 179. Pursuant to the 2012 talks and agreement that Cain made with co-defendants supra, he  
7 instructed his clerk to never process an ADA request herself, nor to forward it to the ADA  
8 coordinator, but to hold such for him alone to process as ADA coordinator.

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

12 181. The Clerk then told him that she would ask Cain for instruction on what to do and call  
13 Mr. Merritt later that day.

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

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

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

28 185. Cain asked them whether they would agree to him conducting a special hearing where  
they summoned Mr. Merritt to his court and do whatever they could to intimidate him and if he

1 refused to cease all aid to Beatrice to issue an injunction against him which prohibited any further  
2 communications so that they could cover up the fabrications in the record that they had created  
3 and approved.

4 186. Defendants Searle and Desmerais agreed with Cain's idea and he ordered his clerk to  
5 summon Mr. Merritt.

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

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

12 189. For more than 60 minutes defendant Cain browbeaten Mr. Merritt falsely told him  
13 that he could not present ADA request to the court for Beatrice; falsely stated that she did not  
14 know what she was signing; stated that everything was proper and that his aiding her was not  
15 needed.

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

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

24 192. Mr. Merritt filed the ADA requests with the clerk court, asking her to forward them to  
25 the ADA coordinator.

26 193. Based on information and belief the Plaintiffs allege that defendant Cain then  
27 intercepted the three ADA requests that Mr. Merritt submitted on official court record, told the  
28 clerk of the court to not send them to ADA coordinator, and prevented them from being sent  
thereto.



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

3           204. Defendants Mckenney, Cain, Pierce, Manoukian, Ku and Does 1 to 20 are employees  
4 of this public entity with the responsibility of being charged with duties which mandates for them  
5 to honor, enforce and uphold ADA and corresponding laws.

6           205. Defendants Desmerais and Searle are members of California Bar and officers of Santa  
7 Clara Superior court.

8           206. Defendant Superior Court is vicariously liable for the acts and omissions of its agents  
9 and it maintains a policy which discriminates and retaliates against persons with disabilities.

10           207. Under defendants' practices and unofficial policy, defendants are excluding Plaintiffs  
11 from participating in litigation which they are both witness and parties to, equally as non-disabled  
12 parties and witnesses are afforded; denying them access to effectively prosecute their claims and  
13 file oppositions as required, even though they have severe physical and mental disabilities and  
14 require certain accommodations.

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

17           209. Defendants are constantly discriminating against Mrs. Merritt and Pacheco-Starks,  
18 due to their disabilities, by not accommodating their need to have their Aide, Mr. Merritt, interpret  
19 and communicate in hearings and other proceedings which were or are pending before defendants  
20 and have sanctioned them precisely because of their disability limitations.

21           210. Defendant Georgia Ku is officially the ADA Coordinator for defendant Superior  
22 Court, however, she constantly fails to perform her duties by honestly and impartially holding  
23 ADA accommodation request reviews, and instead constantly relinquishes her duties and role to  
24 individual judges who normally hold certain biases against disabled litigants.

25           211. Defendants, including Superior Court and Georgia Ku, fail to provide reasonable  
26 accommodations for Mrs. Merritt and Pacheco-Starks who has certain time-limitations which  
27 preclude her from attending to litigation full or even half-time as a non-disabled person would be  
28 capable of doing, which produces cognitive limitations; old age infirmities, near blindness, heart  
problems and more. For example, defendants are refusing to continue trial and hearing dates to

1 permit time for Mrs. Merritt to give her input into preparations et cetera. Defendants are refusing  
2 to consider Mrs. Pacheco-Starks ADA requests wholly and precluding anyone from helping her  
3 who is not part of defendants' plans and team to defraud her.

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

## 16 **COUNT-II**

17 213. Plaintiffs incorporate and reassert paragraphs 1 to 214 as if they were fully set forth  
18 herein.

19 214. This Count is asserted pursuant to the ADA, 42 U.S.C. § 12203, against defendant  
20 Superior Court.

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

26 216. Mr. Merritt has been compelled to aid and articulate Mrs. Merritt's disabilities needs  
27 and witnessed Pierce and Manoukian statement expressing that they do not appreciate him  
28 bringing such disability needs before them; do not particularly care for the ADA requirements that

1 mandates that ADA requests' be made *in camera* and without defense counsel ability to state their  
2 opposition and that it is not a good law.

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

6 218. Defendant Mckenney has expressed his disdain and retaliation for the Plaintiffs  
7 disability requests by taking on the role of ADA Coordinator then refusing to answer requests';  
8 refusing to continue hearing and trial dates so as to accommodate Mrs. Merritts disability; and by  
9 punishing them with the false designation of vexatious litigant, precisely because they pursued  
10 ADA disability accommodations.

11 219. Defendant Cain has been violently hostile against Aide Mr. Merritt, for aiding Mrs.  
12 Pacheco-Starks in presenting Administrative ADA requests' and petitioners, and seeking her  
13 rights under Federal ADA laws. He punished Mr. Merritt specifically, by issuing a TRO that  
14 orders him to stay 100 yards away from Mrs. Pacheco-Starks or face criminal arrest and  
15 proceedings for aiding her; had such TRO promulgated to police agencies; misrepresented to Mr.  
16 Merritt the ADA and conservatorship laws with the intent that Mr. Merritt should rely upon them  
17 as the truth, so that Cain, Desmerais and Searle could cover-up the fraudulent conduct that they  
18 and others committed against Mrs. Pacheco-Starks.

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

24 221. Defendant Georgia Ku is officially the ADA Coordinator for defendant Superior  
25 Court, however, she constantly fails to perform her duties by honestly and impartially holding  
26 ADA accommodation request reviews, and instead constantly relinquishes her duties and role to  
27 individual judges who normally hold certain biases against disabled litigants.  
28





1           231. Under the Disabled Persons Act, a violation of the ADA is a violation of the Disabled  
2 Persons Act.

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

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

7           233. Plaintiffs incorporate and reassert paragraphs 1 to 233 as if they were fully set forth  
8 herein.

9           234. This Count is asserted pursuant to the ADA, 42 U.S.C. § 12203, against defendant  
10 Superior Court.

11           235. Mr. Merritt was enlisted and asked by Mrs. Pacheco-Starks to present her wishes and  
12 needs to the defendants.

13           236. Defendants Superior Court, Cain, Desmerais, Georgia Ku and Searle refused and  
14 failed to accept Mr. Merritt aiding Mrs. Pacheco-Starks, and joined in to a conspiracy to intimidate  
15 and threaten him so as to interfere with his attempts to aid her.

16           237. Defendants Desmerais and Searle were enlisted by defendant Cain to be actors on  
17 behalf of Superior Court, as he was acting.

18           238. Defendants Desmerais and Searle accepted this agency role.

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

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

25           241. Mr. Merritt finally ceased further effort to present ADA requests to defendants, and  
26 upon leaving court simply filed them with the clerk.

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

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

4 244. Defendant Georgia Ku is officially the ADA Coordinator for defendant Superior  
5 Court, however, she constantly fails to perform her duties by honestly and impartially holding  
6 ADA accommodation request reviews, and instead constantly relinquishes her duties and role to  
7 individual judges who normally hold certain biases against disabled litigants.

8 245. All defendants have retaliated against the Plaintiffs for seeking to enforce and assist  
9 in the enforcement of ADA laws and rights, and have interfered with their exercising the rights  
10 granted by the Federal and State ADA laws.

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

## 18 **COUNT-VII**

### 19 **Violation of Civil Rights, 42 USC § 1983 Deprivation of ADAAA Rights**

20 247. Plaintiffs incorporate and reassert paragraphs 1 to 247 as if they were fully set forth  
21 herein.

22 248. This is brought under 42 USC § 1983, to recover damages against defendants Cain,  
23 Mckenney, Pierce, Manoukian and Ku for violation of Plaintiffs rights under the ADAAA of  
24 2008.

25 249. Jurisdiction is predicated on 28 U.S.C. § 1331 and 1343.

26 250. Plaintiffs Pacheco-Starks, Salma and David Merritt, are citizens of the United States,  
27 and residents of Santa Clara County.

28 251. Defendants Mckenney, Pierce, Manoukian, Cain, Ku, Desmerais, Searle and Does 1  
to 20, is and at all times mentioned herein was, employees or agents of the State of California,

1 County of Santa Clara, organized and existing under the laws of the State of California, with the  
2 capacity to sue and be sued in their individual capacity.

3 252. Each of the acts or omissions at all times mentioned herein, were performed under  
4 the color of State of California law with a substantial part of the events giving rise to this action  
5 occurring in Santa Clara County and is therefore proper under 28 USC § 1391(b).

6 253. Defendants Mckenney, Pierce, Manoukian, Cain, Ku, Desmerais, Searle and Does 1  
7 to 20, and each of them, subjected the Plaintiffs, or caused Plaintiffs to be subjected to the  
8 deprivation of rights, privileges and immunities mandated under the ADAAA as described through  
9 Counts I to VI.

10 254. From January to April 2013, Plaintiffs Salma Merritt and Pacheco-Starks sent their  
11 ADAAA Aide, David Merritt, to submit on their behalf ADA requests for disability  
12 accommodations as described herein.

13 255. Each time Mr. Merritt presented the ADA requests for them, defendants Mckenney,  
14 Pierce, Manoukian, Cain, Desmerais, Searle, Ku et al, refused to grant the requests' under  
15 ADAAA, and directly caused Plaintiffs to be excluded from participating in public court  
16 proceedings which non-disabled persons would have been able to.

17 256. Each time Mr. Merritt presented ADA requests for them, defendants Mckenney,  
18 Pierce, Manoukian, Cain, Desmerais, Searle, Ku et al, took on the role of ADA coordinator and  
19 acted with recklessly, callously indifferent or with malice when they refused to apply ADAAA  
20 law as described in Counts I to VI.

21 257. Plaintiffs have suffered injury, loss and damage, including but not limited to:  
22 deprivation of civil rights; emotional stress, pain and suffering and seeks compensation from each  
23 individual defendant in the amount of \$10,000 each.

24 **COUNT-VIII—42 U.S.C. § 1983 VIOLATION CIVIL RIGHTS RETALIATION**

25 258. Plaintiffs incorporate and reassert paragraphs 1 to 258 as if they were fully set forth  
26 herein.

27 259. This is brought under 42 USC § 1983, to recover damages against defendants Cain,  
28 Mckenney, Pierce, Manoukian and Ku for violation of Plaintiffs rights under the ADAAA of  
2008.

1 260. Jurisdiction is predicated on 28 U.S.C. § 1331 and 1343.

2 261. Plaintiffs Pacheco-Starks, Salma and David Merritt, are citizens of the United States,  
3 and residents of Santa Clara County.

4 262. Defendants Mckenney, Pierce, Manoukian, Cain, Ku, Desmerais, Searle and Does 1  
5 to 20, is and at all times mentioned herein was, employees or agents of the State of California,  
6 County of Santa Clara, organized and existing under the laws of the State of California, with the  
7 capacity to sue and be sued in their individual capacity.

8 263. Each of the acts or omissions at all times mentioned herein, were performed under  
9 the color of State of California law with a substantial part of the events giving rise to this action  
10 occurring in Santa Clara County and is therefore proper under 28 USC § 1391(b).

11 264. Defendants Mckenney, Pierce, Manoukian, Cain, Ku, Desmerais, Searle and Does 1  
12 to 20, and each of them, subjected the Plaintiffs, or caused Plaintiffs to be subjected to the  
13 deprivation of rights, privileges and immunities mandated under the ADAAA as described through  
14 Counts I to VI in the form of retaliation for exercising their right to petition the government under  
15 ADAAA supra and the First Amendment of the US Constitution.

16 265. From January to April 2013, Plaintiffs Salma Merritt and Pacheco-Starks sent their  
17 ADAAA Aide, David Merritt, to submit on their behalf ADA requests for disability  
18 accommodations as described herein.

19 266. Each time Mr. Merritt presented the ADA requests for them, defendants Mckenney,  
20 Pierce, Manoukian, Cain, Desmerais, Searle, Ku et al, refused to grant the requests' under  
21 ADAAA, and directly caused Plaintiffs to be excluded from participating in public court  
22 proceedings which non-disabled persons would have been able to.

23 267. Each time Mr. Merritt presented ADA requests for them, defendants Mckenney,  
24 Pierce, Manoukian, Cain, Desmerais, Searle, Ku et al, took on the role of ADA coordinator and  
25 acted with recklessly, callously indifferent or with malice when they refused to apply ADAAA  
26 law as described in Counts I to VI.

27 268. Each of these acts or omissions was done in retaliation against Plaintiffs for  
28 petitioning a public entity for redress of their rights, under ADAAA.

1 269. Plaintiffs have suffered injury, loss and damage, including but not limited to:  
2 deprivation of civil rights; emotional stress, pain and suffering and seeks compensation from each  
3 individual defendant in the amount of \$10,000 each.

4 **COUNT-IX—42 U.S.C. § 1985(2)—Conspiracy To Obstructing Due Course of Justice**

5 270. Plaintiffs incorporate and reassert paragraphs 1 to 270 as if they were fully set forth  
6 herein.

7 271. This is brought under 42 USC § 1985(2), to recover damages against defendants Cain,  
8 Mckenney, Pierce, Manoukian and Ku for violation of Plaintiffs rights under the ADAAA of  
9 2008.

10 272. Jurisdiction is predicated on 28 U.S.C. § 1331 and 1343.

11 273. Plaintiffs Pacheco-Starks, Salma and David Merritt, are citizens of the United States,  
12 and residents of Santa Clara County.

13 274. Defendants Mckenney, Pierce, Manoukian, Cain, Ku, Desmerais, Searle and Does 1  
14 to 20, is and at all times mentioned herein was, employees or agents of the State of California,  
15 County of Santa Clara, organized and existing under the laws of the State of California, with the  
16 capacity to sue and be sued in their individual capacity.

17 275. When defendants Mckenney, Pierce, Manoukian, Cain, Ku, Desmerais, Searle and  
18 Does 1 to 20, discussed (conspired) among themselves on how to gain authority over the  
19 processing of ADA Accommodation requests; communicated with co-defendant Ku and court  
20 personnel with agreements to direct Plaintiffs requests to them in order to deter Plaintiffs by force,  
21 intimidations or threat, who were both party and witnesses to pending court cases in Santa Clara  
22 County, in order to keep them from attending or testifying in the above described court  
23 proceedings freely, fully and truthfully; or when they discussed (conspired) among themselves for  
24 the purpose of impeding, hindering, obstructing or defeating the due course of justice, they each  
25 individually obstructed the due course of justice and denied each Plaintiff the equal protection of  
26 the laws for lawfully enforcing, or attempting to enforce the disability rights and rights to aid  
27 disabled persons.  
28

1 276. Plaintiffs have suffered injury, loss and damage, including but not limited to:  
2 deprivation of civil rights; emotional stress, pain and suffering and seeks compensation from each  
3 individual defendant in the additional amount of \$10,000 from each.

4 **COUNT-IX—42 U.S.C. § 1985(3)—Conspiracy To Deprive of Equal Protection**

5 277. Plaintiffs incorporate and reassert paragraphs 1 to 277 as if they were fully set forth  
6 herein.

7 278. This is brought under 42 USC § 1985(3), to recover damages against defendants Cain,  
8 Mckenney, Pierce, Manoukian and Ku for violation of Plaintiffs rights under the ADAAA of  
9 2008.

10 279. Jurisdiction is predicated on 28 U.S.C. § 1331 and 1343.

11 280. Plaintiffs Pacheco-Starks, Salma and David Merritt, are citizens of the United States,  
12 and residents of Santa Clara County.

13 281. Defendants Mckenney, Pierce, Manoukian, Cain, Ku, Desmerais, Searle and Does 1  
14 to 20, is and at all times mentioned herein was, employees or agents of the State of California,  
15 County of Santa Clara, organized and existing under the laws of the State of California, with the  
16 capacity to sue and be sued in their individual capacity.

17 282. When defendants Mckenney, Pierce, Manoukian, Cain, Ku, Desmerais, Searle and  
18 Does 1 to 20, discussed (conspired) among themselves on how to gain authority over the  
19 processing of ADA Accommodation requests; communicated with co-defendant Ku and court  
20 personnel with agreements to direct Plaintiffs requests to them in order to deprive the Plaintiffs  
21 from gaining ADAAA rights, as belonging to the class of persons identified as disabled or aides of  
22 the disabled, or deprive them from equal privileges or immunities under the law, they each  
23 individually denied each Plaintiff the equal protection of the laws for lawfully enforcing, or  
24 attempting to enforce the disability rights and rights to aid disabled persons.

25 283. Plaintiffs have suffered injury, loss and damage, including but not limited to:  
26 deprivation of civil rights; emotional stress, pain and suffering and seeks compensation from each  
27 individual defendant in the additional amount of \$10,000 from each.  
28

**VI. PRAYER FOR RELIEF**

1  
2  
3 WHEREFORE, Plaintiffs' prays that this Court:

4 1. Assume jurisdiction over this case.

5 2. Send case to Jury trial.

6 3. Declare that defendants' exclusion of persons with physical disabilities such as Mrs.  
7 Merritt and Mrs. Pacheco-Starks, with corresponding cognitive and chronic pain disabilities,  
8 physical limitations, near blindness, old age infirmities, from participation in court proceedings,  
9 hearings, preparations, and other litigation matters, violates the ADA.

10 4. Declare that defendants' retaliation against persons with disabilities such as Mrs. Merritt  
11 and Mrs. Pacheco-Starks with corresponding cognitive and chronic pain disabilities, physical  
12 limitations, near blindness, old age infirmities, and need to have their Aid, Mr. Merritt interpret  
13 their rights diligently, then punished for such attempts to enforce rights, or interfering with  
14 attempts to enforce such rights, violates the ADA.

15 5. Declare that Cain, Desmerais, Searle et al did conspire to retaliate, intimidate and interfere  
16 against Mr. Merritt and Mrs. Pacheco-Starks for Mr. Merritt aiding and encouraging her how to  
17 exercise her ADA rights, and that such violates the ADA.

18 6. Order injunctive relief requiring defendants to undo any and all orders which are found to  
19 have derived from retaliation, interference with or failures to provide disability accommodations.

20 7. Order injunctive relief requiring defendants to cease and desist from further interference or  
21 retaliation against Plaintiffs.

22 8. Order injunctive relief requiring defendants to implement a policy whereby Plaintiffs, and  
23 other persons with disabilities only need make one request for accommodations, one time, and that  
24 all state judges will need to abide to the accommodation that is needed and for there not be a  
25 requirement for persons with disabilities who are litigants, need to make repeated requests'.

26 9. Order injunctive relief requiring defendants to not hold persons with disabilities and their  
27 representative to some higher standard than defendants hold lawyers to, and to in fact hold such  
28 litigants to less stringent standard than lawyers, per ADA and other Federal laws and practice.



1 10. Order any other injunctive relief that the Court deems proper which compels defendants to  
2 comply with the ADA and Unruh Civil Rights and Disabilities Acts. **NOTE:** Plaintiffs are not  
3 invoking section 55 of the California Civil Code and not seeking injunctive relief under the  
4 Disabled Persons Act.

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

9 12. Award monetary damages under § 1983 and 1985 according to proof.

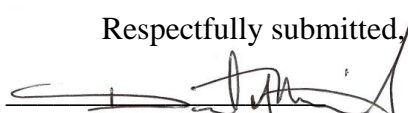
10 13. Award punitive damages according to proof.

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

13 15. Any other relief that the Court deems proper and just.

14 Respectfully submitted,

15 Dated: July 28, 2013

  
16 David Merritt

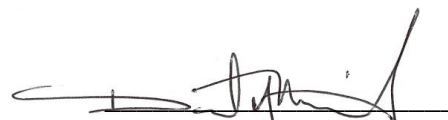
17 Dated: July 28, 2013

  
18 Salma Merritt

19 Verification

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

23 Executed in Santa Clara County, CA on July 28, 2013.

  
24 David Merritt

25 Executed in Santa Clara County, CA on July 28, 2013.

  
26 Salma Merritt  
27  
28