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7 Attorneys for Plaintiff
8 ERNESTINA SALDANA-NEILY

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 ERNESTINA SALDANA-NEILY
12 Plaintiff,

CASE NO.

Civil Rights

v.

13 SANTA CRUZ SCHOOL DISTRICT;
14 and DOES 1 through 20,
15 Inclusive

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF: DENIAL OF
DISABLED ACCESS TO PUBLIC SCHOOL
FACILITIES; TITLE II OF THE
AMERICANS WITH DISABILITIES ACT;
VIOLATION OF § 504 OF
REHABILITATION ACT OF 1973;
GOVERNMENT CODE § 4450;
CALIFORNIA CIVIL CODE §§ 54 AND
54.1**

16 Defendants.

DEMAND FOR JURY TRIAL

17
18
19
20 PLAINTIFF ERNESTINA SALDANA-NEILY complains of
21 Defendants SANTA CRUZ SCHOOL DISTRICT; and DOES 1-20, and alleges
22 as follows:

23
24 **INTRODUCTION**

25 1. PLAINTIFF is a physically disabled wheelchair user
26 who has been denied the basic right to freely and independently
27 use the public educational facilities at Soquel Cooperative
28 Nursery Preschool, located in the City of Soquel County of Santa

1 Cruz. PLAINTIFF ERNESTINA SALDANA-NEILY is a physically disabled
2 women who requires the use of a wheelchair for mobility.

3 Plaintiff was denied her civil rights under both state and
4 federal laws and regulations, due to the continuing inaccessible
5 public facilities at Soquel Cooperative Nursery Preschool, which
6 are inaccessible to disabled persons in multiple respects,
7 including: inaccessible paths from the public right of way into
8 the nursery school grounds, inaccessible paths of travel to the
9 only (recently remodeled) front door entrance, inaccessible
10 playground, inaccessible public restroom and lavatory facilities
11 at the nursery school, and other inaccessible school programs and
12 activities that are conducted as part of the parent/child
13 involvement with the Adult Education Parent Program through the
14 Soquel Cooperative Nursery Preschool Program.

15 2. Plaintiff challenges defendants' continued
16 operation of public facilities that wrongfully deny access and
17 public participation to Plaintiff as a parent of a child in the
18 Soquel Cooperative Nursery School and as a participant in the
19 Adult Education Parent Program at the Soquel Cooperative Nursery
20 School, and to all other similarly disabled persons who require
21 the use of wheelchairs to attend and participate in the programs,
22 services and activities offered to parents and their children at
23 the Soquel Cooperative Nursery Preschool. PLAINTIFF brings this
24 action on her own behalf, and as private attorney general on
25 behalf of the public.

26
27 **JURISDICTION**

28 3. The Americans With Disabilities Act of 1990, 42

1 U.S.C. sections 12101, et seq., ("ADA") confers jurisdiction on
2 this Court over Plaintiff's claims, regardless of the amount in
3 controversy.

4 4. This Court has subject matter jurisdiction of this
5 action pursuant to 28 U.S.C. sections 1343(3) and (4) for claims
6 arising under Section 504 of the Rehabilitation Act of 1973.

7 5. Under the doctrine of supplemental jurisdiction,
8 this Court has jurisdiction over plaintiff's claims arising under
9 California state law.

10
11 **VENUE**

12 6. Venue is proper in the Northern District of
13 California, the judicial district in which the claim has arisen,
14 pursuant to 28 U.S.C. section 1391(b).

15
16 **PARTIES**

17 7. Plaintiff is, and at all times relevant to this
18 Complaint, was a physically "handicapped person," "physically
19 disabled person," and "person with disabilities", as these terms
20 are used under California law and under federal laws including
21 but not limited to §504 of the Rehabilitation Act and Title II of
22 the Americans with Disabilities Act of 1990. These terms, a
23 "physically handicapped person", a "physically disabled person",
24 and a "person with disabilities", will be used interchangeably
25 throughout this Complaint. Plaintiff has mobility disabilities
26 and requires the use of wheelchair for mobility.

27 8. Defendants SANTA CRUZ SCHOOL DISTRICT; AND DOES 1
28 THROUGH 20, inclusive, are public entities subject to Title II

1 of the Americans with Disabilities Act of 1990, to §504 of the
2 Rehabilitation Act of 1973, to the requirements of California
3 State law requiring full and equal access to public facilities
4 pursuant to Government Code §4450 *et seq.* and elsewhere, and to
5 all other legal requirements referred to in this complaint.

6 Plaintiff does not know the relative responsibilities of each
7 of the Defendants in the ownership and operation of the
8 facilities herein complained of, and allege a joint venture and
9 common enterprise by Defendants SANTA CRUZ CITY SCHOOL
10 DISTRICT, AND DOES 1-20 INCLUSIVE in the ownership and
11 operation of each such facility, program or services offered.

12 9. Plaintiff does not know the true names and
13 capacities of the Defendants sued herein as Does 1 through 20, or
14 each of them, and therefore sues them under such fictitious
15 names. On information and belief, defendants DOES 1-20 are state
16 agencies and public entities who operate in the state of
17 California. Plaintiff is informed and believes that all such
18 defendants had some form of control or legal responsibility for
19 the maintenance, ownership and/or operation of the facilities at
20 Soquel Cooperative Nursery Preschool and the Adult Education
21 Parent Program operated in conjunction with the Soquel
22 Cooperative Nursery Preschool during periods of time relevant to
23 this complaint. After appropriate discovery, Plaintiff will seek
24 leave of the Court to amend this complaint to identify said DOE
25 defendants when such defendants' true names and capacities have
26 been ascertained.

27
28 **GOVERNMENT CLAIMS FILED** (With regard to claims for damages under

1 California state law.)

2 10. Plaintiff ERNESTINA SALDANA-NEILY made timely
3 claims for damages to the SANTA CRUZ SCHOOL DISTRICT on January
4 21, 2000, and an amended claim on June 7, 2000. These claims
5 were rejected by operation of law on July 24, 2000.

6
7 **FACTUAL BASES FOR COMPLAINT**

8 11. **PLAINTIFF ERNESTINA SALDANA-NEILY:** Plaintiff
9 SALDANA-NEILY is and was at all times relevant to this action, a
10 "physically disabled" person, and the mother of a preschool
11 student enrolled at the Soquel Cooperative Nursery Preschool in
12 conjunction with the Adult Education Parent Program, located on
13 the campus of Soquel High School, instituted by the Santa Cruz
14 School District (hereinafter, "Soquel Preschool"). In order for
15 plaintiff's child to attend the preschool, plaintiff and her
16 husband are required to attend weekly parenting classes, assist
17 in the classroom and playground, and attend parenting functions.
18 As a result of the inaccessible conditions at the preschool and
19 Soquel High School, plaintiff has been unable to safely and
20 independently access the school, and take meaningful part in
21 parenting or school activities.

22 Commencing one year prior to the date of the filing of
23 this lawsuit, and continuing to the date of this action,
24 plaintiff has been denied her rights to full and equal access
25 under federal and state law, including California Government Code
26 §§4450 *et seq.*, Title II of the Americans with Disabilities Act
27 of 1990, section 504 of the Rehabilitation Act of 1973, and
28 sections 54 and 54.1 of the California Civil Code, as the result

1 of the inaccessible facilities at the Soquel High School and
2 Soquel Preschool Nursery. The inaccessible conditions include;
3 an inaccessible and unsafe path of travel from the public right
4 of way to the entrance of the preschool; a front door entrance
5 that is not independently accessible; an inaccessible entrance to
6 the playground; inaccessible restroom and lavatory facilities;
7 and an inaccessible playground. As the result of the
8 inaccessible conditions at the school, plaintiff was forced to
9 sit outside for hours each week in inclement weather, by herself
10 with her infant daughter, for over six months before defendants
11 constructed a ramp to the front door of the school. Plaintiff is
12 still unable to access the playground entrance and once inside
13 the school is unable to use the restroom or lavatory facilities.

14 On February 15, 2000, plaintiff was forced to sit
15 outside in the playground area, along with her infant daughter,
16 in inclement weather in order to complete her weekly quota of
17 "school" hours required for her child's enrollment in the
18 preschool. After hours of sitting outside, plaintiff developed
19 an urgent need to use restroom facilities. Since the only
20 restrooms serving the school were located inside of the nursery
21 school, which on February 15, 2000 was completely inaccessible to
22 plaintiff (which restrooms are still inaccessible to wheelchair
23 users), plaintiff was forced to leave the school premises in
24 search of an accessible restroom. Plaintiff was unable to reach
25 an accessible restroom in time and had a urinary accident shortly
26 after leaving the school premises. Plaintiff, soiled and
27 frustrated with her inability to participate in the school's
28 parenting program, returned home in her soiled condition and

1 missed her weekly parenting class. During the months between
2 September and March prior to the installation of the ramp to the
3 front door, plaintiff was forced to sit outside in the playground
4 listening through an open door while the mother's and the teacher
5 conducted their parenting classes inside the inaccessible
6 preschool.

7 In addition to the architectural barriers, plaintiff
8 has also been routinely excluded from participating in the
9 parenting program with non-disabled students and parents school
10 due to the inaccessible locations chosen by defendants for field
11 trips and social gatherings. On or about the week of January
12 10th, 2000, defendants scheduled a "Mom's Night Out" for the
13 mother's in plaintiff's parenting class. Attendance at this
14 special event function was required for plaintiff's parenting
15 group. This special event was scheduled to take place on the
16 second floor banquet room of a local restaurant that plaintiff
17 knew was not wheelchair accessible. Plaintiff informed the
18 leader of this group that the restaurant was not wheelchair
19 accessible, asking the leader how she could attend the special
20 event in the inaccessible restaurant. The leader of the
21 parenting group informed plaintiff that she would be "excused"
22 from attending the special event, instead of relocating the event
23 to an accessible restaurant. Defendants scheduled the "Mom's
24 Night Out" special event in an inaccessible location without
25 regard to plaintiff's inability to participate, and then exclude
26 plaintiff from the event rather than relocate the event to an
27 accessible location.

28 In addition to the above-cited incidents, plaintiff has

1 on numerous occasions within the last year of the filing of this
2 complaint, been excluded from attending student and/or parenting
3 functions due to the inaccessibility of the subject premises,
4 and/or the inaccessible locations chosen by defendants for
5 student/parent field trips and/or school functions.

6 12. As a result of the actions and failure to act of
7 Defendants and each of them and as a result of the
8 inaccessibility of the preschool facilities, and of the programs,
9 services and activities, as above described, plaintiff ERNESTINA
10 SALDANA-NEILY suffered denial of her Civil Rights, physical
11 injuries, psychological and emotional distress, physical and
12 emotional pain and suffering, embarrassment and humiliation, and
13 denial of her rights to full and equal access to public
14 facilities, all to her statutory and general damages. PLAINTIFF
15 was embarrassed, humiliated, and suffered all detriment alleged
16 herein on the basis that she was physically disabled and unable
17 to enter and use Defendants' public facilities and/or programs,
18 services and activities on a full and equal basis with non-
19 disabled parents.

20
21 **FIRST CAUSE OF ACTION:**
22 **DISCRIMINATION IN VIOLATION OF TITLE II**
OF THE AMERICANS WITH DISABILITIES ACT OF 1990

23 13. PLAINTIFF repleads and incorporates by reference,
24 as if fully set forth hereafter, the allegations contained in
25 Paragraphs 1 through 12 of this complaint and incorporates them
26 herein as if separately repled.

27 14. Effective January 26, 1992, PLAINTIFF was entitled
28 to the protections of the "Public Services" provision of Title II

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1 of the Americans with Disabilities Act of 1990. Title II,
2 Subpart A prohibits discrimination by any "public entity",
3 including any state or local government, as defined by 42 USC
4 §12131, section 201 of the ADA. PLAINTIFF was at all times
5 relevant herein a qualified individual with a disability as
6 therein defined.

7 15. Pursuant to 42 USC §12132, Section 202 of Title
8 II, no qualified individual with a disability shall, by reason of
9 such disability, be excluded from participation in or be denied
10 the benefits of the services, programs or activities of a public
11 entity, or be subjected to discrimination by any such entity.

12 16. The defendant government entities have failed in
13 their responsibilities under Title II to provide their services,
14 programs and activities in a full and equal manner to disabled
15 students as described hereinabove, including: failing to insure
16 that the facilities described herein are accessible to disabled
17 persons; failing to locate their programs, services and
18 activities in facilities that are accessible to disabled persons;
19 and failing to remove known architectural barriers at the subject
20 facilities to make their public facilities accessible to disabled
21 persons. As a proximate result of Defendants' action and
22 omissions, Defendants have discriminated against PLAINTIFF, in
23 violation of Title II of the Americans With Disabilities Act of
24 1990, and of the regulations adopted to implement the ADA.

25 17. As a result of such discrimination, in violation
26 of §202 of the ADA, PLAINTIFF are entitled to the remedies,
27 procedures and rights set forth in Section 505 of the
28 Rehabilitation Act of 1973 (29 USC §794a). PLAINTIFF also seeks

1 injunctive relief to require Defendants to remove the barriers to
2 access complained of, to provide proper accommodations providing
3 reasonable access for Plaintiff to Defendants' programs, services
4 and activities, and to provide all remedies, and statutory
5 attorneys' fees, litigation expenses and costs, including those
6 remedies specified by section 203 and 505 of the Americans With
7 Disabilities Act of 1990 and by section 1021.5 California Code of
8 Civil Procedure, according to proof.

9 18. Injunctive Relief - To the date of filing this
10 complaint, the specified public facilities and programs continue
11 to be inaccessible for independent entry and use by physically
12 disabled persons such as PLAINTIFF. PLAINTIFF requests that an
13 injunction be ordered requiring that Defendants take prompt
14 action to modify the aforementioned public facilities to render
15 them accessible to and usable PLAINTIFF and other similarly
16 situated physically disabled persons.

17 Wherefore, PLAINTIFF prays the court grant relief as
18 requested hereinbelow.

19
20 **SECOND CAUSE OF ACTION:**
21 **VIOLATION OF §504 OF THE REHABILITATION ACT OF 1973**

22 19. PLAINTIFF repleads and incorporates by reference,
23 as if fully set forth hereafter, the allegations contained in
24 Paragraphs 1 through 18 of this complaint and incorporates them
25 herein as if separately repled.

26 20. Defendants SANTA CRUZ SCHOOL DISTRICT; AND DOES 1
27 THROUGH 20, INCLUSIVE are governmental agencies existing under
28 the laws of the State of California with responsibility for,

1 *inter alia*, operating the public facilities at the Soquel
2 Cooperative Nursery Preschool, located on the campus of Soquel
3 High School. PLAINTIFF is informed and believes and therefore
4 alleges that SANTA CRUZ SCHOOL DISTRICT; AND DOES 1 THROUGH 20,
5 INCLUSIVE are recipients of Federal financial assistance and that
6 part of that financial assistance is used to fund the operations
7 of the specific buildings and facilities described herein, and
8 the activities which take place therein.

9 21. By its actions or inactions in denying disabled
10 accessible facilities at the facilities and buildings specified,
11 and in failing to provide access to other campus buildings and
12 facilities, the SANTA CRUZ SCHOOL DISTRICT; AND DOES 1 THROUGH
13 20, INCLUSIVE have violated PLAINTIFF's rights under §504 of the
14 Rehabilitation Act of 1973, 29 USC §794, and the regulations
15 promulgated thereunder.

16 22. By their actions or inactions in denying to
17 Plaintiff ERNESTINA SALDANA-NEILY, a disabled parent, her right
18 to have equal access to the same programs, activities and
19 environment as non-disabled parents, and by otherwise
20 discriminating against PLAINTIFF solely by reason of her physical
21 disabilities, Defendants and each of them have violated
22 Plaintiff's rights under §504 of the Rehabilitation Act of 1973
23 and the regulations promulgated thereunder. PLAINTIFF seeks
24 damages for denial of their Civil Rights, interference with her
25 participation in the Adult Education Parenting Program of the
26 Santa Cruz School District, for physical, mental and emotional
27 injury, all to her damages according to proof. Further,
28 PLAINTIFF seeks injunctive relief requesting that the Court order

1 Defendants to correct the access deficiencies complained of
2 herein so that PLAINTIFF will not continue to be discriminated
3 against and injured on a frequent and recurrent basis as she is
4 forced to use unsafe public facilities and foreclosed from fully
5 participating in defendants' parenting program on the same basis
6 as non-disabled parents, and seeks recovery of statutory attorney
7 fees, litigation expenses and costs.

8 23. PLAINTIFF has no adequate remedy at law, and
9 unless the relief requested herein is granted, PLAINTIFF will
10 suffer irreparable injury by the continual deprivation of full
11 and equal access to the specified public facilities at the Soquel
12 Preschool Nursery and other public facilities operated by
13 Defendants.

14 Wherefore, PLAINTIFF prays the court grant relief as
15 requested, hereinbelow.

16
17 **THIRD CAUSE OF ACTION:**
18 **VIOLATION OF CALIFORNIA GOVERNMENT CODE §4450 et seq.**

19 24. PLAINTIFF repleads and incorporates by reference,
20 as if fully set forth hereafter, the factual allegations
21 contained in Paragraphs 1 through 23 of this complaint and
22 incorporates them herein as if separately repled.

23 25. PLAINTIFF is informed and believes and therefore
24 allege that the specified public buildings and other facilities
25 administered by the SANTA CRUZ SCHOOL DISTRICT are buildings,
26 structures or related facilities within the meaning of California
27 Government Code §§4450 and 4451. PLAINTIFF is further informed
28 and believe and therefore allege that the SANTA CRUZ SCHOOL

1 DISTRICT, have constructed, altered, or repaired parts of these
2 public buildings and facilities within the meaning of California
3 Government Code §§4450, 4451 and 4456, thereby requiring
4 provision of access to persons with disabilities, as required by
5 law, and statutory attorney fees, litigation expenses and costs,
6 including but not limited to public interest attorney fees
7 pursuant to California Code of Civil Procedure § 1021.5.

8 26. The actions and omissions of the SANTA CRUZ SCHOOL
9 DISTRICT as herein alleged constitute a denial of access to and
10 use of the described public educational facilities by physically
11 disabled persons within the meaning of California Government Code
12 §4450 et seq. As a proximate result of Defendants' action and
13 omissions Defendants have discriminated against PLAINTIFF, in
14 violation of California Government Code §§4450 et seq., and of
15 Title 24 regulations adopted to implement section 4450.

16 27. PLAINTIFF has no adequate remedy at law, and
17 unless the relief requested herein is granted, PLAINTIFF will
18 suffer irreparable harm as a result of Defendants' failure to
19 fulfill their obligations to provide full and equal access to the
20 Soquel Preschool Nursery, programs, services and activities.

21 Wherefore, PLAINTIFF prays the court grant relief as
22 requested, hereinbelow.

23
24
25 **FOURTH CAUSE OF ACTION:**
26 **FOR VIOLATION OF CALIFORNIA'S**
27 **CIVIL RIGHTS ACTS (§§54 and 54.1 CIVIL CODE)**

28 28. PLAINTIFF repleads and incorporates by reference,
as if fully set forth hereafter, the factual allegations

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1 contained in Paragraphs 1 through 27 of this complaint and
2 incorporates them herein as if separately repled.

3 29. The premises at SANTA CRUZ SCHOOL DISTRICT, above
4 described, constitute public accommodations within the meaning of
5 Government Code §4450 *et seq.*, and are facilities to which
6 members of the public are invited. The aforementioned acts and
7 omissions of Defendants and each of them constitute a denial of
8 equal access to and use and enjoyment of these facilities by
9 persons with disabilities including PLAINTIFF, ERNESTINA SALDANA-
10 NEILY. Said acts and omissions are also in violation of
11 provisions of Title 24 of the California Administrative Code.

12 30. Commencing one year prior to the filing of this
13 lawsuit, on each date that plaintiff was required to attend
14 parenting classes and/or volunteer at the Soquel Preschool
15 Nursery, and on the dates specified hereinabove, PLAINTIFF
16 suffered violations of §§54 and 54.1 Civil Code in that she was
17 denied "full and free use" and "full and equal access" to public
18 buildings, public walkways, public facilities, and programs,
19 services and activities conducted by defendants on the basis that
20 she was a parent with a disability.

21 31. As a result of the denial of full and equal access
22 to the facilities by Defendants and each of them, PLAINTIFF
23 suffered a violation of her Civil Rights including but not
24 limited to rights under §§54, 54.1 and 54.3 of California Civil
25 Code, suffered physical personal injuries, physical discomfort,
26 emotional distress, embarrassment, and humiliation, all to her
27 damages as hereinabove and hereinafter stated.

28 32. PLAINTIFF seeks damages for the violation of her

1 rights as a disabled person as specified hereinabove and
2 continuing to the present date and until proper access is
3 provided, in all respects requested, according to proof.
4 PLAINTIFF requests injunctive relief per §55 Civil Code, to
5 require provision of facilities which provide full and equal
6 access per §§54 and 54.1 Civil Code. PLAINTIFF also requests an
7 award of attorneys' fees, litigation expenses and costs pursuant
8 to §§54.3 and 55 Civil Code, as well as the damage remedies,
9 including treble damages, available pursuant to §54.3 Civil Code.

10 Wherefore, PLAINTIFF prays the court grant relief as
11 requested hereinbelow.

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF prays that this Court:

15 1. Issue a preliminary and permanent injunction
16 directing Defendants to modify the specified public buildings and
17 other non-conforming facilities and their policies and practices,
18 so that each provides full and equal access physically disabled
19 persons;

20 2. Retain jurisdiction over the Defendants until such
21 time as the Court is satisfied that Defendants' unlawful
22 policies, practices, acts and omissions complained of herein no
23 longer exist, and will not, recur;

24 5. Grant a jury trial and award to PLAINTIFF all
25 appropriate damages in an amount to be proved at trial;

26 6. Award to PLAINTIFF all costs of this proceeding
27 and award all statutory remedies including statutory attorneys'
28 fees, litigation expenses and costs, as provided by law; and

1 7. Grant such other and further relief as this Court
2 may deem just and proper.

3
4 Dated: January 20, 2003 LAW OFFICES OF PAUL L. REIN
5 PAUL L. REIN
6 PATRICIA BARBOSA

7
8 _____
9 Attorneys for PLAINTIFF
10 ERNESTINA SALDANA-NEILY

11 **DEMAND FOR JURY TRIAL**

12
13 Plaintiff hereby demands a jury for all claims for
14 which a jury is permitted.

15
16 Dated: January 20, 2003 LAW OFFICES OF PAUL L. REIN
17 PAUL L. REIN
18 PATRICIA BARBOSA

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20 _____
21 Attorneys for PLAINTIFF
22 ERNESTINA SALDANA-NEILY