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**UNITED STATES DISTRICT COURT DISTRICT OF
OREGON PORTLAND DIVISION**

**ASSOCIATION OF OREGON CENTERS
FOR INDEPENDENT LIVING, MARTHA
MAE BRYSON, KIMBERLY MORRISEY,
DAVE MAULE, JORDAN OHLDE,
WILLIAM PHILLIPS, LAURIE SITTON,
CARRIE TAYLOR, and LAURA POTTS,**

Plaintiffs,

vs.

**OREGON DEPARTMENT OF
TRANSPORTATION; and MATTHEW
GARRETT, in his official capacity as
Director of the Oregon Department of
Transportation,**

Defendants.

Case No. 3:16-cv-00322-HZ

**PLAINTIFF'S SECOND AMENDED
CIVIL RIGHTS COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

CLASS ACTION ALLEGATION

Americans with Disabilities Act
42 U.S.C. § 12101 *et seq.*

Section 504 of the Rehabilitation Act of 1973
29 U.S.C. § 794 *et seq.*

COME NOW the Plaintiffs and file this Amended Class Action Complaint as a matter of right under Rule 15(a)(2) of the Federal Rules of Civil Procedure.

INTRODUCTION

This action is brought against Defendant Oregon Department of Transportation (ODOT) and its Director, Matthew Garrett, in his official capacity as Director of ODOT, to remedy a systemic and continuing pattern and practice of discrimination against people with physical disabilities, particularly those with mobility impairments. Effective January 26, 1992, Title II of the Americans with Disabilities Act required that state and local governments ensure that persons with disabilities have access to the pedestrian routes in the public right-of-way. An important part of this requirement is the obligation whenever streets, roadways, or highways are newly constructed, paved, resurfaced or otherwise altered to provide compliant curb ramps where street level pedestrian walkways cross curbs, and accessible pedestrian signals at curb ramps with traffic signals. Since at least November 1993, it has been clear that paving and resurfacing are “alterations” that require the installation of curb ramps where street level pedestrian walkways cross curbs. Nevertheless, between 1993 and the present, it has been ODOT’s continuing unlawful pattern, policy and/or practice to newly construct, pave, resurface, or otherwise alter roadways throughout the state without installing curb ramps or bringing non-conforming curb ramps and pedestrian signals into compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. This lawsuit is filed to remedy the Department’s systematic and continuing violation of the law with respect to the new construction, paving, resurfacing and other alterations of roadways and its failure to maintain a program of reasonably accessible pedestrian rights-of-way.

JURISDICTION AND VENUE

1. This is an action for declaratory and injunctive relief, brought pursuant to the Americans with Disabilities Act (“the ADA”), 42 U.S.C. §§ 12101 to 12213, specifically Title II of the ADA and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et. seq.*

2. This court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343 for claims arising under the ADA and Section 504 of the Rehabilitation Act.

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

4. Defendants have a place of business in this District and transact business in this District, and a substantial portion of the acts giving rise to this action occurred in this District. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

5. As a substantial portion of the acts or omissions giving rise to this action occurred in Washington, Clackamas, or Multnomah Counties, divisional venue is proper in this Division pursuant to LR 3-2.

PARTIES

Defendant Oregon Department of Transportation

6. The Oregon Department of Transportation (“ODOT”) is an Oregon state agency whose responsibility is to provide a safe, efficient transportation system that supports economic opportunity and livable communities in the State of Oregon. ODOT is a public entity under Title II of the ADA as defined in 42 U.S.C. § 12131(1) and 28 C.F.R. §35.104. ODOT is a recipient of millions of dollars of federal financial assistance under 29 U.S.C. §794. ODOT uses said federal financial assistance in its program activities, including highway construction and maintenance. Under both statutes, Defendant ODOT is responsible for installing, repairing and upgrading curb ramps and pedestrian signals along the state highway system throughout the

State of Oregon where it has newly constructed paved, resurfaced or otherwise altered the roadway. ODOT is also responsible for maintaining a program of pedestrian rights-of-way that is “readily accessible to and useable by individuals with disabilities. 28 C.F.R. § 35.150.

Defendant Matthew Garrett

7. Matthew Garrett is the Director of ODOT. Mr. Garrett is sued in his official capacity. Defendant Garrett is responsible for managing the day-to-day operations of Oregon’s state transportation system, and for the violations alleged herein.

Plaintiff Association of Oregon Centers for Independent Living

8. The Association of Oregon Centers for Independent Living (“AOCIL”) is an Oregon statewide non-profit corporation representing seven accredited Centers for Independent Living (CILs). AOCIL’s mission is to lead the consumer driven Independent Living Movement by supporting the CILs, engaging in systems advocacy, community education, and development of collaborative partnerships. AOCIL values the basic human rights of dignity, equality, inclusion and independence for all people with disabilities.

9. The majority of the members of AOCIL’s Board of Directors are people with disabilities, and majority of the staff and boards of directors of the seven CIL’s are people with disabilities. This membership requirement ensures that AOCIL is and will always be consumer-driven and consumer controlled. AOCIL brings a unique peer perspective to the services and advocacy it offers for people with disabilities. As such, AOCIL represents people with disabilities and provides the means by which they can protect their collective interests.

10. People with mobility and visual impairments are constituents of AOCIL, and many have suffered, or are continuing to suffer, injury to their right to use the streets and roads maintained by ODOT, an injury that would allow them to bring suit in their own right.

11. The CILs are consumer controlled, community based, cross-disability non-

profit agencies created and authorized by 29 U.S.C. § 796 *et seq.* to promote a philosophy of independent living, including self-determination, equal access, and individual and system advocacy, to maximize the leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society.

12. AOCIL's Board of Directors is a membership organization, consisting of the Executive Directors of each of the CILs, and collectively represents all people with disabilities in the state, including those to whom the CILs provide services and supports.

13. The CILs represent clients who are facing impediments to their independence, including people with mobility impairments who cannot cross state roads or face unreasonable danger and obstacles when they try to do so, as a direct result of ODOT's failure to build and maintain compliant curb ramps. The CILs, including but not limited to the Eastern Oregon Center for Independent Living (EOCIL), have been financially damaged because it is more difficult to fulfill their responsibilities to consumers whom they are charged to serve and they have expended funds to advocate for improved accessibility. Further, when consumers cannot reach the center because of the inaccessibility of state roads, the CILs have to expend funds to send staff to the homes of their constituents, or send staff to conduct meetings at accessible locations, diverting the center's time and financial resources. This limitation on the CIL's ability to serve its clients also frustrates the mission of the CILs and the statewide mission of AOCIL. Further the Portland metro area CIL, Independent Living Resources, has spent money advocating for compliant pedestrian signals in the Tualatin Valley Highway area (TV Highway is a state road).

14. AOCIL sues in its own name for injury to itself as a statewide organization for people with disabilities.

15. AOCIL also has standing to bring suit on behalf of its members because they (a) have standing to sue in their own right; (b) the interests AOCIL seeks to protect are germane to its organizational purpose; and (c) neither the claim asserted nor the relief requested require the participation of individual members in the lawsuit. What is at issue in this case is whether ODOT's multi-year continuing pattern, policy and/or practice of failing to install and upgrade curb ramps and pedestrian signals violates federal law, and the relief requested is statewide remediation. Neither requires participation by the individual members or constituents.

16. Defendants, by failing and/or refusing to construct or ensure construction of compliant curb ramps and pedestrian signals when constructing, paving, resurfacing or otherwise altering state roads, has injured AOCIL's ability to support the CILs and their members, by impairing its ability to provide and obtain safe access to community services by its members with mobility and visual impairments. Defendants are further impairing AOCIL's ability to promote and maximize the integration and full inclusion of individuals with disabilities into the mainstream of American society.

17. Further, AOCIL's mission of advocating for inclusion and independence for all people with disabilities has been frustrated by Defendants' actions, which force people with mobility and visual impairments in Oregon to have to choose between traveling within their towns and cities and their safety, thereby impairing their independence and ability to participate equally in mainstream community life.

18. There is a causal connection between AOCIL's injury and Defendants' inactions, and the injury will be redressed by requiring Defendants to remediate all non-

compliant ramps and pedestrian signals and by making pedestrian rights-of-way accessible to people with disabilities, which is the relief sought in this case.

19. Further, the clients who are served by the CILs that comprise AOCIL are being injured by Defendants' failure and/or refusal to make state highways safe and accessible to people with mobility and visual impairments. AOCIL brings this action on behalf of those clients.

The Individual Named Plaintiffs

Plaintiff Martha Mae Bryson

20. Martha Mae Bryson is a resident of Roseburg, Oregon. She uses an electric wheelchair for mobility due to a variety of orthopedic conditions that make it difficult to walk. Ms. Bryson travels all over the central city area of Roseburg in her wheelchair. She is an activist and advocate for other people with disabilities and the homeless community in Roseburg. However, at numerous places in the Roseburg area, obstructed roads and crosswalks under ODOT's control make it unreasonably dangerous for her and the people for whom she advocates to travel the streets of Roseburg, impeding their ability to move about town and to use certain intersections. These architectural barriers make it difficult and dangerous for her to use the streets and sidewalks of the city, as well as the services and programs available around the city.

21. Ms. Bryson's wheelchair has one pair of larger, powered rear wheels, as well as a second pair of smaller, unpowered wheels in the front. When Ms. Bryson encounters a curb ramp with an excessive lip, slope, or other obstacle, she can only safely ascend the ramp by turning her wheelchair around and mounting the obstacle in reverse. Going up a noncompliant ramp in the forward direction can result in her chair either becoming stuck, overturning, or sliding down the slope. While proceeding in reverse can make an obstructed or noncompliant

ramp surmountable to her, the elaborate process of turning her chair around in the crosswalk as traffic passes her and then moving her chair in reverse up the ramp exposes her to an unreasonable risk of being struck by a car. The added amount of time spent in the crosswalk to accommodate her turn and reverse of direction often means that she cannot cross a signaled intersection before the light changes. It also means that she cannot look at the oncoming traffic while reversing. Ms. Bryson has bone spurs in her cervical spine that make turning her head impossible. Finally, oncoming traffic does not anticipate pedestrians suddenly turning around and reversing in the middle of a crosswalk. All of these factors make transiting obstructed crosswalks unsafe for her.

22. For instance, the crosswalk on the entrance ramp to interstate highway 5 northbound from state highway 138 is highly dangerous because it is unmarked, badly maintained, and out of compliance with current ADA standards. The slope at the west curb ramp is excessive and the ramp has an excessive lip that requires Ms. Bryson to turn her wheelchair 180 degrees to ascend the ramp in reverse – all in the face of right- and left-turning traffic freely merging onto the exit ramp and accelerating to highway speeds. Although ODOT has placed a black and white text sign reminding west-bound drivers on highway 138 to yield to pedestrians, the sign would be difficult to read at traffic speeds, nor does it use any of the traditional, attention-getting colors and shapes of traffic signs. A second curb ramp on the east side of the entrance ramp has been constructed in the last three years, but the noncompliant west side ramp was not brought into compliance. Further, without a marked crosswalk, it is not clear to pedestrians or drivers (at least those that notice the unmarked pedestrian crossing at all) which of the two curb ramps on the east side of the entrance ramp should be used. Ms. Bryson faces discrimination in her access to the sidewalks daily, and is injured by Defendants' failure to install and maintain its curb ramps.

23. While pedestrians using the newer curb ramp have a gentler grade to ascend and are more visible to turning traffic, the distance across the entrance ramp by using the newer curb ramp is longer, and thus the time a pedestrian is exposed to the risk of oncoming traffic is increased.

24. Because Interstate 5 bisects the city of Roseburg from north to south, with only a few pedestrian routes over or under it, the inaccessible curb ramps on the northbound entrance ramp make it challenging to access the west side of town. The entrance ramp is immediately adjacent to Roseburg High School. Although making government buildings and schools accessible to pedestrians is the highest priority for crosswalk upgrades under federal law, the presence of the high school has not warranted adequate attention from Defendants to bring the crosswalk up to ADA requirements.

Plaintiff Kimberly Morrisey

25. Kimberly Morrisey is a resident of Clatskanie, a smaller town in rural Columbia County. Because of her disability, she uses a self-propelled wheelchair at all times for mobility in her home and to get around the city. Ms. Morrisey travels around Columbia and Clatsop Counties frequently, and around the state on occasion.

26. Due to the state highway resurfacing that occurred a few years ago in Clatskanie, Ms. Morrisey is no longer able to cross Highway 30, the main state highway through town that was constructed and is maintained by ODOT, because the slope of the pedestrian crossing is too great, and the ramps were not remediated to meet the altered surface at an angle compliant with federal law. This forces her to stay on one side of town with limited access to places in the community, like the main grocery store, a local pharmacy, and city hall. Ms. Morrisey, like all citizens of Clatskanie, does not receive home mail delivery. Her mail

must instead be picked up from a Post Office box. The local Post Office lies on the far side of Highway 30, and she cannot reach it in her wheelchair. Ms. Morrissey cannot receive her mail, except on days when someone drives her across Highway 30.

27. She only has access to a caregiver three times a week to take her in to the community and one of those days is to take her to church on Sunday. Because of the inaccessibility of the highway crossings, she is dependent on her parents, who live an hour away, to take her places.

28. Ms. Morrissey has “fallen forward” on more than one occasion and fortunately hershe had her caregiver with her to assist her back to an upright position. She has also been stuck “high centered” before on certain areas of the curb ramps, and required assistance to continue on her way. Neither would have happened if the curb ramps were compliant.

29. There are crosswalks in Ms. Morrissey’s town on the state highway that provide no wheelchair accessibility to people with disabilities. The curb ramps either are not present, are partial curb ramps that do not allow for wheelchair access, or the location is not correct and the ramps are not compliant. In addition, the curb ramps in her area have large lips that cannot be navigated or are difficult to navigate for self-propelled wheelchair users, and there are many aggregate or bumpy surfaces that make access more difficult. The curb ramps are not useable by Ms. Morrissey and other people with mobility impairments, resulting in ongoing injury.

30. The overall result is that Ms. Morrissey is not able to access services in her community because of missing or substandard curb ramps. Her quality of life suffers as a result, and that has contributed to a feeling of isolation in her community that is already fairly remote in location. The city has recently made repairs to city maintained sidewalks which has

helped, but she is waiting for the day when, among her other concerns, Defendants will finally make the state highway crossable again for persons with disabilities.

Plaintiff Dave Maule

31. Mr. Maule is 68-year-old veteran who resides in Lincoln City, Oregon and has lived in his residence since 1983. He has had one leg removed due to his disability, and relies on his electric wheelchair to get him around his home and to his numerous medical appointments around town. He is unable to travel down Highway 101 or to cross it because of the missing or substandard curb ramps near his home. For example, at the nearest crossing of Highway 101 at Devil's Lake Road that is very close to his home, all curb ramps are non-compliant or missing at this major intersection. He laments that he is unable to cross the street to the public library, located in the same building as city hall and one of the main grocery stores in town. The only way Mr. Maule can safely cross over Highway 101 is by driving. The Defendants' failure to properly maintain and improve curb ramps and pedestrian ways along Highway 101 has completely denied him pedestrian access to the west side of his town.

32. A six mile portion of Highway 101 was recently repaved, and yet none of the curb ramps were brought into compliance or even repaired. Based on information and belief, Defendants did not make the curb ramps compliant because the project design did not provide for paving the final foot of the road shoulder on either side. A well-publicized report performed by an access consultant at the request of Lincoln City demonstrated the widespread noncompliant curb ramps on Highway 101.

33. In February 2016, Lincoln City completed a self-evaluation of pedestrian ways under its own control and those lining Highway 101 under ODOT's control. The self-evaluation identified 141 curb ramps along Highway 101 within Lincoln City, under ODOT's

control, that were out of compliance with federal law. Since ODOT road work on Highway 101 in Lincoln City was completed within the last two years, and many of the identified curb ramps lie within that construction zone, ODOT failed to uphold its obligations to upgrade and repair curb ramps.

34. The lack of curb ramps along Highway 101 at this intersection and along Highway 101 has led Mr. Maule to avoid crossing Highway 101 without assistance. He feels that he is isolated in his home, and often avoids going out at all together because it requires him to operate his electric wheelchair on the roadway which is unsafe, and deprives him of the benefit of the sidewalks that is afforded to other citizens.

Plaintiff Jordan Ohlde

35. Mr. Ohlde is a long-time resident of Bend, Oregon. He uses a wheelchair to get around. Due to the poorly maintained sidewalks and curb ramps, Mr. Ohlde is often unable to use pedestrian facilities in Bend. He must instead travel along busy roads using the bicycle lane. This forces him closer to traffic and endangers his safety. These poor road conditions have contributed to the breaking of five different axles on Mr. Ohlde's wheelchair.

36. In Bend, state highway 20 goes through the center of town. Highway 20 is called Northeast Greenwood Avenue as it travels east-west from the eastern outskirts of Bend west to Northeast Third Avenue, where Highway 20 turns north. Highway 20 goes in a north-south direction on Northeast Third Avenue from Northeast Greenwood Avenue. Mr. Ohlde lives close to Northeast Greenwood Avenue/Highway 20. He travels on the highway to get to the pool, to his doctor's office, and to his church. From Northeast Eleventh Street towards the center of town, Northeast Greenwood Avenue has very old, poorly maintained curb ramps. For instance, the ramps near Northeast Tenth Street and Northeast Greenwood Avenue are impassible for a wheelchair user. It would be impossible for a wheelchair user to turn north at

the northeast corner of Northeast Greenwood Avenue because the curb ramp leads directly into a utility pole. Similarly, no wheelchair user could travel eastbound or southbound from the southeast corner of Northeast Greenwood Avenue at Northeast Sixth Street, because the whole ramp landing is impeded in both directions by a sign and a traffic post. In other places on Northeast Greenwood Avenue, no north-south curb ramps are provided that would allow a wheelchair user to cross Northeast Greenwood Avenue without wheeling into oncoming east-west traffic. Many of the curb ramps adjoining Northeast Greenwood Avenue between Northeast Third and Northeast Eleventh are badly cracked and damaged.

37. On Northeast Third Avenue, noncompliant ramps make use of the sidewalks challenging or impossible for people with disabilities. One curb ramp at Northeast Third Avenue and Northeast Norton Avenue directs walker and wheelchair users into a sewer grate. Even relatively new looking curb ramps have no detectable warnings. Mr. Ohlde states that some of the pedestrian walk signals are not easily accessible because the posts on which they are placed have secondary curbs and other obstructions that place them out of reach of wheelchair users, such as at Northeast Third Avenue and Northeast Revere Avenue and at Northeast Greenwood Avenue and Northeast Third Avenue. Mr. Ohlde has attempted to use those signals and gotten his wheelchair stuck by these barriers. The signal buttons are not located on a level pad for wheelchair users.

38. Mr. Ohlde has made requests to see these problems fixed, but has experienced only mutual blame between the city of Bend and ODOT. His access to the streets of the city where he lives is impeded by Defendants' failure to install, to upgrade, and to maintain curb ramps in compliance with the law. Instead of being permitted to use the sidewalks of the main roads of Bend, he is forced into the bicycle lane and into traffic, where oncoming vehicles are

not likely to expect a wide, slow-moving wheelchair that fills most of the width of the lane. Mr. Ohlde's property (in the form of his wheelchair), his life, and his liberty to move around his own town are jeopardized by ODOT's failure to provide equal access for people with disabilities.

Plaintiff William Phillips

39. Mr. Phillips has lived in his apartment in Portland, Oregon for 24 years. His apartment is part of a large public housing complex with 120 units located in North Portland. He has very poor eyesight and severe nerve damage in his legs that requires him to use a self-propelled wheelchair for mobility at all times. He relies exclusively on public transportation to get him to doctor appointments and out into the community for his weekly activities.

40. While Mr. Phillips uses a wheelchair to get around, he has very limited use of his legs and can stand up with difficulty. However, he is unsteady on his feet, and it is unsafe for him to stand without support.

41. All the bus lines near his home travel along Lombard Avenue, Highway 30 bypass, a state highway constructed and is maintained by ODOT. Even though Lombard Avenue has been repaved many times in the last decade, very few of the curb ramps have been made compliant. For example, at a nearby crossing of Highway 30 at North Chautauqua Boulevard near a large public park and community center, all four curb ramps are noncompliant and too narrow for a wheelchair to descend safely. The way that Mr. Phillips copes with this noncompliance when he needs to cross at this corner is get out of his wheelchair and push his chair down off the curb and edge his way down into the roadway, risking catastrophic injury from a fall.

42. There is also no accessible path along Lombard Avenue because of the noncompliant curb ramps. He has tried to operate his wheelchair in the roadway, but because there is no shoulder or bike lane, it simply is not possible without impeding traffic and risking his life, a risk he is not willing to take. Instead, he often has to wait for and take a bus a few blocks rather than travelling those blocks in his wheelchair to get to where he is going. He feels this is not fair since other people get to use the sidewalk. It further contributes to his sense of incapacity, which is particularly hard given that he greatly values his own independence.

43. Mr. Phillips has also recently encountered many noncompliant curb ramps along Highway 99E that were constructed and are maintained by ODOT. This includes the portion of 99E in North Portland where it is known as Martin Luther King Boulevard, and in the central Eastside District where it is also known as Grand Avenue. Mr. Phillips does not understand why Defendants would want to avoid fixing the curb ramps when they have repaved these roads that are used heavily by both cars and pedestrians.

44. Mr. Phillips has also encountered non-compliant traffic signals on Lombard Avenue, where he cannot reach the button because of the absence of a level pad or because the button is out of his reach range.

Plaintiff Laurie Sitton

45. Ms. Sitton is a longtime resident of East Portland. She lives in a house on Powell Boulevard/US 26 near 119th. She has limited motion in her right arm. She deftly controls her power wheelchair with a toggle switch. She primarily travels independently using Tri-Met fixed route public buses on the regular bus lines. She is thereby able to independently complete basic errands and medical visits, as well as visit friends and engage in social and community activities.

46. Unfortunately, at numerous intersections along Powell Boulevard, the pedestrian buttons are inaccessible and do not meet federal design standards. At these intersections, she is left to wait for someone else to come along to push the button, to travel down the bike path alongside the street traffic, or to endanger herself with an unsafe approach to the button.

47. Among the intersections posing this problem are the southwest corner of Powell and 122nd Avenue, where a Safeway is located. She is unable to reach the pedestrian button to cross 122nd because the approach has an inaccessible slope, which makes her chair - balance unstable. There is no level platform landing. Further, the pole on which the button is fastened has a raised cement base which hinders approach. That obstruction, together with the height of the button, make the reach excessive and the button unreachable.

48. Similarly, at the northwest corner of 136th and Powell, she cannot reach the button to cross either 136th or Powell. She likes to patronize the Plaid Pantry and a restaurant at this intersection, but her access is significantly impaired. There is a 4” curb abutting the pole on which the button is fastened, making it impossible to use a parallel or other approach to the button; there is also no level landing area and the reach range is excessive. This is true despite the fact that the actual ramps at this intersection appear to have been constructed within the past few years.

49. Several major transit stops and/or transfers also have non-compliant pedestrian signals. At the northeast corner of 112th Avenue and Powell, where Ms. Sitton makes bus transfers along 112th to Division, the curb slope prevents safe access to the buttons . At the east side of the I-205 on-ramp crossing, pole pedestals prevent accessible approach at all four (4) corners, and there are no landings or accessible approaches at any of the corners. Ms. Sitton uses this site en route to MAX lines.

50. Ms. Sitton also has problems with curb ramps on Powell Boulevard, which she uses to access TriMet buses, particularly at 122nd Street , where bus lines 17 and 71 travel to downtown Portland, and at 92nd and Powell where the green line MAX runs.

51. There is also a problem with the curb ramp crossing the on ramp/ off ramp to I-205 which intersects Powell Boulevard between 92nd and 98th Avenues that makes access very dangerous. This makes it particularly difficult to get off the MAX line at 92nd Avenue and go down to Powell and head east toward home.

Plaintiff Carrie Taylor

52. Ms. Taylor is a woman who has a visual impairment and is ambulatory but is unable to utilize the pedestrian signals without audible and visual components. There are several intersections that she regularly travels in Hillsboro along Tualatin Valley Highway, which is a state road, which have pedestrian buttons that are unusable by her. She must therefore wait until she perceives that traffic has stopped because of the crosswalk signal being activated, and only then crosses the intersection. She has no way of knowing whether traffic has, in fact, stopped, putting her at risk of serious injury or death.

53. When Ms. Taylor encounters accessible signals in Portland or Beaverton, which have audible and visual pedestrian buttons, she is able to navigate the intersections freely and without the risk she faces along TV Highway.

54. Ms. Taylor moved to Hillsboro in late 2015 and only discovered the inaccessible state of pedestrian ways adjoining the TV Highway after moving to Hillsboro.

Plaintiff Laura Potts

55. Ms. Potts has a mobility impairment and uses a wheelchair. She has encountered multiple locations on TV Highway, a state road, where there are pedestrian signals; however, she cannot reach them to activate the signals because there is either no clear, level

landing pad or the button is not within compliant reach ranges. She therefore cannot cross those intersections until traffic stops for some reason other than her activating the signal, denying her equal access to ODOT's pedestrian walkways.

56. Prior to 1999, Ms. Potts used a manual wheelchair. Because of steep curb ramps and/or curb ramps with lips at the bottom on TV Highway, she was flipped out of her chair on several occasions and suffered bruises and other injuries. This occurred even when she had an assistant traveling with her to assist her up and down these curb ramps.

57. In 1999, she switched from a manual chair to a power chair to provide her with more power to get up and down the curb ramps. However, she still had difficulty, and at some intersections chose to ignore the non-compliant curb ramp, and instead use driveways to access the sidewalk, forcing her to travel down the shoulder of the road and risk serious injury.

CLASS ACTION ALLEGATIONS

58. Pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, the plaintiffs bring this action on behalf of themselves and other people with physical disabilities, particularly those with mobility or visual impairments, whose have been adversely affected by Defendants' unlawful pattern, policy and/or practice of paving, resurfacing or otherwise altering roadways throughout the state without installing curb ramps or bringing non-conforming curb ramps and pedestrian signals into compliance with the Title II of the ADA and Section 504 of the Rehabilitation Act. The plaintiffs seek injunctive and declaratory relief individually and on behalf of the class to remedy this violation and their loss of mobility and independence that result from the inaccessibility of ramps and pedestrian signals.

59. The plaintiff class is so numerous that joinder of all members is impracticable. The class consists of several thousand individuals in Oregon who have physical disabilities who have been adversely affected by Defendants' unlawful practices.

60. These are common questions of law, including *inter alia*:

a. whether the defendants are violating the ADA and Rehabilitation Act by altering the public highway system without installing curb ramps or bringing non-compliant ramps and pedestrian signals into compliance with the ADA and Section 504;

b. whether the defendants' written policy from 2008 to January 1, 2014 that resurfacing projects "will not require ADA ramp addition or modification;" violated the ADA and Section 504;

c. whether, given the scope of defendants' failure to install and maintain compliant curb ramps, that failure can be anything other than an unlawful policy, pattern and/or practice;

61. There are questions of fact common to the class, including:

a. how many curb ramps are missing or non-compliant as a result of defendants' policy and practice, and how many pedestrian signals are out of compliance with federal law;

b. whether ODOT has failed to install curb ramps or make required improvements by engaging in systemic and continuing acts of subterfuge to evade the requirements of federal law;

c. whether the named plaintiffs and members of the plaintiff class have meaningful access to the system of pedestrian rights-of-way on state highways;

d. whether the named plaintiffs and members of the plaintiff class are unnecessarily isolated in their homes and denied the full opportunity for community integration as a result of Defendants' unlawful policy, pattern and/or practice of failing to install curb ramps or bring non-compliance ramps and pedestrians into compliance with the ADA and Section 504 when paving or resurfacing a state highway;

62. The named plaintiffs' injuries and claims are typical of the class in that all class members are being denied meaningful and equal access to the system of pedestrian rights-of-way on state highways . The named plaintiffs adequately and fairly represent the interest of all

class members, will fully and vigorously prosecute this action, and are represented by attorneys experienced in federal class action litigation and disability law. Absent certification, individual members of the class would have difficulty pursuing their own claims or remedying systemic violations on their own.

63. Defendants administer, fund and maintain the state highway system in a way that discriminates against persons with physical disabilities, including those with mobility and visual impairments, by failing to construct and maintain compliant curb ramps and pedestrian signals, putting plaintiffs at risk of isolation, injury and even death. The Defendants have acted or refused to act on grounds generally applicable to the entire plaintiff class, through their policies, patterns and/or practices of altering the public highway system without installing curb ramps or bringing non-compliant ramps and pedestrian signals into compliance with the ADA and Section 504, thereby making injunctive and declaratory relief appropriate with respect to the class as a whole. As a result, the plaintiffs seek certification pursuant to Fed. R. Civ. P. 23(b)(2),

FACTUAL ALLEGATIONS

64. Defendants provide for public use an extensive network of physical facilities around the state of Oregon, including many curb ramps, pedestrian crossings, and pedestrian signals throughout the state of Oregon at streets, roadways and highways. These ODOT facilities are a key program, service and activity within ODOT's jurisdiction. ODOT provides this public program, service and activity for the benefit of residents of and visitors to the state of Oregon. By failing to comply with the requirements of the ADA and 29 U.S.C. §794 for the installation of compliant curb ramps and correction of non-compliant curb ramps and pedestrian signals when newly constructing, paving, resurfacing, or otherwise altering streets, roadways or highways, Defendants discriminate against persons with disabilities. This is a violation of federal law and has been a pattern and practice of the Defendants since at least 1993.

65. Both the ADA (since January 26, 1992) and Section 504 (since June 3,

1977) have mandated that whenever a public entity itself newly constructs or alters streets, roads or highways, it must install curb ramps at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, to ensure that newly constructed or altered pedestrian right-of-way programs and facilities are readily accessible to and usable by individuals with disabilities.

66. Both the ADA and Section 504 also require compliance with applicable standards for accessible design. These standards contain detailed design specifications addressing such issues as, for example, the slope of curb ramps and their locations. The ADA also required public entities to remediate new construction or alterations that were not done in compliance with the standards in effect at the time of construction. ODOT has failed to remediate new construction, resurfacing or other alterations not constructed in compliance with the standards in effect at the time of construction.

67. The 2010 ADA Standards for Accessible Design, which include requirements for curb ramps, require that there be a clear and level landing pad at pedestrian signals, and that the operable buttons be at specified reach ranges and heights. Further, the Public Rights of Way Accessibility Guidelines (PROWAGS) require the installation of accessible pedestrian signals that provide audible warnings to those with vision impairments, directing them as to whether and when it is safe to cross the road. Defendants have failed to comply with either of those legal obligations.

68. Defendants have had an ongoing obligation to make curb ramps and pedestrian crossings and signals compliant with the ADA, and have systematically and continuously ignored that obligation.

69. During the period 1992 through at least December 31, 2014, Defendants have maintained an unlawful policy, pattern and/or practice that the resurfacing or paving of streets, roadways or highways does not constitute an “alteration” for purposes of the ADA and Section

504 of the Rehabilitation Act. By no later than 2008, Defendants reduced their unlawful policy and practice to writing in the form of a Highway Design Manual. In ODOT's Highway Design Manual, ODOT informed employees and contractors working on improvement projects involving streets, roadways or highways that resurfacing projects "will not require ADA ramp addition or modification." This written policy was in violation of ADA and Section 504 requirements. Pursuant to this policy and practice, Defendants have failed to install curb ramps and failed to correct non-compliant curb ramps where street level pedestrian walkways cross curbs in new construction, resurfacing, paving, resurfacing or other projects altering roadways.

70. On December 19, 2013, Defendants issued a Technical Services Advisory with an effective date of January 1, 2014. Under the Technical Services Advisory issued in January 2014, ODOT declared that resurfacing projects (except for those involving chip seals) were alterations under the ADA triggering a requirement to upgrade or provide curb ramps where sidewalks or prepared surfaces exist. The Technical Services Advisory changed ODOT's unlawful written policy that resurfacing projects were not alterations under the ADA.

71. In its 2011 Transition Plan, ODOT estimated that the total number of locations needing curb ramps needed in the State was 16,938. Of that total inventory, 15,270 locations had either missing or non-compliant curb ramps. To the best of Plaintiffs' knowledge, no inventory has been done of the pedestrian signals on state roads throughout the state to determine how many are out of compliance with federal law.

72. The scope of such statewide noncompliance, where more than three of every four locations needing curb ramps have either missing ramps or ramps in poor condition, speaks for itself. A person with a mobility impairment or a visual impairment does not have meaningful access to the system of pedestrian rights-of-way in a system where so many ramps are missing or in poor condition. Neither could such a systematic and continuing failure to install and maintain

compliant curb ramps have arisen in a program that regularly installs or improves curb ramps when the adjoining road is altered. Given that most roads will need improvement and alteration over the course of more than two decades, this deficit could not have arisen except through a pattern and practice of systemic and continuing failure to upgrade and install curb ramps when required.

73. ODOT has also failed to install required curb ramps or to make required improvements in ramps by engaging in systemic and continuing acts of subterfuge around the state, specifically attempting to evade the legal requirements for ramp upgrades. Examples of this conduct include performing an alteration across all lanes of traffic on a highway except for one lane, or performing an alteration to all parts of a road, but stopping the project a few feet short of the crosswalk at an intersection. Such a policy of deliberate evasion of the requirements of federal law violates the law itself.

74. As an example of such subterfuge, between October 2014 and June 2015 on Southeast 82nd Avenue in Clackamas County near Boyer Street, ODOT resurfaced both northbound lanes, the center turning lane, and one southbound lane of traffic. However, the second southbound lane of traffic remained unresurfaced north of Boyer Street, and obviously noncompliant curb ramps at the Boyer Street intersection were not improved. Resurfacing of all five lanes of traffic began roughly ten feet south of the Boyer Street intersection. No plausible explanation for such selective repaving work could be believed other than intentional subterfuge. Similarly, repaving work on Highway 101 in Lincoln City in 2014 and 2015 appeared to be an act of subterfuge, where the road alteration stopped a few feet short of the curb, and the curb ramps adjoining Highway 101 were not improved.

75. ODOT systemically fails to ensure that pedestrian ways remain reasonably accessible during times of construction work. For instance, at multiple sites in Roseburg during recent construction operations on Highway 138 (Oak Avenue) in the fall of 2015, no alternate route was identified for pedestrians, and Ms. Bryson was forced to wheel her chair in the road. Inherent in operating a system of state roads and highways is a periodic need for maintenance and construction. The pattern and practice of failure to make alternate accessible routes violates federal law.

76. ODOT engages in a continuing pattern and practice of failure to adequately oversee work done by its employees, its contractors, and managerial staff in five geographic districts, leading to nonstandard and noncompliant construction or complete failure to produce accessible pedestrian ways.

77. ODOT, as a matter of state policy, fails to maintain a reasonable means for complaint regarding the inaccessibility of any pedestrian facility to people with disabilities. The ODOT website does not provide specific guidance on how to complain about missing curb ramps or inaccessible pedestrian ways. The closest thing to a meaningful avenue for identifying noncompliant curb ramps is to fill in a catch-all Title VI/ADA discrimination form addressing all forms of discrimination (based on race, sex, disability, religion, national origin). While the form quotes the language of Title VI, the ADA is only in the title of the form and its protections are not described. A layperson would be hard-pressed to identify this form as a means to complain about inaccessible curb ramps. People with disabilities are denied access to the ODOT complaint system. Moreover, because they cannot effectively draw ODOT's attention to the inaccessibility of some pedestrian rights-of-way, the inaccessibility of the complaint system fosters further inaccessibility of the pedestrian rights-of-way, because areas in need of new ramps,

improvements to ramps, or maintenance of ramps cannot be effectively brought to ODOT's attention.

78. Other noncompliant elements curb ramps persist in the architecture around the state. In many places, the curb ramps have slopes or cross-slopes that are too steep, lack a smooth transition to the crosswalk or otherwise have a "lip" between the ramp and pavement, lack detectable warnings, lack adequate flat spaces to allow wheelchair users to safely turn their wheelchairs at the top of each ramp, or incorporate obvious obstructions and hazards, like utility posts or sewer grates. These continuing patterns and practices of noncompliant construction and maintenance violate federal law.

79. ODOT also lacks an adequate means of monitoring and maintaining the condition of existing curb ramps and other pedestrian rights-of-way. Many of the noncompliant curb ramps around the state have broken pavement or show patterns of wear that keep people with disabilities from using them safely. In many places, the bottom of the ramp has become worn or damaged, creating a hollow for water to pool or for gravel to collect, degrading the accessibility of the ramp. Other than its infrequent self-assessments, ODOT has no ongoing, regularly-scheduled means to assess the condition of these ramps. It has no regularly-planned maintenance for curb ramps.

80. In the ways enumerated above, each of the plaintiffs and the plaintiff class are excluded from participating in, or denied the benefits of, the goods, services, programs and activities of the Oregon Department of Transportation on the basis of their disability through Defendants' failure to install, repair and upgrade curb ramps and pedestrian signals in compliance with the ADA and the Rehabilitation Act. These failures make the system of pedestrian rights-of-way systemically inaccessible and unavailable to the plaintiffs. Further, plaintiffs and the plaintiff

class are being denied meaningful access to public buildings, transportation, places of employment and public accommodation, through either a complete denials of access, non-compliance with the ADAAGs, or the maintenance of unsafe conditions.

81. AOCIL and its members and clients and the individual plaintiffs have been harmed as a result of ODOT's continuing non-compliance with federal and state law and the inaccessibility of curb ramps and pedestrian signals on state roads and highways, which, inter alia, frustrates autonomy and full and equal integration into community life.

82. Plaintiffs made demand that Defendants identify all new construction, resurfacing, paving or other alteration projects that have been completed during the period 1992 through December 31, 2013, and install or upgrade curb ramps and pedestrian signals where street level pedestrian walkways cross curbs, as required by the ADA and 29 U.S.C. §794. Defendants have failed to identify and correct the non-compliant new construction, resurfacing, paving and other alteration projects to bring curb ramps and pedestrian signals into compliance. The individual plaintiffs, plaintiff class, AOCIL and its members and constituents will suffer irreparable injury unless the defendants are required to come into full compliance with the ADA and 29 U.S.C. §794 requirements, including the 2010 ADA Standards for Accessible Design.

83. Plaintiffs are informed and believe that defendants deny that they failed to comply with applicable laws prohibiting discrimination against person with disabilities during the period 1993 to the present, in violation of the ADA and Section 504. A judicial declaration of rights is necessary and appropriate in order that each party may know their respective rights and duties and act accordingly.

84. Plaintiffs entered into a tolling agreement with Defendants that extended the statute of limitations for these claims through February 29, 2016.

**FIRST CLAIM FOR RELIEF
THE AMERICANS WITH DISABILITIES ACT**

85. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 84 above.

86. Title II of the ADA prohibits a public entity from excluding a person with a disability from participating in, or denying the benefits of, the goods, services, programs and activities of the entity or otherwise discriminating against a person on the basis of disability. 42 U.S.C. § 12132.

87. At all times relevant to this action ODOT was and is a public entity within the meaning of Title II of the ADA and provides a pedestrian right-of-way program, service or activity to the general public.

88. At all times relevant to this action, the individual Plaintiffs and the class they represent were and are qualified individuals with disabilities within the meaning of Title II of the ADA and meet the essential eligibility requirements for the receipt of the services, programs or activities of provided by ODOT. AOCIL was and is a representative organization dedicated to defending the interests of qualified individuals with disabilities and preserving their access to the community.

89. The regulations implementing Title II of the ADA require a public entity to install compliant curb ramps at intersections whenever it newly constructs, paves, resurfaces or otherwise alters sidewalks, streets, roads and/or highways at any time after January 26, 1992. 28 C.F.R. § 35.151(b). The ADA also required public entities to remediate new construction, paving, resurfacing or other alterations that were not done in compliance with the standards in effect at the time of construction. 28 C.F.R. § 35.151(c)(5)(i).

90. Resurfacing projects undertaken by ODOT constitute an alteration within the meaning of the ADA.

91. From November 1993 through the present, Defendants have continually failed to provide compliant curb ramps and pedestrian signals when ODOT newly constructs, paves, resurfaces or otherwise alters sidewalks, streets, roads and/or highways. This conduct constitutes unlawful discrimination on the basis of disability in violation of Title II of the ADA. ODOT has further, on a continuing and systematic basis, failed to remediate curb ramps and pedestrian signals in new construction, paving, resurfacing or alterations not done in compliance with the standards in effect at the time of construction, in violation of the ADA. ODOT has therefore engaged in a continuing pattern and practice of discrimination against people with disabilities.

92. In addition to the many individual instances of failures to construct curb ramps required by law, the statewide program of pedestrian rights-of-way when considered as a whole is inaccessible to people with disabilities, whether the disabilities are mobility impairments or visual impairments. The Defendants' failures to make pedestrian ways accessible deny people with disabilities safe access to the basic amenities of community living: city halls, libraries, post offices, grocery stores, pharmacies, churches, doctor's offices, restaurants, and retail shops, as well as denying access to the pedestrian ways themselves.

93. Defendants are mandated to operate each program, service, or activity "so that, when viewed in its entirety, it is readily accessible to and useable by individuals with disabilities." 28 C.F.R. § 35.150; see also 28 C.F.R. §§ 35.149 & 35.151. Pedestrian rights-of-way themselves constitute a vital public program, service, or activity under Title II of the ADA. 28 C.F.R. § 35.104; *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002).

Defendants' systemic and ongoing failures have caused the state's pedestrian rights-of-way to be inaccessible, when viewed in their entirety and when viewed within the context of individual local communities, in violation of Title II of the ADA.

94. As a direct and proximate result of Defendants' violations of Title II of the ADA, the individual plaintiffs and the members of AOCIL have been injured as set forth herein and will continue to suffer injury until Defendants are required to, and have, come into compliance with the requirements of the ADA.

SECOND CLAIM FOR RELIEF
SECTION 504 OF THE REHABILITATION ACT OF 1973

95. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 84 above.

96. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and the regulations promulgated thereunder, prohibit discrimination against people with disabilities by recipients of federal funding. Section 504 provides, in pertinent part, that:

No otherwise qualified handicapped individual...shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance [...].

97. Defendants have received substantial federal financial assistance at all relevant times.

98. Plaintiffs and plaintiff class are otherwise qualified handicapped individuals within the meaning of Section 504 of the Rehabilitation Act, as are the members and individuals represented by AOCIL.

99. Defendants have discriminated against Plaintiffs in programs and activities receiving federal financial assistance on an ongoing and continuing basis solely because of the disabilities of plaintiffs, and all others similarly situated, in violation of 29 U.S.C. §794 and the regulations promulgated thereunder.

100. As a proximate result of Defendants' violations of Section 504, the individuals plaintiffs and the members and individuals served by AOCIL have been injured as set forth herein and will continue to suffer injury until ODOT is brought into compliance with 29 U.S.C. §794 requirements.

101. Because Defendants' continuing discriminatory conduct presents a real and immediate threat to plaintiffs, their safety and their ability to equally access public facilities, declaratory and injunctive relief are appropriate remedies.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Certify this case as a class action pursuant to Fed. R. Civ. P. 23;
2. Issue a declaratory judgment that Defendants' continuing policy, pattern and/or practice of failing to provide legally compliant curb ramps and pedestrian signals when ODOT newly constructs, paves, resurfaces, or otherwise alters sidewalks, streets, roads and/or highways discriminates against the named plaintiffs and members of the plaintiff class, and fails to comply with the requirements of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973;
3. Issue a declaratory judgment that Defendants' continuing policy, pattern and/or practice of failing to remediate non-compliant or missing curb ramps and pedestrian signals in new construction, paving, resurfacing or alterations not done in compliance with the standards in effect at the time of construction, violates Title II of the ADA and Section 504 of the

Rehabilitation Act of 1973;

4. Issue a declaratory judgment that hat least 1993 to maintain a statewide system of pedestrian rights-of-way in a manner that is readily accessible to and useable by people with disabilities, in violation of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973;

5. Issue an order and judgment enjoining Defendants from violating Title II of the ADA and Section 504 of the Rehabilitation Act of 1973;

6. Issue an order and judgment requiring Defendants to conduct a survey of all new construction, paving, resurfacing or other alteration projects undertaken on state roads between November 1993 and the present, and to identify each and every non-compliant curb ramp and non-complaint pedestrian signal, or intersection requiring a curb ramp, along the roadways constructed, paved, resurfaced or otherwise altered by Defendants;

7. Issue an order and judgment requiring Defendants to retrofit each and every non-compliant curb ramp and pedestrian signal at intersections requiring a curb ramp or compliant pedestrian signal along the roadways newly constructed, paved, resurfaced, or otherwise altered by Defendants without bringing the ramps into compliance with the standards in effect at the time of construction during that time, including constructing curb ramps where they are required but do not exist, and bringing pedestrian signals at curb ramps into compliance with the 2010 ADA standards for Accessible Design;

8. Award plaintiffs' reasonable attorneys' fees, litigation expenses and costs pursuant to 42 U.S.C. 12205 and 29 U.S.C. 794a; and

9. Grant all such other and further relief as it deems just and proper.

DATED this 3rd day of November, 2016.

Respectfully submitted,

/s/ Kathleen Wilde

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