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8 Attorneys for the Plaintiff People of the State of  
California ex rel. Bill Lockyer,  
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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF MARIN  
12

13 PEOPLE OF THE STATE OF CALIFORNIA ex rel.  
14 BILL LOCKYER, ATTORNEY GENERAL OF THE  
STATE OF CALIFORNIA,

15 Plaintiff,

16 v.

17 MILL VALLEY CITY COUNCIL, MILL VALLEY  
18 BUILDING DEPARTMENT, AND DOES ONE  
THROUGH FIFTY,

19 Defendants,.  
20

Case No.:

**PETITION FOR WRIT OF  
MANDATE AND  
COMPLAINT FOR  
INJUNCTIVE RELIEF**

21 The People of the State of California, by and through Bill Lockyer, Attorney General of  
22 the State of California, allege as follows:

23 **INTRODUCTION**

24 1. Government Code section 4450 et seq. requires that all buildings, structures, sidewalks,  
25 curbs and related facilities constructed or remodeled with public funds after January 1, 1969, be  
26 accessible to and usable by persons with disabilities and that they comply with the building standards  
27 contained in regulations adopted by the California Building Standards Commission set forth at Title  
28

1 24, Part 2, Volume 1 of the California Code of Regulations (“Title 24”).

2 2. Government Code section 4453 provides that where municipal funds are utilized, the  
3 governing body of the municipality has a mandatory duty to enforce Government Code section 4450  
4 et seq. and Title 24 with respect to publicly funded buildings, structures, sidewalks, curbs and related  
5 facilities located within the municipality’s jurisdiction.

6 3. Government Code section 4452 provides that any unauthorized deviation from Title 24  
7 regulations shall be rectified by full compliance within 90 days after confirmation of the deviation.

8 4. Health and Safety Code section 19955 et seq. requires that all privately funded public  
9 accommodations and facilities constructed or remodeled after January 1, 1970 be accessible to and  
10 usable by persons with disabilities, and that they comply with the provisions of Government Code  
11 section 4450 et seq. and the building standards contained in Title 24.

12 5. Health and Safety Code section 19958 provides that the building department of a city has  
13 the mandatory duty to enforce Health and Safety Code section 19955 et seq. and Title 24 with respect  
14 to privately-funded public accommodations and facilities within the city’s jurisdiction.

15 6. Civil Code section 54 , subdivision (a) provides that individuals with disabilities have the  
16 same right as the general public to the full and free use of the streets, sidewalks, walkways, public  
17 buildings, public facilities and other public places. Civil Code section 54, subdivision (c) provides that  
18 a violation of the right of an individual under the Americans with Disabilities Act of 1990 also  
19 constitutes a violation of Civil Code section 54.

20 **THE PARTIES**

21 7. Plaintiff Bill Lockyer is the duly elected Attorney General of the State of California. The  
22 Attorney General is empowered by the California Constitution to take whatever action is necessary  
23 to see that the laws of the State are uniformly and adequately enforced. (Cal. Const., art. V, § 13.)  
24 This authority extends to taking whatever action is necessary to ensure that local governing bodies  
25 and local building departments meet their mandatory duties to enforce Government Code section  
26 4450 et seq., Health and Safety Code section 19955 et seq., and the building standards that are set  
27 forth in Title 24. Government Code section 4458 and Health and Safety Code section 19958.5  
28 authorize the Attorney General to enforce these statutory provisions and regulations. The Attorney

1 General is also authorized, pursuant to Civil Code section 55.1, to enforce the provisions of Civil  
2 Code section 54.

3 8. The Defendant Mill Valley City Council is a governing body within the meaning of  
4 Government Code section 4453 and, therefore, has a mandatory duty to enforce Government Code  
5 section 4450 et seq. and Title 24 with respect to publicly funded buildings, structures, sidewalks,  
6 curbs and related facilities that are constructed or altered with municipal funds. The Defendant Mill  
7 Valley City Council is also responsible for ensuring that the streets, sidewalks, walkways, public  
8 buildings, public facilities and other public places constructed, operated or maintained by the City  
9 comply with the provisions of Civil Code section 54.

10 9. Defendant Mill Valley Building Department (hereafter “Defendant Building Department”)  
11 is a building department within the meaning of Health and Safety Code section 19958 and has a  
12 mandatory duty to enforce Health and Safety Code section 19958 et seq. and Title 24 with respect  
13 to privately funded public accommodations and facilities that are subject to the jurisdiction of the city  
14 of Mill Valley and a mandatory duty to comply with the provisions of Civil Code section 54 as to  
15 public facilities within its jurisdiction.

16 10. Defendants Does One Through Fifty, inclusive, are sued under fictitious names. Their true  
17 names and capacities are unknown to Plaintiff, and therefore, Plaintiff sues them in this fictional  
18 capacity. When their true names and capacities are ascertained, Plaintiff will amend this Petition by  
19 inserting their true names and capacities herein.

#### 20 **VENUE AND JURISDICTION**

21 11. This Court is the appropriate venue for this case because the Defendant City of Mill Valley  
22 and the Mill Valley Building Department are located within Marin County. Moreover, this Court  
23 has jurisdiction over causes of action alleging the failure to carry out mandatory statutory  
24 responsibilities pursuant to Government Code section 4450 et seq., Health and Safety Code sections  
25 19955 et seq. and Civil Code section 54.

#### 26 **EXHAUSTION OF REMEDIES**

27 12. The State is exempted from having to comply with applicable claims procedures for suits  
28 brought against local public entities pursuant to Government Code section 905, subdivision (i).

1 **ALLEGATIONS**

2 **FIRST CAUSE OF ACTION**

3 **(Against All Defendants)**

4 (Mandamus Relief–Failure to Meet Mandatory Duty to Enforce Government Code section 4450 et  
5 seq., Health and Safety Code section 19955 et seq., and Title 24)

6 13. Plaintiff realleges and incorporates the allegations of paragraphs 1 through 12 as if fully set  
7 forth herein.

8 14. On or about March 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
9 he had lodged a complaint with Defendants on that same date alleging that the entrance, the parking  
10 lot, drinking fountain, service counter and restrooms of a Jiffy Lube located at 374 Miller Avenue in  
11 Mill Valley did not comply with Title 24. Jiffy Lube is subject to the jurisdiction of Defendant  
12 Building Department and is a privately funded public accommodation or facility within the meaning  
13 of Health and Safety Code section 19955 et seq. Plaintiff conducted an investigation of the private  
14 citizen’s complaint and determined that the Defendants failed to properly investigate and resolve the  
15 complaint and that, as of July 9, 2003, the entrance, the parking lot, drinking fountain, service counter  
16 and restrooms of the Jiffy Lube did not comply with Title 24.

17 15. On or about August 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
18 he had lodged a complaint with Defendants on this same date alleging that the parking facilities, front  
19 entrance, and service counter of the Baskin Robbins located at 29 Miller Avenue in Mill Valley did not  
20 comply with Title 24. This Baskin Robbins is subject to the jurisdiction of Defendant Building  
21 Department and is a privately funded public accommodation or facility within the meaning of Health  
22 and Safety Code section 19955 et seq. Plaintiff conducted an investigation of the private citizen’s  
23 complaint and determined that the Defendants failed to properly investigate and resolve the complaint  
24 and that, as of July 9, 2003, the parking facilities, front entrance and service counter at Baskin Robbins  
25 did not comply with Title 24.

26 16. On or about March 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
27 he had previously lodged a complaint with Defendants on or about April 29, 2001, alleging that the  
28 parking facilities and the men’s restroom at the Cantina, located at 651 East Blithesdale Avenue in Mill

1 Valley, did not comply with Title 24. He further alleged that Defendants failed to adequately  
2 investigate and resolve his complaint. The Cantina is subject to the jurisdiction of Defendant Building  
3 Department and is a privately funded public accommodation or facility within the meaning of Health  
4 and Safety Code section 19955 et seq. Plaintiff conducted an investigation of the private citizen's  
5 complaint and determined that Defendants failed to properly investigate and resolve the complaint and  
6 that, as of July 9, 2003, the parking facilities and men's restroom at the Cantina did not comply with  
7 Title 24.

8 17. Shortly after April 30, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
9 he had lodged a complaint with Defendants around that same date, alleging that the restrooms at  
10 Piazza D'Angelo, located at 22 Miller Avenue in Mill Valley, did not comply with Title 24. Piazza  
11 D'Angelo is subject to the jurisdiction of Defendant Building Department and is a privately funded  
12 public accommodation or facility within the meaning of Health and Safety Code section 19955 et seq.  
13 Plaintiff conducted an investigation of the private citizen's complaint and determined that the  
14 Defendants failed to properly investigate and resolve the complaint and that, as of July 9, 2003, the  
15 restrooms at Piazza D'Angelo did not comply with Title 24.

16 18. On or about March 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
17 he had previously lodged a complaint with Defendants on or about April 7, 2001, alleging that the  
18 primary entrance and the men's and women's restrooms at Champagne Bakery, located at 41  
19 Throckmorton Avenue in Mill Valley, did not comply with Title 24. He further alleged that  
20 Defendants failed to adequately investigate and resolve his complaint. Champagne Bakery is subject  
21 to the jurisdiction of Defendant Building Department and is a privately funded public accommodation  
22 or facility within the meaning of Health and Safety Code section 19955 et seq. Plaintiff conducted an  
23 investigation of the private citizen's complaint and determined that the Defendants failed to properly  
24 investigate and resolve the April 7, 2001 complaint and that, as of July 9, 2003, the primary entrance  
25 and the men's and women's restrooms at Champagne Bakery did not comply with Title 24.

26 19. On or about August 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
27 he had lodged a complaint with Defendants on this same date alleging that the exterior exit gate from  
28 the patio at Mudbugs, located at 44 East Blithesdale Avenue in Mill Valley, did not comply with Title

1 24. Mudbugs is subject to the jurisdiction of Defendant Building Department and is a privately funded  
2 public accommodation or facility within the meaning of Health and Safety Code section 19955 et seq.  
3 Plaintiff conducted an investigation of the private citizen's complaint and determined that the  
4 Defendants failed to properly investigate and resolve the complaint and that, as of July 9, 2003, the  
5 exterior exit gate did not comply with Title 24. Moreover, there were no detectable warnings over  
6 the driveway, as required by Title 24.

7 20. On or about August 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
8 he had lodged a complaint on this same date with Defendants alleging that the parking facilities of the  
9 West America Bank, located at 64 East Blithesdale Avenue in Mill Valley, did not comply with Title  
10 24. West America Bank is subject to the jurisdiction of Defendant Building Department and is a  
11 privately funded public accommodation or facility within the meaning of Health and Safety Code  
12 section 19955 et seq. Plaintiff conducted an investigation of the private citizen's complaint and  
13 determined that Defendants failed to properly investigate and resolve the complaint and that, as of July  
14 9, 2003, West America Bank's parking facilities did not comply with Title 24.

15 21. On or about March 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
16 he had previously lodged a complaint with Defendants on or about April 29, 2001, alleging that the  
17 parking facilities and curb ramps serving Rite Aid, located at 701 East Blithesdale Avenue in Mill  
18 Valley, did not comply with Title 24. He further alleged that the Defendants failed to adequately  
19 investigate and resolve his complaint. Rite Aid is subject to the jurisdiction of Defendant Building  
20 Department and is a privately funded public accommodation or facility within the meaning of Health  
21 and Safety Code section 19955 et seq. Plaintiff conducted an investigation of the private citizen's  
22 complaint and determined that the Defendants failed to properly investigate and resolve the complaint  
23 and that, as of July 9, 2003, Rite Aid's parking facilities and curb ramps still did not comply with Title  
24 24.

25 22. On or about March 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
26 he had previously lodged a complaint with Defendants on or about April 1, 2001, May 5, 2001, and  
27 May 6, 2001, alleging that the passenger loading zones, parking facilities, flagpole, elevators, entry  
28 door tactile signage, fire alarm pull stations, exterior routes, men's restroom, family changing room,

1 men's locker room, pool area exit doors, sliding doors between the pool and the exterior seating area,  
2 field gate and field bleachers at the Mill Valley Community Center, located on Camino Alto Road in  
3 Mill Valley, did not comply with Title 24. He further alleged that the Defendants failed to adequately  
4 investigate and resolve his complaint. Plaintiff is informed and believes and on that basis, alleges that  
5 the Mill Valley Community Center is a facility that was constructed with the use of municipal funds  
6 after January 1, 1969. Plaintiff conducted an investigation and determined that Defendants failed to  
7 properly investigate and resolve the complaint, and that, as of July 15, 2003, the passenger loading  
8 zones, parking facilities, flagpole, elevators, entry door tactile signage, game room door signage,  
9 public phone volume control signage, fire alarm pull stations, exterior routes, food kiosk service  
10 window, men's restroom, family changing room, men's locker room, pool area exit doors, sliding  
11 doors between the pool and the exterior seating area, field gate and field bleachers at the Mill Valley  
12 Community Center did not comply with Title 24.

13 23. On or about March 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
14 he had previously lodged a complaint with Defendants on or about October 6, 2001, alleging that the  
15 men's and women's restrooms and the elevators at the Mill Valley Library, located at 375  
16 Throckmorton Avenue in Mill Valley, did not comply with Title 24. He further alleged that the  
17 Defendants failed to adequately investigate and resolve his complaint. Plaintiff is informed and  
18 believes, and on that basis alleges that the Mill Valley Library is a facility that was remodelled with the  
19 use of municipal funds after January 1, 1969. Plaintiff conducted an investigation and determined that  
20 Defendants failed to properly investigate and resolve the complaint, and that, as of July 15, 2003, the  
21 restrooms and the elevators at the Mill Valley Library did not comply with Title 24.

22 24. On or about March 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
23 he had previously lodged a complaint with Defendants on or about October 6, 2001, alleging that Mill  
24 Valley was not carrying out an effective enforcement policy to prevent Mill Valley business owners  
25 from blocking public sidewalk access to the disabled by placing clothing racks, tables, chairs and other  
26 product displays on the sidewalks in violation of Title 24. He further alleged that the Defendants failed  
27 to adequately investigate and resolve his complaint. Plaintiff is informed and believes, and on that  
28 basis, alleges that the public sidewalks within Mill Valley are facilities which were constructed or

1 altered with the use of municipal funds after January 1, 1969. Plaintiff conducted an investigation and  
2 determined that Defendants failed to properly investigate and resolve the complaint, and that, as of  
3 July 15, 2003, Defendant Building Department had not drafted a policy regarding the blockage of  
4 disabled access to public sidewalks by street furniture and that Defendants were not adequately  
5 enforcing existing municipal codes which governed the encroachment of objects on public sidewalks.

6 25. On or about September 25, 2002, a private citizen lodged a complaint with Plaintiff alleging  
7 that he had lodged a complaint with Defendants that same date alleging that the Mill Valley City Hall,  
8 located at 26 Corte Madera Avenue in Mill Valley, has a policy that requires 24 hours' advance notice  
9 for three assistive listening devices to be provided, in addition to the one that is already provided  
10 without notice, and that such requirement violates Title 24. Plaintiff is informed and believes, and on  
11 that basis alleges, that the Mill Valley City Hall was constructed or altered with the use of municipal  
12 funds after January 1, 1969. Plaintiff conducted an investigation and determined that Defendants had  
13 failed to adequately investigate and resolve the complaint and that, as of July 15, 2003, the policy  
14 requiring 24 hours' advance notice for the provision of more than one assistive listening device at the  
15 Mill Valley City Hall is still in effect and that such policy violates Title 24.

16 26. The allegations contained in Paragraphs 1 through 25 above establish that Defendants have  
17 failed to carry out their mandatory duty to enforce Government Code section 4450 et seq., Health and  
18 Safety Code section 19955 et seq. and the implementing regulations contained in Title 24. Plaintiff  
19 is informed and believes, and based upon such information and belief alleges that Defendants' failure  
20 to meet such mandatory duty is due to defective or inadequate policies, practices, and procedures for  
21 preventing and correcting violations of Government Code section 4450 et seq., Health and Safety  
22 Code section 19955 et seq. and Title 24, and the failure to provide adequate disabled access training  
23 to their employees who are responsible for disabled access enforcement. Complaints received by  
24 Defendants that allege deviations from Government Code section 4450 et seq., Health and Safety  
25 Code section 19955 et seq. and Title 24 are not adequately investigated and are not rectified within  
26 90 days of the confirmation of a deviation, and building permits are being issued by Defendants for  
27 new construction and/or alteration projects which do not conform with Health and Safety Code section  
28 19955 et seq. and Title 24. Publicly-funded facilities are being constructed and remodeled that do not



1 comply with Government Code section 4450 et seq. and Title 24. This failure to enforce Government  
2 Code section 4450 et seq., Health and Safety Code section 19955 et seq., and Title 24 and to do so  
3 in a timely manner has resulted in, and poses an unreasonable risk of, future violations of those laws  
4 and regulations.

5 27. Plaintiff is entitled to a writ of mandate ordering Defendants to carry out their mandatory  
6 duty to enforce Government Code section 4450 et seq. and Health and Safety Code section 19955 et  
7 seq.

8 28. Plaintiff is entitled to all costs of investigating and prosecuting actions pursuant to  
9 Government Code section 4458 and Health and Safety Code section 19958.5, including expert fees,  
10 reasonable attorney's fees, and costs, pursuant to Code of Civil Procedure section 1021.8.

11 **SECOND CAUSE OF ACTION**

12 **(Against All Defendants)**

13 (Injunctive Relief–Failure to Comply with Civil Code section 54)

14 29. On or about February 4, 2002, a private citizen lodged a complaint with Plaintiff alleging  
15 that he had previously lodged a complaint on or about October 6, 2001 with Defendants alleging that  
16 the curb ramp at the corner of Throckmorton and Miller Avenues in Mill Valley did not comply with  
17 the California disabled access statutes and regulations. He further alleged that Defendants failed to  
18 adequately investigate and resolve his complaint. Plaintiff is informed and believes, and on that basis  
19 alleges, that this curb ramp was a public facility within the meaning of Civil Code section 54. Plaintiff  
20 conducted an investigation and determined that Defendants failed to properly investigate and resolve  
21 the complaint, and that, as of July 15, 2003, the curb ramp at the corner of Throckmorton and Miller  
22 Avenues did not comply with Civil Code section 54, subdivision (c).

23 30. On or about September 25, 2002, a private citizen lodged a complaint with Plaintiff alleging  
24 that he had lodged a complaint on that same date with Defendants alleging that the disabled parking  
25 space on East Blithesdale in front of the Outdoor Art Club and the sidewalk alongside it at the corner  
26 of Blithesdale and Throckmorton Avenues in Mill Valley did not comply with the California disabled  
27 access statutes and regulations. Plaintiff is informed and believes, and on that basis alleges that East  
28 Blithesdale and the sidewalk along it at the corner of Throckmorton Avenue are public facilities within

1 the meaning of Civil Code section 54. Plaintiff conducted an investigation and determined that  
2 Defendants failed to adequately investigate and resolve the complaint and that, as of July 15, 2003,  
3 the disabled parking space on East Blithesdale in front of the Outdoor Art Club and the sidewalk  
4 alongside the corner of Blithesdale and Throckmorton Avenues did not comply with Civil Code  
5 section 54, subdivision (c).

6 31. On or about March 2, 2002, a private citizen lodged a complaint with Plaintiff alleging that  
7 he had previously lodged a complaint with Defendants on or about October 6, 2001, alleging that the  
8 restroom at the Mill Valley library was not in compliance with the California disabled access statutes  
9 and regulations. Plaintiff conducted an investigation of the private citizen's complaint and determined  
10 that the Defendants failed to properly investigate and resolve the complaint, and that, as of July 15,  
11 2003, the signage on the restroom doors was not in compliance with Civil Code section 54,  
12 subdivision (c), because the lettering on the restroom signs did not provide 70% contrast.

13 32. The allegations contained in Paragraphs 29 through 31 above establish that Defendants have  
14 failed to comply with Civil Code section 54, subdivision (c). Plaintiff is informed and believes, and  
15 based upon such information and belief alleges that Defendants' failure to comply is due to defective  
16 or inadequate policies, practices, and procedures for preventing and correcting violations of Civil Code  
17 sections 54, and the failure to provide adequate disabled access training to their employees who are  
18 responsible for disabled access enforcement.

19 33. Plaintiff is entitled to injunctive relief enjoining Defendants to comply with Civil Code  
20 section 54.

21 34. Plaintiff is entitled to all costs of investigating and prosecuting actions pursuant to Civil  
22 Code section 54, including expert fees, reasonable attorney's fees, and costs, pursuant to Code of Civil  
23 Procedure section 1021.8.

24 **NECESSITY FOR EQUITABLE RELIEF**

25 35. In view of the foregoing, and by the nature of the allegations, except as specifically  
26 pled above, there exists no adequate remedy at law. Further, the various violations of law alleged  
27 result in irreparable harm to the People of the State of California, and the balance of hardships weighs  
28 in favor of the People.

1 ///

2 **PRAYER**

3 Wherefore, the Attorney General requests the following relief:

4 1. For a writ of mandamus compelling Defendants to meet their mandatory duty to enforce  
5 Government Code section 4450 et seq., Health and Safety Code section 19955 et seq., and Title 24;

6 2. For a permanent injunction enjoining Defendants to comply with Civil Code section 54;

7 3. For appointment of a monitor, selected by the Plaintiff, to oversee Defendants'  
8 implementation of the Court's orders;

9 4. For costs of investigating and prosecuting this action, including expert fees, reasonable  
10 attorney's fees, and costs; and

11 5. For other equitable and legal relief as the Court deems appropriate.

12  
13 Dated: January 26, 2004

14 Respectfully submitted,

15 BILL LOCKYER  
16 Attorney General of the State of California  
17 LOUIS VERDUGO, JR.  
18 Senior Assistant Attorney General  
19 SUZANNE AMBROSE  
20 Supervising Deputy Attorney General

21 By:

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26 California ex rel. Bill Lockyer, Attorney  
27 General of the State of California

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