

AMENDED IN SENATE JULY 2, 2015
AMENDED IN ASSEMBLY MAY 21, 2015
AMENDED IN ASSEMBLY MAY 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1521

**Introduced by Committee on Judiciary (Assembly Members
Mark Stone (Chair), Alejo, Chau, Chiu, Cristina Garcia, and
Holden)**

March 10, 2015

An act to amend ~~Section 55.3~~ of Sections 55, 55.3, and 55.54 of, and to add Section 54.35, the Civil Code, to amend Section 425.50 of, and to add Sections 425.55 and 425.60 to, the Code of Civil Procedure, to amend Section 19953 of the Health and Safety Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

AB 1521, as amended, Committee on Judiciary. Disability access: construction-related accessibility claims.

Existing law provides that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, public facilities, and other public places, and allows a person who is aggrieved or potentially aggrieved by a violation of specific provisions of law to bring an action to enjoin the violation. Existing law requires an attorney to provide a written advisory with each demand letter or complaint, as defined, sent to or served upon a defendant or potential defendant for any construction-related accessibility claim, as specified.

This bill would require the above-described advisory to include additional information regarding the rights and obligations of business owners and commercial tenants, as specified. In addition to the written advisory, the bill would require an attorney to provide a defendant or potential defendant of a construction-related accessibility claim with an answer form developed by the Judicial Council, which would allow a defendant to respond in the event a complaint is filed, as specified. The bill would, on or before July 1, 2016, require the Judicial Council to update the advisory form and adopt the answer form, as specified.

Existing law authorizes commencement of an action for damages against persons who interfere with these access rights, including, but not limited to, actions against owners and tenants of property for construction-related barriers.

This bill would, with certain exceptions, require the owner of property to which the general public is invited to indemnify a microbusiness tenant, as defined, from liability arising from any construction-related accessibility claims, as specified.

This bill would require that the attorney, or the party in cases where the party is not represented by counsel, certify that specified conditions have been met, including, but not limited to, that the action is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay. By expanding the definition of the crime of perjury, this bill would impose a state-mandated local program.

Existing law entitles the prevailing party to recover reasonable attorney's fees.

This bill would, instead, require the court to award costs and reasonable attorney's fees to a prevailing plaintiff, and to award court costs and reasonable attorney's fees to the defendant if the court finds that the plaintiff's case is clearly frivolous.

This bill would, with certain exceptions, require a person who is represented by an attorney and has filed more than 15 lawsuits that allege construction-related accessibility violations against places of public accommodation within the prior 12 month-period, to seek and obtain approval of the court with respect to settlement of the case.

Existing law authorizes a defendant to file a request for a court stay and an early evaluation conference in the proceedings under certain circumstances, and tolls the period for responsive pleadings.

This bill would specify that these provisions also apply if a defendant is a business that has been served with a complaint filed by a

high-frequency litigant, as defined, or is a business requesting an early evaluation conference.

Existing law, upon the filing of an application for a court stay and an early evaluation conference by a defendant, requires the court to immediately issue an order that does certain things, including, but not limited to, scheduling a mandatory early evaluation conference for a date as soon as possible from the date of the order, but in no event later than 70 days after the issuance of the order.

This bill would, if requested by the defendant, require the court order to direct the parties and their counsel to meet at the premises, or other place as specified, no later than 30 days after issuance of the court order, to jointly inspect the premises, and review any programmatic or policy issues, that are claimed to constitute a violation of a construction-related accessibility standard.

Existing law requires that an allegation of a construction-related accessibility claim in a complaint state facts sufficient to allow a reasonable person to identify the basis of the violation, including, but not limited to, a plain language explanation of the specific access barrier or barriers the individual encountered, or by which the individual alleges he or she was deterred.

This bill would, for cases filed by or on behalf of a high-frequency litigant, require the complaint to also state that the complaint is filed by, or on behalf of, a high-frequency litigant, the number of complaints alleging a construction-related accessibility claim that the high-frequency litigant has filed during the 12 months prior to filing the complaint, and the reason why the individual visited the place of public accommodation.

This bill would become operative only if Senate Bill 251 of the 2015-16 Legislative Session, relating to disability access, is enacted on or before January 1, 2016.

Existing Constitutional provisions require a statute that limits the right of public access to meeting or writings of public officials to be adopted with findings demonstrating the interested to be protected by that limitation and the need to protect that interest.

This bill would declare that it includes limitations on access, that the interests to be protected are the privacy rights of the litigants, and that the need to protect those interests is to prevent a chilling effect on litigation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill also would include technical changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54.35 is added to the Civil Code,
2 immediately following Section 54.3, to read:

3 54.35. (a) Notwithstanding any law, the owner of property to
4 which the general public is invited, as set forth in Section 54.1,
5 shall indemnify a microbusiness tenant of that property for any
6 liability under this part arising from any construction-related
7 accessibility claims if either of the following conditions apply:

8 (1) The construction-related barrier existed prior to the
9 initiation, renewal, or extension of the lease which is the basis of
10 the microbusiness tenant’s liability.

11 (2) The construction-related barrier was created by parties
12 other than the microbusiness tenant after the initiation, renewal,
13 or extension of the lease which is the basis of the microbusiness
14 tenant’s liability.

15 (b) The duty of the owner to indemnify a microbusiness tenant
16 pursuant to subdivision (a) may be modified through a written
17 agreement that may be included as a separate rider to the lease
18 agreement, setting forth the terms under which the microbusiness
19 tenant is accepting some or all of the potential liability for
20 construction-related claims, including, but not limited to, a grant
21 of the authority for the microbusiness tenant to modify the structure
22 in order to comply with this part, and a process for determining
23 the owner’s share of the costs of those modifications.

24 (c) For the purposes of this section, “microbusiness” has the
25 same meaning as set forth in Section 14837 of the Government
26 Code.

27 (d) This section shall apply only to construction-related liability
28 arising from leases entered into, amended, or extended, on and
29 after January 1, 2016.

30 SEC. 2. Section 55 of the Civil Code is amended to read:

1 55. Any person who is aggrieved or potentially aggrieved by
2 a violation of Section 54 or 54.1 of this code, Chapter 7
3 (commencing with Section 4450) of Division 5 of Title 1 of the
4 Government Code, or Part 5.5 (commencing with Section 19955)
5 of Division 13 of the Health and Safety Code may bring an action
6 to enjoin the violation. ~~The prevailing party in the action shall be~~
7 ~~entitled to recover reasonable attorney's fees.~~ *The court shall award*
8 *costs and reasonable attorney's fees to a prevailing plaintiff in an*
9 *action filed pursuant to this section. If the court finds that the*
10 *plaintiff's case is clearly frivolous, it shall award court costs and*
11 *reasonable attorney's fees to the defendant.*

12 **SECTION 1.**

13 **SEC. 3.** Section 55.3 of the Civil Code is amended to read:

14 55.3. (a) For purposes of this section, the following apply:

15 (1) "Complaint" means a civil complaint that is filed or is to be
16 filed with a court and is sent to or served upon a defendant on the
17 basis of one or more construction-related accessibility claims, as
18 defined in this section.

19 (2) "Construction-related accessibility claim" means any claim
20 of a violation of any construction-related accessibility standard,
21 as defined by paragraph (6) of subdivision (a) of Section 55.52,
22 with respect to a place of public accommodation.
23 "Construction-related accessibility claim" does not include a claim
24 of interference with housing within the meaning of paragraph (2)
25 of subdivision (b) of Section 54.1, or any claim of interference
26 caused by something other than the construction-related
27 accessibility condition of the property, including, but not limited
28 to, the conduct of any person.

29 (3) "Demand for money" means a prelitigation written document
30 or oral statement that is provided or issued to a building owner or
31 tenant, or the owner's or tenant's agent or employee, that does all
32 of the following:

33 (A) Alleges that the site is in violation of one or more
34 construction-related accessibility standards, as defined in paragraph
35 (6) of subdivision (a) of Section 55.52, or alleges one or more
36 construction-related accessibility claims, as defined in paragraph
37 (2).

38 (B) Contains or makes a request or demand for money or an
39 offer or agreement to accept money.

1 (C) Is provided or issued whether or not the attorney intends to
2 file a complaint, or eventually files a complaint, in state or federal
3 court.

4 (4) “Demand letter” means a prelitigation written document that
5 is provided to a building owner or tenant, or the owner’s or tenant’s
6 agent or employee, that alleges the site is in violation of one or
7 more construction-related accessibility standards, as defined in
8 paragraph (6) of subdivision (a) of Section 55.52, or alleges one
9 or more construction-related accessibility claims, as defined in
10 paragraph (2), and is provided whether or not the attorney intends
11 to file a complaint, or eventually files a complaint, in state or
12 federal court.

13 (b) An attorney shall provide the following items with each
14 demand letter or complaint sent to or served upon a defendant or
15 potential defendant alleging a construction-related accessibility
16 claim:

17 (1) A written advisory on the form described in subparagraph
18 (B), or, until that form is available, on a separate page or pages
19 that are clearly distinguishable from the demand letter or complaint.
20 The advisory shall not be required in subsequent communications
21 following the initial demand letter or initial complaint unless a
22 new construction-related accessibility claim is asserted in the
23 subsequent demand letter or amended complaint.

24 (A) The advisory shall state as follows:

25
26 STATE LAW REQUIRES THAT YOU GET THIS
27 IMPORTANT ADVISORY INFORMATION FOR BUILDING
28 OWNERS AND TENANTS
29

30 This information is available in English, Spanish, Chinese,
31 Vietnamese, and Korean through the Judicial Council of California.
32 Persons with visual impairments can get assistance in viewing this
33 form through the Judicial Council Internet Web site at
34 www.courts.ca.gov.

35 California law requires that you receive this information because
36 the demand letter or court complaint you received with this
37 document claims that your building or property does not comply
38 with one or more existing construction-related accessibility laws
39 or regulations protecting the civil rights of persons with disabilities
40 to access public places.

1 YOU HAVE IMPORTANT LEGAL OBLIGATIONS.
2 Compliance with disability access laws is a serious and significant
3 responsibility that applies to all California building owners and
4 tenants with buildings open for business to the public. You may
5 obtain information about your legal obligations and how to comply
6 with disability access laws through the Division of the State
7 Architect at www.dgs.ca.gov. Information is also available from
8 the California Commission on Disability Access at
9 www.cdda.ca.gov/guide.htm.

10 YOU HAVE IMPORTANT LEGAL RIGHTS. The allegations
11 made in the accompanying demand letter or court complaint do
12 not mean that you are required to pay any money unless and until
13 a court finds you liable. Moreover, RECEIPT OF A DEMAND
14 LETTER OR COURT COMPLAINT AND THIS ADVISORY
15 DOES NOT NECESSARILY MEAN YOU WILL BE FOUND
16 LIABLE FOR ANYTHING. You will have the right if you are
17 later sued to fully present your explanation why you believe you
18 have not in fact violated disability access laws or have corrected
19 the violation or violations giving rise to the claim.

20 You have the right to seek assistance or advice about this demand
21 letter or court complaint from any person of your choice. If you
22 have insurance, you may also wish to contact your insurance
23 provider. Your best interest may be served by seeking legal advice
24 or representation from an attorney, but you may also represent
25 yourself and file the necessary court papers to protect your interests
26 if you are served with a court complaint. If you have hired an
27 attorney to represent you, you should immediately notify your
28 attorney.

29 If a court complaint has been served on you, you will get a
30 separate advisory notice with the complaint advising you of special
31 options and procedures available to you under certain conditions.

32 **ADDITIONAL THINGS YOU SHOULD KNOW:**

33 **ATTORNEY MISCONDUCT.** Except for limited circumstances,
34 state law generally requires that a prelitigation demand letter from
35 an attorney **MAY NOT MAKE A REQUEST OR DEMAND FOR**
36 **MONEY OR AN OFFER OR AGREEMENT TO ACCEPT**
37 **MONEY.** Moreover, a demand letter from an attorney **MUST**
38 **INCLUDE THE ATTORNEY'S STATE BAR LICENSE**
39 **NUMBER.**

1 If you believe the attorney who provided you with this notice
2 and prelitigation demand letter is not complying with state law,
3 you may send a copy of the demand letter you received from the
4 attorney to the State Bar of California by facsimile transmission
5 to 1-415-538-2171, or by mail to the State Bar of California, 180
6 Howard Street, San Francisco, CA, 94105, Attention: Professional
7 Competence.

8 **REDUCING YOUR DAMAGES.** If you are a small business
9 owner and correct all of the construction-related violations that
10 are the basis of the complaint against you within 30 days of being
11 served with the complaint, you may qualify for reduced damages
12 if the matter results in a court judgment. If you believe you qualify
13 for reduced damages, you may wish to consult an attorney to obtain
14 legal advice, or contact the California Commission on Disability
15 Access for additional information about the rights and obligations
16 of business owners.

17 **COMMERCIAL TENANT.** If you are a commercial tenant, you
18 may not be responsible for ensuring that some or all portions of
19 the premises you lease for your business, including common areas
20 such as parking lots, are accessible to the public because those
21 areas may be the responsibility of your landlord. You may want
22 to refer to your lease agreement and consult with an attorney or
23 contact your landlord, to determine if your landlord is responsible
24 under the terms of your lease for maintaining and improving some
25 or all of the areas you lease to operate your business.

26
27 (B) On or before July 1, 2016, the Judicial Council shall update
28 the advisory form that may be used by an attorney to comply with
29 the requirements of subparagraph (A). The advisory form shall be
30 in substantially the same format and include all of the text set forth
31 in subparagraph (A). The advisory form shall be available in
32 English, Spanish, Chinese, Vietnamese, and Korean, and shall
33 include a statement that the advisory form is available in additional
34 languages, and the Judicial Council Internet Web site address
35 where the different versions of the advisory form are located. The
36 advisory form shall include Internet Web site information for the
37 Division of the State Architect and the California Commission on
38 Disability Access.

1 (2) An answer form developed by the Judicial Council, which
2 allows a defendant to respond to the complaint in the event a
3 complaint is filed.

4 (A) The answer form shall be written in plain language and
5 allow the defendant to state any relevant information affecting the
6 defendant's liability or damages including, but not limited to, the
7 following:

8 (i) Specific denials of the allegations in the complaint, including
9 whether the plaintiff has demonstrated that he or she was denied
10 full and equal access to the place of public accommodation on a
11 particular occasion pursuant to Section 55.56.

12 (ii) Potential affirmative defenses available to the defendant,
13 including:

14 (I) An assertion that the defendant qualifies for reduced damages
15 pursuant to paragraph (1) or (2) of subdivision (f) of Section 55.56,
16 and facts supporting that assertion.

17 (II) An assertion that the defendant's landlord is responsible for
18 ensuring that some or all of the property leased by the defendant,
19 including the areas at issue in the complaint, are accessible to the
20 public. The defendant shall provide facts supporting that assertion,
21 and the name and contact information of the defendant's landlord.

22 (III) Any other affirmative defense the defendant wishes to
23 assert.

24 (iii) Whether the defendant made a written settlement offer that
25 was rejected by the plaintiff, or met with the plaintiff in a good
26 faith effort to negotiate a settlement of the complaint.

27 (iv) Any other information that the defendant believes is relevant
28 to his or her potential liability or damages.

29 (B) The answer form shall provide instructions to a defendant
30 who wishes to file the form as an answer to the complaint. The
31 form shall also notify the defendant that he or she may use the
32 completed form as an informal response to a demand letter or for
33 settlement discussion purposes.

34 (C) On or before July 1, 2016, the Judicial Council shall adopt
35 the answer form that may be used by an attorney to comply with
36 the requirements of this paragraph, and shall post the answer form
37 on the Judicial Council Internet web site.

38 (c) Subdivision (b) applies only to a demand letter or complaint
39 made by an attorney. This section does not affect the right to file
40 a civil complaint under any other law or regulation protecting the

1 physical access rights of persons with disabilities. Additionally,
2 this section does not require a party to provide or send a demand
3 letter to another party before proceeding against that party with a
4 civil complaint.

5 (d) This section does not apply to an action brought by the
6 Attorney General or any district attorney, city attorney, or county
7 counsel.

8 *SEC. 4. Section 55.54 of the Civil Code is amended to read:*

9 55.54. (a) (1) An attorney who causes a summons and
10 complaint to be served in an action that includes a
11 construction-related accessibility claim, including, but not limited
12 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
13 same time, cause to be served a copy of the application form
14 specified in subdivision (c) and a copy of the following notice,
15 including, until January 1, 2013, the bracketed text, to the defendant
16 on separate papers that shall be served with the summons and
17 complaint:

18
19 **ADVISORY NOTICE TO DEFENDANT**

20
21 **YOU MAY BE ENTITLED TO ASK FOR A COURT**
22 **STAY (AN ORDER TEMPORARILY STOPPING ANY**
23 **LAWSUIT) AND EARLY EVALUATION CONFERENCE**
24 **IN THIS LAWSUIT AND MAY BE ASSESSED REDUCED**
25 **STATUTORY DAMAGES IF YOU MEET CERTAIN**
26 **CONDITIONS.**

27 If the construction-related accessibility claim pertains to a
28 site that has a Certified Access Specialist (CASp) inspection
29 report for that site, or to a site where new construction or
30 improvement was approved after January 1, 2008, by the local
31 building permit and inspection process, you may make an
32 immediate request for a court stay and early evaluation
33 conference in the construction-related accessibility claim by
34 filing the attached application form with the court. You may
35 be entitled to the court stay and early evaluation conference
36 regarding the accessibility claim only if ALL of the statements
37 in the application form applicable to you are true.

38 FURTHER, if you are a defendant described above (with a
39 CASp inspection report or with new construction after January
40 1, 2008), and, to the best of your knowledge, there have been

1 no modifications or alterations completed or commenced since
2 the CASp report or building department approval of the new
3 construction or improvement that impacted compliance with
4 construction-related accessibility standards with respect to the
5 plaintiff’s claim, your liability for minimum statutory damages
6 may be reduced to \$1,000 for each offense, unless the violation
7 was intentional, and if all construction-related accessibility
8 violations giving rise to the claim are corrected within 60 days
9 of being served with this complaint.

10 IN ADDITION, if your business is a small business that,
11 over the previous three years, or the existence of the business
12 if less than three years, employs 25 or fewer employees on
13 average over that time period and meets specified gross
14 receipts criteria, you may also be entitled to the court stay and
15 early evaluation ~~conference~~ *conference, if the plaintiff in this*
16 *case has filed more than 15 lawsuits that allege*
17 *construction-related accessibility claims against places of*
18 *public accommodation in the 12 months prior to the date of*
19 *this lawsuit. If you are a small businesses that meets the*
20 *employee and gross receipts criteria, you may also be entitled*
21 *to a court stay and an early evaluation conference, and your*
22 *minimum statutory damages for each claim may be reduced*
23 *to \$2,000 for each offense, unless the violation was intentional,*
24 *and if all the alleged construction-related accessibility*
25 *violations are corrected within 30 days of being served with*
26 *the complaint.*

27 If you plan to correct the violations giving rise to the claim,
28 you should take pictures and measurements or similar action
29 to document the condition of the physical barrier asserted to
30 be the basis for a violation before undertaking any corrective
31 action in case a court needs to see the condition of a barrier
32 before it was corrected.

33 The court will schedule the conference to be held within ~~70~~
34 90 days after you file the attached application form.

35 [If you are not a defendant with a CASp inspection report,
36 until a form is adopted by the Judicial Council, you may use
37 the attached form if you modify the form and supplement it
38 with your declaration stating any one of the following:

39 (1) Until January 1, 2018, that the site’s new construction
40 or improvement on or after January 1, 2008, and before January

1 1, 2016, was approved pursuant to the local building permit
2 and inspection process; that, to the best of your knowledge,
3 there have been no modifications or alterations completed or
4 commenced since the building department approval that
5 impacted compliance with construction-related accessibility
6 standards with respect to the plaintiff’s claim; and that all
7 violations giving rise to the claim have been corrected, or will
8 be corrected within 60 days of the complaint being served.

9 (2) That the site’s new construction or improvement passed
10 inspection by a local building department inspector who is a
11 certified access specialist; that, to the best of your knowledge,
12 there have been no modifications or alterations completed or
13 commenced since that inspection approval that impacted
14 compliance with construction-related accessibility standards
15 with respect to the plaintiff’s claim; and that all violations
16 giving rise to the claim have been corrected, or will be
17 corrected within 60 days of the complaint being served.

18 (3) That your business is a small business with 25 or fewer
19 employees and meets the gross receipts criteria set out in
20 Section 55.56 of the Civil Code, and that all violations giving
21 rise to the claim have been corrected, or will be corrected
22 within 30 days of being served with the complaint.]

23 The court will also issue an immediate stay of the
24 proceedings unless the plaintiff has obtained a temporary
25 restraining order in the construction-related accessibility claim.
26 You may obtain a copy of the application form, filing
27 instructions, and additional information about the stay and
28 early evaluation conference through the Judicial Council
29 Internet Web site at www.courts.ca.gov/selfhelp-start.htm.

30 You may file the application after you are served with a
31 summons and complaint, but no later than your first court
32 pleading or appearance in this case, which is due within 30
33 days after you receive the summons and complaint. If you do
34 not file the application, you will still need to file your reply
35 to the lawsuit within 30 days after you receive the summons
36 and complaint to contest it. You may obtain more information
37 about how to represent yourself and how to file a reply without
38 hiring an attorney at www.courts.ca.gov/selfhelp-start.htm.

39 You may file the application without the assistance of an
40 attorney, but it may be in your best interest to immediately

1 seek the assistance of an attorney experienced in disability
2 access laws when you receive a summons and complaint. You
3 may make an offer to settle the case, and it may be in your
4 interest to put that offer in writing so that it may be considered
5 under Section 55.55 of the Civil Code.
6

7 (2) An attorney who files a Notice of Substitution of Counsel
8 to appear as counsel for a plaintiff who, acting in propria persona,
9 had previously filed a complaint in an action that includes a
10 construction-related accessibility claim, including, but not limited
11 to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the
12 same time, cause to be served a copy of the application form
13 specified in subdivision (c) and a copy of the notice specified in
14 paragraph (1) upon the defendant on separate pages that shall be
15 attached to the Notice of Substitution of Counsel.

16 (b) (1) Notwithstanding any other law, upon being served with
17 a summons and complaint asserting a construction-related
18 accessibility claim, including, but not limited to, a claim brought
19 under Section 51, 54, 54.1, or 55, a qualified defendant, or other
20 defendant as defined in paragraph (2), may file a request for a court
21 stay and early evaluation conference in the proceedings of that
22 claim prior to or simultaneous with that defendant's responsive
23 pleading or other initial appearance in the action that includes the
24 claim. If that defendant filed a timely request for stay and early
25 evaluation conference before a responsive pleading was due, the
26 period for filing a responsive pleading shall be tolled until the stay
27 is lifted. Any responsive pleading filed simultaneously with a
28 request for stay and early evaluation conference may be amended
29 without prejudice, and the period for filing that amendment shall
30 be tolled until the stay is lifted.

31 (2) This subdivision shall also apply to a defendant if any of
32 the following apply:

33 (A) Until January 1, 2018, the site's new construction or
34 improvement on or after January 1, 2008, and before January 1,
35 2016, was approved pursuant to the local building permit and
36 inspection process, and the defendant declares with the application
37 that, to the best of the defendant's knowledge, there have been no
38 modifications or alterations completed or commenced since that
39 approval that impacted compliance with construction-related
40 accessibility standards with respect to the plaintiff's claim, and

1 that all violations have been corrected, or will be corrected within
2 60 days of being served with the complaint.

3 (B) The site's new construction or improvement was approved
4 by a local public building department inspector who is a certified
5 access specialist, and the defendant declares with the application
6 that, to the best of the defendant's knowledge, there have been no
7 modifications or alterations completed or commenced since that
8 approval that impacted compliance with construction-related
9 accessibility standards with respect to the plaintiff's claim, and
10 that all violations have been corrected, or will be corrected within
11 60 days of being served with the complaint.

12 (C) The defendant is a small business described in subdivision
13 (f) of Section 55.56, and the defendant declares with the application
14 that all violations have been corrected, or will be corrected within
15 30 days of being served with the complaint.

16 (D) *The defendant is a small business, as described in*
17 *subdivision (f) of Section 55.56, that has been served with a*
18 *complaint filed by a high-frequency litigant, as defined in*
19 *subdivision (b) of Section 425.55 of the Code of Civil Procedure,*
20 *asserting a construction-related accessibility claim, including, but*
21 *not limited to, a claim brought under Section 51, 54, 54.1, or 55.*

22 (3) Notwithstanding any other law, if the plaintiff had acted in
23 propria persona in filing a complaint that includes a
24 construction-related accessibility claim, including, but not limited
25 to, a claim brought under Section 51, 54, 54.1, or 55, a qualified
26 defendant, or a defendant described by paragraph (2), who is served
27 with a Notice of Substitution of Counsel shall have 30 days to file
28 an application for a stay and an early evaluation conference. The
29 application may be filed prior to or after the defendant's filing of
30 a responsive pleading or other initial appearance in the action that
31 includes the claim, except that an application may not be filed in
32 a claim in which an early evaluation conference or settlement
33 conference has already been held on the claim.

34 (c) (1) An application for an early evaluation conference and
35 stay by a qualified defendant shall include a signed declaration
36 that states both of the following:

37 (A) The site identified in the complaint has been
38 CASp-inspected or meets applicable standards, or is CASp
39 determination pending or has been inspected by a CASp, and if
40 the site is CASp-inspected or meets applicable standards, there

1 have been no modifications completed or commenced since the
2 date of inspection that may impact compliance with
3 construction-related accessibility standards to the best of the
4 defendant's knowledge.

5 (B) An inspection report pertaining to the site has been issued
6 by a CASp. The inspection report shall be provided to the court
7 and the plaintiff at least 15 days prior to the court date set for the
8 early evaluation conference.

9 (2) An application for an early evaluation conference and stay
10 by a defendant described by subparagraph (A) of paragraph (2) of
11 subdivision (b), which may be filed until January 1, 2018, shall
12 include a signed declaration that states all of the following:

13 (A) The site's new construction or improvement was approved
14 pursuant to the local building permit and inspection process on or
15 after January 1, 2008, and before January 1, 2016.

16 (B) To the best of the defendant's knowledge there have been
17 no modifications or alterations completed or commenced since
18 that approval that impacted compliance with construction-related
19 accessibility standards with respect to the plaintiff's claim.

20 (C) All construction-related violations giving rise to the claim
21 have been corrected, or will be corrected within 60 days of the
22 complaint being served upon the defendant.

23 (3) An application for an early evaluation conference and stay
24 by a defendant described in subparagraph (B) of paragraph (2) of
25 subdivision (b) shall include a signed declaration that states all of
26 the following:

27 (A) The site's new construction or improvement was approved
28 by a local building department inspector who is a certified access
29 specialist.

30 (B) To the best of the defendant's knowledge there have been
31 no modifications or alterations completed or commenced since
32 that approval that impacted compliance with construction-related
33 accessibility standards with respect to the plaintiff's claim.

34 (C) All construction related violations giving rise to the claim
35 have been corrected, or will be corrected within 60 days of the
36 complaint being served upon the defendant.

37 (4) An application for an early evaluation conference and stay
38 by a defendant described by subparagraph (C) of paragraph (2) of
39 subdivision (b) shall include the materials listed in paragraphs (5)

1 and (6) of this subdivision, and shall include a signed declaration
2 that states both of the following:

3 (A) The defendant is a small business that employs 25 or fewer
4 employees and meets the gross receipts eligibility criteria provided
5 in paragraph (2) of subdivision (f) of Section 55.56.

6 (B) All construction-related violations giving rise to the claim
7 have been corrected, or will be corrected within 30 days of the
8 complaint being served upon the defendant.

9 (5) An application for an early evaluation conference and stay
10 by a small business defendant under paragraph (4) shall include
11 evidence showing correction of all violations within 30 days of
12 the service of the complaint and served upon the plaintiff with the
13 reply unless the application is filed prior to completion of the
14 corrections. In that event, the evidence shall be provided to the
15 court and served upon the plaintiff within 10 days of the court
16 order as provided in paragraph (4) of subdivision (d). This
17 paragraph shall not be construed to extend the permissible time
18 under subdivision (f) of Section 55.56 to make the corrections.

19 (6) An application for an early evaluation conference and stay
20 by a small business defendant under paragraph (4) shall also
21 include both of the following, which shall be confidential
22 documents filed only with the court and not served upon or
23 available to the plaintiff:

24 (A) Proof of the defendant's number of employees, as shown
25 by wage report forms filed with the Employment Development
26 Department.

27 (B) Proof of the defendant's average gross receipts for the
28 previous three years, or for the existence of the business if less
29 than three years, as shown by a federal or state tax document.

30 *(7) An application for an early evaluation conference and stay*
31 *by a defendant described by subparagraph (D) of paragraph (2)*
32 *of subdivision (b) shall include a declaration that the defendant*
33 *is a small business that employs 25 or fewer employees and meets*
34 *the gross receipts eligibility criteria provided in paragraph (2) of*
35 *subdivision (f) of Section 55.56 and shall also include both of the*
36 *following, which shall be confidential documents filed only with*
37 *the court and not served upon or available to the plaintiff:*

38 *(A) Proof of the defendant's number of employees, as shown by*
39 *wage report forms filed with the Employment Development*
40 *Department.*

1 *(B) Proof of the defendant's average gross receipts for the*
2 *previous three years, or for the existence of the business if less*
3 *than three years, as shown by a federal or state tax document.*

4 ~~(7)~~

5 (8) The following provisional request and notice forms may be
6 used and filed by a qualified defendant until forms are adopted by
7 the Judicial Council for those purposes pursuant to subdivision

8 *(l):*

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
NOTICE OF STAY OR PROCEEDINGS AND EARLY EVALUATION CONFERENCE (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	CASE NUMBER:

Stay of Proceedings

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

Notice of Early Evaluation Conference

1. This action includes a construction-related accessibility claim under Civil Code Section 55.52(a)(1) or other provision of law.
2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code Section 55.54.
3. The early evaluation conference is scheduled as follows:
 - a. Date: Time: Dept. Room:
 - b. The conference will be held at _____ the court address shown above, or _____ at:
4. The plaintiff and defendant shall attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.
5. The defendant that requested the conference and stay of proceedings must file with the court and serve on all parties a copy of the CASp report for the site that is the subject of the construction-related accessibility claim at least fifteen (15) days before the date set for the early evaluation conference. The CASp report is confidential and only available as set forth below and in Civil Code Section 55.54(d)(4).
6. The CASp report shall be marked "CONFIDENTIAL" and may be disclosed only to counsel, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case.
7. The plaintiff shall file with the court and serve on all parties at least fifteen (15) days before the date set for the early evaluation conference a statement of, to the extent known, all of the following:
 - a. An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint;
 - b. The amount of damages claimed;
 - c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
 - d. Any demand for settlement of the case in its entirety.

8. A copy of this Notice and Order and the Defendant’s Application shall be served on the plaintiff or plaintiff’s attorney by hand delivering it or mailing it to the address listed on the complaint on the same date that the court issues this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

Date: Clerk, by _____, Deputy

More information about this Notice and Order and the defendant’s application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at <http://www.courtinfo.ca.gov/selfhelp/>.)

Requests for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk’s office or go to www.courtinfo.ca.gov/forms for Request for Accommodations by Persons with Disabilities and Order (form MC-410). (Civil Code Section 54.8)

Proof of Service

(Required from Defendant Filing Application for Stay and Early Evaluation Conference)

I served a copy of the defendant’s Application For Stay and Early Evaluation Conference Pursuant To Civil Code Section 55.54 and the court Notice and Order of Stay of Proceedings and Early Evaluation Conference (check one):

_____ On the Plaintiff’s attorney

_____ On the Plaintiff who is not represented by an attorney

By hand delivering it or mailing it to the address listed on the complaint on the day the court issued this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: _____

Type or Print Name

Signature

Address of named person

1 ~~(8)~~

2 (9) The provisional forms and any replacement Judicial Council
3 forms shall include the defendant’s declaration of proof of service
4 of the application, the notice of the court’s order, and the court’s
5 order pursuant to subdivision (d).

6 (d) Upon the filing of an application for stay and early evaluation
7 conference by a qualified defendant, or a defendant described by
8 paragraph (2) of subdivision (b), the court shall immediately issue
9 an order that does all of the following:

10 (1) Grants a 90-day stay of the proceedings with respect to the
11 construction-related accessibility claim, unless the plaintiff has
12 obtained temporary injunctive relief that is still in place for the
13 construction-related accessibility claim.

14 (2) Schedules a mandatory early evaluation conference for a
15 date as soon as possible from the date of the order, but in no event
16 later than 70 days after issuance of the order, and in no event earlier
17 than 50 days after the filing of the request.

18 (3) Directs the parties, and any other person whose authority is
19 required to negotiate and enter into settlement, to appear in person
20 at the time set for the conference. Appearance by counsel shall not
21 satisfy the requirement that the parties or those with negotiation
22 and settlement authority personally appear, provided, however,
23 that the court may allow a party who is unable to attend in person
24 due to his or her disability to participate in the hearing by telephone
25 or other alternative means or through a representative authorized
26 to settle the case.

27 (4) (A) Directs the qualified defendant to file with the court
28 and serve on the plaintiff a copy of any relevant CASp inspection
29 report at least 15 days before the date of the conference. The CASp
30 inspection report is confidential and is available only as set forth
31 in paragraph (5) of this subdivision and in paragraph (4) of
32 subdivision (e).

33 (B) Directs a defendant described by subparagraph (A) or (B)
34 of paragraph (2) of subdivision (b) who has filed a declaration
35 stating that the violation or violations have been corrected, or will
36 be corrected within 60 days of service of the complaint to file with
37 the court and serve on the plaintiff evidence showing correction
38 of the violation or violations within 10 calendar days after the
39 completion of the corrections.

1 (C) Directs a defendant described by subparagraph (C) of
 2 paragraph (2) of subdivision (b) who has filed a declaration stating
 3 that the violation or violations have been corrected, or will be
 4 corrected within 30 days of service of the complaint to file with
 5 the court and serve on the plaintiff within 10 days after issuance
 6 of the court order evidence of correction of the violation or
 7 violations, if that evidence showing correction was not filed
 8 previously with the application and served on the plaintiff.

9 (5) Directs the parties that the CASp inspection report may be
 10 disclosed only to the court, the parties to the action, the parties’
 11 attorneys, those individuals employed or retained by the attorneys
 12 to assist in the litigation, and insurance representatives or others
 13 involved in the evaluation and settlement of the case.

14 (6) *If the defendant so requests, directs the parties that no later*
 15 *than 30 days after issuance of the court order the parties and their*
 16 *counsel, accompanied by their experts if the parties so elect, shall*
 17 *meet in person at the subject premises. If plaintiff alleges only*
 18 *programmatic or policy violations, the parties and their counsel*
 19 *may meet in person at any mutually agreeable location. They shall*
 20 *jointly inspect the portions of the subject premises, and shall review*
 21 *any programmatic or policy issues, that are claimed to constitute*
 22 *a violation of a construction-related accessibility standard.*

23 ~~(6)~~

24 (7) Directs the plaintiff to file with the court and serve on the
 25 defendant at least 15 days before the date of the conference a
 26 statement that includes, to the extent reasonably known, for use
 27 solely for the purpose of the early evaluation conference, all of the
 28 following:

29 (A) An itemized list of specific conditions on the subject
 30 premises that are the basis of the claimed violations of
 31 construction-related accessibility standards in the plaintiff’s
 32 complaint.

33 (B) The amount of damages claimed.

34 (C) The amount of attorney’s fees and costs incurred to date, if
 35 any, that are being claimed.

36 (D) Any demand for settlement of the case in its entirety.

37 (e) (1) A party failing to comply with any court order may be
 38 subject to court sanction at the court’s discretion.

39 (2) (A) The court shall lift the stay when the defendant has
 40 failed to file and serve the CASp inspection report prior to the

1 early evaluation conference and has failed also to produce the
2 report at the time of the early evaluation conference, unless the
3 defendant shows good cause for that failure.

4 (B) The court shall lift the stay when a defendant described by
5 paragraph (2) of subdivision (b) has failed to file and serve the
6 evidence showing correction of the violation or violations as
7 required by law.

8 (3) The court may lift the stay at the conclusion of the early
9 evaluation conference upon a showing of good cause by the
10 plaintiff. Good cause may include the defendant's failure to make
11 reasonably timely progress toward completion of corrections noted
12 by a CASp.

13 (4) The CASp inspection report filed and served pursuant to
14 subdivision (d) shall remain confidential throughout the stay and
15 shall continue to be confidential until the conclusion of the claim,
16 whether by dismissal, settlement, or final judgment, unless there
17 is a showing of good cause by any party. Good cause may include
18 the defendant's failure to make reasonably timely progress toward
19 completion of corrections noted by a CASp. The confidentiality
20 of the inspection report shall terminate upon the conclusion of the
21 claim, unless the owner of the report obtains a court order pursuant
22 to the California Rules of Court to seal the record.

23 (f) All discussions at the early evaluation conference shall be
24 subject to Section 1152 of the Evidence Code. It is the intent of
25 the Legislature that the purpose of the evaluation conference shall
26 include, but not be limited to, evaluation of all of the following,
27 as applicable:

28 (1) Whether the defendant is entitled to the 90-day stay for some
29 or all of the identified issues in the case, as a qualified defendant.

30 (2) The current condition of the site and the status of any plan
31 of corrections, including whether the qualified defendant has
32 corrected or is willing to correct the alleged violations, and the
33 timeline for doing so.

34 (3) Whether subdivision (f) of Section 55.56 may be applicable
35 to the case, and whether all violations giving rise to the claim have
36 been corrected within the specified time periods.

37 (4) Whether the case, including any claim for damages or
38 injunctive relief, can be settled in whole or in part.

39 (5) Whether the parties should share other information that may
40 facilitate early evaluation and resolution of the dispute.

1 (g) Nothing in this section precludes any party from making an
2 offer to compromise pursuant to Section 998 of the Code of Civil
3 Procedure.

4 (h) For a claim involving a qualified defendant, as provided in
5 paragraph (1) of subdivision (b), the court may schedule additional
6 conferences and may extend the 90-day stay for good cause shown,
7 but not to exceed one additional 90-day extension.

8 (i) Early evaluation conferences shall be conducted by a superior
9 court judge or commissioner, or a court early evaluation conference
10 officer. A commissioner shall not be qualified to conduct early
11 evaluation conferences pursuant to this subdivision unless he or
12 she has received training regarding disability access requirements
13 imposed by the federal Americans with Disabilities Act of 1990
14 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws
15 that govern access to public facilities, and federal and state
16 regulations adopted pursuant to those laws. For purposes of this
17 subdivision, a “court early evaluation conference officer” means
18 an attorney employed by the court who has received training
19 regarding disability access requirements imposed by the federal
20 Americans with Disabilities Act of 1990, state laws that govern
21 access to public facilities, and federal and state regulations adopted
22 pursuant to those laws. Attorneys serving in this capacity may also
23 be utilized by the court for other purposes not related to these
24 proceedings.

25 (j) Nothing in this part shall be deemed to make any inspection
26 report, opinion, statement, or other finding or conclusion of a CASp
27 binding on the court, or to abrogate in any manner the ultimate
28 authority of the court to make all appropriate findings of fact and
29 law. The CASp inspection report and any opinion, statement,
30 finding, or conclusion therein shall be given the weight the trier
31 of fact finds that it deserves.

32 (k) Nothing in this part shall be construed to invalidate or limit
33 any California construction-related accessibility standard that
34 provides greater or equal protection for the rights of individuals
35 with disabilities than is afforded by the federal Americans with
36 Disabilities Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et
37 seq.) and the federal regulations adopted pursuant to that act.

38 (l) (1) The Judicial Council shall, by January 1, 2013, prepare
39 and post on its Internet Web site instructions and a form for use
40 by a qualified defendant, or other defendant described by paragraph

1 (2) of subdivision (b), to file an application for stay and early
2 evaluation conference as provided in subdivisions (b) and (c), a
3 form for the court’s notice of stay and early evaluation conference,
4 and any other forms appropriate to implement the provisions
5 relating to early evaluation conferences. Until those forms are
6 adopted, the Judicial Council shall post on its Internet Web site
7 the provisional forms set forth in subdivision (c).

8 (2) Until the adoption of the forms as provided in paragraph
9 (1), the provisional application form may be used by a defendant
10 described by paragraph (2) of subdivision (b).

11 (3) In lieu of the provisions specified in number 3 of page 1 of
12 the application form set forth in paragraph (7) of subdivision (c),
13 the application shall include one of the following declarations of
14 the defendant as to the basis for the application, as follows:

15 (A) That all of the following apply to a defendant described by
16 subparagraph (A) of paragraph (2) of subdivision (b):

17 (i) The site’s new construction or improvement was approved
18 pursuant to the local building permit and inspection process on or
19 after January 1, 2008, and before January 1, 2016.

20 (ii) To the best of the defendant’s knowledge there have been
21 no modifications or alterations completed or commenced since
22 that approval that impacted compliance with construction-related
23 accessibility standards with respect to the plaintiff’s claim.

24 (iii) All the violations giving rise to the claim have been
25 corrected, or will be corrected within 60 days of the complaint
26 being served.

27 (B) That all of the following apply to a defendant described by
28 subparagraph (B) of paragraph (2) of subdivision (b):

29 (i) The site’s new construction or improvement was approved
30 by a local public building department inspector who is a certified
31 access specialist.

32 (ii) To the best of the defendant’s knowledge there have been
33 no modifications or alterations completed or commenced since
34 that approval that impacted compliance with construction-related
35 accessibility standards with respect to the plaintiff’s claim.

36 (iii) All the violations giving rise to the claim have been
37 corrected, or will be corrected within 60 days of the complaint
38 being served.

39 (C) That both of the following apply to a defendant described
40 by subparagraph (C) of paragraph (2) of subdivision (b):

1 (i) The defendant is a small business described in paragraph (2)
2 of subdivision (f) of Section 55.56.

3 (ii) The violation or violations giving rise to the claim have been
4 corrected, or will be corrected within 30 days of the complaint
5 being served.

6 (4) In lieu of the provision specified in number 4(c) of page 1
7 of the application form set forth in paragraph (7) of subdivision
8 (c), the application shall include a request that the court order the
9 defendant to do either of the following:

10 (A) For a defendant who has filed a declaration stating that all
11 violations have been corrected, or will be corrected within 60 days
12 of service of the complaint, file with the court and serve on the
13 plaintiff evidence showing correction of the violation or violations
14 within 10 calendar days of the completion of the corrections.

15 (B) For a defendant who is a small business that has filed a
16 declaration stating that all the violations have been corrected, or
17 will be corrected within 30 days of the service of the complaint,
18 file with the court and serve on the plaintiff evidence showing
19 correction of the violation or violations within 10 calendar days
20 after issuance of the court order, if that evidence showing correction
21 was not filed previously with the application and served on the
22 plaintiff.

23 (5) The Judicial Council shall also prepare and post on its
24 Internet Web site instructions and cover pages to assist plaintiffs
25 and defendants, respectively, to comply with their filing
26 responsibilities under subdivision (d). The cover pages shall also
27 provide for the party's declaration of proof of service of the
28 pertinent document served under the court order.

29 (m) The stay provisions shall not apply to any
30 construction-related accessibility claim in which the plaintiff has
31 been granted temporary injunctive relief that remains in place.

32 (n) This section shall not apply to any action brought by the
33 Attorney General, or by any district attorney, city attorney, or
34 county counsel.

35 (o) The amendments to this section made by Senate Bill 1186
36 of the 2011–12 Regular Session of the Legislature shall apply only
37 to claims filed on or after the operative date of that act. Nothing
38 in this part is intended to affect any complaint filed before that
39 date.

1 (p) Nothing in this part is intended to affect existing law
2 regarding class action requirements.

3 *SEC. 5. Section 425.50 of the Code of Civil Procedure is*
4 *amended to read:*

5 425.50. (a) An allegation of a construction-related accessibility
6 claim in a complaint, as defined in subdivision (a) of Section 55.52
7 of the Civil Code, shall state facts sufficient to allow a reasonable
8 person to identify the basis of the violation or violations supporting
9 the claim, including all of the following:

10 (1) A plain language explanation of the specific access barrier
11 or barriers the individual encountered, or by which the individual
12 alleges he or she was deterred, with sufficient information about
13 the location of the alleged barrier to enable a reasonable person to
14 identify the access barrier.

15 (2) The way in which the barrier denied the individual full and
16 equal use or access, or in which it deterred the individual, on each
17 particular occasion.

18 (3) The date or dates of each particular occasion on which the
19 claimant encountered the specific access barrier, or on which he
20 or she was deterred.

21 (4) (A) *Except in complaints that allege physical injury or*
22 *damage to property, a complaint filed by or on behalf of a*
23 *high-frequency litigant shall also state all of the following:*

24 (i) *That the complaint is filed by, or on behalf of, a*
25 *high-frequency litigant.*

26 (ii) *The number of complaints alleging a construction-related*
27 *accessibility claim that the high-frequency litigant has filed during*
28 *the 12 months prior to filing the complaint.*

29 (iii) *The reason the individual was in the geographic area of*
30 *the defendant's business.*

31 (iv) *The reason why the individual desired to access the*
32 *defendant's business, including the specific commercial, business,*
33 *personal, social, leisure, recreational, or other purpose.*

34 (B) *As used in this section "high-frequency litigant" has the*
35 *same meaning as set forth in subdivision (b) of Section 425.55.*

36 (b) A complaint alleging a construction-related accessibility
37 claim, as those terms are defined in subdivision (a) of Section 55.3
38 of the Civil Code, shall be verified by the plaintiff. A complaint
39 filed without verification shall be subject to a motion to strike.

1 (c) A complaint alleging a construction-related accessibility
2 claim shall be signed by at least one attorney of record in the
3 attorney's individual name, or, if the party is not represented by
4 an attorney, shall be signed by the party. By signing the complaint,
5 the attorney or unrepresented party is certifying that, to the best
6 of the person's knowledge, information, and belief, formed after
7 an inquiry reasonable under the circumstances, all of the following
8 conditions are met:

9 (1) It is not being presented primarily for an improper purpose,
10 such as to harass or to cause unnecessary delay or needless
11 increase in the cost of litigation.

12 (2) The claims, defenses, and other legal contentions therein
13 are warranted by existing law or by a nonfrivolous argument for
14 the extension, modification, or reversal of existing law or the
15 establishment of new law.

16 (3) The allegations and other factual contentions have
17 evidentiary support or, if specifically so identified, are likely to
18 have evidentiary support after a reasonable opportunity for further
19 investigation or discovery.

20 (4) The denials of factual contentions are warranted on the
21 evidence or, if specifically so identified, are reasonably based on
22 a lack of information or belief.

23 (d) A court may, after notice and a reasonable opportunity to
24 respond, determine whether subdivision (c) has been violated and,
25 if so, impose sanctions as provided in Section 128.7 for violations
26 of subdivision (b) Section 128.7.

27 ~~(e)~~

28 (e) Nothing in this section shall limit the right of a plaintiff to
29 amend a complaint under Section 472, or with leave of the court
30 under Section 473. However, an amended pleading alleging a
31 construction-related accessibility claim shall be pled as required
32 by subdivision (a).

33 ~~(f)~~

34 (f) This section shall become operative on January 1, 2013.

35 SEC. 6. Section 425.55 is added to the Code of Civil Procedure,
36 to read

37 425.55. (a) The Legislature finds and declares all of the
38 following:

39 (1) Protection of the civil rights of persons with disabilities is
40 of the utmost importance to this state, and private enforcement is

1 *the essential means of achieving that goal, as the law has been*
2 *designed.*

3 *(2) In recent years, a very small number of plaintiffs have filed*
4 *a disproportionately large number of the construction-related*
5 *accessibility claims in the state, from 70 to 300 lawsuits each year;*
6 *that are filed frequently against small businesses on the basis of*
7 *boilerplate complaints.*

8 *(3) Therefore, given these special and unique circumstances,*
9 *the provisions of this section are warranted for this limited group*
10 *of plaintiffs.*

11 *(b) For the purposes of this article, “high-frequency litigant”*
12 *means a person who utilizes court resources in actions arising*
13 *from alleged construction-related access violations at such a high*
14 *level that it is appropriate that additional safeguards apply so as*
15 *to ensure that the claims are warranted and appropriate. A*
16 *“high-frequency litigant” means plaintiff who has filed 15 or more*
17 *complaints alleging a construction-related accessibility violation*
18 *within the 12-month period immediately preceding the filing of*
19 *the current complaint alleging a construction-related accessibility*
20 *violation.*

21 *SEC. 7. Section 425.60 is added to the Code of Civil Procedure,*
22 *to read:*

23 *425.60. (a) Any written settlement agreement regarding a*
24 *construction-related accessibility claim shall be filed by the*
25 *plaintiff with the California Commission on Disability Access*
26 *within 30 days of the execution of the agreement.*

27 *(b) Except as set forth in subdivision (e), a high frequency*
28 *litigant shall seek and obtain approval of the court with respect*
29 *to the settlement of a construction-related accessibility claim*
30 *against a small business as defined by subdivision (f) of section*
31 *55.56 to determine that the proposed settlement is lawful,*
32 *reasonable, and non-collusive.*

33 *(c) A party requesting court review of a settlement shall do so*
34 *by means of a motion for a settlement conference, which shall be*
35 *scheduled no later than 30 court days after the filing of the motion.*
36 *If the matter is not scheduled to be heard within 30 court days, the*
37 *settlement shall be deemed approved. A party requesting a court*
38 *review of the settlement shall attach a copy of the settlement*
39 *agreement or a description its material terms in the motion.*

1 (d) If the court does not approve the settlement, it shall state
2 the reasons for decision in a written order and the litigation shall
3 proceed. If the hearing occurs prior to the expiration of a stay of
4 the proceedings pursuant to any provision of law, including, but
5 not limited to, Section 55.54, the court shall terminate the stay on
6 the date of the settlement conference.

7 (e) This section shall not apply in any of the following
8 circumstances:

9 (1) The settlement agreement provides for the removal or
10 remediation of some or all of the violations described in the
11 complaint by a specified date, unless removal or remediation of
12 the violations cannot be accomplished because of the closure or
13 elimination of the place of public accommodation or a feature or
14 element of the place of public accommodation or because the
15 public accommodation was temporary or ephemeral in nature,
16 such as an irregularly held festival, fair, performance, or athletic
17 games.

18 (2) The complaint alleges that the plaintiff suffered physical
19 injuries or damage to property.

20 (f) Nothing set forth in this section is intended to affect the law
21 of the interpretation of contracts. There is a presumption that
22 settlement agreements shall be enforceable. It shall be deemed
23 bad faith for any party to negotiate a settlement agreement and
24 then dispute the terms thereof at any hearing held under this
25 section absent good cause shown for a change in position. If the
26 defendant seeks to contest a settlement to which the defendant has
27 previously agreed, he or she shall do so by filing a notice of his
28 or her intent to dispute the settlement which shall be accompanied
29 by a declaration setting forth all of the reasons why the party
30 believes that circumstances have changed and that the settlement
31 is no longer just, fair, or enforceable. This notice shall be filed
32 with the court no later than 15 days before the date of the hearing
33 scheduled pursuant to subdivision (c) and shall be served on the
34 plaintiff concurrently with filing.

35 (g) An attorney who violates this section or Section 425.55,
36 shall be subject to discipline by the State Bar.

37 SEC. 8. Section 19953 of the Health and Safety Code is
38 amended to read:

39 19953. Any person who is aggrieved or potentially aggrieved
40 by a violation of this part, Chapter 7 (commencing with Section

1 4450) of Division 5 of Title 1 of the Government Code, or Part
2 5.5 (commencing with Section 19955) of Division 13 of the Health
3 and Safety Code may bring an action to enjoin the violation. ~~The~~
4 ~~prevailing party in the action shall be entitled to recover reasonable~~
5 ~~attorney's fees.~~ *The court shall award costs and reasonable*
6 *attorney's fees to a prevailing plaintiff in an action filed pursuant*
7 *to this section. If the court finds that the plaintiff's case is clearly*
8 *frivolous, it shall award court costs and reasonable attorney's*
9 *fees to the defendant.*

10 *SEC. 9. This act shall become operative only if Senate Bill 251*
11 *of the 2015-16 Legislative Session, relating to disability access,*
12 *is enacted on or before January 1, 2016.*

13 *SEC. 10. The Legislature finds and declares that Section 4 of*
14 *this act limits the public's right of access to public documents*
15 *within the meaning of Section 3 of Article I of the California*
16 *Constitution. Pursuant to that constitutional provision, the*
17 *Legislature makes the following findings to demonstrate the interest*
18 *and the need for protecting that interest:*

19 *(a) The interest protected by this limitation is the privacy rights*
20 *of litigants.*

21 *(b) The need for protecting those interests is to preclude the*
22 *chilling effect on litigation if public disclosure were required.*

23 *SEC. 11. No reimbursement is required by this act pursuant*
24 *to Section 6 of Article XIII B of the California Constitution because*
25 *the only costs that may be incurred by a local agency or school*
26 *district will be incurred because this act creates a new crime or*
27 *infraction, eliminates a crime or infraction, or changes the penalty*
28 *for a crime or infraction, within the meaning of Section 17556 of*
29 *the Government Code, or changes the definition of a crime within*
30 *the meaning of Section 6 of Article XIII B of the California*
31 *Constitution.*