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 6 CITY OF BERKELEY

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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 TERRY COCHRELL,
 12 Plaintiff,

13 vs.

14 BERKELEY UNIFIED SCHOOL DISTRICT;
 15 CITY OF BERKELEY; does 1 through 10,
 inclusive,

16 Defendants.

NO. C11-03395 SI

**FURTHER DECLARATION OF
 FREDERICK SCOTT FERRIS IN
 SUPPORT OF OPPOSITION TO
 PLAINTIFF’S MOTION FOR
 PRELIMINARY INJUNCTION**

DATE: December 9, 2011
 TIME: 9:00 a.m.
 CTRM: 10, 19th Floor

17
 18 I, Frederick Scott Ferris, declare:

19 1. I am the Recreation and Youth Services Manager for the City of Berkeley’s
 20 Parks, Recreation & Waterfront Department (“PR&W”); I have held that position since 2005. I
 21 have been continuously employed in East Bay public agencies’ recreation divisions since 1991.
 22 Beginning November 28, 2011, I became the City’s Acting Director of PR&W. The following
 23 facts are within my personal knowledge and if called as a witness, I could and would
 24 competently testify thereto.

25 2. Since 2005, when I first started with the City, I have been responsible for the
 26 City’s Aquatics Program, which uses three pools located around the City (King Pool; West
 27 Campus Pool; and the Warm Water Pool at Berkeley High School (“Warm Pool”).

1 3. Warm Pool is open for use by the City of Berkeley five days per week for a total
2 of 18 hours per week. **The City currently runs the following programs exclusively for senior**
3 **or disabled patrons at Warm Pool:**

- 4 • **Arthritis Class (for seniors and disabled):** Is held at Warm Pool a total of 1 hour per
5 week (8:30-9:30am Saturday). This is a “fee class”, costing \$5 for senior/disabled
6 patrons. The class is held in the shallow end of the pool, where the patrons can stand.

7 **Upon closure of Warm Pool, the City will encourage patrons to participate in a**
8 **similar class at King Pool**, the somewhat misnamed “Senior Exercise Class”. In reality,

9 the current “Senior Exercise Class” enrollment is approximately 60% disabled patrons,
10 and not all of them are seniors. The City plans to rename the class to the more accurate
11 “Senior/Disabled Exercise Class”. The Senior/Disabled Exercise Class will be available
12 four hours per week (4 separate 1 hour classes from 10:30-11:30 am Monday—
13 Thursday), and will cost \$5 for senior/disabled patrons. The class is held in the shallow
14 end of the pool, where the patrons can stand. The instructor for this class is Mr. Yassir
15 Chadley, who has been leading these types of classes in Berkeley/Albany since 1993.
16 Mr. Chadley is trained and experienced in disabled aquatics exercise, and is extremely
17 well-regarded by his students.

- 18
- 19 • **“Quiet Swim” (for seniors and disabled):** Is held at Warm Pool a total of 6 hour per
20 week (7:30-8:30 pm Mon; 4-5 pm Wed and Fri; 8:30-11:30am Sat). This is not a staff-
21 led class, it is a “drop-in” program costing \$3 for senior/disabled patrons. “Quiet Swim”
22 is simply a way to utilize the deep end of the pool while an instructor-led class occupies
23 the shallow end. The pool area is not “quiet”, instead those that are in the deep end must
24 remain quiet so they don’t disturb the class going on in the shallow end. **Upon closure**
25 **of Warm Pool, the City intends to open the diving pool at King Pool for this same**
26 **purpose** for approximately 6 hours per week, as the diving pool is a completely separate
27 deep pool (minimum 10.5 feet deep) approximately 35’ x 30’, which is roughly the same
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1 space available at Warm Pool in the deep end. Those patrons would be charged the drop-
2 in fee of \$3 per visit.

- 3
- 4 • **“Senior/Disabled Swim” (for seniors and disabled):** Is held at Warm Pool a total of 12
5 hours per week (4:30-7:30 pm Mon, Wed and Fri, 1-4 pm Sat). This is not a staff-led
6 class, it is a “drop-in” program costing \$3 for senior/disabled patrons. For
7 Senior/Disabled Swim, Warm Pool is divided into two sections, allowing for lap swim in
8 the deep end and standing-related activities in the shallow end. **Upon closure of Warm**
9 **Pool, those patrons can utilize King Pool for lap swim (up to 35 hours per week) and**
10 **the shallow part of King Pool will be available for many hours as well** for those
11 patrons who presently enjoy activities in the shallow end of Warm Pool. Whether using
12 lap swim or the shallow end, those patrons would be charged the drop-in fee of \$3 per
13 visit.

- 14 • **“Spirit Walking/Aqua Chi” (for seniors and disabled):** Is held in the shallow end of
15 Warm Pool a total of 2 hours per week. This is a “fee class”, costing \$5 for
16 senior/disabled patrons. The class is held in the shallow end of the pool, where the
17 patrons can stand. **Upon closure of Warm Pool, the City intends to offer a**
18 **“meditation” class in the shallow end of King Pool.**

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20 4. King/West Pools presently offer the following options for disabled patrons:

- 21 • **Reduced Costs:** Almost every program/drop-in time at King Pool is discounted for
22 seniors/disabled, and completely open for participation by these patrons. There is a
23 hydraulic lift that assists disabled patrons into the main pools.
- 24 • **Water Aerobics:** Senior/disabled patrons participate in the same class as all adults.
- 25 • **Senior Exercise** (see above).

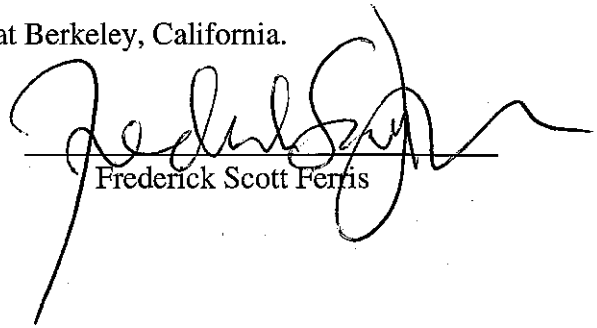
26 5. The Berkeley YMCA (“Berkeley Y”) is located at 2001 Allston Way, Berkeley,
27 CA 94704, on the corner of Allston Way and Milvia Street. In my original declaration, I
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1 described the Berkeley Y facility in detail, including the Berkeley Y's two indoor warm water
2 pools. For several months the City and the Berkeley Y were exploring ways to "partner" upon
3 the closure of Warm Pool, but it was ultimately determined that was unworkable, for logistic and
4 operational reasons. Nonetheless, the Berkeley Y is actively soliciting users of Warm Pool, and
5 on December 2, 2011, sent the letter attached as Exhibit A to Warm Pool users it had identified.

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

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Executed this 8th day of December, 2011, at Berkeley, California.



Frederick Scott Ferris