

1 DAVID M. WALSH (SB# 120761)
(davidwalsh@paulhastings.com)
2 PAUL, HASTINGS, JANOFSKY & WALKER LLP
515 South Flower Street
3 Twenty-Fifth Floor
Los Angeles, CA 90071-2228
4 Telephone: (213) 683-6000
Facsimile: (213) 627-0705

5 JEFF MICHALOWSKI (SB# 248073)
(jeffmichalowski@paulhastings.com)
6 PAUL, HASTINGS, JANOFSKY & WALKER LLP
7 55 Second Street
Twenty-Fourth Floor
8 San Francisco, CA 94105
Telephone: (415) 856-7060
9 Facsimile: (415) 856-7100

10 Attorney for Defendants
11 APPLE INC.
DEKA IMMOBILIEN INVESTMENT GMBH

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 NICOLE BROWN-BOOKER,
and JANA OVERBO,

17 Plaintiffs,

18 vs.

19 APPLE INC.; DEKA IMMOBILIEN
20 INVESTMENT GMBH; and DOES 1-10,
Inclusive,

21 Defendants.

Case No: 3:07-cv-04397-SI

**DEFENDANTS APPLE INC. AND DEKA
IMMOBILIEN INVESTMENT GMBH'S
ANSWER TO COMPLAINT**

22
23 Defendants Apple Inc. and Deka Immobilien Investment GMBH (“Defendants”) answer
24 the Complaint of Nicole Brown-Booker and Jana Overbo (“Plaintiffs”) and assert separate
25 defenses as follows:

26
27 1. **INTRODUCTION:** Defendants state that Paragraph 1 identifies claims for
28 relief and sets forth legal conclusions to which no response is required. To the extent that a

1 response is required, Defendants are without sufficient knowledge or information to form a belief
2 as to the truth of these allegations and, on that basis, deny the allegations contained therein.

3 Defendants expressly deny that Plaintiffs were injured by Defendants in any way or that
4 Defendants discriminated against Plaintiffs in any way.
5

6 2. **JURISDICTION:** Defendants admit that Plaintiffs have alleged federal
7 and state law claims.
8

9 3. **VENUE:** Defendants admit that the U.S. District Court for the Northern
10 District of California is the proper venue.
11

12 4. **INTRADISTRICT:** Defendants admit that this matter is properly assigned
13 to the San Francisco/Oakland intradistrict.
14

15 5. **PARTIES:** Defendants state that Paragraph 5 contains legal conclusions
16 to which no response is required. To the extent that a response is required, Apple Inc. admits that
17 it leases the property located at One Stockton Street, San Francisco, California (the "Property")
18 from Deka Immobilien Investment GMBH, the owner of the Property. Additionally, Apple Inc.
19 admits that it operates a retail outlet on the Property called the Apple Store San Francisco. Apple
20 Inc. admits that it has carried out alterations, structural repairs or additions to the Property since
21 the inception of its lease on July 24, 1998. To the remaining allegations of Paragraph 5,
22 Defendants are without sufficient knowledge or information to form a belief as to the truth of
23 these allegations and, on that basis, deny the allegations contained therein.
24

25 6. Defendants state that Paragraph 6 contains legal conclusions to which no
26 response is required. To the extent that a response is required, Defendants are without sufficient
27
28

1 knowledge or information to form a belief as to the truth of the allegations of Paragraph 6 and, on
2 that basis, deny the allegations contained therein.

3
4 7. Defendants state that Paragraph 7 contains legal conclusions to which no
5 response is required. To the extent that a response is required, Apple Inc. admits that it leases the
6 Property from Deka Immobilien Investment GMBH, the owner of the Property. With respect to
7 the remaining allegations of Paragraph 7, Defendants are without sufficient knowledge or
8 information to form a belief as to the truth of these allegations and, on that basis, deny the
9 allegations contained therein.

10
11 **FIRST CAUSE OF ACTION: DAMAGES AND INJUNCTIVE RELIEF FOR DENIAL OF**
12 **FULL AND EQUAL ACCESS TO A PUBLIC ACCOMMODATION: PUBLIC**
13 **FACILITIES IN A PUBLIC FACILITY (California Health & Safety Code §§ 19955, *Et***
***Seq.*, Civil Code § 54.1)**

14 8. In response to Paragraph 8, Defendants incorporate and reallege the above
15 responses to Paragraphs 1 through 7, as though fully set forth herein.

16
17 9. Defendants state that Paragraph 9 contains no factual allegations against
18 Defendants, therefore no response is required.

19
20 10. Defendants state that Paragraph 10 contains legal conclusions to which no
21 response is required. To the extent that a response is required, Apple Inc. admits that it has
22 carried out alterations, structural repairs or additions to the Property since the inception of its
23 lease on July 24, 1998. As to the remaining allegations of Paragraph 10, Defendants are without
24 sufficient knowledge or information to form a belief as to the truth of these allegations and, on
25 that basis, deny the allegations contained therein.

1 11. **FACTUAL STATEMENT:** Defendants are without sufficient knowledge
2 or information to form a belief as to the truth of the allegations of Paragraph 11 and, on that basis,
3 deny the allegations contained therein.
4

5 12. Defendants are without sufficient knowledge or information to form a
6 belief as to the truth of the allegations of Paragraph 12 and, on that basis, deny the allegations
7 contained therein.
8

9 13. Defendants are without sufficient knowledge or information to form a
10 belief as to the truth of the allegations of Paragraph 13 and, on that basis, deny the allegations
11 contained therein.
12

13 14. Defendants are without sufficient knowledge or information to form a
14 belief as to the truth of the allegations of Paragraph 14 and, on that basis, deny the allegations
15 contained therein.
16

17 15. Defendants state that Paragraph 15 contains legal conclusions to which no
18 response is required. To the extent that a response is required, Defendants are without sufficient
19 knowledge or information to form a belief as to the truth of the allegations of Paragraph 15 and,
20 on that basis, deny the allegations contained therein.
21

22 16. Defendants state that Paragraph 16 contains legal conclusions to which no
23 response is required. To the extent that a response is required, Defendants deny each and every
24 allegation contained in Paragraph 16.
25

26 17. Defendants state that Paragraph 17 contains legal conclusions to which no
27 response is required. To the extent that a response is required, Defendants are without sufficient
28

1 knowledge or information to form a belief as to the truth of the allegations of Paragraph 17 and,
2 on that basis, deny the allegations contained therein.

3
4 18. Defendants state that Paragraph 18 identifies claims for relief and sets forth
5 legal conclusions to which no response is required. To the extent that a response is required,
6 Defendants deny each and every allegation contained in Paragraph 18.

7
8 19. **INJUNCTIVE RELIEF:** Defendants state that Paragraph 19 identifies
9 claims for relief and sets forth legal conclusions to which no response is required. To the extent
10 that a response is required, Defendants deny each and every allegation contained in Paragraph 19.

11
12 20. Defendants state that Paragraph 20 identifies claims for relief and sets forth
13 legal conclusions to which no response is required. To the extent that a response is required,
14 Defendants deny each and every allegation contained in Paragraph 20.

15
16 21. **DAMAGES:** Defendants state that Paragraph 21 identifies claims for
17 relief and sets forth legal conclusions to which no response is required. To the extent that a
18 response is required, Defendants deny each and every allegation contained in Paragraph 21.

19
20 22. Defendants state that Paragraph 22 identifies claims for relief and sets forth
21 legal conclusions to which no response is required. To the extent that a response is required,
22 Defendants deny each and every allegation contained in Paragraph 22.

23
24 **SECOND CAUSE OF ACTION: VIOLATION OF UNRUH CIVIL RIGHTS ACT
25 CALIFORNIA CIVIL CODE SECTIONS 51 & 52, ON THE BASIS OF DISABILITY**

26 23. In response to Paragraph 23, Defendants incorporate and reallege the above
27 responses to Paragraphs 1 through 22, as though fully set forth herein.

28

1 24. Defendants state that Paragraph 24 contains no factual allegations against
2 Defendants, therefore no response is required.

3
4 25. Defendants state that Paragraph 25 identifies claims for relief and sets forth
5 legal conclusions to which no response is required. To the extent that a response is required,
6 Defendants deny each and every allegation contained in Paragraph 25.

7
8 **THIRD CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**
9 **DISABILITIES ACT OF 1990 42 USC §12101FF**

10 26. In response to Paragraph 26, Defendants incorporate and reallege the above
11 responses to Paragraphs 1 through 25, as though fully set forth herein.

12 27. Defendants state that Paragraph 27 contains no factual allegations against
13 Defendants, therefore no response is required.

14
15 28. Defendants state that Paragraph 28 contains no factual allegations against
16 Defendants, therefore no response is required.

17
18 29. Defendants state that Paragraph 29 contains legal conclusions to which no
19 response is required. To the extent that a response is required, Defendants are without sufficient
20 knowledge or information to form a belief as to the truth of the allegations of Paragraph 29 and,
21 on that basis, deny the allegations contained therein.

22
23 30. Defendants state that Paragraph 30 contains no factual allegations against
24 Defendants, therefore no response is required.

25
26 31. Defendants state that Paragraph 31 contains no factual allegations against
27 Defendants, therefore no response is required.

28

1 32. Defendants state that Paragraph 32 contains legal conclusions to which no
2 response is required. To the extent that a response is required, Apple Inc. admits that it has carried
3 out alterations, structural repairs or additions to the Property since the inception of its lease on
4 July 24, 1998. With respect to the remaining allegations of Paragraph 32, Defendants deny each
5 and every allegation contained in Paragraph 32.
6

7 33. Defendants state that Paragraph 33 contains legal conclusions to which no
8 response is required. To the extent that a response is required, Defendants deny each and every
9 allegation contained in Paragraph 33.
10

11 34. Defendants state that Paragraph 34 identifies claims for relief and sets forth
12 legal conclusions to which no response is required. To the extent that a response is required,
13 Defendants deny each and every allegation contained in Paragraph 34.
14

15 35. Defendants state that Paragraph 35 identifies claims for relief and sets forth
16 legal conclusions to which no response is required. To the extent that a response is required,
17 Defendants deny each and every allegation contained in Paragraph 35.
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ANSWER TO PLAINTIFFS' PRAYER

Answering Plaintiffs' prayer, Defendants deny that Plaintiffs are entitled to any relief whatsoever, of any kind and nature, from Defendants in connection with this action.

DEFENDANTS' SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

1. Plaintiffs' Complaint and each purported claim for relief attempted to be stated therein fails to state facts sufficient to constitute a claim of relief against Defendants.

SECOND SEPARATE DEFENSE

2. Plaintiffs are not entitled to damages, to the extent that they failed to mitigate their alleged damages.

THIRD SEPARATE DEFENSE

3. If Defendants are judged to be liable to Plaintiffs, then any such judgment must be reduced by an amount equal to that portion of the judgment in proportion to the comparative negligence and/or fault of the Plaintiffs and/or other individuals or entities causing Plaintiffs' damages.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH SEPARATE DEFENSE

4. Plaintiffs' claims are barred to the extent they have failed to satisfy the jurisdictional and/or statutory prerequisites for their causes of action, and/or exhaust the appropriate administrative remedies.

FIFTH SEPARATE DEFENSE

5. Plaintiffs' claims as set forth in the Complaint are barred because the accommodations and modifications sought by Plaintiffs are not required by law.

SIXTH SEPARATE DEFENSE

6. Plaintiffs' claims as set forth in the Complaint are barred because Defendants are in compliance with the applicable law and the Property is readily accessible to the disabled.

SEVENTH SEPARATE DEFENSE

7. Plaintiffs' Complaint seeks accommodations and modifications that would require the construction, alteration, repair, structural or otherwise, or modification that is beyond the requirements of the law and not otherwise readily achievable.

EIGHTH SEPARATE DEFENSE

8. Plaintiffs' claims as set forth in the Complaint are barred in that Plaintiffs lack standing and/or capacity to bring each claim, in that, among other things, Plaintiffs did not encounter any barriers to access within the Property.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NINTH SEPARATE DEFENSE

9. Plaintiffs' claims as set forth in the Complaint fail as a matter of law because, to the extent that Plaintiffs were not provided with full and equal accommodations, advantages, facilities, privileges or services of Defendants' facilities, it was because Plaintiffs failed to give Defendants sufficient notice of the need and sufficient opportunity to meet that need.

TENTH SEPARATE DEFENSE

10. Plaintiffs' claims as set forth in their Complaint are barred by the applicable statute of limitations.

ELEVENTH SEPARATE DEFENSE

11. To the extent it had a duty to do so at any relevant time, Defendants made every good faith effort to evaluate and configure the readily achievable modifications to the Property to permit access to individuals qualified under the Americans with Disabilities Act ("ADA") and other laws which protect persons with disabilities.

TWELFTH SEPARATE DEFENSE

12. To the extent any violation of the ADA or any other statute occurred, it was the responsibility of a third party and not Defendants.

THIRTEENTH SEPARATE DEFENSE

13. Defendants' conduct was privileged and justified in that the plans, specifications and/or improvements for the facility were approved by the government officials

1 authorized to do so and to enforce compliance with the ADA and all other statutes and
2 regulations.

3
4 **FOURTEENTH SEPARATE DEFENSE**

5 14. To the extent that Plaintiffs allege non-compliance with the ADA,
6 Plaintiffs' claim fails because construction of the premises is within industry standard
7 requirements.
8

9
10 **FIFTEENTH SEPARATE DEFENSE**

11 15. Plaintiffs' claims are barred because pursuing the modifications demanded
12 by Plaintiffs would fundamentally alter the benefits offered to the public or result in an undue
13 burden.
14

15 **ADDITIONAL RESPONSES**

16
17 16. Defendants currently have insufficient information upon which to form a
18 belief as to whether they may have additional, as yet unstated, defenses. Defendants reserve the
19 right to assert additional defenses in the event discovery indicates additional defenses are
20 appropriate.
21

22 17. To the extent Defendants have not expressly admitted an allegation of the
23 Complaint or denied an allegation of the Complaint based on a lack of information and belief,
24 Defendants deny all further and remaining allegations of the Complaint and no response
25 contained herein is intended to constitute a waiver of such denial.
26
27
28

