

1 Mark S. Pollock, Esq. (SBN xxx) (Local Counsel)  
POLLOCK & JAMES, LLP  
2 1827 Clay Street, Suite 300  
Napa, California 94559  
3 Telephone: (858) 459-9111  
E-mail: mpollock@pollackandjames.com

4 Andrew J. Campanelli, Esq. (Pending pro hac vice admission)  
5 CAMPANELLI & ASSOCIATES, P.C.  
1757 Merrick Ave, Suite 204  
6 Merrick, New York 11566  
Telephone: (516) 746-1600  
7 Facsimile: (516) 746-2611  
E-mail: ajc@campanellipc.com

8 Attorneys for Plaintiff ELIZABETH BARRIS

9  
10 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 ELIZABETH BARRIS,

13 Plaintiff,

14 v.

15 COUNTY OF LOS ANGELES, a government  
entity, SOUTHERN CALIFORNIA EDISON  
16 COMPANY, a domestic corporation,

17 Defendants.

Case No.:

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF AND  
PENALTIES for:**

**1. 42 U.S.C. §§ 12131 et seq. [Title II of The  
Americans with Disabilities Act];**

**2. 42 U.S.C. §§ 3601 et seq. [Fair Housing  
Act];**

**3. Cal. Gov. Code §§ 12900 et seq. [Fair  
Employment and Housing Act];**

**4. Fundamental rights to self-defense, safety,  
personal security and bodily integrity [42  
U.S.C. § 1983; Cal. Constitution, Art. I, § 1];**

**DEMAND FOR JURY TRIAL**

1 **COMPLAINT**

2 Plaintiff Elizabeth Barris (“Plaintiff”) brings this action for declaratory and injunctive relief,  
3 punitive damages and civil penalties against the County of Los Angeles (the “County”), Southern  
4 California Edison Company<sup>1</sup> (“Edison,” and together with the County, the “Defendants”) under the  
5 Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended (“FHA”) and related  
6 California Fair Employment and Housing Act, Cal. Gov. Code §§ 12900 *et seq.* (“FEHA”), Title II  
7 of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131–12134, as well as  
8 implementing regulations 28 C.F.R. Part 35, challenging the County's refusal to grant Plaintiff's  
9 requests for reasonable accommodation on the basis of her electromagnetic hypersensitivity  
10 (“EHS”) disability. She also asserts a claim for violation of her fundamental rights to self-defense,  
11 safety, personal security and bodily integrity under the United States and California Constitutions.

12 **INTRODUCTION**

13 1. The Plaintiff suffers from the worst form of EHS disability. When she leaves her  
14 dwelling, she generally has to wear Radio Frequency Radiation (“RFR” or “RF”) shielding  
15 garments and clothing to protect herself from the danger of RFR exposure. She cannot live near any  
16 wireless facilities, or she would experience dramatic adverse health effects. That is the reason why  
17 she chose to move to Topanga, a very secluded area in the Santa Monica Mountains. Recently,  
18 however, wireless companies and/or site developers have constructed numerous wireless facilities  
19 all over Topanga, including one facility in very close proximity to her home owned by Edison.

20 2. The Plaintiff has been constrained to bring this federal action because the County has  
21 refused to consider Plaintiff's request for ADA and FHA accommodation regarding Edison's  
22 approved wireless facility, which can injure and deprive the Plaintiff of her opportunity to live  
23 safely within the confines of her home.

24 3. The Plaintiff is not asking this Honorable Court to determine whether she is disabled  
25 within the meaning of the ADA, FHA and FEHA, or to scrutinize requests for reasonable  
26

27  
28 <sup>1</sup> The Complaint does not assert any direct causes of action against Edison. Edison is named as a defendant insofar as it is a necessary party in this case because, upon information and belief, Edison received approval from the County to operate a wireless facility near Plaintiff's Residence that is the subject of this lawsuit.

1 accommodation made by disabled individuals on a case-by-case basis. Rather, Plaintiff’s lawsuit  
2 challenges the County’s deliberate indifference to the rights of disabled individuals and seek a  
3 simple, finite judicial determination: whether the Telecommunications Act of 1996 (including  
4 subsequent Federal Communication Commission’s (FCC) RF exposure guidelines) precludes both  
5 ADA and FHA claims in their entirety, thus permitting local governments to refuse to (a) consider  
6 whether disabled individuals are entitled to reasonable accommodation in permitting and zoning  
7 matters regarding placements of wireless facilities near their homes, (b) determine what that  
8 reasonable accommodation should be, and (c) mandate wireless carriers and/or site developers to  
9 provide such reasonable accommodation to disabled individuals. The Plaintiff urges the Court to  
10 answer this question in the negative, as there is overwhelming legal and congressional support for  
11 the notion that the TCA does not strip away the rights of disabled individuals under the ADA and  
12 FHA.

13 4. The County knows that the ADA and FHA, two of the most fundamental pieces of  
14 civil rights legislations that ensure equal rights and opportunities to the disabled in our society,  
15 *mandate state and local governments* to review complaints filed by the public and determine if  
16 disabled individuals are entitled to accommodation under these statutes. Similarly, a recent  
17 California decision in Brown v. Los Angeles Unified School District, No. B294240 (Cal. Ct. of  
18 Appeals, February 18, 2021) has confirmed that EHS disabled individuals can adequately plead  
19 EHS disability within the four corners of the FEHA.

20 5. Yet, the County has refused to consider Plaintiff’s request for reasonable  
21 accommodation—let alone determine what reasonable accommodation should be granted to protect  
22 Plaintiff from the danger of RF exposure within the confines of her homes. A true and correct copy  
23 of Plaintiff’s Requests for reasonable accommodation to the County is attached hereto as **Exhibit**  
24 **“A”** and incorporated by this reference.

25 6. The County cannot possibly claim that the Plaintiff is not entitled to a reasonable  
26 accommodation. Title II of the ADA prohibits discrimination on the basis of disability by public  
27 entities. Similarly, the FHA requires the County to “make reasonable accommodations in rules,  
28

1 policies, practices, or services, when such accommodations may be necessary to afford such person  
2 equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B).

3 7. The Telecommunications Act of 1996 (“TCA”) contains, in turn, the following broad  
4 savings clause:

5 NO IMPLIED EFFECT.—This Act and the amendments made by this Act shall not  
6 be construed to modify, impair, or supersede Federal, State, or local law unless  
expressly so provided in such Act or amendments.

7 8. This savings clause, drafted nearly *five years after* the ADA, clearly evidences  
8 Congress’ express desire not to preclude any parts of the ADA or FHA. Nothing in the TCA  
9 modifies, impairs or supersedes the rights of disabled people. Therefore, Congress left the rights and  
10 remedies of disabled individuals under the ADA and FHA fully intact.

11 9. To the extent that the County or Edison claim that the County cannot regulate the  
12 placement of wireless facilities based on health concerns, Congress did not intend the TCA (or  
13 related FCC’s RF exposure guidelines) to preclude the ADA and FHA or strip away the right of  
14 disabled individuals, including EHS individuals, before their local zoning boards.

15 10. Clear congressional intent and established jurisprudence in this Circuit mandate the  
16 County to (a) consider Plaintiff’s disability in deciding permits for the construction and operation of  
17 wireless facilities under the Los Angeles County Code (the “County Code”), and (b) determine what  
18 a reasonable accommodation should be in light of Plaintiff’s EHS disability, to which wireless  
19 carriers and/or site developers, including Edison, must abide while operating wireless facilities near  
20 Plaintiff’s dwelling.

21 11. In a single, finite judicial determination, this Court has the power to declare the  
22 County’s actions violative of both the ADA and FHA, and order the County to comply with its  
23 federally-mandated obligations—as well as its broader state-mandated obligations under the FEHA.

24 **PARTIES**

25 12. Plaintiff Elizabeth Barris is an individual who resides in an apartment on Monte  
26 Vista Dr., Topanga, California 90290 (the “Residence”).

27 13. Defendant County of Los Angeles is a California government agency duly organized  
28 and operating in California.



1           21.     Every time a company seeks to construct and operate a new wireless facility, it must  
2 submit an application to obtain the necessary project permits (*e.g.*, special or conditional use  
3 permits, site plan approval, minor coastal development permits, and/or variances).

4           22.     Without the necessary project permits, companies cannot operate DAS systems,  
5 small cells, transmitters, cell towers or other types of wireless communications facilities in  
6 Topanga.

7           23.     Under the process established by the County Code, the DRP has routinely granted  
8 wireless carriers and/or site developers permission to build and operate small cells, DAS systems,  
9 other transmitters, and/or cell towers around Topanga without considering the rights of EHS  
10 disabled individuals under the ADA and FHA.

11          24.     Specifically, the County has no policy, practice or procedure through which the  
12 County can (a) notify adversely affected third-parties of applications for wireless facilities in close  
13 proximity to their homes, (b) notify adversely affected third-parties of any project permits issued to  
14 wireless carriers and/or site developers for the construction of wireless facilities in close proximity  
15 to their homes, (c) consider an individual's EHS disability at any point in time before approving the  
16 necessary project permits, (d) grant reasonable accommodations to EHS disabled individuals, and  
17 (e) mandate wireless carriers and/or site developers to provide reasonable accommodations to EHS  
18 disabled individuals.

19          25.     As logic would dictate, EHS disabled people are the ones paying the price for the  
20 irresponsible placement of these wireless facilities at a shockingly high speed and without any  
21 constraints imposed by the County. They simply wake up one morning to find unregulated wireless  
22 facilities have been installed—without notice—in close proximity to their homes. The increase in  
23 RFR emissions, combined with the unreasonable proximity of these installations to their residential  
24 properties, negatively affects their health and ability to enjoy the use and occupancy of their homes.

25          26.     The County's conduct in refusing to consider the rights of disabled individuals in  
26 connection with wireless facilities operated in Los Angeles County, and controlled and regulated  
27 exclusively by the County, is consistent with and part of the standard procedure and policy utilized  
28 by the County.

1 **Edison constructed a wireless facility in close proximity to the Residence that is or will be**  
2 **injurious to the Plaintiff.**

3 27. As part of a nationwide deployment of wireless infrastructures, a significant number  
4 of wireless carriers and site developers have aggressively installed, or are actively in the process of  
5 installing, numerous wireless communications facilities (*e.g.*, monopoles, guyed cell towers, small  
6 cells, DAS systems or transmitters) around the country in an effort to improve their current wireless  
7 infrastructures.

8 28. In recent years, Edison and other companies have decided to improve their wireless  
9 infrastructures in Topanga by (1) contracting with Edison to develop and manage wireless facilities  
10 (see Ex. B), (2) leasing space on utility poles to build their own wireless facilities, (3) constructing  
11 their own support structures and wireless facilities (see Ex. B), or (4) constructing unlawful support  
12 structures and wireless facilities without obtaining the necessary project permits under the County  
13 Code, especially during the ongoing COVID-19 pandemic where it has become more difficult to  
14 obtain zoning permits in a short period of time.

15 29. Upon information and belief, Edison initially built a staggering number of wireless  
16 facilities all over S. Topanga Canyon Blvd., Topanga, CA. Then, Edison has started moving north  
17 and, upon information and belief, has targeted N. Topanga Canyon Blvd., Old Topanga Canyon Rd.  
18 and Monte Vista Dr., the street where the Plaintiff currently resides.

19 30. Edison has now completed construction of one (1) transmitter located roughly two  
20 hundred fifty (250) feet from her Residence in a manner that is injurious to the Plaintiff.  
21 Alternatively, Edison's transmitter has yet to be turned on, but will likely injure the Plaintiff once it  
22 is activated. Annexed hereto as **Exhibit "C"** are photographs of Edison's transmitter.

23 31. Upon information and belief, Edison operates the transmitter either for its benefit or  
24 for the benefit of the other wireless companies.

25 **The County's refusal to consider Plaintiff's disability.**

26 32. The U.S. Architectural and Transportation Barriers Compliance Board or "Access  
27 Board," the federal agency charged with advising on disability-related matters, recognizes EHS as a  
28 disabling condition under the ADA. See 69 Fed. Reg. 44087 (July 23, 2004).

1           33.     According to Dr. Gunnar Heuser, a Doctor of Medicine licensed in the State of  
2 California, the Plaintiff is an individual who suffers from EHS. In Dr. Heuser's professional  
3 opinion, this medical condition severely impairs Plaintiff's neurological system and many major life  
4 activities, including, but not limited to, the following symptoms: nausea, vomiting, extreme  
5 migraines, dizziness, loss of energy, ringing and pain in her ears, tiredness, and sleep deprivation.  
6 To enjoy a better quality of life, Dr. Heuser recommends her to avoid RFR exposure. See Ex. A.

7           34.     When Edison erected its wireless facility in close proximity to the Residence without  
8 any notice, the Plaintiff faced the spectrum of having to leave her Residence. Thus, she promptly  
9 submitted a request for ADA accommodation to the Director of Regional Planning for the County.  
10 See Ex. A. In this correspondence, Plaintiff's attorney outlined Plaintiff's status as a qualified  
11 individual with a disability under the ADA and underscored the urgency of this matter.

12           35.     The Plaintiff also filled out the Reasonable Accommodation Application form that  
13 the County provides on its online website to offer a "waiver or modification to regulations, policies,  
14 procedures, and standards that is both reasonable and necessary for an individual with a disability to  
15 have an equal opportunity to use and enjoy a residential use." That is exactly what the Plaintiff  
16 contemplated when she submitted her demand for reasonable accommodation.

17           36.     The request was addressed to the Director of Regional Planning because (a) the  
18 County provides a specific form to make reasonable accommodation applications, and (b) the  
19 County, through either the DRP or DPW, controls and regulates the placement of wireless  
20 communications facilities in Topanga. Thus, it is the only body that can grant requests for  
21 reasonable accommodation to individuals with a disability regarding proposed or approved wireless  
22 installations, including the transmitter at issue herein.

23           37.     In a similar vein, the Director of Regional Planning has the authority to impose  
24 restrictions on zoning permits and mandate wireless companies or site developers to comply with  
25 those restrictions.

26           38.     The County, however, summarily refused to consider Plaintiff's request for  
27 reasonable accommodation claiming, *inter alia*, that "Title 22 of the Los Angeles County Code  
28 ("Zoning Code") must be with respect to the property for which the land use request is made and



1 where the applicant resides or will reside. All applications made the Zoning Code apply only to land  
2 use requests for that property over which the applicant has authorization or control.” A true and  
3 correct copy of the County’s response to Plaintiff’s request for ADA and FHA Accommodation is  
4 attached hereto as **Exhibit “D”** and incorporated by this reference.

5 39. Under the County’s spurious interpretation, not a single EHS disabled individual will  
6 ever be entitled to receive an accommodation simply because he or she does not reside on the  
7 property where the wireless facility is located—even when, for example, a facility is installed as  
8 close as several feet from his or her bedroom window. This interpretation also contradicts the  
9 expressed language in the Reasonable Accommodation Application form where the County seeks to  
10 afford the disabled equal opportunities to use and enjoy “a residential use.”

11 40. The County’s position on this issue is devoid of any merit and reflects a clear  
12 departure from its federally and state-mandated obligations under the ADA, FHA and FEHA. In  
13 fact, even if the purpose of the County Code, Chapter 22.182 - *Requests for Reasonable*  
14 *Accommodations*, is to “to ensure that individuals with disabilities have an equal opportunity to use  
15 and enjoy housing by allowing an accommodation or accommodations with respect to certain  
16 County regulations, policies, procedures, and standards if said accommodation or accommodations  
17 are both reasonable and necessary to provide such equal opportunity without compromising the  
18 County's commitment to protecting community character and environmental quality,” the County  
19 refuses to do so on a practical level.

20 41. The County is well aware that the Plaintiff is in desperate need of an  
21 accommodation, but continues to permit Edison to operate its wireless facility around Plaintiff’s  
22 apartment without any limitations or procedural safeguards. The County has not even engaged in an  
23 interactive process to discuss how it can help prevent Plaintiff from enduring serious bodily harm.

24 42. The County ignored Plaintiff’s rights under the ADA, FHA and FEHA, utterly  
25 disregarded her symptoms and the seriousness of her disability, and permitted Edison to keep  
26 operating its wireless facility.



1 (d) otherwise limit Plaintiff in the enjoyment of any right, privilege, advantage, or  
2 opportunity enjoyed by others receiving the aid, benefit, or service, in violation of Title II of the  
3 ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(1)(vii);

4 (e) fail to make reasonable modifications in policies, practices, or procedures necessary  
5 to avoid discrimination on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. §  
6 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(7);

7 (f) utilize methods of administration that have the effect of subjecting Plaintiff to  
8 discrimination on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, and  
9 its implementing regulation, 28 C.F.R. § 35.130(b)(3);

10 (g) exclude or otherwise deny equal services, programs, or activities to an individual or  
11 entity because of the known disability of an individual with whom the individual or entity is known  
12 to have a relationship or association, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its  
13 implementing regulation, 28 C.F.R. § 35.130(g); and

14 (h) interfere with an individual in the exercise or enjoyment of, or an account of his or  
15 her having exercised or enjoyed, or an account of his or her having aided or encouraged any other  
16 individual in the exercise of enjoyment of, any right granted or protected by the ADA, in violation  
17 of title V of the ADA, 42 U.S.C. § 12203(b).

18 49. Furthermore, a failure to consider and accommodate Plaintiff's status in reviewing  
19 applications for wireless communications facilities within the neighborhood of her Residence  
20 entails a failure to meet the County's obligations under Title II. 28 C.F.R. § 35.130(b)(7)(i); 24  
21 C.F.R. § 100.204(a).

22 50. The failure to reasonably accommodate Plaintiff—a severely disabled individual—in  
23 this context constitutes discrimination within the meaning of the statute. Disabled individuals,  
24 including EHS disabled individuals, must be protected from acts of discrimination, disparate  
25 treatments and/or failure to make reasonable accommodations necessary to accommodate Plaintiff's  
26 disability.

27 51. The County acted intentionally, willfully, and in plain disregard for the rights of  
28 others, including Plaintiff's rights.







1           75.     At all times described herein, the Plaintiff was vested with fundamental and basic  
2 U.S. Constitutional rights to self-defense, personal security and bodily integrity, which are most  
3 acute when Plaintiff is within the confines of her own home.

4           76.     Plaintiff's fundamental rights include the right to preserve the integrity of her body,  
5 to avoid pain, and to preserve her life.

6           77.     Such rights of personal security, to preserve bodily integrity, and to protect oneself  
7 from harm while inside the confines of her own home, and to be secure within one's own home, are  
8 both fundamental to, and implicit within, the nation's scheme of ordered liberty, deeply rooted in  
9 our Nation's history, and protected under the Due Process clause of the 5th Amendment to the  
10 United States Constitution.

11          78.     The Plaintiff's fundamental right to protect herself to assure her own personal safety  
12 from bodily harm extend to encompass the right to protect herself against any and all extraneous  
13 dangers or intrusions, of any type, which may intrude into her home and thereby cause her to sustain  
14 harm or injury while therein.

15          79.     Such fundamental and basic rights constitute both liberty and property rights  
16 guaranteed and afforded protection by the Due Process Clause of the 5th Amendment to the United  
17 States Constitution.

18          80.     Under Article I, Section 1 of the Constitution of the State of California, the Plaintiff  
19 is contemporaneously vested with Constitutional rights to defend her life and liberty, and to pursue  
20 and obtain safety.

21          81.     Inasmuch as the Defendants interpret, and rely upon, 47 U.S.C. 332(c)(7)(B)(iv) of  
22 the TCA as prohibiting the Plaintiff, who is disabled and suffers from severe EHS symptoms, from  
23 raising objection to being bombarded by uninterrupted, extremely high levels of RF radiation while  
24 inside the confines of her own home, Plaintiff asserts that such interpretation against her violated  
25 her Constitutional rights—guaranteed to her under the United States Constitution, the 5th  
26 Amendment to the United States Constitution, and Article 1, § 1 of the California Constitution.

27  
28





1 discriminatory conduct towards EHS persons, as mandated by 42 U.S.C. § 12101(b)(1), and to  
2 eliminate, to the extent practicable, the effects of its unlawful housing practices as described herein;

3 (vi) awarding punitive damages under 42 U.S.C. § 3613(c); and

4 (vii) awarding attorneys' fees and costs under 42 U.S.C. § 12205 and 42 U.S.C. §  
5 3613(c)(2), as well as assessing a civil penalty against the Defendants in an amount authorized by  
6 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest.

7 B. On the Third Cause of Action (FEHA claim):

8 (i) declaring that the Defendants' actions violate the California Fair Employment  
9 and Housing Act, Cal. Gov. Code § 12955;

10 (ii) enjoining the County, its officers, employees, agents, successors and all other  
11 persons in active concert or participation with it, from discriminating on the basis of disability  
12 against any disabled individuals suffering from electromagnetic hypersensitivity, in violation of the  
13 California Fair Employment and Housing Act;

14 (iii) enjoining Edison, its officers, employees, agents, successors and all other  
15 persons in active concert or participation with it, from discriminating on the basis of disability  
16 against any disabled individuals suffering from electromagnetic hypersensitivity, in violation of the  
17 California Fair Employment and Housing Act;

18 (iv) enjoining Edison from operating its wireless facility until the County  
19 determines if Plaintiff is disabled and entitled to a reasonable accommodation;

20 (v) ordering the Defendants to take all affirmative steps to ensure compliance  
21 with the California Fair Employment and Housing Act, including any and all steps necessary to  
22 prevent the recurrence of any discriminatory conduct towards EHS persons, and to eliminate, to the  
23 extent practicable, the effects of its unlawful housing practices as described herein;

24 (vi) awarding punitive damages under Cal. Gov. Code § 12989; and

25 (vii) awarding attorneys' fees and costs under Cal. Gov. Code § 12989.

26 C. On the Fourth Cause of Action (U.S. Constitution, Fifth Amendment to the U.S.  
27 Constitution, and Cal. Constitution, Art. I, § 1 claims):

28

1 (i) declaring that her United States Constitutional rights, and California  
2 Constitutional rights, have been violated;

3 (ii) declaring that 47 U.S.C.A. §332(c)(7)(B)(iv) of the Telecommunications Act  
4 of 1996 is unconstitutional, *as interpreted* and *as applied* against the Plaintiff herein;

5 (iii) declaring as null and void *ab initio* the authorization, approval, and/or  
6 execution of any of Edison's administrative or use permits granting Edison permission to operate its  
7 wireless facility in close proximity to the Plaintiff's Residence, and directing that no further  
8 approvals of an administrative or use permit may be granted by the County for proposed wireless  
9 installations, without the County first conducting new hearings at which the Plaintiff shall be  
10 permitted to raise her lawful concerns and present her ADA and FHA accommodation request  
11 described herein;

12 (iv) awarding nominal damages of \$1 against the Defendants; and

13 (v) awarding statutory attorneys' fees and costs as legally authorized by laws  
14 inclusive of, but not limited to, 42 U.S.C. §1988.

15 D. Awarding any additional relief as the interest of justice may require.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands a trial by jury for all the issues a jury properly may decide and for all of  
18 the requested relief that a jury may award.

19 Dated: April 22, 2021

Respectfully submitted,

20 **POLLOCK & JAMES, LLP**

21 By: /s/ Mark S. Pollock  
22 Mark S. Pollock (SBN xxx) (*Local Counsel*)  
23 1827 Clay Street, Suite 300  
Napa, CA 94559

24 **CAMPANELLI & ASSOCIATES, P.C.**

25 Andrew J. Campanelli (*pending pro hac vice*)  
26 1757 Merrick Ave, Suite 204  
Merrick, NY 11566

27 *Attorneys for Plaintiff Elizabeth Barris*  
28