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**UNITED STATES DISTRICT
COURT**

**CENTRAL DISTRICT OF
CALIFORNIA**

13
BRADFORD D. LUND,

Case No. 2:20-cv-1894-SVW-JC

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PLAINTIFF, **FIRST AMENDED COMPLAINT**

16

v. **(JURY TRIAL DEMANDED)**

17

THE HONORABLE DAVID J.

18

COWAN, Los Angeles County Superior

19 Court Judge, LOS ANGELES
COUNTY SUPERIOR COURT for the
State of

20 California

DEFENDANTS.

21

22

23

1. This case involves the Plaintiff, Bradford D. Lund (“Mr. Lund”), the
24
grandson of entertainment tycoon Walt Disney. For the past decade, Mr. Lund has
been entrapped in the probate division of the Los Angeles County Superior Court

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 2 of 36 Page ID #:328](#)

1

fighting against hostile trustees to receive his beneficiary distributions from his trusts.

2

As one of their tactics to keep Mr. Lund from receiving his trust distributions, Mr.

3

Lund’s hostile trustees, in concert with certain of Mr. Lund’s estranged family

4

5

members, alleged that he was incapacitated and needed a guardianship and

6

conservatorship. After seven years of fighting that battle in the Arizona courts, and

25

26

7 after a 10-day bench trial, Mr. Lund was victorious in all respects and was found to
8

9 have capacity, resulting in a dismissal of that case. The disgruntled estranged family
10 members appealed the case and the Arizona appellate court unanimously affirmed the
11 trial court's decision. The Arizona Supreme Court refused review, and a final
12

Arizona judgment was filed in August, 2016. Additionally, another
California

13

14 Superior Court judge found that Bradford Lund had capacity to choose successor
15 trustees for one of his other trusts after similar allegations were previously made by
16

Mr. Lund's hostile trustees. In the face of these specific findings and the decade long
17

18 history of litigation without any guardian ad litem, and without notice or any
hearing,

19 the Hon. David J. Cowan, on his own *sua sponte* Order to Show Cause, appointed a
20 limited purpose guardian ad litem over Mr. Lund without any evidentiary hearing
or

21

22 notice. In so doing, Judge Cowan refused to take judicial notice of the Arizona
23 decision in the form of either judicial comity or full faith and credit.

24

2. That imposition of a guardian ad litem has imposed significant constraints
on Mr. Lund's liberty and property interests in violation of the 14th

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 3 of 36 Page ID #:329

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1 Amendment, and his constitutional right to due process of law by not having any
2 hearing. Indeed, his attorneys (3 current and 1 former) have filed affidavits under
3 oath which stated that Mr. Lund is, in fact, competent, and does not need any
4
5 guardian ad litem – consistent with the specific findings of fact made by Judge
6
7 Oberbillig in Arizona, and Judge Beckloff in California, that were completely
8 ignored
9 by Judge Cowan.

9 3. The decision by Judge Cowan to appoint a GAL sua sponte, without a
10 hearing, contradicting the factual and legal findings of Judge Oberbillig after a
11 10-
12 day bench trial in Phoenix, Arizona, and utterly ignoring constitutional
13 requirements
14 of due process of law is all too reminiscent of a perspective where facts do not
15 matter
16
17 but alternative facts do, where the constitution does not matter and where the rule
18 of
19 law is set aside and replaced by the rule of subjective, fact-free decision-making.

16 4. After a ten-day bench trial in Arizona, as explained above, on a
17
18 guardianship/conservatorship petition, the Honorable Robert Oberbillig
19 determined
20 that Mr. Lund was not “not incapacitated,” not in need of a guardianship or
21 conservatorship, and that “Although not his burden of proof, Bradford Lund has
22
23
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22 proven that he deserves the freedom in life to make his own choices.” (**Exhibit A**, p.
23 3-6). Furthermore, the Supreme Court of Arizona specifically determined that Mr.
24
Lund was entitled to his property and lifted all stays in the Arizona probate matter,
while also denying the petition for review.

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 4 of 36 Page ID #:330

1 5. In 2009, the Trustees sought to have a guardian ad litem appointed over
2
Mr. Lund but dismissed that requested relief before it was ruled on when the parties
3 settled. In 2012, the Trustees sought a Cal. Evidence Code § 730 Expert to advise the
4
5 court on Mr. Lund’s competency. The Trustees motion for a §
730 Expert was
6 denied by the Hon. Mitchell L. Beckloff.
7
8 6. In a 2013 bench trial before the Hon. Mitchell L. Beckloff, in regard to
9
an issue of whether Mr. Lund was competent to appoint his successor trustees on one
10 of his trusts, he was found to have capacity. Indeed, there was no guardian ad litem
11 appointed over Mr. Lund at any time during that California probate proceeding, nor
12 any of the appeals following that judgment. Specifically, Judge Beckloff determined
13
14 that: “Evidence presented during the trial did not persuade the court that Mr.
Lund
15 lacked capacity to exercise his Trustee Removal Power.” (**Exhibit B**, p. 32).

25

26

16

Additionally, Judge Beckloff found: “The evidence did not rebut the
statutory

17

18 presumption that Mr. Lund had capacity to exercise the Trustee Removal Power.”

19

(**Exhibit B**, p. 32). Regarding the allegations that Mr. Lund was subject to undue
20 influence, Judge Beckloff specifically found: “There is no direct evidence that Mr.

21

22 Lund was unduly influenced to exercise the Trustee Removal Power.” (**Exhibit B**, p.

23 33). Ultimately, Judge Beckloff specifically found: “The court finds that Mr. Lund’s

24 exercise of the Trustee Removal Power was knowing, voluntary, and intelligent.”

(**Exhibit B**, p. 35).

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 5 of 36 Page ID #:331](#)

1 7. In the present California proceedings, Mr. Lund was given no notice or

2

hearing. Instead, without notice Judge Cowan, ordered a limited purpose guardian ad
3 litem over Mr. Lund on the baseless and unproven allegations by the Trustees of the

4

5 Sharon D. Lund Residuary Trust fbo Bradford D. Lund (the “BRT”) that Mr.
Lund

6 was incapacitated, in the face of the Arizona decision and previous California
7 decisions otherwise. In his written order appointing the limited guardian ad litem,

8

9 Judge Cowan stated that Mr. Lund had not proven his capacity, despite the statutory

10 presumption that all persons have the capacity to make decisions and to be

25

26

11 responsible for those acts and/or decisions. This was not Mr. Lund’s burden to
12 overcome. In California, and throughout the country, the statutory presumption is
13

14 that all individuals have capacity and are competent, the burden is placed on the
party

15 challenging competence or capacity. However, Judge Cowan turned that burden on
16 its head and, again, required Mr. Lund to prove that he was competent and had 17

18

capacity. 19

8. The guardian ad litem has complete control over Mr. Lund’s legal
20 decisions and actions, together with interfering with Mr. Lund’s right to choose his
21

22 own attorneys. Specifically, the order appointing the guardian ad litem grants to that
23 position the following powers to: (1) “facilitat[e] a new settlement agreement”; (2)
24 determine “whether the Court can grant Bradford’s request to appoint” a trustee; (3)
“provide the Court with a report on how to streamline future litigation” if a new
[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 6 of 36 Page ID #:332](#)

1 settlement is not possible; (4) determine “whether Bradford’s lawyers should be
2 disqualified due to conflict”; (5) determine “whether the Court should remove [the
3
co-trustees of Mr. Lund’s 1992 Trust] pursuant to the OSC re: removal based on their
4

5 refusal to provide information regarding the Nevada Trust or any other reason”;
(6)

6 determine “whether the interim stay should be lifted” on the 1992 Trust case; (7)
7 whether approval of the settlement could be conditioned on a court order before
25

26

9 decanting of assets in the Nevada Trust; and (8) representing Mr. Lund “on any
10 appeal of this order.” (**Exhibit C**, p. 18-19).

11

12 9. Despite the lack of evidentiary basis for the deprivation of Mr. Lund’s
13 liberty, Mr. Lund was forced into the *de facto* custody of a guardian ad litem. The

14

15 statutes enacted in California permitting such a deprivation of liberty are
16 unconstitutional because they have denied Mr. Lund any due process. Specifically,
17 the statutes fail to (1) require a judge to provide a party with any due process, not

18

19 even a hearing, before subjecting him to the losses of liberty by appointing a guardian
20 ad litem; (2) set effective limits for the *de facto* custody of a guardian ad litem,
21 including limits on the duration; and (3) provide any post-deprivation remedy; and (4)

22

23 fail to provide for a direct appellate remedy to challenge the appointment.

24 10. Mr. Lund remains in the *de facto* custody of the guardian ad litem
25 wrongly imposed on him pursuant to the unconstitutional State of California
26 statutes.

Mr. Lund’s constitutional and civil rights have been violated by a public
official

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 7 of 36 Page ID #:333

1 under color of law and thus, such actions cannot be allowed to stand in a nation of
2 laws, not men; in a nation that cares about the constitution and the rule of law.

3

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26

Therefore, Mr. Lund brings this complaint as follows:

4

5

JURISDICTION

6

11. This action is brought pursuant to 42 U.S.C. § 1983 and Fourteenth Amendment to the United States Constitution. Jurisdiction is proper under 28 U.S.C.

7
8

9 § 1331 and § 1343(a)(3).

10 12. Pursuant to 42 U.S.C. § 1983, “in any action brought against a judicial
11 officer for an act or omission taken in such officer’s judicial capacity,
injunctive
12 relief shall not be granted unless a declaratory decree was violated, or
declaratory

13

14 relief was unavailable.” In the present matter, declaratory relief is available and that
15 is the only relief requested. *See Yellen v. Hara*, No. CV 15-00300 JMS-KSC, 2015
16 WL 8664200 (D. Haw. Dec. 10, 2015).

17

18 In *Yellen*, the judicial officer was named as a party and the case was not

19 ¹ dismissed under the *Younger* abstention doctrine of the *Rooker-Feldman*
doctrine.

20

There, the *Yellen* court stated:

21

¹ The claims against the judge were dismissed because the plaintiff was seeking monetary damages and injunctive relief which are prevented. In the present case, there are no damages or injunctive relief sought.

25

26

22 Applied here, although state proceedings are ongoing, they are not
“quasicriminal enforcement actions,” nor do they “involve a state's interest in 23
enforcing the orders and judgments of its courts.” *Id.* This action involves

24

1 routine state-court orders appointing individuals to assist the court—
guardianship, conservatorship, and Kokua Kanawai appointments. These
2 are not orders that involve “the process by which a state ‘compels
3 compliance with the judgments of its courts.’” *Id.* (quoting *Potrero Hills
Landfill, Inc. v. Cty. of Solano*, 657 F.3d 876, 886 (9th Cir. 2011)). In
4 short, *Younger* does not apply, and provides no basis for dismissal or
5 abstention.

6 *Yellen*, 2015 WL 8664200 at * 7. In the present case, this case is not a
“quasi-criminal
7 enforcement action” but similarly, involves routine state-court orders
appointing an
8
9 individual to assist the court.

10 13. Jurisdiction is also proper pursuant to Title II of the Americans With
11 Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131 et seq. *See
Tennessee v.*

12 *Lane*, 541 U.S. 509 (2009). In *Lane*, the United States Supreme Court held that Title
13

14 II of the ADA, as applied to cases implicating fundamental rights of access to the
15 courts, constitutes a valid exercise of Congress’ enforcement power under the

25

26

18 14. Venue is proper in the United States District Court or the Central District
19 of California pursuant to 28 U.S.C. § 1391(b).

20

21 15. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201,
22 for the purpose of determining a question of actual controversy between the parties.

23 Mr. Lund seeks a declaration from this Court that the laws of the State of California,

24

as executed, are unconstitutional because Mr. Lund is “in custody” by virtue
of the appointment of the guardian ad litem without due process of law. This de facto

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 9 of 36 Page ID #:335](#)

1 custody of the guardian ad litem continues despite specific findings on previous
2 occasions that Mr. Lund is not incapacitated, not in need of a guardian or a
3 conservator, together with under oath declarations from his attorneys that Mr. Lund
4
5 is, in fact, competent. The ongoing unwillingness to correct the custody of the
6 guardian ad litem that Mr. Lund has been placed in, is a continuing deprivation of Mr.
7
Lund’s due process rights.

8

9 16. This is also an action that the Los Angeles County Superior Court and
10 Judge Cowan have discriminated against Mr. Lund based upon the perceived

25

26

11 conception that he suffers from Down syndrome. Mr. Lund is seeking a
12 decision on
13 this and the monetary damages that are called for based upon Title II of the
14 ADA.

13

14

PARTIES

15

16 17. Plaintiff, Bradford D. Lund, is and was, at all times relevant herein a
17 citizen of the United States, a resident of Clark County, Nevada, and involved in

17

18 ongoing litigation in the Los Angeles County Superior Court.

19

19 18. Defendant, the Honorable David J. Cowan, is a judge of the Los Angeles
20 County Superior Court for the State of California.

21

22 19. Defendant, the Los Angeles County Superior Court, is a division of the
23 State of California.

24

20. Defendants are named only in their official capacities. Defendants were
acting and continue to act under color of state law in the deprivation of Mr. Lund's

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 10 of 36 Page ID #:336](#)

1 constitutionally protected rights. Both Defendants, Judge Cowan and the Los
2 Angeles County Superior Court, are hereinafter referred to collectively as "Judge
3 Cowan".

25

26

4

5 21. L. Andrew Gifford, Robert L. Wilson, Douglas Strode, and First
6
7 Republic Trust Company (“FRTC”) (collectively, the “Trustees”), as Trustees of the
8 Sharon D. Lund Residuary Trust fbo Bradford D. Lund; as Trustees of the Sharon D.
9 Lund Residuary Trust fbo Michelle A. Lund, FRTC as former trustee of the Bradford
10 Disney Lund 1992 Trust, and Sharon D. Lund 1986 Irrevocable Trust fbo Bradford
11 D. Lund; and FRTC as a Co-Trustee of the Lillian B. Disney Trust fbo Bradford D.
12 Lund are not named as defendants or real parties in interest because there is no
13 pecuniary interest by the trusts.

14

STATEMENT OF FACTS

15

Background Facts:

16

17

18 22. Mr. Lund is a forty-nine-year-old man who is the heir to the fortune of
19 entertainment and media pioneer Walt Disney. The litigation in California
20 began on
21 October 20, 2009 and the litigation in Arizona began six days later on October 26, 21
22 2009.

23 23. Mr. Lund unquestionably prevailed in the Arizona Matter and benefited

24

25

24 from detailed and specific findings of fact and conclusions of law made by
Judge

Oberbillig. The contents of those findings are attached as **Exhibit A**, and specifically
[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 11 of 36 Page ID #:337](#)

1 incorporated by reference as if set forth in full
herein. Judge Oberbillig found in

2 pertinent part:

3

1) Petitioners have failed to meet their burden of proof by clear and

4

convincing evidence or even by a preponderance of the evidence as to the
5 request for a Limited Guardianship.

6 2) Petitioners have failed to meet their burden of proof by a 7
preponderance of the evidence to establish a Limited Conservatorship or other less
restrictive alternatives. 8

3) Bradford Lund has established by clear and convincing presently,

9

in 2016, he is not incapacitated, an appointment of a guardian is not 10
necessary to provide for his demonstrated needs, and Bradford Lund's needs are
currently being properly met by less restrictive means.

11

12 4) The Court-Appointed Independent Neuropsychologist Dr. Daniel
Blackwood testified that "Mr. Lund is not in need of a guardian or 13 conservator as
of May 3, 2011."

14

15 5) Court Investigator Robert Segelbaum testified that as of June 2011,
he had "ambivalent" feelings whether a guardianship
and/or

25

26

conservatorship were warranted. He deferred to Dr. Blackwood,
although
16 he did conclude “there does not appear to be any reason to secure a 17
guardianship at this time,” referring to as of June 2011.

18 6) The Petitioners presented no credible expert testimony that 19
Bradford Lund needs a limited guardian or conservator.

20 7) Bradford Lund’s treating physicians, Dr. Duane and Dr. Chung, were the only
neurologists who have examined Bradford Lund since May

21
2011 and both testified Bradford Lund was not incapacitated and not in
22 need of a guardian or conservator to effectively manage his personal care,
medical, or financial matters so long as Bradford Lund continued to rely
23 on the advice of trusted family members and professional advisors.

24

8) Petitioners concede Bradford Lund has the capacity to manage
all of his activities of daily living.

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 12 of 36 Page ID #:338](#)

1 9) Michelle Lund testified in the Superior Court of California on December
17, 2013, that Bradford Lund is “competent” and “he ultimately
2 had the capacity to decide what he would want to do in a business sense.”

3

[...]

4

5 12) Bradford Lund is able to effectively manage his medical care, estate,
and other affairs. Bradford Lund has consistently demonstrated 6 that he makes
mature and appropriate financial decisions. He properly relies and has relied upon
the advice of his father, Sherry Lund, Rachel

7

Schemitsch, Robert Rosepink, Douglas Wiley, and others as any

25

26

8 reasonable person of substantial wealth would do in making important decisions involving his personal affairs, estate, and financial matters. 9

10 [...]

11 15) Bradford Lund, now 45, has been described by Petitioners and the 12 other witnesses as a very “frugal” man with his money.

13 16) There was no credible testimony Bradford Lund has ever wasted or dissipated any property or funds at any time in his life.

14

15 17) The weight of the credible evidence does not support Petitioners’ claim that Respondents are out to get Bradford Lund’s funds or have 16 wrongfully benefitted from or improperly used his funds.

17

18) There was undisputed evidence Bradford Lund’s father has assisted 18 Bradford Lund and Michelle Lund in making collectively over \$100 million in profits.

19

20 19) As stated by estate planning attorney specialist Douglas Wiley, the Nevada trust is an excellent method for Bradford Lund to protect his assets 21 from both creditors and predators. Further, the trust is set up to preclude 22 Bradford Lund from wasting or dissipating his assets.

23 [...]

24

22) Although not his burden of proof, Bradford Lund has proven that he deserves the freedom in life to make his own choices.

(Exhibit A, p. 3-6).

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 13 of 36 Page ID #:339

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1 24. The California Litigation had a thirteen-day bench trial in Los Angeles
2
3 Superior Court Case Nos. BP119205 (*In re The Sharon D. Lund Residuary Trust fbo*
4 *Bradford D. Lund*); BP120814 (*In re The Bradford Disney Lund 1992 Trust*);
5 and
6 BP129815 (*In re The Sharon D. Lund 1986 Irrevocable Trust fbo Bradford D. Lund*).

7 There was no guardian ad litem appointed in any of the California Litigation at all.
8 Ultimately, Judge Beckloff made the following findings on the only issue presented
9 that had anything to do with competence or capacity.

10 a. “Evidence presented during the trial did not persuade the court
11 that Mr. Lund Lacked capacity to exercise his Trustee Removal
12 Power.
13 While there are legal proceedings pending in Arizona to conserve Mr.
14 Lund, such pending litigation alone is insufficient to establish
15 that Mr.
16 Lund lacked mental capacity to exercise his Trustee Removal
17 Power.”
18 **(Exhibit B, p. 32)**

19 b. “The evidence did not rebut the statutory presumption that Mr.
20 Lund had capacity to exercise the Trustee Removal Power.
21 While

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23
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capacity must be considered in the context of the decision being made,
17 the evidence before the court did not establish that Mr. Lund lacked
18 capacity such that he could not make independent decisions in
19 connection with the Trustee Removal Power or that he did not
understand the rights, duties, responsibilities, risks, benefits, and
reasonable alternatives involved in or affected by a decision to
exercise
20 the Trustee Removal Power.” (**Exhibit B**, p. 32).

21
c. “There is no direct evidence that Mr. Lund was unduly influenced
22 to exercise the Trustee Removal Power.” (**Exhibit B**, p. 33).

23 25. Ultimately, Judge Beckloff found:

24

After having considered the evidence, the court cannot find that
Mr. Lund’s free will was overborne by another. Mr. Lund elected to
exercise his Trustee Removal Power with the advice and assistance of
his counsel. Mr. Lund’s exercise is not without articulated reasons.
While Mr. Lund

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 14 of 36 Page ID #:340](#)

1 is dependent upon those around him, the evidence is insufficient to establish that Mr.
Lund is not acting of his own will and desire on the
2
issue. The court finds that Mr. Lund’s exercise of the Trustee Removal 3
Power was knowing, voluntary, and intelligent.

4

(**Exhibit B**, p. 35).

5

The Current California Litigation:

6

7 26. The California Litigation continued and now involves five separate case
25
26

8 numbers: BP055495 (*In re The Lillian B. Disney Trust fbo Bradford D. Lund*);
9
10 BP119204 (*In re The Sharon D. Lund Residuary Trust fbo Michelle A. Lund*);
11 BP119205; BP129814; BP129815 (collectively, the “Lund Trust Matters”).

12 27. On December 19, 2018, Judge Cowan, on his own motion, issued two
13 separate orders to show cause. One of those orders to show cause involved
14 whether
15 the court should appoint a guardian ad litem for Mr. Lund (the “OSC”).
16 Judge

17 Cowan specifically set a hearing on the order to show cause to be heard on
18 February

19 ² Both Mr. Lund and the opposing party, Mr. Lund’s trustees, filed 7, 2019.

20 Responses to Judge Cowan’s OSC on February 28, 2019.

21 28. The parties of the Lund Trust Matters all agreed to continue the OSC
22 hearing in order to engage in mediation in an effort to settle the case, or
23 portions of
24 the case. The OSC hearings were continued with Judge Cowan’s blessing
pursuant to

² That date was continued to a later date given the parties stipulation for extensions of time for the filing of the briefing, but the hearing on the OSC never actually occurred.

25

26

1 his subsequently issued order for the parties to attend mediation. No guardian ad
2
litem was appointed over Mr. Lund prior to mediation.

3
4 29. Mr. Lund, without any guardian ad litem or alternate decision-maker,
5 together with the Co-Trustees of the Bradford Disney Lund 1992 Trust, on the one
6
hand, and the Trustees, on the other hand, engaged in a two-day in-person
7 mediation
on March 25 and 26, 2019, before the Hon. Leslie Green, a retired Los
8 Angeles

9 County Superior Court Probate Judge. Additionally, the parties engaged in another
10 approximately two weeks of negotiations, assisted by Judge Green (ret.), which
11 resulted in a complete and total global Settlement Agreement. Mr. Lund signed the
12 settlement agreement himself, and the Trustees accepted his signature, without any
13
14 guardian ad litem of any kind appointed over Mr. Lund.

15
16 30. Pursuant to the Settlement Agreement, the agreement was presented to
17
Judge Cowan for approval which would finally put an end to over a
decade of

25

26

18 litigation between the parties to the Lund Trust Matters. For the first time in a
decade

19 all of the parties stood before the Los Angeles County Superior Court, and in a
20 unified voice asked for the approval of the Settlement Agreement which would
21

22 finally end all of the litigation.

23 31. On June 25, 2019, during a status conference regarding the approval of
24 the settlement agreement, Judge Cowan stated: “Do I want to give 200 million
[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 16 of 36 Page ID #:342](#)

1 dollars, effectively, to someone who may suffer, on some level from Down
2
syndrome? The answer is no.”

3

4 32. Mr. Lund’s attorney immediately informed Judge Cowan that it had been

5 proven that Mr. Lund unquestionably did not suffer from Down syndrome and

6

7 requested that Judge Cowan retract the statement. Judge Cowan responded by
7 stating:
“Denied.” 8

9 33. Judge Cowan refused to approve the Settlement Agreement in its

10 entirety and only approved portions of the same including the substantial
payment of

11

\$14.5 million in termination fees to the adverse party, the Trustees.

12

25 34. On September 27, 2019, without any notice or hearing, Judge Cowan

26

13

14 issued an Order appointing a limited purpose
guardian ad litem, Margaret Lodise,

15 over Mr. Lund.

16

17 35. In California the appointment of a guardian ad litem is not an appealable

18 order. (*See In re Marriage of Caballero*, 27 Cal. App. 4th 1139, 1149 (1994), *In re*

19

Hathaway's Estate, 111 Cal. 270, 271 (1896)). Mr. Lund had no pre-deprivation
20 remedy or any post-deprivation remedy to remove the limited purpose
guardian ad 21

22 litem.

23

24 36. On October 17, 2019, Mr. Lund timely filed a Petition for Writ of

Mandate with the California Court of Appeal, Second District, regarding the
improper appointment of a guardian ad litem. On November 14, 2019, the California

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 17 of 36 Page ID #:343](#)

1 appellate court summarily denied Mr. Lund's writ petition. On November 20, 2019,

2

Mr. Lund timely filed a Petition for Review with the Supreme Court of California

3

challenging the summary denial of the writ petition. On November 26, 2019, the

4

5 California high court summarily denied Mr. Lund's petition for review.

25

26

6

7
37. Mr. Lund exhausted his state court remedies regarding the imposition of
8 a limited purpose guardian ad litem being appointed over him.

8

9 38. The imposition of the limited guardian ad litem without any hearing has
10 resulted in a deprivation of Mr. Lund's liberty and property interests.
Specifically,

11 the limited guardian ad litem, was ordered to do the following:

12

13 a. "[F]acilitat[e] a new settlement agreement" between the parties of

14

15 the Lund Trust Matters;

16 b. Determine "whether the Court can grant Bradford's request to
17 appoint" a trustee;

18

19 c. If a new settlement is not reachable, "provide the
20 Court with a

21 report on how to streamline future litigation";

22

23 d. Determine "whether Bradford's lawyers should be disqualified

24

25 due to conflict";

26

27 e. Determine "whether the Court should remove [the co-trustees of

28

29 Mr. Lund's 1992 Trust] pursuant to the OSC re: removal based on their

30 [Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 18 of 36 Page ID #:344](#)

31

32

1 refusal to provide information regarding
the Nevada Trust or any other

2 reason”;

3

f. Determine “whether the interim stay should be lifted” on the 1992

4

Trust case;

5

6

7 g. Determine whether approval of the settlement could be
conditioned on a court order before decanting of assets in the Nevada

8

Trust; and

9

h. Represent Mr. Lund “on any appeal of this order.”

10

11

(**Exhibit C**, p. 18).

12

39. The above actions by the guardian ad litem represent a deprivation of not

13

14 only Mr. Lund’s liberty interests, but also relegates Mr. Lund into the de facto
15 custody of guardian ad litem. Indeed, the guardian ad litem is, in fact, has already
16 begun to engage in renegotiation of the settlement with the Trustees. (**Exhibit D**, p.

17

18 3:15-19).

19

40. Judge Cowan has deprived Mr. Lund of his liberty and property. The

20

Constitution imposes upon him the State’s concomitant duty to see that no

21

25

26

22 deprivation occurs without adequate procedural protections. In this case, Judge
23 Cowan failed to assure that Mr. Lund was accorded due process prior to a loss of
24 liberty or property.

The 1992 Trust Litigation

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 19 of 36 Page ID #:345

1 41. On or about, November 5, 1992, Mr. Lund funded the Bradford Disney
2
Lund 1992 Trust (the “1992 Trust”).

3
4 42. Mr. Lund is the settlor of the trust and the trusts sole lifetime
5 beneficiary. The 1992 Trust was to pay income to Mr. Lund not less often than
6
quarterly. The 1992 Trust also required mandatory birthday distributions when Mr.
7
Lund achieved the age of 35, 40, and 45.

8
9 43. The 35th Birthday Distribution was for one-third of the trust estate. The
10 40th Birthday Distribution was for one-half of the trust estate. The 45th
Birthday

11
12 Distribution was for the remaining balance of the trust estate. The only exception to
the Birthday Distributions was that if the trustees of the trust determined that Mr.

13
14 Lund “has not theretofore demonstrated the maturity and financial ability
to manage

25

26

15 and utilize such funds in a prudent and responsible manner.”

16

17 44. When Mr. Lund was 44 years old, and just before he was about to turn

18 45 years old, the trustee of the 1992 Trust, Mutual of Omaha Bank, determined that
19

20 Mr. Lund should receive his 35th and 40th Birthday Distributions. Mutual of Omaha
21 determined in their discretion that the exception, set forth above in paragraph 27, to

22 the distribution did not apply.

23 45. At the same time, and in the same petition, Mutual of Omaha indicated
24 that it would make the decision on the 45th birthday distribution after Mr. Lund
turned 45, on June 5, 2015.

25

26

21

22 right to challenge such expenses.”

23

24

25

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 21 of 36 Page ID #:347

1 49. The reason for Judge Paul’s interim stay was because of Michelle

2

Lund’s objections in the 1992 Trust Case which have since been settled.

3

4 50. On September 27, 2018, Mr. Lund and Michelle settled all issues in the

4

5 1992 Trust case. Included in the settlement was that Michelle would not “object to
6 the distribution of the proceeds of the 1992 Trust by the Co-Trustees Sherry and Dew
7 to Bradford in accordance with his directives.”

8

9 51. The settlement between Mr. Lund and Michelle Lund put all issues,

10 except objections to accountings to rest. FRTC, as a former trustee, was
merely a

11 purported creditor seeking outstanding attorneys’ fees, but have never filed an
12 affirmative pleading seeking any fees. Judge Paul’s order required a
holdback of

13

14 \$600,000. Mr. Lund and Mutual of Omaha Bank settled regarding the 1992 Trust On

15

25

26

February 13, 2019.

16

52. Mr. Lund moved to lift the stay on the 1992 Trust in October, 2019. The
17

18 Hon. David J. Cowan denied that Motion and required Mr. Lund to submit the issue
19 as a petition. The Co-Trustees of the 1992 Trust filed the Petition to Lift Interim Stay
20 on January 8, 2019. 21

22 53. On September 27, 2019, the court effectively again denied Mr. Lund the
23 right to his own personal property even though there are no longer any issues
24 regarding the 1992 Trust except purported creditor issues by FRTC (former
trustee of the 1992 Trust) which have a specific holdback.

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 22 of 36 Page ID #:348](#)

1 Mr. Lund has been denied his due process and access to his own personal assets by
2 the California Superior Court. Despite the resolution of all issues in the 1992 Trust 3
except the objections to the accountings filed by FRTC, the California Superior
Court

4

5 refuses to remove its order preventing Mr. Lund from receiving his own assets.

6

Full Faith And Credit Clause

7

54. The Full Faith and Credit Clause of the United States Constitution reads
8

9 in pertinent part: “Full Faith and Credit shall be given in each State to the public
10 Acts, Records and judicial Proceedings of every other State. And the Congress may
11 by general Laws prescribe the Manner in which such Acts, Records and Proceedings

25

26

12 shall be proved, and the Effect thereof.”

13

14 55. Despite the constitutional requirement that Full Faith and Credit shall be
15 given to the judicial acts, records, and proceedings of every other state, Judge
Cowan
16 ignored the 2016 Arizona Judgment and appointed a limited guardian ad litem
over 17

18 Mr. Lund.

19

20 56. Judge Cowan specifically ignored the findings made in an Arizona
21 Superior Court In & For Maricopa County case involving Mr. Lund. In *In re The*
22 *Guardianship and Conservatorship of Bradford D. Lund*, Maricopa County Case No.
23 PB2009-002244, specific and detailed findings of fact and conclusions of law were
24 made, that were unanimously affirmed by the Arizona Court of Appeals, Division
One. Judge Cowan specifically ignored the findings that Mr. Lund was competent,
[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 23 of 36 Page ID #:349](#)

1 had capacity, was not in need of any guardian or conservator, and “Although not
his

2 burden of proof, Bradford Lund has proven that he deserves the freedom in life to
3
make his own choices.”

4

5 57. As stated above, Mr. Lund incorporates by reference all of the findings

6

25

26

of fact and conclusions of law made by Judge Oberbillig in the 2016 Arizona

7

Judgment, attached as **Exhibit A**, as if set forth in its entirety herein.

8

9 58. The Trustees and the Arizona Petitioners were in privity because they
10 had a common interest agreement between them. The privity between the
11 Trustees
12 and Arizona Petitioners applies because a party is adequately represented for
13 purposes of the privity rule “if his or her interests are so similar to a party’s
14 interest

13

14 that the latter was the former’s virtual representative in the earlier action.” *Citizens*
15 *for Open Access to Sand and Tide, Inc. v. Seadrift Ass’n*, 60 Cal. App. 4th 1053, 1070

16

(Cal. App. 1998). Having a common interest agreement between the Trustees and

17

18 Arizona Petitioners required them to have the same legal interest. *See OXY Res.*

19

20 *California LLC v. Superior Court*, 115 Cal. App. 4th 874, 891 (2004) (“For
21 the common interest doctrine to attach, most courts seem to insist that the two parties

21

22 have in common an interest in securing legal advice related to the same matter—and

23 that the communications be made to advance their shared interest in securing legal

24 advice on that common matter.”). Therefore, the Arizona Petitioners and the

Trustees were in fact, in privity with each other.

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 24 of 36 Page ID #:350](#)

25

26

21

22 issued a 17-page memorandum decision. Included in the Arizona appellate court's
23 discussion of the evidence is the following statement:

24

Andrew Gifford, one of the trustees of the Sharon D. Lund Residuary Trust for the benefit of Bradford, testified that Bradford had the capacity to sign documents in 2005 and 2007 establishing, among other things, a fee arrangement to appoint a successor trustee in 2007, and to consent to

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 25 of 36 Page ID #:351

1 an increase in the compensation for the management of his personal accounts in 2005.

2

3 (**Exhibit E**, p. 11 ¶ 25). The detailed memorandum decision includes specific analysis

4

of the guardianship, conservatorship, assessment of Mr. Lund, and guardian ad litem

5

issues, among other things. Ultimately, the Arizona Court of Appeals found: "We

6

7 affirm the superior court's judgment denying Olson's petition for guardianship and

8 conservatorship." (**Exhibit E**, p. 29 ¶ 82).

9

10 63. The Arizona appellate court in determining the guardian ad litem issue
10 stated: "Substantial support exists in the record showing Bradford's interests were

11

12 being represented by independent counsel and his representation was adequate under

13

A.R.S. § 14-1408(A). Substantial evidence also exists demonstrating that Bradford is

25

26

14 not incompetent. Consistent with the court’s findings of fact and conclusion of law,
15

16 the record shows he understood the nature of the proceedings and was able to assist
in

17 the presentation of his case. Therefore, the substantial evidence shows Bradford was
18 not in need of a GAL under A.R.S. § 14-1408 or Rule 17 of the Arizona Rules of
19

20 Civil Procedure, we find no abuse of discretion in the court’s dismissal of the GAL.”

21 (**Exhibit E**, p. 28 ¶ 79).

22

23 64. On January 25, 2018, the Arizona Petitioners filed a petition for review
in the Supreme Court of Arizona together with an emergency motion to stay the
24 distribution of assets from the Walt Disney Trust. On February 9, 2018, the
Arizona

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 26 of 36 Page ID #:352](#)

1 high court denied the emergency motion to stay. On August 29, 2018, the Supreme

2

Court of Arizona denied the petition for review.

3

4 65. On September 27, 2019, Judge Cowan appointed a limited purpose
5 guardian ad litem over Mr. Lund and ignored the findings made in California. Judge

6

Cowan ignoring the findings made in the Arizona Superior Court violated the Full

7

Faith and Credit clause of the United States Constitution.

8

25

26

9 **The Striking Of The Objection To The Judge**

10 66. On October 17, 2019, Mr. Lund filed a Verified Statement Objecting To
11 11
12 Judge David Cowan Pursuant To Code of Civil Procedure § 170.1. See **Exhibit F**,
13 13 incorporated herein. Throughout the hearings in this case, Judge Cowan prejudged
14 and predetermined the issues. As one example only, Judge Cowan stated: “Do I
15 want
16 to give 200 million dollars, effectively, to someone who may suffer, on some level,
17 17 from Down syndrome? The answer is no.” Judge Cowan would not retract that
18 statement even after one of Mr. Lund’s counsel indicated that there was an
19 indisputable DNA test proving that Mr. Lund did not have Down syndrome.
20 20

21 67. On October 24, 2019, Judge Cowan, the very same judge that Mr. Lund
22 21 objected to, filed an order striking his Statement of Disqualification pursuant to Code
23 of Civil Procedure § 170.4(b).
24 24

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 27 of 36 Page ID #:353](#)

1 68. Mr. Lund was denied his due process through the allowance of the
2 2
3 California Code of Civil Procedure § 170.4(b) which allowed Judge Cowan to strike
4 the objection from the record.
4 4

5 **Count One**

25
26

6

(Due Process Violation of the Fourteenth Amendment to the United States

7

Constitution)

8

9 69. Mr. Lund hereby incorporates paragraphs 1 through 68 above as if fully
10 set forth herein.

11

12 70. The guardian ad litem statutes of the State of California are
13 unconstitutional in that they (1) vest unlimited discretion in the trial judge to subject a

13

14 person to a long term, indefinite, de facto custody; (2) fail to provide Mr. Lund
with

15 procedural due process prior to taking away his liberty and property; (3) fail to
16 provide Mr. Lund with any procedural safeguards, including but not limited to, a

17

18 means to have the trial court's decisions reviewed in a timely manner; and (4) fail
to

19 provide Mr. Lund with any post-deprivation rights of direct appeal to remove the
20 appointment. 21

22 71. The Defendants' failure to give Full Faith and Credit to the 2016

23 Arizona Judgment is a violation of Mr. Lund's due process.

24

72. The Defendants' acts through Judge Cowan in appointing the guardian ad
litem and refusing to release Mr. Lund from the appointment constitute violations

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 28 of 36 Page ID #:354](#)

25

26

1 of Mr. Lund’s rights pursuant to the Fourteenth Amendment to the United States
2
3 Constitution not to be deprived of Life, Liberty, or Property without due process of
4 law and to enjoy the equal protection of the laws of the State of California.

5 73. The Defendants’ acts through Judge Cowan in ignoring the 2016
6
7 Arizona Judgment constitute violations of Mr. Lund’s constitutional right to Full
8
9 Faith and Credit together with violations of his rights pursuant to the Fourteenth
10 Amendment to the United States Constitution not to be deprived of Life, Liberty, or
11 Property without due process of law.

12
13
Count Two

(Declaratory Judgment)

14 74. Mr. Lund hereby incorporates
15 paragraphs 1 through 73 above as if fully
16 set forth herein.

17 75. The above facts demonstrate that Defendants have acted in violation of
18 Mr. Lund’s constitutional rights pursuant to the Fourteenth Amendment to the
19
20 Constitution.

21 76. Mr. Lund is entitled to declaratory judgment holding that Defendants’
22
23
24
25
26

22 actions placing Mr. Lund in long term, indefinite custody of the guardian ad litem,
23 without a hearing and in the face of Judge Beckloff’s ruling, Judge Oberbillig’s
24 ruling, the Arizona Court of Appeals affirmation of Judge Oberbillig’s ruling, and the
sworn declarations from Mr. Lund’s counsel that they have “directly observed that
[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 29 of 36 Page ID #:355](#)

1 [Mr. Lund] was able to understand the nature and consequences of
proceedings and to
2 assist [them] in [their] representation of him at all times.”

3

77. Mr. Lund is further entitled to a declaratory judgment holding that the

4

5 laws of the State of California that permit the appointment of a guardian ad litem
over

6 a competent adult for any period of time without a hearing are unconstitutional. *See*

7

Weaver by Weaver v. New York City Employees' Ret. Sys., 717 F. Supp. 1039,
1044

8

9 (S.D.N.Y. 1989); *Thomas v. Humfield*, 916 F.2d 1032, 1034 (5th Cir. 1990).

10

Count Three

11

12 (Declaratory Judgment)

13 78. Mr. Lund hereby incorporates paragraphs 1
through 77 above as if fully

25

26

14 set forth herein.

15

16 79. In California the burden of proof is on the party asserting that someone
17 is incompetent and needs a guardian ad litem.

18

19 80. Judge Cowan reversed the burden of proof and required Mr. Lund to
19 prove that he was not incompetent. (**Exhibit C**, p. 19-28).

20

21 81. Mr. Lund is entitled to declaratory judgment holding that the above
22 actions by Judge Cowan, forcing Mr. Lund to prove his competency, violated
22 Mr.

23

Lund's due process. *See Weaver by Weaver*, 717 F. Supp. at 1044.

24

Count Four

(Declaratory Judgment)

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 30 of 36 Page ID #:356

1 82. Mr. Lund hereby incorporates
2 paragraphs 1 through 81 above as if fully

2 set forth herein

3

4 83. The above facts demonstrate the Defendants have acted in violation of

4

5 Mr. Lund's constitutional rights pursuant to the Full Faith and Credit Clause found in

6

Article IV, § 1 of the United States Constitution.

7

25

26

84. Mr. Lund is entitled to declaratory judgment holding that Defendants'
8
9 actions in ignoring the findings of fact and conclusions of law on Mr. Lund's
10 competence and capacity are binding on all courts in all states.

11
85. Mr. Lund is further entitled to a declaratory judgment holding that Full
12
Faith and Credit Clause applies to the Arizona Judgment.

14

Count Five

15

(Declaratory Judgment)

16

86. Mr. Lund hereby incorporates paragraphs 1 through 85 above as if fully
17
18 set
forth herein. 19

87. Pursuant to 14th Amendment all parties are entitled to have a neutral and
20 detached decision maker preside over their litigation. Judge Cowan, the subject of
21
22 the objection, ordered those objections stricken from the record. It is obvious that
23 Judge Cowan is not neutral and detached regarding this issue.

24

88. The above facts demonstrate that Judge Cowan's striking of Mr. Lund's

Verified Statement objecting to him on the grounds of bias and
prejudice is a

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 31 of 36 Page ID #:357](#)

25

26

1 violation of Mr. Lund's his right to due process
pursuant to the 14th Amendment to

2 the Constitution.

3

89. Mr. Lund is entitled to a declaratory judgment holding the California

4

5 Code of Civil Procedure, § 170.4(b) is unconstitutional and violates due process.

6

Count 6

7

(Discrimination Under Title II of The Americans With Disabilities Act of
1990)

8

9 90. Mr. Lund hereby incorporates paragraphs 1 through 89 above as if fully
10 set forth herein.

11

12 91. Pursuant to Title II, §§ (1)(iii) and (f)(1) of the ADA, any action by
government officials, including a judge, that discriminates and causes harm against

13

14 an individual due to a "perceived ... mental impairment" – even if such
perception is

15 false and there is no such actual impairment – is liable for damages.

16

92. Defendants, through Judge Cowan, violated the ADA by making a *false*

17

18 *statement* on the record, from the bench, based upon a *false perception* of Mr.
Lund's

25

26

19 physical and mental condition. The statement caused Mr. Lund substantial economic
20 and constitutional harm. Judge Cowan stated on the record, without any
evidentiary

21

22 hearing or any due process, that Mr. Lund “may suffer, on some level, from Down
23 syndrome”. This perception was indisputably false given that a DNA test, conducted
24 in 2012, proved that Mr. Lund did not in fact suffer from Down syndrome. As stated
[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 32 of 36 Page ID #:358](#)

1 paragraph 32, even after Judge Cowan was alerted that his statement was false, Judge

2

Cowan refused to retract it.

3

93. Based upon Judge Cowan’s *false perception* he caused substantial harm

4

5 to Mr. Lund by specifically stating that he was not going to give Mr. Lund the

6

distributions that the Sharon D. Lund Residuary Trust fbo Bradford D. Lund
required,

7

and by appointing a limited guardian ad litem for Mr. Lund, a competent person, over

8

9 his objections. The appointment of the limited guardian ad litem was done without

10 any hearing depriving Mr. Lund of procedural due process and the fundamental
right

11 to control the litigation through his own chosen counsel. Judge Cowan’s improper
12 perception of Mr. Lund used in order to regard him as disabled, which in turn was

13

25

26

14 used as a basis for discrimination against Mr. Lund, is prohibited by the
ADA,

15 thereby justifying damages against the Defendants and each of them.

16

94. As set forth above, Mr. Lund must be presumed to be fully competent

17

18 and have capacity, and was indeed found to be so by Judge Oberbillig in Arizona and

19

Judge Beckloff in California.

20

95. Title II of the ADA defines a person with a disability as a person:

21

22 (a) (1) [* * *] (iii) being regarded as having such an impairment as described in
paragraph (f) of this section. [* * *]

23

(f) *Is regarded as having such an impairment.* The following principles

24

apply under the “regarded” as prong of the definition of “disability”
(paragraph (a)(1)(iii) of this section:

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 33 of 36 Page ID #:359

1 (1) Except as set forth in paragraph (f)(2) of this section, an individual is
“regarded as having such an impairment” if the individual is subjected
to

2

3 a prohibited action because of an actual or perceived physical or mental
impairment, whether or not that impairment substantially limits, or is perceived to
limit, a major life activity, even if the public entity asserts, or

4 may or does ultimately establish, a defense to the action prohibited by the
5 ADA.

6 28 C.F.R. § 35.108.

25

26

7

96. Defendants have regarded Mr. Lund as having an impairment that has
8 resulted in the discrimination against him and the prevention of him receiving
access 9

10 to the courts. By way of example only, Defendants have regarded Mr. Lund as
11 having some form of mental impairment, namely Down syndrome. Defendants'
12 perception of Mr. Lund is illustrated by all of the findings in Judge Cowan's Rulings,
13

14 and Judge Cowan ignoring the findings made by Judge Oberbillig and Judge
15 Beckloff.

16

97. The ADA prohibits discrimination toward any "qualified individual with
17
18 a disability" and those individuals shall not be excluded from the participation in or
19 be denied the benefits of the services, programs, or activities of a public entity, or be
20 subjected to discrimination by any public entity. 21

98. The Defendants are public entities as defined by the Americans With
22
23 Disabilities Act of 1990.

24

99. The actions of the Defendants have subjected Mr. Lund to discrimination.

[Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 34 of 36 Page ID #:360](#)

1 a. As stated above in paragraph 31 above, Judge Cowan specifically
2 regarded Mr. Lund as "someone who may suffer, on some level, from

3

25

26

Down syndrome”.

4

5 b. Based upon Judge Cowan regarding Mr. Lund as having such a
6 disability, Defendants appointed a limited guardian ad litem over Mr.

7

Lund without notice and without any hearing.

8

9 c. On September 27, 2019 Judge Cowan, after taking the decision on
10 whether to approve the settlement reached by the parties under
11 submission, granted in part only portions of the agreement, effectively

12

13 denying all of the consideration Mr. Lund would receive, and appointed
14 a limited guardian ad litem to “facilitat[e] a new settlement agreement”
15 that Judge Cowan would approve.

16

17 d. The decision to appoint a limited guardian ad litem was over Mr.
18 Lund’s objection, without any notice, and without any hearing.

19

20 e. The effect of denying due process to Mr. Lund has denied him
20 reasonable access to the courts and interfered with his own chosen

21

22 counsel.

23 100. Mr. Lund has been damaged in an amount to be proven at trial, but
24 not
24 less than the incurred amount of attorneys’ fees.

Case 2:20-cv-01894-SVW-JC Document 22 Filed 03/17/20 Page 35 of 36 Page ID #:361

25

26

19 findings of fact and conclusions of law included in the 2016 Arizona
Judgment is 20 unconstitutional and a violation of the Full Faith and Credit
Clause of the United
21
22 States Constitution.

23 4. Issue a declaratory judgment finding that Judge Cowan refusing to lift
24 the stay on the 1992 Trust is an unconstitutional deprivation of property to Mr.
Lund without due process of law.

25

26

5. Award Mr. Lund damages for the Defendants' violation of the American With Disabilities Act of 1990.

6. Award Mr. Lund any and all other relief that is just and appropriate under the circumstances.

Jury Demand

Plaintiff Bradford Lund hereby demands a trial by jury of all issues regarding the Americans With Disabilities Act of 1990.

Respectfully submitted this 17th day of March, 2020.

THE PITET FIRM, PC
DAVIS GOLDBERG & GALPER PLLC
HORNE SLATON, PLLC

By: /s/ Sandra Slaton

Sandra Slaton, Esq.

Attorney for Plaintiff Bradford D. Lund