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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 JOE BOHL,

11 Plaintiff,

12 v.

13 ILONA C. OLIVER, dba EDIBLES CAFE &
14 CATERING, CLAUDIA BOWMAN and
15 DOES ONE through FIFTY, inclusive,

16 Defendants.

) Case No. C-02-4136 CW

) Civil Rights

) COMPLAINT FOR INJUNCTIVE RELIEF
) AND DAMAGES: DENIAL OF CIVIL
) RIGHTS OF A DISABLED PERSON IN
) VIOLATION OF THE AMERICANS WITH
) DISABILITIES ACT OF 1990; VIOLATION
) OF CALIFORNIA'S CIVIL RIGHTS
) STATUTES

) JURY TRIAL REQUESTED

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19 Plaintiff JOE BOHL complains of ILONA C. OLIVER, dba EDIBLES CAFE &
20 CATERING, CLAUDIA BOWMAN and DOES ONE to FIFTY, inclusive, and alleges as
21 follows:
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23 JURISDICTION AND VENUE

24 1. The Court has jurisdiction of this action pursuant to 28 USC § 1331 for
25 violations of the *Americans with Disabilities Act of 1990*, (42 USC § 12101, et seq.)
26 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the
27 same facts, are also brought under California law, including but not limited to violations of
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1 **California Health & Safety Code** § 19955, *et seq.*, including **California Code of**
2 **Regulations**, Title 24, § 19959, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1,
3 54.3 and 55.

4 2. Venue is proper in this court pursuant to 28 **USC** § 1391(b) and is founded on
5 the fact that the real property which is the subject of this action is located in this district, at
6 Point Richmond, California, and that plaintiff's causes of action arose in this district.

7 INTRODUCTION

8
9 3. **EDIBLES CAFE** is located at 31 Washington Avenue, Point Richmond,
10 California. Said restaurant is owned and operated by defendants **ILONA C. OLIVER, dba**
11 **EDIBLES CAFE & CATERING, CLAUDIA BOWMAN** and **DOES ONE to FIFTY,**
12 **inclusive.**

13 Defendants **ILONA C. OLIVER, dba EDIBLES CAFE & CATERING, CLAUDIA**
14 **BOWMAN and DOES ONE to FIFTY, inclusive**, operates an establishment for services to
15 the public and at which Defendants failed to provide barrier free access to said
16 establishment in conformity with both Federal and California legal requirements. Further,
17 Defendants failed to provide compliance as follows:
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- 19 1. There is no accessible path of travel from the front property line at the
20 main entry into the building due to a 6" step in front of the doorway in
21 violation of ADAAG § 4.1.3(1) & 4.3.8 and California Title 24 §
22 1133B.1.1.1;
- 23 2. There is no accessible path of travel from the rear property line into the
24 courtyard or building due to a series of 6 steps at the gate in violation of
25 ADAAG 4.1.3(1) and California Title 24 § 1133B.1.1.1;
- 26 3. The side door leading from the main dining room to the exterior decks
27 and the lone restroom has a threshold approximately 1" high in violation
28 of ADAAG 4.13.8 and California Title 24 § 1133B.2.4.1;
4. The side door leading from the main dining room to the exterior decks
and the lone restroom had a maneuvering depth on the outside of the

1 door of only 32" in violation of ADAAG 4.13.6 and California Title 24 §
2 1133B.2.4.2;

- 3 5. The exterior deck corridor leading from the main dining room to the
4 exterior decks and the lone restroom has a width of only 32" making it
5 too narrow for a wheelchair user to move through the passageway in
6 violation of ADAAG 4.3.3 and California Title 24 § 1133B.3.1;
- 7 6. There is insufficient maneuvering space to allow a wheelchair user to sit
8 at a table without blocking aisles or encroaching into space needed for
9 other tables in violation of ADAAG 5.1, 4.1.3(18), & 4.32 and California
10 Title 24 § 1122B.
- 11 7. The door to the restroom is at the top of a 5" high step and is only 30"
12 wide prohibiting a person with a mobility-related disability from being
13 able to enter the room in violation of ADAAG 4.13.5 and 4.13.8 and
14 California Title 24 § 1133B.2;
- 15 8. The restroom is too small be usable by persons with disabilities with
16 inadequate turning and maneuvering space, an inaccessible toilet, no
17 grab bars, and an inaccessible sink in violation of ADAAG 4.16, 4.19, &
18 4.22 and California Title 24 § 1115B.7.2;
- 19 9. There are no raised letter and Braille signs at the restroom entry in
20 violation of ADAAG 4.30.6 and California Title 24 § 1117B.5.

21 Several of these violations interfered with Plaintiff's safe and barrier free access to the
22 restaurant, and deter Plaintiff from returning in the future, as Plaintiff would have absent the
23 barriers. As a legal result, Plaintiff **JOE BOHL** suffered violation of his civil rights to full and
24 equal enjoyment of goods, services, facilities and privileges, and suffered embarrassment
25 and humiliation.

26 FACTUAL ALLEGATIONS

27 4. Plaintiff **JOE BOHL** is, and at all times relevant to this Complaint was, a
28 "physically handicapped person," "physically disabled person," and a "person with a
disability," as these terms are used under California law and under federal laws including,
but not limited to, Title III of the ***Americans with Disabilities Act of 1990***. (The terms
"physically handicapped person," "physically disabled person," and a "person with a

1 disability” will be used interchangeably throughout this Complaint.) Plaintiff is a “person with
2 a disability,” as defined by all applicable California and United State’s laws. Plaintiff **JOE**
3 **BOHL** is severely limited in the use of his legs.

4 5. Defendants **ILONA C. OLIVER, dba EDIBLES CAFE & CATERING,**
5 **CLAUDIA BOWMAN and DOES ONE to FIFTY, inclusive,** at all times relevant herein
6 were and are the owners and operators; lessors and/or lessees, franchisers and/or
7 franchisees, of public facilities known as the “**EDIBLES CAFE**” located at Point Richmond,
8 California, subject to the requirements of California state law requiring full and equal access
9 to public facilities pursuant to **California Health & Safety Code § 19955, et seq., California**
10 **Civil Code §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55,** and subject to Title III of the
11 **Americans with Disabilities Act of 1990,** and to all other legal requirements referred to in
12 this Complaint. Plaintiff does not know the relative responsibilities of defendants in the
13 operation of the facilities herein complained of, and alleges a joint venture and common
14 enterprise by all such defendants.
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17 6. Defendants **ILONA C. OLIVER, dba EDIBLES CAFE & CATERING,**
18 **CLAUDIA BOWMAN and DOES ONE to FIFTY, inclusive** (hereinafter alternatively
19 referred to collectively as “defendants”), at all times relevant herein were and are owners,
20 possessors, builders and keepers of the “**EDIBLES CAFE**” in Point Richmond, California.
21

22 7. Defendants **ILONA C. OLIVER, dba EDIBLES CAFE & CATERING,**
23 **CLAUDIA BOWMAN and DOES ONE to FIFTY, inclusive** are the owners and operators of
24 the subject “**EDIBLES CAFE**”, at all times relevant to this Complaint. Plaintiff is informed
25 and believes that each of the defendants herein is the agent, employee or representative of
26 each of the other defendants, and performed all acts and omissions stated herein within the
27 scope of such agency or employment or representative capacity and is responsible in some
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1 manner for the acts and omissions of the other defendants in legally causing the damages
2 complained of herein, and have approved or ratified each of the acts or omissions of each
3 other defendant, as herein described.

4 8. Plaintiff **JOE BOHL** does not know the true names and capacities of
5 defendants **ILONA C. OLIVER, dba EDIBLES CAFE & CATERING, CLAUDIA BOWMAN**
6 **and DOES ONE to FIFTY, inclusive**, their business capacities, their ownership connection
7 to the property and business, nor their relative responsibilities in causing the access
8 violations herein complained of, and alleges a joint venture and common enterprise by all
9 such defendants. Plaintiff is informed and believes that each of the defendants herein,
10 including DOES ONE to FIFTY, inclusive, is the agent, ostensible agent, master, servant,
11 employer, employee, representative, franchiser, franchisee, joint venturer, partner, and
12 associate, or such similar capacity, of each of the other defendants, and was at all times
13 acting and performing, or failing to act or perform, with the authorization, consent,
14 permission or ratification of each of the other defendants, and is responsible in some
15 manner for the acts and omissions of the other defendants in legally causing the violations
16 and damages complained of herein, and have approved or ratified each of the acts or
17 omissions of each other defendant, as herein described. Plaintiff will seek leave to amend
18 this Complaint when the true names, capacities, connections and responsibilities of
19 defendants **ILONA C. OLIVER, dba EDIBLES CAFE & CATERING, CLAUDIA BOWMAN**
20 **and DOES ONE to FIFTY, inclusive**, are ascertained.
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24 9. Plaintiff is informed and believes that all named defendants, including DOES
25 ONE to FIFTY, inclusive, conspired to commit the acts described herein, or alternatively,
26 aided and abetted one another in the performance of the wrongful acts hereinafter alleged.

27 10. Defendants **ILONA C. OLIVER, dba EDIBLES CAFE & CATERING,**
28

1 **CLAUDIA BOWMAN and DOES ONE to FIFTY, inclusive**, are the owners and operators
2 of "**EDIBLES CAFE**" restaurant, located at Point Richmond, California. This restaurant,
3 including, but not limited to, parking spaces and access aisles and access routes, are each
4 a part of a "public accommodation or facility" subject to the requirements of **California**
5 **Health & Safety Code** § 19955, *et seq.*, and of **California Civil Code** §§ 51, 52(a), 54,
6 54.1, *et seq.* On information and belief, this "**EDIBLES CAFE**" was constructed after 1990
7 which has subjected the "**EDIBLES CAFE**" to handicapped access requirements per
8 **California Health & Safety Code** § 19959, and applicable portions of **California Code of**
9 **Regulations**, Title 24, (the State Building Code).

11 11. On or about July 12, 2002, Plaintiff **JOE BOHL** visited the "**EDIBLES CAFE**"
12 restaurant in Point Richmond, California, for the purpose of making a purchase. Defendants
13 **ILONA C. OLIVER, dba EDIBLES CAFE & CATERING, CLAUDIA BOWMAN and DOES**
14 **ONE to FIFTY, inclusive**, interfered with plaintiff's access to the "**EDIBLES CAFE**" as set
15 forth in Paragraph 3 above.

17 Said acts and omissions denied plaintiff legal handicapped access to the "**EDIBLES**
18 **CAFE**" according to federal and state law.

19 12. Plaintiff encountered and/or is informed and believes that the following
20 architectural barriers, which violate the requirements of the **California Code of Regulations**
21 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those
22 similarly situated full and equal access to the subject public facility as set forth in Paragraph
23 3 above.

25 13. Defendants, and each of them, discriminated against plaintiff **JOE BOHL** on
26 the basis of his physical disability, and interfered with his access to the "**EDIBLES CAFE**"
27 establishment, in violation of both California law including, but not limited to, **California Civil**
28

1 **Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the “Prohibition of
2 Discrimination” provision and §503, the “Prohibition Against Retaliation or Coercion”
3 provision of the **Americans with Disabilities Act of 1990**.

4 14. As a result of the actions and failure to act of defendants, and each of them,
5 and as a result of the failure to provide appropriate handicapped parking, proper
6 handicapped signage, proper handicapped accessible entryways, and handicapped
7 accommodations for restrooms, Plaintiff **JOE BOHL** suffered and will suffer a loss of his civil
8 rights to full and equal access to public facilities, and further suffered and will suffer
9 emotional distress, mental distress, mental suffering, mental anguish, which includes
10 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
11 and naturally associated with a person with a physical disability being denied access to a
12 public accommodation, all to his damages as prayed hereinafter in an amount within the
13 jurisdiction of this court.
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15
16 **I. FIRST CAUSE OF ACTION:**
17 VIOLATION OF **THE AMERICANS WITH DISABILITIES ACT OF 1990**
(42 **USC** §12101 *et seq.*)

18 15. Plaintiff repleads and incorporates by reference, as if fully set forth again
19 herein, the allegations contained in paragraphs 1 through 14 of this Complaint and
20 incorporates them herein as if separately repled.

21 16. Pursuant to law, in 1990 the United States Congress made findings per 42
22 **USC** § 12101 regarding persons with physical disabilities, finding that laws were needed to
23 more fully protect 43 million Americans with one or more physical or mental disabilities;
24 [that] historically society has tended to isolate and segregate individuals with disabilities;
25 [that] such forms of discrimination against individuals with disabilities continue to be a
26 serious and pervasive social problem; [that] the nation’s proper goals regarding individuals
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1 with disabilities are to assure equality of opportunity, full participation, independent living
2 and economic self-sufficiency for such individuals; [and that] the continuing existence of
3 unfair and unnecessary discrimination and prejudice denies people with disabilities the
4 opportunity to compete on an equal basis and to pursue those opportunities for which our
5 free society is justifiably famous.

6 17. Congress stated as its purpose in passing the **Americans with Disabilities**
7 **Act of 1990** (42 **USC** § 12102):

8
9 It is the purpose of this act (1) to provide a clear and comprehensive
10 national mandate for the elimination of discrimination against individuals with
11 disabilities; (2) to provide clear, strong, consistent, enforceable standards
12 addressing discrimination against individuals with disabilities; (3) to ensure that
13 the Federal government plays a central role in enforcing the standards
14 established in this act on behalf of individuals with disabilities; and (4) to
15 invoke the sweep of Congressional authority, including the power to enforce
16 the 14th Amendment and to regulate commerce, in order to address the major
17 areas of discrimination faced day to day by people with disabilities.

18 18. As part of the **Americans with Disabilities Act of 1990**, Public Law 101-336
19 (hereinafter the “ADA”), Congress passed “Title III - Public Accommodations and Services
20 Operated by Private Entities” (42 **USC** § 12181 *et seq.*). Among the public accommodations
21 identified for purposes of this title were “a bakery, restaurant, bar or other establishment
22 serving food or drink, grocery store, clothing store, hardware store, shopping center or other
23 sales or rental establishment.”

24 19. Pursuant to 42 **USC** § 12182, “No individual shall be discriminated against on
25 the basis of disability in the full and equal enjoyment of the goods, services, facilities,
26 privileges, advantages, or accommodations of any place of public accommodation by any
27 person who owns, leases (or leases to), or operates a place of public accommodation.”

28 20. Among the general prohibitions against discrimination were included in 42
USC §12182(b)(1)(A)(i):

1 **Denial of participation.** It shall be discriminatory to subject an
2 individual or class of individuals on the basis of a disability or disabilities of
3 such individual or class, directly, or through contractual, licensing, or other
4 arrangements, to a denial of the opportunity of the individual or class to
5 participate in or benefit from the goods, services, facilities, privileges,
6 advantages, or accommodations of an entity.

7 21. Among the general prohibitions against discrimination were included in 42

8 **USC §12182(b)(1)(E):**

9 **Association** -- It shall be discriminatory to exclude or otherwise deny
10 equal goods, services, facilities, privileges, advantages, accommodations, or
11 other opportunities to an individual or entity because of the known disability of
12 an individual with whom the individual or entity is known to have a relationship
13 or association.

14 The acts of defendants set forth herein were a violation of Plaintiff's rights under the ADA,
15 Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36 et seq.

16 22. Among the general prohibitions against discrimination were included in 42

17 **USC § 12182(b)(2)(A)(i) and 42 USC § 12182(b)(2)(A)(ii):**

18 **Discrimination.** For purposes of subsection (a), discrimination
19 includes -

20 (i) the imposition or application of eligibility criteria that screen out or
21 tend to screen out an individual with a disability or any class of individuals with
22 disabilities from fully and equally enjoying any goods, services, facilities,
23 privileges, advantages, or accommodations, unless such criteria can be shown
24 to be necessary for the provision of the goods, services, facilities, privileges,
25 advantages, or accommodations being offered;

26 (ii) a failure to make reasonable modifications in policies, practices, or
27 procedures, when such modifications are necessary to afford such goods,
28 services, facilities, privileges, advantages, or accommodations to individuals
with disabilities, unless the entity can demonstrate that making such
modifications would fundamentally alter the nature of such goods, services,
facilities, privileges, advantages, or accommodations.

29 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices
30 and procedure for entry to the "**EDIBLES CAFE**" facility by persons with disabilities and their
31 companions as established by the defendants can be simply modified to eliminate disparate

1 and discriminatory treatment of persons with disabilities by properly constructing barrier free
2 handicapped access for safe and full and equal enjoyment of the "**EDIBLES CAFE**" as that
3 enjoyed by other people.

4 24. The specific prohibition against retaliation and coercion is included in the
5 **Americans With Disabilities Act of 1990** § 503(b) and the *Remedies and Procedures* in §
6 503(c):

7 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to
8 coerce, intimidate, threaten, or interfere with any individual in the exercise or
9 enjoyment of, or on account of his or her having exercised or enjoyed, or on
10 account of his or her having aided or encouraged any other individual in the
exercise or enjoyment of, any right granted or protected by this Act.

11 (c) Remedies and Procedure. - The remedies and procedures available
12 under sections 107, 203, and 308 of this Act shall be available to aggrieved
13 persons for violations of subsections (a) and (b), with respect to Title I, Title II
and Title III, respectively.

14 25. Among the specific prohibitions against discrimination were included, in 42
15 **USC** § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications
16 barriers that are structural in nature, in existing facilities...where such removal is readily
17 achievable;" and (v) "where and entity can demonstrate that the removal of a barrier under
18 clause (iv) is not readily achievable, a failure to make such goods, services, facilities,
19 privileges, advantages, or accommodations available through alternative methods if such
20 methods are readily achievable." The acts of Defendants set forth herein were a violations
21 of Plaintiff's rights under the "ADA," Public Law 101-336, and the regulations promulgated
22 thereunder, 28 **CFR** Part 36, *et seq.*

24 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
25 were at all times after 1990 "readily achievable." On information and belief, if the removal of
26 all the barriers complained of here together were not "readily achievable," the removal of
27 each individual barrier complained of herein was "readily achievable."
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1 27. Per 42 **USC** § 12181(9), “The term ‘readily achievable’ means easily
2 accomplishable and able to be carried out without much difficulty or expense.” The statute
3 and attendant regulations define relative “expense” in relation to the total financial resources
4 of the entities involved, including any “parent” companies. Plaintiff alleges that properly
5 repairing each of the items that Plaintiff complains of herein is readily achievable, including
6 but not limited to correcting and repairing the items set forth in Paragraph 3 above.

7
8 The changes needed to remove barriers to access for the disabled were and are
9 “readily achievable” by the defendants under standards set forth under 42 **USC** § 12181 of
10 the **Americans with Disabilities Act of 1990**. (Further, if it was not “readily achievable” for
11 defendants to remove all such barriers, defendants have failed to make the required
12 services available through alternative methods, although such methods are achievable as
13 required by 42 **USC** §12181(b)(2)(a)(iv), (v).)

14 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
15 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil**
16 **Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to
17 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable
18 grounds for believing that he is about to be subjected to discrimination in violation of
19 **Americans With Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of
20 the public facilities complained of herein for the purpose of entry and provision of goods and
21 service so long as defendants continue to apply eligibility criteria, policies, practices and
22 procedures to screen out and refuse to allow entry and service to persons with disabilities
23 such as Plaintiff’s.

24 29. Defendants’, and each of their acts and omissions of failing to provide barrier
25 free handicapped access for plaintiff, were tantamount to interference, coercion or
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1 intimidation pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** §
2 12203):

3 It shall be unlawful to coerce, intimidate, threaten, or interfere with any
4 individual in the exercise or enjoyment of, or on account of his or her having
5 encouraged any other individual in the exercise or enjoyment of, any right
6 granted or protected by this Act.

7 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §
8 12188), “Nothing in this section shall require a person with a disability to engage in a futile
9 gesture if such person has actual notice that a person or organization covered by this title
10 does not intend to comply with its provisions.” Pursuant to this last section, plaintiff, on
11 information and belief, alleges that defendants have continued to violate the law and deny
12 the rights of plaintiff and other disabled persons to access this public accommodation for the
13 purpose of dining. Therefore, plaintiff seeks injunctive relief pursuant to §308(a)(2),
14 “...Where appropriate, injunctive relief shall also include requiring the provision of an
15 auxiliary aid or service, modifications of a policy, or provision of alternative methods, to the
16 extent required by this title.”

17 31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the **Civil**
18 **Rights Act of 1964** (42 **USC** § 2000a-3(a), and pursuant to federal regulations adopted to
19 implement the **Americans with Disabilities Act of 1990**, including but not limited to an
20 order granting injunctive relief and attorneys’ fees. Such attorneys’ fees, “including litigation
21 expenses and costs,” are further specifically provided for by §505 of Title III.

22 Wherefore, Plaintiff prays for relief as hereinafter set forth.

23
24 **II. SECOND CAUSE OF ACTION**
25 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS**
26 **WITH PHYSICAL DISABILITIES**
27 **(California Health & Safety Code § 19955, et seq.)**

28 32. Plaintiff repleads and incorporates by reference, as if fully set forth again

1 herein, the allegations contained in paragraphs 1 through 31 of this Complaint and
2 incorporate them herein as if separately repled.

3 33. **California Health & Safety Code** § 19955 provides in pertinent part:

4 The purpose of this part is to insure that public accommodations or
5 facilities constructed in this state with private funds adhere to the provisions of
6 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
7 *Government Code*. For the purposes of this part “public accommodation or
8 facilities” means a building, structure, facility, complex, or improved area which
9 is used by the general public and shall include auditoriums, hospitals, theaters,
10 restaurants, hotels, motels, stadiums, and convention centers. When sanitary
11 facilities are made available for the public, clients or employees in such
12 accommodations or facilities, they shall be made available for the
13 handicapped.

14 34. **California Health & Safety Code** § 19956, which appears in the same
15 chapter as §19955, provides in pertinent part, “accommodations constructed in this state
16 shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of
17 Title 1 of the *Government Code*...” **California Health & Safety Code** § 19956 was
18 operative July 1, 1970, and is applicable to all public accommodations constructed or altered
19 after that date. On information and belief, portions of “**EDIBLES CAFE**” and/or of its
20 buildings, were constructed and/or altered after July 1, 1970, and substantial portions of said
21 building had alterations, structural repairs, and/or additions made to such public
22 accommodations after July 1, 1970, thereby requiring said public accommodations and/or
23 buildings to be subject to the requirements of Part 5.5, **California Health & Safety Code** §
24 19955, *et seq.*, upon such alteration, structural repairs or additions per **California Health &**
25 **Safety Code** § 19959.

26 35. Pursuant to the authority delegated by **California Government Code** § 4450,
27 *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
28 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
California State Architect’s Regulations and these regulations must be complied with as to

1 any alterations and/or modifications of the “**EDIBLES CAFE**” occurring after that date.
2 Construction changes occurring prior to this date but after July 1, 1970 triggered access
3 requirements pursuant to the “ASA” requirements, the *American Standards Association*
4 *Specifications*, A117.1-1961. On information and belief, at the time of the construction and
5 modification of said building, all buildings and facilities covered were required to conform to
6 each of the standards and specifications described in the *American Standards*
7 *Association Specifications* and/or those contained in Title 24 of the *California*
8 *Administrative Code*, (now known as Title 24, *California Code of Regulations*.)

9
10 36. Public facilities, such as “**EDIBLES CAFE**” are public accommodations or
11 facilities within the meaning of *California Health & Safety Code* § 19955, *et seq.*

12 37. It is difficult or impossible for persons with physical disabilities who use
13 wheelchairs, canes, walkers and service animals to travel about in public to use a restaurant
14 with the defects set forth in Paragraph 3 above as required by Title 24 of the *California*
15 *Code of Regulations* and the *Americans with Disabilities Act Access Guidelines*
16 *(ADAAG)*. Thus, when public accommodations fail to provide handicap accessible public
17 facilities, persons with physical disabilities are unable to enter and use said facilities, and
18 are denied full and equal access to and use of that facility that is enjoyed by other members
19 of the general public.
20

21 38. Plaintiff **JOE BOHL** and other similarly situated persons with physical
22 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
23 service animals are unable to use public facilities on a “full and equal” basis unless each
24 such facility is in compliance with the provisions of the *California Health & Safety Code* §
25 19955, *et seq.* Plaintiff is a member of that portion of the public whose rights are protected
26 by the provisions of *California Health & Safety Code* § 19955, *et seq.*
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1 39. The **California Health & Safety Code** was enacted “[t]o ensure that public
2 accommodations or facilities constructed in this state with private funds adhere to the
3 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*
4 *Code*.” Such public accommodations are defined to include restaurants.

5 40. Plaintiff is further informed and believes that as of the date of filing this
6 Complaint, Defendants have not made accessible the facilities at the subject restaurant as
7 set forth in Paragraph 3 above.

8 41. Plaintiff **JOE BOHL** is informed and believes, and therefore alleges, that
9 Defendants **ILONA C. OLIVER, dba EDIBLES CAFE & CATERING, CLAUDIA BOWMAN**
10 **and DOES ONE to FIFTY, inclusive**, and each of them, caused the subject buildings
11 constituting “**EDIBLES CAFE**” to be constructed, altered and maintained in such a manner
12 that persons with physical disabilities were denied full and equal access to, within and
13 throughout said buildings and were denied full and equal use of said public facilities, and
14 despite knowledge and actual and constructive notice to such Defendants that the
15 configuration of the restaurant and/or buildings was in violation of the civil rights of persons
16 with physical disabilities, such as Plaintiff. Such construction, modification, ownership,
17 operation, maintenance and practices of such public facilities are in violation of law as stated
18 in Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, and elsewhere in the laws of
19 California.

20 42. On information and belief, the subject building constituting the public facilities
21 of “**EDIBLES CAFE**” denied full and equal access to Plaintiff and other persons with
22 physical disabilities in other respects due to non-compliance with requirement of Title 24 of
23 the **California Code of Regulations** and **California Health & Safety Code** § 19955, *et*
24 *seq.*

1 43. The basis of Plaintiff's aforementioned information and belief is the various
2 means upon which Defendants must have acquired such knowledge, including but not
3 limited to this lawsuit, other access lawsuits, communications with operators of other
4 restaurants and other property owners regarding denial access, communications with
5 Plaintiff and other persons with disabilities, communications with other patrons who regularly
6 visit there, communications with owners of other businesses, notices and advisories they
7 obtained from governmental agencies through the mails, at seminars, posted bulletins,
8 television, radio, public service announcements, or upon modification, improvement,
9 alteration or substantial repair of the subject premises and other properties owned by these
10 Defendants, newspaper articles and trade publications regarding the **Americans with**
11 **Disabilities Act of 1990** and other access law, and other similar information. The scope
12 and means of the knowledge of each defendant is within each defendant's exclusive control
13 and cannot be ascertained except through discovery.

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16 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
17 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
18 enforce provisions of the law protecting access for persons with physical disabilities and
19 prohibiting discrimination against persons with physical disabilities, and to take such action
20 both in his own interests and in order to enforce an important right affecting the public
21 interest. Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable
22 attorneys' fees incurred, pursuant to the provisions of the **California Code of Civil**
23 **Procedure** § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to **California**
24 **Health & Safety Code** § 19953 and **California Civil Code** §§ 54.3 and 55.

25
26 45. Defendants, and each of them, at times prior to and including July 12, 2002,
27 and continuing to the present time, knew that persons with physical disabilities were denied
28

1 their rights of equal access to all portions of this public facility. Despite such knowledge,
2 Defendants failed and refused to take steps to comply with the applicable access statutes;
3 and despite knowledge of the resulting problems and denial of civil rights thereby suffered
4 by Plaintiff **JOE BOHL** and other similarly situated persons with disabilities, including the
5 specific notices referred to in paragraph 43 of this Complaint. Defendants have failed and
6 refused to take action to grant full and equal access to persons with physical disabilities in
7 the respects complained of hereinabove. Defendants and each of them have carried out a
8 course of conduct of refusing to respond to, or correct complaints about, denial of handicap
9 access. Such actions and continuing course of conduct by Defendants, evidence
10 despicable conduct in conscious disregard for the rights or safety of Plaintiff and of other
11 similarly situated persons, justifying an award of exemplary and punitive damages pursuant
12 to **California Civil Code** § 3294.
13

14 46. Defendants' actions have also been oppressive to persons with physical
15 disabilities and of other members of the public, and have evidenced actual or implied
16 malicious intent toward those members of the public, such as Plaintiff and other persons
17 with physical disabilities who have been denied the proper access they are entitled to by
18 law. Further, Defendants' refusals on a day-to-day basis to correct these problems
19 evidence despicable conduct in conscious disregard for the rights of Plaintiff and other
20 members of the public with physical disabilities.
21

22 47. Plaintiff prays for an award of punitive damages against Defendants, and each
23 of them, pursuant to **California Civil Code** § 3294 in an amount sufficient to make a more
24 profound example of Defendants and discourage owners, operators, franchisers and
25 franchisees of other public facilities from willful disregard of the rights of persons with
26 physical disabilities. Plaintiff does not know the financial worth of Defendants, or the
27
28

1 amount of punitive damages sufficient to accomplish the public purposes of **California Civil**
2 **Code** § 3294 and seeks leave to amend this Complaint when such facts are known.

3 48. As a result of the actions and failure of Defendants, and each of them, and as
4 a result of the failure to provide proper accessible public facilities, Plaintiff **JOE BOHL** was
5 denied his civil rights, including his right to full and equal access to public facilities, was
6 embarrassed and humiliated, suffered physical, psychological and mental injuries and
7 emotional distress, mental distress, mental suffering, mental anguish, which includes
8 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
9 and naturally associated with a person with a physical disability being denied access to a
10 public accommodation.
11

12 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

13 **III. THIRD CAUSE OF ACTION**
14 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**
15 **(California Civil Code §§ 54, 54.1 and 54.3)**

16 49. Plaintiff repleads and incorporates by reference as if fully set forth again
17 herein, the allegations contained in paragraphs 1 through 48 of this Complaint and
18 incorporates them herein as if separately repled.

19 50. The public facilities above-described constitute public facilities and public
20 accommodations within the meaning of **California Health & Safety Code** § 19955 *et seq.*
21 and were facilities to which members of the public are invited. The aforementioned acts and
22 omissions of defendants, and each of them, constitute a denial of equal access to and use
23 and enjoyment of these facilities by persons with disabilities, including plaintiff **JOE BOHL**.
24 Said acts and omissions are also in violation of provisions of Title 24 of the **California Code**
25 **of Regulations**.
26

27 51. The rights of plaintiff, the entitlement of plaintiff to full and equal access and
28

1 the denial by defendants of such rights and entitlements are set forth in **California Civil**
2 **Code** §§ 54, 54.1 and 54.3, to wit:

3 Individuals with disabilities shall have the same right as the...general
4 public to full and free use of the streets, highways, sidewalks, walkways, public
5 buildings, public facilities, and other public places. **California Civil Code §**
6 **54(a).**

7 Individuals with disabilities shall be entitled to full and equal access, as
8 other members of the general public, to accommodations, advantages,
9 facilities, and privileges of all common carriers, airplanes, motor vehicles,
10 railroad trains, motor buses, streetcars, boats, or any other public
11 conveyances or modes of transportation (whether private, public, franchised,
12 licensed, contracted, or otherwise provided), telephone facilities, adoption
13 agencies, private schools, hotels, lodging places, places of public
14 accommodation, amusement or resort, and other places to which the general
15 public is invited, subject only to the conditions and limitations established by
16 law, or state or federal regulation, and applicable alike to all persons.
17 **California Civil Code § 54.1(a).**

18 52. On or about July 12, 2002, Plaintiff **JOE BOHL** suffered violations of
19 **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of the
20 goods, services, facilities and privileges of said **EDIBLES CAFE** by being denied access to
21 all of the dining areas of the restaurant and inadequate restroom facilities for persons in a
22 wheelchair, all as set forth in paragraph 3 above.

23 Plaintiff was also denied full and equal access to other particulars, including, but not
24 limited to, those described hereinabove. Plaintiff was also denied use of facilities that he
25 was entitled to under Title III of the **Americans with Disabilities Act of 1990**.

26 53. As a result of the denial of full and equal enjoyment of the goods, services,
27 facilities and privileges of defendants' **EDIBLES CAFE** due to the acts and omissions of
28 defendants, and each of them, in owning, operating and maintaining this subject public
facility, plaintiff suffered violations of his civil rights, including but not limited to rights under
California Civil Code §§ 54, 54.1, and 54.3, and has and will suffer physical injury,
emotional distress, mental distress, mental suffering, mental anguish, which includes

1 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
2 and naturally associated with a disabled person's denial of full and equal enjoyment of
3 goods, services, privileges, etc. all to his damages as prayed hereinafter in an amount within
4 the jurisdiction of the court. Defendants' actions and omissions to act constituted
5 discrimination against plaintiff on the sole basis that plaintiff was physically disabled.

6 54. Plaintiff seeks damages for the violation of his rights as a disabled person on
7 or about July 12, 2002, according to proof, pursuant to **California Civil Code** § 54.3,
8 including a trebling of all statutory and actual damages, general and special, available
9 pursuant to **California Civil Code** § 54.3(a).

10 55. As a result of defendants' acts and omissions in this regard, plaintiff **JOE**
11 **BOHL** has been required to incur legal expenses and hire attorneys in order to enforce his
12 rights and enforce provisions of the law protecting the full and equal enjoyment of goods,
13 services, facilities, privileges of public facilities by the disabled, and those individuals
14 associated with or accompanied by a person with disabilities, and prohibiting discrimination
15 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable
16 attorneys' fees incurred pursuant to the provisions of **California Civil Code** § 54.3.
17 Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for damages to
18 plaintiff, but also to compel the defendants to make their goods, services, facilities and
19 privileges available and accessible to all members of the public with physical disabilities,
20 justifying public interest attorneys' fees pursuant to the provisions of **California Code of**
21 **Civil Procedure** § 1021.5.

22 56. The acts and omissions of defendants in failing to provide the required
23 accessible facilities subsequent to the enactment date and compliance date of the
24 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and
25

1 alterations to its handicapped parking, handicapped signage, pathways, and other elements
2 as hereinabove stated, after being notified by patrons before and after the time of plaintiff's
3 visit and injuries, on or about July 12, 2002, and all times prior thereto with the knowledge
4 that persons with disabilities would enter defendants' premises, the reason given therefor,
5 was an established policy, practice and procedure of refusing and denying entry, thereby
6 denying lodging and other services to a person with disabilities and the companions thereof,
7 evidence malice and oppression toward plaintiff and other disabled persons.
8

9 57. Such despicable conduct, as that incorporated herein by reference and
10 specifically set forth in Paragraph 3, was carried out by defendants with a willful and
11 conscious disregard for the law and the rights of plaintiff and of other disabled persons, and
12 was oppressive in that such conduct subjected plaintiff "to cruel and unjust hardship in
13 conscious disregard" for the law and plaintiff's rights, and justifies exemplary and punitive
14 damages pursuant to **California Civil Code** § 3294, in amounts sufficient to make an
15 example of defendants and to punish defendants and to carry out the purposes of
16 **California Civil Code** § 3294.
17

18 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
19 practice and procedure for entry into said "**EDIBLES CAFE**" as hereinabove described.
20

21 59. As a result of defendants' continuing failure to provide for the full and equal
22 enjoyment of goods, services, facilities and privileges of said "**EDIBLES CAFE**" as
23 hereinabove described, plaintiff has continually been denied his rights to full and equal
24 enjoyment of the subject restaurant, as it would be a "futile gesture" to attempt to patronize
25 said "**EDIBLES CAFE**" with the discriminatory policy in place as hereinabove described.
26

27 60. The acts and omissions of defendants as complained of herein in failing to
28 provide the required accessible facilities subsequent to the enactment date and compliance

1 date of the **Americans with Disabilities Act of 1990** and refusal to make remedial
2 modifications and alternations to the architectural barriers as stated herein and in failing to
3 establish practices, policies and procedures to allow safe access by persons who are
4 disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully
5 excluding plaintiff and other members of the public who are physically disabled, from full and
6 equal enjoyment of the subject "**EDIBLES CAFE**" as hereinabove described. Such acts and
7 omissions are the continuing cause of humiliation and mental and emotional suffering of
8 plaintiff in that these actions continue to treat plaintiff as an inferior and second class citizen
9 and serve to discriminate against him on the sole basis that he is a physically disabled.
10 Plaintiff is unable, so long as such acts and omissions of defendants continue, to achieve
11 full and equal enjoyment of the goods and services of said "**EDIBLES CAFE**" as described
12 hereinabove. The acts of defendants have legally caused and will continue to cause
13 irreparable injury to plaintiff if not enjoined by this court.

14
15
16 61. Wherefore, plaintiff asks this court to preliminarily and permanently enjoin any
17 continuing refusal by defendants to permit entry to said "**EDIBLES CAFE**" and to serve
18 plaintiff or others similarly situated, and to require defendants to comply forthwith with the
19 applicable statutory requirements relating to the full and equal enjoyment of goods and
20 services as described hereinabove for disabled persons. Such injunctive relief is provided
21 by **California Civil Code** § 55. Plaintiff further requests that the court award statutory costs
22 and attorneys' fees to plaintiff pursuant to **California Civil Code** § 55 and **California Code**
23 **of Civil Procedure** § 1021.5, all as hereinafter prayed for.

24
25 WHEREFORE, plaintiff prays for compensatory damages, reasonable attorneys' fees
26 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
27 damages.
28

1 **IV. FOURTH CAUSE OF ACTION**
2 VIOLATIONS OF **UNRUH CIVIL RIGHTS ACT**
3 (**California Civil Code** §§ 51 and 51.5)

4 62. Plaintiff repleads and incorporates by reference, as if fully set forth again
5 herein, the allegations contained in paragraphs 1 through 61 of this Complaint and
6 incorporates them herein as if separately repled.

7 63. Defendants' acts and omissions as specified with regard to the discriminatory
8 treatment of plaintiff **JOE BOHL** on the basis of his physical disabilities, have been in
9 violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have
10 denied to plaintiff his rights to "full and equal accommodations, advantages, facilities,
11 privileges or services in all business establishments of every kind whatsoever."

12 64. **California Civil Code** § 51 also provides that "[a] violation of the right of any
13 individual under the **Americans with Disabilities Act of 1990** (Public Law 101-336) shall
14 also constitute a violation of this section."

15 65. **California Civil Code** § 51.5 also provides that "[n]o business establishment
16 of any kind whatsoever shall discriminate against, boycott, or blacklist, refuse to buy from,
17 sell to, or trade with any person in this state because of the race, creed, religion, color,
18 national origin, sex, disability of the person or of the person's partners, members,
19 stockholders, directors, officers, managers, superintendents, agents, employees, business
20 associates, suppliers, or customers."

21 66. As a result of the violation of plaintiff's civil rights protected by **California Civil**
22 **Code** §§ 51 and, 51.5, plaintiff is entitled to the rights and remedies of **California Civil**
23 **Code** § 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h)
24 to mean "special and general damages"), as well as reasonable attorneys' fees and costs,
25 as allowed by statute, according to proof. Further, pursuant to paragraphs 11, 12, 13, 35
26
27
28

1 and 43, plaintiff seeks appropriate exemplary damages under **California Civil Code** § 3294.

2 WHEREFORE, Plaintiff prays that this court award damages and provide relief as
3 follows:

4 **PRAYER FOR RELIEF**

5 Plaintiff prays that this court award damages and provide relief as follows:

6 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
7 criteria policy, practice and procedure permitting entry into the **EDIBLES CAFE** in Point
8 Richmond, California, for the receipt of food and beverage service according to **California**
9 **Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, *et seq.*, and Title III of the **Americans with**
10 **Disabilities Act of 1990**, and grant injunctive relief requiring that Defendants repair and
11 render safe to handicapped persons, and otherwise make handicapped-accessible, all
12 public areas of the restaurant, and make such facilities “readily accessible to and usable by
13 individuals with disabilities,” according to the standards of Title 24 of the **California**
14 **Administrative Code, California Health & Safety Code** § 19955 *et seq.*, and Title III of
15 the **Americans with Disabilities Act of 1990** and the standards of **ADAAG**; and
16 prohibiting operation of the **EDIBLES CAFE**, located in Point Richmond, California, as a
17 public facility until Defendants provide full and equal enjoyment of goods and services as
18 described hereinabove to physically disabled persons, including Plaintiff;

19 2. General damages according to proof;

20 3. Statutory and “actual” damages, including general damages and special
21 damages, according to proof, pursuant to **California Civil Code** §§ 52, and 54.3, and that
22 these damages be trebled;

23 4. Prejudgment interest on all compensatory damages;

24 5. Punitive and exemplary damages pursuant to the standards and purposes of
25
26
27
28

1 **California Civil Code** § 3294;

2 6. Remedies and Procedures available under **Americans with Disabilities Act**
3 **of 1990** §§ 107, 203 and 308;

4 7. Award plaintiff all litigation expenses, all costs of this proceeding and all
5 reasonable attorneys' fees as provided by law, including but not limited to those recoverable
6 pursuant to the provisions of **California Civil Code** §§ 52, 54.3, and 55, **California Code of**
7 **Civil Procedure** § 1021.5, and **Americans with Disabilities Act of 1990** §308 of Title III;
8 and;

9
10 8. Grant such other and further relief as the court may deem just and proper.

11
12 Dated: August 23, 2002

13 _____
14 Jason K. Singleton, Attorney for
15 Plaintiff, **JOE BOHL**

16 **REQUEST FOR JURY TRIAL**

17 Plaintiff hereby requests a jury for all claims for which a jury is permitted.

18
19 Dated: August 23, 2002

20 _____
21 Jason K. Singleton, Attorney for
22 Plaintiff, **JOE BOHL**