

1 Jason K. Singleton State Bar #166170
2 SINGLETON LAW GROUP
3 611 "L" Street, Suite A
4 Eureka, CA 95501
5 (707) 441-1177
6 FAX 441-1533

7 Attorney for Plaintiff, JEFF HOHLBEIN

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 JEFF HOHLBEIN,

11 Plaintiff,

12 v.

13 BAY AREA/DIABLO PETROLEUM, CO., a
14 California corporation, dba EUREKA CASH
15 OIL, and DOES ONE to FIFTY, inclusive,

16 Defendants.

Case No. C 03-03981 JSW

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

18 Plaintiff JEFF HOHLBEIN complains of defendants BAY AREA/DIABLO PETROLEUM,
19 CO., a California corporation, dba EUREKA CASH OIL, and DOES ONE to FIFTY,
20 inclusive, and alleges as follows:

21 JURISDICTION AND VENUE

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

1 2. Venue is proper in this court pursuant to 28 **USC** § 1391(b) and is founded on the
2 fact that the real property which is the subject of this action is located in this district, at Eureka,
3 Humboldt County, California, and that Plaintiff's causes of action arose in this district.

4 **INTRODUCTION**

5 3. **EUREKA CASH OIL** is located at 1679 Myrtle Avenue, Eureka, California. Said
6 gas station is owned and operated by defendants **BAY AREA/DIABLO PETROLEUM, CO., A**
7 **California corporation, and DOES ONE to FIFTY, inclusive.**

8 Defendants **BAY AREA/DIABLO PETROLEUM, CO., A California corporation, and**
9 **DOES ONE to FIFTY, inclusive,** operate an establishment for services to the public and at
10 which Defendants failed to provide barrier free access to said establishment in conformity with
11 both Federal and California legal requirements. Further, Defendants failed to provide
12 compliance as follows:
13

- 14 a. There is no compliant path of travel from the sidewalk to the front entrance
15 and has an excessive grade and slope in violation of California Title 24 §
16 1114B.
- 17 b. The driveway has a severe cross-slope and no level landing to travel back
18 up onto the property in violation of California Title 24 § 3103A.
- 19 c. There are multiple steps at the entrance door making wheelchair access
20 impossible under any circumstance, as is the front entrance (e.g., no
21 landing, inaccessible door hardware, too high of threshold) in violation of
22 California Title 24 § 1133B.
- 23 d. There is no designated accessible parking space in violation of California
24 Title 24 § 1129B.
- 25 e. The restroom is completely non-compliant (e.g., no grab bars, wheelchair
26 clearance) See California Title 24 § 1115B.
- 27 f. There is not a 36" clear space at the cash register counter in violation of
28 California Title 24 § 1110B.
- g. Access aisles between the counter and merchandise is too narrow in
violation of California Title 24 § 1105B3.5.

The above barriers interfered with Plaintiff's access of the facilities and continue to deter

1 Plaintiff from visiting said facilities, and as a legal result, Plaintiff **JEFF HOHLBEIN** suffers
2 violations of his civil rights to full and equal enjoyment of goods, services, facilities and
3 privileges, and has and will suffer embarrassment and humiliation.

4 **FACTUAL ALLEGATIONS**

5 4. Plaintiff **JEFF HOHLBEIN** is, and at all times relevant to this Complaint is, a
6 “physically handicapped person, “physically disabled person,” and a “person with a disability,”
7 as these terms are used under California law and under federal laws including, but not limited
8 to, Title III of the *Americans with Disabilities Act of 1990*. (The terms “physically
9 handicapped person,” “physically disabled person,” and a “person with a disability” will be used
10 interchangeably throughout this Complaint.) Plaintiff is a “person with a disability,” as defined
11 by all applicable California and United State’s laws. Plaintiff **JEFF HOHLBEIN** is severely
12 limited in the use of his legs. He is wheelchair-mobile.

13 5. Defendants **BAY AREA/DIABLO PETROLEUM, CO., A California corporation,**
14 **and DOES ONE to FIFTY, inclusive,** at all times relevant herein were and are the owners and
15 operators; lessors and/or lessees, franchisers and/or franchisees, of public facilities known as
16 the “**EUREKA CASH OIL,**” located at Eureka, California, subject to the requirements of
17 California state law requiring full and equal access to public facilities pursuant to *California*
18 *Health & Safety Code* § 19955, *et seq.*, *California Civil Code* §§ 51, 51.5, 52(a), 52.1, 54,
19 54.1, 54.3 and 55, and subject to Title III of the *Americans with Disabilities Act of 1990*, and
20 to all other legal requirements referred to in this Complaint. Plaintiff does not know the relative
21 responsibilities of defendants in the operation of the facilities herein complained of, and alleges
22 a joint venture and common enterprise by all such defendants.

23 6. Defendants **BAY AREA/DIABLO PETROLEUM, CO., A California corporation,**
24 **and DOES ONE to FIFTY, inclusive** (hereinafter alternatively referred to collectively as
25 “defendants”), at all times relevant herein were and are owners, possessors, builders and

1 keepers of the “**EUREKA CASH OIL**” in Eureka, California.

2 7. Defendants **BAY AREA/DIABLO PETROLEUM, CO., A California corporation,**
3 **and DOES ONE to FIFTY, inclusive** are the owners and operators of the subject “**EUREKA**
4 **CASH OIL**” at all times relevant to this Complaint. Plaintiff is informed and believes that each
5 of the defendants herein is the agent, employee or representative of each of the other
6 defendants, and performed all acts and omissions stated herein within the scope of such
7 agency or employment or representative capacity and is responsible in some manner for the
8 acts and omissions of the other defendants in legally causing the damages complained of
9 herein, and have approved or ratified each of the acts or omissions of each other defendant, as
10 herein described.

11
12 8. Plaintiff **JEFF HOHLBEIN** does not know the true names and capacities of
13 defendants **BAY AREA/DIABLO PETROLEUM, CO., A California corporation, and DOES**
14 **ONE to FIFTY, inclusive**, their business capacities, their ownership connection to the property
15 and business, nor their relative responsibilities in causing the access violations herein
16 complained of, and alleges a joint venture and common enterprise by all such defendants.
17 Plaintiff is informed and believes that each of the defendants herein, including **DOES ONE to**
18 **FIFTY, inclusive**, is the agent, ostensible agent, master, servant, employer, employee,
19 representative, franchiser, franchisee, joint venturer, partner, and associate, or such similar
20 capacity, of each of the other defendants, and was at all times acting and performing, or failing
21 to act or perform, with the authorization, consent, permission or ratification of each of the other
22 defendants, and is responsible in some manner for the acts and omissions of the other
23 defendants in legally causing the violations and damages complained of herein, and have
24 approved or ratified each of the acts or omissions of each other defendant, as herein
25 described. Plaintiff will seek leave to amend this Complaint when the true names, capacities,
26 connections and responsibilities of defendants **BAY AREA/DIABLO PETROLEUM, CO., A**
27
28

1 **California corporation, and DOES ONE to FIFTY, inclusive**, are ascertained.

2 9. Plaintiff is informed and believes that all named defendants, including DOES ONE
3 to FIFTY, inclusive, conspired to commit the acts described herein, or alternatively, aided and
4 abetted one another in the performance of the wrongful acts hereinafter alleged.

5 10. Defendants **BAY AREA/DIABLO PETROLEUM, CO., A California corporation,**
6 **and DOES ONE to FIFTY, inclusive**, are the owners and operators of the “**EUREKA CASH**
7 **OIL,**” located at Eureka, California. This gas station, including, but not limited to, parking
8 spaces and access aisles and access routes, are each a part of a “public accommodation or
9 facility” subject to the requirements of *California Health & Safety Code* § 19955, *et seq.*, and
10 of *California Civil Code* §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this
11 “**EUREKA CASH OIL**” gas station was constructed after 1990, which has subjected the
12 “**EUREKA CASH OIL**” gas station to handicapped access requirements per *California Health*
13 **& Safety Code** § 19959, and applicable portions of *California Code of Regulations*, Title 24,
14 (the State Building Code).

15 11. On or about April 24, 2003, Plaintiff **JEFF HOHLBEIN**, visited the “**EUREKA CASH**
16 **OIL**” in Eureka, California for the purpose of obtaining gas and some refreshments.
17 Defendants **BAY AREA/DIABLO PETROLEUM, CO., A California corporation, and DOES**
18 **ONE to FIFTY, inclusive**, interfered with Plaintiff’s access to the “**EUREKA CASH OIL**” as set
19 forth in Paragraph 3 above.
20
21
22

23 Said acts and omissions denied Plaintiff legal handicapped access to the “**EUREKA**
24 **CASH OIL**” according to federal and state law.

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

1 13. Defendants, and each of them, discriminated against Plaintiff **JEFF HOHLBEIN**
2 on the basis of his physical disability, and interfered with his access to the "**EUREKA CASH**
3 **OIL**" establishment, in violation of both California law including, but not limited to, **California**
4 **Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition of
5 Discrimination" provision and §503, the "Prohibition Against Retaliation or Coercion" provision
6 of the **Americans with Disabilities Act of 1990**.

7
8 14. As a result of the actions and failure to act of defendants, and each of them, and
9 as a result of the failure to provide appropriate handicapped parking, proper handicapped
10 signage, proper handicapped accessible entryways, and handicapped accommodations for gas
11 stations and convenience stores, Plaintiff **JEFF HOHLBEIN** suffered and will suffer a loss of his
12 civil rights to full and equal access to public facilities, and further suffered and will suffer
13 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,
14 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and
15 naturally associated with a person with a physical disability being denied access to a public
16 accommodation, all to his damages as prayed hereinafter in an amount within the jurisdiction of
17 this court.

18
19 **I. FIRST CAUSE OF ACTION:**
20 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**
21 **(42 USC §12101 et seq.)**

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

25 16. Pursuant to law, in 1990 the United States Congress made findings per 42 **USC** §
26 12101 regarding persons with physical disabilities, finding that laws were needed to more fully
27 protect 43 million Americans with one or more physical or mental disabilities; [that] historically
28 society has tended to isolate and segregate individuals with disabilities; [that] such forms of

1 discrimination against individuals with disabilities continue to be a serious and pervasive social
2 problem; [that] the nation's proper goals regarding individuals with disabilities are to assure
3 equality of opportunity, full participation, independent living and economic self-sufficiency for
4 such individuals; [and that] the continuing existence of unfair and unnecessary discrimination
5 and prejudice denies people with disabilities the opportunity to compete on an equal basis and
6 to pursue those opportunities for which our free society is justifiably famous.

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

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

19 18. As part of the **Americans with Disabilities Act of 1990**, Public Law 101-336
20 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
21 Operated by Private Entities" (42 **USC** § 12181 *et seq.*). Among the public accommodations
22 identified for purposes of this title were "a laundromat, dry-cleaner, bank, barber shop, beauty
23 shop, travel service, shoe repair service, funeral parlor, gas station, , or other service
24 establishment. . ."

25 19. Pursuant to 42 **USC** § 12182,

26 "No individual shall be discriminated against on the basis of disability in the
27 full and equal enjoyment of the goods, services, facilities, privileges, advantages,
28 or accommodations of any place of public accommodation by any person who
owns, leases (or leases to), or operates a place of public accommodation."

29 20. Among the general prohibitions against discrimination were included in 42 **USC**
30 §12182(b)(1)(A)(i):

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

7 21. Among the general prohibitions against discrimination were included in 42 **USC**
8 §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 an
12 individual with whom the individual or entity is known to have a relationship or
13 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 **USC** §
17 12182(b)(2)(A)(i) and 42 **USC** § 12182(b)(2)(A)(ii):

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

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

25 (ii) a failure to make reasonable modifications in policies, practices, or
26 procedures, when such modifications are necessary to afford such goods,
27 services, facilities, privileges, advantages, or accommodations to individuals with
28 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 "**EUREKA CASH OIL**" facility by persons with disabilities and
31 their companions as established by the defendants can be simply modified to eliminate
32 disparate and discriminatory treatment of persons with disabilities by properly constructing

1 barrier free handicapped access for safe and full and equal enjoyment of the "EUREKA CASH
2 OIL" as that enjoyed by other people.

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

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

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

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

22 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
23 were at all times after 1990 "readily achievable." On information and belief, if the removal of all
24 the barriers complained of here together were not "readily achievable," the removal of each
25 individual barrier complained of herein was "readily achievable."
26

27 27. Per 42 **USC** § 12181(9), "The term 'readily achievable' means easily
28

1 accomplishable and able to be carried out without much difficulty or expense.” The statute and
2 attendant regulations define relative “expense” in relation to the total financial resources of the
3 entities involved, including any “parent” companies. Plaintiff alleges that properly repairing
4 each of the items that Plaintiff complains of herein is readily achievable, including, but not
5 limited to, correcting and repairing the items set forth in Paragraph 3 above.

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

12
13 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
14 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil Rights**
15 **Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to discrimination on
16 the basis of disability in violation of this title and/or Plaintiff has reasonable grounds for
17 believing that he is about to be subjected to discrimination in violation of **Americans With**
18 **Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of the public facilities
19 complained of herein for the purpose of entry and provision of goods and service so long as
20 defendants continue to apply eligibility criteria, policies, practices and procedures to screen out
21 and refuse to allow entry and service to persons with disabilities such as Plaintiff’s.

22
23
24 29. Defendants’, and each of their acts and omissions of failing to provide barrier free
25 handicapped access for Plaintiff, were tantamount to interference, coercion or intimidation
26 pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** § 12203):

27 It shall be unlawful to coerce, intimidate, threaten, or interfere with any
28 individual in the exercise or enjoyment of, or on account of his or her having
encouraged any other individual in the exercise or enjoyment of, any right granted

1 or protected by this Act.

2 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §
3 12188), “Nothing in this section shall require a person with a disability to engage in a futile
4 gesture if such person has actual notice that a person or organization covered by this title does
5 not intend to comply with its provisions.” Pursuant to this last section, Plaintiff, on information
6 and belief, alleges that defendants have continued to violate the law and deny the rights of
7 Plaintiff and other disabled persons to access this public accommodation for the purpose of
8 obtaining gas and/or refreshments. Therefore, Plaintiff seeks injunctive relief pursuant to
9 §308(a)(2),
10

11 “...Where appropriate, injunctive relief shall also include requiring the
12 provision of an auxiliary aid or service, modifications of a policy, or provision of
13 alternative methods, to the extent required by this title.”

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

19 **II. SECOND CAUSE OF ACTION**
20 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL**
21 **DISABILITIES (*California Health & Safety Code* § 19955, *et seq.*)**

22 32. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
23 the allegations contained in paragraphs 1 through 31 of this Complaint and incorporate them
24 herein as if separately repled.

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

26 The purpose of this part is to insure that public accommodations or
27 facilities constructed in this state with private funds adhere to the provisions of
28 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the *Government*
Code. For the purposes of this part “public accommodation or facilities” means a
building, structure, facility, complex, or improved area which is used by the

1 general public and shall include auditoriums, hospitals, theaters, restaurants,
2 hotels, motels, stadiums, and convention centers. When sanitary facilities are
3 made available for the public, clients or employees in such accommodations or
4 facilities, they shall be made available for the handicapped.

5 34. **California Health & Safety Code** § 19956, which appears in the same chapter
6 as §19955, provides in pertinent part, “accommodations constructed in this state shall conform
7 to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
8 *Government Code*...” **California Health & Safety Code** § 19956 was operative July 1, 1970,
9 and is applicable to all public accommodations constructed or altered after that date. On
10 information and belief, portions of “**EUREKA CASH OIL**” and/or of its buildings, were
11 constructed and/or altered after July 1, 1970, and substantial portions of said building had
12 alterations, structural repairs, and/or additions made to such public accommodations after July
13 1, 1970, thereby requiring said public accommodations and/or buildings to be subject to the
14 requirements of Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, upon such
15 alteration, structural repairs or additions per **California Health & Safety Code** § 19959.

16 35. Pursuant to the authority delegated by **California Government Code** § 4450, *et*
17 *seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
18 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
19 California State Architect’s Regulations and these regulations must be complied with as to any
20 alterations and/or modifications of the “**EUREKA CASH OIL**” occurring after that date.
21 Construction changes occurring prior to this date but after July 1, 1970 triggered access
22 requirements pursuant to the “ASA” requirements, the **American Standards Association**
23 **Specifications**, A117.1-1961. On information and belief, at the time of the construction and
24 modification of said building, all buildings and facilities covered were required to conform to
25 each of the standards and specifications described in the **American Standards Association**
26 **Specifications** and/or those contained in Title 24 of the **California Administrative Code**,

1 (now known as Title 24, **California Code of Regulations**.)

2 36. Public facilities, such as “**EUREKA CASH OIL**” are public accommodations or
3 facilities within the meaning of **California Health & Safety Code** § 19955, *et seq.*

4 37. It is difficult or impossible for persons with physical disabilities who use
5 wheelchairs, canes, walkers and service animals to travel about in public to use a gas station
6 with the defects set forth in Paragraph 3 above as required by Title 24 of the **California Code**
7 **of Regulations** and the **Americans with Disabilities Act Access Guidelines (ADAAG)**.
8 Thus, when public accommodations fail to provide handicap accessible public facilities,
9 persons with physical disabilities are unable to enter and use said facilities, and are denied full
10 and equal access to and use of that facility that is enjoyed by other members of the general
11 public.
12

13 38. Plaintiff **JEFF HOHLBEIN** and other similarly situated persons with physical
14 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
15 service animals are unable to use public facilities on a “full and equal” basis unless each such
16 facility is in compliance with the provisions of the **California Health & Safety Code** § 19955, *et*
17 *seq.* Plaintiff is a member of that portion of the public whose rights are protected by the
18 provisions of **California Health & Safety Code** § 19955, *et seq.*
19

20 39. The **California Health & Safety Code** was enacted “[t]o ensure that public
21 accommodations or facilities constructed in this state with private funds adhere to the
22 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*
23 *Code.*” Such public accommodations are defined to include gas stations.
24

25 40. Plaintiff is further informed and believes that as of the date of filing this
26 Complaint, Defendants have not made accessible the facilities at the subject gas station as set
27 forth in Paragraph 3 above.

28 41. Plaintiff **JEFF HOHLBEIN** is informed and believes, and therefore alleges, that

1 Defendants **BAY AREA/DIABLO PETROLEUM, CO., A California corporation, and DOES**
2 **ONE to FIFTY, inclusive**, and each of them, caused the subject buildings constituting
3 **“EUREKA CASH OIL”** to be constructed, altered and maintained in such a manner that
4 persons with physical disabilities were denied full and equal access to, within and throughout
5 said buildings and were denied full and equal use of said public facilities, and despite
6 knowledge and actual and constructive notice to such Defendants that the configuration of the
7 gas station and/or buildings was in violation of the civil rights of persons with physical
8 disabilities, such as Plaintiff. Such construction, modification, ownership, operation,
9 maintenance and practices of such public facilities are in violation of law as stated in Part 5.5,
10 **California Health & Safety Code** § 19955, *et seq.*, and elsewhere in the laws of California.

12 42. On information and belief, the subject building constituting the public facilities of
13 **“EUREKA CASH OIL”** denied full and equal access to Plaintiff and other persons with physical
14 disabilities in other respects due to non-compliance with requirement of Title 24 of the
15 **California Code of Regulations** and **California Health & Safety Code** § 19955, *et seq.*

17 43. The basis of Plaintiff’s aforementioned information and belief is the various
18 means upon which Defendants must have acquired such knowledge, including, but not limited
19 to, this lawsuit, other access lawsuits, communications with operators of other gas stations and
20 other property owners regarding denial access, communications with Plaintiff and other
21 persons with disabilities, communications with other patrons who regularly visit there,
22 communications with owners of other businesses, notices and advisories they obtained from
23 governmental agencies through the mails, at seminars, posted bulletins, television, radio,
24 public service announcements, or upon modification, improvement, alteration or substantial
25 repair of the subject premises and other properties owned by these Defendants, newspaper
26 articles and trade publications regarding the **Americans with Disabilities Act of 1990** and
27 other access law, and other similar information. The scope and means of the knowledge of
28

1 each defendant is within each defendant's exclusive control and cannot be ascertained except
2 through discovery.

3 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
4 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
5 enforce provisions of the law protecting access for persons with physical disabilities and
6 prohibiting discrimination against persons with physical disabilities, and to take such action
7 both in his own interests and in order to enforce an important right affecting the public interest.
8 Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable attorneys' fees
9 incurred, pursuant to the provisions of the **California Code of Civil Procedure** § 1021.5.
10 Plaintiff additionally seeks attorneys' fees pursuant to **California Health & Safety Code** §
11 19953 and **California Civil Code** §§ 54.3 and 55.

12 13 45. Defendants, and each of them, at times prior to and including April 24, 2003, and
14 continuing to the present time, knew that persons with physical disabilities were denied their
15 rights of equal access to all portions of this public facility. Despite such knowledge,
16 Defendants failed and refused to take steps to comply with the applicable access statutes; and
17 despite knowledge of the resulting problems and denial of civil rights thereby suffered by
18 Plaintiff **JEFF HOHLBEIN** and other similarly situated persons with disabilities, including the
19 specific notices referred to in paragraph 43 of this Complaint. Defendants have failed and
20 refused to take action to grant full and equal access to persons with physical disabilities in the
21 respects complained of hereinabove. Defendants and each of them have carried out a course
22 of conduct of refusing to respond to, or correct complaints about, denial of handicap access.
23 Such actions and continuing course of conduct by Defendants, evidence despicable conduct in
24 conscious disregard for the rights or safety of Plaintiff and of other similarly situated persons,
25 justifying an award of treble damages pursuant to **California Civil Code** § 54.3.

26 27 28 46. Defendants' actions have also been oppressive to persons with physical

1 disabilities and of other members of the public, and have evidenced actual or implied malicious
2 intent toward those members of the public, such as Plaintiff and other persons with physical
3 disabilities who have been denied the proper access they are entitled to by law. Further,
4 Defendants' refusals on a day-to-day basis to correct these problems evidence despicable
5 conduct in conscious disregard for the rights of Plaintiff and other members of the public with
6 physical disabilities.

7
8 47. Plaintiff prays for an award of treble damages against Defendants, and each of
9 them, pursuant to **California Civil Code** § 54.3 in an amount sufficient to make a more
10 profound example of Defendants and discourage owners, operators, franchisers and
11 franchisees of other public facilities from willful disregard of the rights of persons with physical
12 disabilities.

13
14 48. As a result of the actions and failure of Defendants, and each of them, and as a
15 result of the failure to provide proper accessible public facilities, Plaintiff **JEFF HOHLBEIN** was
16 denied his civil rights, including his right to full and equal access to public facilities, was
17 embarrassed and humiliated, suffered physical, psychological and mental injuries and
18 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,
19 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and
20 naturally associated with a person with a physical disability being denied access to a public
21 accommodation.

22 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

23
24 **III. THIRD CAUSE OF ACTION**
25 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**
26 **(California Civil Code §§ 54, 54.1 and 54.3)**

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

1 50. The public facilities above-described constitute public facilities and public
2 accommodations within the meaning of **California Health & Safety Code** § 19955 *et seq.* and
3 were facilities to which members of the public are invited. The aforementioned acts and
4 omissions of defendants, and each of them, constitute a denial of equal access to and use and
5 enjoyment of these facilities by persons with disabilities, including Plaintiff **JEFF HOHLBEIN**.
6 Said acts and omissions are also in violation of provisions of Title 24 of the **California Code of**
7 **Regulations**.

9 51. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and the
10 denial by defendants of such rights and entitlements are set forth in **California Civil Code** §§
11 54, 54.1 and 54.3, to wit:

12 Individuals with disabilities shall have the same right as the...general
13 public to full and free use of the streets, highways, sidewalks, walkways, public
14 buildings, public facilities, and other public places. **California Civil Code** §
15 54(a).

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

26 52. On or about April 24, 2003, Plaintiff **JEFF HOHLBEIN** suffered violations of
27 **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of the
28 goods, services, facilities and privileges of said **EUREKA CASH OIL**, as set forth in paragraph
29 3 above.

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

1 53. As a result of the denial of full and equal enjoyment of the goods, services,
2 facilities and privileges of defendants' **EUREKA CASH OIL** due to the acts and omissions of
3 defendants, and each of them, in owning, operating and maintaining this subject public facility,
4 Plaintiff suffered violations of his civil rights, including, but not limited to, rights under
5 **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical injury, emotional
6 distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation,
7 embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally
8 associated with a disabled person's denial of full and equal enjoyment of goods, services,
9 privileges, etc. all to his damages as prayed hereinafter in an amount within the jurisdiction of
10 the court. Defendants' actions and omissions to act constituted discrimination against Plaintiff
11 on the sole basis that Plaintiff was physically disabled.

13 54. Plaintiff seeks damages for the violation of his rights as a disabled person on or
14 about April 24, 2003, according to proof, pursuant to **California Civil Code** § 54.3, including a
15 trebling of all statutory and actual damages, general and special, available pursuant to
16 **California Civil Code** § 54.3(a).

18 55. As a result of defendants' acts and omissions in this regard, Plaintiff **JEFF**
19 **HOHLBEIN** has been required to incur legal expenses and hire attorneys in order to enforce
20 his rights and enforce provisions of the law protecting the full and equal enjoyment of goods,
21 services, facilities, privileges of public facilities by the disabled, and those individuals
22 associated with or accompanied by a person with disabilities, and prohibiting discrimination
23 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable
24 attorneys' fees incurred pursuant to the provisions of **California Civil Code** § 54.3.
25 Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for damages to
26 Plaintiff, but also to compel the defendants to make their goods, services, facilities and
27 privileges available and accessible to all members of the public with physical disabilities,
28

1 justifying public interest attorneys' fees pursuant to the provisions of **California Code of Civil**
2 **Procedure** § 1021.5.

3 56. The acts and omissions of defendants in failing to provide the required accessible
4 facilities subsequent to the enactment date and compliance date of the **Americans with**
5 **Disabilities Act of 1990**, and refusal to make remedial modifications and alterations to its
6 handicapped parking, handicapped signage, pathways, and other elements as hereinabove
7 stated, after being notified by patrons before and after the time of Plaintiff's visit and injuries,
8 on or about April 24, 2003, and all times prior thereto with the knowledge that persons with
9 disabilities would enter defendants' premises, the reason given therefor, was an established
10 policy, practice and procedure of refusing and denying entry, thereby denying lodging and
11 other services to a person with disabilities and the companions thereof, evidence malice and
12 oppression toward Plaintiff and other disabled persons.

14 57. Plaintiff seeks injunctive relief pursuant to **California Civil Code** Section 55 to
15 require Defendants to comply with federal and state access regulations.

17 58. Defendants have failed to establish a nondiscriminatory criteria, policy, practice
18 and procedure for entry into said "**EUREKA CASH OIL**" as hereinabove described.

19 59. As a result of defendants' continuing failure to provide for the full and equal
20 enjoyment of goods, services, facilities and privileges of said "**EUREKA CASH OIL**" as
21 hereinabove described, Plaintiff has continually been denied his rights to full and equal
22 enjoyment of the subject gas station, as it would be a "futile gesture" to attempt to patronize
23 said "**EUREKA CASH OIL**" with the discriminatory policy in place as hereinabove described.

25 60. The acts and omissions of defendants as complained of herein in failing to
26 provide the required accessible facilities subsequent to the enactment date and compliance
27 date of the **Americans with Disabilities Act of 1990** and refusal to make remedial
28 modifications and alternations to the architectural barriers as stated herein and in failing to

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

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

22 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
23 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
24 damages.
25

26 **IV. FOURTH CAUSE OF ACTION**
27 **VIOLATIONS OF *UNRUH CIVIL RIGHTS ACT***
28 **(*California Civil Code* §§ 51 and 51.5)**

62. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,

1 the allegations contained in paragraphs 1 through 61 of this Complaint and incorporates them
2 herein as if separately repled.

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

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

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

19 66. As a result of the violation of Plaintiff's civil rights protected by **California Civil**
20 **Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of **California Civil Code** §
21 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h) to mean
22 "special and general damages"), as well as reasonable attorneys' fees and costs, as allowed
23 by statute, according to proof. Further, pursuant to paragraphs 11, 12, 13, 35 and 43, Plaintiff
24 seeks appropriate exemplary damages under **California Civil Code** § 3294.
25

26 WHEREFORE, Plaintiff prays that this court award damages and provide relief as
27 follows:
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PRAYER FOR RELIEF

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

1. Grant injunctive relief requiring that defendants establish a non-discriminatory criteria policy, practice and procedure permitting entry into the **EUREKA CASH OIL** in Eureka, California, for the purpose of services according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, and 55, *et seq.*, and Title III of the **Americans with Disabilities Act of 1990**, and grant injunctive relief requiring that Defendants repair and render safe to handicapped persons, and otherwise make handicapped-accessible, all public areas of the gas station, including, but not limited to, each of the barriers to access identified in Paragraph 3, above, and make such facilities “readily accessible to and usable by individuals with disabilities,” according to the standards of Title 24 of the **California Administrative Code, California Health & Safety Code** § 19955 *et seq.*, and Title III of the **Americans with Disabilities Act of 1990** and the standards of **ADAAG**; and prohibiting operation of the **EUREKA CASH OIL**, located in Eureka, California, as a public facility until Defendants provide full and equal enjoyment of goods and services as described hereinabove to physically disabled persons, including Plaintiff;

2. General damages according to proof;

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

4. Prejudgment interest on all compensatory damages;

5. Punitive and exemplary damages pursuant to the standards and purposes of **California Civil Code** § 3294;

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

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

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

6 **SINGLETON LAW GROUP**

7
8 Dated: August 25, 2003

9 _____
10 Jason K. Singleton, Attorney for
11 Plaintiff, **JEFF HOHLBEIN**

12 **REQUEST FOR JURY TRIAL**

13 Plaintiffs hereby request a jury for all claims for which a jury is permitted.

14 **SINGLETON LAW GROUP**

15 Dated: August 25, 2003

16 _____
17 Jason K. Singleton, Attorney for
18 Plaintiff, **JEFF HOHLBEIN**