

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 CURLY REDWOOD LODGE, LLC, a
14 California Limited Liability Company,
15 BEVERLY GILLESPIE dba CURLY
16 REDWOOD LODGE, and DOES ONE to
17 FIFTY, inclusive,

18 Defendants.

) Case No. C 02-04281 BZ

) 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

19 Plaintiff JEFF HOHLBEIN complains of defendants CURLY REDWOOD LODGE,
20 LLC, a California Limited Liability Company, BEVERLY GILLESPIE dba CURLY
21 REDWOOD LODGE, and DOES ONE to FIFTY, inclusive, and alleges as follows:

22 JURISDICTION AND VENUE

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

1 **Regulations**, Title 24, § 19959, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1,
2 54.3 and 55.

3
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 Crescent City, California, and that Plaintiff's causes of action arose in this district.

7 **INTRODUCTION**

8 3. **CURLY REDWOOD LODGE** is located at 701 Highway 101 South, Crescent
9 City, California. Said motel is owned and operated by defendants **CURLY REDWOOD**
10 **LODGE, LLC, a California Limited Liability Company, BEVERLY GILLESPIE dba**
11 **CURLY REDWOOD LODGE, and DOES ONE to FIFTY, inclusive.**

12 Defendants **CURLY REDWOOD LODGE, LLC, a California Limited Liability**
13 **Company, BEVERLY GILLESPIE dba CURLY REDWOOD LODGE, and DOES ONE to**
14 **FIFTY, inclusive,** operate an establishment for services to the public and at which
15 Defendants failed to provide barrier free access to said establishment in conformity with
16 both Federal and California legal requirements. Further, Defendants failed to provide
17 compliance as follows:
18

19 A. **PARKING:**

20
21 1. There are 30 parking spaces and no accessible parking spaces in
22 violation of California Title 24 § 1129B.1, Table 11B-7, and ADAAG
23 4.1.2(5)(a);

24 2. There is no signage indicating accessible parking, entrance or
25 path of travel in violation of California Title 24 § 1129B.5 and ADAAG
26 4.6.4;

27 3. There are no ramps from the parking lot to the exterior walkways
28 serving the lobby and guest rooms in violation of California Title 24
§1123B and ADAAG 4.3;

4. There is no access from public paths of travel to the exterior
walkways serving the lobby and guestrooms in violation of California

1 Title 24 § 1114B.1.2 and ADAAG 4.1.2(1);

2 5. There is a vertical rise of 6-3/4" at the entrances of the lobby and
3 guest rooms in violation of California Title 24 § 1133B.2.4, § 1117B.4,
4 and ADAAG 4.13.6

5 6. Plaintiff is informed and believes there are no accessible guest
6 rooms in this facility.

7 The above barriers interfered with Plaintiff's access of the facilities and continue to deter
8 Plaintiff from visiting said facilities, and as a legal result, Plaintiff **JEFF HOHLBEIN** suffers
9 violations of his civil rights to full and equal enjoyment of goods, services, facilities and
10 privileges, and has and will suffer embarrassment and humiliation.

11 FACTUAL ALLEGATIONS

12 4. Plaintiff **JEFF HOHLBEIN** is, and at all times relevant to this Complaint is, a
13 "physically handicapped person, "physically disabled person," and a "person with a
14 disability," as these terms are used under California law and under federal laws including,
15 but not limited to, Title III of the ***Americans with Disabilities Act of 1990***. (The terms
16 "physically handicapped person," "physically disabled person," and a "person with a
17 disability" will be used interchangeably throughout this Complaint.) Plaintiff is a "person with
18 a disability," as defined by all applicable California and United State's laws. Plaintiff **JEFF**
19 **HOHLBEIN** is severely limited in the use of his legs. He is wheelchair-mobile.

20 5. Defendants **CURLY REDWOOD LODGE, LLC, a California Limited Liability**
21 **Company, BEVERLY GILLESPIE dba CURLY REDWOOD LODGE, and DOES ONE to**
22 **FIFTY, inclusive,** at all times relevant herein were and are the owners and operators;
23 lessors and/or lessees, franchisers and/or franchisees, of public facilities known as the
24 "**CURLY REDWOOD LODGE,**" located at Crescent City, California, subject to the
25 requirements of California state law requiring full and equal access to public facilities
26 pursuant to ***California Health & Safety Code § 19955, et seq., California Civil Code §§***
27
28

1 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to Title III of the *Americans with*
2 *Disabilities Act of 1990*, and to all other legal requirements referred to in this Complaint.

3 Plaintiff does not know the relative responsibilities of defendants in the operation of the
4 facilities herein complained of, and alleges a joint venture and common enterprise by all
5 such defendants.
6

7 6. Defendants **CURLY REDWOOD LODGE, LLC, a California Limited Liability**
8 **Company, BEVERLY GILLESPIE dba CURLY REDWOOD LODGE, and DOES ONE to**
9 **FIFTY, inclusive** (hereinafter alternatively referred to collectively as “defendants”), at all
10 times relevant herein were and are owners, possessors, builders and keepers of the
11 “**CURLY REDWOOD LODGE**” in Crescent City, California.
12

13 7. Defendants **CURLY REDWOOD LODGE, LLC, a California Limited Liability**
14 **Company, BEVERLY GILLESPIE dba CURLY REDWOOD LODGE, and DOES ONE to**
15 **FIFTY, inclusive** are the owners and operators of the subject “**CURLY REDWOOD**
16 **LODGE**” at all times relevant to this Complaint. Plaintiff is informed and believes that each
17 of the defendants herein is the agent, employee or representative of each of the other
18 defendants, and performed all acts and omissions stated herein within the scope of such
19 agency or employment or representative capacity and is responsible in some manner for the
20 acts and omissions of the other defendants in legally causing the damages complained of
21 herein, and have approved or ratified each of the acts or omissions of each other defendant,
22 as herein described.
23

24 8. Plaintiff **JEFF HOHLBEIN** does not know the true names and capacities of
25 defendants **CURLY REDWOOD LODGE, LLC, a California Limited Liability Company,**
26 **BEVERLY GILLESPIE dba CURLY REDWOOD LODGE, and DOES ONE to FIFTY,**
27 **inclusive**, their business capacities, their ownership connection to the property and
28

1 business, nor their relative responsibilities in causing the access violations herein
2 complained of, and alleges a joint venture and common enterprise by all such defendants.
3 Plaintiff is informed and believes that each of the defendants herein, including DOES ONE
4 to FIFTY, inclusive, is the agent, ostensible agent, master, servant, employer, employee,
5 representative, franchiser, franchisee, joint venturer, partner, and associate, or such similar
6 capacity, of each of the other defendants, and was at all times acting and performing, or
7 failing to act or perform, with the authorization, consent, permission or ratification of each of
8 the other defendants, and is responsible in some manner for the acts and omissions of the
9 other defendants in legally causing the violations and damages complained of herein, and
10 have approved or ratified each of the acts or omissions of each other defendant, as herein
11 described. Plaintiff will seek leave to amend this Complaint when the true names,
12 capacities, connections and responsibilities of defendants **CURLY REDWOOD LODGE,**
13 **LLC, a California Limited Liability Company, BEVERLY GILLESPIE dba CURLY**
14 **REDWOOD LODGE, and DOES ONE to FIFTY, inclusive,** are ascertained.

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

21 10. Defendants **CURLY REDWOOD LODGE, LLC, a California Limited Liability**
22 **Company, BEVERLY GILLESPIE dba CURLY REDWOOD LODGE, and DOES ONE to**
23 **FIFTY, inclusive,** are the owners and operators of the “**CURLY REDWOOD LODGE,**”
24 located at Crescent City, California. This motel, including, but not limited to, parking spaces
25 and access aisles and access routes, are each a part of a “public accommodation or facility”
26 subject to the requirements of **California Health & Safety Code** § 19955, *et seq.*, and of
27 **California Civil Code** §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this
28

1 "CURLY REDWOOD LODGE" motel was constructed after 1990, which has subjected the
2 "CURLY REDWOOD LODGE" motel to handicapped access requirements per *California*
3 *Health & Safety Code* § 19959, and applicable portions of *California Code of*
4 *Regulations*, Title 24, (the State Building Code).

5
6 11. On or about May 17, 2002, Plaintiff **JEFF HOHLBEIN**, visited the "**CURLY**
7 **REDWOOD LODGE**" in Crescent City, California for the purpose of obtaining a room.
8 Defendants **CURLY REDWOOD LODGE, LLC, a California Limited Liability Company,**
9 **BEVERLY GILLESPIE dba CURLY REDWOOD LODGE, and DOES ONE to FIFTY,**
10 **inclusive**, interfered with Plaintiff's access to the "**CURLY REDWOOD LODGE**" as set forth
11 in Paragraph 3 above.

12
13 Said acts and omissions denied Plaintiff legal handicapped access to the "**CURLY**
14 **REDWOOD LODGE**" according to federal and state law.

15
16 12. Plaintiff encountered and/or is informed and believes that the following
17 architectural barriers, which violate the requirements of the *California Code of Regulations*
18 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those
19 similarly situated full and equal access to the subject public facility as set forth in Paragraph
20 3 above.

21
22 13. Defendants, and each of them, discriminated against Plaintiff **JEFF**
23 **HOHLBEIN** on the basis of his physical disability, and interfered with his access to the
24 "**CURLY REDWOOD LODGE**" establishment, in violation of both California law including,
25 but not limited to, *California Civil Code* §§ 51, 51.5, 54, 54.1, and a violation of Title III,
26 §302, the "Prohibition of Discrimination" provision and §503, the "Prohibition Against
27 Retaliation or Coercion" provision of the *Americans with Disabilities Act of 1990*.

28 14. As a result of the actions and failure to act of defendants, and each of them,

1 and as a result of the failure to provide appropriate handicapped parking, proper
2 handicapped signage, proper handicapped accessible entryways, and handicapped
3 accommodations for motels, Plaintiff **JEFF HOHLBEIN** suffered and will suffer a loss of his
4 civil rights to full and equal access to public facilities, and further suffered and will suffer
5 emotional distress, mental distress, mental suffering, mental anguish, which includes
6 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
7 and naturally associated with a person with a physical disability being denied access to a
8 public accommodation, all to his damages as prayed hereinafter in an amount within the
9 jurisdiction of this court.

11 **I. FIRST CAUSE OF ACTION:**
12 VIOLATION OF ***THE AMERICANS WITH DISABILITIES ACT OF 1990***
13 (42 ***USC*** §12101 *et seq.*)

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

17 16. Pursuant to law, in 1990 the United States Congress made findings per 42
18 ***USC*** § 12101 regarding persons with physical disabilities, finding that laws were needed to
19 more fully protect 43 million Americans with one or more physical or mental disabilities;
20 [that] historically society has tended to isolate and segregate individuals with disabilities;
21 [that] such forms of discrimination against individuals with disabilities continue to be a
22 serious and pervasive social problem; [that] the nation's proper goals regarding individuals
23 with disabilities are to assure equality of opportunity, full participation, independent living
24 and economic self-sufficiency for such individuals; [and that] the continuing existence of
25 unfair and unnecessary discrimination and prejudice denies people with disabilities the
26 opportunity to compete on an equal basis and to pursue those opportunities for which our
27
28

1 free society is justifiably famous.

2 17. Congress stated as its purpose in passing the **Americans with Disabilities**
3 **Act of 1990** (42 **USC** § 12102):
4

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

16 18. As part of the **Americans with Disabilities Act of 1990**, Public Law 101-336
17 (hereinafter the “ADA”), Congress passed “Title III - Public Accommodations and Services
18 Operated by Private Entities” (42 **USC** § 12181 *et seq.*). Among the public accommodations
19 identified for purposes of this title were “an inn, hotel, motel, or other places of lodging . . .”
20

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

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

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

30 **Denial of participation.** It shall be discriminatory to subject an
31 individual or class of individuals on the basis of a disability or
32 disabilities of such individual or class, directly, or through
33 contractual, licensing, or other arrangements, to a denial of the
34 opportunity of the individual or class to participate in or benefit
35 from the goods, services, facilities, privileges, advantages, or
36 accommodations of an entity.
37

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

1 **USC** §12182(b)(1)(E):

2 **Association** -- It shall be discriminatory to exclude or otherwise
3 deny equal goods, services, facilities, privileges, advantages,
4 accommodations, or other opportunities to an individual or entity
5 because of the known disability of an individual with whom the
6 individual or entity is known to have a relationship or association.

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

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

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

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

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

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

27 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices
28 and procedure for entry to the "**CURLY REDWOOD LODGE**" facility by persons with
disabilities and their companions as established by the defendants can be simply modified
to eliminate disparate and discriminatory treatment of persons with disabilities by properly
constructing barrier free handicapped access for safe and full and equal enjoyment of the
"**CURLY REDWOOD LODGE**" as that enjoyed by other people.

 24. The specific prohibition against retaliation and coercion is included in the

1 **Americans With Disabilities Act of 1990** § 503(b) and the *Remedies and Procedures* in §
2 503(c):

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

9 (c) Remedies and Procedure. - The remedies and procedures
10 available under sections 107, 203, and 308 of this Act shall be
11 available to aggrieved persons for violations of subsections (a)
12 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
14 **USC** § 12182(b)(2)(a)(iv), “A failure to remove architectural barriers, and communications
15 barriers that are structural in nature, in existing facilities...where such removal is readily
16 achievable;” and (v) “where and entity can demonstrate that the removal of a barrier under
17 clause (iv) is not readily achievable, a failure to make such goods, services, facilities,
18 privileges, advantages, or accommodations available through alternative methods if such
19 methods are readily achievable.” The acts of Defendants set forth herein were a violations
20 of Plaintiff’s rights under the “ADA,” Public Law 101-336, and the regulations promulgated
21 thereunder, 28 **CFR** Part 36, *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
24 all the barriers complained of here together were not “readily achievable,” the removal of
25 each individual barrier complained of herein was “readily achievable.”

26 27. Per 42 **USC** § 12181(9), “The term ‘readily achievable’ means easily
27 accomplishable and able to be carried out without much difficulty or expense.” The statute
28 and attendant regulations define relative “expense” in relation to the total financial resources

1 of the entities involved, including any “parent” companies. Plaintiff alleges that properly
2 repairing each of the items that Plaintiff complains of herein is readily achievable, including
3 but not limited to correcting and repairing the items set forth in Paragraph 3 above.
4

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

12 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
13 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil**
14 **Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to
15 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable
16 grounds for believing that he is about to be subjected to discrimination in violation of
17 **Americans With Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of
18 the public facilities complained of herein for the purpose of entry and provision of goods and
19 service so long as defendants continue to apply eligibility criteria, policies, practices and
20 procedures to screen out and refuse to allow entry and service to persons with disabilities
21 such as Plaintiff’s.
22

23 29. Defendants’, and each of their acts and omissions of failing to provide barrier
24 free handicapped access for Plaintiff, were tantamount to interference, coercion or
25 intimidation pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** §
26 12203):
27

28 It shall be unlawful to coerce, intimidate, threaten, or interfere
with any individual in the exercise or enjoyment of, or on account

1 of his or her having encouraged any other individual in the
2 exercise or enjoyment of, any right granted or protected by this
3 Act.

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

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

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

20 **II. SECOND CAUSE OF ACTION**

21 BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH
22 PHYSICAL DISABILITIES (**California Health & Safety Code** § 19955, *et*
seq.)

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

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

27 The purpose of this part is to insure that public accommodations
28 or facilities constructed in this state with private funds adhere to

1 the provisions of Chapter 7 (commencing with Sec. 4450) of
2 Division 5 of Title 1 of the *Government Code*. For the purposes
3 of this part “public accommodation or facilities” means a building,
4 structure, facility, complex, or improved area which is used by
5 the general public and shall include auditoriums, hospitals,
6 theaters, restaurants, hotels, motels, stadiums, and convention
centers. When sanitary facilities are made available for the
public, clients or employees in such accommodations or facilities,
they shall be made available for the handicapped.

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

21 35. Pursuant to the authority delegated by **California Government Code** § 4450,
22 *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
23 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
24 California State Architect’s Regulations and these regulations must be complied with as to
25 any alterations and/or modifications of the “**CURLY REDWOOD LODGE**” occurring after
26 that date. Construction changes occurring prior to this date but after July 1, 1970 triggered
27 access requirements pursuant to the “ASA” requirements, the **American Standards**
28

1 **Association Specifications**, A117.1-1961. On information and belief, at the time of the
2 construction and modification of said building, all buildings and facilities covered were
3 required to conform to each of the standards and specifications described in the **American**
4 **Standards Association Specifications** and/or those contained in Title 24 of the **California**
5 **Administrative Code**, (now known as Title 24, **California Code of Regulations**.)

7 36. Public facilities, such as “**CURLY REDWOOD LODGE**” are public
8 accommodations or facilities within the meaning of **California Health & Safety Code** §
9 19955, *et seq.*

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

20 38. Plaintiff **JEFF HOHLBEIN** and other similarly situated persons with physical
21 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
22 service animals are unable to use public facilities on a “full and equal” basis unless each
23 such facility is in compliance with the provisions of the **California Health & Safety Code** §
24 19955, *et seq.* Plaintiff is a member of that portion of the public whose rights are protected
25 by the provisions of **California Health & Safety Code** § 19955, *et seq.*

27 39. The **California Health & Safety Code** was enacted “[t]o ensure that public
28 accommodations or facilities constructed in this state with private funds adhere to the

1 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*
2 *Code*.” Such public accommodations are defined to include motels.

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

7 41. Plaintiff **JEFF HOHLBEIN** is informed and believes, and therefore alleges, that
8 Defendants **CURLY REDWOOD LODGE, LLC, a California Limited Liability Company,**
9 **BEVERLY GILLESPIE dba CURLY REDWOOD LODGE, and DOES ONE to FIFTY,**
10 **inclusive**, and each of them, caused the subject buildings constituting “**CURLY REDWOOD**
11 **LODGE**” to be constructed, altered and maintained in such a manner that persons with
12 physical disabilities were denied full and equal access to, within and throughout said
13 buildings and were denied full and equal use of said public facilities, and despite knowledge
14 and actual and constructive notice to such Defendants that the configuration of the motel
15 and/or buildings was in violation of the civil rights of persons with physical disabilities, such
16 as Plaintiff. Such construction, modification, ownership, operation, maintenance and
17 practices of such public facilities are in violation of law as stated in Part 5.5, **California**
18 **Health & Safety Code** § 19955, *et seq.*, and elsewhere in the laws of California.
19
20

21 42. On information and belief, the subject building constituting the public facilities
22 of “**CURLY REDWOOD LODGE**” denied full and equal access to Plaintiff and other persons
23 with physical disabilities in other respects due to non-compliance with requirement of Title
24 24 of the **California Code of Regulations** and **California Health & Safety Code** § 19955,
25 *et seq.*
26

27 43. The basis of Plaintiff’s aforementioned information and belief is the various
28 means upon which Defendants must have acquired such knowledge, including but not

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

13
14 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
15 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
16 enforce provisions of the law protecting access for persons with physical disabilities and
17 prohibiting discrimination against persons with physical disabilities, and to take such action
18 both in his own interests and in order to enforce an important right affecting the public
19 interest. Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable
20 attorneys' fees incurred, pursuant to the provisions of the **California Code of Civil**
21 **Procedure** § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to **California**
22 **Health & Safety Code** § 19953 and **California Civil Code** §§ 54.3 and 55.
23

24 45. Defendants, and each of them, at times prior to and including May 17, 2002,
25 and continuing to the present time, knew that persons with physical disabilities were denied
26 their rights of equal access to all portions of this public facility. Despite such knowledge,
27 Defendants failed and refused to take steps to comply with the applicable access statutes;
28

1 and despite knowledge of the resulting problems and denial of civil rights thereby suffered
2 by Plaintiff **JEFF HOHLBEIN** and other similarly situated persons with disabilities, including
3 the specific notices referred to in paragraph 43 of this Complaint. Defendants have failed
4 and refused to take action to grant full and equal access to persons with physical disabilities
5 in the respects complained of hereinabove. Defendants and each of them have carried out
6 a course of conduct of refusing to respond to, or correct complaints about, denial of
7 handicap access. Such actions and continuing course of conduct by Defendants, evidence
8 despicable conduct in conscious disregard for the rights or safety of Plaintiff and of other
9 similarly situated persons, justifying an award of treble damages pursuant to **California**
10 **Civil Code** § 54.3.
11

12
13 46. Defendants' actions have also been oppressive to persons with physical
14 disabilities and of other members of the public, and have evidenced actual or implied
15 malicious intent toward those members of the public, such as Plaintiff and other persons
16 with physical disabilities who have been denied the proper access they are entitled to by
17 law. Further, Defendants' refusals on a day-to-day basis to correct these problems
18 evidence despicable conduct in conscious disregard for the rights of Plaintiff and other
19 members of the public with physical disabilities.
20

21 47. Plaintiff prays for an award of treble damages against Defendants, and each of
22 them, pursuant to **California Civil Code** § 54.3 in an amount sufficient to make a more
23 profound example of Defendants and discourage owners, operators, franchisers and
24 franchisees of other public facilities from willful disregard of the rights of persons with
25 physical disabilities.
26

27 48. As a result of the actions and failure of Defendants, and each of them, and as
28 a result of the failure to provide proper accessible public facilities, Plaintiff **JEFF HOHLBEIN**

1 was denied his civil rights, including his right to full and equal access to public facilities, was
2 embarrassed and humiliated, suffered physical, psychological and mental injuries and
3 emotional distress, mental distress, mental suffering, mental anguish, which includes
4 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
5 and naturally associated with a person with a physical disability being denied access to a
6 public accommodation.

7
8 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

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

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

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

22
23 51. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and
24 the denial by defendants of such rights and entitlements are set forth in **California Civil**
25 **Code** §§ 54, 54.1 and 54.3, to wit:

26
27 Individuals with disabilities shall have the same right as
28 the...general public to full and free use of the streets, highways,
sidewalks, walkways, public buildings, public facilities, and other
public places. **California Civil Code** § 54(a).

1
2 Individuals with disabilities shall be entitled to full and equal
3 access, as other members of the general public, to
4 accommodations, advantages, facilities, and privileges of all
5 common carriers, airplanes, motor vehicles, railroad trains, motor
6 buses, streetcars, boats, or any other public conveyances or
7 modes of transportation (whether private, public, franchised,
8 licensed, contracted, or otherwise provided), telephone facilities,
9 adoption agencies, private schools, hotels, lodging places,
places of public accommodation, amusement or resort, and other
places to which the general public is invited, subject only to the
conditions and limitations established by law, or state or federal
regulation, and applicable alike to all persons. **California Civil
Code § 54.1(a).**

10 52. On or about May 17, 2002, Plaintiff **JEFF HOHLBEIN** suffered violations of
11 **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of the
12 goods, services, facilities and privileges of said **CURLY REDWOOD LODGE**, as set forth in
13 paragraph 3 above.

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

17 53. As a result of the denial of full and equal enjoyment of the goods, services,
18 facilities and privileges of defendants' **CURLY REDWOOD LODGE** due to the acts and
19 omissions of defendants, and each of them, in owning, operating and maintaining this
20 subject public facility, Plaintiff suffered violations of his civil rights, including but not limited to
21 rights under **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical
22 injury, emotional distress, mental distress, mental suffering, mental anguish, which includes
23 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
24 and naturally associated with a disabled person's denial of full and equal enjoyment of
25 goods, services, privileges, etc. all to his damages as prayed hereinafter in an amount within
26 the jurisdiction of the court. Defendants' actions and omissions to act constituted
27
28

1 discrimination against Plaintiff on the sole basis that Plaintiff was physically disabled.

2 54. Plaintiff seeks damages for the violation of his rights as a disabled person on
3 or about May 17, 2002, according to proof, pursuant to **California Civil Code** § 54.3,
4 including a trebling of all statutory and actual damages, general and special, available
5 pursuant to **California Civil Code** § 54.3(a).
6

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

21 56. The acts and omissions of defendants in failing to provide the required
22 accessible facilities subsequent to the enactment date and compliance date of the
23 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and
24 alterations to its handicapped parking, handicapped signage, pathways, and other elements
25 as hereinabove stated, after being notified by patrons before and after the time of Plaintiff's
26 visit and injuries, on or about May 17, 2002, and all times prior thereto with the knowledge
27 that persons with disabilities would enter defendants' premises, the reason given therefor,
28

1 was an established policy, practice and procedure of refusing and denying entry, thereby
2 denying lodging and other services to a person with disabilities and the companions thereof,
3 evidence malice and oppression toward Plaintiff and other disabled persons.
4

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

7 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
8 practice and procedure for entry into said "**CURLY REDWOOD LODGE**" as hereinabove
9 described.

10 59. As a result of defendants' continuing failure to provide for the full and equal
11 enjoyment of goods, services, facilities and privileges of said "**CURLY REDWOOD LODGE**"
12 as hereinabove described, Plaintiff has continually been denied his rights to full and equal
13 enjoyment of the subject motel, as it would be a "futile gesture" to attempt to patronize said
14 "**CURLY REDWOOD LODGE**" with the discriminatory policy in place as hereinabove
15 described.
16

17 60. The acts and omissions of defendants as complained of herein in failing to
18 provide the required accessible facilities subsequent to the enactment date and compliance
19 date of the **Americans with Disabilities Act of 1990** and refusal to make remedial
20 modifications and alternations to the architectural barriers as stated herein and in failing to
21 establish practices, policies and procedures to allow safe access by persons who are
22 disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully
23 excluding Plaintiff and other members of the public who are physically disabled, from full
24 and equal enjoyment of the subject "**CURLY REDWOOD LODGE**" as hereinabove
25 described. Such acts and omissions are the continuing cause of humiliation and mental and
26 emotional suffering of Plaintiff in that these actions continue to treat Plaintiff as an inferior
27
28

1 and second class citizen and serve to discriminate against him on the sole basis that he is a
2 physically disabled. Plaintiff is unable, so long as such acts and omissions of defendants
3 continue, to achieve full and equal enjoyment of the goods and services of said "**CURLY**
4 **REDWOOD LODGE**" as described hereinabove. The acts of defendants have legally
5 caused and will continue to cause irreparable injury to Plaintiff if not enjoined by this court.
6

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

16 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
17 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
18 damages.
19

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

22 62. Plaintiff repleads and incorporates by reference, as if fully set forth again
23 herein, the allegations contained in paragraphs 1 through 61 of this Complaint and
24 incorporates them herein as if separately repled.
25

26 63. Defendants' acts and omissions as specified with regard to the discriminatory
27 treatment of Plaintiff **JEFF HOHLBEIN** on the basis of his physical disabilities, have been in
28 violation of *California Civil Code* §§ 51 and 51.5, the *Unruh Civil Rights Act*, and have

1 denied to Plaintiff his rights to “full and equal accommodations, advantages, facilities,
2 privileges or services in all business establishments of every kind whatsoever.”

3
4 64. **California Civil Code** § 51 also provides that “[a] violation of the right of any
5 individual under the **Americans with Disabilities Act of 1990** (Public Law 101-336) shall
6 also constitute a violation of this section.”

7 65. **California Civil Code** § 51.5 also provides that “[n]o business establishment
8 of any kind whatsoever shall discriminate against, boycott, or blacklist, refuse to buy from,
9 sell to, or trade with any person in this state because of the race, creed, religion, color,
10 national origin, sex, disability of the person or of the person’s partners, members,
11 stockholders, directors, officers, managers, superintendents, agents, employees, business
12 associates, suppliers, or customers.”

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

22 WHEREFORE, Plaintiff prays that this court award damages and provide relief as
23 follows:

24 **PRAYER FOR RELIEF**

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

26
27 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
28 criteria policy, practice and procedure permitting entry into the **CURLY REDWOOD LODGE**

1 in Crescent City, California, for the purpose of services according to **California Civil Code**
2 §§ 51, 51.5, 52, 54, 54.1, 54.3, and 55, *et seq.*, and Title III of the **Americans with**
3 **Disabilities Act of 1990**, and grant injunctive relief requiring that Defendants repair and
4 render safe to handicapped persons, and otherwise make handicapped-accessible, all
5 public areas of the motel, including but not limited to, each of the barriers to access
6 identified in Paragraph 3, above, and make such facilities “readily accessible to and usable
7 by individuals with disabilities,” according to the standards of Title 24 of the **California**
8 **Administrative Code, California Health & Safety Code** § 19955 *et seq.*, and Title III of the
9 **Americans with Disabilities Act of 1990** and the standards of **ADAAG**; and prohibiting
10 operation of the **CURLY REDWOOD LODGE**, located in Crescent City, California, as a
11 public facility until Defendants provide full and equal enjoyment of goods and services as
12 described hereinabove to physically disabled persons, including Plaintiff;

15 2. General damages according to proof;

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

19 4. Prejudgment interest on all compensatory damages;

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

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

24 7. Award Plaintiff all litigation expenses, all costs of this proceeding and all
25 reasonable attorneys’ fees as provided by law, including but not limited to those recoverable
26 pursuant to the provisions of **California Civil Code** §§ 52, 54.3, and 55, **California Code of**
27
28

1 **Civil Procedure** § 1021.5, and **Americans with Disabilities Act of 1990** §308 of Title III;
2 and

3 8. Grant such other and further relief as the court may deem just and proper.
4

5
6 Dated: September 6, 2002

7 Jason K. Singleton, Attorney for
8 Plaintiff, **JEFF HOHLBEIN**

9 **REQUEST FOR JURY TRIAL**

10 Plaintiffs hereby request a jury for all claims for which a jury is permitted.
11

12 Dated: September 6, 2002

13 Jason K. Singleton, Attorney for
14 Plaintiff, **JEFF HOHLBEIN**