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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 PATRICK McMAHON,

11 Plaintiff,

12 v.

13 PIZZA WITH PIZZAZZ, INC., a California
14 corporation, dba ANGELO'S PIZZA, and
15 DOES ONE through FIFTY, inclusive,

16 Defendants.

) Case No. C 02-3713 CRB

) Civil Rights

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

) JURY TRIAL REQUESTED

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18
19 Plaintiff PATRICK McMAHON complains of PIZZA WITH PIZZAZZ, INC., a
20 California corporation, dba ANGELO'S PIZZA, and DOES ONE to FIFTY, inclusive, and
21 alleges as follows:

22
23 JURISDICTION AND VENUE

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

1 **California Health & Safety Code** § 19955, *et seq.*, including **California Code of**
2 **Regulations**, Title 24, § 19959, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1,
3 54.3 and 55.

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

7 INTRODUCTION

8
9 3. **ANGELO'S** is located at 215 West 7th Street, Eureka, California. Said
10 restaurant is owned and operated by defendants **PIZZA WITH PIZZAZZ, INC., a California**
11 **corporation, dba ANGELO'S PIZZA, and DOES ONE to FIFTY, inclusive.**

12 Defendants **PIZZA WITH PIZZAZZ, INC., a California corporation, dba ANGELO'S**
13 **PIZZA, and DOES ONE to FIFTY, inclusive**, operates an establishment for services to the
14 public and at which Defendants failed to provide barrier free access to said establishment in
15 conformity with both Federal and California legal requirements. Further, Defendants failed
16 to provide compliance as follows:

17 A. PARKING:

- 18
19 1. Accessible space is not on the shortest accessible route in violation of
20 California Title 24 § 1129B.1, ADAAG 4.6.2.
- 21 2. The accessible space has no access aisle in violation of California Title
22 24 § 1129B.4.1, ADAAG 4.6.3.
- 23 3. There are insufficient accessible spaces in violation of California Title 24
24 § 1129B.1, Table 11B-6, ADAAG 4.1.2(5).
- 25 4. There is no signage on the parking lot in violation of California Title 24 §
26 1129B.5.
- 27 5. The accessible space requires patrons to travel behind vehicles other
28 than their own in violation of California Title 24 § 1129B.4.3

1 B. DINING:

- 2 1. The order counter and beverage counter are too high in violation of
3 California Title 24 § 1122B.4, ADAAG 4.32.4.

4 C. RESTROOMS:

- 5 1. There is no grab bar at the back of the toilet in violation of California Title
6 24 § 1115B.8.1.
- 7 2. There is no clear space under the sink in violation of California Title 24 §
8 1115B.1, California Plumbing Code § 1504.2.1, ADAAG 4.19.2.
- 9 3. The toilet is too close to the wall in violation of California Title 24 §
10 1115B.7.1.4, ADAAG 4.17.3.
- 11 4. The faucet controls require grasping and pinching in violation of
12 California Plumbing Code § 504(c), ADAAG 4.24.7.
- 13 5. There is not a 60" clear space in violation of California Title 24 §
14 1115B.7.2.
- 15 6. The door is too narrow in violation of California Title 24 § 1115B.7.1.3,
16 ADAAG 4.17.3.
- 17 7. The dispenses are all placed too high in violation of California Title 24 §
18 1115B.9.2, ADAAG 4.23.7

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

24 **FACTUAL ALLEGATIONS**

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

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

5 5. Defendants **PIZZA WITH PIZZAZZ, INC., a California corporation, dba**
6 **ANGELO'S PIZZA, and DOES ONE to FIFTY, inclusive**, at all times relevant herein were
7 and are the owners and operators; lessors and/or lessees, franchisers and/or franchisees, of
8 public facilities known as the "**ANGELO'S**" located at Eureka, California, subject to the
9 requirements of California state law requiring full and equal access to public facilities
10 pursuant to **California Health & Safety Code § 19955, et seq., California Civil Code §§**
11 **51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55**, and subject to Title III of the **Americans with**
12 **Disabilities Act of 1990**, and to all other legal requirements referred to in this Complaint.
13 Plaintiff does not know the relative responsibilities of defendants in the operation of the
14 facilities herein complained of, and alleges a joint venture and common enterprise by all
15 such defendants.
16
17

18 6. Defendants **PIZZA WITH PIZZAZZ, INC., a California corporation, dba**
19 **ANGELO'S PIZZA, and DOES ONE to FIFTY, inclusive** (hereinafter alternatively referred
20 to collectively as “defendants”), at all times relevant herein were and are owners,
21 possessors, builders and keepers of the “**ANGELO'S**” in Eureka, California.
22

23 7. Defendants **PIZZA WITH PIZZAZZ, INC., a California corporation, dba**
24 **ANGELO'S PIZZA, and DOES ONE to FIFTY, inclusive** are the owners and operators of
25 the subject “**ANGELO'S**”, at all times relevant to this Complaint. Plaintiff is informed and
26 believes that each of the defendants herein is the agent, employee or representative of each
27 of the other defendants, and performed all acts and omissions stated herein within the
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1 scope of such agency or employment or representative capacity and is responsible in some
2 manner for the acts and omissions of the other defendants in legally causing the damages
3 complained of herein, and have approved or ratified each of the acts or omissions of each
4 other defendant, as herein described.

5 8. Plaintiff **PATRICK McMAHON** does not know the true names and capacities
6 of defendants **PIZZA WITH PIZZAZZ, INC., a California corporation, dba ANGELO'S**
7 **PIZZA, and DOES ONE to FIFTY, inclusive**, their business capacities, their ownership
8 connection to the property and business, nor their relative responsibilities in causing the
9 access violations herein complained of, and alleges a joint venture and common enterprise
10 by all such defendants. Plaintiff is informed and believes that each of the defendants
11 herein, including DOES ONE to FIFTY, inclusive, is the agent, ostensible agent, master,
12 servant, employer, employee, representative, franchiser, franchisee, joint venturer, partner,
13 and associate, or such similar capacity, of each of the other defendants, and was at all times
14 acting and performing, or failing to act or perform, with the authorization, consent,
15 permission or ratification of each of the other defendants, and is responsible in some
16 manner for the acts and omissions of the other defendants in legally causing the violations
17 and damages complained of herein, and have approved or ratified each of the acts or
18 omissions of each other defendant, as herein described. Plaintiff will seek leave to amend
19 this Complaint when the true names, capacities, connections and responsibilities of
20 defendants **PIZZA WITH PIZZAZZ, INC., a California corporation, dba ANGELO'S**
21 **PIZZA, and DOES ONE to FIFTY, inclusive**, are ascertained.

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

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

11
12 11. On or about June 20, 2002, Plaintiff **PATRICK McMAHON** visited the
13 "**ANGELO'S**" restaurant in Eureka, California, for the purpose of making a purchase.
14 Defendants **PIZZA WITH PIZZAZZ, INC.**, a California corporation, dba **ANGELO'S**
15 **PIZZA**, and **DOES ONE to FIFTY, inclusive**, interfered with plaintiff's access to the
16 "**ANGELO'S**" as set forth in Paragraph 3 above.

17
18 Said acts and omissions denied plaintiff legal handicapped access to the
19 "**ANGELO'S**" according to federal and state law.

20
21 12. Plaintiff encountered and/or is informed and believes that the following
22 architectural barriers, which violate the requirements of the **California Code of Regulations**
23 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those
24 similarly situated full and equal access to the subject public facility as set forth in Paragraph
25 3 above.

26
27 13. Defendants, and each of them, discriminated against plaintiff **PATRICK**
28 **McMAHON** on the basis of his physical disability, and interfered with his access to the

1 **"ANGELO'S"** establishment, in violation of both California law including, but not limited to,
2 **California Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition
3 of Discrimination" provision and §503, the "Prohibition Against Retaliation or Coercion"
4 provision of the **Americans with Disabilities Act of 1990**.

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

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

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

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

7
8 17. Congress stated as its purpose in passing the ***Americans with Disabilities***
9 ***Act 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
16 invoke the sweep of Congressional authority, including the power to enforce
17 the 14th Amendment and to regulate commerce, in order to address the major
18 areas of 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 bakery, restaurant, bar or other establishment
23 serving food or drink, grocery store, clothing store, hardware store, shopping center or other
24 sales or rental establishment."

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

///

1 20. Among the general prohibitions against discrimination were included in 42

2 **USC §12182(b)(1)(A)(i):**

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

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

8 **USC §12182(b)(1)(E):**

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

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

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

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

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

19 (i) the imposition or application of eligibility criteria that screen out or
20 tend 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 be necessary for the provision of the goods, services, facilities, privileges,
advantages, or accommodations being offered;

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

27 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices
28

1 and procedure for entry to the "**ANGELO'S**" facility by persons with disabilities and their
2 companions as established by the defendants can be simply modified to eliminate disparate
3 and discriminatory treatment of persons with disabilities by properly constructing barrier free
4 handicapped access for safe and full and equal enjoyment of the "**ANGELO'S**" as that
5 enjoyed by other people.

6 24. The specific prohibition against retaliation and coercion is included in the
7 ***Americans With Disabilities Act of 1990*** § 503(b) and the *Remedies and Procedures* in §
8 503(c):

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

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

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

28 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
were at all times after 1990 "readily achievable." On information and belief, if the removal of

1 all the barriers complained of here together were not “readily achievable,” the removal of
2 each individual barrier complained of herein was “readily achievable.”

3 27. Per 42 **USC** § 12181(9), “The term ‘readily achievable’ means easily
4 accomplishable and able to be carried out without much difficulty or expense.” The statute
5 and attendant regulations define relative “expense” in relation to the total financial resources
6 of the entities involved, including any “parent” companies. Plaintiff alleges that properly
7 repairing each of the items that Plaintiff complains of herein is readily achievable, including
8 but not limited to correcting and repairing the items set forth in Paragraph 3 above.
9

10 The changes needed to remove barriers to access for the disabled were and are
11 “readily achievable” by the defendants under standards set forth under 42 **USC** § 12181 of
12 the **Americans with Disabilities Act of 1990**. (Further, if it was not “readily achievable” for
13 defendants to remove all such barriers, defendants have failed to make the required
14 services available through alternative methods, although such methods are achievable as
15 required by 42 **USC** §12181(b)(2)(a)(iv), (v).)
16

17 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
18 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil**
19 **Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to
20 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable
21 grounds for believing that he is about to be subjected to discrimination in violation of
22 **Americans With Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of
23 the public facilities complained of herein for the purpose of entry and provision of goods and
24 service so long as defendants continue to apply eligibility criteria, policies, practices and
25 procedures to screen out and refuse to allow entry and service to persons with disabilities
26 such as Plaintiff’s.
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1 29. Defendants', and each of their acts and omissions of failing to provide barrier
2 free handicapped access for plaintiff, were tantamount to interference, coercion or
3 intimidation pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** §
4 12203):

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

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

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

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

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1 **II. SECOND CAUSE OF ACTION**

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

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

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

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

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

35. Pursuant to the authority delegated by **California Government Code** § 4450,

1 *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
2 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
3 California State Architect's Regulations and these regulations must be complied with as to
4 any alterations and/or modifications of the "**ANGELO'S**" occurring after that date.
5 Construction changes occurring prior to this date but after July 1, 1970 triggered access
6 requirements pursuant to the "ASA" requirements, the **American Standards Association**
7 **Specifications**, A117.1-1961. On information and belief, at the time of the construction and
8 modification of said building, all buildings and facilities covered were required to conform to
9 each of the standards and specifications described in the **American Standards**
10 **Association Specifications** and/or those contained in Title 24 of the **California**
11 **Administrative Code**, (now known as Title 24, **California Code of Regulations**.)

13 36. Public facilities, such as "**ANGELO'S**" are public accommodations or facilities
14 within the meaning of **California Health & Safety Code** § 19955, *et seq.*

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

25 38. Plaintiff **PATRICK McMAHON** and other similarly situated persons with
26 physical disabilities whose physical conditions require the use of wheelchairs, canes,
27 walkers and service animals are unable to use public facilities on a "full and equal" basis
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1 unless each such facility is in compliance with the provisions of the **California Health &**
2 **Safety Code** § 19955, *et seq.* Plaintiff is a member of that portion of the public whose rights
3 are protected by the provisions of **California Health & Safety Code** § 19955, *et seq.*

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

8
9 40. Plaintiff is further informed and believes that as of the date of filing this
10 Complaint, Defendants have not made accessible the facilities at the subject restaurant as
11 set forth in Paragraph 3 above.

12 41. Plaintiff **PATRICK McMAHON** is informed and believes, and therefore alleges,
13 that Defendants **PIZZA WITH PIZZAZZ, INC., a California corporation, dba ANGELO'S**
14 **PIZZA, and DOES ONE to FIFTY, inclusive,** and each of them, caused the subject
15 buildings constituting “**ANGELO'S**” to be constructed, altered and maintained in such a
16 manner that persons with physical disabilities were denied full and equal access to, within
17 and throughout said buildings and were denied full and equal use of said public facilities,
18 and despite knowledge and actual and constructive notice to such Defendants that the
19 configuration of the restaurant and/or buildings was in violation of the civil rights of persons
20 with physical disabilities, such as Plaintiff. Such construction, modification, ownership,
21 operation, maintenance and practices of such public facilities are in violation of law as stated
22 in Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, and elsewhere in the laws of
23 California.
24
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26 42. On information and belief, the subject building constituting the public facilities
27 of “**ANGELO'S**” denied full and equal access to Plaintiff and other persons with physical
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1 disabilities in other respects due to non-compliance with requirement of Title 24 of the
2 **California Code of Regulations** and **California Health & Safety Code** § 19955, *et seq.*

3 43. The basis of Plaintiff's aforementioned information and belief is the various
4 means upon which Defendants must have acquired such knowledge, including, but not
5 limited to, this lawsuit, other access lawsuits, communications with operators of other
6 restaurants and other property owners regarding denial access, communications with
7 Plaintiff and other persons with disabilities, communications with other patrons who regularly
8 visit there, communications with owners of other businesses, notices and advisories they
9 obtained from governmental agencies through the mails, at seminars, posted bulletins,
10 television, radio, public service announcements, or upon modification, improvement,
11 alteration or substantial repair of the subject premises and other properties owned by these
12 Defendants, newspaper articles and trade publications regarding the **Americans with**
13 **Disabilities Act of 1990** and other access law, and other similar information. The scope
14 and means of the knowledge of each defendant is within each defendant's exclusive control
15 and cannot be ascertained except through discovery.
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18 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
19 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
20 enforce provisions of the law protecting access for persons with physical disabilities and
21 prohibiting discrimination against persons with physical disabilities, and to take such action
22 both in his own interests and in order to enforce an important right affecting the public
23 interest. Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable
24 attorneys' fees incurred, pursuant to the provisions of the **California Code of Civil**
25 **Procedure** § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to **California**
26 **Health & Safety Code** § 19953 and **California Civil Code** §§ 54.3 and 55.
27
28

1 45. Defendants, and each of them, at times prior to and including June 20, 2002,
2 and continuing to the present time, knew that persons with physical disabilities were denied
3 their rights of equal access to all portions of this public facility. Despite such knowledge,
4 Defendants failed and refused to take steps to comply with the applicable access statutes;
5 and despite knowledge of the resulting problems and denial of civil rights thereby suffered
6 by Plaintiff **PATRICK McMAHON** and other similarly situated persons with disabilities,
7 including the specific notices referred to in paragraph 43 of this Complaint. Defendants
8 have failed and refused to take action to grant full and equal access to persons with physical
9 disabilities in the respects complained of hereinabove. Defendants and each of them have
10 carried out a course of conduct of refusing to respond to, or correct complaints about, denial
11 of handicap access. Such actions and continuing course of conduct by Defendants,
12 evidence despicable conduct in conscious disregard for the rights or safety of Plaintiff and of
13 other similarly situated persons, justifying an award of exemplary and punitive damages
14 pursuant to **California Civil Code** § 3294.
15

16
17 46. Defendants' actions have also been oppressive to persons with physical
18 disabilities and of other members of the public, and have evidenced actual or implied
19 malicious intent toward those members of the public, such as Plaintiff and other persons
20 with physical disabilities who have been denied the proper access they are entitled to by
21 law. Further, Defendants' refusals on a day-to-day basis to correct these problems
22 evidence despicable conduct in conscious disregard for the rights of Plaintiff and other
23 members of the public with physical disabilities.
24

25 47. Plaintiff prays for an award of punitive damages against Defendants, and each
26 of them, pursuant to **California Civil Code** § 3294 in an amount sufficient to make a more
27 profound example of Defendants and discourage owners, operators, franchisers and
28

1 franchisees of other public facilities from willful disregard of the rights of persons with
2 physical disabilities. Plaintiff does not know the financial worth of Defendants, or the
3 amount of punitive damages sufficient to accomplish the public purposes of **California Civil**
4 **Code** § 3294 and seeks leave to amend this Complaint when such facts are known.

5 48. As a result of the actions and failure of Defendants, and each of them, and as
6 a result of the failure to provide proper accessible public facilities, Plaintiff **PATRICK**
7 **McMAHON** was denied his civil rights, including his right to full and equal access to public
8 facilities, was embarrassed and humiliated, suffered physical, psychological and mental
9 injuries and emotional distress, mental distress, mental suffering, mental anguish, which
10 includes shame, humiliation, embarrassment, anger, chagrin, disappointment and worry,
11 expectedly and naturally associated with a person with a physical disability being denied
12 access to a public accommodation.
13

14 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

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

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

22 50. The public facilities above-described constitute public facilities and public
23 accommodations within the meaning of **California Health & Safety Code** § 19955 *et seq.*
24 and were facilities to which members of the public are invited. The aforementioned acts and
25 omissions of defendants, and each of them, constitute a denial of equal access to and use
26 and enjoyment of these facilities by persons with disabilities, including plaintiff **PATRICK**
27 **McMAHON**. Said acts and omissions are also in violation of provisions of Title 24 of the
28

1 **California Code of Regulations.**

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

5 Individuals with disabilities shall have the same right as the...general
6 public to full and free use of the streets, highways, sidewalks, walkways, public
7 buildings, public facilities, and other public places. **California Civil Code** §
8 54(a).

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

20 52. On or about June 20, 2002, Plaintiff **PATRICK McMAHON** suffered violations
21 of **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of
22 the goods, services, facilities and privileges of said **ANGELO'S** by being denied access to
23 all of the dining areas of the restaurant and inadequate restroom facilities for persons in a
24 wheelchair, all as set forth in paragraph 3 above.

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

28 53. As a result of the denial of full and equal enjoyment of the goods, services,
facilities and privileges of defendants' **ANGELO'S** due to the acts and omissions of
defendants, and each of them, in owning, operating and maintaining this subject public
facility, plaintiff suffered violations of his civil rights, including, but not limited to, rights under

1 **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical injury,
2 emotional distress, mental distress, mental suffering, mental anguish, which includes
3 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
4 and naturally associated with a disabled person's denial of full and equal enjoyment of
5 goods, services, privileges, etc. all to his damages as prayed hereinafter in an amount within
6 the jurisdiction of the court. Defendants' actions and omissions to act constituted
7 discrimination against plaintiff on the sole basis that plaintiff was physically disabled.
8

9 54. Plaintiff seeks damages for the violation of his rights as a disabled person on
10 or about June 20, 2002, according to proof, pursuant to **California Civil Code** § 54.3,
11 including a trebling of all statutory and actual damages, general and special, available
12 pursuant to **California Civil Code** § 54.3(a).

13 55. As a result of defendants' acts and omissions in this regard, plaintiff **PATRICK**
14 **McMAHON** has been required to incur legal expenses and hire attorneys in order to enforce
15 his rights and enforce provisions of the law protecting the full and equal enjoyment of goods,
16 services, facilities, privileges of public facilities by the disabled, and those individuals
17 associated with or accompanied by a person with disabilities, and prohibiting discrimination
18 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable
19 attorneys' fees incurred pursuant to the provisions of **California Civil Code** § 54.3.
20 Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for damages to
21 plaintiff, but also to compel the defendants to make their goods, services, facilities and
22 privileges available and accessible to all members of the public with physical disabilities,
23 justifying public interest attorneys' fees pursuant to the provisions of **California Code of**
24 **Civil Procedure** § 1021.5.
25
26

27 56. The acts and omissions of defendants in failing to provide the required
28

1 accessible facilities subsequent to the enactment date and compliance date of the
2 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and
3 alterations to its handicapped parking, handicapped signage, pathways, and other elements
4 as hereinabove stated, after being notified by patrons before and after the time of plaintiff's
5 visit and injuries, on or about June 20, 2002, and all times prior thereto with the knowledge
6 that persons with disabilities would enter defendants' premises, the reason given therefor,
7 was an established policy, practice and procedure of refusing and denying entry, thereby
8 denying lodging and other services to a person with disabilities and the companions thereof,
9 evidence malice and oppression toward plaintiff and other disabled persons.

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

20 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
21 practice and procedure for entry into said "**ANGELO'S**" as hereinabove described.

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

1 60. The acts and omissions of defendants as complained of herein in failing to
2 provide the required accessible facilities subsequent to the enactment date and compliance
3 date of the **Americans with Disabilities Act of 1990** and refusal to make remedial
4 modifications and alternations to the architectural barriers as stated herein and in failing to
5 establish practices, policies and procedures to allow safe access by persons who are
6 disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully
7 excluding plaintiff and other members of the public who are physically disabled, from full and
8 equal enjoyment of the subject "**ANGELO'S**" as hereinabove described. Such acts and
9 omissions are the continuing cause of humiliation and mental and emotional suffering of
10 plaintiff in that these actions continue to treat plaintiff as an inferior and second class citizen
11 and serve to discriminate against him on the sole basis that he is a physically disabled.
12 Plaintiff is unable, so long as such acts and omissions of defendants continue, to achieve
13 full and equal enjoyment of the goods and services of said "**ANGELO'S**" as described
14 hereinabove. The acts of defendants have legally caused and will continue to cause
15 irreparable injury to plaintiff if not enjoined by this court.
16
17

18 61. Wherefore, plaintiff asks this court to preliminarily and permanently enjoin any
19 continuing refusal by defendants to permit entry to said "**ANGELO'S**" and to serve plaintiff or
20 others similarly situated, and to require defendants to comply forthwith with the applicable
21 statutory requirements relating to the full and equal enjoyment of goods and services as
22 described hereinabove for disabled persons. Such injunctive relief is provided by **California**
23 **Civil Code** § 55. Plaintiff further requests that the court award statutory costs and
24 attorneys' fees to plaintiff pursuant to **California Civil Code** § 55 and **California Code of**
25 **Civil Procedure** § 1021.5, all as hereinafter prayed for.
26

27 WHEREFORE, plaintiff prays for compensatory damages, reasonable attorneys' fees
28

1 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
2 damages.

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

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

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

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

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

23 66. As a result of the violation of plaintiff's civil rights protected by ***California Civil***
24 ***Code* §§ 51 and, 51.5**, plaintiff is entitled to the rights and remedies of ***California Civil***
25 ***Code* § 52**, including a trebling of actual damages (defined by ***California Civil Code* § 52(h)**)
26
27
28

1 to mean “special and general damages”), as well as reasonable attorneys’ fees and costs,
2 as allowed by statute, according to proof. Further, pursuant to paragraphs 11, 12, 13, 35
3 and 43, plaintiff seeks appropriate exemplary damages under **California Civil Code** § 3294.

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

6 **PRAYER FOR RELIEF**

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

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

22
23
24 2. General damages according to proof;

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

1 4. Prejudgment interest on all compensatory damages;

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

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

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

11 8. Grant such other and further relief as the court may deem just and proper.
12

13
14 Dated: July 25, 2002

15 _____
16 Jason K. Singleton, Attorney for
17 Plaintiff, **PATRICK McMAHON**

18 **REQUEST FOR JURY TRIAL**

19 Plaintiff hereby requests a jury for all claims for which a jury is permitted.
20

21 Dated: July 25, 2002

22 _____
23 Jason K. Singleton, Attorney for
24 Plaintiff, **PATRICK McMAHON**
25
26
27
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