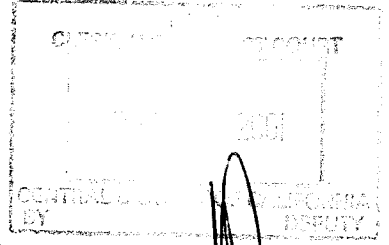


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IS



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

C. HUGH MARSH,
Plaintiff,
v.

ROBERT M. COE, INC., dba TACO BELL;
DUANE JONES; and DOES ONE TO TEN,
inclusive,
Defendants.

Case No. SACV01-1193 AHS(MLG)
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

Plaintiff C. HUGH MARSH complains of defendants ROBERT M. COE, INC., dba TACO BELL; DUANE JONES; and DOES ONE TO TEN, inclusive,, and alleges as follows:

JURISDICTION AND VENUE

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

20
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1 54.3 and 55.

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

5 **INTRODUCTION**

6
7 3. Taco Bell is located at 140 North Fairview, Goleta, California. Said restaurant is
8 owned and operated by defendants **ROBERT M. COE, INC., dba TACO BELL; DUANE**
9 **JONES; and DOES ONE TO TEN, inclusive.**

10 Defendants **ROBERT M. COE, INC., dba TACO BELL; DUANE JONES; and DOES**
11 **ONE TO TEN, inclusive**, operate an establishment for services to the public and at which
12 Defendants failed to provide barrier free access to said establishment in conformity with both
13 Federal and California legal requirements. Further, Defendants failed to provide compliance
14 as follows:

15
16 **A. Parking**

- 17 1. A tow-away sign is not provided at each entrance to the parking lot or adjacent
18 to the accessible spaces in violation of California Title 24 § 1129B.4.5.
19 2. A vertical sign identifying the accessible spaces with the International Symbol of
20 Accessibility and as a van accessible space is not provided in violation of
21 California Title 24 § 1129B.5 and ADAAG 4.6.4.
22 3. The accessible parking space is less than 18 feet long in violation of California
23 Title 24 § 1129B.4.2

24 **B. Entrance Ramp**

- 25 1. The slope of the ramp from the sidewalk to the entrance is greater than 8.3
26 percent. The maximum allowed slope of a ramp is 8.3 percent in violation of
27 California Title 24 § 1133B.5.1 & 1133B.5.3 and ADAAG 4.8.2.
28

- 1 2. The ramp does not have handrails in violation of California Title 24 §
2 1133B.5.5.1 and ADAAG 4.8.5.

3 **C. Entrance Door**

- 4 1. The hardware for the entrance door requires tight grasping in violation of
5 California Title 24 § 1133B.2.5.1 and ADAAG 4.13.9
6 2. The bottom 10 inches of the door on the push side is not smooth in violation of
7 California Title 24 § 1133B.2.6

8 **D. Restrooms**

9 1. Entrance Doors

- 10 a. No raised letter and Braille signs are provided on the wall next to the restroom
11 entrance doors in violation of California Title 24 § 1117B.5.9 and ADAAG
12 4.30.6.
13 b. The hardware for the men's entrance door requires tight grasping in violation of
14 California Title 24 § 1133B.2.5.1 and ADAAG 4.13.9
15 c. The strike side clearance for the women's restroom door is blocked by a drain
16 pipe. The push side of the door should have 12 inches clear and level on the
17 strike edge of the door as required for doors with both a latch and a closer in
18 violation of California Title 24 § 1133B.2.4.2 and ADAAG 4.13.6.
19 d. The opening width of the entrance doors is 22.5 inches in violation of California
20 Title 24 § 1133B.1.1.1.1 and ADAAG 4.13.5

21 2. Accessibility

22 The restrooms are not accessible because of the narrow door openings and
23 because there is insufficient space to allow someone in a wheelchair to enter.
24 There is insufficient space inside to inscribe a 60-inch turning circle, or to make
25 a t-type turn in violation of California Title 24 § 1115B.7.1.2, and ADAAG 4.22.3.

26 //

1 **E. Driveway**

2 The driveways to the Taco Bell Restaurant site create a cross slope on the perimeter
3 sidewalk that exceeds 2 percent in violation of California Title 24 § 1133B.6.1.3 and
4 ADAAG 4.3.7

5 The above barriers interfered with Plaintiff's access and continue to deter Plaintiff from
6 visiting said facilities, and as a legal result, Plaintiff **C. HUGH MARSH** suffers violation of his
7 civil rights to full and equal enjoyment of goods, services, facilities and privileges, and has
8 and will suffer embarrassment and humiliation.

9
10 **FACTUAL ALLEGATIONS**

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

19
20 5. Defendants **ROBERT M. COE, INC., dba TACO BELL; DUANE JONES; and**
21 **DOES ONE TO TEN, inclusive**, at all times relevant herein were and are the owners and
22 operators; lessors and/or lessees, franchisers and/or franchisees, of public facilities known as
23 the "**TACO BELL**" store, located at Goleta, California, subject to the requirements of
24 California state law requiring full and equal access to public facilities pursuant to *California*
25 *Health & Safety Code* § 19955, *et seq.*, *California Civil Code* §§ 51, 51.5, 52(a), 52.1, 54,
26 54.1, 54.3 and 55, and subject to Title III of the *Americans with Disabilities Act of 1990*,
27 and to all other legal requirements referred to in this Complaint. Plaintiff does not know the
28

1 relative responsibilities of defendants in the operation of the facilities herein complained of,
2 and alleges a joint venture and common enterprise by all such defendants.

3 6. Defendants **ROBERT M. COE, INC., dba TACO BELL; DUANE JONES; and**
4 **DOES ONE TO TEN, inclusive** (hereinafter alternatively referred to collectively as
5 "defendants"), at all times relevant herein were and are owners, possessors, builders and
6 keepers of the "TACO BELL " in Goleta, California.

7
8 7. Defendants **ROBERT M. COE, INC., dba TACO BELL; DUANE JONES; and**
9 **DOES ONE TO TEN, inclusive** are the owners and operators of the subject "TACO BELL"
10 store, at all times relevant to this Complaint. Plaintiff is informed and believes that each of
11 the defendants herein is the agent, employee or representative of each of the other
12 defendants, and performed all acts and omissions stated herein within the scope of such
13 agency or employment or representative capacity and is responsible in some manner for the
14 acts and omissions of the other defendants in legally causing the damages complained of
15 herein, and have approved or ratified each of the acts or omissions of each other defendant,
16 as herein described.

17
18 8. Plaintiff **C. HUGH MARSH** does not know the true names and capacities of
19 defendants **ROBERT M. COE, INC., dba TACO BELL; DUANE JONES; and DOES ONE**
20 **TO TEN, inclusive**, their business capacities, their ownership connection to the property and
21 business, nor their relative responsibilities in causing the access violations herein complained
22 of, and alleges a joint venture and common enterprise by all such defendants. Plaintiff is
23 informed and believes that each of the defendants herein, including **DOES ONE TO TEN,**
24 **inclusive**, is the agent, ostensible agent, master, servant, employer, employee,
25 representative, franchiser, franchisee, joint venturer, partner, and associate, or such similar
26 capacity, of each of the other defendants, and was at all times acting and performing, or
27 failing to act or perform, with the authorization, consent, permission or ratification of each of
28

1 the other defendants, and is responsible in some manner for the acts and omissions of the
2 other defendants in legally causing the violations and damages complained of herein, and
3 have approved or ratified each of the acts or omissions of each other defendant, as herein
4 described. Plaintiff will seek leave to amend this Complaint when the true names, capacities,
5 connections and responsibilities of defendants **ROBERT M. COE, INC., dba TACO BELL;**
6 **DUANE JONES; and DOES ONE TO TEN, inclusive,** are ascertained.

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

11 10. Defendants **ROBERT M. COE, INC., dba TACO BELL; DUANE JONES; and**
12 **DOES ONE TO TEN, inclusive,** are the owners and operators of "TACO BELL" restaurant,
13 located at Goleta, California. This restaurant, including, but not limited to, parking spaces
14 and access aisles and access routes, are each a part of a "public accommodation or facility"
15 subject to the requirements of *California Health & Safety Code* § 19955, *et seq.*, and of
16 *California Civil Code* §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this "TACO
17 **BELL**" store was constructed after 1990 which has subjected the "TACO BELL" store to
18 handicapped access requirements per *California Health & Safety Code* § 19959, and
19 applicable portions of *California Code of Regulations*, Title 24, (the State Building Code).

20 21 11. On or about August 30, 2001, Plaintiff **C. HUGH MARSH**, visited the "TACO
22 **BELL**" store in Goleta, California for the purpose of dining. Defendants **ROBERT M. COE,**
23 **INC., dba TACO BELL; DUANE JONES; and DOES ONE TO TEN, inclusive,** interfered
24 with Plaintiff's access to the "TACO BELL" store as set forth in Paragraph 3 above.

25 26 Said acts and omissions denied Plaintiff legal handicapped access to the "TACO
27 **BELL**" store according to federal and state law.

28 12. Plaintiff encountered and/or is informed and believes that the following

1 architectural barriers, which violate the requirements of the **California Code of Regulations**
2 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those
3 similarly situated full and equal access to the subject public facility as set forth in Paragraph 3
4 above.

5 13. Defendants, and each of them, discriminated against Plaintiff **C. HUGH MARSH**
6 on the basis of his physical disability, and interfered with his access to the "**TACO BELL**"
7 establishment, in violation of both California law including, but not limited to, **California Civil**
8 **Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition of
9 Discrimination" provision and §503, the "Prohibition Against Retaliation or Coercion" provision
10 of the **Americans with Disabilities Act of 1990**.
11

12 14. As a result of the actions and failure to act of defendants, and each of them,
13 and as a result of the failure to provide appropriate handicapped parking, proper handicapped
14 signage, proper handicapped accessible entryways, and handicapped accommodations for
15 dressing rooms, Plaintiff **C. HUGH MARSH** suffered and will suffer a loss of his civil rights to
16 full and equal access to public facilities, and further suffered and will suffer emotional
17 distress, mental distress, mental suffering, mental anguish, which includes shame,
18 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and
19 naturally associated with a person with a physical disability being denied access to a public
20 accommodation, all to his damages as prayed hereinafter in an amount within the jurisdiction
21 of this court.
22
23

24 **I. FIRST CAUSE OF ACTION:**
25 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On
26 Behalf of Plaintiff **C. HUGH MARSH** and Against Defendants **ROBERT M. COE,**
27 **INC., dba TACO BELL; DUANE JONES; and DOES ONE TO TEN, inclusive**)
28 (42 **USC** §12101 *et seq.*)

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

1 herein as if separately repled.

2 16. Pursuant to law, in 1990 the United States Congress made findings per 42 *USC*
3 § 12101 regarding persons with physical disabilities, finding that laws were needed to more
4 fully protect 43 million Americans with one or more physical or mental disabilities; [that]
5 historically society has tended to isolate and segregate individuals with disabilities; [that] such
6 forms of discrimination against individuals with disabilities continue to be a serious and
7 pervasive social problem; [that] the nation's proper goals regarding individuals with
8 disabilities are to assure equality of opportunity, full participation, independent living and
9 economic self-sufficiency for such individuals; [and that] the continuing existence of unfair
10 and unnecessary discrimination and prejudice denies people with disabilities the opportunity
11 to compete on an equal basis and to pursue those opportunities for which our free society is
12 justifiably famous.
13

14
15 17. Congress stated as its purpose in passing the *Americans with Disabilities Act*
16 *of 1990* (42 *USC* § 12102):

17 It is the purpose of this act (1) to provide a clear and comprehensive
18 national mandate for the elimination of discrimination against individuals with
19 disabilities; (2) to provide clear, strong, consistent, enforceable standards
20 addressing discrimination against individuals with disabilities; (3) to ensure that
21 the Federal government plays a central role in enforcing the standards
22 established in this act on behalf of individuals with disabilities; and (4) to invoke
23 the sweep of Congressional authority, including the power to enforce the 14th
24 Amendment and to regulate commerce, in order to address the major areas of
25 discrimination faced day to day by people with disabilities.
26

27 18. As part of the *Americans with Disabilities Act of 1990*, Public Law 101-336
28 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services

1 Operated by Private Entities" (42 **USC** § 12181 *et seq.*). Among the public accommodations
2 identified for purposes of this title were "a bakery, restaurant, bar or other establishment
3 serving food or drink, grocery store, clothing store, hardware store, shopping center or other
4 sales or rental establishment."

5 19. Pursuant to 42 **USC** § 12182,

6 "No individual shall be discriminated against on the basis of disability in
7 the full and equal enjoyment of the goods, services, facilities, privileges,
8 advantages, or accommodations of any place of public accommodation by any
9 person who owns, leases (or leases to), or operates a place of public
10 accommodation."
11

12 20. Among the general prohibitions against discrimination were included in 42 **USC**
13 §12182(b)(1)(A)(i):

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

20 21. Among the general prohibitions against discrimination were included in 42 **USC**
21 §12182(b)(1)(E):

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

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

1 22. Among the general prohibitions against discrimination were included in 42 *USC*
2 § 12182(b)(2)(A)(i) and 42 *USC* § 12182(b)(2)(A)(ii):

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

4 (i) the imposition or application of eligibility criteria that screen out or tend
5 to screen out an individual with a disability or any class of individuals with
6 disabilities from fully and equally enjoying any goods, services, facilities,
7 privileges, advantages, or accommodations, unless such criteria can be shown
8 to be necessary for the provision of the goods, services, facilities, privileges,
9 advantages, or accommodations being offered;

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

16 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices
17 and procedure for entry to the "**TACO BELL**" facility by persons with disabilities and their
18 companions as established by the defendants can be simply modified to eliminate disparate
19 and discriminatory treatment of persons with disabilities by properly constructing barrier free
20 handicapped access for safe and full and equal enjoyment of the "**TACO BELL**" store as that
21 enjoyed by other people.

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

25 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to
26 coerce, intimidate, threaten, or interfere with any individual in the exercise or
27 enjoyment of, or on account of his or her having exercised or enjoyed, or on
28

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

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

7 25. Among the specific prohibitions against discrimination were included, in 42 **USC**
8 § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications barriers
9 that are structural in nature, in existing facilities...where such removal is readily achievable;"
10 and (v) "where and entity can demonstrate that the removal of a barrier under clause (iv) is
11 not readily achievable, a failure to make such goods, services, facilities, privileges,
12 advantages, or accommodations available through alternative methods if such methods are
13 readily achievable." The acts of Defendants set forth herein were a violations of Plaintiff's
14 rights under the "ADA," Public Law 101-336, and the regulations promulgated thereunder, 28
15 **CFR** Part 36, *et seq.*

16
17 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
18 were at all times after 1990 "readily achievable." On information and belief, if the removal of
19 all the barriers complained of here together were not "readily achievable," the removal of
20 each individual barrier complained of herein was "readily achievable."
21

22 27. Per 42 **USC** § 12181(9), "The term 'readily achievable' means easily
23 accomplishable and able to be carried out without much difficulty or expense." The statute
24 and attendant regulations define relative "expense" in relation to the total financial resources
25 of the entities involved, including any "parent" companies. Plaintiff alleges that properly
26 repairing each of the items that Plaintiff complains of herein is readily achievable, including
27 but not limited to correcting and repairing the items set forth in Paragraph 3 above.
28

The changes needed to remove barriers to access for the disabled were and are

1 "readily achievable" by the defendants under standards set forth under 42 **USC** § 12181 of
2 the **Americans with Disabilities Act of 1990**. (Further, if it was not "readily achievable" for
3 defendants to remove all such barriers, defendants have failed to make the required services
4 available through alternative methods, although such methods are achievable as required by
5 42 **USC** §12181(b)(2)(a)(iv), (v).)

6
7 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
8 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil**
9 **Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to
10 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable
11 grounds for believing that he is about to be subjected to discrimination in violation of
12 **Americans With Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of the
13 public facilities complained of herein for the purpose of entry and provision of goods and
14 service so long as defendants continue to apply eligibility criteria, policies, practices and
15 procedures to screen out and refuse to allow entry and service to persons with disabilities
16 such as Plaintiff's.

17
18 29. Defendants', and each of their acts and omissions of failing to provide barrier
19 free handicapped access for Plaintiff, were tantamount to interference, coercion or
20 intimidation pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** §
21 12203):

22
23 It shall be unlawful to coerce, intimidate, threaten, or interfere with any
24 individual in the exercise or enjoyment of, or on account of his or her having
25 encouraged any other individual in the exercise or enjoyment of, any right
26 granted or protected by this Act.

27 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §
28 12188), "Nothing in this section shall require a person with a disability to engage in a futile

1 gesture if such person has actual notice that a person or organization covered by this title
2 does not intend to comply with its provisions.” Pursuant to this last section, Plaintiff, on
3 information and belief, alleges that defendants have continued to violate the law and deny
4 the rights of Plaintiff and other disabled persons to access this public accommodation for the
5 purpose of lodging. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),
6

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

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

16 II. SECOND CAUSE OF ACTION

17 BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL
18 DISABILITIES (On Behalf of Plaintiff C. HUGH MARSH and Against
19 Defendants ROBERT M. COE, INC., dba TACO BELL; DUANE JONES; and
20 DOES ONE TO TEN, inclusive) (*California Health & Safety Code* § 19955,
21 *et seq.*)

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

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

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

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

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

17 35. Pursuant to the authority delegated by **California Government Code** § 4450,
18 *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
19 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
20 California State Architect's Regulations and these regulations must be complied with as to
21 any alterations and/or modifications of the "TACO BELL" occurring after that date.
22 Construction changes occurring prior to this date but after July 1, 1970 triggered access
23 requirements pursuant to the "ASA" requirements, the **American Standards Association**
24 **Specifications**, A117.1-1961. On information and belief, at the time of the construction and
25 modification of said building, all buildings and facilities covered were required to conform to
26 each of the standards and specifications described in the **American Standards Association**
27
28

1 **Specifications** and/or those contained in Title 24 of the **California Administrative Code**,
2 (now known as Title 24, **California Code of Regulations**.)

3 36. Public facilities, such as "TACO BELL" are public accommodations or facilities
4 within the meaning of **California Health & Safety Code** § 19955, *et seq.*

5 37. It is difficult or impossible for persons with physical disabilities who use
6 wheelchairs, canes, walkers and service animals to travel about in public to use a restaurant
7 with the defects set forth in Paragraph 3 above as required by Title 24 of the **California Code**
8 **of Regulations** and the **Americans with Disabilities Act Access Guidelines (ADAAG)**.

9 Thus, when public accommodations fail to provide handicap accessible public facilities,
10 persons with physical disabilities are unable to enter and use said facilities, and are denied
11 full and equal access to and use of that facility that is enjoyed by other members of the
12 general public.
13

14 38. Plaintiff **C. HUGH MARSH** and other similarly situated persons with physical
15 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
16 service animals are unable to use public facilities on a "full and equal" basis unless each such
17 facility is in compliance with the provisions of the **California Health & Safety Code** § 19955,
18 *et seq.* Plaintiff is a member of that portion of the public whose rights are protected by the
19 provisions of **California Health & Safety Code** § 19955, *et seq.*
20

21 39. The **California Health & Safety Code** was enacted "[t]o ensure that public
22 accommodations or facilities constructed in this state with private funds adhere to the
23 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the **Government**
24 **Code**." Such public accommodations are defined to include restaurants.
25

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

1 41. Plaintiff **C. HUGH MARSH** is informed and believes, and therefore alleges, that
2 Defendants **ROBERT M. COE, INC., dba TACO BELL; DUANE JONES; and DOES ONE**
3 **TO TEN, inclusive**, and each of them, caused the subject buildings constituting "**TACO**
4 **BELL**" to be constructed, altered and maintained in such a manner that persons with physical
5 disabilities were denied full and equal access to, within and throughout said buildings and
6 were denied full and equal use of said public facilities, and despite knowledge and actual and
7 constructive notice to such Defendants that the configuration of the store and/or buildings
8 was in violation of the civil rights of persons with physical disabilities, such as Plaintiff. Such
9 construction, modification, ownership, operation, maintenance and practices of such public
10 facilities are in violation of law as stated in Part 5.5, **California Health & Safety Code §**
11 **19955, et seq.**, and elsewhere in the laws of California.

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

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

1 other access law, and other similar information. The scope and means of the knowledge of
2 each defendant is within each defendant's exclusive control and cannot be ascertained
3 except through discovery.

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

13
14
15 45. Defendants, and each of them, at times prior to and including August 30, 2001,
16 and continuing to the present time, knew that persons with physical disabilities were denied
17 their rights of equal access to all portions of this public facility. Despite such knowledge,
18 Defendants failed and refused to take steps to comply with the applicable access statutes;
19 and despite knowledge of the resulting problems and denial of civil rights thereby suffered by
20 Plaintiff **C. HUGH MARSH** and other similarly situated persons with disabilities, including the
21 specific notices referred to in paragraph 43 of this Complaint. Defendants have failed and
22 refused to take action to grant full and equal access to persons with physical disabilities in the
23 respects complained of hereinabove. Defendants and each of them have carried out a
24 course of conduct of refusing to respond to, or correct complaints about, denial of handicap
25 access. Such actions and continuing course of conduct by Defendants, evidence despicable
26 conduct in conscious disregard for the rights or safety of Plaintiff and of other similarly
27 situated persons, justifying an award of exemplary and punitive damages pursuant to
28

1 **California Civil Code § 3294.**

2 46. Defendants' actions have also been oppressive to persons with physical
3 disabilities and of other members of the public, and have evidenced actual or implied
4 malicious intent toward those members of the public, such as Plaintiff and other persons with
5 physical disabilities who have been denied the proper access they are entitled to by law.
6 Further, Defendants' refusals on a day-to-day basis to correct these problems evidence
7 despicable conduct in conscious disregard for the rights of Plaintiff and other members of the
8 public with physical disabilities.
9

10 47. Plaintiff prays for an award of punitive damages against Defendants, and each
11 of them, pursuant to **California Civil Code § 3294** in an amount sufficient to make a more
12 profound example of Defendants and discourage owners, operators, franchisers and
13 franchisees of other public facilities from willful disregard of the rights of persons with physical
14 disabilities. Plaintiff does not know the financial worth of Defendants, or the amount of
15 punitive damages sufficient to accomplish the public purposes of **California Civil Code §**
16 **3294** and seeks leave to amend this Complaint when such facts are known.
17

18 48. As a result of the actions and failure of Defendants, and each of them, and as a
19 result of the failure to provide proper accessible public facilities, Plaintiff **C. HUGH MARSH**
20 was denied his civil rights, including his right to full and equal access to public facilities, was
21 embarrassed and humiliated, suffered physical, psychological and mental injuries and
22 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,
23 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and
24 naturally associated with a person with a physical disability being denied access to a public
25 accommodation.
26

27 WHEREFORE, Plaintiff prays for damages as hereinafter stated.
28

1 **III. THIRD CAUSE OF ACTION**
2 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**
3 **(On Behalf of Plaintiff C. HUGH MARSH and Against Defendants ROBERT M.**
4 **COE, INC., dba TACO BELL; DUANE JONES; and DOES ONE TO TEN,**
5 **inclusive) (California Civil Code §§ 54, 54.1 and 54.3)**

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

9 50. The public facilities above-described constitute public facilities and public
10 accommodations within the meaning of **California Health & Safety Code § 19955 et seq.**
11 and were facilities to which members of the public are invited. The aforementioned acts and
12 omissions of defendants, and each of them, constitute a denial of equal access to and use
13 and enjoyment of these facilities by persons with disabilities, including Plaintiff **C. HUGH**
14 **MARSH**. Said acts and omissions are also in violation of provisions of Title 24 of the
15 **California Code of Regulations**.

16 51. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and the
17 denial by defendants of such rights and entitlements are set forth in **California Civil Code §§**
18 **54, 54.1 and 54.3**, to wit:

19 Individuals with disabilities shall have the same right as the...general
20 public to full and free use of the streets, highways, sidewalks, walkways, public
21 buildings, public facilities, and other public places. **California Civil Code §**
22 **54(a)**.

23 Individuals with disabilities shall be entitled to full and equal access, as
24 other members of the general public, to accommodations, advantages, facilities,
25 and privileges of all common carriers, airplanes, motor vehicles, railroad trains,
26 motor buses, streetcars, boats, or any other public conveyances or modes of
27 transportation (whether private, public, franchised, licensed, contracted, or
28 otherwise provided), telephone facilities, adoption agencies, private schools,

1 hotels, lodging places, places of public accommodation, amusement or resort,
2 and other places to which the general public is invited, subject only to the
3 conditions and limitations established by law, or state or federal regulation, and
4 applicable alike to all persons. **California Civil Code** § 54.1(a).

5 52. On or about August 30, 2001, Plaintiff **C. HUGH MARSH** suffered violations of
6 **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of the
7 goods, services, facilities and privileges of said **TACO BELL**, as set forth in paragraph 3
8 above. Plaintiff was also denied full and equal access to other particulars, including but not
9 limited to those described hereinabove. Plaintiff was also denied use of facilities that he was
10 entitled to under Title III of the **Americans with Disabilities Act of 1990**.

11 53. As a result of the denial of full and equal enjoyment of the goods, services,
12 facilities and privileges of defendants' **TACO BELL** store due to the acts and omissions of
13 defendants, and each of them, in owning, operating and maintaining this subject public
14 facility, Plaintiff suffered violations of his civil rights, including but not limited to rights under
15 **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical injury,
16 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,
17 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and
18 naturally associated with a disabled person's denial of full and equal enjoyment of goods,
19 services, privileges, etc. all to his damages as prayed hereinafter in an amount within the
20 jurisdiction of the court. Defendants' actions and omissions to act constituted discrimination
21 against Plaintiff on the sole basis that Plaintiff was physically disabled.

22 54. Plaintiff seeks damages for the violation of his rights as a disabled person on or
23 about August 30, 2001, according to proof, pursuant to **California Civil Code** § 54.3,
24 including a trebling of all statutory and actual damages, general and special, available
25 pursuant to **California Civil Code** § 54.3(a).

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

14
15 56. The acts and omissions of defendants in failing to provide the required
16 accessible facilities subsequent to the enactment date and compliance date of the
17 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and
18 alterations to its handicapped parking, handicapped signage, pathways, and other elements
19 as hereinabove stated, after being notified by patrons before and after the time of Plaintiff's
20 visit and injuries, on or about August 30, 2001, and all times prior thereto with the knowledge
21 that persons with disabilities would enter defendants' premises, the reason given therefor,
22 was an established policy, practice and procedure of refusing and denying entry, thereby
23 denying lodging and other services to a person with disabilities and the companions thereof,
24 evidence malice and oppression toward Plaintiff and other disabled persons.
25

26 57. Such despicable conduct, as that incorporated herein by reference and
27 specifically set forth in Paragraph 11, was carried out by defendants with a willful and
28 conscious disregard for the law and the rights of Plaintiff and of other disabled persons, and

1 was oppressive in that such conduct subjected Plaintiff "to cruel and unjust hardship in
2 conscious disregard" for the law and Plaintiff's rights, and justifies exemplary and punitive
3 damages pursuant to *California Civil Code* § 3294, in amounts sufficient to make an
4 example of defendants and to punish defendants and to carry out the purposes of *California*
5 *Civil Code* § 3294.

6
7 58. Defendants have failed to establish a nondiscriminatory criteria, policy, practice
8 and procedure for entry into said "**TACO BELL**" store as hereinabove described.

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

15 60. The acts and omissions of defendants as complained of herein in failing to
16 provide the required accessible facilities subsequent to the enactment date and compliance
17 date of the *Americans with Disabilities Act of 1990* and refusal to make remedial
18 modifications and alternations to the architectural barriers as stated herein and in failing to
19 establish practices, policies and procedures to allow safe access by persons who are
20 disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully
21 excluding Plaintiff and other members of the public who are physically disabled, from full and
22 equal enjoyment of the subject "**TACO BELL**" as hereinabove described. Such acts and
23 omissions are the continuing cause of humiliation and mental and emotional suffering of
24 Plaintiff in that these actions continue to treat Plaintiff as an inferior and second class citizen
25 and serve to discriminate against him on the sole basis that he is a physically disabled.
26 Plaintiff is unable, so long as such acts and omissions of defendants continue, to achieve full
27 and equal enjoyment of the goods and services of said "**TACO BELL**" as described
28

1 hereinabove. The acts of defendants have legally caused and will continue to cause
2 irreparable injury to Plaintiff if not enjoined by this court.

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

11
12 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
13 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
14 damages.

15
16 **IV. FOURTH CAUSE OF ACTION**
17 **VIOLATIONS OF UNRUH CIVIL RIGHTS ACT (On Behalf of Plaintiff C. HUGH**
18 **MARSH and Against Defendants ROBERT M. COE, INC., dba TACO BELL;**
19 **DUANE JONES; and DOES ONE TO TEN, inclusive) (California Civil Code**
20 **§§ 51 and 51.5)**

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

24 63. Defendants' acts and omissions as specified with regard to the discriminatory
25 treatment of Plaintiff **C. HUGH MARSH** on the basis of his physical disabilities, have been in
26 violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have
27 denied to Plaintiff his rights to "full and equal accommodations, advantages, facilities,
28 privileges or services in all business establishments of every kind whatsoever."

64. **California Civil Code** § 51 also provides that "[a] violation of the right of any

1 facilities "readily accessible to and usable by individuals with disabilities," according to the
2 standards of Title 24 of the **California Administrative Code, California Health & Safety**
3 **Code § 19955 et seq.**, and Title III of the **Americans with Disabilities Act of 1990** and the
4 standards of **ADAAG**; and prohibiting operation of the **TACO BELL**, located in Goleta,
5 California, as a public facility until Defendants provide full and equal enjoyment of goods and
6 services as described hereinabove to physically disabled persons, including Plaintiff;

7
8 2. General damages according to proof;

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

12 4. Prejudgment interest on all compensatory damages;

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

15 6. Remedies and Procedures available under **Americans with Disabilities Act of**
16 **1990 §§ 107, 203 and 308**;

17 7. Award Plaintiff all litigation expenses, all costs of this proceeding and all
18 reasonable attorneys' fees as provided by law, including but not limited to those recoverable
19 pursuant to the provisions of **California Civil Code §§ 52, 54.3, and 55, California Code of**
20 **Civil Procedure § 1021.5**, and **Americans with Disabilities Act of 1990 §308** of Title III;
21 and
22

23
24 8. Grant such other and further relief as the court may deem just and proper.

25
26 Dated: December 7, 2001

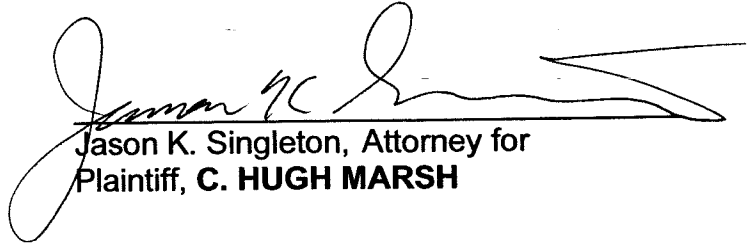
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Jason K. Singleton, Attorney for
Plaintiff, **C. HUGH MARSH**

REQUEST FOR JURY TRIAL

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

Dated: December 7, 2001



Jason K. Singleton, Attorney for
Plaintiff, **C. HUGH MARSH**

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