

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

FILED
CLERK, U.S. DISTRICT COURT
MAR 12 2001
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

JS
5/20

7
8
9 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 JAMES COLLINS,

11 Plaintiff,

12 v.

13 FRESH PIES, INC., a California corporation,
14 dba MARIE CALLENDERS, WEA PALM
15 DESERT LLC, a Delaware Limited Liability
16 Company, WESTFIELD AMERICA LIMITED
17 PARTNERSHIP, a Delaware Limited
18 Partnership, WESTFIELD AMERICA, INC., a
Missouri corporation, and DOES ONE to TEN,
inclusive,

Defendants.

) Case No. EDCV 01-176 VAP SGLX
)

) Civil Rights
)

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

) JURY TRIAL REQUESTED
)
)

19 Plaintiff JAMES COLLINS complains of defendants FRESH PIES, INC., a California
20 corporation, dba MARIE CALLENDERS, WEA PALM DESERT LLC, a Delaware Limited
21 Liability Company, WESTFIELD AMERICA LIMITED PARTNERSHIP, a Delaware Limited
22 Partnership, WESTFIELD AMERICA, INC., a Missouri corporation, and DOES ONE to TEN,
23 inclusive, and alleges as follows:

24
25 JURISDICTION AND VENUE

26 1. The Court has jurisdiction of this action pursuant to 28 USC §1331 for violations of the
27 Americans with Disabilities Act of 1990, 42 USC 12101, et seq. Pursuant to pendant jurisdiction,
28 attendant and related causes of action, arising from the same facts, are also brought under California

ENTER ON ICMS
MAR 16 2001
[Signature]

(1)

1 3. Curbscut from parking lot to entrance:

2 a) The slope in the direction of travel varies from 10% to 11% in violation of
3 California Title 24 § 1127B.5.3 which requires a slope $\leq 1:12$ (8.33%);

4 b) There is no 12" wide grooved surface on the top and sides of the curb cut in
5 violation of California Title 24 § 1127B.5.7;

6 c) There is no ½" high lip at the bottom of the curb cut in violation of California
7 Title 24 § 1127B.5.5 which requires a ½" lip beveled at 45°;

8 d) The side slope of the curb cut exceeds 10% in violation of California Title 24 §
9 1127B.5.3 which also requires no more than 8.33% if there's pedestrian cross traffic.

10 e) There is no contrasting finish to surrounding surfaces in violation of California
11 Title 24 § 1127B.5.6 which requires a slip resistant surface on all curb ramps and side flares and
12 a contrasting finish to the adjacent surface;

13 4. The entry door threshold is approximately 1" vertical high in violation of California Title
14 24 § 1004.9.1a and 1133B.2.4.1 which requires $\leq ¼"$ or up to ½" if beveled.

15 **B. INTERIOR:**

16 1. The door from the restaurant to the corridor leading to the restrooms and public
17 telephone:

18 a) There is approximately a 3" clear space on the latch side in violation of California
19 Title 24 § 1004.9.2.2a and 1133B.2.4.3 which require $\geq 18"$ clear space at the strike edge of
20 interior doors on the pull side and $\geq 12"$ clear space at the latch edge of passage doors if there is a
21 latch and closure.

22 b) There is no complying signage indicating the door leads to the restrooms in
23 violation of California Title 24 § 1117B.5.9.

24 2. Men's Restroom:

25 a) The entry door does not have complying signage as required in California Title 24
26 § 1115B.5.

27 b) The lavatory is 37" high in violation of California Title 24 § 1504(a) which
28 requires the top of the bowl or counter to be $\leq 34"$.

1 c) The hot water and drain lines are not sufficiently covered as required in California
2 Title 24 § 1504(b).

3 d) The flush valve is on the wrong side in violation of California Title 24 § 1502
4 which requires the flush valve be mounted on the wide side of the toilet stall.

5 e) The grab bar extends about 3" in front of the water closet in violation of
6 California Title 24 § 1502 which requires, among things, the side grab bars extend ≥ 24 " in front
7 of a water closet.

8 f) The toilet paper dispenser limits the space beside the water closet to 28" in
9 violation of California Title 24 § 1115B.7.1.2 which requires a 32" space beside the water closet
10 to a wall or ≥ 28 " to a fixture.

11 g) There is only a 56" clear space in front of the water closet in violation of
12 California Title 24 § 1115B.7.1.2 which requires ≥ 60 " space for stalls with a side entry.

13 h) There is not a complying open handle on both sides of the stall door in violation
14 of California Title 24 § 1115B.7.1.3 requiring a complying opening handle on each side of
15 accessible stall doors.

16 i) The door swings into the accessible stall in violation of California Title 24 §
17 1115B.7.1.3 which requires the door open outward or space for a ≥ 36 " X 48" wheelchair to enter
18 and shut the door.

19 j) We are informed and believe the women's restrooms have the same violations as
20 those observed in the men's restrooms and require the same corrections.

21 3. Seating and sales counters:

22 a) The booths are non-complying in violation of California Title 24 § 1104B.5.4
23 which requires 5% of the total seating be wheelchair seating integrated throughout the seating
24 area and located in all functional areas.

25 b) The handrails on the ramp to the raised area are non-complying in violation of
26 California Title 24 § 1007.5a.2 which requires continuous handrails on both sides of a ramp 34"
27 to 38" high, extending ≥ 12 " past the top and bottom of the ramp with ends terminating in a post
28 or returned.

1 c) The sales counter for the pies exceeds 34" in height in violation of California Title
2 24 § 1122B.4 which requires tables and counters used as dining/work surfaces shall be 28" to
3 34" high by ≥36" wide or 5% of the table/bar length, which ever is longer.

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

8 **FACTUAL ALLEGATIONS**

9
10 4. Plaintiff **JAMES COLLINS** is, and at all times relevant to this Complaint is, a
11 "physically handicapped person, "physically disabled person," and a "person with a disability," as these
12 terms are used under California law and under federal laws including, but not limited to, Title III of the
13 *Americans with Disabilities Act of 1990*. (The terms "physically handicapped person," "physically
14 disabled person," and a "person with a disability" will be used interchangeably throughout this
15 Complaint.) Plaintiff is a "person with a disability," as defined by all applicable California and United
16 State's laws. Plaintiff **JAMES COLLINS** is severely limited in the use of his legs.

17
18 5. Defendants **FRESH PIES, INC., A CALIFORNIA CORPORATION, WEA PALM**
19 **DESERT LLC, A DELAWARE LIMITED LIABILITY COMPANY, WESTFIELD AMERICA**
20 **LIMITED PARTNERSHIP, a Delaware Limited Partnership, WESTFIELD AMERICA, INC., a**
21 **Missouri corporation, and DOES ONE to TEN, inclusive,** at all times relevant herein were and are
22 the owners and operators; lessors and/or lessees, franchisers and/or franchisees, of public facilities
23 known as "**MARIE CALLENDERS**" restaurant facility, located at Palm Desert, California, subject to
24 the requirements of California state law requiring full and equal access to public facilities pursuant to
25 *Health & Safety Code §19955, et seq., California Civil Code §§51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and*
26 *55,* and subject to Title III of the *Americans with Disabilities Act of 1990*, and to all other legal
27 requirements referred to in this Complaint. Plaintiff does not know the relative responsibilities of
28

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

3 6. Defendants **FRESH PIES, INC., A CALIFORNIA CORPORATION, WEA PALM**
4 **DESERT LLC, A DELAWARE LIMITED LIABILITY COMPANY, WESTFIELD AMERICA**
5 **LIMITED PARTNERSHIP, a Delaware Limited Partnership, WESTFIELD AMERICA, INC., a**
6 **Missouri corporation and DOES ONE to TEN, inclusive** (hereinafter alternatively referred to
7 collectively as “defendants”), at all times relevant herein were and are owners, possessors, builders and
8 keepers of “**MARIE CALLENDERS**” in Palm Desert, California.

9
10 7. Defendants **FRESH PIES, INC., A CALIFORNIA CORPORATION, WEA PALM**
11 **DESERT LLC, A DELAWARE LIMITED LIABILITY COMPANY, WESTFIELD AMERICA**
12 **LIMITED PARTNERSHIP, a Delaware Limited Partnership, WESTFIELD AMERICA, INC., a**
13 **Missouri corporation and DOES ONE to TEN, inclusive,** are the owners and operators of the subject
14 “**MARIE CALLENDERS**” establishment, at all times relevant to this Complaint. Plaintiff is informed
15 and believes that each of the defendants herein is the agent, employee or representative of each of the
16 other defendants, and performed all acts and omissions stated herein within the scope of such agency or
17 employment or representative capacity and is responsible in some manner for the acts and omissions of
18 the other defendants in legally causing the damages complained of herein, and have approved or ratified
19 each of the acts or omissions of each other defendant, as herein described.

20
21 8. Plaintiff **JAMES COLLINS** does not know the true names and capacities of defendants
22 **FRESH PIES, INC., A CALIFORNIA CORPORATION, WEA PALM DESERT LLC, A**
23 **DELAWARE LIMITED LIABILITY COMPANY WESTFIELD AMERICA LIMITED**
24 **PARTNERSHIP, a Delaware Limited Partnership, WESTFIELD AMERICA, INC., a Missouri**
25 **corporation and DOES ONE to TEN, inclusive,** their business capacities, their ownership connection
26 to the property and business, nor their relative responsibilities in causing the access violations herein
27 complained of, and alleges a joint venture and common enterprise by all such defendants. Plaintiff is
28

1 informed and believes that each of the defendants herein, including DOES ONE to TEN, inclusive, are
2 the agents, ostensible agents, masters, servants, employers, employees, representatives, franchisers,
3 franchisees, joint venturers, partners, and associates, or such similar capacity, of each of the other
4 defendants, and was at all times acting and performing, or failing to act or perform, with the
5 authorization, consent, permission or ratification of each of the other defendants, and is responsible in
6 some manner for the acts and omissions of the other defendants in legally causing the violations and
7 damages complained of herein, and have approved or ratified each of the acts or omissions of each other
8 defendant, as herein described.

9
10 Plaintiff **JAMES COLLINS** is informed and believes **WEA PALM DESERT LLC, A**
11 **DELAWARE LIMITED LIABILITY COMPANY**, does not have the right to conduct business in the
12 State of California by virtue of being "canceled" by the California Secretary of State and Plaintiff
13 therefore sues its officers, partners, managers, and members in their individual capacity and will amend
14 the Complaint to insert the true names when ascertained.

15
16 Plaintiff **JAMES COLLINS** will seek leave to amend this Complaint when the true names,
17 capacities, connections and responsibilities of defendants **FRESH PIES, INC., A CALIFORNIA**
18 **CORPORATION, WEA PALM DESERT LLC, A DELAWARE LIMITED LIABILITY**
19 **COMPANY, WESTFIELD AMERICA LIMITED PARTNERSHIP, a Delaware Limited**
20 **Partnership, WESTFIELD AMERICA, INC., a Missouri corporation and DOES ONE to TEN,**
21 **inclusive**, are ascertained.

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

26 10. Defendants **FRESH PIES, INC., A CALIFORNIA CORPORATION, WEA PALM**
27 **DESERT LLC, A DELAWARE LIMITED LIABILITY COMPANY, WESTFIELD AMERICA**
28 **LIMITED PARTNERSHIP, a Delaware Limited Partnership, WESTFIELD AMERICA, INC., a**

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

10 11. On or about February 26, 2001, plaintiff **JAMES COLLINS**, visited the "**MARIE**
11 **CALENDERS**" restaurant in Palm Desert, California for the purpose of eating a meal there.
12 Defendants **FRESH PIES, INC., A CALIFORNIA CORPORATION, WEA PALM DESERT LLC,**
13 **A DELAWARE LIMITED LIABILITY COMPANY, WESTFIELD AMERICA LIMITED**
14 **PARTNERSHIP, a Delaware Limited Partnership, WESTFIELD AMERICA, INC., a Missouri**
15 **corporation and DOES ONE to TEN, inclusive**, interfered with plaintiff's access to the "**MARIE**
16 **CALENDERS**" establishment as set forth in Paragraph 3 above.

18 Said acts and omissions denied plaintiff legal handicapped access to the "**MARIE**
19 **CALENDERS**" establishment according to federal and state law.

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

25 13. Defendants, and each of them, discriminated against plaintiff **JAMES COLLINS** on the
26 basis of his physical disability, and interfered with his access to the "**MARIE CALENDERS**"
27 establishment, in violation of both California law including, but not limited to, *California Civil Code*
28 §§51, 51.5, 54, 54.1, , and a violation of Title III, §302, the "Prohibition of Discrimination" provision

1 and §503, the "Prohibition Against Retaliation or Coercion" provision of the *Americans with Disabilities*
2 *Act of 1990*.

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

12 **I. FIRST CAUSE OF ACTION:**

13 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On Behalf of**
14 **Plaintiff JAMES COLLINS and Against Defendants FRESH PIES, INC., a California**
15 **corporation, dba MARIE CALLENDERS, WEA PALM DESERT LLC, a Delaware**
16 **Limited Liability Company, WESTFIELD AMERICA LIMITED PARTNERSHIP, a**
Delaware Limited Partnership, WESTFIELD AMERICA, INC., a Missouri corporation
and DOES ONE to TEN, inclusive) (42 USC § 12101ff)

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

21 16. Pursuant to law, in 1990 the United States Congress made findings per 42 *USC* §12101
22 regarding persons with physical disabilities, finding that laws were needed to more fully protect

23 some 43 million Americans with one or more physical or mental disabilities;
24 [that] historically society has tended to isolate and segregate individuals with disabilities;
25 [that] such forms of discrimination against individuals with disabilities continue to be a
26 serious and pervasive social problem; [that] the nation's proper goals regarding
27 individuals with disabilities are to assure equality of opportunity, full participation,
28 independent living and economic self-sufficiency for such individuals; [and that] the

1 continuing existence of unfair and unnecessary discrimination and prejudice denies
2 people with disabilities the opportunity to compete on an equal basis and to pursue those
3 opportunities for which our free society is justifiably famous.

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

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

16 18. As part of the *Americans with Disabilities Act of 1990*, Public Law 101-336 (hereinafter
17 the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private
18 Entities" (42 *USC* 1218ff). Among the public accommodations identified for purposes of this title were
19 "a bakery, restaurant, bar or other establishment serving food or drink, grocery store, clothing store,
20 hardware store, shopping center or other sales or rental establishment."
21

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

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

Denial of participation. It shall be discriminatory to subject an individual or

1 class of individuals on the basis of a disability or disabilities of such individual or class,
2 directly, or through contractual, licensing, or other arrangements, to a denial of the
3 opportunity of the individual or class to participate in or benefit from the goods, services,
4 facilities, privileges, advantages, or accommodations of an entity.

5 21. Among the general prohibitions against discrimination were included in 42 *USC* §12182

6
7 (b)(1)(E):

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

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

14
15 22. Among the general prohibitions against discrimination were included in 42 *USC* §12182

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

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

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

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

1 accommodations.

2 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices and
3 procedure for entry to the "MARIE CALLENDERS" facility by persons with disabilities and their
4 companions as established by the defendants can be simply modified to eliminate disparate and
5 discriminatory treatment of persons with disabilities by properly constructing barrier free handicapped
6 access for safe and full and equal enjoyment of the "MARIE CALLENDERS" restaurant facility as that
7 enjoyed by other people.
8

9 24. The specific prohibition against retaliation and coercion is include in §503(b) and the
10 Remedies and Procedures in §503(c):

11 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to coerce,
12 intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or
13 on account of his or her having exercised or enjoyed, or on account of his or her having
14 aided or encouraged any other individual in the exercise or enjoyment of, any right
15 granted or protected by this Act.
16

17 (c) Remedies and Procedure. - The remedies and procedures available under
18 sections 107, 203, and 308 of this Act shall be available to aggrieved persons for
19 violations of subsections (a) and (b), with respect to Title I, Title II and Title III,
20 respectively.
21

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

1 promulgated thereunder, 28 *CFR* Part 36 et seq.

2 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged were at all
3 times after 1993 “readily achievable.” On information and belief, if the removal of all the barriers
4 complained of here together were not “readily achievable,” the removal of each individual barrier
5 complained of herein was “readily achievable.”
6

7 27. Per §301(9), 42 *USC* 12181, “The term ‘readily achievable’ means easily accomplishable
8 and able to be carried out without much difficulty or expense.” The statute and attendant regulations
9 define relative “expense” in relation to the total financial resources of the entities involved, including
10 any “parent” companies. Plaintiff alleges that properly repairing each of the items that Plaintiff
11 complains of herein is readily achievable, including but not limited to correcting and repairing the items
12 set forth in Paragraph 3 above.
13

14 The changes needed to remove barriers to access for the disabled were and are “readily
15 achievable” by the defendants under standards set forth under 42 *USC* 12181 of the Americans with
16 Disabilities Act. Further, if it was not “readily achievable” for defendants to remove all such barriers,
17 defendants have failed to make the required services available through alternative methods, although
18 such methods are achievable as required by 42 *USC* 12181(b)(2)(a)(iv) and (v).
19

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

29. Defendants’, and each of their acts and omissions of failing to provide barrier free

1 handicapped access for plaintiff, were tantamount to interference, coercion or intimidation pursuant to
2 §503(b) (42 USC 12203):

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

6
7 30. Per §308(a)(1) (42 USC 12188), “Nothing in this section shall require a person with a
8 disability to engage in a futile gesture if such person has actual notice that a person or organization
9 covered by this title does not intend to comply with its provisions.” Pursuant to this last section,
10 plaintiff, on information and belief, alleges that defendants have continued to violate the law and deny
11 the rights of plaintiff and other disabled persons to access this public accommodation for the purposes of
12 eating. Therefore, plaintiff seeks injunctive relief pursuant to §308(a)(2), “...Where appropriate,
13 injunctive relief shall also include requiring the provision of an auxiliary aid or service, modifications of
14 a policy, or provision of alternative methods, to the extent required by this title.”

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

21
22 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

23 **II. SECOND CAUSE OF ACTION**

24 BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL
25 DISABILITIES (On Behalf of Plaintiff **JAMES COLLINS** and Against Defendants **FRESH**
26 **PIES, INC., a California corporation, dba MARIE CALLENDERS, WEA PALM DESERT**
27 **LLC, a Delaware Limited Liability Company, WESTFIELD AMERICA LIMITED**
28 **PARTNERSHIP, a Delaware Limited Partnership, WESTFIELD AMERICA, INC., a**
 Missouri corporation and DOES ONE to TEN, inclusive) (Health & Safety Code §§19955, et
 seq.)

30 32. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the

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

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

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

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

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

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

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

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

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

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

1 defined to include restaurants.

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

5 41. Plaintiff **JAMES COLLINS** is informed and believes, and therefore alleges, that
6 Defendants **FRESH PIES, INC., A CALIFORNIA CORPORATION, WEA PALM DESERT LLC,**
7 **A DELAWARE LIMITED LIABILITY COMPANY, WESTFIELD AMERICA LIMITED**
8 **PARTNERSHIP, a Delaware Limited Partnership, WESTFIELD AMERICA, INC., a Missouri**
9 **corporation and DOES ONE to TEN, inclusive,** and each of them, caused the subject buildings
10 constituting “**MARIE CALLENDERS**” to be constructed, altered and maintained in such a manner that
11 persons with physical disabilities were denied full and equal access to, within and throughout said
12 buildings and were denied full and equal use of said public facilities, and despite knowledge and actual
13 and constructive notice to such Defendants that the configuration of the restaurant and/or buildings was
14 in violation of the civil rights of persons with physical disabilities, such as Plaintiff. Such construction,
15 modification, ownership, operation, maintenance and practices of such public facilities are in violation
16 of law as stated in Part 5.5, *Health & Safety Code §19955, et seq.*, and elsewhere in the laws of
17 California.

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

22 43. The basis of Plaintiff’s aforementioned information and belief is the various means upon
23 which Defendants must have acquired such knowledge, including but not limited to this lawsuit, other
24 access lawsuits, communications with operators of other restaurants and other property owners
25 regarding denial access, communications with Plaintiff and other persons with disabilities,
26
27
28

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

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

19 45. Defendants, and each of them, at times prior to and including February 26, 2001, and
20 continuing to the present time, knew that persons with physical disabilities were denied their rights of
21 equal access to all portions of this public facility. Despite such knowledge, Defendants failed and
22 refused to take steps to comply with the applicable access statutes; and despite knowledge of the
23 resulting problems and denial of civil rights thereby suffered by Plaintiff **JAMES COLLINS** and other
24 similarly situated persons with disabilities, including the specific notices referred to in paragraph 43 of
25 this Complaint. Defendants have failed and refused to take action to grant full and equal access to
26 persons with physical disabilities in the respects complained of hereinabove. Defendants and each of
27 them have carried out a course of conduct of refusing to respond to, or correct complaints about, denial
28

1 of handicap access. Such actions and continuing course of conduct by Defendants, evidence despicable
2 conduct in conscious disregard for the rights or safety of Plaintiff and of other similarly situated persons,
3 justifying an award of exemplary and punitive damages pursuant to *Civil Code* §3294.

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

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

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

24 WHEREFORE, Plaintiff prays for damages as hereinafter stated.
25
26
27
28

1 **III. THIRD CAUSE OF ACTION**

2 VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS (On Behalf of Plaintiff **JAMES**
3 **COLLINS** and Against Defendants **FRESH PIES, INC.**, a California corporation, dba
4 **MARIE CALLENDERS, WEA PALM DESERT LLC**, a Delaware Limited Liability
5 **Company, WESTFIELD AMERICA LIMITED PARTNERSHIP**, a Delaware Limited
6 **Partnership, WESTFIELD AMERICA, INC.**, a Missouri corporation and **DOES ONE to**
7 **TEN, inclusive**) (California Civil Code §§54, 54.1 and 54.3)

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

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

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

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

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

1 invited, subject only to the conditions and limitations established by law, or state or
2 federal regulation, and applicable alike to all persons. *Civil Code §54.1(a)*.

3 52. On or about February 26, 2001, Plaintiff **JAMES COLLINS** suffered violations of §§54
4 and 54.1 of the *Civil Code* in that he was denied full and equal enjoyment of the goods, services,
5 facilities and privileges of said “**MARIE CALLENDERS**”, on the basis that plaintiff **JAMES**
6 **COLLINS** was physically disabled, as set forth in paragraph 3 above. Plaintiff was also denied full and
7 equal access to other particulars, including, but not limited to, those described hereinabove. Plaintiff
8 was also denied use of facilities that he was entitled to under Title III of the *Americans with Disabilities*
9 *Act*.

10
11 53. As a result of the denial of full and equal enjoyment of the goods, services, facilities and
12 privileges of defendants’ **FRESH PIES, INC., A CALIFORNIA CORPORATION, WEA PALM**
13 **DESERT LLC, A DELAWARE LIMITED LIABILITY COMPANY**, restaurant due to the acts and
14 omissions of defendants, and each of them, in owning, operating and maintaining this subject public
15 facility, plaintiff **JAMES COLLINS** suffered violations of his civil rights, including but not limited to
16 rights under *Civil Code* §§54, 54.1, and 54.3, and has and will suffer physical injury, emotional distress,
17 mental distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment,
18 anger, chagrin, disappointment and worry, expectedly and naturally associated with a disabled person’s
19 denial of full and equal enjoyment of goods, services, privileges, etc. all to his damages as prayed
20 hereinafter in an amount within the jurisdiction of the court. Defendants’ actions and omissions to act
21 constituted discrimination against plaintiff on the sole basis that plaintiff was physically disabled.

22
23
24 54. Plaintiff seeks damages for the violation of his rights as a disabled person on or about
25 February 26, 2001, according to proof, pursuant to *Civil Code* §54.3, including a trebling of all statutory
26 and actual damages, general and special, available pursuant to *Civil Code* §54.3.

27
28 55. As a result of defendants’ acts and omissions in this regard, plaintiff **JAMES COLLINS**
has been required to incur legal expenses and hire attorneys in order to enforce his rights and enforce

1 provisions of the law protecting the full and equal enjoyment of goods, services, facilities, privileges of
2 public facilities by the disabled, and those individuals associated with or accompanied by a person with
3 disabilities, and prohibiting discrimination against the disabled. Plaintiff, therefore, seeks recovery in
4 this lawsuit for all reasonable attorneys' fees incurred pursuant to the provisions of *Civil Code* §54.3.
5 Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but
6 also to compel the defendants to make their goods, services, facilities and privileges available and
7 accessible to all members of the public with physical disabilities, justifying public interest attorneys'
8 fees pursuant to the provisions of *California Code of Civil Procedure* §1021.5.

10 56. The acts and omissions of defendants in failing to provide the required accessible
11 facilities subsequent to the enactment date and compliance date of the Americans with Disabilities Act,
12 and refusal to make remedial modifications and alterations to its handicapped parking, handicapped
13 signage, pathways, and other elements as hereinabove stated, after being notified by patrons before and
14 after the time of plaintiff's visit and injuries, on or about February 26, 2001, and all times prior thereto
15 with the knowledge that persons with disabilities would enter defendants' premises, the reason given
16 therefor, was an established policy, practice and procedure of refusing and denying entry, thereby
17 denying meals and other services to a person with disabilities and the companions thereof, evidence
18 malice and oppression toward plaintiff **JAMES COLLINS** and other disabled persons.

20 57. Such despicable conduct, as that incorporated herein by reference and specifically set
21 forth in Paragraph 11, was carried out by defendants with a willful and conscious disregard for the law
22 and the rights of plaintiff and of other disabled persons, and was oppressive in that such conduct
23 subjected plaintiff "to cruel and unjust hardship in conscious disregard" for the law and plaintiff's rights,
24 and justifies exemplary and punitive damages pursuant to *Civil Code* §3294, in amounts sufficient to
25 make an example of defendants and to punish defendants and to carry out the purposes of *Civil Code*
26 §3294.
27

28 58. Defendants have failed to establish a nondiscriminatory criteria, policy, practice and

1 procedure for entry into said "MARIE CALLENDERS" restaurant establishment, as hereinabove
2 described.

3 59. As a result of defendants' continuing failure to provide for the full and equal enjoyment
4 of goods, services, facilities and privileges of said "MARIE CALLENDERS," as hereinabove
5 described, plaintiff has continually been denied his rights to full and equal enjoyment of the subject
6 restaurant, as it would be a "futile gesture" to attempt to patronize said "MARIE CALLENDERS" with
7 the discriminatory policy in place as hereinabove described.
8

9 60. The acts and omissions of defendants as complained of herein in failing to provide the
10 required accessible facilities subsequent to the enactment date and compliance date of the *Americans*
11 *with Disabilities Act of 1990* and refusal to make remedial modifications and alternations to the
12 architectural barriers as stated herein and in failing to establish practices, policies and procedures to
13 allow safe access by persons who are disabled are continuing on a day-to-day basis to have the effect of
14 wrongfully and willfully excluding plaintiff and other members of the public who are physically
15 disabled, from full and equal enjoyment of the subject "MARIE CALLENDERS" as hereinabove
16 described. Such acts and omissions are the continuing cause of humiliation and mental and emotional
17 suffering of plaintiff in that these actions continue to treat plaintiff as an inferior and second class citizen
18 and serve to discriminate against him on the sole basis that he is a physically disabled. Plaintiff is
19 unable, so long as such acts and omissions of defendants continue, to achieve full and equal enjoyment
20 of the goods and services of said "MARIE CALLENDERS" as described hereinabove. The acts of
21 defendants have legally caused and will continue to cause irreparable injury to plaintiff if not enjoined
22 by this court.
23
24

25 61. Wherefore, plaintiff asks this court to preliminarily and permanently enjoin any
26 continuing refusal by defendants to permit entry to said "MARIE CALLENDERS" and to provide
27 service to the plaintiff or others similarly situated, and to require defendants to comply forthwith with
28 the applicable statutory requirements relating to the full and equal enjoyment of goods and services as

1 described hereinabove for disabled persons. Such injunctive relief is provided by *California Civil Code*
2 §55. Plaintiff further requests that the court award statutory costs and attorneys' fees to plaintiff
3 pursuant to *Civil Code* §55 and *Code of Civil Procedure* §1021.5, all as hereinafter prayed for.

4 WHEREFORE, plaintiff prays for compensatory damages, reasonable attorneys' fees and costs
5 of suit, as allowed by statute and according to proof, and appropriate exemplary damages.

6
7 **IV. FOURTH CAUSE OF ACTION**

8 **VIOLATIONS OF UNRUH CIVIL RIGHTS ACT (On Behalf of Plaintiff JAMES COLLINS**
9 **and Against Defendants FRESH PIES, INC., a California corporation, dba MARIE**
10 **CALLENDERS, WEA PALM DESERT LLC, a Delaware Limited Liability Company,**
11 **WESTFIELD AMERICA LIMITED PARTNERSHIP, a Delaware Limited Partnership,**
12 **WESTFIELD AMERICA, INC., a Missouri corporation and DOES ONE to TEN,**
13 **inclusive) (Civil Code §§51, 51.5)**

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

17 63. Defendants' acts and omissions as specified with regard to the discriminatory treatment
18 of plaintiff JAMES COLLINS on the basis of his physical disabilities, have been in violation of §§51
19 and 51.5 of the *California Civil Code*, the *Unruh Civil Rights Act*, and have denied to plaintiff his rights
20 to "full and equal accommodations, advantages, facilities, privileges or services in all business
21 establishments of every kind whatsoever."

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

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

1 c) Bevel a 1/2" high lip at the bottom of the curb cut in compliance with California
2 Title 24 § 1127B.5.5 which requires a 1/2" lip beveled at 45°;

3 d) Redo the side slope of the curb cut in compliance with California Title 24 §
4 1127B.5.3 which requires no more that 8.33% if there's pedestrian cross traffic.

5 e) Place contrasting finish to surrounding surfaces in compliance with California
6 Title 24 § 1127B.5.6 which requires a slip resistant surface on all curb ramps and side flares and
7 a contrasting finish to the adjacent surface;

8 4. Remodel the entry door threshold in compliance with California Title 24 § 1004.9.1a and
9 1133B.2.4.1 which requires $\leq 1/4$ " or up to 1/2" if beveled.

10 **B. INTERIOR:**

11 1. The door from the restaurant to the corridor leading to the restrooms and public
12 telephone:

13 a) Correct the clear space on the latch side in compliance with California Title 24 §
14 1004.9.2.2a and 1133B.2.4.3 which require ≥ 18 " clear space at the strike edge of interior doors
15 on the pull side and ≥ 12 " clear space at the latch edge of passage doors if there is a latch and
16 closure.

17 b) Place complying signage indicating the door leads to the restrooms in compliance
18 with California Title 24 § 1117B.5.9.

19 2. Men's Restroom:

20 a) Place complying signage at entry door as required in California Title 24 §
21 1115B.5.

22 b) Lower the lavatory in compliance with California Title 24 §1504(a) which
23 requires the top of the bowl or counter to be ≤ 34 ".

24 c) Cover the hot water and drain lines as required in California Title 24 § 1504(b).

25 d) Remount the flush valve in compliance with California Title 24 § 1502 which
26 requires the flush valve be mounted on the wide side of the toilet stall.

27 e) Install grab bar in compliance with California Title 24 § 1502 which requires,
28 among things, the side grab bars extend ≥ 24 " in front of a water closet.

1 f) Provide space beside the toilet paper dispenser and the water closet in compliance
2 with California Title 24 § 1115B.7.1.2 which requires a 32" space beside the water closet to a
3 wall or ≥28" to a fixture.

4 g) Provide clear space in front of the water closet in compliance with California Title
5 24 § 1115B.7.1.2 which requires ≥60" space for stalls with a side entry.

6 h) Install complying open handles on both sides of the stall door in compliance with
7 California Title 24 § 1115B.7.1.3 requiring a complying opening handle on each side of
8 accessible stall doors.

9 i) Rehang the door into the accessible stall in compliance with California Title 24 §
10 1115B.7.1.3 which requires the door open outward or space for a ≥36" X 48" wheelchair to enter
11 and shut the door.

12 j) Provide the same corrections outlined above in the women's restrooms where
13 applicable.

14 3. Seating and sales counters:

15 a) Provide booths in compliance with California Title 24 § 1104B.5.4 which requires
16 5% of the total seating be wheelchair seating integrated throughout the seating area and located
17 in all functional areas.

18 b) Provide handrails on the ramp to the raised area in compliance with California
19 Title 24 § 1007.5a.2 which requires continuous handrails on both sides of a ramp 34" to 38"
20 high, extending ≥12" past the top and bottom of the ramp with ends terminating in a post or
21 returned.

22 c) Remodel the sales counter for the pies in compliance with California Title 24 §
23 1122B.4 which requires tables and counters used as dining/work surfaces shall be 28" to 34"
24 high by ≥36" wide or 5% of the table/bar length, which ever is longer.

25 and make such facilities "readily accessible to and usable by individuals with disabilities," according to
26 the standards of Title 24 of the *California Administrative Code, Health & Safety Code* §19955ff, and
27 Title III of the *Americans with Disabilities Act of 1990* and the standards of ADAAG; and prohibiting
28 operation of the **MARIE CALLENDERS**, located at Palm Desert, California, as a public

1 facility/accommodation until Defendants provide full and equal enjoyment of goods and services as
2 described hereinabove to physically disabled persons, including Plaintiff;

3 2. General damages according to proof;

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

6 4. Prejudgment interest on all compensatory damages;

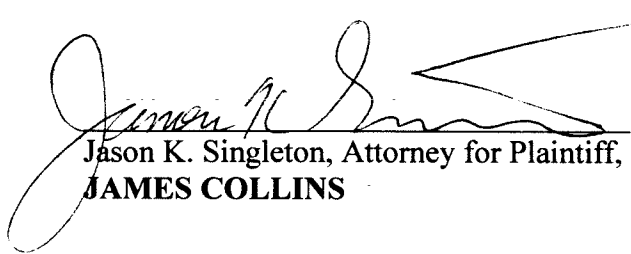
7 5. Punitive and exemplary damages pursuant to the standards and purposes of *Civil Code*
8 §3294;

9 6. Remedies and Procedures available under §§1107, 203 and 308 of the *Americans with*
10 *Disabilities Act of 1990*;

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

15 8. Grant such other and further relief as the court may deem just and proper.
16

17
18
19 Dated: March 8, 2001

20 
21 Jason K. Singleton, Attorney for Plaintiff,
22 JAMES COLLINS

23 **REQUEST FOR JURY TRIAL**

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

25 Dated: March 8, 2001

26 
27 Jason K. Singleton, Attorney for Plaintiff,
28 JAMES COLLINS