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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 LARRY BRISBON, MARCY DARBY-KEY,)
13 and PATRICK MCMAHON,)

14 Plaintiff,

15 v.)

16 DAVID CORKILL, dba CINEMA WEST dba)
17 FORTUNA THEATER, and DOES ONE to)
18 FIFTY, inclusive,)

19 Defendants.)

Case No. C 01 1884 VRW

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

20 Plaintiffs LARRY BRISBON, MARCY DARBY-KEY, and PATRICK MCMAHON
21 complain of defendants DAVID CORKILL, dba CINEMA WEST, dba FORTUNA
22 THEATER, and DOES ONE to FIFTY, inclusive, and alleges as follows:

23 JURISDICTION AND VENUE

24 1. The Court has jurisdiction of this action pursuant to 28 *USC* § 1331 for
25 violations of the *Americans with Disabilities Act of 1990*, (42 *USC* § 12101, *et seq.*)
26 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the
27 same facts, are also brought under California law, including but not limited to violations of
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1 **California Health & Safety Code** § 19955, *et seq.*, including **California Code of**
2 **Regulations**, Title 24, § 19959, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1,
3 54.3 and 55.

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

7 INTRODUCTION

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9 3. **FORTUNA THEATER** is located at 1241 Main Street, Fortuna, California.
10 Said theater is owned and operated by defendants **DAVID CORKILL, dba CINEMA WEST,**
11 **dba FORTUNA THEATER, and DOES ONE to FIFTY, inclusive.**

12 Defendants **DAVID CORKILL, dba CINEMA WEST, dba FORTUNA THEATER, and**
13 **DOES ONE to FIFTY, inclusive**, operate an establishment for services to the public and at
14 which Defendants failed to provide barrier free access to said establishment in conformity
15 with both Federal and California legal requirements. Further, Defendants failed to provide
16 compliance as follows:

17 **A. First Floor Theater:**

- 18
19 1. The slope of the ramp to the accessible theater is 11.4% in violation of
20 California Title 24 § 1133B.5.1 & 1133B.5.3 and ADAAG 4.8.2.
- 21 2. Handrails are not provided on both sides of the ramp in violation of California
22 Title 24 § 1133B.5.5.1 and ADAAG 4.8.5.
- 23 3. The handrails do not extend 12" beyond the top and bottom of the ramp in
24 violation of California Title 24 § 1133B.5.5.1 and ADAAG 4.8.5(2).

25 **B. Entrance Door to Theater:**

- 26 1. The entrance to the accessible theater on the first floor does not have a level
27 landing in violation of California Title 24 §1133B.2.4 and ADAAG 4.13.6.

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1 **C. Unisex Restroom:**

- 2 1. The accessible toilet only has 39.5" of clear space in front of the toilet in
3 violation of California Title 24 § 1115B.7.1.4.
- 4 2. The distance from the centerline of the toilet to the wall is 19" in violation of
5 California Title 24 § 1115B.7.2 and ADAAG 4.17.3.
- 6 3. The toilet is less than 17" from the floor in violation of California Title 24 §
7 1115B.1, California Plumbing Code 1502 and ADAAG 4.16.3.
- 8 4. The door swings into the space in front of the toilet in violation of California
9 Title 24 § 1115B.7.2 and ADAAG 2.23.2.
- 10 5. The side grab bar is 40" long with 22" in front of the toilet in violation of
11 California Title 24 § 1115B.8.1 and ADAAG 4.16.4 & 4.17.6 requiring the bar
12 to be 42" long with 24" in front of the toilet.
- 13 6. A clear space 30" by 48" is not provided in front of the toilet seat cover
14 dispenser in violation of California Title 24 § 1117B.6.4 and ADAAG 4.22.7 &
15 4.23.7.
- 16 7. The flush control is not on the clear space side of the toilet in violation of
17 California Title 24 § 1115B.1 and ADAAG 4.16.5.
- 18 8. The highest operable part of the towel dispenser is 60" above the floor in
19 violation of California Title 24 § 1115B.9.2 which requires a maximum of 40"
20 above the floor.
- 21 9. The pipes under the lavatory are not fully insulated in violation of California
22 Title 24 § 1115B.1, California Plumbing Code 1504.2.1 and ADAAG 4.19.4.

23 The above barriers interfered with Plaintiffs' access and continue to deter Plaintiffs from
24 visiting said facilities, and as a legal result, Plaintiffs **LARRY BRISBON, MARCY DARBY-
25 KEY, and PATRICK MCMAHON** suffered violations of their civil rights to full and equal
26 enjoyment of goods, services, facilities and privileges, and suffered embarrassment and
27 humiliation.

28 **FACTUAL ALLEGATIONS**

4. Plaintiffs **LARRY BRISBON, MARCY DARBY-KEY, and PATRICK
MCMAHON** are, and at all times relevant to this Complaint were, "physically handicapped

1 persons, "physically disabled persons," and "persons with a disability," as these terms are
2 used under California law and under federal laws including, but not limited to, Title III of the
3 **Americans with Disabilities Act of 1990**. (The terms "physically handicapped person,"
4 "physically disabled person," and a "person with a disability" will be used interchangeably
5 throughout this Complaint.) Plaintiffs are "persons with a disability," as defined by all
6 applicable California and United State's laws. Plaintiffs **LARRY BRISBON, MARCY**
7 **DARBY-KEY, and PATRICK MCMAHON** are severely limited in the use of their legs and
8 wheelchair bound.

10 5. Defendants **DAVID CORKILL, dba CINEMA WEST, dba FORTUNA**
11 **THEATER, and DOES ONE to FIFTY, inclusive**, at all times relevant herein were and are
12 the owners and operators; lessors and/or lessees, franchisers and/or franchisees, of public
13 facilities known as the "**FORTUNA THEATER**", located at Fortuna, California, subject to the
14 requirements of California state law requiring full and equal access to public facilities
15 pursuant to **California Health & Safety Code § 19955, et seq., California Civil Code §§**
16 **51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55**, and subject to Title III of the **Americans with**
17 **Disabilities Act of 1990**, and to all other legal requirements referred to in this Complaint.
18 Plaintiffs do not know the relative responsibilities of defendants in the operation of the
19 facilities herein complained of, and alleges a joint venture and common enterprise by all
20 such defendants.
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23 6. Defendants **DAVID CORKILL, dba CINEMA WEST, dba FORTUNA**
24 **THEATER, and DOES ONE to FIFTY, inclusive** (hereinafter alternatively referred to
25 collectively as "defendants"), at all times relevant herein were and are owners, possessors,
26 builders and keepers of the "**FORTUNA THEATER** " in Fortuna, California.
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28 7. Defendants **DAVID CORKILL, dba CINEMA WEST, dba FORTUNA**

1 **THEATER, and DOES ONE to FIFTY, inclusive** are the owners and operators of the
2 subject "**FORTUNA THEATER**" theater, at all times relevant to this Complaint. Plaintiffs are
3 informed and believes that each of the defendants herein is the agent, employee or
4 representative of each of the other defendants, and performed all acts and omissions stated
5 herein within the scope of such agency or employment or representative capacity and is
6 responsible in some manner for the acts and omissions of the other defendants in legally
7 causing the damages complained of herein, and have approved or ratified each of the acts
8 or omissions of each other defendant, as herein described.

10 8. Plaintiffs **LARRY BRISBON, MARCY DARBY-KEY, and PATRICK**
11 **MCMAHON** do not know the true names and capacities of defendants **DAVID CORKILL,**
12 **dba CINEMA WEST, dba FORTUNA THEATER, and DOES ONE to FIFTY, inclusive,**
13 their business capacities, their ownership connection to the property and business, nor their
14 relative responsibilities in causing the access violations herein complained of, and alleges a
15 joint venture and common enterprise by all such defendants. Plaintiffs are informed and
16 believes that each of the defendants herein, including DOES ONE to FIFTY, inclusive, is the
17 agent, ostensible agent, master, servant, employer, employee, representative, franchiser,
18 franchisee, joint venturer, partner, and associate, or such similar capacity, of each of the
19 other defendants, and was at all times acting and performing, or failing to act or perform,
20 with the authorization, consent, permission or ratification of each of the other defendants,
21 and is responsible in some manner for the acts and omissions of the other defendants in
22 legally causing the violations and damages complained of herein, and have approved or
23 ratified each of the acts or omissions of each other defendant, as herein described.
24 Plaintiffs will seek leave to amend this Complaint when the true names, capacities,
25 connections and responsibilities of defendants **DAVID CORKILL, dba CINEMA WEST, dba**
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1 **FORTUNA THEATER, and DOES ONE to FIFTY, inclusive**, are ascertained.

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

5 10. Defendants **DAVID CORKILL, dba CINEMA WEST, dba FORTUNA**
6 **THEATER, and DOES ONE to FIFTY, inclusive**, are the owners and operators of
7 "FORTUNA THEATER", located at Fortuna, California. This theater, including, but not
8 limited to, parking spaces and access aisles and access routes, are each a part of a "public
9 accommodation or facility" subject to the requirements of **California Health & Safety Code**
10 **§ 19955, et seq.**, and of **California Civil Code §§ 51, 52(a), 54, 54.1, et seq.** On
11 information and belief, this "FORTUNA THEATER" was constructed after 1990 which has
12 subjected the "FORTUNA THEATER" to handicapped access requirements per **California**
13 **Health & Safety Code § 19959**, and applicable portions of **California Code of**
14 **Regulations**, Title 24, (the State Building Code).

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17 11. (a) On or about April 21, 2001, Plaintiff **LARRY BRISBON** visited the
18 "FORTUNA THEATER" in Fortuna, California for the purpose of viewing a movie.
19 Defendants **DAVID CORKILL, dba CINEMA WEST, dba FORTUNA THEATER, and**
20 **DOES ONE to FIFTY, inclusive**, interfered with Plaintiff's access to the "FORTUNA
21 THEATER" as set forth in Paragraph 3 above.

22
23 (b) On or about and during the first two weeks of January, 2001, Plaintiff **MARCY**
24 **DARBY-KEY** visited the "FORTUNA THEATER" in Fortuna, California for the purpose of
25 viewing a movie. Defendants **DAVID CORKILL, dba CINEMA WEST, dba FORTUNA**
26 **THEATER, and DOES ONE to FIFTY, inclusive**, interfered with Plaintiff's access to the
27 "FORTUNA THEATER" as set forth in Paragraph 3 above
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1 (c) On or about the latter half of November, 2000, Plaintiff **PATRICK MCMAHON**,
2 visited the "**FORTUNA THEATER**" in Fortuna, California for the purpose of viewing a movie.
3 Defendants **DAVID CORKILL, dba CINEMA WEST, dba FORTUNA THEATER, and**
4 **DOES ONE to FIFTY, inclusive**, interfered with Plaintiff's access to the "**FORTUNA**
5 **THEATER**" as set forth in Paragraph 3 above

6 Said acts and omissions denied Plaintiffs legal handicapped access to the
7 "**FORTUNA THEATER**" according to federal and state law.

8
9 12. Plaintiffs encountered and/or are informed and believe that the following
10 architectural barriers, which violate the requirements of the **California Code of Regulations**
11 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiffs and those
12 similarly situated full and equal access to the subject public facility as set forth in Paragraph
13 3 above.

14
15 13. Defendants, and each of them, discriminated against Plaintiffs **LARRY**
16 **BRISBON, MARCY DARBY-KEY, and PATRICK MCMAHON** on the basis of their physical
17 disability, and interfered with their access to the "**FORTUNA THEATER**" establishment, in
18 violation of both California law including, but not limited to, **California Civil Code** §§ 51,
19 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition of Discrimination" provision
20 and §503, the "Prohibition Against Retaliation or Coercion" provision of the **Americans with**
21 **Disabilities Act of 1990**.

22
23 14. As a result of the actions and failure to act of defendants, and each of them,
24 and as a result of the failure to provide appropriate handicapped accessible entryways and
25 handicapped accommodations, Plaintiffs **LARRY BRISBON, MARCY DARBY-KEY, and**
26 **PATRICK MCMAHON** suffered and will suffer a loss of their civil rights to full and equal
27 access to public facilities, and further suffered and will suffer emotional distress, mental
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1 distress, mental suffering, mental anguish, which includes shame, humiliation,
2 embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally
3 associated with a person with a physical disability being denied access to a public
4 accommodation, all to his damages as prayed hereinafter in an amount within the
5 jurisdiction of this court.

6 **I. FIRST CAUSE OF ACTION:**
7 VIOLATION OF ***THE AMERICANS WITH DISABILITIES ACT OF 1990***
8 (42 ***USC*** §12101 *et seq.*)

9 15. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
10 the allegations contained in paragraphs 1 through 14 of this Complaint and incorporates
11 them herein as if separately repled.

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

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

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

8 18. As part of the **Americans with Disabilities Act of 1990**, Public Law 101-336
9 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
10 Operated by Private Entities" (42 **USC** § 12181 *et seq.*). Among the public accommodations
11 identified for purposes of this title were "a motion picture house, theater, concert hall,
12 stadium, or other place of exhibition or entertainment."

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

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

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

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

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

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

The acts of defendants set forth herein were a violation of Plaintiffs' rights under the ADA,

Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36 et seq.

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

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

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

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

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

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

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

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

1 and Title III, respectively.

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

12 26. The removal of the barriers complained of by Plaintiffs as hereinabove alleged
13 were at all times after 1990 “readily achievable.” On information and belief, if the removal of
14 all the barriers complained of here together were not “readily achievable,” the removal of
15 each individual barrier complained of herein was “readily achievable.”

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

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

3 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
4 12188 *et seq.*), Plaintiffs are entitled to the remedies and procedures set forth in the **Civil**
5 **Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiffs are being subjected to
6 discrimination on the basis of disability in violation of this title and/or Plaintiffs have
7 reasonable grounds for believing that they are about to be subjected to discrimination in
8 violation of **Americans With Disabilities Act of 1990** §302. Plaintiffs cannot return to or
9 make use of the public facilities complained of herein for the purpose of entry and provision
10 of goods and service so long as defendants continue to apply eligibility criteria, policies,
11 practices and procedures to screen out and refuse to allow entry and service to persons with
12 disabilities such as Plaintiffs.

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

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

22 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §
23 12188), "Nothing in this section shall require a person with a disability to engage in a futile
24 gesture if such person has actual notice that a person or organization covered by this title
25 does not intend to comply with its provisions." Pursuant to this last section, Plaintiffs, on
26 information and belief, allege that defendants have continued to violate the law and deny
27 the rights of Plaintiffs and other disabled persons to access this public accommodation for
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1 the purpose of lodging. Therefore, Plaintiffs seek injunctive relief pursuant to §308(a)(2),

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

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

10 **II. SECOND CAUSE OF ACTION**

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

14 32. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
15 the allegations contained in paragraphs 1 through 31 of this Complaint and incorporate them
16 herein as if separately repled.

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

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

27 34. **California Health & Safety Code** § 19956, which appears in the same
28 chapter as §19955, provides in pertinent part, “accommodations constructed in this state
shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of
Title 1 of the **Government Code**...” **California Health & Safety Code** § 19956 was
operative July 1, 1970, and is applicable to all public accommodations constructed or altered

1 after that date. On information and belief, portions of "**FORTUNA THEATER**" and/or of its
2 buildings, were constructed and/or altered after July 1, 1970, and substantial portions of said
3 building had alterations, structural repairs, and/or additions made to such public
4 accommodations after July 1, 1970, thereby requiring said public accommodations and/or
5 buildings to be subject to the requirements of Part 5.5, **California Health & Safety Code** §
6 19955, *et seq.*, upon such alteration, structural repairs or additions per **California Health &**
7 **Safety Code** § 19959.

8
9 35. Pursuant to the authority delegated by **California Government Code** § 4450,
10 *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
11 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
12 California State Architect's Regulations and these regulations must be complied with as to
13 any alterations and/or modifications of the "**FORTUNA THEATER**" occurring after that date.
14 Construction changes occurring prior to this date but after July 1, 1970, triggered access
15 requirements pursuant to the "ASA" requirements, the **American Standards Association**
16 **Specifications**, A117.1-1961. On information and belief, at the time of the construction and
17 modification of said building, all buildings and facilities covered were required to conform to
18 each of the standards and specifications described in the **American Standards**
19 **Association Specifications** and/or those contained in Title 24 of the **California**
20 **Administrative Code**, (now known as Title 24, **California Code of Regulations**.)

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23 36. Public facilities, such as "**FORTUNA THEATER**" are public accommodations
24 or facilities within the meaning of **California Health & Safety Code** § 19955, *et seq.*

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

6 38. Plaintiffs **LARRY BRISBON, MARCY DARBY-KEY, and PATRICK**
7 **MCMAHON** and other similarly situated persons with physical disabilities whose physical
8 conditions require the use of wheelchairs, canes, walkers and service animals are unable to
9 use public facilities on a “full and equal” basis unless each such facility is in compliance with
10 the provisions of the **California Health & Safety Code** § 19955, *et seq.* Plaintiffs are
11 members of that portion of the public whose rights are protected by the provisions of
12 **California Health & Safety Code** § 19955, *et seq.*

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

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19 40. Plaintiffs are further informed and believe that as of the date of filing this
20 Complaint, Defendants have not made accessible the facilities at the subject theater as set
21 forth in Paragraph 3 above.

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23 41. Plaintiffs **LARRY BRISBON, MARCY DARBY-KEY, and PATRICK**
24 **MCMAHON** are informed and believe, and therefore allege, that Defendants **DAVID**
25 **CORKILL, dba CINEMA WEST, dba FORTUNA THEATER, and DOES ONE to FIFTY,**
26 **inclusive,** and each of them, caused the subject buildings constituting “**FORTUNA**
27 **THEATER**” to be constructed, altered and maintained in such a manner that persons with
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1 physical disabilities were denied full and equal access to, within and throughout said
2 buildings and were denied full and equal use of said public facilities, and despite knowledge
3 and actual and constructive notice to such Defendants that the configuration of the theater
4 and/or buildings was in violation of the civil rights of persons with physical disabilities, such
5 as Plaintiff. Such construction, modification, ownership, operation, maintenance and
6 practices of such public facilities are in violation of law as stated in Part 5.5, **California**
7 **Health & Safety Code** § 19955, *et seq.*, and elsewhere in the laws of California.

9 42. On information and belief, the subject building constituting the public facilities
10 of "**FORTUNA THEATER**" denied full and equal access to Plaintiffs and other persons with
11 physical disabilities in other respects due to non-compliance with requirement of Title 24 of
12 the **California Code of Regulations** and **California Health & Safety Code** § 19955, *et*
13 *seq.*

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

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

12 45. Defendants, and each of them, at times prior to and including each of Plaintiffs'
13 visits to **FORTUNA THEATER**, and continuing to the present time, knew that persons with
14 physical disabilities were denied their rights of equal access to all portions of this public
15 facility. Despite such knowledge, Defendants failed and refused to take steps to comply
16 with the applicable access statutes; and despite knowledge of the resulting problems and
17 denial of civil rights thereby suffered by Plaintiffs **LARRY BRISBON, MARCY DARBY-KEY,**
18 **and PATRICK MCMAHON** and other similarly situated persons with disabilities, including
19 the specific notices referred to in paragraph 43 of this Complaint. Defendants have failed
20 and refused to take action to grant full and equal access to persons with physical disabilities
21 in the respects complained of hereinabove. Defendants and each of them have carried out
22 a course of conduct of refusing to respond to, or correct complaints about, denial of
23 handicap access. Such actions and continuing course of conduct by Defendants, evidence
24 despicable conduct in conscious disregard for the rights or safety of Plaintiffs and of other
25 similarly situated persons, justifying an award of exemplary and punitive damages pursuant
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1 to **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 Plaintiffs and other persons
5 with physical disabilities who have been denied the proper access they are entitled to by
6 law. Further, Defendants' refusals on a day-to-day basis to correct these problems
7 evidence despicable conduct in conscious disregard for the rights of Plaintiffs and other
8 members of the public with physical disabilities.
9

10 47. Plaintiffs pray 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
14 physical disabilities. Plaintiffs do not know the financial worth of Defendants, or the amount
15 of 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
19 a result of the failure to provide proper accessible public facilities, Plaintiffs **LARRY**
20 **BRISBON, MARCY DARBY-KEY, and PATRICK MCMAHON** were denied their civil rights,
21 including their right to full and equal access to public facilities, were embarrassed and
22 humiliated, suffered physical, psychological and mental injuries and emotional distress,
23 mental distress, mental suffering, mental anguish, which includes shame, humiliation,
24 embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally
25 associated with a person with a physical disability being denied access to a public
26 accommodation.
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1 WHEREFORE, Plaintiffs pray for damages as hereinafter stated.

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

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

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

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

18
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,
25 facilities, and privileges of all common carriers, airplanes, motor vehicles,
26 railroad trains, motor buses, streetcars, boats, or any other public conveyances
27 or modes of transportation (whether private, public, franchised, licensed,
28 contracted, or otherwise provided), telephone facilities, adoption agencies,
private schools, hotels, lodging places, places of public accommodation,
amusement or resort, and other places to which the general public is invited,
subject only to the conditions and limitations established by law, or state or
federal regulation, and applicable alike to all persons. *California Civil Code* §
54.1(a).

1 52. On or about each of the dates set forth in paragraph 11 above, Plaintiffs
2 **LARRY BRISBON, MARCY DARBY-KEY, and PATRICK MCMAHON** suffered violations of
3 **California Civil Code** §§ 54 and 54.1 in that they were denied full and equal enjoyment of
4 the goods, services, facilities and privileges of said **FORTUNA THEATER** as set forth in
5 paragraph 3 above.
6

7 Plaintiffs were also denied full and equal access to other particulars, including but not
8 limited to those described hereinabove. Plaintiffs were also denied use of facilities that they
9 were entitled to under Title III of the **Americans with Disabilities Act of 1990**.
10

11 53. As a result of the denial of full and equal enjoyment of the goods, services,
12 facilities and privileges of defendants' **FORTUNA THEATER** due to the acts and omissions
13 of defendants, and each of them, in owning, operating and maintaining this subject public
14 facility, Plaintiffs suffered violations of their civil rights, including but not limited to rights
15 under **California Civil Code** §§ 54, 54.1, and 54.3, and have and will suffer physical injury,
16 emotional distress, mental distress, mental suffering, mental anguish, which includes
17 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
18 and naturally associated with a disabled person's denial of full and equal enjoyment of
19 goods, services, privileges, etc. all to their damages as prayed hereinafter in an amount
20 within the jurisdiction of the court. Defendants' actions and omissions to act constituted
21 discrimination against Plaintiffs on the sole basis that Plaintiffs were physically disabled.
22

23 54. Plaintiffs seeks damages for the violation of their rights as a disabled person,
24 according to proof, pursuant to **California Civil Code** § 54.3, including a trebling of all
25 statutory and actual damages, general and special, available pursuant to **California Civil**
26 **Code** § 54.3(a).
27

28 55. As a result of defendants' acts and omissions in this regard, Plaintiffs **LARRY**

1 **BRISBON, MARCY DARBY-KEY, and PATRICK MCMAHON** have been required to incur
2 legal expenses and hire attorneys in order to enforce their rights and enforce provisions of
3 the law protecting the full and equal enjoyment of goods, services, facilities, privileges of
4 public facilities by the disabled, and those individuals associated with or accompanied by a
5 person with disabilities, and prohibiting discrimination against the disabled. Plaintiffs,
6 therefore, seek recovery in this lawsuit for all reasonable attorneys' fees incurred pursuant
7 to the provisions of **California Civil Code** § 54.3. Additionally, Plaintiffs' lawsuit is intended
8 not only to obtain compensation for damages to Plaintiffs, but also to compel the defendants
9 to make their goods, services, facilities and privileges available and accessible to all
10 members of the public with physical disabilities, justifying public interest attorneys' fees
11 pursuant to the provisions of **California Code of Civil Procedure** § 1021.5.

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

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

1 and was oppressive in that such conduct subjected Plaintiffs “to cruel and unjust hardship in
2 conscious disregard” for the law and Plaintiffs' 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
5 **California Civil Code** § 3294.

6 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
7 practice and procedure for entry into said **"FORTUNA THEATER"** as hereinabove
8 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 **"FORTUNA THEATER"** as
11 hereinabove described, Plaintiffs have continually been denied their rights to full and equal
12 enjoyment of the subject theater, as it would be a “futile gesture” to attempt to patronize said
13 **"FORTUNA THEATER"** with the discriminatory policy in place as hereinabove described.

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

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

13
14 WHEREFORE, Plaintiffs pray for compensatory damages, reasonable attorneys' fees
15 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
16 damages.
17

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

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

24 63. Defendants' acts and omissions as specified with regard to the discriminatory
25 treatment of Plaintiffs **LARRY BRISBON, MARCY DARBY-KEY, and PATRICK**
26 **MCMAHON** on the basis of their physical disabilities, have been in violation of **California**
27 **Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have denied to Plaintiffs their
28

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

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

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

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

20
21 WHEREFORE, Plaintiffs pray that this court award damages and provide relief as
22 follows:
23

24 **PRAYER FOR RELIEF**

25 Plaintiffs pray that this court award damages and provide relief as follows:

26 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
27 criteria policy, practice and procedure permitting entry into the **FORTUNA THEATER** in
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1 Fortuna, California, for the purpose of services according to **California Civil Code** §§ 51,
2 51.5, 52, 54, 54.1, 54.3, *et seq.*, and Title III of the **Americans with Disabilities Act of**
3 **1990**, and grant injunctive relief requiring that Defendants repair and render safe to
4 handicapped persons, and otherwise make handicapped-accessible, all public areas of the
5 theater, including but not limited to:

6 **A. First Floor Theater:**

- 7
- 8 1. The slope of the ramp to the accessible theater is 11.4% in violation of
California Title 24 § 1133B.5.1 & 1133B.5.3 and ADAAG 4.8.2.
 - 9 2. Handrails are not provided on both sides of the ramp in violation of California
10 Title 24 § 1133B.5.5.1 and ADAAG 4.8.5.
 - 11 3. The handrails do not extend 12" beyond the top and bottom of the ramp in
12 violation of California Title 24 § 1133B.5.5.1 and ADAAG 4.8.5(2).

13 **B. Entrance Door to Theater:**

- 14
- 15 1. The entrance to the accessible theater on the first floor does not have a level
landing in violation of California Title 24 §1133B.2.4 and ADAAG 4.13.6.

16 **C. Unisex Restroom:**

- 17
- 18 1. The accessible toilet only has 39.5" of clear space in front of the toilet in
violation of California Title 24 § 1115B.7.1.4.
 - 19 2. The distance from the centerline of the toilet to the wall is 19" in violation of
California Title 24 § 1115B.7.2 and ADAAG 4.17.3.
 - 20 3. The toilet is less than 17" from the floor in violation of California Title 24 §
21 1115B.1, California Plumbing Code 1502 and ADAAG 4.16.3.
 - 22 4. The door swings into the space in front of the toilet in violation of California
23 Title 24 § 1115B.7.2 and ADAAG 2.23.2.
 - 24 5. The side grab bar is 40" long with 22" in front of the toilet in violation of
California Title 24 § 1115B.8.1 and ADAAG 4.16.4 & 4.17.6 requiring the bar
25 to be 42" long with 24" in front of the toilet.
 - 26 6. A clear space 30" by 48" is not provided in front of the toilet seat cover
27 dispenser in violation of California Title 24 § 1117B.6.4 and ADAAG 4.22.7 &
28 4.23.7.

- 1 7. The flush control is not on the clear space side of the toilet in violation of
2 California Title 24 § 1115B.1 and ADAAG 4.16.5.
- 3 8. The highest operable part of the towel dispenser is 60" above the floor in
4 violation of California Title 24 § 1115B.9.2 which requires a maximum of 40"
5 above the floor.
- 6 9. The pipes under the lavatory are not fully insulated in violation of California
7 Title 24 § 1115B.1, California Plumbing Code 1504.2.1 and ADAAG 4.19.4.

8 and make such facilities "readily accessible to and usable by individuals with disabilities,"
9 according to the standards of Title 24 of the **California Administrative Code, California**
10 **Health & Safety Code § 19955 et seq.**, and Title III of the **Americans with Disabilities Act**
11 **of 1990** and the standards of **ADAAG**; and prohibiting operation of the **FORTUNA**
12 **THEATER**, located in Fortuna, California, as a public facility until Defendants provide full
13 and equal enjoyment of goods and services as described hereinabove to physically disabled
14 persons, including Plaintiffs;

15 2. General damages according to proof;

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

19 4. Prejudgment interest on all compensatory damages;

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

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

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

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

2 and

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

4
5 Dated: May 10, 2001

6 Jason K. Singleton, Attorney for Plaintiffs,
7 **LARRY BRISBON, MARCY DARBY-KEY,**
8 **and PATRICK MCMAHON**

9 **REQUEST FOR JURY TRIAL**

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

11
12
13 Dated: May 10, 2001

14 Jason K. Singleton, Attorney for Plaintiffs,
15 **LARRY BRISBON, MARCY DARBY-KEY,**
16 **and PATRICK MCMAHON**