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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 SHAYNA GEIGER,

11 Plaintiff,

12 v.

13 BIG OIL & TIRE CO., a California
14 corporation, dba UNION 76 GAS
15 STATION, and DOES ONE to FIFTY,
16 inclusive,

17 Defendants.

) Case No. CV 03-00515 BZ

) Civil Rights

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

) JURY TRIAL REQUESTED

18
19 Plaintiff **SHAYNA GEIGER** complains of defendants **BIG OIL & TIRE CO., a**
20 **California corporation, dba UNION 76 GAS STATION, and DOES ONE to FIFTY,**
21 **inclusive,** and alleges as follows:

22 **JURISDICTION AND VENUE**

23
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 Eureka, California, and that Plaintiff's causes of action arose in this district.

7 INTRODUCTION

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9 3. **UNION 76 GAS STATION** is located at 1589 Myrtle Ave Eureka, California.
10 Said gas station is owned and operated by defendants **BIG OIL & TIRE CO, a California**
11 **corporation, and DOES ONE to FIFTY, inclusive.**

12 Defendants **BIG OIL & TIRE CO., a California corporation, and DOES ONE to**
13 **FIFTY, inclusive**, operate an establishment for services to the public and at which
14 Defendants failed to provide barrier free access to said establishment in conformity with
15 both Federal and California legal requirements. Further, Defendants failed to provide
16 compliance as follows:

17
18 1. Parking:

19 (a) There are no accessible parking spaces in violation of California Title 24
20 § 1129B and ADAAG 4.6.3.

21 (b) A reflectorized International Symbol of Accessibility is not provided as is
22 required by California Title 24 § 1129B.5 and ADAAG 4.6.4.

23 (c) Tow-away Sign. A tow-away sign is not provided at each entrance to
24 the parking lot or adjacent to accessible spaces as required by California Title
25 24 § 1129B.4.5.

26 2. There are two entrances:

27 (a) The first cannot be considered as an accessible entrance due to its
28 steep ramp. The maximum allowed curb ramp slope is 8.3%, as required by
California Title 24 § 1127B.5.3 and ADAAG 4.7.2.

1 (b) The second entrance is more likely to be designated as an accessible
2 entrance with the following barriers:

3 (1) There is no signage in violation of California Title 24 §
4 1117B.5.1.

5 (2) The entrance is too narrow in violation of California Title 24 §
6 1001.9.1.2 and 1133B.2.3.1.

7 (3) The threshold exceeds 1/2" in violation of ADAAG 4.13.8 and
8 California Title 24 § 1133B.2.4.1.

9 (4) The door pressure is too high in violation of California Title 24 §
10 1004.13 and 1133B.2.5.1.

11 (5) It also has insufficient 60-inches of clear space on the swing side
12 of the door in violation of California Title 24 § 1133B.2.4.2 and ADAAG 4.13.6.

13 3. Within the station:

14 (a) The access aisles are too narrow in violation of California Title 24 §
15 1005.2.1a and 1133B.2.3.1.

16 (b) The counters, including the cashier counter and the coffee counter, are
17 too high in violation of California Title 24 § 1110B.1.3.

18 (c) The bathrooms are non-accessible in violation of California Title 24 §
19 1115B.1.

20 The above barriers interfered with Plaintiff's access of the facilities and continue to
21 deter Plaintiff from visiting said facilities, and as a legal result, Plaintiff **SHAYNA GEIGER**
22 suffers violations of her civil rights to full and equal enjoyment of goods, services, facilities
23 and privileges, and has and will suffer embarrassment and humiliation.

24 FACTUAL ALLEGATIONS

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

1 disability” will be used interchangeably throughout this Complaint.) Plaintiff is a “person with
2 a disability,” as defined by all applicable California and United State’s laws. Plaintiff
3 **SHAYNA GEIGER** is severely limited in the use of her legs.

4 5. Defendants **BIG OIL & TIRE CO., a California corporation, and DOES ONE**
5 **to FIFTY, inclusive**, at all times relevant herein were and are the owners and operators;
6 lessors and/or lessees, franchisers and/or franchisees, of public facilities known as the
7 **“UNION 76 GAS STATION”**, located at Eureka, California, subject to the requirements of
8 California state law requiring full and equal access to public facilities pursuant to **California**
9 **Health & Safety Code § 19955, et seq., California Civil Code §§ 51, 51.5, 52(a), 52.1, 54,**
10 **54.1, 54.3 and 55,** and subject to Title III of the **Americans with Disabilities Act of 1990,**
11 and to all other legal requirements referred to in this Complaint. Plaintiff does not know the
12 relative responsibilities of defendants in the operation of the facilities herein complained of,
13 and alleges a joint venture and common enterprise by all such defendants.
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16 6. Defendants **BIG OIL & TIRE CO., a California corporation, and DOES ONE**
17 **to FIFTY, inclusive** (hereinafter alternatively referred to collectively as “defendants”), at all
18 times relevant herein were and are owners, possessors, builders and keepers of the
19 **“UNION 76 GAS STATION ”** in Eureka, California.
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21 7. Defendants **BIG OIL & TIRE CO., a California corporation, and DOES ONE**
22 **to FIFTY, inclusive** are the owners and operators of the subject **“UNION 76 GAS**
23 **STATION”** at all times relevant to this Complaint. Plaintiff is informed and believes that
24 each of the defendants herein is the agent, employee or representative of each of the other
25 defendants, and performed all acts and omissions stated herein within the scope of such
26 agency or employment or representative capacity and is responsible in some manner for the
27 acts and omissions of the other defendants in legally causing the damages complained of
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1 herein, and have approved or ratified each of the acts or omissions of each other defendant,
2 as herein described.

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

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

22 10. Defendants **BIG OIL & TIRE CO., a California corporation, and DOES ONE**
23 **to FIFTY, inclusive**, are the owners and operators of “**UNION 76 GAS STATION**”, located
24 at Eureka, California. This gas station, including, but not limited to, parking spaces and
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1 access aisles and access routes, are each a part of a “public accommodation or facility”
2 subject to the requirements of **California Health & Safety Code** § 19955, *et seq.*, and of
3 **California Civil Code** §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this
4 **"UNION 76 GAS STATION"** was constructed after 1990 which has subjected the **"UNION**
5 **76 GAS STATION"** to handicapped access requirements per **California Health & Safety**
6 **Code** § 19959, and applicable portions of **California Code of Regulations**, Title 24, (the
7 State Building Code).

9 11. On or about December 23, 2002 Plaintiff **SHAYNA GEIGER**, visited the
10 **"UNION 76 GAS STATION"** in Eureka, California for the purpose of making a purchase.
11 Defendants **BIG OIL & TIRE CO.**, a California corporation, and **DOES ONE to FIFTY,**
12 **inclusive**, interfered with Plaintiff’s access to the **"UNION 76 GAS STATION"** as set forth in
13 Paragraph 3 above.

14 Said acts and omissions denied Plaintiff legal handicapped access to the **"UNION 76**
15 **GAS STATION"** according to federal and state law.

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

21 13. Defendants, and each of them, discriminated against Plaintiff **SHAYNA**
22 **GEIGER** on the basis of her physical disability, and interfered with her access to the
23 **"UNION 76 GAS STATION"** establishment, in violation of both California law including, but
24 not limited to, **California Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302,
25 the “Prohibition of Discrimination” provision and §503, the “Prohibition Against Retaliation or
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1 Coercion” provision of the ***Americans with Disabilities Act of 1990***.

2 14. As a result of the actions and failure to act of defendants, and each of them,
3 and as a result of the failure to provide appropriate handicapped parking, proper
4 handicapped signage, proper handicapped accessible entryways, and handicapped
5 accommodations for purchases, Plaintiff **SHAYNA GEIGER** suffered and will suffer a loss of
6 her civil rights to full and equal access to public facilities, and further suffered and will suffer
7 emotional distress, mental distress, mental suffering, mental anguish, which includes
8 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
9 and naturally associated with a person with a physical disability being denied access to a
10 public accommodation, all to her damages as prayed hereinafter in an amount within the
11 jurisdiction of this court.
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13 **I. FIRST CAUSE OF ACTION:**
14 VIOLATION OF ***THE AMERICANS WITH DISABILITIES ACT OF***
15 **(42 USC §12101 et seq.)**

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

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

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

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

17 18. As part of the ***Americans with Disabilities Act of 1990***, Public Law 101-336
18 (hereinafter the “ADA”), Congress passed “Title III - Public Accommodations and Services
19 Operated by Private Entities” (42 ***USC*** § 12181 *et seq.*). Among the public accommodations
20 identified for purposes of this title were “a laundromat, dry-cleaner, bank, barber shop,
21 beauty shop, travel service, shoe repair service, funeral parlor, gas station ... or other
22 service establishment.”

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

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

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

31 **Denial of participation.** It shall be discriminatory to subject an
32 individual or class of individuals on the basis of a disability or

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

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

7 **USC** §12182(b)(1)(E):

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

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

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

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

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

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

26 (ii) a failure to make reasonable modifications in policies,
27 practices, or procedures, when such modifications are necessary
28 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.

29 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices
30 and procedure for entry to the "**UNION 76 GAS STATION**" facility by persons with
31 disabilities and their companions as established by the defendants can be simply modified

1 to eliminate disparate and discriminatory treatment of persons with disabilities by properly
2 constructing barrier free handicapped access for safe and full and equal enjoyment of the
3 "**UNION 76 GAS STATION**" as that enjoyed by other people.

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

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

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

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

24 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
25 were at all times after 1990 "readily achievable." On information and belief, if the removal of
26 all the barriers complained of here together were not "readily achievable," the removal of
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1 each individual barrier complained of herein was “readily achievable.”

2 27. Per 42 **USC** § 12181(9), “The term ‘readily achievable’ means easily
3 accomplishable and able to be carried out without much difficulty or expense.” The statute
4 and attendant regulations define relative “expense” in relation to the total financial resources
5 of the entities involved, including any “parent” companies. Plaintiff alleges that properly
6 repairing each of the items that Plaintiff complains of herein is readily achievable, including
7 but not limited to correcting and repairing the items set forth in Paragraph 3 above.
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9 The changes needed to remove barriers to access for the disabled were and are
10 “readily achievable” by the defendants under standards set forth under 42 **USC** § 12181 of
11 the **Americans with Disabilities Act of 1990**. (Further, if it was not “readily achievable” for
12 defendants to remove all such barriers, defendants have failed to make the required
13 services available through alternative methods, although such methods are achievable as
14 required by 42 **USC** §12181(b)(2)(a)(iv), (v).)
15

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

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

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

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

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

25 **II. SECOND CAUSE OF ACTION**

26 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH 27 PHYSICAL DISABILITIES (*California Health & Safety Code* § 19955, *et seq.*)**

28 32. Plaintiff repleads and incorporates by reference, as if fully set forth again
herein, the allegations contained in paragraphs 1 through 31 of this Complaint and

1 incorporate them herein as if separately replied.

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

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

14 34. **California Health & Safety Code** § 19956, which appears in the same
15 chapter as §19955, provides in pertinent part, “accommodations constructed in this state
16 shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of
17 Title 1 of the *Government Code*...” **California Health & Safety Code** § 19956 was
18 operative July 1, 1970, and is applicable to all public accommodations constructed or altered
19 after that date. On information and belief, portions of “**UNION 76 GAS STATION**” and/or of
20 its buildings, were constructed and/or altered after July 1, 1970, and substantial portions of
21 said building had alterations, structural repairs, and/or additions made to such public
22 accommodations after July 1, 1970, thereby requiring said public accommodations and/or
23 buildings to be subject to the requirements of Part 5.5, **California Health & Safety Code** §
24 19955, *et seq.*, upon such alteration, structural repairs or additions per **California Health &**
25 **Safety Code** § 19959.

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

1 any alterations and/or modifications of the “**UNION 76 GAS STATION**” occurring after that
2 date. Construction changes occurring prior to this date but after July 1, 1970 triggered
3 access requirements pursuant to the “ASA” requirements, the **American Standards**
4 **Association Specifications**, A117.1-1961. On information and belief, at the time of the
5 construction and modification of said building, all buildings and facilities covered were
6 required to conform to each of the standards and specifications described in the **American**
7 **Standards Association Specifications** and/or those contained in Title 24 of the **California**
8 **Administrative Code**, (now known as Title 24, **California Code of Regulations**.)

10 36. Public facilities, such as “**UNION 76 GAS STATION**” are public
11 accommodations or facilities within the meaning of **California Health & Safety Code** §
12 19955, *et seq.*

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

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

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

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

9 41. Plaintiff **SHAYNA GEIGER** is informed and believes, and therefore alleges,
10 that Defendants **BIG OIL & TIRE CO., a California corporation, and DOES ONE to**
11 **FIFTY, inclusive**, and each of them, caused the subject buildings constituting “**UNION 76**
12 **GAS STATION**” to be constructed, altered and maintained in such a manner that persons
13 with physical disabilities were denied full and equal access to, within and throughout said
14 buildings and were denied full and equal use of said public facilities, and despite knowledge
15 and actual and constructive notice to such Defendants that the configuration of the gas
16 station and/or buildings was in violation of the civil rights of persons with physical disabilities,
17 such as Plaintiff. Such construction, modification, ownership, operation, maintenance and
18 practices of such public facilities are in violation of law as stated in Part 5.5, *California*
19 *Health & Safety Code* § 19955, *et seq.*, and elsewhere in the laws of California.

20 42. On information and belief, the subject building constituting the public facilities
21 of “**UNION 76 GAS STATION**” denied full and equal access to Plaintiff and other persons
22 with physical disabilities in other respects due to non-compliance with requirement of Title
23 24 of the *California Code of Regulations* and *California Health & Safety Code* § 19955,
24 *et seq.*

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

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

25
26 45. Defendants, and each of them, at times prior to and including December 23,
27 2002, and continuing to the present time, knew that persons with physical disabilities were
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1 denied their rights of equal access to all portions of this public facility. Despite such
2 knowledge, Defendants failed and refused to take steps to comply with the applicable
3 access statutes; and despite knowledge of the resulting problems and denial of civil rights
4 thereby suffered by Plaintiff **SHAYNA GEIGER** and other similarly situated persons with
5 disabilities, including the specific notices referred to in paragraph 43 of this Complaint.
6 Defendants have failed and refused to take action to grant full and equal access to persons
7 with physical disabilities in the respects complained of hereinabove. Defendants and each
8 of them have carried out a course of conduct of refusing to respond to, or correct complaints
9 about, denial of handicap access. Such actions and continuing course of conduct by
10 Defendants, evidence despicable conduct in conscious disregard for the rights or safety of
11 Plaintiff and of other similarly situated persons, justifying an award of exemplary and
12 punitive damages pursuant to **California Civil Code** § 3294.
13

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

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

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

12 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

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

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

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

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

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

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

20 52. On or about December 23, 2002, Plaintiff **SHAYNA GEIGER** suffered
21 violations of **California Civil Code** §§ 54 and 54.1 in that she was denied full and equal
22 enjoyment of the goods, services, facilities and privileges of said **UNION 76 GAS STATION**,
23 as set forth in paragraph 3 above.

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

27 53. As a result of the denial of full and equal enjoyment of the goods, services,
28 facilities and privileges of defendants' **UNION 76 GAS STATION** due to the acts and
omissions of defendants, and each of them, in owning, operating and maintaining this
subject public facility, Plaintiff suffered violations of her civil rights, including but not limited
to rights under **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical
injury, emotional distress, mental distress, mental suffering, mental anguish, which includes

1 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
2 and naturally associated with a disabled person's denial of full and equal enjoyment of
3 goods, services, privileges, etc. all to her damages as prayed hereinafter in an amount
4 within the jurisdiction of the court. Defendants' actions and omissions to act constituted
5 discrimination against Plaintiff on the sole basis that Plaintiff was physically disabled.

6 54. Plaintiff seeks damages for the violation of her rights as a disabled person on
7 or about December 23, 2002, according to proof, pursuant to **California Civil Code** § 54.3,
8 including a trebling of all statutory and actual damages, general and special, available
9 pursuant to **California Civil Code** § 54.3(a).

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

25 56. The acts and omissions of defendants in failing to provide the required
26 accessible facilities subsequent to the enactment date and compliance date of the
27 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and
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1 alterations to its handicapped parking, handicapped signage, pathways, and other elements
2 as hereinabove stated, after being notified by patrons before and after the time of Plaintiff's
3 visit and injuries, on or about December 23, 2002, and all times prior thereto with the
4 knowledge that persons with disabilities would enter defendants' premises, the reason given
5 therefor, was an established policy, practice and procedure of refusing and denying entry,
6 thereby denying lodging and other services to a person with disabilities and the companions
7 thereof, evidence malice and oppression toward Plaintiff and other disabled persons.
8

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

18 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
19 practice and procedure for entry into said "**UNION 76 GAS STATION**" as hereinabove
20 described.
21

22 59. As a result of defendants' continuing failure to provide for the full and equal
23 enjoyment of goods, services, facilities and privileges of said "**UNION 76 GAS STATION**" as
24 hereinabove described, Plaintiff has continually been denied her rights to full and equal
25 enjoyment of the subject gas station, as it would be a "futile gesture" to attempt to patronize
26 said "**UNION 76 GAS STATION**" with the discriminatory policy in place as hereinabove
27 described.
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1 60. The acts and omissions of defendants as complained of herein in failing to
2 provide the required accessible facilities subsequent to the enactment date and compliance
3 date of the **Americans with Disabilities Act of 1990** and refusal to make remedial
4 modifications and alternations to the architectural barriers as stated herein and in failing to
5 establish practices, policies and procedures to allow safe access by persons who are
6 disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully
7 excluding Plaintiff and other members of the public who are physically disabled, from full
8 and equal enjoyment of the subject "**UNION 76 GAS STATION**" as hereinabove described.
9 Such acts and omissions are the continuing cause of humiliation and mental and emotional
10 suffering of Plaintiff in that these actions continue to treat Plaintiff as an inferior and second
11 class citizen and serve to discriminate against her on the sole basis that she is a physically
12 disabled. Plaintiff is unable, so long as such acts and omissions of defendants continue, to
13 achieve full and equal enjoyment of the goods and services of said "**UNION 76 GAS**
14 **STATION**" as described hereinabove. The acts of defendants have legally caused and will
15 continue to cause irreparable injury to Plaintiff if not enjoined by this court.

16 61. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin any
17 continuing refusal by defendants to permit entry to said "**UNION 76 GAS STATION**" and to
18 serve Plaintiff or others similarly situated, and to require defendants to comply forthwith with
19 the applicable statutory requirements relating to the full and equal enjoyment of goods and
20 services as described hereinabove for disabled persons. Such injunctive relief is provided
21 by **California Civil Code** § 55. Plaintiff further requests that the court award statutory costs
22 and attorneys' fees to Plaintiff pursuant to **California Civil Code** § 55 and **California Code**
23 **of Civil Procedure** § 1021.5, all as hereinafter prayed for.

24 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
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1 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
2 damages.

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

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

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

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

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

23 66. As a result of the violation of Plaintiff's civil rights protected by **California Civil**
24 **Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of **California Civil**
25 **Code** § 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h))
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1 to mean “special and general damages”), as well as reasonable attorneys’ fees and costs,
2 as allowed by statute, according to proof. Further, pursuant to paragraphs 11, 12, 13, 35
3 and 43, Plaintiff seeks appropriate exemplary damages under **California Civil Code** §
4 3294.

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

7 **PRAYER FOR RELIEF**

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

9 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
10 criteria policy, practice and procedure permitting entry into the **UNION 76 GAS STATION** in
11 Eureka, California, for the purpose of services according to **California Civil Code** §§ 51,
12 51.5, 52, 54, 54.1, 54.3, *et seq.*, and Title III of the **Americans with Disabilities Act of**
13 **1990**, and grant injunctive relief requiring that Defendants repair and render safe to
14 handicapped persons, and otherwise make handicapped-accessible, all public areas of the
15 gas station, including but not limited to, removal of all barriers to access identified in
16 Paragraph 3, above, and make such facilities “readily accessible to and usable by
17 individuals with disabilities,” according to the standards of Title 24 of the **California**
18 **Administrative Code, California Health & Safety Code** § 19955 *et seq.*, and Title III of the
19 **Americans with Disabilities Act of 1990** and the standards of **ADAAG**; and prohibiting
20 operation of the **UNION 76 GAS STATION**, located in Eureka, California, as a public facility
21 until Defendants provide full and equal enjoyment of goods and services as described
22 hereinabove to physically disabled persons, including Plaintiff;

23 2. General damages according to proof;

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

3 4. Prejudgment interest on all compensatory damages;

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

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

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

13 8. Grant such other and further relief as the court may deem just and proper.
14

15
16
17 Dated: January 31, 2003

18 Jason K. Singleton, Attorney for
19 Plaintiff, **SHAYNA GEIGER**

20
21 **REQUEST FOR JURY TRIAL**

22 Plaintiffs hereby request a jury for all claims for which a jury is permitted.
23

24
25 Dated: January 31, 2003

26 Jason K. Singleton, Attorney for
27 Plaintiff, **SHAYNA GEIGER**
28