

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

6 Attorney for Plaintiff, THOMAS WONG

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 THOMAS WONG,

11 Plaintiff,

12 v.

13 HUNG SHING, INC., a California
14 corporation, dba LICHEE GARDEN
15 RESTAURANT; CHAK LUNG SIU AND
16 ANNIE SIU and DOES ONE through
17 FIFTY, inclusive,

18 Defendants.

) Case No. C-03-1529 JSW

) Civil Rights

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

) JURY TRIAL REQUESTED

19 Plaintiff THOMAS WONG complains of HUNG SHING, INC., a California
20 corporation, dba LICHEE GARDEN RESTAURANT; CHAK LUNG SIU AND ANNIE SIU
21 and DOES ONE to FIFTY, inclusive, and alleges as follows:

22
23 JURISDICTION AND VENUE

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

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

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

7 **INTRODUCTION**

8
9 3. **LICHEE GARDEN RESTAURANT** is located at 622 Jackson Street, San
10 Francisco, California. Said restaurant is owned and operated by defendants **HUNG SHING,**
11 **INC., a California corporation, dba LICHEE GARDEN RESTAURANT; CHAK LUNG SIU**
12 **AND ANNIE SIU and DOES ONE to FIFTY, inclusive.**

13 Defendants **HUNG SHING, INC., a California corporation, CHAK LUNG SIU AND**
14 **ANNIE SIU and DOES ONE to FIFTY, inclusive,** operate an establishment for services to
15 the public and at which Defendants failed to provide barrier free access to said
16 establishment in conformity with both Federal and California legal requirements. Further,
17 Defendants failed to provide compliance as follows:
18

- 19 1. There are steps into front entrance of restaurant with no entrance
20 available with wheelchair access in violation of California Title 24 §
21 1133B.1.1.1.1
22 2. Men's Restroom:
23 a. There are no grab bars in violation of California Title 24 § 1115B.8
24 b. The hot water pipes are not insulated in violation of California Title
25 24 § 1115B.2.1.2.2
26 c. The stall and urinal dividers encroach into the clear space in
27 violation of California Title 24 § 1115B.2.1.1.1; 1115B.9.4;
28 1118B.4.

Several of these violations interfered with Plaintiff's safe and barrier free access to the
restaurant, and deter Plaintiff from returning in the future, as Plaintiff would have absent the
barriers. As a legal result, Plaintiff **THOMAS WONG** suffered violation of his civil rights to

1 full and equal enjoyment of goods, services, facilities and privileges, and suffered
2 embarrassment and humiliation.

3 **FACTUAL ALLEGATIONS**

4 4. Plaintiff **THOMAS WONG** is, and at all times relevant to this Complaint was, a
5 “physically handicapped person, “physically disabled person,” and a “person with a
6 disability,” as these terms are used under California law and under federal laws including,
7 but not limited to, Title III of the ***Americans with Disabilities Act of 1990***. (The terms
8 “physically handicapped person,” “physically disabled person,” and a “person with a
9 disability” will be used interchangeably throughout this Complaint.) Plaintiff is a “person with
10 a disability,” as defined by all applicable California and United State’s laws. Plaintiff
11 **THOMAS WONG** is severely limited in the use of his legs.

12 5. Defendants **HUNG SHING, INC., a California corporation, CHAK LUNG SIU**
13 **AND ANNIE SIU and DOES ONE to FIFTY, inclusive**, at all times relevant herein were and
14 are the owners and operators; lessors and/or lessees, franchisers and/or franchisees, of
15 public facilities known as the "**LICHEE GARDEN RESTAURANT**" located at San Francisco,
16 California, subject to the requirements of California state law requiring full and equal access
17 to public facilities pursuant to ***California Health & Safety Code*** § 19955, *et seq.*, ***California***
18 ***Civil Code*** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to Title III of the
19 ***Americans with Disabilities Act of 1990***, and to all other legal requirements referred to in
20 this Complaint. Plaintiff does not know the relative responsibilities of defendants in the
21 operation of the facilities herein complained of, and alleges a joint venture and common
22 enterprise by all such defendants.

23 6. Defendants **HUNG SHING, INC., a California corporation, CHAK LUNG SIU**
24 **AND ANNIE SIU and DOES ONE to FIFTY, inclusive** (hereinafter alternatively referred to
25

1 collectively as “defendants”), at all times relevant herein were and are owners, possessors,
2 builders and keepers of the “**LICHEE GARDEN RESTAURANT**” in San Francisco,
3 California.

4 7. Defendants **HUNG SHING, INC., a California corporation, CHAK LUNG SIU**
5 **AND ANNIE SIU and DOES ONE to FIFTY, inclusive** are the owners and operators of the
6 subject “**LICHEE GARDEN RESTAURANT**”, at all times relevant to this Complaint. Plaintiff
7 is informed and believes that each of the defendants herein is the agent, employee or
8 representative of each of the other defendants, and performed all acts and omissions stated
9 herein within the scope of such agency or employment or representative capacity and is
10 responsible in some manner for the acts and omissions of the other defendants in legally
11 causing the damages complained of herein, and have approved or ratified each of the acts
12 or omissions of each other defendant, as herein described.

13
14 8. Plaintiff **THOMAS WONG** does not know the true names and capacities of
15 defendants **HUNG SHING, INC., a California corporation, CHAK LUNG SIU AND ANNIE**
16 **SIU and DOES ONE to FIFTY, inclusive**, their business capacities, their ownership
17 connection to the property and business, nor their relative responsibilities in causing the
18 access violations herein complained of, and alleges a joint venture and common enterprise
19 by all such defendants. Plaintiff is informed and believes that each of the defendants
20 herein, including DOES ONE to FIFTY, inclusive, is the agent, ostensible agent, master,
21 servant, employer, employee, representative, franchiser, franchisee, joint venturer, partner,
22 and associate, or such similar capacity, of each of the other defendants, and was at all times
23 acting and performing, or failing to act or perform, with the authorization, consent,
24 permission or ratification of each of the other defendants, and is responsible in some
25 manner for the acts and omissions of the other defendants in legally causing the violations
26
27
28

1 and damages complained of herein, and have approved or ratified each of the acts or
2 omissions of each other defendant, as herein described. Plaintiff will seek leave to amend
3 this Complaint when the true names, capacities, connections and responsibilities of
4 defendants **HUNG SHING, INC., a California corporation, CHAK LUNG SIU AND ANNIE**
5 **SIU and DOES ONE to FIFTY, inclusive**, are ascertained.

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

9 10. Defendants **HUNG SHING, INC., a California corporation, CHAK LUNG SIU**
10 **AND ANNIE SIU and DOES ONE to FIFTY, inclusive**, are the owners and operators of
11 **"LICHEE GARDEN RESTAURANT"** restaurant, located at San Francisco, California. This
12 restaurant, including, but not limited to, parking spaces and access aisles and access
13 routes, are each a part of a "public accommodation or facility" subject to the requirements of
14 **California Health & Safety Code § 19955, et seq.**, and of **California Civil Code §§ 51,**
15 **52(a), 54, 54.1, et seq.** On information and belief, this **"LICHEE GARDEN RESTAURANT"**
16 was constructed after 1990 which has subjected the **"LICHEE GARDEN RESTAURANT"** to
17 handicapped access requirements per **California Health & Safety Code § 19959**, and
18 applicable portions of **California Code of Regulations, Title 24**, (the State Building Code).

19 11. On or about February 27, 2003, Plaintiff **THOMAS WONG**, visited the
20 **"LICHEE GARDEN RESTAURANT"** restaurant in San Francisco, California, for the purpose
21 of having a meal. Defendants **HUNG SHING, INC., a California corporation, CHAK**
22 **LUNG SIU AND ANNIE SIU and DOES ONE to FIFTY, inclusive**, interfered with plaintiff's
23 access to the **"LICHEE GARDEN RESTAURANT"** as set forth in Paragraph 3 above.

24 Said acts and omissions denied plaintiff legal handicapped access to the **"LICHEE**
25
26
27
28

1 **GARDEN RESTAURANT**" according to federal and state law.

2 12. Plaintiff encountered and/or is informed and believes that the following
3 architectural barriers, which violate the requirements of the **California Code of Regulations**
4 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those
5 similarly situated full and equal access to the subject public facility as set forth in Paragraph
6 3 above.

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

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

23 ///

24 ///

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

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

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

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

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

28 18. As part of the **Americans with Disabilities Act of 1990**, Public Law 101-336

1 (hereinafter the “ADA”), Congress passed “Title III - Public Accommodations and Services
2 Operated by Private Entities” (42 **USC** § 12181 *et seq.*). Among the public accommodations
3 identified for purposes of this title were “a bakery, restaurant, bar or other establishment
4 serving food or drink, grocery store, clothing store, hardware store, shopping center or other
5 sales or rental establishment.”

6 19. Pursuant to 42 **USC** § 12182,

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

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

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

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

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

28 The acts of defendants set forth herein were a violation of Plaintiff’s 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

1 includes -

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

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

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

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

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

28 (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
and Title III, respectively.

29 25. Among the specific prohibitions against discrimination were included, in 42
30 **USC** § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications

1 barriers that are structural in nature, in existing facilities...where such removal is readily
2 achievable;” and (v) “where and entity can demonstrate that the removal of a barrier under
3 clause (iv) is not readily achievable, a failure to make such goods, services, facilities,
4 privileges, advantages, or accommodations available through alternative methods if such
5 methods are readily achievable.” The acts of Defendants set forth herein were a violations
6 of Plaintiff’s rights under the “ADA,” Public Law 101-336, and the regulations promulgated
7 thereunder, 28 **CFR** Part 36, *et seq.*

8
9 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
10 were at all times after 1990 “readily achievable.” On information and belief, if the removal of
11 all the barriers complained of here together were not “readily achievable,” the removal of
12 each individual barrier complained of herein was “readily achievable.”

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

19
20 The changes needed to remove barriers to access for the disabled were and are
21 “readily achievable” by the defendants under standards set forth under 42 **USC** § 12181 of
22 the **Americans with Disabilities Act of 1990**. (Further, if it was not “readily achievable” for
23 defendants to remove all such barriers, defendants have failed to make the required
24 services available through alternative methods, although such methods are achievable as
25 required by 42 **USC** §12181(b)(2)(a)(iv), (v).)

26
27 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
28

1 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil**
2 **Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to
3 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable
4 grounds for believing that he is about to be subjected to discrimination in violation of
5 **Americans With Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of
6 the public facilities complained of herein for the purpose of entry and provision of goods and
7 service so long as defendants continue to apply eligibility criteria, policies, practices and
8 procedures to screen out and refuse to allow entry and service to persons with disabilities
9 such as Plaintiff's.

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

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

20 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §
21 12188),

22 "Nothing in this section shall require a person with a disability to engage in a
23 futile gesture if such person has actual notice that a person or organization
24 covered by this title does not intend to comply with its provisions."

25 Pursuant to this last section, plaintiff, on information and belief, alleges that defendants have
26 continued to violate the law and deny the rights of plaintiff and other disabled persons to
27 access this public accommodation for the purpose of lodging. Therefore, plaintiff seeks
28 injunctive relief pursuant to §308(a)(2), "...Where appropriate, injunctive relief shall also
include requiring the provision of an auxiliary aid or service, modifications of a policy, or

1 provision of alternative methods, to the extent required by this title.”

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

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

8
9 **II. SECOND CAUSE OF ACTION**

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

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

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

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

26 34. **California Health & Safety Code** § 19956, which appears in the same
27 chapter as §19955, provides in pertinent part, “accommodations constructed in this state
28 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
after that date. On information and belief, portions of “**LICHEE GARDEN RESTAURANT**”

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

7
8 35. Pursuant to the authority delegated by **California Government Code** § 4450,
9 *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
10 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
11 California State Architect's Regulations and these regulations must be complied with as to
12 any alterations and/or modifications of the "LICHEE GARDEN RESTAURANT" occurring
13 after that date. Construction changes occurring prior to this date but after July 1, 1970
14 triggered access requirements pursuant to the "ASA" requirements, the **American**
15 **Standards Association Specifications**, A117.1-1961. On information and belief, at the
16 time of the construction and modification of said building, all buildings and facilities covered
17 were required to conform to each of the standards and specifications described in the
18 **American Standards Association Specifications** and/or those contained in Title 24 of the
19 **California Administrative Code**, (now known as Title 24, **California Code of**
20 **Regulations**.)

21
22
23 36. Public facilities, such as "LICHEE GARDEN RESTAURANT" are public
24 accommodations or facilities within the meaning of **California Health & Safety Code** §
25 19955, *et seq.*

26 37. It is difficult or impossible for persons with physical disabilities who use
27 wheelchairs, canes, walkers and service animals to travel about in public to use a restaurant
28

1 with the defects set forth in Paragraph 3 above as required by Title 24 of the **California**
2 **Code of Regulations** and the **Americans with Disabilities Act Access Guidelines**
3 **(ADAAG)**. Thus, when public accommodations fail to provide handicap accessible public
4 facilities, persons with physical disabilities are unable to enter and use said facilities, and
5 are denied full and equal access to and use of that facility that is enjoyed by other members
6 of the general public.

7
8 38. Plaintiff **THOMAS WONG** and other similarly situated persons with physical
9 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
10 service animals are unable to use public facilities on a “full and equal” basis unless each
11 such facility is in compliance with the provisions of the **California Health & Safety Code §**
12 **19955, et seq.** Plaintiff is a member of that portion of the public whose rights are protected
13 by the provisions of **California Health & Safety Code § 19955, et seq.**

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

19
20 40. Plaintiff is further informed and believes that as of the date of filing this
21 Complaint, Defendants have not made accessible the facilities at the subject restaurant as
22 set forth in Paragraph 3 above.

23
24 41. Plaintiff **THOMAS WONG** is informed and believes, and therefore alleges, that
25 Defendants **HUNG SHING, INC., a California corporation, CHAK LUNG SIU AND ANNIE**
26 **SIU and DOES ONE to FIFTY, inclusive**, and each of them, caused the subject buildings
27 constituting “**LICHEE GARDEN RESTAURANT**” to be constructed, altered and maintained
28 in such a manner that persons with physical disabilities were denied full and equal access

1 to, within and throughout said buildings and were denied full and equal use of said public
2 facilities, and despite knowledge and actual and constructive notice to such Defendants that
3 the configuration of the restaurant and/or buildings was in violation of the civil rights of
4 persons with physical disabilities, such as Plaintiff. Such construction, modification,
5 ownership, operation, maintenance and practices of such public facilities are in violation of
6 law as stated in Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, and elsewhere
7 in the laws of California.
8

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

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

1 and cannot be ascertained except through discovery.

2 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
3 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
4 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 his own interests and in order to enforce an important right affecting the public
7 interest. Plaintiff, therefore, seeks 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. Plaintiff additionally seeks 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 February 27,
13 2003, and continuing to the present time, knew that persons with physical disabilities were
14 denied their rights of equal access to all portions of this public facility. Despite such
15 knowledge, Defendants failed and refused to take steps to comply with the applicable
16 access statutes; and despite knowledge of the resulting problems and denial of civil rights
17 thereby suffered by Plaintiff **THOMAS WONG** and other similarly situated persons with
18 disabilities, including the specific notices referred to in paragraph 43 of this Complaint.
19 Defendants have failed and refused to take action to grant full and equal access to persons
20 with physical disabilities in the respects complained of hereinabove. Defendants and each
21 of them have carried out a course of conduct of refusing to respond to, or correct complaints
22 about, denial of handicap access. Such actions and continuing course of conduct by
23 Defendants, evidence despicable conduct in conscious disregard for the rights or safety of
24 Plaintiff and of other similarly situated persons, justifying an award of exemplary and
25 punitive damages pursuant to **California Civil Code** § 3294.
26
27
28

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

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

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

26 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

27 ///

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

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

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

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

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

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

52. On or about February 27, 2003, Plaintiff **THOMAS WONG** suffered violations

1 of **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of
2 the goods, services, facilities and privileges of said "**LICHEE GARDEN RESTAURANT**" by
3 being denied access to all of the dining areas of the restaurant and inadequate restroom
4 facilities for persons in a wheelchair, all as set forth in paragraph 3 above.

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

8
9 53. As a result of the denial of full and equal enjoyment of the goods, services,
10 facilities and privileges of defendants' "**LICHEE GARDEN RESTAURANT**" due to the acts
11 and omissions of defendants, and each of them, in owning, operating and maintaining this
12 subject public facility, plaintiff suffered violations of his civil rights, including, but not limited
13 to, rights under **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical
14 injury, emotional distress, mental distress, mental suffering, mental anguish, which includes
15 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
16 and naturally associated with a disabled person's denial of full and equal enjoyment of
17 goods, services, privileges, etc. all to his damages as prayed hereinafter in an amount within
18 the jurisdiction of the court. Defendants' actions and omissions to act constituted
19 discrimination against plaintiff on the sole basis that plaintiff was physically disabled.
20

21
22 54. Plaintiff seeks damages for the violation of his rights as a disabled person on
23 or about February 27, 2003, according to proof, pursuant to **California Civil Code** § 54.3,
24 including a trebling of all statutory and actual damages, general and special, available
25 pursuant to **California Civil Code** § 54.3(a).

26
27 55. As a result of defendants' acts and omissions in this regard, plaintiff **THOMAS**
28 **WONG** has been required to incur legal expenses and hire attorneys in order to enforce his

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

12 56. The acts and omissions of defendants in failing to provide the required
13 accessible facilities subsequent to the enactment date and compliance date of the
14 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and
15 alterations to its handicapped parking, handicapped signage, pathways, and other elements
16 as hereinabove stated, after being notified by patrons before and after the time of plaintiff's
17 visit and injuries, on or about February 27, 2003, and all times prior thereto with the
18 knowledge that persons with disabilities would enter defendants' premises, the reason given
19 therefor, was an established policy, practice and procedure of refusing and denying entry,
20 thereby denying lodging and other services to a person with disabilities and the companions
21 thereof, evidence malice and oppression toward plaintiff and other disabled persons.

24 57. Such despicable conduct, as that incorporated herein by reference and
25 specifically set forth in Paragraph 11, was carried out by defendants with a willful and
26 conscious disregard for the law and the rights of plaintiff and of other disabled persons, and
27 was oppressive in that such conduct subjected plaintiff "to cruel and unjust hardship in
28

1 conscious disregard” for the law and plaintiff’s rights, and justifies exemplary and punitive
2 damages pursuant to **California Civil Code** § 3294, in amounts sufficient to make an
3 example of defendants and to punish defendants and to carry out the purposes of
4 **California Civil Code** § 3294.

5 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
6 practice and procedure for entry into said **"LICHEE GARDEN RESTAURANT"** as
7 hereinabove described.

8
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 **"LICHEE GARDEN**
11 **RESTAURANT"** as hereinabove described, plaintiff has continually been denied his rights to
12 full and equal enjoyment of the subject restaurant, as it would be a “futile gesture” to attempt
13 to patronize said **"LICHEE GARDEN RESTAURANT"** with the discriminatory policy in place
14 as hereinabove described.

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

1 physically disabled. Plaintiff is 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 "**LICHEE**
3 **GARDEN RESTAURANT**" as described hereinabove. The acts of defendants have legally
4 caused and will continue to cause irreparable injury to plaintiff if not enjoined by this court.

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

13
14 WHEREFORE, plaintiff prays 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. Plaintiff repleads and incorporates by reference, as if fully set forth again
22 herein, the allegations contained in paragraphs 1 through 61 of this Complaint and
23 incorporates them herein as if separately repled.

24 63. Defendants' acts and omissions as specified with regard to the discriminatory
25 treatment of plaintiff **THOMAS WONG** on the basis of his physical disabilities, have been in
26 violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have
27 denied to plaintiff his rights to "full and equal accommodations, advantages, facilities,
28

1 privileges or services in all business establishments of every kind whatsoever.”

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

5 65. **California Civil Code** § 51.5 also provides that

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

12 66. As a result of the violation of plaintiff’s civil rights protected by **California Civil**
13 **Code** §§ 51 and, 51.5, plaintiff is 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, plaintiff seeks appropriate exemplary damages under **California Civil Code** § 3294.

18 WHEREFORE, Plaintiff prays that this court award damages and provide relief as
19 follows:

20 PRAYER FOR RELIEF

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

22 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
23 criteria policy, practice and procedure permitting entry into the **LICHEE GARDEN**
24 **RESTAURANT** in San Francisco, California, for the receipt of food and beverage service
25 according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, *et seq.*, and Title III of
26 the **Americans with Disabilities Act of 1990**, and grant injunctive relief requiring that
27 Defendants repair and render safe to handicapped persons, and otherwise make
28

1 handicapped-accessible, all public areas of the restaurant, and make such facilities “readily
2 accessible to and usable by individuals with disabilities,” according to the standards of Title
3 24 of the **California Administrative Code, California Health & Safety Code** § 19955 *et*
4 *seq.*, and Title III of the **Americans with Disabilities Act of 1990** and the standards of
5 **ADAAG**; and prohibiting operation of the **LICHEE GARDEN RESTAURANT**, located in
6 San Francisco, California, as a public facility until Defendants provide full and equal
7 enjoyment of goods and services as described hereinabove to physically disabled persons,
8 including Plaintiff;

9
10 2. General damages according to proof;

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

14 4. Prejudgment interest on all compensatory damages;

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

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

19 7. Award plaintiff all litigation expenses, all costs of this proceeding and all
20 reasonable attorneys’ fees as provided by law, including, but not limited to, those
21 recoverable pursuant to the provisions of **California Civil Code** §§ 52, 54.3, and 55,
22 **California Code of Civil Procedure** § 1021.5, and **Americans with Disabilities Act of**
23 **1990** §308 of Title III; and;

24
25
26 ///

27
28 ///

