


ORIGINAL

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY  DEPUTY

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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13 CHRIS KOHLER,

14 Plaintiff,

15 vs.

16 CPG CARLSBAD HOLDINGS,
17 LLC; CHELSEA PROPERTY
18 GROUP; ADIDAS
19 PROMOTIONAL RETAIL
20 OPERATIONS, INC. dba ADIDAS;
21 RETAIL BRAND ALLIANCE, INC.
22 dba BROOKS BROTHERS
23 FACTORY STORE; CONVERSE,
24 INC. dba THE CONVERSE
25 OUTLET STORE #3742; THE
26 KITCHEN COLLECTION, INC.
27 WHICH WILL DO BUSINESS IN
28 CALIFORNIA AS KCI FACTORY
OUTLET STORES dba LE
GOURMET CHEF; GAP
(APPAREL), LLC dba GAP
OUTLET #7780; HDOS

No. 10 CV 0365 IEG

RBB

Plaintiff's Complaint

Kohler v. Chelsea Carlsbad Finance, LLC, et al.
Plaintiff's Complaint



1 ENTERPRISES dba HOT DOG on a)
2 STICK #192; JOCKEY)
3 INTERNATIONAL GLOBAL, INC.)
4 dba THE JOCKEY STORE #125;)
5 KENNETH COLE PRODUCTIONS,)
6 INC. dba KENNETH COLE #5051;)
7 POLO CALIFORNIA, LLC dba)
8 POLO FACTORY STORE; PUMA)
9 NORTH AMERICA, INC. dba)
10 PUMA; REEBOK)
11 INTERNATIONAL LTD. dba)
12 REEBOK OUTLET STORE #114;)
13 RUBIO'S RESTAURANTS, INC.)
14 dba RUBIO'S FRESH MEXICAN)
15 GRILL; EAT at JOE'S, INC. dba)
16 RUBY'S DINER; TOMMY)
17 HILFIGER RETAIL, LLC dba)
18 TOMMY HILFIGER #54;)
19 PHILLIPS - VAN HEUSEN)
20 CORPORATION dba VAN)
21 HEUSEN STORE #462; BANANA)
22 REPUBLIC, LLC dba BANANA)
23 REPUBLIC #6282,)
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Defendants.

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I. SUMMARY

1. This is a civil rights action by plaintiff Chris Kohler (“Kohler”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complexes known as:

Common Areas
5620 Paseo del Norte
Carlsbad, CA 92008
(APN 211.022.22)
(hereafter “the Common Area Facility”)

Adidas #6126
5600 Paseo del Norte, Suite 105
Carlsbad, CA 92008
(hereafter “the Adidas Facility”)

Brooks Brothers Factory Store
5610 Paseo del Norte
Carlsbad, CA 92008
(hereafter “the Brooks Brothers Facility”)

The Converse Outlet Store #3742
5620 Paseo del Norte, Suite C114
Carlsbad, CA 92008
(hereafter “the Converse Facility”)

Le Gourmet Chef
5630 Paseo del Norte, Suite 1
Carlsbad, CA 92008
(hereafter “the Le Gourmet Chef Facility”)

Gap Outlet #7780
5620 Paseo del Norte
Carlsbad, CA 92008
(hereafter “the Gap Facility”)

1 Hot Dog on a Stick
2 5620 Paseo del Norte
3 Carlsbad, CA 92008
4 (hereafter “the Hot Dog Facility”)

5 The Jockey Store #125
6 5600 Paseo del Norte
7 Carlsbad, CA 92008
8 (hereafter “the Jockey Facility”)

9 Kenneth Cole #5051
10 5630 Paseo del Norte, Suite 108
11 Carlsbad, CA 92008
12 (hereafter “the Kenneth Cole Facility”)

13 Polo Factory Store
14 5600 Paseo del Norte, Suite 100
15 Carlsbad, CA 92008
16 (hereafter “the Polo Facility”)

17 Puma
18 5610 Paseo del Norte, Suite 116B
19 Carlsbad, CA 92008
20 (hereafter “the Puma Facility”)

21 Reebok Outlet Store #114
22 5630 Paseo del Norte, Suite 135
23 Carlsbad, CA 92008
24 (hereafter “the Reebok Facility”)

25 Rubio’s Fresh Mexican Grill
26 5620 Paseo del Norte, Suite 128
27 Carlsbad, CA 92008
28 (hereafter “the Rubio’s Facility”)

Ruby’s Diner
5630 Paseo del Norte
Carlsbad, CA 92008
(hereafter “the Ruby’s Facility”)

1 Tommy Hilfiger #54
2 5610 Paseo del Norte, Suite 117B
3 Carlsbad, CA 92008
4 (hereafter “the Tommy Hilfiger Facility”)

5 Van Heusen Store #462
6 5630 Paseo del Norte
7 Carlsbad, CA 92008
8 (hereafter “the Van Heusen Facility”)

9 Banana Republic #6282
10 5610 Paseo del Norte
11 Carlsbad, CA 92008
12 (hereafter “the Banana Republic Facility”)

13 (collectively, “the Facilities”)

14
15 2. Pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C.
16 §§ 12101 et seq.), and related California statutes, Kohler seeks damages,
17 injunctive and declaratory relief, and attorney fees and costs, against:

- 18 • CPG Carlsbad Holdings, LLC and Chelsea Property Group (hereinafter the
19 “Common Area Defendants”)
- 20 • Adidas Promotional Retail Operations, Inc. dba Adidas #6126; CPG
21 Carlsbad Holdings, LLC; and, Chelsea Property Group (hereinafter the
22 “Adidas Defendants”)
- 23 • Retail Brand Alliance, Inc. dba Brooks Brothers Factory Store; CPG
24 Carlsbad Holdings, LLC; and, Chelsea Property Group (hereinafter the
25 “Brooks Brothers Defendants”)
- 26 • Converse, Inc. dba The Converse Outlet Store #3742; CPG Carlsbad
27 Holdings, LLC; and, Chelsea Property Group (hereinafter the “Converse
28 Defendants”)

- 1 • The Kitchen Collection, Inc. which will do business in California as KCI
2 Factory Outlet Stores dba Le Gourmet Chef; CPG Carlsbad Holdings,
3 LLC; and, Chelsea Property Group (hereinafter the “Le Gourmet Chef
4 Defendants”)
- 5 • Gap (Apparel), LLC dba Gap Outlet #7780; CPG Carlsbad Holdings,
6 LLC; and, Chelsea Property Group (hereinafter the “Gap Defendants”)
- 7 • HDOS Enterprises dba Hot Dog on a Stick #192; CPG Carlsbad Holdings,
8 LLC; and, Chelsea Property Group (hereinafter the “Hot Dog
9 Defendants”)
- 10 • Jockey International Global, Inc. dba The Jockey Store #125; CPG
11 Carlsbad Holdings, LLC; and, Chelsea Property Group (hereinafter the
12 “Jockey Defendants”)
- 13 • Kenneth Cole Productions, Inc. dba Kenneth Cole #5051; CPG Carlsbad
14 Holdings, LLC; and, Chelsea Property Group (hereinafter the “Kenneth
15 Cole Defendants”)
- 16 • Polo California, LLC dba Polo Factory Store; CPG Carlsbad Holdings,
17 LLC; and, Chelsea Property Group (hereinafter the “Polo Defendants”)
- 18 • Puma North America, Inc. dba Puma; CPG Carlsbad Holdings, LLC; and,
19 Chelsea Property Group (hereinafter the “Puma Defendants”)
- 20 • Reebok International Ltd. dba Reebok Outlet Store #114; CPG Carlsbad
21 Holdings, LLC; and, Chelsea Property Group (hereinafter the “Reebok
22 Defendants”)
- 23 • Rubio’s Restaurants, Inc. dba Rubio’s Fresh Mexican Grill; CPG
24 Carlsbad Holdings, LLC; and, Chelsea Property Group (hereinafter the
25 “Rubio’s Defendants”)
- 26 • Eat at Joe’s, Inc. dba Ruby’s Diner; CPG Carlsbad Holdings, LLC; and,
27 Chelsea Property Group (hereinafter the “Ruby’s Defendants”)
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- 1 • Tommy Hilfiger Retail, LLC dba Tommy Hilfiger #54; CPG Carlsbad
- 2 Holdings, LLC; and, Chelsea Property Group (hereinafter the “Tommy
- 3 Hilfiger Defendants”)
- 4 • Phillips – Van Heusen Corporation dba Van Heusen Store #462; CPG
- 5 Carlsbad Holdings, LLC; and, Chelsea Property Group (hereinafter the
- 6 “Van Heusen Defendants”)
- 7 • Banana Republic, LLC dba Banana Republic #6282; CPG Carlsbad
- 8 Holdings, LLC; and, Chelsea Property Group (hereinafter the “Banana
- 9 Republic Defendants”)

10 II. JURISDICTION

11 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and
12 1343 for ADA claims.

13 4. Supplemental jurisdiction for claims brought under parallel
14 California law—arising from the same nucleus of operative facts—is predicated
15 on 28 U.S.C. § 1367.

16 5. Kohler’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

17 III. VENUE

18 6. All actions complained of herein take place within the jurisdiction
19 of the United States District Court, Southern District of California, and venue is
20 invoked pursuant to 28 U.S.C. § 1391(b), (c).

21 IV. PARTIES

22 7. The Common Area Defendants own, operate, manage, and/or lease
23 the Common Area Facility, and consist of a person (or persons), firm, and/or
24 corporation.

25 8. The Adidas Defendants own, operate, manage, and/or lease the
26 Adidas Facility, and consist of a person (or persons), firm, and/or corporation.

1 9. The Brooks Brothers Defendants own, operate, manage, and/or
2 lease the Brooks Brothers Facility, and consist of a person (or persons), firm,
3 and/or corporation.

4 10. The Converse Defendants own, operate, manage, and/or lease the
5 Converse Facility, and consist of a person (or persons), firm, and/or corporation.

6 11. The Le Gourmet Chef Defendants own, operate, manage, and/or
7 lease the Le Gourmet Chef Facility, and consist of a person (or persons), firm,
8 and/or corporation.

9 12. The Gap Defendants own, operate, manage, and/or lease the Gap
10 Facility, and consist of a person (or persons), firm, and/or corporation.

11 13. The Hot Dog Defendants own, operate, manage, and/or lease the
12 Hot Dog Facility, and consist of a person (or persons), firm, and/or corporation.

13 14. The Jockey Defendants own, operate, manage, and/or lease the
14 Jockey Facility, and consist of a person (or persons), firm, and/or corporation.

15 15. The Kenneth Cole Defendants own, operate, manage, and/or lease
16 the Kenneth Cole Facility, and consist of a person (or persons), firm, and/or
17 corporation.

18 16. The Polo Defendants own, operate, manage, and/or lease the Polo
19 Facility, and consist of a person (or persons), firm, and/or corporation.

20 17. The Puma Defendants own, operate, manage, and/or lease the Puma
21 Facility, and consist of a person (or persons), firm, and/or corporation.

22 18. The Reebok Defendants own, operate, manage, and/or lease the
23 Reebok Facility, and consist of a person (or persons), firm, and/or corporation.

24 19. The Rubio's Defendants own, operate, manage, and/or lease the
25 Rubio's Facility, and consist of a person (or persons), firm, and/or corporation.

26 20. The Ruby's Defendants own, operate, manage, and/or lease the
27 Ruby's Facility, and consist of a person (or persons), firm, and/or corporation.
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1 29. The Le Gourmet Chef Facility is a sales or retail establishment,
2 open to the public, which is intended for nonresidential use and whose operation
3 affects commerce.

4 30. The Gap Facility is a sales or retail establishment, open to the
5 public, which is intended for nonresidential use and whose operation affects
6 commerce.

7 31. The Hot Dog Facility is an establishment serving food and drink,
8 open to the public, which is intended for nonresidential use and whose operation
9 affects commerce.

10 32. The Jockey Facility is a sales or retail establishment, open to the
11 public, which is intended for nonresidential use and whose operation affects
12 commerce.

13 33. The Kenneth Cole Facility is a sales or retail establishment, open to
14 the public, which is intended for nonresidential use and whose operation affects
15 commerce.

16 34. The Polo Facility is a sales or retail establishment, open to the
17 public, which is intended for nonresidential use and whose operation affects
18 commerce.

19 35. The Puma Facility is a sales or retail establishment, open to the
20 public, which is intended for nonresidential use and whose operation affects
21 commerce.

22 36. The Reebok Facility is a sales or retail establishment, open to the
23 public, which is intended for nonresidential use and whose operation affects
24 commerce.

25 37. The Rubio's Facility is an establishment serving food and drink,
26 open to the public, which is intended for nonresidential use and whose operation
27 affects commerce.

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1 38. The Ruby's Facility is an establishment serving food and drink,
2 open to the public, which is intended for nonresidential use and whose operation
3 affects commerce.

4 39. The Tommy Hilfiger Facility is a sales or retail establishment, open
5 to the public, which is intended for nonresidential use and whose operation
6 affects commerce.

7 40. The Van Heusen Facility is a sales or retail establishment, open to
8 the public, which is intended for nonresidential use and whose operation affects
9 commerce.

10 41. The Banana Republic Facility is a sales or retail establishment, open
11 to the public, which is intended for nonresidential use and whose operation
12 affects commerce.

13 42. Kohler visited the Facilities and encountered barriers (both physical
14 and intangible) that interfered with—if not outright denied—his ability to use
15 and enjoy the goods, services, privileges, and accommodations offered at all of
16 the facilities.

17 43. To the extent known by Kohler, the barriers at the Common Area
18 Facility included, but are not limited to, the following:

- 19 • The access aisles have slopes and cross slopes that exceed 2.0%;
- 20 • The disabled parking spaces have slopes and cross slopes that
21 exceed 2.0%;
- 22 • At least one disabled parking space has incorrect signage posted;
- 23 • The tow away signage posted is incorrect;
- 24 • Multiple sidewalks have cross slopes exceed 2.0%;

25 *Restroom A:* There are numerous barriers to access, including, but not
26 limited to:

- 27 • The restroom door lock requires twisting, pinching, and/or grasping
28 to operate;

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- The toilet tissue dispenser protrudes into the clear floor and/or maneuvering space needed to access the water closet;
- The toilet tissue dispenser is an obstruction to the use of the side grab bar;
- The pipes beneath the lavatory are improperly and/or incompletely wrapped;
- The lavatory protrudes into the clear floor space required to access the paper towel dispenser;

Restroom B: There are numerous barriers to access, including, but not limited to:

- There is no International Symbol of Accessibility (“ISA”) at the restroom entrance;
- The restroom door requires pinching, twisting, and/or grasping to operate;
- The pipes beneath one of the lavatories are not wrapped;
- The pipes beneath one of the lavatories are improperly and incompletely wrapped;
- The lavatory controls require more than five pounds of force to operate;
- There is insufficient strike side clearance when exiting the restroom;

Restroom C: There are numerous barriers to access, including, but not limited to:

- There is no ISA at the restroom entrance;
- The restroom door lock requires twisting, pinching, and/or grasping to operate;
- The pipes beneath the lavatory are improperly and incompletely wrapped; and,

- 1 • The lavatory controls require more than five pounds of force to
2 operate.

3 These barriers prevented Kohler from enjoying full and equal access at the
4 Common Area Facility.

5 44. Kohler was also deterred from visiting the Common Area Facility
6 because he knew that the Common Area Facility's goods, services, facilities,
7 privileges, advantages, and accommodations were unavailable to physically
8 disabled patrons (such as himself). He continues to be deterred from visiting the
9 Common Area Facility because of the future threats of injury created by these
10 barriers.

11 45. To the extent known by Kohler, the barriers at the Adidas Facility
12 included, but are not limited to, the following:

- 13 • The dressing room bench is not 24 inches wide by 48 inches long;
14 • The accessible dressing room is not designated by an ISA; and,
15 • The check out counter is too high with no portion lowered to
16 accommodate a patron in a wheelchair.

17 These barriers prevented Kohler from enjoying full and equal access at the
18 Adidas Facility.

19 46. Kohler was also deterred from visiting the Adidas Facility because
20 he knew that the Adidas Facility's goods, services, facilities, privileges,
21 advantages, and accommodations were unavailable to physically disabled
22 patrons (such as himself). He continues to be deterred from visiting the Adidas
23 Facility because of the future threats of injury created by these barriers.

24 47. To the extent known by Kohler, the barriers at the Brooks Brothers
25 Facility included, but are not limited to, the following:

- 26 • There is no ISA at the entrance;
27 • The check out counter is too high with no portion lowered to
28 accommodate a patron in a wheelchair;

- 1 • The dressing room bench is being used as storage for merchandise;
- 2 • The accessible dressing room is not identified with an ISA;
- 3 • The dressing room bench is not 24 inches wide by 48 inches long;
- 4 • The accessible dressing room is not identified with an ISA..

5 These barriers prevented Kohler from enjoying full and equal access at the
6 Brooks Brothers Facility.

7 48. Kohler was also deterred from visiting the Brooks Brothers Facility
8 because he knew that the Brooks Brothers Facility's goods, services, facilities,
9 privileges, advantages, and accommodations were unavailable to physically
10 disabled patrons (such as himself). He continues to be deterred from visiting the
11 Brooks Brothers Facility because of the future threats of injury created by these
12 barriers.

13 49. To the extent known by Kohler, the barriers at the Converse Facility
14 included, but are not limited to, the following:

- 15 • The dressing room bench is not 24 inches wide by 48 inches long;
- 16 • The accessible dressing room is not identified with an ISA.

17 These barriers prevented Kohler from enjoying full and equal access at the
18 Converse Facility.

19 50. Kohler was also deterred from visiting the Converse Facility
20 because he knew that the Converse Facility's goods, services, facilities,
21 privileges, advantages, and accommodations were unavailable to physically
22 disabled patrons (such as himself). He continues to be deterred from visiting the
23 Converse Facility because of the future threats of injury created by these barriers.

24 51. To the extent known by Kohler, the barriers at the Le Gourmet Chef
25 Facility included, but are not limited to, the following:

- 26 • The pay point machine is too high;
- 27 • The check out counter is too high with no portion lowered to
28 accommodate a patron in a wheelchair.

1 These barriers prevented Kohler from enjoying full and equal access at the
2 Le Gourmet Chef Facility.

3 52. Kohler was also deterred from visiting the Le Gourmet Chef
4 Facility because he knew that the Le Gourmet Chef Facility's goods, services,
5 facilities, privileges, advantages, and accommodations were unavailable to
6 physically disabled patrons (such as himself). He continues to be deterred from
7 visiting the Le Gourmet Chef Facility because of the future threats of injury
8 created by these barriers.

9 53. To the extent known by Kohler, the barriers at the Gap Facility
10 included, but are not limited to, the following:

- 11 • The dressing room bench is not 24 inches wide by 48 inches long;
- 12 • There is insufficient clear floor space within the dressing room due
13 to the inward swing of the door;
- 14 • The accessible dressing room is not identified with an ISA;
- 15 • The dressing room mirror is not mounted so as to afford a view to a
16 person seated on the bench.

17 These barriers prevented Kohler from enjoying full and equal access at the
18 Gap Facility.

19 54. Kohler was also deterred from visiting the Gap Facility because he
20 knew that the Gap Facility's goods, services, facilities, privileges, advantages,
21 and accommodations were unavailable to physically disabled patrons (such as
22 himself). He continues to be deterred from visiting the Gap Facility because of
23 the future threats of injury created by these barriers.

24 55. To the extent known by Kohler, the barriers at the Hot Dog Facility
25 included, but are not limited to, the following:

- 26 • The ISA at the entrance is not posted at the correct height;
- 27 • The mats at the entrance door are not securely attached to the floor;

- 1 • The pipes beneath the lavatory are improperly and incompletely
- 2 wrapped;
- 3 • The waste receptacle encroaches into the clear floor space required
- 4 to access the lavatory;
- 5 • The clothing hook on the door is mounted too high;
- 6 • There is insufficient strike side clearance when exiting the restroom
- 7 due to the baby changing station;
- 8 • The toilet tissue dispenser protrudes into the clear floor and/or
- 9 maneuvering space required to access the water closet;
- 10 • There is no accessible seating;
- 11 • There is no seating designated as being accessible to the disabled.

12 These barriers prevented Kohler from enjoying full and equal access at the
13 Hot Dog Facility.

14 56. Kohler was also deterred from visiting the Hot Dog Facility
15 because he knew that the Hot Dog Facility's goods, services, facilities,
16 privileges, advantages, and accommodations were unavailable to physically
17 disabled patrons (such as himself). He continues to be deterred from visiting the
18 Hot Dog Facility because of the future threats of injury created by these barriers.

19 57. To the extent known by Kohler, the barriers at the Jockey Facility
20 included, but are not limited to, the following:

- 21 • There is no space beside the dressing room bench for a wheelchair;
- 22 • The accessible dressing room is not identified with an ISA;
- 23 • The dressing room bench is not 24 inches wide by 48 inches long;
- 24 • The dressing room bench is not fixed to the wall.

25 These barriers prevented Kohler from enjoying full and equal access at the
26 Jockey Facility.

27 58. Kohler was also deterred from visiting the Jockey Facility because
28 he knew that the Jockey Facility's goods, services, facilities, privileges,

1 advantages, and accommodations were unavailable to physically disabled
2 patrons (such as himself). He continues to be deterred from visiting the Jockey
3 Facility because of the future threats of injury created by these barriers.

4 59. To the extent known by Kohler, the barriers at the Kenneth Cole
5 Facility included, but are not limited to, the following:

- 6 • The dressing room has insufficient clear floor space;
- 7 • There is no bench inside the dressing room;
- 8 • The accessible dressing room is not identified with an ISA.

9 These barriers prevented Kohler from enjoying full and equal access at the
10 Kenneth Cole Facility.

11 60. Kohler was also deterred from visiting the Kenneth Cole Facility
12 because he knew that the Kenneth Cole Facility's goods, services, facilities,
13 privileges, advantages, and accommodations were unavailable to physically
14 disabled patrons (such as himself). He continues to be deterred from visiting the
15 Kenneth Cole Facility because of the future threats of injury created by these
16 barriers.

17 61. To the extent known by Kohler, the barriers at the Polo Facility
18 included, but are not limited to, the following:

- 19 • There is insufficient clear floor space within the dressing room due
20 to the inward swing of the door;
- 21 • The dressing room bench is not 24 inches wide by 48 inches long;
- 22 • There is no space beside the dressing room bench for a wheelchair.

23 These barriers prevented Kohler from enjoying full and equal access at the
24 Polo Facility.

25 62. Kohler was also deterred from visiting the Polo Facility because he
26 knew that the Polo Facility's goods, services, facilities, privileges, advantages,
27 and accommodations were unavailable to physically disabled patrons (such as
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1 himself). He continues to be deterred from visiting the Polo Facility because of
2 the future threats of injury created by these barriers.

3 63. To the extent known by Kohler, the barriers at the Puma Facility
4 included, but are not limited to, the following:

- 5 • The check out counter is too high with no portion lowered to
6 accommodate a patron in a wheelchair;
- 7 • The accessible dressing room is not identified with an ISA;
- 8 • The dressing room bench is not 24 inches wide by 48 inches long;
- 9 • There is no space beside the dressing room bench for a wheelchair;
- 10 • While the bench is fixed to the wall, the cushion placed on top is
11 not.

12 These barriers prevented Kohler from enjoying full and equal access at the
13 Puma Facility.

14 64. Kohler was also deterred from visiting the Puma Facility because
15 he knew that the Puma Facility's goods, services, facilities, privileges,
16 advantages, and accommodations were unavailable to physically disabled
17 patrons (such as himself). He continues to be deterred from visiting the Puma
18 Facility because of the future threats of injury created by these barriers.

19 65. To the extent known by Kohler, the barriers at the Reebok Facility
20 included, but are not limited to, the following:

- 21 • There is no space beside the dressing room bench for a wheelchair;
- 22 • The dressing room bench is not 24 inches wide by 48 inches long;
- 23 • The accessible dressing room is not identified with an ISA.

24 These barriers prevented Kohler from enjoying full and equal access at the
25 Reebok Facility.

26 66. Kohler was also deterred from visiting the Reebok Facility because
27 he knew that the Reebok Facility's goods, services, facilities, privileges,
28 advantages, and accommodations were unavailable to physically disabled

1 patrons (such as himself). He continues to be deterred from visiting the Reebok
2 Facility because of the future threats of injury created by these barriers.

3 67. To the extent known by Kohler, the barriers at the Rubio's Facility
4 included, but are not limited to, the following:

- 5 • The water closet stall door is not self-closing;
- 6 • The toilet tissue dispenser protrudes into the clear floor and/or
7 maneuvering space required to access the water closet;
- 8 • The toilet tissue dispenser obstructs the use of the side grab bar;
- 9 • The lavatory obstructs the use of both soap dispensers;
- 10 • The lavatory controls require more than five pounds of force to
11 operate;
- 12 • The pipes beneath the lavatory are improperly and incompletely
13 wrapped;
- 14 • The waste receptacle is an obstruction to the use of the paper towel
15 dispenser.

16 These barriers prevented Kohler from enjoying full and equal access at the
17 Rubio's Facility.

18 68. Kohler was also deterred from visiting the Rubio's Facility because
19 he knew that the Rubio's Facility's goods, services, facilities, privileges,
20 advantages, and accommodations were unavailable to physically disabled
21 patrons (such as himself). He continues to be deterred from visiting the Rubio's
22 Facility because of the future threats of injury created by these barriers.

23 69. To the extent known by Kohler, the barriers at the Ruby's Facility
24 included, but are not limited to, the following:

- 25 • There is no ISA at the entrance;
- 26 • The mats at the entrance are not securely attached;
- 27 • There is no handle mounted below the water closet stall door lock;
- 28 • The water closet stall door is not self-closing;

- 1 • The pipes beneath the lavatory are improperly and incompletely
- 2 wrapped;
- 3 • There is insufficient strike side clearance when exiting the restroom.

4 These barriers prevented Kohler from enjoying full and equal access at the
5 Ruby's Facility.

6 70. Kohler was also deterred from visiting the Ruby's Facility because
7 he knew that the Ruby's Facility's goods, services, facilities, privileges,
8 advantages, and accommodations were unavailable to physically disabled
9 patrons (such as himself). He continues to be deterred from visiting the Ruby's
10 Facility because of the future threats of injury created by these barriers.

11 71. To the extent known by Kohler, the barriers at the Tommy Hilfiger
12 Facility included, but are not limited to, the following:

- 13 • The dressing room bench is not 24 inches wide by 48 inches long;
- 14 • There is no space beside the dressing room bench for a wheelchair;
- 15 • The accessible dressing room is not designated with an ISA;
- 16 • There is insufficient clear floor space in the dressing room due to
- 17 the clothing racks being store there.

18 These barriers prevented Kohler from enjoying full and equal access at the
19 Tommy Hilfiger Facility.

20 72. Kohler was also deterred from visiting the Tommy Hilfiger Facility
21 because he knew that the Tommy Hilfiger Facility's goods, services, facilities,
22 privileges, advantages, and accommodations were unavailable to physically
23 disabled patrons (such as himself). He continues to be deterred from visiting the
24 Tommy Hilfiger Facility because of the future threats of injury created by these
25 barriers.

26 73. To the extent known by Kohler, the barriers at the Van Heusen
27 Facility included, but are not limited to, the following:

- 28 • The accessible dressing room is not designated with an ISA;

- 1 • The dressing room bench is much less than 24 inches wide by 48
- 2 inches long;
- 3 • The clothing hooks are mounted too high.

4 These barriers prevented Kohler from enjoying full and equal access at the
5 Van Heusen Facility.

6 74. Kohler was also deterred from visiting the Van Heusen Facility
7 because he knew that the Van Heusen Facility's goods, services, facilities,
8 privileges, advantages, and accommodations were unavailable to physically
9 disabled patrons (such as himself). He continues to be deterred from visiting the
10 Van Heusen Facility because of the future threats of injury created by these
11 barriers.

12 75. To the extent known by Kohler, the barriers at the Banana Republic
13 Facility included, but are not limited to, the following:

- 14 • There is no space beside the dressing room bench for a wheelchair;
- 15 • The dressing room bench is not 24 inches wide by 48 inches long;
- 16 • The accessible dressing room is not designated with an ISA.

17 These barriers prevented Kohler from enjoying full and equal access at the
18 Banana Republic Facility.

19 76. Kohler was also deterred from visiting the Banana Republic
20 Facility because he knew that the Banana Republic Facility's goods, services,
21 facilities, privileges, advantages, and accommodations were unavailable to
22 physically disabled patrons (such as himself). He continues to be deterred from
23 visiting the Banana Republic Facility because of the future threats of injury
24 created by these barriers.

25 77. Kohler also encountered barriers at the Facilities which violate state
26 and federal law, but were unrelated to his disability. Nothing within this
27 Complaint, however, should be construed as an allegation that Kohler is seeking
28 to remove barriers unrelated to his disability.

1 78. The Common Area Defendants knew that these elements and areas
2 of the Common Area Facility were inaccessible, violate state and federal law,
3 and interfere with (or deny) access to the physically disabled. Moreover, the
4 Common Area Defendants have the financial resources to remove these barriers
5 from the Common Area Facility (without much difficulty or expense), and make
6 the Common Area Facility accessible to the physically disabled. To date,
7 however, the Common Area Defendants refuse to either remove those barriers or
8 seek an unreasonable hardship exemption to excuse non-compliance.

9 79. At all relevant times, the Common Area Defendants have possessed
10 and enjoyed sufficient control and authority to modify the Common Area Facility
11 to remove impediments to wheelchair access and to comply with the Americans
12 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
13 Common Area Defendants have not removed such impediments and have not
14 modified the Common Area Facility to conform to accessibility standards. The
15 Common Area Defendants have intentionally maintained the Common Area
16 Facility in its current condition and have intentionally refrained from altering
17 Common Area Facility so that it complies with the accessibility standards.

18 80. Kohler further alleges that the (continued) presence of barriers at the
19 Common Area Facility is so obvious as to establish the Common Area
20 Defendants' discriminatory intent.¹ On information and belief, Kohler avers that
21 evidence of the discriminatory intent includes the Common Area Defendants'
22 refusal to adhere to relevant building standards; disregard for the building plans
23 and permits issued for the Common Area Facility; conscientious decision to the
24 architectural layout (as it currently exists) at the Common Area Facility; decision
25 not to remove barriers from the Common Area Facility; and allowance that the
26 Common Area Facility continues to exist in its non-compliant state. Kohler
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¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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1 further alleges, on information and belief, that the Common Area Defendants are
2 not in the midst of a remodel, and that the barriers present at the Common Area
3 Facility are not isolated (or temporary) interruptions in access due to
4 maintenance or repairs.²

5 81. The Adidas Defendants knew that these elements and areas of the
6 Adidas Facility were inaccessible, violate state and federal law, and interfere
7 with (or deny) access to the physically disabled. Moreover, the Adidas
8 Defendants have the financial resources to remove these barriers from the Adidas
9 Facility (without much difficulty or expense), and make the Adidas Facility
10 accessible to the physically disabled. To date, however, the Adidas Defendants
11 refuse to either remove those barriers or seek an unreasonable hardship
12 exemption to excuse non-compliance.

13 82. At all relevant times, the Adidas Defendants have possessed and
14 enjoyed sufficient control and authority to modify the Adidas Facility to remove
15 impediments to wheelchair access and to comply with the Americans with
16 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Adidas
17 Defendants have not removed such impediments and have not modified the
18 Adidas Facility to conform to accessibility standards. The Adidas Defendants
19 have intentionally maintained the Adidas Facility in its current condition and has
20 intentionally refrained from altering the Adidas Facility so that it complies with
21 the accessibility standards.

22 83. Kohler further alleges that the (continued) presence of barriers at the
23 Adidas Facility is so obvious as to establish the Adidas Defendants'
24 discriminatory intent.³ On information and belief, Kohler avers that evidence of
25 the discriminatory intent includes the Adidas Defendants' refusal to adhere to
26 relevant building standards; disregard for the building plans and permits issued
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28 ² Id.; 28 C.F.R. § 36.211(b)

³ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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1 for the Adidas Facility; conscientious decision to the architectural layout (as it
2 currently exists) at the Adidas Facility; decision not to remove barriers from the
3 Adidas Facility; and allowance that the Adidas Facility continues to exist in its
4 non-compliant state. Kohler further alleges, on information and belief, that the
5 Adidas Defendants are not in the midst of a remodel, and that the barriers present
6 at the Adidas Facility are not isolated (or temporary) interruptions in access due
7 to maintenance or repairs.⁴

8 84. The Brooks Brothers Defendants knew that these elements and areas
9 of the Brooks Brothers Facility were inaccessible, violate state and federal law,
10 and interfere with (or deny) access to the physically disabled. Moreover, the
11 Brooks Brothers Defendants have the financial resources to remove these
12 barriers from the Brooks Brothers Facility (without much difficulty or expense),
13 and make the Brooks Brothers Facility accessible to the physically disabled. To
14 date, however, the Brooks Brothers Defendants refuse to either remove those
15 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

16 85. At all relevant times, the Brooks Brothers Defendants have
17 possessed and enjoyed sufficient control and authority to modify the Brooks
18 Brothers Facility to remove impediments to wheelchair access and to comply
19 with the Americans with Disabilities Act Accessibility Guidelines and Title 24
20 regulations. The Brooks Brothers Defendants have not removed such
21 impediments and have not modified the Brooks Brothers Facility to conform to
22 accessibility standards. The Brooks Brothers Defendants have intentionally
23 maintained the Brooks Brothers Facility in its current condition and has
24 intentionally refrained from altering Brooks Brothers Facility so that it complies
25 with the accessibility standards.

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⁴ Id.; 28 C.F.R. § 36.211(b)
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1 86. Kohler further alleges that the (continued) presence of barriers at the
2 Brooks Brothers Facility is so obvious as to establish the Brooks Brothers
3 Defendants' discriminatory intent.⁵ On information and belief, Kohler avers that
4 evidence of the discriminatory intent includes the Brooks Brothers Defendants'
5 refusal to adhere to relevant building standards; disregard for the building plans
6 and permits issued for the Brooks Brothers Facility; conscientious decision to the
7 architectural layout (as it currently exists) at the Brooks Brothers Facility;
8 decision not to remove barriers from the Brooks Brothers Facility; and allowance
9 that the Brooks Brothers Facility continues to exist in its non-compliant state.
10 Kohler further alleges, on information and belief, that the Brooks Brothers
11 Defendants are not in the midst of a remodel, and that the barriers present at the
12 Brooks Brothers Facility are not isolated (or temporary) interruptions in access
13 due to maintenance or repairs.⁶

14 87. The Converse Defendants knew that these elements and areas of the
15 Converse Facility were inaccessible, violate state and federal law, and interfere
16 with (or deny) access to the physically disabled. Moreover, the Converse
17 Defendants have the financial resources to remove these barriers from the
18 Converse Facility (without much difficulty or expense), and make the Converse
19 Facility accessible to the physically disabled. To date, however, the Converse
20 Defendants refuse to either remove those barriers or seek an unreasonable
21 hardship exemption to excuse non-compliance.

22 88. At all relevant times, the Converse Defendants have possessed and
23 enjoyed sufficient control and authority to modify the Converse Facility to
24 remove impediments to wheelchair access and to comply with the Americans
25 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
26 Converse Defendants have not removed such impediments and have not
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28 ⁵ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

⁶ Id.; 28 C.F.R. § 36.211(b)

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1 modified the Converse Facility to conform to accessibility standards. The
2 Converse Defendants have intentionally maintained the Converse Facility in its
3 current condition and has intentionally refrained from altering the Converse
4 Facility so that it complies with the accessibility standards.

5 89. Kohler further alleges that the (continued) presence of barriers at the
6 Converse Facility is so obvious as to establish the Converse Defendants'
7 discriminatory intent.⁷ On information and belief, Kohler avers that evidence of
8 the discriminatory intent includes the Converse Defendants' refusal to adhere to
9 relevant building standards; disregard for the building plans and permits issued
10 for the Converse Facility; conscientious decision to the architectural layout (as it
11 currently exists) at the Converse Facility; decision not to remove barriers from
12 the Converse Facility; and allowance that the Converse Facility continues to
13 exist in its non-compliant state. Kohler further alleges, on information and
14 belief, that the Converse Defendants are not in the midst of a remodel, and that
15 the barriers present at the Converse Facility are not isolated (or temporary)
16 interruptions in access due to maintenance or repairs.⁸

17 90. The Le Gourmet Chef Defendants knew that these elements and
18 areas of the Le Gourmet Chef Facility were inaccessible, violate state and federal
19 law, and interfere with (or deny) access to the physically disabled. Moreover,
20 the Le Gourmet Chef Defendants have the financial resources to remove these
21 barriers from the Le Gourmet Chef Facility (without much difficulty or expense),
22 and make the Le Gourmet Chef Facility accessible to the physically disabled. To
23 date, however, the Le Gourmet Chef Defendants refuse to either remove those
24 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

25 91. At all relevant times, the Le Gourmet Chef Defendants have
26 possessed and enjoyed sufficient control and authority to modify the Le Gourmet
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28 ⁷ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

⁸ Id.; 28 C.F.R. § 36.211(b)

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1 Chef Facility to remove impediments to wheelchair access and to comply with
2 the Americans with Disabilities Act Accessibility Guidelines and Title 24
3 regulations. The Le Gourmet Chef Defendants have not removed such
4 impediments and have not modified the Le Gourmet Chef Facility to conform to
5 accessibility standards. The Le Gourmet Chef Defendants have intentionally
6 maintained the Le Gourmet Chef Facility in its current condition and has
7 intentionally refrained from altering the Le Gourmet Chef Facility so that it
8 complies with the accessibility standards.

9 92. Kohler further alleges that the (continued) presence of barriers at the
10 Le Gourmet Chef Facility is so obvious as to establish the Le Gourmet Chef
11 Defendants' discriminatory intent.⁹ On information and belief, Kohler avers that
12 evidence of the discriminatory intent includes the Le Gourmet Chef Defendants'
13 refusal to adhere to relevant building standards; disregard for the building plans
14 and permits issued for the Le Gourmet Chef Facility; conscientious decision to
15 the architectural layout (as it currently exists) at the Le Gourmet Chef Facility;
16 decision not to remove barriers from the Le Gourmet Chef Facility; and
17 allowance that the Le Gourmet Chef Facility continues to exist in its non-
18 compliant state. Kohler further alleges, on information and belief, that the Le
19 Gourmet Chef Defendants are not in the midst of a remodel, and that the barriers
20 present at the Le Gourmet Chef Facility are not isolated (or temporary)
21 interruptions in access due to maintenance or repairs.¹⁰

22 93. The Gap Defendants knew that these elements and areas of the Gap
23 Facility were inaccessible, violate state and federal law, and interfere with (or
24 deny) access to the physically disabled. Moreover, the Gap Defendants have the
25 financial resources to remove these barriers from the Gap Facility (without much
26 difficulty or expense), and make the Gap Facility accessible to the physically
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28 ⁹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

¹⁰ Id.; 28 C.F.R. § 36.211(b)

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1 disabled. To date, however, the Gap Defendants refuse to either remove those
2 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

3 94. At all relevant times, the Gap Defendants have possessed and
4 enjoyed sufficient control and authority to modify the Gap Facility to remove
5 impediments to wheelchair access and to comply with the Americans with
6 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Gap
7 Defendants have not removed such impediments and have not modified the Gap
8 Facility to conform to accessibility standards. The Gap Defendants have
9 intentionally maintained the Gap Facility in its current condition and has
10 intentionally refrained from altering the Gap Facility so that it complies with the
11 accessibility standards.

12 95. Kohler further alleges that the (continued) presence of barriers at the
13 Gap Facility is so obvious as to establish the Gap Defendants' discriminatory
14 intent.¹¹ On information and belief, Kohler avers that evidence of the
15 discriminatory intent includes the Gap Defendants' refusal to adhere to relevant
16 building standards; disregard for the building plans and permits issued for the
17 Gap Facility; conscientious decision to the architectural layout (as it currently
18 exists) at the Gap Facility; decision not to remove barriers from the Gap Facility;
19 and allowance that the Gap Facility continues to exist in its non-compliant state.
20 Kohler further alleges, on information and belief, that the Gap Defendants are
21 not in the midst of a remodel, and that the barriers present at the Gap Facility are
22 not isolated (or temporary) interruptions in access due to maintenance or
23 repairs.¹²

24 96. The Hot Dog Defendants knew that these elements and areas of the
25 Hot Dog Facility were inaccessible, violate state and federal law, and interfere
26 with (or deny) access to the physically disabled. Moreover, the Hot Dog
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28 ¹¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

¹² Id.; 28 C.F.R. § 36.211(b)

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1 Defendants have the financial resources to remove these barriers from the Hot
2 Dog Facility (without much difficulty or expense), and make the Hot Dog
3 Facility accessible to the physically disabled. To date, however, the Hot Dog
4 Defendants refuse to either remove those barriers or seek an unreasonable
5 hardship exemption to excuse non-compliance.

6 97. At all relevant times, the Hot Dog Defendants have possessed and
7 enjoyed sufficient control and authority to modify the Hot Dog Facility to
8 remove impediments to wheelchair access and to comply with the Americans
9 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The Hot
10 Dog Defendants have not removed such impediments and have not modified the
11 Hot Dog Facility to conform to accessibility standards. The Hot Dog Defendants
12 have intentionally maintained the Hot Dog Facility in its current condition and
13 has intentionally refrained from altering the Hot Dog Facility so that it complies
14 with the accessibility standards.

15 98. Kohler further alleges that the (continued) presence of barriers at the
16 Hot Dog Facility is so obvious as to establish the Hot Dog Defendants'
17 discriminatory intent.¹³ On information and belief, Kohler avers that evidence of
18 the discriminatory intent includes the Hot Dog Defendants' refusal to adhere to
19 relevant building standards; disregard for the building plans and permits issued
20 for the Hot Dog Facility; conscientious decision to the architectural layout (as it
21 currently exists) at the Hot Dog Facility; decision not to remove barriers from the
22 Hot Dog Facility; and allowance that the Hot Dog Facility continues to exist in
23 its non-compliant state. Kohler further alleges, on information and belief, that
24 the Hot Dog Defendants are not in the midst of a remodel, and that the barriers
25 present at the Hot Dog Facility are not isolated (or temporary) interruptions in
26 access due to maintenance or repairs.¹⁴

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28 ¹³ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

¹⁴ Id.; 28 C.F.R. § 36.211(b)

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1 99. The Jockey Defendants knew that these elements and areas of the
2 Jockey Facility were inaccessible, violate state and federal law, and interfere
3 with (or deny) access to the physically disabled. Moreover, the Jockey
4 Defendants have the financial resources to remove these barriers from the Jockey
5 Facility (without much difficulty or expense), and make the Jockey Facility
6 accessible to the physically disabled. To date, however, the Jockey Defendants
7 refuse to either remove those barriers or seek an unreasonable hardship
8 exemption to excuse non-compliance.

9 100. At all relevant times, the Jockey Defendants have possessed and
10 enjoyed sufficient control and authority to modify the Jockey Facility to remove
11 impediments to wheelchair access and to comply with the Americans with
12 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Jockey
13 Defendants have not removed such impediments and have not modified the
14 Jockey Facility to conform to accessibility standards. The Jockey Defendants
15 have intentionally maintained the Jockey Facility in its current condition and has
16 intentionally refrained from altering the Jockey Facility so that it complies with
17 the accessibility standards.

18 101. Kohler further alleges that the (continued) presence of barriers at the
19 Jockey Facility is so obvious as to establish the Jockey Defendants'
20 discriminatory intent.¹⁵ On information and belief, Kohler avers that evidence of
21 the discriminatory intent includes the Jockey Defendants' refusal to adhere to
22 relevant building standards; disregard for the building plans and permits issued
23 for the Jockey Facility; conscientious decision to the architectural layout (as it
24 currently exists) at the Jockey Facility; decision not to remove barriers from the
25 Jockey Facility; and allowance that the Jockey Facility continues to exist in its
26 non-compliant state. Kohler further alleges, on information and belief, that the
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¹⁵ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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1 Jockey Defendants are not in the midst of a remodel, and that the barriers present
2 at the Jockey Facility are not isolated (or temporary) interruptions in access due
3 to maintenance or repairs.¹⁶

4 102. The Kenneth Cole Defendants knew that these elements and areas of
5 the Kenneth Cole Facility were inaccessible, violate state and federal law, and
6 interfere with (or deny) access to the physically disabled. Moreover, the
7 Kenneth Cole Defendants have the financial resources to remove these barriers
8 from the Kenneth Cole Facility (without much difficulty or expense), and make
9 the Kenneth Cole Facility accessible to the physically disabled. To date,
10 however, the Kenneth Cole Defendants refuse to either remove those barriers or
11 seek an unreasonable hardship exemption to excuse non-compliance.

12 103. At all relevant times, the Kenneth Cole Defendants have possessed
13 and enjoyed sufficient control and authority to modify the Kenneth Cole Facility
14 to remove impediments to wheelchair access and to comply with the Americans
15 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
16 Kenneth Cole Defendants have not removed such impediments and have not
17 modified the Kenneth Cole Facility to conform to accessibility standards. The
18 Kenneth Cole Defendants have intentionally maintained the Kenneth Cole
19 Facility in its current condition and has intentionally refrained from altering the
20 Kenneth Cole Facility so that it complies with the accessibility standards.

21 104. Kohler further alleges that the (continued) presence of barriers at the
22 Kenneth Cole Facility is so obvious as to establish the Kenneth Cole Defendants'
23 discriminatory intent.¹⁷ On information and belief, Kohler avers that evidence of
24 the discriminatory intent includes the Kenneth Cole Defendants' refusal to
25 adhere to relevant building standards; disregard for the building plans and
26 permits issued for the Kenneth Cole Facility; conscientious decision to the
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28 ¹⁶ Id.; 28 C.F.R. § 36.211(b)

¹⁷ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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1 architectural layout (as it currently exists) at the Kenneth Cole Facility; decision
2 not to remove barriers from the Kenneth Cole Facility; and allowance that the
3 Kenneth Cole Facility continues to exist in its non-compliant state. Kohler
4 further alleges, on information and belief, that the Kenneth Cole Defendants are
5 not in the midst of a remodel, and that the barriers present at the Kenneth Cole
6 Facility are not isolated (or temporary) interruptions in access due to
7 maintenance or repairs.¹⁸

8 105. The Polo Defendants knew that these elements and areas of the Polo
9 Facility were inaccessible, violate state and federal law, and interfere with (or
10 deny) access to the physically disabled. Moreover, the Polo Defendants have the
11 financial resources to remove these barriers from the Polo Facility (without much
12 difficulty or expense), and make the Polo Facility accessible to the physically
13 disabled. To date, however, the Polo Defendants refuse to either remove those
14 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

15 106. At all relevant times, the Polo Defendants have possessed and
16 enjoyed sufficient control and authority to modify the Polo Facility to remove
17 impediments to wheelchair access and to comply with the Americans with
18 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Polo
19 Defendants have not removed such impediments and have not modified the Polo
20 Facility to conform to accessibility standards. The Polo Defendants have
21 intentionally maintained the Polo Facility in its current condition and has
22 intentionally refrained from altering the Polo Facility so that it complies with the
23 accessibility standards.

24 107. Kohler further alleges that the (continued) presence of barriers at the
25 Polo Facility is so obvious as to establish the Polo Defendants' discriminatory
26 intent.¹⁹ On information and belief, Kohler avers that evidence of the
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28 ¹⁸ Id.; 28 C.F.R. § 36.211(b)

¹⁹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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1 discriminatory intent includes the Polo Defendants' refusal to adhere to relevant
2 building standards; disregard for the building plans and permits issued for the
3 Polo Facility; conscientious decision to the architectural layout (as it currently
4 exists) at the Polo Facility; decision not to remove barriers from the Polo
5 Facility; and allowance that the Polo Facility continues to exist in its non-
6 compliant state. Kohler further alleges, on information and belief, that the Polo
7 Defendants are not in the midst of a remodel, and that the barriers present at the
8 Polo Facility are not isolated (or temporary) interruptions in access due to
9 maintenance or repairs.²⁰

10 108. The Puma Defendants knew that these elements and areas of the
11 Puma Facility were inaccessible, violate state and federal law, and interfere with
12 (or deny) access to the physically disabled. Moreover, the Puma Defendants
13 have the financial resources to remove these barriers from the Puma Facility
14 (without much difficulty or expense), and make the Puma Facility accessible to
15 the physically disabled. To date, however, the Puma Defendants refuse to either
16 remove those barriers or seek an unreasonable hardship exemption to excuse
17 non-compliance.

18 109. At all relevant times, the Puma Defendants have possessed and
19 enjoyed sufficient control and authority to modify the Puma Facility to remove
20 impediments to wheelchair access and to comply with the Americans with
21 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Puma
22 Defendants have not removed such impediments and have not modified the
23 Puma Facility to conform to accessibility standards. The Puma Defendants have
24 intentionally maintained the Puma Facility in its current condition and has
25 intentionally refrained from altering the Puma Facility so that it complies with
26 the accessibility standards.

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²⁰ Id.; 28 C.F.R. § 36.211(b)
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1 110. Kohler further alleges that the (continued) presence of barriers at the
2 Puma Facility is so obvious as to establish the Puma Defendants' discriminatory
3 intent.²¹ On information and belief, Kohler avers that evidence of the
4 discriminatory intent includes the Puma Defendants' refusal to adhere to relevant
5 building standards; disregard for the building plans and permits issued for the
6 Puma Facility; conscientious decision to the architectural layout (as it currently
7 exists) at the Puma Facility; decision not to remove barriers from the Puma
8 Facility; and allowance that the Puma Facility continues to exist in its non-
9 compliant state. Kohler further alleges, on information and belief, that the Puma
10 Defendants are not in the midst of a remodel, and that the barriers present at the
11 Puma Facility are not isolated (or temporary) interruptions in access due to
12 maintenance or repairs.²²

13 111. The Reebok Defendants knew that these elements and areas of the
14 Reebok Facility were inaccessible, violate state and federal law, and interfere
15 with (or deny) access to the physically disabled. Moreover, the Reebok
16 Defendants have the financial resources to remove these barriers from the
17 Reebok Facility (without much difficulty or expense), and make the Reebok
18 Facility accessible to the physically disabled. To date, however, the Reebok
19 Defendants refuse to either remove those barriers or seek an unreasonable
20 hardship exemption to excuse non-compliance.

21 112. At all relevant times, the Reebok Defendants have possessed and
22 enjoyed sufficient control and authority to modify the Reebok Facility to remove
23 impediments to wheelchair access and to comply with the Americans with
24 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Reebok
25 Defendants have not removed such impediments and have not modified the
26 Reebok Facility to conform to accessibility standards. The Reebok Defendants
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28 ²¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

²² Id.; 28 C.F.R. § 36.211(b)

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1 have intentionally maintained the Reebok Facility in its current condition and
2 has intentionally refrained from altering the Reebok Facility so that it complies
3 with the accessibility standards.

4 113. Kohler further alleges that the (continued) presence of barriers at the
5 Reebok Facility is so obvious as to establish the Reebok Defendants'
6 discriminatory intent.²³ On information and belief, Kohler avers that evidence of
7 the discriminatory intent includes the Reebok Defendants' refusal to adhere to
8 relevant building standards; disregard for the building plans and permits issued
9 for the Reebok Facility; conscientious decision to the architectural layout (as it
10 currently exists) at the Reebok Facility; decision not to remove barriers from the
11 Reebok Facility; and allowance that the Reebok Facility continues to exist in its
12 non-compliant state. Kohler further alleges, on information and belief, that the
13 Reebok Defendants are not in the midst of a remodel, and that the barriers
14 present at the Reebok Facility are not isolated (or temporary) interruptions in
15 access due to maintenance or repairs.²⁴

16 114. The Rubio's Defendants knew that these elements and areas of the
17 Rubio's Facility were inaccessible, violate state and federal law, and interfere
18 with (or deny) access to the physically disabled. Moreover, the Rubio's
19 Defendants have the financial resources to remove these barriers from the
20 Rubio's Facility (without much difficulty or expense), and make the Rubio's
21 Facility accessible to the physically disabled. To date, however, the Rubio's
22 Defendants refuse to either remove those barriers or seek an unreasonable
23 hardship exemption to excuse non-compliance.

24 115. At all relevant times, the Rubio's Defendants have possessed and
25 enjoyed sufficient control and authority to modify the Rubio's Facility to remove
26 impediments to wheelchair access and to comply with the Americans with
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28 ²³ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

²⁴ Id.; 28 C.F.R. § 36.211(b)

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1 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Rubio's
2 Defendants have not removed such impediments and have not modified the
3 Rubio's Facility to conform to accessibility standards. The Rubio's Defendants
4 have intentionally maintained the Rubio's Facility in its current condition and
5 has intentionally refrained from altering the Rubio's Facility so that it complies
6 with the accessibility standards.

7 116. Kohler further alleges that the (continued) presence of barriers at the
8 Rubio's Facility is so obvious as to establish the Rubio's Defendants'
9 discriminatory intent.²⁵ On information and belief, Kohler avers that evidence of
10 the discriminatory intent includes the Rubio's Defendants' refusal to adhere to
11 relevant building standards; disregard for the building plans and permits issued
12 for the Rubio's Facility; conscientious decision to the architectural layout (as it
13 currently exists) at the Rubio's Facility; decision not to remove barriers from the
14 Rubio's Facility; and allowance that the Rubio's Facility continues to exist in its
15 non-compliant state. Kohler further alleges, on information and belief, that the
16 Rubio's Defendants are not in the midst of a remodel, and that the barriers
17 present at the Rubio's Facility are not isolated (or temporary) interruptions in
18 access due to maintenance or repairs.²⁶

19 117. The Ruby's Defendants knew that these elements and areas of the
20 Ruby's Facility were inaccessible, violate state and federal law, and interfere
21 with (or deny) access to the physically disabled. Moreover, the Ruby's
22 Defendants have the financial resources to remove these barriers from the
23 Ruby's Facility (without much difficulty or expense), and make the Ruby's
24 Facility accessible to the physically disabled. To date, however, the Ruby's
25 Defendants refuse to either remove those barriers or seek an unreasonable
26 hardship exemption to excuse non-compliance.

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28 ²⁵ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

²⁶ Id.; 28 C.F.R. § 36.211(b)

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1 118. At all relevant times, the Ruby's Defendants have possessed and
2 enjoyed sufficient control and authority to modify the Ruby's Facility to remove
3 impediments to wheelchair access and to comply with the Americans with
4 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Ruby's
5 Defendants have not removed such impediments and have not modified the
6 Ruby's Facility to conform to accessibility standards. The Ruby's Defendants
7 have intentionally maintained the Ruby's Facility in its current condition and has
8 intentionally refrained from altering the Ruby's Facility so that it complies with
9 the accessibility standards.

10 119. Kohler further alleges that the (continued) presence of barriers at the
11 Ruby's Facility is so obvious as to establish the Ruby's Defendants'
12 discriminatory intent.²⁷ On information and belief, Kohler avers that evidence of
13 the discriminatory intent includes the Ruby's Defendants' refusal to adhere to
14 relevant building standards; disregard for the building plans and permits issued
15 for the Ruby's Facility; conscientious decision to the architectural layout (as it
16 currently exists) at the Ruby's Facility; decision not to remove barriers from the
17 Ruby's Facility; and allowance that the Ruby's Facility continues to exist in its
18 non-compliant state. Kohler further alleges, on information and belief, that the
19 Ruby's Defendants are not in the midst of a remodel, and that the barriers present
20 at the Ruby's Facility are not isolated (or temporary) interruptions in access due
21 to maintenance or repairs.²⁸

22 120. The Tommy Hilfiger Defendants knew that these elements and areas
23 of the Tommy Hilfiger Facility were inaccessible, violate state and federal law,
24 and interfere with (or deny) access to the physically disabled. Moreover, the
25 Tommy Hilfiger Defendants have the financial resources to remove these
26 barriers from the Tommy Hilfiger Facility (without much difficulty or expense),
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28 ²⁷ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

²⁸ Id.; 28 C.F.R. § 36.211(b)

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1 and make the Tommy Hilfiger Facility accessible to the physically disabled. To
2 date, however, the Tommy Hilfiger Defendants refuse to either remove those
3 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

4 121. At all relevant times, the Tommy Hilfiger Defendants have
5 possessed and enjoyed sufficient control and authority to modify the Tommy
6 Hilfiger Facility to remove impediments to wheelchair access and to comply with
7 the Americans with Disabilities Act Accessibility Guidelines and Title 24
8 regulations. The Tommy Hilfiger Defendants have not removed such
9 impediments and have not modified the Tommy Hilfiger Facility to conform to
10 accessibility standards. The Tommy Hilfiger Defendants have intentionally
11 maintained the Tommy Hilfiger Facility in its current condition and has
12 intentionally refrained from altering the Tommy Hilfiger Facility so that it
13 complies with the accessibility standards.

14 122. Kohler further alleges that the (continued) presence of barriers at the
15 Tommy Hilfiger Facility is so obvious as to establish the Tommy Hilfiger
16 Defendants' discriminatory intent.²⁹ On information and belief, Kohler avers
17 that evidence of the discriminatory intent includes the Tommy Hilfiger
18 Defendants' refusal to adhere to relevant building standards; disregard for the
19 building plans and permits issued for the Tommy Hilfiger Facility; conscientious
20 decision to the architectural layout (as it currently exists) at the Tommy Hilfiger
21 Facility; decision not to remove barriers from the Tommy Hilfiger Facility; and
22 allowance that the Tommy Hilfiger Facility continues to exist in its non-
23 compliant state. Kohler further alleges, on information and belief, that the
24 Tommy Hilfiger Defendants are not in the midst of a remodel, and that the
25 barriers present at the Tommy Hilfiger Facility are not isolated (or temporary)
26 interruptions in access due to maintenance or repairs.³⁰

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28 ²⁹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

³⁰ Id.; 28 C.F.R. § 36.211(b)

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1 123. The Van Heusen Defendants knew that these elements and areas of
2 the Van Heusen Facility were inaccessible, violate state and federal law, and
3 interfere with (or deny) access to the physically disabled. Moreover, the Van
4 Heusen Defendants have the financial resources to remove these barriers from
5 the Van Heusen Facility (without much difficulty or expense), and make the Van
6 Heusen Facility accessible to the physically disabled. To date, however, the Van
7 Heusen Defendants refuse to either remove those barriers or seek an
8 unreasonable hardship exemption to excuse non-compliance.

9 124. At all relevant times, the Van Heusen Defendants have possessed
10 and enjoyed sufficient control and authority to modify the Van Heusen Facility
11 to remove impediments to wheelchair access and to comply with the Americans
12 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The Van
13 Heusen Defendants have not removed such impediments and have not modified
14 the Van Heusen Facility to conform to accessibility standards. The Van Heusen
15 Defendants have intentionally maintained the Van Heusen Facility in its current
16 condition and has intentionally refrained from altering the Van Heusen Facility
17 so that it complies with the accessibility standards.

18 125. Kohler further alleges that the (continued) presence of barriers at the
19 Van Heusen Facility is so obvious as to establish the Van Heusen Defendants'
20 discriminatory intent.³¹ On information and belief, Kohler avers that evidence of
21 the discriminatory intent includes the Van Heusen Defendants' refusal to adhere
22 to relevant building standards; disregard for the building plans and permits
23 issued for the Van Heusen Facility; conscientious decision to the architectural
24 layout (as it currently exists) at the Van Heusen Facility; decision not to remove
25 barriers from the Van Heusen Facility; and allowance that the Van Heusen
26 Facility continues to exist in its non-compliant state. Kohler further alleges, on
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³¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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1 information and belief, that the Van Heusen Defendants are not in the midst of a
2 remodel, and that the barriers present at the Van Heusen Facility are not isolated
3 (or temporary) interruptions in access due to maintenance or repairs.

4 126. The Banana Republic Defendants knew that these elements and
5 areas of the Banana Republic Facility were inaccessible, violate state and federal
6 law, and interfere with (or deny) access to the physically disabled. Moreover,
7 the Banana Republic Defendants have the financial resources to remove these
8 barriers from the Banana Republic Facility (without much difficulty or expense),
9 and make the Banana Republic Facility accessible to the physically disabled. To
10 date, however, the Banana Republic Defendants refuse to either remove those
11 barriers or seek an unreasonable hardship exemption to excuse non-compliance.

12 127. At all relevant times, the Banana Republic Defendants have
13 possessed and enjoyed sufficient control and authority to modify the Banana
14 Republic Facility to remove impediments to wheelchair access and to comply
15 with the Americans with Disabilities Act Accessibility Guidelines and Title 24
16 regulations. The Banana Republic Defendants have not removed such
17 impediments and have not modified the Banana Republic Facility to conform to
18 accessibility standards. The Banana Republic Defendants have intentionally
19 maintained the Banana Republic Facility in its current condition and has
20 intentionally refrained from altering the Banana Republic Facility so that it
21 complies with the accessibility standards.

22 128. Kohler further alleges that the (continued) presence of barriers at the
23 Banana Republic Facility is so obvious as to establish the Banana Republic
24 Defendants' discriminatory intent.³² On information and belief, Kohler avers
25 that evidence of the discriminatory intent includes the Banana Republic
26 Defendants' refusal to adhere to relevant building standards; disregard for the
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³² E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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1 building plans and permits issued for the Banana Republic Facility;
2 conscientious decision to the architectural layout (as it currently exists) at the
3 Banana Republic Facility; decision not to remove barriers from the Banana
4 Republic Facility; and allowance that the Banana Republic Facility continues to
5 exist in its non-compliant state. Kohler further alleges, on information and
6 belief, that the Banana Republic Defendants are not in the midst of a remodel,
7 and that the barriers present at the Banana Republic Facility are not isolated (or
8 temporary) interruptions in access due to maintenance or repairs.

9 VI. FIRST CLAIM

10 **Americans with Disabilities Act of 1990**

11 Denial of "Full and Equal" Enjoyment and Use

12 (The Common Area Facility)

13 129. Kohler incorporates the allegations contained in paragraphs 1
14 through 128 for this claim.

15 130. Title III of the ADA holds as a "general rule" that no individual
16 shall be discriminated against on the basis of disability in the full and equal
17 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
18 offered by any person who owns, operates, or leases a place of public
19 accommodation. 42 U.S.C. § 12182(a).

20 131. The Common Area Defendants discriminated against Kohler by
21 denying "full and equal enjoyment" and use of the goods, services, facilities,
22 privileges or accommodations of the Common Area Facility during each visit
23 and each incident of deterrence.

24 Failure to Remove Architectural Barriers in an Existing Facility

25 132. The ADA specifically prohibits failing to remove architectural
26 barriers, which are structural in nature, in existing facilities where such removal
27 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily
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1 achievable” is defined as “easily accomplishable and able to be carried out
2 without much difficulty or expense.” Id. § 12181(9).

3 133. When an entity can demonstrate that removal of a barrier is not
4 readily achievable, a failure to make goods, services, facilities, or
5 accommodations available through alternative methods is also specifically
6 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

7 134. Here, Kohler alleges that the Common Area Defendants can easily
8 remove the architectural barriers at the Common Area Facility without much
9 difficulty or expense, and that the Common Area Defendants violated the ADA
10 by failing to remove those barriers, when it was readily achievable to do so.

11 135. In the alternative, if it was not “readily achievable” for the Common
12 Area Defendants to remove the Common Area Facility’s barriers, then the
13 Common Area Defendants violated the ADA by failing to make the required
14 services available through alternative methods, which are readily achievable.

15 Failure to Design and Construct an Accessible Facility

16 136. On information and belief, the Common Area Facility was designed
17 or constructed (or both) after January 26, 1992—independently triggering access
18 requirements under Title III of the ADA.

19 137. The ADA also prohibits designing and constructing facilities for
20 first occupancy after January 26, 1993, that aren’t readily accessible to, and
21 usable by, individuals with disabilities when it was structurally practicable to do
22 so. 42 U.S.C. § 12183(a)(1).

23 138. Here, the Common Area Defendants violated the ADA by designing
24 or constructing (or both) the Common Area Facility in a manner that was not
25 readily accessible to the physically disabled public—including Kohler—when it
26 was structurally practical to do so.³³

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28 ³³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.
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1 He also seeks to enjoin the Common Area Defendants from violating the
2 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
3 recover reasonable attorneys' fees and incurred under California Civil Code §§
4 54.3 and 55.

5 VIII. THIRD CLAIM

6 **Unruh Civil Rights Act**

7 (The Common Area Facility)

8 152. Kohler incorporates the allegations contained in paragraphs 1
9 through 128 for this claim.

10 153. California Civil Code § 51 states, in part, that: All persons within
11 the jurisdiction of this state are entitled to the full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishments of
13 every kind whatsoever.

14 154. California Civil Code § 51.5 also states, in part, that: No business
15 establishment of any kind whatsoever shall discriminate against any person in
16 this state because of the disability of the person.

17 155. California Civil Code § 51(f) specifically incorporates (by
18 reference) an individual's rights under the ADA into the Unruh Act.

19 156. The Common Area Defendants' aforementioned acts and omissions
20 denied the physically disabled public—including Kohler—full and equal
21 accommodations, advantages, facilities, privileges and services in a business
22 establishment (because of their physical disability).

23 157. These acts and omissions (including the ones that violate the ADA)
24 denied, aided or incited a denial, or discriminated against Kohler by violating the
25 Unruh Act.

26 158. Kohler was damaged by the Common Area Defendants' wrongful
27 conduct, and seeks statutory minimum damages of four thousand dollars
28 (\$4,000) for each offense.

1 X. FIFTH CLAIM

2 **Americans with Disabilities Act of 1990**

3 Denial of "Full and Equal" Enjoyment and Use

4 (The Adidas Facility)

5 165. Kohler incorporates the allegations contained in paragraphs 1
6 through 128 for this claim.

7 166. Title III of the ADA holds as a "general rule" that no individual
8 shall be discriminated against on the basis of disability in the full and equal
9 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
10 offered by any person who owns, operates, or leases a place of public
11 accommodation. 42 U.S.C. § 12182(a).

12 167. The Adidas Defendants discriminated against Kohler by denying
13 "full and equal enjoyment" and use of the goods, services, facilities, privileges or
14 accommodations of the Adidas Facility during each visit and each incident of
15 deterrence.

16 Failure to Remove Architectural Barriers in an Existing Facility

17 168. The ADA specifically prohibits failing to remove architectural
18 barriers, which are structural in nature, in existing facilities where such removal
19 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily
20 achievable" is defined as "easily accomplishable and able to be carried out
21 without much difficulty or expense." *Id.* § 12181(9).

22 169. When an entity can demonstrate that removal of a barrier is not
23 readily achievable, a failure to make goods, services, facilities, or
24 accommodations available through alternative methods is also specifically
25 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

26 170. Here, Kohler alleges that the Adidas Defendants can easily remove
27 the architectural barriers at the Adidas Facility without much difficulty or
28

1 expense, and that the Adidas Defendants violated the ADA by failing to remove
2 those barriers, when it was readily achievable to do so.

3 171. In the alternative, if it was not “readily achievable” for the Adidas
4 Defendants to remove the Adidas Facility’s barriers, then the Adidas Defendants
5 violated the ADA by failing to make the required services available through
6 alternative methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 172. On information and belief, the Adidas Facility was designed or
9 constructed (or both) after January 26, 1992—independently triggering access
10 requirements under Title III of the ADA.

11 173. The ADA also prohibits designing and constructing facilities for
12 first occupancy after January 26, 1993, that aren’t readily accessible to, and
13 usable by, individuals with disabilities when it was structurally practicable to do
14 so. 42 U.S.C. § 12183(a)(1).

15 174. Here, the Adidas Defendants violated the ADA by designing or
16 constructing (or both) the Adidas Facility in a manner that was not readily
17 accessible to the physically disabled public—including Kohler—when it was
18 structurally practical to do so.³⁴

19 Failure to Make an Altered Facility Accessible

20 175. On information and belief, the Adidas Facility was modified after
21 January 26, 1992, independently triggering access requirements under the ADA.

22 176. The ADA also requires that facilities altered in a manner that affects
23 (or could affect) its usability must be made readily accessible to individuals with
24 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
25 an area that contains a facility’s primary function also requires adding making
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27
28 ³⁴ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 the paths of travel, bathrooms, telephones, and drinking fountains serving that
2 area accessible to the maximum extent feasible. Id.

3 177. Here, the Adidas Defendants altered the Adidas Facility in a manner
4 that violated the ADA and was not readily accessible to the physically disabled
5 public—including Kohler—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 178. The ADA also requires reasonable modifications in policies,
8 practices, or procedures, when necessary to afford such goods, services,
9 facilities, or accommodations to individuals with disabilities, unless the entity
10 can demonstrate that making such modifications would fundamentally alter their
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 179. Here, the Adidas Defendants violated the ADA by failing to make
13 reasonable modifications in policies, practices, or procedures at the Adidas
14 Facility, when these modifications were necessary to afford (and would not
15 fundamentally alter the nature of) these goods, services, facilities, or
16 accommodations.

17 180. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
18 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
19 U.S.C. § 12205.

20 181. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
21 that the Adidas Defendants violated the ADA in order to pursue damages under
22 California's Unruh Civil Rights Act or Disabled Persons Act.

23 **XI. SIXTH CLAIM**

24 **Disabled Persons Act**

25 (The Adidas Facility)

26 182. Kohler incorporates the allegations contained in paragraphs 1
27 through 128 for this claim.

1 183. California Civil Code § 54 states, in part, that: Individuals with
2 disabilities have the same right as the general public to the full and free use of
3 the streets, sidewalks, walkways, public buildings and facilities, and other public
4 places.

5 184. California Civil Code § 54.1 also states, in part, that: Individuals
6 with disabilities shall be entitled to full and equal access to accommodations,
7 facilities, telephone facilities, places of public accommodation, and other places
8 to which the general public is invited.

9 185. Both sections specifically incorporate (by reference) an individual's
10 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

11 186. Here, the Adidas Defendants discriminated against the physically
12 disabled public—including Kohler—by denying them full and equal access to
13 the Adidas Facility. The Adidas Defendants also violated Kohler's rights under
14 the ADA, and, therefore, infringed upon or violated (or both) Kohler's rights
15 under the Disabled Persons Act.

16 187. For each offense of the Disabled Persons Act, Kohler seeks actual
17 damages (both general and special damages), statutory minimum damages of one
18 thousand dollars (\$1,000), declaratory relief, and any other remedy available
19 under California Civil Code § 54.3.

20 188. He also seeks to enjoin the Adidas Defendants from violating the
21 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
22 recover reasonable attorneys' fees and incurred under California Civil Code §§
23 54.3 and 55.

24 **XII. SEVENTH CLAIM**

25 **Unruh Civil Rights Act**

26 (The Adidas Facility)

27 189. Kohler incorporates the allegations contained in paragraphs 1
28 through 128 for this claim.

1 198. Health and Safety Code § 19955(a) states, in part, that: California
2 public accommodations or facilities (built with private funds) shall adhere to the
3 provisions of Government Code § 4450.

4 199. Health and Safety Code § 19959 states, in part, that: Every existing
5 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
6 altered or structurally repaired, is required to comply with this chapter.

7 200. Kohler alleges the Adidas Facility is a public accommodation
8 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
9 and Safety Code or Government Code § 4450 (or both), and that the Adidas
10 Facility was not exempt under Health and Safety Code § 19956.

11 201. The Adidas Defendants' non-compliance with these requirements at
12 the Adidas Facility aggrieved (or potentially aggrieved) Kohler and other
13 persons with physical disabilities. Accordingly, He seeks injunctive relief and
14 attorney fees pursuant to Health and Safety Code § 19953.

15 **XIV. NINTH CLAIM**

16 **Americans with Disabilities Act of 1990**

17 **Denial of "Full and Equal" Enjoyment and Use**

18 **(The Brooks Brothers Facility)**

19 202. Kohler incorporates the allegations contained in paragraphs 1
20 through 128 for this claim.

21 203. Title III of the ADA holds as a "general rule" that no individual
22 shall be discriminated against on the basis of disability in the full and equal
23 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
24 offered by any person who owns, operates, or leases a place of public
25 accommodation. 42 U.S.C. § 12182(a).

26 204. The Brooks Brothers Defendants discriminated against Kohler by
27 denying "full and equal enjoyment" and use of the goods, services, facilities,
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1 privileges or accommodations of the Brooks Brothers Facility during each visit
2 and each incident of deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 205. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
7 achievable” is defined as “easily accomplishable and able to be carried out
8 without much difficulty or expense.” Id. § 12181(9).

9 206. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

13 207. Here, Kohler alleges that the Brooks Brothers Defendants can easily
14 remove the architectural barriers at the Brooks Brothers Facility without much
15 difficulty or expense, and that the Brooks Brothers Defendants violated the ADA
16 by failing to remove those barriers, when it was readily achievable to do so.

17 208. In the alternative, if it was not “readily achievable” for the Brooks
18 Brothers Defendants to remove the Brooks Brothers Facility’s barriers, then the
19 Brooks Brothers Defendants violated the ADA by failing to make the required
20 services available through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 209. On information and belief, the Brooks Brothers Facility was
23 designed or constructed (or both) after January 26, 1992—independently
24 triggering access requirements under Title III of the ADA.

25 210. The ADA also prohibits designing and constructing facilities for
26 first occupancy after January 26, 1993, that aren’t readily accessible to, and
27 usable by, individuals with disabilities when it was structurally practicable to do
28 so. 42 U.S.C. § 12183(a)(1).

1 211. Here, the Brooks Brothers Defendants violated the ADA by
2 designing or constructing (or both) the Brooks Brothers Facility in a manner that
3 was not readily accessible to the physically disabled public—including Kohler—
4 when it was structurally practical to do so.³⁵

5 Failure to Make an Altered Facility Accessible

6 212. On information and belief, the Brooks Brothers Facility was
7 modified after January 26, 1992, independently triggering access requirements
8 under the ADA.

9 213. The ADA also requires that facilities altered in a manner that affects
10 (or could affect) its usability must be made readily accessible to individuals with
11 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
12 an area that contains a facility's primary function also requires adding making
13 the paths of travel, bathrooms, telephones, and drinking fountains serving that
14 area accessible to the maximum extent feasible. *Id.*

15 214. Here, the Brooks Brothers Defendants altered the Brooks Brothers
16 Facility in a manner that violated the ADA and was not readily accessible to the
17 physically disabled public—including Kohler—to the maximum extent feasible.

18 Failure to Modify Existing Policies and Procedures

19 215. The ADA also requires reasonable modifications in policies,
20 practices, or procedures, when necessary to afford such goods, services,
21 facilities, or accommodations to individuals with disabilities, unless the entity
22 can demonstrate that making such modifications would fundamentally alter their
23 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

24 216. Here, the Brooks Brothers Defendants violated the ADA by failing
25 to make reasonable modifications in policies, practices, or procedures at the
26 Brooks Brothers Facility, when these modifications were necessary to afford
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28 ³⁵ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 (and would not fundamentally alter the nature of) these goods, services,
2 facilities, or accommodations.

3 217. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
5 U.S.C. § 12205.

6 218. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
7 that the Brooks Brothers Defendants violated the ADA in order to pursue
8 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

9 **XV. TENTH CLAIM**

10 **Disabled Persons Act**

11 (The Brooks Brothers Facility)

12 219. Kohler incorporates the allegations contained in paragraphs 1
13 through 128 for this claim.

14 220. California Civil Code § 54 states, in part, that: Individuals with
15 disabilities have the same right as the general public to the full and free use of
16 the streets, sidewalks, walkways, public buildings and facilities, and other public
17 places.

18 221. California Civil Code § 54.1 also states, in part, that: Individuals
19 with disabilities shall be entitled to full and equal access to accommodations,
20 facilities, telephone facilities, places of public accommodation, and other places
21 to which the general public is invited.

22 222. Both sections specifically incorporate (by reference) an individual's
23 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 223. Here, the Brooks Brothers Defendants discriminated against the
25 physically disabled public—including Kohler—by denying them full and equal
26 access to the Brooks Brothers Facility. The Brooks Brothers Defendants also
27 violated Kohler's rights under the ADA, and, therefore, infringed upon or
28 violated (or both) Kohler's rights under the Disabled Persons Act.

1 Kohler and other persons with physical disabilities. Accordingly, he seeks
2 injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

3 XVIII. THIRTEENTH CLAIM

4 **Americans with Disabilities Act of 1990**

5 Denial of "Full and Equal" Enjoyment and Use

6 (The Converse Facility)

7 239. Kohler incorporates the allegations contained in paragraphs 1
8 through 128 for this claim.

9 240. Title III of the ADA holds as a "general rule" that no individual
10 shall be discriminated against on the basis of disability in the full and equal
11 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
12 offered by any person who owns, operates, or leases a place of public
13 accommodation. 42 U.S.C. § 12182(a).

14 241. The Converse Defendants discriminated against Kohler by denying
15 "full and equal enjoyment" and use of the goods, services, facilities, privileges or
16 accommodations of the Converse Facility during each visit and each incident of
17 deterrence.

18 Failure to Remove Architectural Barriers in an Existing Facility

19 242. The ADA specifically prohibits failing to remove architectural
20 barriers, which are structural in nature, in existing facilities where such removal
21 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily
22 achievable" is defined as "easily accomplishable and able to be carried out
23 without much difficulty or expense." *Id.* § 12181(9).

24 243. When an entity can demonstrate that removal of a barrier is not
25 readily achievable, a failure to make goods, services, facilities, or
26 accommodations available through alternative methods is also specifically
27 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

1 244. Here, Kohler alleges that the Converse Defendants can easily
2 remove the architectural barriers at the Converse Facility without much difficulty
3 or expense, and that the Converse Defendants violated the ADA by failing to
4 remove those barriers, when it was readily achievable to do so.

5 245. In the alternative, if it was not “readily achievable” for the Converse
6 Defendants to remove the Converse Facility’s barriers, then the Converse
7 Defendants violated the ADA by failing to make the required services available
8 through alternative methods, which are readily achievable.

9 Failure to Design and Construct an Accessible Facility

10 246. On information and belief, the Converse Facility was designed or
11 constructed (or both) after January 26, 1992—independently triggering access
12 requirements under Title III of the ADA.

13 247. The ADA also prohibits designing and constructing facilities for
14 first occupancy after January 26, 1993, that aren’t readily accessible to, and
15 usable by, individuals with disabilities when it was structurally practicable to do
16 so. 42 U.S.C. § 12183(a)(1).

17 248. Here, the Converse Defendants violated the ADA by designing or
18 constructing (or both) the Converse Facility in a manner that was not readily
19 accessible to the physically disabled public—including Kohler—when it was
20 structurally practical to do so.³⁶

21 Failure to Make an Altered Facility Accessible

22 249. On information and belief, the Converse Facility was modified after
23 January 26, 1992, independently triggering access requirements under the ADA.

24 250. The ADA also requires that facilities altered in a manner that affects
25 (or could affect) its usability must be made readily accessible to individuals with
26 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
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28 ³⁶ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.
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1 an area that contains a facility's primary function also requires adding making
2 the paths of travel, bathrooms, telephones, and drinking fountains serving that
3 area accessible to the maximum extent feasible. Id.

4 251. Here, the Converse Defendants altered the Converse Facility in a
5 manner that violated the ADA and was not readily accessible to the physically
6 disabled public—including Kohler—to the maximum extent feasible.

7 Failure to Modify Existing Policies and Procedures

8 252. The ADA also requires reasonable modifications in policies,
9 practices, or procedures, when necessary to afford such goods, services,
10 facilities, or accommodations to individuals with disabilities, unless the entity
11 can demonstrate that making such modifications would fundamentally alter their
12 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

13 253. Here, the Converse Defendants violated the ADA by failing to make
14 reasonable modifications in policies, practices, or procedures at the Converse
15 Facility, when these modifications were necessary to afford (and would not
16 fundamentally alter the nature of) these goods, services, facilities, or
17 accommodations.

18 254. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
19 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
20 U.S.C. § 12205.

21 255. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
22 that the Converse Defendants violated the ADA in order to pursue damages
23 under California's Unruh Civil Rights Act or Disabled Persons Act.

24 **XIX. FOURTEENTH CLAIM**

25 **Disabled Persons Act**

26 **(The Converse Facility)**

27 256. Kohler incorporates the allegations contained in paragraphs 1
28 through 128 for this claim.

1 privileges or accommodations of the Le Gourmet Chef Facility during each visit
2 and each incident of deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 279. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
7 achievable” is defined as “easily accomplishable and able to be carried out
8 without much difficulty or expense.” Id. § 12181(9).

9 280. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

13 281. Here, Kohler alleges that the Le Gourmet Chef Defendants can
14 easily remove the architectural barriers at the Le Gourmet Chef Facility without
15 much difficulty or expense, and that the Le Gourmet Chef Defendants violated
16 the ADA by failing to remove those barriers, when it was readily achievable to
17 do so.

18 282. In the alternative, if it was not “readily achievable” for the Le
19 Gourmet Chef Defendants to remove the Le Gourmet Chef Facility’s barriers,
20 then the Le Gourmet Chef Defendants violated the ADA by failing to make the
21 required services available through alternative methods, which are readily
22 achievable.

23 Failure to Design and Construct an Accessible Facility

24 283. On information and belief, the Le Gourmet Chef Facility was
25 designed or constructed (or both) after January 26, 1992—independently
26 triggering access requirements under Title III of the ADA.

27 284. The ADA also prohibits designing and constructing facilities for
28 first occupancy after January 26, 1993, that aren’t readily accessible to, and

1 usable by, individuals with disabilities when it was structurally practicable to do
2 so. 42 U.S.C. § 12183(a)(1).

3 285. Here, the Le Gourmet Chef Defendants violated the ADA by
4 designing or constructing (or both) the Le Gourmet Chef Facility in a manner
5 that was not readily accessible to the physically disabled public—including
6 Kohler—when it was structurally practical to do so.³⁷

7 Failure to Make an Altered Facility Accessible

8 286. On information and belief, the Le Gourmet Chef Facility was
9 modified after January 26, 1992, independently triggering access requirements
10 under the ADA.

11 287. The ADA also requires that facilities altered in a manner that affects
12 (or could affect) its usability must be made readily accessible to individuals with
13 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
14 an area that contains a facility's primary function also requires adding making
15 the paths of travel, bathrooms, telephones, and drinking fountains serving that
16 area accessible to the maximum extent feasible. Id.

17 288. Here, the Le Gourmet Chef Defendants altered the Le Gourmet Chef
18 Facility in a manner that violated the ADA and was not readily accessible to the
19 physically disabled public—including Kohler—to the maximum extent feasible.

20 Failure to Modify Existing Policies and Procedures

21 289. The ADA also requires reasonable modifications in policies,
22 practices, or procedures, when necessary to afford such goods, services,
23 facilities, or accommodations to individuals with disabilities, unless the entity
24 can demonstrate that making such modifications would fundamentally alter their
25 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

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28 ³⁷ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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1 access to the Le Gourmet Chef Facility. The Le Gourmet Chef Defendants also
2 violated Kohler's rights under the ADA, and, therefore, infringed upon or
3 violated (or both) Kohler's rights under the Disabled Persons Act.

4 298. For each offense of the Disabled Persons Act, Kohler seeks actual
5 damages (both general and special damages), statutory minimum damages of one
6 thousand dollars (\$1,000), declaratory relief, and any other remedy available
7 under California Civil Code § 54.3.

8 He also seeks to enjoin the Le Gourmet Chef Defendants from violating
9 the Disabled Persons Act (and ADA) under California Civil Code § 55, and to
10 recover reasonable attorneys' fees and incurred under California Civil Code §§
11 54.3 and 55.

12 **XXIV. TWENTY-THIRD CLAIM**

13 **Unruh Civil Rights Act**

14 (The Le Gourmet Chef Facility)

15 299. Kohler incorporates the allegations contained in paragraphs 1
16 through 128 for this claim.

17 300. California Civil Code § 51 states, in part, that: All persons within
18 the jurisdiction of this state are entitled to the full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishments of
20 every kind whatsoever.

21 301. California Civil Code § 51.5 also states, in part, that: No business
22 establishment of any kind whatsoever shall discriminate against any person in
23 this state because of the disability of the person.

24 302. California Civil Code § 51(f) specifically incorporates (by
25 reference) an individual's rights under the ADA into the Unruh Act.

26 303. The Le Gourmet Chef Defendants' aforementioned acts and
27 omissions denied the physically disabled public—including Kohler—full and
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1 equal accommodations, advantages, facilities, privileges and services in a
2 business establishment (because of their physical disability).

3 304. These acts and omissions (including the ones that violate the ADA)
4 denied, aided or incited a denial, or discriminated against Kohler by violating the
5 Unruh Act.

6 305. Kohler was damaged by the Le Gourmet Chef Defendants' wrongful
7 conduct, and seeks statutory minimum damages of four thousand dollars
8 (\$4,000) for each offense.

9 306. Kohler also seeks to enjoin the Le Gourmet Chef Defendants from
10 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and
11 costs incurred under California Civil Code § 52(a).

12 XXV. TWENTY-FOURTH CLAIM

13 **Denial of Full and Equal Access to Public Facilities**

14 (The Le Gourmet Chef Facility)

15 307. Kohler incorporates the allegations contained in paragraphs 1
16 through 128 for this claim. . .

17 308. Health and Safety Code § 19955(a) states, in part, that: California
18 public accommodations or facilities (built with private funds) shall adhere to the
19 provisions of Government Code § 4450.

20 309. Health and Safety Code § 19959 states, in part, that: Every existing
21 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
22 altered or structurally repaired, is required to comply with this chapter.

23 310. Kohler alleges the Le Gourmet Chef Facility is a public
24 accommodation constructed, altered, or repaired in a manner that violates Part
25 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and
26 that the Le Gourmet Chef Facility was not exempt under Health and Safety Code
27 § 19956.

1 311. The Le Gourmet Chef Defendants' non-compliance with these
2 requirements at the Le Gourmet Chef Facility aggrieved (or potentially
3 aggrieved) Kohler and other persons with physical disabilities. Accordingly, He
4 seeks injunctive relief and attorney fees pursuant to Health and Safety Code §
5 19953.

6 XXVI. TWENTY-FIFTH CLAIM
7 **Americans with Disabilities Act of 1990**
8 Denial of "Full and Equal" Enjoyment and Use
9 (The Gap Facility)

10 312. Kohler incorporates the allegations contained in paragraphs 1
11 through 128 for this claim.

12 313. Title III of the ADA holds as a "general rule" that no individual
13 shall be discriminated against on the basis of disability in the full and equal
14 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
15 offered by any person who owns, operates, or leases a place of public
16 accommodation. 42 U.S.C. § 12182(a).

17 314. The Gap Defendants discriminated against Kohler by denying "full
18 and equal enjoyment" and use of the goods, services, facilities, privileges or
19 accommodations of the Gap Facility during each visit and each incident of
20 deterrence.

21 Failure to Remove Architectural Barriers in an Existing Facility

22 315. The ADA specifically prohibits failing to remove architectural
23 barriers, which are structural in nature, in existing facilities where such removal
24 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily
25 achievable" is defined as "easily accomplishable and able to be carried out
26 without much difficulty or expense." *Id.* § 12181(9).

27 316. When an entity can demonstrate that removal of a barrier is not
28 readily achievable, a failure to make goods, services, facilities, or

1 accommodations available through alternative methods is also specifically
2 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

3 317. Here, Kohler alleges that the Gap Defendants can easily remove the
4 architectural barriers at the Gap Facility without much difficulty or expense, and
5 that the Gap Defendants violated the ADA by failing to remove those barriers,
6 when it was readily achievable to do so.

7 318. In the alternative, if it was not “readily achievable” for the Gap
8 Defendants to remove the Gap Facility’s barriers, then the Gap Defendants
9 violated the ADA by failing to make the required services available through
10 alternative methods, which are readily achievable.

11 Failure to Design and Construct an Accessible Facility

12 319. On information and belief, the Gap Facility was designed or
13 constructed (or both) after January 26, 1992—independently triggering access
14 requirements under Title III of the ADA.

15 320. The ADA also prohibits designing and constructing facilities for
16 first occupancy after January 26, 1993, that aren’t readily accessible to, and
17 usable by, individuals with disabilities when it was structurally practicable to do
18 so. 42 U.S.C. § 12183(a)(1).

19 321. Here, the Gap Defendants violated the ADA by designing or
20 constructing (or both) the Gap Facility in a manner that was not readily
21 accessible to the physically disabled public—including Kohler—when it was
22 structurally practical to do so.³⁸

23 Failure to Make an Altered Facility Accessible

24 322. On information and belief, the Gap Facility was modified after
25 January 26, 1992, independently triggering access requirements under the ADA.

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28 ³⁸ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 323. The ADA also requires that facilities altered in a manner that affects
2 (or could affect) its usability must be made readily accessible to individuals with
3 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
4 an area that contains a facility's primary function also requires adding making
5 the paths of travel, bathrooms, telephones, and drinking fountains serving that
6 area accessible to the maximum extent feasible. Id.

7 324. Here, the Gap Defendants altered the Gap Facility in a manner that
8 violated the ADA and was not readily accessible to the physically disabled
9 public—including Kohler—to the maximum extent feasible.

10 Failure to Modify Existing Policies and Procedures

11 325. The ADA also requires reasonable modifications in policies,
12 practices, or procedures, when necessary to afford such goods, services,
13 facilities, or accommodations to individuals with disabilities, unless the entity
14 can demonstrate that making such modifications would fundamentally alter their
15 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

16 326. Here, the Gap Defendants violated the ADA by failing to make
17 reasonable modifications in policies, practices, or procedures at the Gap Facility,
18 when these modifications were necessary to afford (and would not fundamentally
19 alter the nature of) these goods, services, facilities, or accommodations.

20 327. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
21 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
22 U.S.C. § 12205.

23 328. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
24 that the Gap Defendants violated the ADA in order to pursue damages under
25 California's Unruh Civil Rights Act or Disabled Persons Act.

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XXVII. TWENTY-SIXTH CLAIM

Disabled Persons Act

(The Gap Facility)

329. Kohler incorporates the allegations contained in paragraphs 1 through 128 for this claim.

330. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

331. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

332. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

333. Here, the Gap Defendants discriminated against the physically disabled public—including Kohler—by denying them full and equal access to the Gap Facility. The Gap Defendants also violated Kohler's rights under the ADA, and, therefore, infringed upon or violated (or both) Kohler's rights under the Disabled Persons Act.

334. For each offense of the Disabled Persons Act, Kohler seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

He also seeks to enjoin the Gap Defendants from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

1 XXVIII. TWENTY-SEVENTH CLAIM

2 **Unruh Civil Rights Act**

3 (The Gap Facility)

4 335. Kohler incorporates the allegations contained in paragraphs 1
5 through 128 for this claim.

6 336. California Civil Code § 51 states, in part, that: All persons within
7 the jurisdiction of this state are entitled to the full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishments of
9 every kind whatsoever.

10 337. California Civil Code § 51.5 also states, in part, that: No business
11 establishment of any kind whatsoever shall discriminate against any person in
12 this state because of the disability of the person.

13 338. California Civil Code § 51(f) specifically incorporates (by
14 reference) an individual's rights under the ADA into the Unruh Act.

15 339. The Gap Defendants' aforementioned acts and omissions denied the
16 physically disabled public—including Kohler—full and equal accommodations,
17 advantages, facilities, privileges and services in a business establishment
18 (because of their physical disability).

19 340. These acts and omissions (including the ones that violate the ADA)
20 denied, aided or incited a denial, or discriminated against Kohler by violating the
21 Unruh Act.

22 341. Kohler was damaged by the Gap Defendants' wrongful conduct, and
23 seeks statutory minimum damages of four thousand dollars (\$4,000) for each
24 offense.

25 342. Kohler also seeks to enjoin the Gap Defendants from violating the
26 Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred
27 under California Civil Code § 52(a).

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XXIX. TWENTY-EIGHTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Gap Facility)

343. Kohler incorporates the allegations contained in paragraphs 1 through 128 for this claim.

344. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

345. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

346. Kohler alleges the Gap Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Gap Facility was not exempt under Health and Safety Code § 19956.

347. The Gap Defendants' non-compliance with these requirements at the Gap Facility aggrieved (or potentially aggrieved) Kohler and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

XXX. TWENTY-NINTH CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Hot Dog Facility)

348. Kohler incorporates the allegations contained in paragraphs 1 through 128 for this claim.

349. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations

1 offered by any person who owns, operates, or leases a place of public
2 accommodation. 42 U.S.C. § 12182(a).

3 350. The Hot Dog Defendants discriminated against Kohler by denying
4 “full and equal enjoyment” and use of the goods, services, facilities, privileges or
5 accommodations of the Hot Dog Facility during each visit and each incident of
6 deterrence.

7 Failure to Remove Architectural Barriers in an Existing Facility

8 351. The ADA specifically prohibits failing to remove architectural
9 barriers, which are structural in nature, in existing facilities where such removal
10 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
11 achievable” is defined as “easily accomplishable and able to be carried out
12 without much difficulty or expense.” *Id.* § 12181(9).

13 352. When an entity can demonstrate that removal of a barrier is not
14 readily achievable, a failure to make goods, services, facilities, or
15 accommodations available through alternative methods is also specifically
16 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

17 353. Here, Kohler alleges that the Hot Dog Defendants can easily remove
18 the architectural barriers at the Hot Dog Facility without much difficulty or
19 expense, and that the Hot Dog Defendants violated the ADA by failing to
20 remove those barriers, when it was readily achievable to do so.

21 354. In the alternative, if it was not “readily achievable” for the Hot Dog
22 Defendants to remove the Hot Dog Facility’s barriers, then the Hot Dog
23 Defendants violated the ADA by failing to make the required services available
24 through alternative methods, which are readily achievable.

25 Failure to Design and Construct an Accessible Facility

26 355. On information and belief, the Hot Dog Facility was designed or
27 constructed (or both) after January 26, 1992—independently triggering access
28 requirements under Title III of the ADA.

1 356. The ADA also prohibits designing and constructing facilities for
2 first occupancy after January 26, 1993, that aren't readily accessible to, and
3 usable by, individuals with disabilities when it was structurally practicable to do
4 so. 42 U.S.C. § 12183(a)(1).

5 357. Here, the Hot Dog Defendants violated the ADA by designing or
6 constructing (or both) the Hot Dog Facility in a manner that was not readily
7 accessible to the physically disabled public—including Kohler—when it was
8 structurally practical to do so.³⁹

9 Failure to Make an Altered Facility Accessible

10 358. On information and belief, the Hot Dog Facility was modified after
11 January 26, 1992, independently triggering access requirements under the ADA.

12 359. The ADA also requires that facilities altered in a manner that affects
13 (or could affect) its usability must be made readily accessible to individuals with
14 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
15 an area that contains a facility's primary function also requires adding making
16 the paths of travel, bathrooms, telephones, and drinking fountains serving that
17 area accessible to the maximum extent feasible. *Id.*

18 360. Here, the Hot Dog Defendants altered the Hot Dog Facility in a
19 manner that violated the ADA and was not readily accessible to the physically
20 disabled public—including Kohler—to the maximum extent feasible.

21 Failure to Modify Existing Policies and Procedures

22 361. The ADA also requires reasonable modifications in policies,
23 practices, or procedures, when necessary to afford such goods, services,
24 facilities, or accommodations to individuals with disabilities, unless the entity
25 can demonstrate that making such modifications would fundamentally alter their
26 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

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28 ³⁹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.
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1 the Hot Dog Facility. The Hot Dog Defendants also violated Kohler's rights
2 under the ADA, and, therefore, infringed upon or violated (or both) Kohler's
3 rights under the Disabled Persons Act.

4 370. For each offense of the Disabled Persons Act, Kohler seeks actual
5 damages (both general and special damages), statutory minimum damages of one
6 thousand dollars (\$1,000), declaratory relief, and any other remedy available
7 under California Civil Code § 54.3.

8 371. He also seeks to enjoin the Hot Dog Defendants from violating the
9 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
10 recover reasonable attorneys' fees and incurred under California Civil Code §§
11 54.3 and 55.

12 XXXII. THIRTY-FIRST CLAIM

13 **Unruh Civil Rights Act**

14 (The Hot Dog Facility)

15 372. Kohler incorporates the allegations contained in paragraphs 1
16 through 128 for this claim.

17 373. California Civil Code § 51 states, in part, that: All persons within
18 the jurisdiction of this state are entitled to the full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishments of
20 every kind whatsoever.

21 374. California Civil Code § 51.5 also states, in part, that: No business
22 establishment of any kind whatsoever shall discriminate against any person in
23 this state because of the disability of the person.

24 375. California Civil Code § 51(f) specifically incorporates (by
25 reference) an individual's rights under the ADA into the Unruh Act.

26 376. The Hot Dog Defendants' aforementioned acts and omissions
27 denied the physically disabled public—including Kohler—full and equal
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1 accommodations, advantages, facilities, privileges and services in a business
2 establishment (because of their physical disability).

3 377. These acts and omissions (including the ones that violate the ADA)
4 denied, aided or incited a denial, or discriminated against Kohler by violating the
5 Unruh Act.

6 378. Kohler was damaged by the Hot Dog Defendants' wrongful
7 conduct, and seeks statutory minimum damages of four thousand dollars
8 (\$4,000) for each offense.

9 379. Kohler also seeks to enjoin the Hot Dog Defendants from violating
10 the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs
11 incurred under California Civil Code § 52(a).

12 XXXIII. THIRTY-SECOND CLAIM

13 **Denial of Full and Equal Access to Public Facilities**

14 (The Hot Dog Facility)

15 380. Kohler incorporates the allegations contained in paragraphs 1
16 through 128 for this claim.

17 381. Health and Safety Code § 19955(a) states, in part, that: California
18 public accommodations or facilities (built with private funds) shall adhere to the
19 provisions of Government Code § 4450.

20 382. Health and Safety Code § 19959 states, in part, that: Every existing
21 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
22 altered or structurally repaired, is required to comply with this chapter.

23 383. Kohler alleges the Hot Dog Facility is a public accommodation
24 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
25 and Safety Code or Government Code § 4450 (or both), and that the Hot Dog
26 Facility was not exempt under Health and Safety Code § 19956.

27 384. The Hot Dog Defendants' non-compliance with these requirements
28 at the Hot Dog Facility aggrieved (or potentially aggrieved) Kohler and other

1 persons with physical disabilities. Accordingly, He seeks injunctive relief and
2 attorney fees pursuant to Health and Safety Code § 19953.

3 **XXXIV. THIRTY-THIRD CLAIM**

4 **Americans with Disabilities Act of 1990**

5 Denial of "Full and Equal" Enjoyment and Use

6 (The Jockey Facility)

7 385. Kohler incorporates the allegations contained in paragraphs 1
8 through 128 for this claim.

9 386. Title III of the ADA holds as a "general rule" that no individual
10 shall be discriminated against on the basis of disability in the full and equal
11 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
12 offered by any person who owns, operates, or leases a place of public
13 accommodation. 42 U.S.C. § 12182(a).

14 387. The Jockey Defendants discriminated against Kohler by denying
15 "full and equal enjoyment" and use of the goods, services, facilities, privileges or
16 accommodations of the Jockey Facility during each visit and each incident of
17 deterrence.

18 Failure to Remove Architectural Barriers in an Existing Facility

19 388. The ADA specifically prohibits failing to remove architectural
20 barriers, which are structural in nature, in existing facilities where such removal
21 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily
22 achievable" is defined as "easily accomplishable and able to be carried out
23 without much difficulty or expense." *Id.* § 12181(9).

24 389. When an entity can demonstrate that removal of a barrier is not
25 readily achievable, a failure to make goods, services, facilities, or
26 accommodations available through alternative methods is also specifically
27 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

1 390. Here, Kohler alleges that the Jockey Defendants can easily remove
2 the architectural barriers at the Jockey Facility without much difficulty or
3 expense, and that the Jockey Defendants violated the ADA by failing to remove
4 those barriers, when it was readily achievable to do so.

5 391. In the alternative, if it was not “readily achievable” for the Jockey
6 Defendants to remove the Jockey Facility’s barriers, then the Jockey Defendants
7 violated the ADA by failing to make the required services available through
8 alternative methods, which are readily achievable.

9 Failure to Design and Construct an Accessible Facility

10 392. On information and belief, the Jockey Facility was designed or
11 constructed (or both) after January 26, 1992—independently triggering access
12 requirements under Title III of the ADA.

13 393. The ADA also prohibits designing and constructing facilities for
14 first occupancy after January 26, 1993, that aren’t readily accessible to, and
15 usable by, individuals with disabilities when it was structurally practicable to do
16 so. 42 U.S.C. § 12183(a)(1).

17 394. Here, the Jockey Defendants violated the ADA by designing or
18 constructing (or both) the Jockey Facility in a manner that was not readily
19 accessible to the physically disabled public—including Kohler—when it was
20 structurally practical to do so.⁴⁰

21 Failure to Make an Altered Facility Accessible

22 395. On information and belief, the Jockey Facility was modified after
23 January 26, 1992, independently triggering access requirements under the ADA.

24 396. The ADA also requires that facilities altered in a manner that affects
25 (or could affect) its usability must be made readily accessible to individuals with
26 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
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28 ⁴⁰ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 an area that contains a facility's primary function also requires adding making
2 the paths of travel, bathrooms, telephones, and drinking fountains serving that
3 area accessible to the maximum extent feasible. Id.

4 397. Here, the Jockey Defendants altered the Jockey Facility in a manner
5 that violated the ADA and was not readily accessible to the physically disabled
6 public—including Kohler—to the maximum extent feasible.

7 Failure to Modify Existing Policies and Procedures

8 398. The ADA also requires reasonable modifications in policies,
9 practices, or procedures, when necessary to afford such goods, services,
10 facilities, or accommodations to individuals with disabilities, unless the entity
11 can demonstrate that making such modifications would fundamentally alter their
12 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

13 399. Here, the Jockey Defendants violated the ADA by failing to make
14 reasonable modifications in policies, practices, or procedures at the Jockey
15 Facility, when these modifications were necessary to afford (and would not
16 fundamentally alter the nature of) these goods, services, facilities, or
17 accommodations.

18 400. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
19 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
20 U.S.C. § 12205.

21 401. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
22 that the Jockey Defendants violated the ADA in order to pursue damages under
23 California's Unruh Civil Rights Act or Disabled Persons Act.

24 **XXXV. THIRTY-FOURTH CLAIM**

25 **Disabled Persons Act**

26 **(The Jockey Facility)**

27 402. Kohler incorporates the allegations contained in paragraphs 1
28 through 128 for this claim.

1 403. California Civil Code § 54 states, in part, that: Individuals with
2 disabilities have the same right as the general public to the full and free use of
3 the streets, sidewalks, walkways, public buildings and facilities, and other public
4 places.

5 404. California Civil Code § 54.1 also states, in part, that: Individuals
6 with disabilities shall be entitled to full and equal access to accommodations,
7 facilities, telephone facilities, places of public accommodation, and other places
8 to which the general public is invited.

9 405. Both sections specifically incorporate (by reference) an individual's
10 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

11 406. Here, the Jockey Defendants discriminated against the physically
12 disabled public—including Kohler—by denying them full and equal access to
13 the Jockey Facility. The Jockey Defendants also violated Kohler's rights under
14 the ADA, and, therefore, infringed upon or violated (or both) Kohler's rights
15 under the Disabled Persons Act.

16 407. For each offense of the Disabled Persons Act, Kohler seeks actual
17 damages (both general and special damages), statutory minimum damages of one
18 thousand dollars (\$1,000), declaratory relief, and any other remedy available
19 under California Civil Code § 54.3.

20 408. He also seeks to enjoin the Jockey Defendants from violating the
21 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
22 recover reasonable attorneys' fees and incurred under California Civil Code §§
23 54.3 and 55.

24 **XXXVI. THIRTY-FIFTH CLAIM**

25 **Unruh Civil Rights Act**

26 (The Jockey Facility)

27 409. Kohler incorporates the allegations contained in paragraphs 1
28 through 128 for this claim.

1 410. California Civil Code § 51 states, in part, that: All persons within
2 the jurisdiction of this state are entitled to the full and equal accommodations,
3 advantages, facilities, privileges, or services in all business establishments of
4 every kind whatsoever.

5 411. California Civil Code § 51.5 also states, in part, that: No business
6 establishment of any kind whatsoever shall discriminate against any person in
7 this state because of the disability of the person.

8 412. California Civil Code § 51(f) specifically incorporates (by
9 reference) an individual's rights under the ADA into the Unruh Act.

10 413. The Jockey Defendants' aforementioned acts and omissions denied
11 the physically disabled public—including Kohler—full and equal
12 accommodations, advantages, facilities, privileges and services in a business
13 establishment (because of their physical disability).

14 414. These acts and omissions (including the ones that violate the ADA)
15 denied, aided or incited a denial, or discriminated against Kohler by violating the
16 Unruh Act.

17 415. Kohler was damaged by the Jockey Defendants' wrongful conduct,
18 and seeks statutory minimum damages of four thousand dollars (\$4,000) for each
19 offense.

20 416. Kohler also seeks to enjoin the Jockey Defendants from violating
21 the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs
22 incurred under California Civil Code § 52(a).

23 .XXXVII. THIRTY-SIXTH CLAIM

24 **Denial of Full and Equal Access to Public Facilities**

25 (The Jockey Facility)

26 417. Kohler incorporates the allegations contained in paragraphs 1
27 through 128 for this claim.

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1 418. Health and Safety Code § 19955(a) states, in part, that: California
2 public accommodations or facilities (built with private funds) shall adhere to the
3 provisions of Government Code § 4450.

4 419. Health and Safety Code § 19959 states, in part, that: Every existing
5 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
6 altered or structurally repaired, is required to comply with this chapter.

7 420. Kohler alleges the Jockey Facility is a public accommodation
8 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
9 and Safety Code or Government Code § 4450 (or both), and that the Jockey
10 Facility was not exempt under Health and Safety Code § 19956.

11 421. The Jockey Defendants' non-compliance with these requirements at
12 the Jockey Facility aggrieved (or potentially aggrieved) Kohler and other persons
13 with physical disabilities. Accordingly, He seeks injunctive relief and attorney
14 fees pursuant to Health and Safety Code § 19953.

15 **XXXVIII. THIRTY-SEVENTH CLAIM**

16 **Americans with Disabilities Act of 1990**

17 **Denial of "Full and Equal" Enjoyment and Use**

18 **(The Kenneth Cole Facility)**

19 422. Kohler incorporates the allegations contained in paragraphs 1
20 through 128 for this claim.

21 423. Title III of the ADA holds as a "general rule" that no individual
22 shall be discriminated against on the basis of disability in the full and equal
23 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
24 offered by any person who owns, operates, or leases a place of public
25 accommodation. 42 U.S.C. § 12182(a).

26 424. The Kenneth Cole Defendants discriminated against Kohler by
27 denying "full and equal enjoyment" and use of the goods, services, facilities,
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1 privileges or accommodations of the Kenneth Cole Facility during each visit and
2 each incident of deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 425. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
7 achievable” is defined as “easily accomplishable and able to be carried out
8 without much difficulty or expense.” Id. § 12181(9).

9 426. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

13 427. Here, Kohler alleges that the Kenneth Cole Defendants can easily
14 remove the architectural barriers at the Kenneth Cole Facility without much
15 difficulty or expense, and that the Kenneth Cole Defendants violated the ADA
16 by failing to remove those barriers, when it was readily achievable to do so.

17 428. In the alternative, if it was not “readily achievable” for the Kenneth
18 Cole Defendants to remove the Kenneth Cole Facility’s barriers, then the
19 Kenneth Cole Defendants violated the ADA by failing to make the required
20 services available through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 429. On information and belief, the Kenneth Cole Facility was designed
23 or constructed (or both) after January 26, 1992—independently triggering access
24 requirements under Title III of the ADA.

25 430. The ADA also prohibits designing and constructing facilities for
26 first occupancy after January 26, 1993, that aren’t readily accessible to, and
27 usable by, individuals with disabilities when it was structurally practicable to do
28 so. 42 U.S.C. § 12183(a)(1).

1 431. Here, the Kenneth Cole Defendants violated the ADA by designing
2 or constructing (or both) the Kenneth Cole Facility in a manner that was not
3 readily accessible to the physically disabled public—including Kohler—when it
4 was structurally practical to do so.⁴¹

5 Failure to Make an Altered Facility Accessible

6 432. On information and belief, the Kenneth Cole Facility was modified
7 after January 26, 1992, independently triggering access requirements under the
8 ADA.

9 433. The ADA also requires that facilities altered in a manner that affects
10 (or could affect) its usability must be made readily accessible to individuals with
11 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
12 an area that contains a facility's primary function also requires adding making
13 the paths of travel, bathrooms, telephones, and drinking fountains serving that
14 area accessible to the maximum extent feasible. Id.

15 434. Here, the Kenneth Cole Defendants altered the Kenneth Cole
16 Facility in a manner that violated the ADA and was not readily accessible to the
17 physically disabled public—including Kohler—to the maximum extent feasible.

18 Failure to Modify Existing Policies and Procedures

19 435. The ADA also requires reasonable modifications in policies,
20 practices, or procedures, when necessary to afford such goods, services,
21 facilities, or accommodations to individuals with disabilities, unless the entity
22 can demonstrate that making such modifications would fundamentally alter their
23 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

24 436. Here, the Kenneth Cole Defendants violated the ADA by failing to
25 make reasonable modifications in policies, practices, or procedures at the
26 Kenneth Cole Facility, when these modifications were necessary to afford (and
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28 ⁴¹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 would not fundamentally alter the nature of) these goods, services, facilities, or
2 accommodations.

3 437. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
5 U.S.C. § 12205.

6 438. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
7 that the Kenneth Cole Defendants violated the ADA in order to pursue damages
8 under California's Unruh Civil Rights Act or Disabled Persons Act.

9 XXXIX. THIRTY-EIGHTH CLAIM

10 **Disabled Persons Act**

11 (The Kenneth Cole Facility)

12 439. Kohler incorporates the allegations contained in paragraphs 1
13 through 128 for this claim.

14 440. California Civil Code § 54 states, in part, that: Individuals with
15 disabilities have the same right as the general public to the full and free use of
16 the streets, sidewalks, walkways, public buildings and facilities, and other public
17 places.

18 441. California Civil Code § 54.1 also states, in part, that: Individuals
19 with disabilities shall be entitled to full and equal access to accommodations,
20 facilities, telephone facilities, places of public accommodation, and other places
21 to which the general public is invited.

22 442. Both sections specifically incorporate (by reference) an individual's
23 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 443. Here, the Kenneth Cole Defendants discriminated against the
25 physically disabled public—including Kohler—by denying them full and equal
26 access to the Kenneth Cole Facility. The Kenneth Cole Defendants also violated
27 Kohler's rights under the ADA, and, therefore, infringed upon or violated (or
28 both) Kohler's rights under the Disabled Persons Act.

1 XLII. FORTY-FIRST CLAIM

2 **Americans with Disabilities Act of 1990**

3 Denial of "Full and Equal" Enjoyment and Use

4 (The Polo Facility)

5 459. Kohler incorporates the allegations contained in paragraphs 1
6 through 128 for this claim.

7 460. Title III of the ADA holds as a "general rule" that no individual
8 shall be discriminated against on the basis of disability in the full and equal
9 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
10 offered by any person who owns, operates, or leases a place of public
11 accommodation. 42 U.S.C. § 12182(a).

12 461. The Polo Defendants discriminated against Kohler by denying "full
13 and equal enjoyment" and use of the goods, services, facilities, privileges or
14 accommodations of the Polo Facility during each visit and each incident of
15 deterrence.

16 Failure to Remove Architectural Barriers in an Existing Facility

17 462. The ADA specifically prohibits failing to remove architectural
18 barriers, which are structural in nature, in existing facilities where such removal
19 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily
20 achievable" is defined as "easily accomplishable and able to be carried out
21 without much difficulty or expense." *Id.* § 12181(9).

22 463. When an entity can demonstrate that removal of a barrier is not
23 readily achievable, a failure to make goods, services, facilities, or
24 accommodations available through alternative methods is also specifically
25 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

26 464. Here, Kohler alleges that the Polo Defendants can easily remove the
27 architectural barriers at the Polo Facility without much difficulty or expense, and
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1 that the Polo Defendants violated the ADA by failing to remove those barriers,
2 when it was readily achievable to do so.

3 465. In the alternative, if it was not “readily achievable” for the Polo
4 Defendants to remove the Polo Facility’s barriers, then the Polo Defendants
5 violated the ADA by failing to make the required services available through
6 alternative methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 466. On information and belief, the Polo Facility was designed or
9 constructed (or both) after January 26, 1992—independently triggering access
10 requirements under Title III of the ADA.

11 467. The ADA also prohibits designing and constructing facilities for
12 first occupancy after January 26, 1993, that aren’t readily accessible to, and
13 usable by, individuals with disabilities when it was structurally practicable to do
14 so. 42 U.S.C. § 12183(a)(1).

15 468. Here, the Polo Defendants violated the ADA by designing or
16 constructing (or both) the Polo Facility in a manner that was not readily
17 accessible to the physically disabled public—including Kohler—when it was
18 structurally practical to do so.⁴²

19 Failure to Make an Altered Facility Accessible

20 469. On information and belief, the Polo Facility was modified after
21 January 26, 1992, independently triggering access requirements under the ADA.

22 470. The ADA also requires that facilities altered in a manner that affects
23 (or could affect) its usability must be made readily accessible to individuals with
24 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
25 an area that contains a facility’s primary function also requires adding making
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28 ⁴² Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 the paths of travel, bathrooms, telephones, and drinking fountains serving that
2 area accessible to the maximum extent feasible. Id.

3 471. Here, the Polo Defendants altered the Polo Facility in a manner that
4 violated the ADA and was not readily accessible to the physically disabled
5 public—including Kohler—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 472. The ADA also requires reasonable modifications in policies,
8 practices, or procedures, when necessary to afford such goods, services,
9 facilities, or accommodations to individuals with disabilities, unless the entity
10 can demonstrate that making such modifications would fundamentally alter their
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 473. Here, the Polo Defendants violated the ADA by failing to make
13 reasonable modifications in policies, practices, or procedures at the Polo Facility,
14 when these modifications were necessary to afford (and would not fundamentally
15 alter the nature of) these goods, services, facilities, or accommodations.

16 474. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
17 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
18 U.S.C. § 12205.

19 475. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
20 that the Polo Defendants violated the ADA in order to pursue damages under
21 California's Unruh Civil Rights Act or Disabled Persons Act.

22 **XLIII. FORTY-SECOND CLAIM**

23 **Disabled Persons Act**

24 **(The Polo Facility)**

25 476. Kohler incorporates the allegations contained in paragraphs 1
26 through 128 for this claim.

27 477. California Civil Code § 54 states, in part, that: Individuals with
28 disabilities have the same right as the general public to the full and free use of

1 the streets, sidewalks, walkways, public buildings and facilities, and other public
2 places.

3 478. California Civil Code § 54.1 also states, in part, that: Individuals
4 with disabilities shall be entitled to full and equal access to accommodations,
5 facilities, telephone facilities, places of public accommodation, and other places
6 to which the general public is invited.

7 479. Both sections specifically incorporate (by reference) an individual's
8 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

9 480. Here, the Polo Defendants discriminated against the physically
10 disabled public—including Kohler—by denying them full and equal access to
11 the Polo Facility. The Polo Defendants also violated Kohler's rights under the
12 ADA, and, therefore, infringed upon or violated (or both) Kohler's rights under
13 the Disabled Persons Act.

14 481. For each offense of the Disabled Persons Act, Kohler seeks actual
15 damages (both general and special damages), statutory minimum damages of one
16 thousand dollars (\$1,000), declaratory relief, and any other remedy available
17 under California Civil Code § 54.3.

18 482. He also seeks to enjoin the Polo Defendants from violating the
19 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
20 recover reasonable attorneys' fees and incurred under California Civil Code §§
21 54.3 and 55.

22 **XLIV. FORTY-THIRD CLAIM**

23 **Unruh Civil Rights Act**

24 **(The Polo Facility)**

25 483. Kohler incorporates the allegations contained in paragraphs 1
26 through 128 for this claim.

27 484. California Civil Code § 51 states, in part, that: All persons within
28 the jurisdiction of this state are entitled to the full and equal accommodations,

1 advantages, facilities, privileges, or services in all business establishments of
2 every kind whatsoever.

3 485. California Civil Code § 51.5 also states, in part, that: No business
4 establishment of any kind whatsoever shall discriminate against any person in
5 this state because of the disability of the person.

6 486. California Civil Code § 51(f) specifically incorporates (by
7 reference) an individual's rights under the ADA into the Unruh Act.

8 487. The Polo Defendants' aforementioned acts and omissions denied the
9 physically disabled public—including Kohler—full and equal accommodations,
10 advantages, facilities, privileges and services in a business establishment
11 (because of their physical disability).

12 488. These acts and omissions (including the ones that violate the ADA)
13 denied, aided or incited a denial, or discriminated against Kohler by violating the
14 Unruh Act.

15 489. Kohler was damaged by the Polo Defendants' wrongful conduct,
16 and seeks statutory minimum damages of four thousand dollars (\$4,000) for each
17 offense.

18 490. Kohler also seeks to enjoin the Polo Defendants from violating the
19 Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred
20 under California Civil Code § 52(a).

21 **XLV. FORTY-FOURTH CLAIM**

22 **Denial of Full and Equal Access to Public Facilities**

23 **(The Polo Facility)**

24 491. Kohler incorporates the allegations contained in paragraphs 1
25 through 128 for this claim.

26 492. Health and Safety Code § 19955(a) states, in part, that: California
27 public accommodations or facilities (built with private funds) shall adhere to the
28 provisions of Government Code § 4450.

1 493. Health and Safety Code § 19959 states, in part, that: Every existing
2 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
3 altered or structurally repaired, is required to comply with this chapter.

4 494. Kohler alleges the Polo Facility is a public accommodation
5 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
6 and Safety Code or Government Code § 4450 (or both), and that the Polo
7 Facility was not exempt under Health and Safety Code § 19956.

8 495. The Polo Defendants' non-compliance with these requirements at
9 the Polo Facility aggrieved (or potentially aggrieved) Kohler and other persons
10 with physical disabilities. Accordingly, he seeks injunctive relief and attorney
11 fees pursuant to Health and Safety Code § 19953.

12 **XLVI. FORTY-FIFTH CLAIM**

13 **Americans with Disabilities Act of 1990**

14 **Denial of "Full and Equal" Enjoyment and Use**

15 **(The Puma Facility)**

16 496. Kohler incorporates the allegations contained in paragraphs 1
17 through 128 for this claim.

18 497. Title III of the ADA holds as a "general rule" that no individual
19 shall be discriminated against on the basis of disability in the full and equal
20 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
21 offered by any person who owns, operates, or leases a place of public
22 accommodation. 42 U.S.C. § 12182(a).

23 498. The Puma Defendants discriminated against Kohler by denying "full
24 and equal enjoyment" and use of the goods, services, facilities, privileges or
25 accommodations of the Puma Facility during each visit and each incident of
26 deterrence.

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1 Failure to Remove Architectural Barriers in an Existing Facility

2 499. The ADA specifically prohibits failing to remove architectural
3 barriers, which are structural in nature, in existing facilities where such removal
4 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
5 achievable” is defined as “easily accomplishable and able to be carried out
6 without much difficulty or expense.” *Id.* § 12181(9).

7 500. When an entity can demonstrate that removal of a barrier is not
8 readily achievable, a failure to make goods, services, facilities, or
9 accommodations available through alternative methods is also specifically
10 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

11 501. Here, Kohler alleges that the Puma Defendants can easily remove
12 the architectural barriers at the Puma Facility without much difficulty or expense,
13 and that the Puma Defendants violated the ADA by failing to remove those
14 barriers, when it was readily achievable to do so.

15 502. In the alternative, if it was not “readily achievable” for the Puma
16 Defendants to remove the Puma Facility’s barriers, then the Puma Defendants
17 violated the ADA by failing to make the required services available through
18 alternative methods, which are readily achievable.

19 Failure to Design and Construct an Accessible Facility

20 503. On information and belief, the Puma Facility was designed or
21 constructed (or both) after January 26, 1992—independently triggering access
22 requirements under Title III of the ADA.

23 504. The ADA also prohibits designing and constructing facilities for
24 first occupancy after January 26, 1993, that aren’t readily accessible to, and
25 usable by, individuals with disabilities when it was structurally practicable to do
26 so. 42 U.S.C. § 12183(a)(1).

27 505. Here, the Puma Defendants violated the ADA by designing or
28 constructing (or both) the Puma Facility in a manner that was not readily

1 accessible to the physically disabled public—including Kohler—when it was
2 structurally practical to do so.⁴³

3 Failure to Make an Altered Facility Accessible

4 506. On information and belief, the Puma Facility was modified after
5 January 26, 1992, independently triggering access requirements under the ADA.

6 507. The ADA also requires that facilities altered in a manner that affects
7 (or could affect) its usability must be made readily accessible to individuals with
8 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
9 an area that contains a facility's primary function also requires adding making
10 the paths of travel, bathrooms, telephones, and drinking fountains serving that
11 area accessible to the maximum extent feasible. *Id.*

12 508. Here, the Puma Defendants altered the Puma Facility in a manner
13 that violated the ADA and was not readily accessible to the physically disabled
14 public—including Kohler—to the maximum extent feasible.

15 Failure to Modify Existing Policies and Procedures

16 509. The ADA also requires reasonable modifications in policies,
17 practices, or procedures, when necessary to afford such goods, services,
18 facilities, or accommodations to individuals with disabilities, unless the entity
19 can demonstrate that making such modifications would fundamentally alter their
20 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

21 510. Here, the Puma Defendants violated the ADA by failing to make
22 reasonable modifications in policies, practices, or procedures at the Puma
23 Facility, when these modifications were necessary to afford (and would not
24 fundamentally alter the nature of) these goods, services, facilities, or
25 accommodations.

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28 ⁴³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 thousand dollars (\$1,000), declaratory relief, and any other remedy available
2 under California Civil Code § 54.3.

3 He also seeks to enjoin the Puma Defendants from violating the Disabled
4 Persons Act (and ADA) under California Civil Code § 55, and to recover
5 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and
6 55.

7 **XLVIII. FORTY-SEVENTH CLAIM**

8 **Unruh Civil Rights Act**

9 (The Puma Facility)

10 519. Kohler incorporates the allegations contained in paragraphs 1
11 through 128 for this claim.

12 520. California Civil Code § 51 states, in part, that: All persons within
13 the jurisdiction of this state are entitled to the full and equal accommodations,
14 advantages, facilities, privileges, or services in all business establishments of
15 every kind whatsoever.

16 521. California Civil Code § 51.5 also states, in part, that: No business
17 establishment of any kind whatsoever shall discriminate against any person in
18 this state because of the disability of the person.

19 522. California Civil Code § 51(f) specifically incorporates (by
20 reference) an individual's rights under the ADA into the Unruh Act.

21 523. The Puma Defendants' aforementioned acts and omissions denied
22 the physically disabled public—including Kohler—full and equal
23 accommodations, advantages, facilities, privileges and services in a business
24 establishment (because of their physical disability).

25 524. These acts and omissions (including the ones that violate the ADA)
26 denied, aided or incited a denial, or discriminated against Kohler by violating the
27 Unruh Act.

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L. FORTY-NINTH CLAIM
Americans with Disabilities Act of 1990
Denial of “Full and Equal” Enjoyment and Use
(The Reebok Facility)

532. Kohler incorporates the allegations contained in paragraphs 1 through 128 for this claim.

533. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

534. The Reebok Defendants discriminated against Kohler by denying “full and equal enjoyment” and use of the goods, services, facilities, privileges or accommodations of the Reebok Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

535. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” *Id.* § 12181(9).

536. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

537. Here, Kohler alleges that the Reebok Defendants can easily remove the architectural barriers at the Reebok Facility without much difficulty or

1 expense, and that the Reebok Defendants violated the ADA by failing to remove
2 those barriers, when it was readily achievable to do so.

3 538. In the alternative, if it was not “readily achievable” for the Reebok
4 Defendants to remove the Reebok Facility’s barriers, then the Reebok
5 Defendants violated the ADA by failing to make the required services available
6 through alternative methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 539. On information and belief, the Reebok Facility was designed or
9 constructed (or both) after January 26, 1992—independently triggering access
10 requirements under Title III of the ADA.

11 540. The ADA also prohibits designing and constructing facilities for
12 first occupancy after January 26, 1993, that aren’t readily accessible to, and
13 usable by, individuals with disabilities when it was structurally practicable to do
14 so. 42 U.S.C. § 12183(a)(1).

15 541. Here, the Reebok Defendants violated the ADA by designing or
16 constructing (or both) the Reebok Facility in a manner that was not readily
17 accessible to the physically disabled public—including Kohler—when it was
18 structurally practical to do so.⁴⁴

19 Failure to Make an Altered Facility Accessible

20 542. On information and belief, the Reebok Facility was modified after
21 January 26, 1992, independently triggering access requirements under the ADA.

22 543. The ADA also requires that facilities altered in a manner that affects
23 (or could affect) its usability must be made readily accessible to individuals with
24 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
25 an area that contains a facility’s primary function also requires adding making
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28 ⁴⁴ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 the paths of travel, bathrooms, telephones, and drinking fountains serving that
2 area accessible to the maximum extent feasible. Id.

3 544. Here, the Reebok Defendants altered the Reebok Facility in a
4 manner that violated the ADA and was not readily accessible to the physically
5 disabled public—including Kohler—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 545. The ADA also requires reasonable modifications in policies,
8 practices, or procedures, when necessary to afford such goods, services,
9 facilities, or accommodations to individuals with disabilities, unless the entity
10 can demonstrate that making such modifications would fundamentally alter their
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 546. Here, the Reebok Defendants violated the ADA by failing to make
13 reasonable modifications in policies, practices, or procedures at the Reebok
14 Facility, when these modifications were necessary to afford (and would not
15 fundamentally alter the nature of) these goods, services, facilities, or
16 accommodations.

17 547. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
18 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
19 U.S.C. § 12205.

20 548. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
21 that the Reebok Defendants violated the ADA in order to pursue damages under
22 California's Unruh Civil Rights Act or Disabled Persons Act.

23 **LI. FIFTIETH CLAIM**

24 **Disabled Persons Act**

25 **(The Reebok Facility)**

26 549. Kohler incorporates the allegations contained in paragraphs 1
27 through 128 for this claim.

1 550. California Civil Code § 54 states, in part, that: Individuals with
2 disabilities have the same right as the general public to the full and free use of
3 the streets, sidewalks, walkways, public buildings and facilities, and other public
4 places.

5 551. California Civil Code § 54.1 also states, in part, that: Individuals
6 with disabilities shall be entitled to full and equal access to accommodations,
7 facilities, telephone facilities, places of public accommodation, and other places
8 to which the general public is invited.

9 552. Both sections specifically incorporate (by reference) an individual's
10 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

11 553. Here, the Reebok Defendants discriminated against the physically
12 disabled public—including Kohler—by denying them full and equal access to
13 the Reebok Facility. The Reebok Defendants also violated Kohler's rights under
14 the ADA, and, therefore, infringed upon or violated (or both) Kohler's rights
15 under the Disabled Persons Act.

16 554. For each offense of the Disabled Persons Act, Kohler seeks actual
17 damages (both general and special damages), statutory minimum damages of one
18 thousand dollars (\$1,000), declaratory relief, and any other remedy available
19 under California Civil Code § 54.3.

20 555. He also seeks to enjoin the Reebok Defendants from violating the
21 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
22 recover reasonable attorneys' fees and incurred under California Civil Code §§
23 54.3 and 55.

24 **LII. FIFTY-FIRST CLAIM**

25 **Unruh Civil Rights Act**

26 (The Reebok Facility)

27 556. Kohler incorporates the allegations contained in paragraphs 1
28 through 128 for this claim.

1 557. California Civil Code § 51 states, in part, that: All persons within
2 the jurisdiction of this state are entitled to the full and equal accommodations,
3 advantages, facilities, privileges, or services in all business establishments of
4 every kind whatsoever.

5 558. California Civil Code § 51.5 also states, in part, that: No business
6 establishment of any kind whatsoever shall discriminate against any person in
7 this state because of the disability of the person.

8 559. California Civil Code § 51(f) specifically incorporates (by
9 reference) an individual's rights under the ADA into the Unruh Act.

10 560. The Reebok Defendants' aforementioned acts and omissions denied
11 the physically disabled public—including Kohler—full and equal
12 accommodations, advantages, facilities, privileges and services in a business
13 establishment (because of their physical disability).

14 561. These acts and omissions (including the ones that violate the ADA)
15 denied, aided or incited a denial, or discriminated against Kohler by violating the
16 Unruh Act.

17 562. Kohler was damaged by the Reebok Defendants' wrongful conduct,
18 and seeks statutory minimum damages of four thousand dollars (\$4,000) for each
19 offense.

20 563. Kohler also seeks to enjoin the Reebok Defendants from violating
21 the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs
22 incurred under California Civil Code § 52(a).

23 **LIII. FIFTY-SECOND CLAIM**

24 **Denial of Full and Equal Access to Public Facilities**

25 (The Reebok Facility)

26 564. Kohler incorporates the allegations contained in paragraphs 1
27 through 128 for this claim.

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1 565. Health and Safety Code § 19955(a) states, in part, that: California
2 public accommodations or facilities (built with private funds) shall adhere to the
3 provisions of Government Code § 4450.

4 566. Health and Safety Code § 19959 states, in part, that: Every existing
5 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
6 altered or structurally repaired, is required to comply with this chapter.

7 567. Kohler alleges the Reebok Facility is a public accommodation
8 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
9 and Safety Code or Government Code § 4450 (or both), and that the Reebok
10 Facility was not exempt under Health and Safety Code § 19956.

11 568. The Reebok Defendants' non-compliance with these requirements at
12 the Reebok Facility aggrieved (or potentially aggrieved) Kohler and other
13 persons with physical disabilities. Accordingly, He seeks injunctive relief and
14 attorney fees pursuant to Health and Safety Code § 19953.

15 LIV. FIFTY-THIRD CLAIM

16 **Americans with Disabilities Act of 1990**

17 Denial of "Full and Equal" Enjoyment and Use

18 (The Rubio's Facility)

19 569. Kohler incorporates the allegations contained in paragraphs 1
20 through 128 for this claim.

21 570. Title III of the ADA holds as a "general rule" that no individual
22 shall be discriminated against on the basis of disability in the full and equal
23 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
24 offered by any person who owns, operates, or leases a place of public
25 accommodation. 42 U.S.C. § 12182(a).

26 571. The Rubio's Defendants discriminated against Kohler by denying
27 "full and equal enjoyment" and use of the goods, services, facilities, privileges or
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1 accommodations of the Rubio's Facility during each visit and each incident of
2 deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 572. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily
7 achievable" is defined as "easily accomplishable and able to be carried out
8 without much difficulty or expense." Id. § 12181(9).

9 573. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

13 574. Here, Kohler alleges that the Rubio's Defendants can easily remove
14 the architectural barriers at the Rubio's Facility without much difficulty or
15 expense, and that the Rubio's Defendants violated the ADA by failing to remove
16 those barriers, when it was readily achievable to do so.

17 575. In the alternative, if it was not "readily achievable" for the Rubio's
18 Defendants to remove the Rubio's Facility's barriers, then the Rubio's
19 Defendants violated the ADA by failing to make the required services available
20 through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 576. On information and belief, the Rubio's Facility was designed or
23 constructed (or both) after January 26, 1992—independently triggering access
24 requirements under Title III of the ADA.

25 577. The ADA also prohibits designing and constructing facilities for
26 first occupancy after January 26, 1993, that aren't readily accessible to, and
27 usable by, individuals with disabilities when it was structurally practicable to do
28 so. 42 U.S.C. § 12183(a)(1).

1 578. Here, the Rubio's Defendants violated the ADA by designing or
2 constructing (or both) the Rubio's Facility in a manner that was not readily
3 accessible to the physically disabled public—including Kohler—when it was
4 structurally practical to do so.⁴⁵

5 Failure to Make an Altered Facility Accessible

6 579. On information and belief, the Rubio's Facility was modified after
7 January 26, 1992, independently triggering access requirements under the ADA.

8 580. The ADA also requires that facilities altered in a manner that affects
9 (or could affect) its usability must be made readily accessible to individuals with
10 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
11 an area that contains a facility's primary function also requires adding making
12 the paths of travel, bathrooms, telephones, and drinking fountains serving that
13 area accessible to the maximum extent feasible. Id.

14 581. Here, the Rubio's Defendants altered the Rubio's Facility in a
15 manner that violated the ADA and was not readily accessible to the physically
16 disabled public—including Kohler—to the maximum extent feasible.

17 Failure to Modify Existing Policies and Procedures

18 582. The ADA also requires reasonable modifications in policies,
19 practices, or procedures, when necessary to afford such goods, services,
20 facilities, or accommodations to individuals with disabilities, unless the entity
21 can demonstrate that making such modifications would fundamentally alter their
22 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

23 583. Here, the Rubio's Defendants violated the ADA by failing to make
24 reasonable modifications in policies, practices, or procedures at the Gap Facility,
25 when these modifications were necessary to afford (and would not fundamentally
26 alter the nature of) these goods, services, facilities, or accommodations.

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28 ⁴⁵ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 584. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
2 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
3 U.S.C. § 12205.

4 585. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
5 that the Rubio's Defendants violated the ADA in order to pursue damages under
6 California's Unruh Civil Rights Act or Disabled Persons Act.

7 LV. FIFTY-FOURTH CLAIM

8 **Disabled Persons Act**

9 (The Rubio's Facility)

10 586. Kohler incorporates the allegations contained in paragraphs 1
11 through 128 for this claim.

12 587. California Civil Code § 54 states, in part, that: Individuals with
13 disabilities have the same right as the general public to the full and free use of
14 the streets, sidewalks, walkways, public buildings and facilities, and other public
15 places.

16 588. California Civil Code § 54.1 also states, in part, that: Individuals
17 with disabilities shall be entitled to full and equal access to accommodations,
18 facilities, telephone facilities, places of public accommodation, and other places
19 to which the general public is invited.

20 589. Both sections specifically incorporate (by reference) an individual's
21 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

22 590. Here, the Rubio's Defendants discriminated against the physically
23 disabled public—including Kohler—by denying them full and equal access to
24 the Rubio's Facility. The Rubio's Defendants also violated Kohler's rights
25 under the ADA, and, therefore, infringed upon or violated (or both) Kohler's
26 rights under the Disabled Persons Act.

27 591. For each offense of the Disabled Persons Act, Kohler seeks actual
28 damages (both general and special damages), statutory minimum damages of one

1 thousand dollars (\$1,000), declaratory relief, and any other remedy available
2 under California Civil Code § 54.3.

3 592. He also seeks to enjoin the Rubio's Defendants from violating the
4 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
5 recover reasonable attorneys' fees and incurred under California Civil Code §§
6 54.3 and 55.

7 LVI. FIFTY-FIFTH CLAIM

8 **Unruh Civil Rights Act**

9 (The Rubio's Facility)

10 593. Kohler incorporates the allegations contained in paragraphs 1
11 through 128 for this claim.

12 594. California Civil Code § 51 states, in part, that: All persons within
13 the jurisdiction of this state are entitled to the full and equal accommodations,
14 advantages, facilities, privileges, or services in all business establishments of
15 every kind whatsoever.

16 595. California Civil Code § 51.5 also states, in part, that: No business
17 establishment of any kind whatsoever shall discriminate against any person in
18 this state because of the disability of the person.

19 596. California Civil Code § 51(f) specifically incorporates (by
20 reference) an individual's rights under the ADA into the Unruh Act.

21 597. The Rubio's Defendants' aforementioned acts and omissions denied
22 the physically disabled public—including Kohler—full and equal
23 accommodations, advantages, facilities, privileges and services in a business
24 establishment (because of their physical disability).

25 598. These acts and omissions (including the ones that violate the ADA)
26 denied, aided or incited a denial, or discriminated against Kohler by violating the
27 Unruh Act.

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LVIII. FIFTY-SEVENTH CLAIM
Americans with Disabilities Act of 1990
Denial of “Full and Equal” Enjoyment and Use
(The Ruby’s Facility)

606. Kohler incorporates the allegations contained in paragraphs 1 through 128 for this claim.

607. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

608. The Ruby’s Defendants discriminated against Kohler by denying “full and equal enjoyment” and use of the goods, services, facilities, privileges or accommodations of the Ruby’s Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

609. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily achievable” is defined as “easily accomplishable and able to be carried out without much difficulty or expense.” *Id.* § 12181(9).

610. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

611. Here, Kohler alleges that the Ruby’s Defendants can easily remove the architectural barriers at the Ruby’s Facility without much difficulty or

1 expense, and that the Ruby's Defendants violated the ADA by failing to remove
2 those barriers, when it was readily achievable to do so.

3 612. In the alternative, if it was not "readily achievable" for the Ruby's
4 Defendants to remove the Ruby's Facility's barriers, then the Ruby's Defendants
5 violated the ADA by failing to make the required services available through
6 alternative methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 613. On information and belief, the Ruby's Facility was designed or
9 constructed (or both) after January 26, 1992—independently triggering access
10 requirements under Title III of the ADA.

11 614. The ADA also prohibits designing and constructing facilities for
12 first occupancy after January 26, 1993, that aren't readily accessible to, and
13 usable by, individuals with disabilities when it was structurally practicable to do
14 so. 42 U.S.C. § 12183(a)(1).

15 615. Here, the Ruby's Defendants violated the ADA by designing or
16 constructing (or both) the Ruby's Facility in a manner that was not readily
17 accessible to the physically disabled public—including Kohler—when it was
18 structurally practical to do so.⁴⁶

19 Failure to Make an Altered Facility Accessible

20 616. On information and belief, the Ruby's Facility was modified after
21 January 26, 1992, independently triggering access requirements under the ADA.

22 617. The ADA also requires that facilities altered in a manner that affects
23 (or could affect) its usability must be made readily accessible to individuals with
24 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
25 an area that contains a facility's primary function also requires adding making
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28 ⁴⁶ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.
Kohler v. Chelsea Carlsbad Finance, LLC, et al.
Plaintiff's Complaint

1 the paths of travel, bathrooms, telephones, and drinking fountains serving that
2 area accessible to the maximum extent feasible. Id.

3 618. Here, the Ruby's Defendants altered the Ruby's Facility in a manner
4 that violated the ADA and was not readily accessible to the physically disabled
5 public—including Kohler—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 619. The ADA also requires reasonable modifications in policies,
8 practices, or procedures, when necessary to afford such goods, services,
9 facilities, or accommodations to individuals with disabilities, unless the entity
10 can demonstrate that making such modifications would fundamentally alter their
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 620. Here, the Ruby's Defendants violated the ADA by failing to make
13 reasonable modifications in policies, practices, or procedures at the Ruby's
14 Facility, when these modifications were necessary to afford (and would not
15 fundamentally alter the nature of) these goods, services, facilities, or
16 accommodations.

17 621. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
18 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
19 U.S.C. § 12205.

20 622. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
21 that the Ruby's Defendants violated the ADA in order to pursue damages under
22 California's Unruh Civil Rights Act or Disabled Persons Act.

23 LIX. FIFTY-EIGHTH CLAIM

24 **Disabled Persons Act**

25 (The Ruby's Facility)

26 623. Kohler incorporates the allegations contained in paragraphs 1
27 through 128 for this claim.

1 privileges or accommodations of the Tommy Hilfiger Facility during each visit
2 and each incident of deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 646. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
7 achievable” is defined as “easily accomplishable and able to be carried out
8 without much difficulty or expense.” *Id.* § 12181(9).

9 647. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 648. Here, Kohler alleges that the Tommy Hilfiger Defendants can easily
14 remove the architectural barriers at the Tommy Hilfiger Facility without much
15 difficulty or expense, and that the Tommy Hilfiger Defendants violated the ADA
16 by failing to remove those barriers, when it was readily achievable to do so.

17 649. In the alternative, if it was not “readily achievable” for the Tommy
18 Hilfiger Defendants to remove the Tommy Hilfiger Facility’s barriers, then the
19 Tommy Hilfiger Defendants violated the ADA by failing to make the required
20 services available through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 650. On information and belief, the Tommy Hilfiger Facility was
23 designed or constructed (or both) after January 26, 1992—independently
24 triggering access requirements under Title III of the ADA.

25 651. The ADA also prohibits designing and constructing facilities for
26 first occupancy after January 26, 1993, that aren’t readily accessible to, and
27 usable by, individuals with disabilities when it was structurally practicable to do
28 so. 42 U.S.C. § 12183(a)(1).

1 652. Here, the Tommy Hilfiger Defendants violated the ADA by
2 designing or constructing (or both) the Tommy Hilfiger Facility in a manner that
3 was not readily accessible to the physically disabled public—including Kohler—
4 when it was structurally practical to do so.⁴⁷

5 Failure to Make an Altered Facility Accessible

6 653. On information and belief, the Tommy Hilfiger Facility was
7 modified after January 26, 1992, independently triggering access requirements
8 under the ADA.

9 654. The ADA also requires that facilities altered in a manner that affects
10 (or could affect) its usability must be made readily accessible to individuals with
11 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
12 an area that contains a facility's primary function also requires adding making
13 the paths of travel, bathrooms, telephones, and drinking fountains serving that
14 area accessible to the maximum extent feasible. Id.

15 655. Here, the Tommy Hilfiger Defendants altered the Tommy Hilfiger
16 Facility in a manner that violated the ADA and was not readily accessible to the
17 physically disabled public—including Kohler—to the maximum extent feasible.

18 Failure to Modify Existing Policies and Procedures

19 656. The ADA also requires reasonable modifications in policies,
20 practices, or procedures, when necessary to afford such goods, services,
21 facilities, or accommodations to individuals with disabilities, unless the entity
22 can demonstrate that making such modifications would fundamentally alter their
23 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

24 657. Here, the Tommy Hilfiger Defendants violated the ADA by failing
25 to make reasonable modifications in policies, practices, or procedures at the
26 Tommy Hilfiger Facility, when these modifications were necessary to afford
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28 ⁴⁷ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 (and would not fundamentally alter the nature of) these goods, services,
2 facilities, or accommodations.

3 658. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
5 U.S.C. § 12205.

6 659. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
7 that the Tommy Hilfiger Defendants violated the ADA in order to pursue
8 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

9 LXIII. SIXTY-SECOND CLAIM

10 **Disabled Persons Act**

11 (The Tommy Hilfiger Facility)

12 660. Kohler incorporates the allegations contained in paragraphs 1
13 through 128 for this claim.

14 661. California Civil Code § 54 states, in part, that: Individuals with
15 disabilities have the same right as the general public to the full and free use of
16 the streets, sidewalks, walkways, public buildings and facilities, and other public
17 places.

18 662. California Civil Code § 54.1 also states, in part, that: Individuals
19 with disabilities shall be entitled to full and equal access to accommodations,
20 facilities, telephone facilities, places of public accommodation, and other places
21 to which the general public is invited.

22 663. Both sections specifically incorporate (by reference) an individual's
23 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 664. Here, the Tommy Hilfiger Defendants discriminated against the
25 physically disabled public—including Kohler—by denying them full and equal
26 access to the Tommy Hilfiger Facility. The Tommy Hilfiger Defendants also
27 violated Kohler's rights under the ADA, and, therefore, infringed upon or
28 violated (or both) Kohler's rights under the Disabled Persons Act.

1 Kohler and other persons with physical disabilities. Accordingly, He seeks
2 injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

3 LXVI. SIXTY-FIFTH CLAIM

4 **Americans with Disabilities Act of 1990**

5 Denial of “Full and Equal” Enjoyment and Use

6 (The Van Heusen Facility)

7 680. Kohler incorporates the allegations contained in paragraphs 1
8 through 128 for this claim.

9 681. Title III of the ADA holds as a “general rule” that no individual
10 shall be discriminated against on the basis of disability in the full and equal
11 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
12 offered by any person who owns, operates, or leases a place of public
13 accommodation. 42 U.S.C. § 12182(a).

14 682. The Van Heusen Defendants discriminated against Kohler by
15 denying “full and equal enjoyment” and use of the goods, services, facilities,
16 privileges or accommodations of the Van Heusen Facility during each visit and
17 each incident of deterrence.

18 Failure to Remove Architectural Barriers in an Existing Facility

19 683. The ADA specifically prohibits failing to remove architectural
20 barriers, which are structural in nature, in existing facilities where such removal
21 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
22 achievable” is defined as “easily accomplishable and able to be carried out
23 without much difficulty or expense.” *Id.* § 12181(9).

24 684. When an entity can demonstrate that removal of a barrier is not
25 readily achievable, a failure to make goods, services, facilities, or
26 accommodations available through alternative methods is also specifically
27 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

1 685. Here, Kohler alleges that the Van Heusen Defendants can easily
2 remove the architectural barriers at the Van Heusen Facility without much
3 difficulty or expense, and that the Van Heusen Defendants violated the ADA by
4 failing to remove those barriers, when it was readily achievable to do so.

5 686. In the alternative, if it was not “readily achievable” for the Van
6 Heusen Defendants to remove the Van Heusen Facility’s barriers, then the Van
7 Heusen Defendants violated the ADA by failing to make the required services
8 available through alternative methods, which are readily achievable.

9 Failure to Design and Construct an Accessible Facility

10 687. On information and belief, the Van Heusen Facility was designed or
11 constructed (or both) after January 26, 1992—independently triggering access
12 requirements under Title III of the ADA.

13 688. The ADA also prohibits designing and constructing facilities for
14 first occupancy after January 26, 1993, that aren’t readily accessible to, and
15 usable by, individuals with disabilities when it was structurally practicable to do
16 so. 42 U.S.C. § 12183(a)(1).

17 689. Here, the Van Heusen Defendants violated the ADA by designing or
18 constructing (or both) the Van Heusen Facility in a manner that was not readily
19 accessible to the physically disabled public—including Kohler—when it was
20 structurally practical to do so.⁴⁸

21 Failure to Make an Altered Facility Accessible

22 690. On information and belief, the Van Heusen Facility was modified
23 after January 26, 1992, independently triggering access requirements under the
24 ADA.

25 691. The ADA also requires that facilities altered in a manner that affects
26 (or could affect) its usability must be made readily accessible to individuals with
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28 ⁴⁸ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
2 an area that contains a facility's primary function also requires adding making
3 the paths of travel, bathrooms, telephones, and drinking fountains serving that
4 area accessible to the maximum extent feasible. Id.

5 692. Here, the Van Heusen Defendants altered the Van Heusen Facility
6 in a manner that violated the ADA and was not readily accessible to the
7 physically disabled public—including Kohler—to the maximum extent feasible.

8 Failure to Modify Existing Policies and Procedures

9 693. The ADA also requires reasonable modifications in policies,
10 practices, or procedures, when necessary to afford such goods, services,
11 facilities, or accommodations to individuals with disabilities, unless the entity
12 can demonstrate that making such modifications would fundamentally alter their
13 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

14 694. Here, the Van Heusen Defendants violated the ADA by failing to
15 make reasonable modifications in policies, practices, or procedures at the Van
16 Heusen Facility, when these modifications were necessary to afford (and would
17 not fundamentally alter the nature of) these goods, services, facilities, or
18 accommodations.

19 695. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
20 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
21 U.S.C. § 12205.

22 696. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
23 that the Van Heusen Defendants violated the ADA in order to pursue damages
24 under California's Unruh Civil Rights Act or Disabled Persons Act.

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LXVII. SIXTY-SIXTH CLAIM

Disabled Persons Act

(The Van Heusen Facility)

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4 697. Kohler incorporates the allegations contained in paragraphs 1
5 through 128 for this claim.

6 698. California Civil Code § 54 states, in part, that: Individuals with
7 disabilities have the same right as the general public to the full and free use of
8 the streets, sidewalks, walkways, public buildings and facilities, and other public
9 places.

10 699. California Civil Code § 54.1 also states, in part, that: Individuals
11 with disabilities shall be entitled to full and equal access to accommodations,
12 facilities, telephone facilities, places of public accommodation, and other places
13 to which the general public is invited.

14 700. Both sections specifically incorporate (by reference) an individual's
15 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

16 701. Here, the Van Heusen Defendants discriminated against the
17 physically disabled public—including Kohler—by denying them full and equal
18 access to the Van Heusen Facility. The Van Heusen Defendants also violated
19 Kohler's rights under the ADA, and, therefore, infringed upon or violated (or
20 both) Kohler's rights under the Disabled Persons Act.

21 702. For each offense of the Disabled Persons Act, Kohler seeks actual
22 damages (both general and special damages), statutory minimum damages of one
23 thousand dollars (\$1,000), declaratory relief, and any other remedy available
24 under California Civil Code § 54.3.

25 703. He also seeks to enjoin the Van Heusen Defendants from violating
26 the Disabled Persons Act (and ADA) under California Civil Code § 55, and to
27 recover reasonable attorneys' fees and incurred under California Civil Code §§
28 54.3 and 55.

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LXVIII. SIXTY-SEVENTH CLAIM

Unruh Civil Rights Act

(The Van Heusen Facility)

704. Kohler incorporates the allegations contained in paragraphs 1 through 128 for this claim.

705. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

706. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

707. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

708. The Van Heusen Defendants' aforementioned acts and omissions denied the physically disabled public—including Kohler—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

709. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Kohler by violating the Unruh Act.

710. Kohler was damaged by the Van Heusen Defendants' wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

711. Kohler also seeks to enjoin the Van Heusen Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

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LXIX. SIXTY-EIGHTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Van Heusen Facility)

712. Kohler incorporates the allegations contained in paragraphs 1 through 128 for this claim.

713. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

714. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

715. Kohler alleges the Van Heusen Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Van Heusen Facility was not exempt under Health and Safety Code § 19956.

716. The Van Heusen Defendants' non-compliance with these requirements at the Van Heusen Facility aggrieved (or potentially aggrieved) Kohler and other persons with physical disabilities. Accordingly, He seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

LXX. SIXTY-NINTH CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Banana Republic Facility)

717. Kohler incorporates the allegations contained in paragraphs 1 through 128 for this claim.

718. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations

1 offered by any person who owns, operates, or leases a place of public
2 accommodation. 42 U.S.C. § 12182(a).

3 719. The Banana Republic Defendants discriminated against Kohler by
4 denying “full and equal enjoyment” and use of the goods, services, facilities,
5 privileges or accommodations of the Banana Republic Facility during each visit
6 and each incident of deterrence.

7 Failure to Remove Architectural Barriers in an Existing Facility

8 720. The ADA specifically prohibits failing to remove architectural
9 barriers, which are structural in nature, in existing facilities where such removal
10 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
11 achievable” is defined as “easily accomplishable and able to be carried out
12 without much difficulty or expense.” *Id.* § 12181(9).

13 721. When an entity can demonstrate that removal of a barrier is not
14 readily achievable, a failure to make goods, services, facilities, or
15 accommodations available through alternative methods is also specifically
16 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

17 722. Here, Kohler alleges that the Banana Republic Defendants can
18 easily remove the architectural barriers at the Banana Republic Facility without
19 much difficulty or expense, and that the Banana Republic Defendants violated
20 the ADA by failing to remove those barriers, when it was readily achievable to
21 do so.

22 723. In the alternative, if it was not “readily achievable” for the Banana
23 Republic Defendants to remove the Banana Republic Facility’s barriers, then the
24 Banana Republic Defendants violated the ADA by failing to make the required
25 services available through alternative methods, which are readily achievable.

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Failure to Design and Construct an Accessible Facility

724. On information and belief, the Banana Republic Facility was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.

725. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

726. Here, the Banana Republic Defendants violated the ADA by designing or constructing (or both) the Banana Republic Facility in a manner that was not readily accessible to the physically disabled public—including Kohler—when it was structurally practical to do so.⁴⁹

Failure to Make an Altered Facility Accessible

727. On information and belief, the Banana Republic Facility was modified after January 26, 1992, independently triggering access requirements under the ADA.

728. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.

729. Here, the Banana Republic Defendants altered the Banana Republic Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public—including Kohler—to the maximum extent feasible.

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⁴⁹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.
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1 Failure to Modify Existing Policies and Procedures

2 730. The ADA also requires reasonable modifications in policies,
3 practices, or procedures, when necessary to afford such goods, services,
4 facilities, or accommodations to individuals with disabilities, unless the entity
5 can demonstrate that making such modifications would fundamentally alter their
6 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

7 731. Here, the Banana Republic Defendants violated the ADA by failing
8 to make reasonable modifications in policies, practices, or procedures at the
9 Banana Republic Facility, when these modifications were necessary to afford
10 (and would not fundamentally alter the nature of) these goods, services,
11 facilities, or accommodations.

12 732. Kohler seeks all relief available under the ADA (*i.e.*, injunctive
13 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
14 U.S.C. § 12205.

15 733. Kohler also seeks a finding from this Court (*i.e.*, declaratory relief)
16 that the Banana Republic Defendants violated the ADA in order to pursue
17 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

18 LXXI. SEVENTIETH CLAIM

19 **Disabled Persons Act**

20 (The Banana Republic Facility)

21 734. Kohler incorporates the allegations contained in paragraphs 1
22 through 128 for this claim.

23 735. California Civil Code § 54 states, in part, that: Individuals with
24 disabilities have the same right as the general public to the full and free use of
25 the streets, sidewalks, walkways, public buildings and facilities, and other public
26 places.

27 736. California Civil Code § 54.1 also states, in part, that: Individuals
28 with disabilities shall be entitled to full and equal access to accommodations,

1 facilities, telephone facilities, places of public accommodation, and other places
2 to which the general public is invited.

3 737. Both sections specifically incorporate (by reference) an individual's
4 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

5 738. Here, the Banana Republic Defendants discriminated against the
6 physically disabled public—including Kohler—by denying them full and equal
7 access to the Banana Republic Facility. The Banana Republic Defendants also
8 violated Kohler's rights under the ADA, and, therefore, infringed upon or
9 violated (or both) Kohler's rights under the Disabled Persons Act.

10 739. For each offense of the Disabled Persons Act, Kohler seeks actual
11 damages (both general and special damages), statutory minimum damages of one
12 thousand dollars (\$1,000), declaratory relief, and any other remedy available
13 under California Civil Code § 54.3.

14 740. He also seeks to enjoin the Banana Republic Defendants from
15 violating the Disabled Persons Act (and ADA) under California Civil Code § 55,
16 and to recover reasonable attorneys' fees and incurred under California Civil
17 Code §§ 54.3 and 55.

18 LXXII. SEVENTY-FIRST CLAIM

19 **Unruh Civil Rights Act**

20 (The Banana Republic Facility)

21 741. Kohler incorporates the allegations contained in paragraphs 1
22 through 128 for this claim.

23 742. California Civil Code § 51 states, in part, that: All persons within
24 the jurisdiction of this state are entitled to the full and equal accommodations,
25 advantages, facilities, privileges, or services in all business establishments of
26 every kind whatsoever.

1 743. California Civil Code § 51.5 also states, in part, that: No business
2 establishment of any kind whatsoever shall discriminate against any person in
3 this state because of the disability of the person.

4 744. California Civil Code § 51(f) specifically incorporates (by
5 reference) an individual's rights under the ADA into the Unruh Act.

6 745. The Banana Republic Defendants' aforementioned acts and
7 omissions denied the physically disabled public—including Kohler—full and
8 equal accommodations, advantages, facilities, privileges and services in a
9 business establishment (because of their physical disability).

10 746. These acts and omissions (including the ones that violate the ADA)
11 denied, aided or incited a denial, or discriminated against Kohler by violating the
12 Unruh Act.

13 747. Kohler was damaged by the Banana Republic Defendants' wrongful
14 conduct, and seeks statutory minimum damages of four thousand dollars
15 (\$4,000) for each offense.

16 748. Kohler also seeks to enjoin the Banana Republic Defendants from
17 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and
18 costs incurred under California Civil Code § 52(a).

19 LXXIII. SEVENTY-SECOND CLAIM

20 **Denial of Full and Equal Access to Public Facilities**

21 (The Banana Republic Facility)

22 749. Kohler incorporates the allegations contained in paragraphs 1
23 through 128 for this claim.

24 750. Health and Safety Code § 19955(a) states, in part, that: California
25 public accommodations or facilities (built with private funds) shall adhere to the
26 provisions of Government Code § 4450.

1 751. Health and Safety Code § 19959 states, in part, that: Every existing
2 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
3 altered or structurally repaired, is required to comply with this chapter.

4 752. Kohler alleges the Banana Republic Facility is a public
5 accommodation constructed, altered, or repaired in a manner that violates Part
6 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and
7 that the Banana Republic Facility was not exempt under Health and Safety Code
8 § 19956.

9 753. The Banana Republic Defendants' non-compliance with these
10 requirements at the Banana Republic Facility aggrieved (or potentially
11 aggrieved) Kohler and other persons with physical disabilities. Accordingly, He
12 seeks injunctive relief and attorney fees pursuant to Health and Safety Code §
13 19953.

14 LXXIV. PRAYER FOR RELIEF

15 WHEREFORE, Kohler prays judgment against the Common Area Defendants
16 for:

- 17 1. Injunctive relief, preventive relief, or any other relief the Court deems
18 proper.
- 19 2. Declaratory relief that the Common Area Defendants violated the ADA for
20 the purposes of Unruh Act or Disabled Persons Act damages.
- 21 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
22 California Civil Code (but not both) according to proof.
- 23 4. Attorneys' fees, litigation expenses, and costs of suit.⁵⁰
- 24 5. Interest at the legal rate from the date of the filing of this action.

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28 _____
⁵⁰ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Kohler v. Chelsea Carlsbad Finance, LLC, et al.
Plaintiff's Complaint

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LXXV. PRAYER FOR RELIEF

WHEREFORE, Kohler prays judgment against the Adidas Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Adidas Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.⁵¹
5. Interest at the legal rate from the date of the filing of this action.

LXXVI. PRAYER FOR RELIEF

WHEREFORE, Kohler prays judgment against the Brooks Brothers Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Brooks Brothers Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.⁵²
5. Interest at the legal rate from the date of the filing of this action.

LXXVII. PRAYER FOR RELIEF

WHEREFORE, Kohler prays judgment against the Converse Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.

⁵¹ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

⁵² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

1 2. Declaratory relief that the Converse Defendants violated the ADA for the
2 purposes of Unruh Act or Disabled Persons Act damages.

3 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
4 California Civil Code (but not both) according to proof.

5 4. Attorneys' fees, litigation expenses, and costs of suit.⁵³

6 5. Interest at the legal rate from the date of the filing of this action.

7 LXXVIII. PRAYER FOR RELIEF

8 WHEREFORE, Kohler prays judgment against the Le Gourmet Chef Defendants
9 for:

10 1. Injunctive relief, preventive relief, or any other relief the Court deems
11 proper.

12 2. Declaratory relief that the Le Gourmet Chef Defendants violated the ADA
13 for the purposes of Unruh Act or Disabled Persons Act damages.

14 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
15 California Civil Code (but not both) according to proof.

16 4. Attorneys' fees, litigation expenses, and costs of suit.⁵⁴

17 5. Interest at the legal rate from the date of the filing of this action.

18 LXXIX. PRAYER FOR RELIEF

19 WHEREFORE, Kohler prays judgment against the Gap Defendants for:

20 1. Injunctive relief, preventive relief, or any other relief the Court deems
21 proper.

22 2. Declaratory relief that the Gap Defendants violated the ADA for the
23 purposes of Unruh Act or Disabled Persons Act damages.

24 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
25 California Civil Code (but not both) according to proof.

26 4. Attorneys' fees, litigation expenses, and costs of suit.⁵⁵

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28 ⁵³ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

⁵⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

1 5. Interest at the legal rate from the date of the filing of this action.

2 LXXX. PRAYER FOR RELIEF

3 WHEREFORE, Kohler prays judgment against the Hot Dog Defendants for:

4 1. Injunctive relief, preventive relief, or any other relief the Court deems
5 proper.

6 2. Declaratory relief that the Hot Dog Defendants violated the ADA for the
7 purposes of Unruh Act or Disabled Persons Act damages.

8 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
9 California Civil Code (but not both) according to proof.

10 4. Attorneys' fees, litigation expenses, and costs of suit.⁵⁶

11 5. Interest at the legal rate from the date of the filing of this action.

12 LXXXI. PRAYER FOR RELIEF

13 WHEREFORE, Kohler prays judgment against the Jockey Defendants for:

14 1. Injunctive relief, preventive relief, or any other relief the Court deems
15 proper.

16 2. Declaratory relief that the Jockey Defendants violated the ADA for the
17 purposes of Unruh Act or Disabled Persons Act damages.

18 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
19 California Civil Code (but not both) according to proof.

20 4. Attorneys' fees, litigation expenses, and costs of suit.⁵⁷

21 5. Interest at the legal rate from the date of the filing of this action.

22 LXXXII. PRAYER FOR RELIEF

23 WHEREFORE, Kohler prays judgment against the Kenneth Cole Defendants for:

24 1. Injunctive relief, preventive relief, or any other relief the Court deems
25 proper.

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⁵⁵ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

⁵⁶ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

⁵⁷ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

Kohler v. Chelsea Carlsbad Finance, LLC, et al.

Plaintiff's Complaint

1 2. Declaratory relief that the Kenneth Cole Defendants violated the ADA for
2 the purposes of Unruh Act or Disabled Persons Act damages.

3 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
4 California Civil Code (but not both) according to proof.

5 4. Attorneys' fees, litigation expenses, and costs of suit.⁵⁸

6 5. Interest at the legal rate from the date of the filing of this action.

7 LXXXIII. PRAYER FOR RELIEF

8 WHEREFORE, Kohler prays judgment against the Polo Defendants for:

9 1. Injunctive relief, preventive relief, or any other relief the Court deems
10 proper.

11 2. Declaratory relief that the Polo Defendants violated the ADA for the
12 purposes of Unruh Act or Disabled Persons Act damages.

13 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
14 California Civil Code (but not both) according to proof.

15 4. Attorneys' fees, litigation expenses, and costs of suit.⁵⁹

16 5. Interest at the legal rate from the date of the filing of this action.

17 LXXXIV. PRAYER FOR RELIEF

18 WHEREFORE, Kohler prays judgment against the Puma Defendants for:

19 1. Injunctive relief, preventive relief, or any other relief the Court deems
20 proper.

21 2. Declaratory relief that the Puma Defendants violated the ADA for the
22 purposes of Unruh Act or Disabled Persons Act damages.

23 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
24 California Civil Code (but not both) according to proof.

25 4. Attorneys' fees, litigation expenses, and costs of suit.⁶⁰

27 ⁵⁸ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

28 ⁵⁹ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

⁶⁰ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

Kohler v. Chelsea Carlsbad Finance, LLC, et al.

Plaintiff's Complaint

1 5. Interest at the legal rate from the date of the filing of this action.

2 LXXXV. PRAYER FOR RELIEF

3 WHEREFORE, Kohler prays judgment against the Reebok Defendants for:

4 1. Injunctive relief, preventive relief, or any other relief the Court deems
5 proper.

6 2. Declaratory relief that the Reebok Defendants violated the ADA for the
7 purposes of Unruh Act or Disabled Persons Act damages.

8 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
9 California Civil Code (but not both) according to proof.

10 4. Attorneys' fees, litigation expenses, and costs of suit.⁶¹

11 5. Interest at the legal rate from the date of the filing of this action.

12 LXXXVI. PRAYER FOR RELIEF

13 WHEREFORE, Kohler prays judgment against the Rubio's Defendants for:

14 1. Injunctive relief, preventive relief, or any other relief the Court deems
15 proper.

16 2. Declaratory relief that the Rubio's Defendants violated the ADA for the
17 purposes of Unruh Act or Disabled Persons Act damages.

18 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
19 California Civil Code (but not both) according to proof.

20 4. Attorneys' fees, litigation expenses, and costs of suit.⁶²

21 5. Interest at the legal rate from the date of the filing of this action.

22 LXXXVII. PRAYER FOR RELIEF

23 WHEREFORE, Kohler prays judgment against the Ruby's Defendants for:

24 1. Injunctive relief, preventive relief, or any other relief the Court deems
25 proper.

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28 ⁶¹ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

⁶² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

Kohler v. Chelsea Carlsbad Finance, LLC, et al.

Plaintiff's Complaint

1 2. Declaratory relief that the Ruby's Defendants violated the ADA for the
2 purposes of Unruh Act or Disabled Persons Act damages.

3 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
4 California Civil Code (but not both) according to proof.

5 4. Attorneys' fees, litigation expenses, and costs of suit.⁶³

6 5. Interest at the legal rate from the date of the filing of this action.

7 LXXXVIII. PRAYER FOR RELIEF

8 WHEREFORE, Kohler prays judgment against the Tommy Hilfiger Defendants
9 for:

10 1. Injunctive relief, preventive relief, or any other relief the Court deems
11 proper.

12 2. Declaratory relief that the Tommy Hilfiger Defendants violated the ADA
13 for the purposes of Unruh Act or Disabled Persons Act damages.

14 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
15 California Civil Code (but not both) according to proof.

16 4. Attorneys' fees, litigation expenses, and costs of suit.⁶⁴

17 5. Interest at the legal rate from the date of the filing of this action.

18 LXXXIX. PRAYER FOR RELIEF

19 WHEREFORE, Kohler prays judgment against the Van Heusen Defendants for:

20 1. Injunctive relief, preventive relief, or any other relief the Court deems
21 proper.

22 2. Declaratory relief that the Van Heusen Defendants violated the ADA for
23 the purposes of Unruh Act or Disabled Persons Act damages.

24 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
25 California Civil Code (but not both) according to proof.

26 4. Attorneys' fees, litigation expenses, and costs of suit.⁶⁵

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28 ⁶³ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

⁶⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

Kohler v. Chelsea Carlsbad Finance, LLC, et al.

Plaintiff's Complaint

1 5. Interest at the legal rate from the date of the filing of this action.

2 XC. PRAYER FOR RELIEF

3 WHEREFORE, Kohler prays judgment against the Banana Republic Defendants
4 for:

5 1. Injunctive relief, preventive relief, or any other relief the Court deems
6 proper.

7 2. Declaratory relief that the Banana Republic Defendants violated the ADA
8 for the purposes of Unruh Act or Disabled Persons Act damages.

9 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
10 California Civil Code (but not both) according to proof.

11 4. Attorneys' fees, litigation expenses, and costs of suit.⁶⁶

12 5. Interest at the legal rate from the date of the filing of this action.

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14 DATED: February 11, 2010 DISABLED ADVOCACY GROUP, APLC

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LYNN HUBBARD, III
Attorney for Plaintiff, Chris Kohler

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⁶⁵ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

⁶⁶ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

Kohler v. Chelsea Carlsbad Finance, LLC, et al.

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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
CHRIS KOHLER

DEFENDANTS
SEE ATTACHED LIST

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)
LYNN HUBBARD, III DISABLED ADVOCACY GROUP, APLC
12 Williamsburg Lane Chico, CA 95926 (530) 895-3252

Attorneys (If Known)
10 CV 0365 IEG RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty			<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 950 Constitutionalality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.

Brief description of cause:
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 02/11/2010

FOR OFFICE USE ONLY

RECEIPT # 10232 AMOUNT \$350- APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

WR

RB 02-16-10

FILED
2010 FEB 16 AM 10:48
CLERK US DISTRICT COURT
DISTRICT OF CALIFORNIA

OF ATTORNEY OF RECORD

DEFENDANT LIST

1. CPG CARLSBAD HOLDINGS, LLC;
2. CHELSEA PROPERTY GROUP;
3. ADIDAS PROMOTIONAL RETAIL OPERATIONS, INC. dba ADIDAS;
4. RETAIL BRAND ALLIANCE, INC. dba BROOKS BROTHERS FACTORY STORE;
5. CONVERSE, INC. dba THE CONVERSE OUTLET STORE #3742;
6. THE KITCHEN COLLECTION, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS KCI FACTORY OUTLET STORES dba LE GOURMET CHEF;
7. GAP (APPAREL), LLC dba GAP OUTLET #7780;
8. HDOS ENTERPRISES dba HOT DOG on a STICK #192;
9. JOCKEY INTERNATIONAL GLOBAL, INC. dba THE JOCKEY STORE #125;
10. KENNETH COLE PRODUCTIONS, INC. dba KENNETH COLE #5051;
11. POLO CALIFORNIA, LLC dba POLO FACTORY STORE;
12. PUMA NORTH AMERICA, INC. dba PUMA;
13. REEBOK INTERNATIONAL LTD. dba REEBOK OUTLET STORE #114;
14. RUBIO'S RESTAURANTS, INC. dba RUBIO'S FRESH MEXICAN GRILL;
15. EAT at JOE'S, INC. dba RUBY'S DINER;
16. TOMMY HILFIGER RETAIL, LLC dba TOMMY HILFIGER #54;
17. PHILLIPS - VAN HEUSEN CORPORATION dba VAN HEUSEN STORE #462;
18. BANANA REPUBLIC, LLC dba BANANA REPUBLIC #6282

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS010232
Cashier ID: mbain
Transaction Date: 02/16/2010
Payer Name: LYNN HUBBARD

CIVIL FILING FEE

For: KOHLER V CPG CARLSBAD HOLDINGS
Case/Party: D-CAS-3-10-CV-000365-001
Amount: \$350.00

CREDIT CARD

Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.