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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

JL

11 CRAIG YATES, an individual,
12 Plaintiff,

13 v.

14 SHANGHAI CHINA RESTAURANT &
15 ZAOH RESTAURANT, a.k.a. KAAN Y.
16 CHIN and EVA K. CHIN, as Trustees of the
Chin Family Trust, U.D.T. ("Under
17 Declaration of Trust"), dated May 19, 2005;
18 and SOO QUN CHIN, as Trustee of the
19 SOO QUN CHIN TRUST, U.D.T. ("Under
Declaration of Trust"), dated May 16, 2006,
20 Defendants.

CV 10 3748
CASE NO. 10 3748
Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:

1st CAUSE OF ACTION: For Denial of Access
by a Public Accommodation in Violation of the
Americans with Disabilities Act of 1990 (42
U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
and Equal Access in Violation of California
Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
Accessible Sanitary Facilities in Violation of
California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of
Access to Full and Equal Accommodations,
Advantages, Facilities, Privileges and/or
Services in Violation of California Civil Code
§51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

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NORTHERN DISTRICT OF CALIFORNIA
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1 Plaintiff CRAIG YATES, an individual, complains of defendants KAAN Y. CHIN and
2 EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under Declaration of Trust”),
3 dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO QUN CHIN TRUST, U.D.T.
4 (“Under Declaration of Trust”), dated May 16, 2006, which are also known by the public
5 accommodations they own as, SHANGHAI CHINA RESTAURANT & ZAOH RESTAURANT
6 and alleges as follows:

7 **INTRODUCTION:**

8 1. This is a civil rights action for discrimination against persons with physical
9 disabilities, of which class plaintiff CRAIG YATES and the disability community are members,
10 for failure to remove architectural barriers structural in nature at defendants’ SHANGHAI
11 CHINA RESTAURANT & ZAOH RESTAURANT, each a place of public accommodation,
12 thereby discriminatorily denying plaintiff and the class of other similarly situated persons with
13 physical disabilities access to, the full and equal enjoyment of, opportunity to participate in, and
14 benefit from, the goods, facilities, services, and accommodations thereof. Plaintiff seeks
15 injunctive relief and damages pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C.
16 §12101, *et seq.*; California Civil Code §§51, 51.5 and 54, *et seq.*; and California Health & Safety
17 Code §19955, *et seq.*

18 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about
19 April 17, 2010, May 11, 2010, June 15, 2010 and August 2, 2010 was an invitee, guest, patron,
20 customer at defendants’ SHANGHAI CHINA RESTAURANT, and who was an invitee, guest,
21 patron, customer at defendants’ ZAOH RESTAURANT on or about April 17, 2010,
22 May 12, 2010 and July 14, 2010, in the City of San Francisco, California. At said times and
23 places, defendants failed to provide proper legal access to both SHANGHAI CHINA
24 RESTAURANT and ZAOH RESTAURANT, each of which is a “public accommodation” and/or
25 a “public facility” including, but not limited to the entrance(s) and unisex restroom(s). The
26 denial of access was in violation of both federal and California legal requirements, and plaintiff
27 CRAIG YATES suffered violation of his civil rights to full and equal access, and was
28 embarrassed and humiliated.

1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel
6 California law, whose goals are closely tied with the ADA, including but not limited to violations
7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
8 *seq.*, including §19959; Title 24 California Building Standards Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
10 founded on the facts that the real property which is the subject of this action is located at/near
11 1555 Mission Street, 1559 Mission Street, in the City and County of San Francisco, State of
12 California, and that plaintiff's causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff CRAIG YATES is a "physically handicapped person", a "physically
15 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically
16 disabled", "physically handicapped" and "person with physical disabilities" are used
17 interchangeably, as these words have similar or identical common usage and legal meaning, but
18 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
19 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other
20 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff
21 CRAIG YATES is a "person with physical disabilities", as defined by all applicable California
22 and United States laws. Plaintiff is a triplegic. Plaintiff CRAIG YATES requires the use of a
23 wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of that
24 portion of the public whose rights are protected by the provisions of Health & Safety Code
25 §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped
26 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the
27 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.
28 §12101, *et seq.*

1 6. Defendants KAAN Y. CHIN and EVA K. CHIN, as Trustees of the Chin Family
2 Trust, U.D.T. (“Under Declaration of Trust”), dated May 19, 2005; and SOO QUN CHIN, as
3 Trustee of the SOO QUN CHIN TRUST, U.D.T. (“Under Declaration of Trust”), dated May 16,
4 2006 (hereinafter alternatively collectively referred to as “defendants”) are the owners and
5 operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public
6 accommodation(s) known as SHANGHAI CHINA RESTAURANT and ZAOH RESTAURANT,
7 located at/near 1555 Mission Street, 1559 Mission Street, San Francisco, California, respectively,
8 or of the building and/or buildings which constitute said public accommodations.

9 7. At all times relevant to this complaint, defendants KAAN Y. CHIN and EVA K.
10 CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under Declaration of Trust”), dated May
11 19, 2005; and SOO QUN CHIN, as Trustee of the SOO QUN CHIN TRUST, U.D.T. (“Under
12 Declaration of Trust”), dated May 16, 2006, own and operate in joint venture the subject
13 SHANGHAI CHINA RESTAURANT & ZAOH RESTAURANT as public accommodations.
14 This business is open to the general public and conducts business therein. Each business is a
15 “public accommodation” or “public facility” subject to the requirements of California Civil Code
16 §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C.
17 §12101, *et seq.*

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1 8. At all times relevant to this complaint, defendants KAAN Y. CHIN and EVA K.
2 CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under Declaration of Trust”), dated May
3 19, 2005; and SOO QUN CHIN, as Trustee of the SOO QUN CHIN TRUST, U.D.T. (“Under
4 Declaration of Trust”), dated May 16, 2006 are jointly and severally responsible to identify and
5 remove architectural barriers at the subject restaurants pursuant to Code of Federal Regulations
6 title 28, section 36.201(b), which states in pertinent part:

7 **§ 36.201 General**

8 (b) *Landlord and tenant responsibilities.* Both the landlord
9 who owns the building that houses a place of public
10 accommodation and the tenant who owns or operates the place of
11 public accommodation are public accommodations subject to the
12 requirements of this part. As between the parties, allocation of
13 responsibility for complying with the obligations of this part may
14 be determined by lease or other contract.

15 28 CFR §36.201(b)

16 **PRELIMINARY FACTUAL ALLEGATIONS:**

17 9. The SHANGHAI CHINA & ZAOH, are restaurants, located at/near 1555 Mission
18 Street, 1559 Mission Street, San Francisco, California. The SHANGHAI CHINA & ZAOH,
19 their entrance(s) and unisex restroom(s), and its other facilities are each a “place of public
20 accommodation or facility” subject to the barrier removal requirements of the Americans with
21 Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone
22 “alterations, structural repairs and additions,” each of which has subjected the SHANGHAI
23 CHINA & ZAOH and each of its facilities, their entrance(s) and unisex restroom(s) to disability
24 access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG),
25 and Title 24 of the California Code of regulations (Title 24).

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1 10. On or about but before May 16, 2006, defendants' and each of them purchased
2 and/or took possessory control of the premises now known as SHANGHAI CHINA & ZAOH.
3 At all times prior thereto, defendants' and each of them were aware of their obligation prior to
4 the close of escrow, or upon taking possessory interest that public accommodations had a duty to
5 identify and remove architectural barriers and were aware that SHANGHAI CHINA & ZAOH
6 were not accessible to the disabled. Nevertheless, defendants' and each of them, operated
7 SHANGHAI CHINA & ZAOH as though each was accessible.

8 11. At all times stated herein, defendants' and each of them with the knowledge that
9 each of them had a continuing obligation to identify and remove architectural barriers where it
10 was readily achievable to do so, failed to adopt a transition plan to provide better and/or
11 compliant access to the subject accommodation.

12 12. At all times referred to herein and continuing to the present time, defendants, and
13 each of them, advertised, publicized and held out the SHANGHAI CHINA & ZAOH as each
14 being handicapped accessible and handicapped usable.

15 13. On or about April 17, 2010, it was plaintiff CRAIG YATES's intent to dine at
16 SHANGHAI CHINA or ZAOH's, and to take either Chinese or Japanese cuisine home with him.

17 14. On or about April 17, 2010, May 11, 2010, June 15, 2010 and August 2, 2010,
18 plaintiff CRAIG YATES was an invitee and guest at the subject SHANGHAI CHINA
19 RESTAURANT, for purposes of having food and beverage.

20 15. On or about April 17, 2010, May 12, 2010 and July 14, 2010, plaintiff CRAIG
21 YATES was an invitee and guest at the subject ZAOH RESTAURANT, for purposes of having
22 food and beverage.

23 16. On or about April 17, 2010, plaintiff CRAIG YATES power wheeled to
24 SHANGHAI CHINA RESTAURANT. Plaintiff CRAIG YATES encountered a step-up
25 approximately three (3) inches and could not gain access into the subject restaurant.
26 Plaintiff CRAIG YATES opened the front door of SHANGHAI CHINA RESTAURANT. An
27 employee came out to take plaintiff CRAIG YATES's order, returning with Chinese food and
28 providing it to plaintiff CRAIG YATES on the sidewalk.

1 17. On or about April 17, 2010, plaintiff CRAIG YATES then wheeled to ZAOH
2 RESTAURANT. Plaintiff CRAIG YATES encountered a three (3) inch step. Again, plaintiff
3 CRAIG YATES opened the entry door but could not gain access due to the step-up at the subject
4 restaurant. Plaintiff CRAIG YATES was compelled to order Japanese food from the sidewalk
5 outside ZAOH.

6 18. Rather than plaintiff CRAIG YATES being able to dine at either restaurant(s),
7 plaintiff CRAIG YATES was forced to be served on the sidewalk.

8 19. On or about April 21, 2010, plaintiff CRAIG YATES wrote four (4) letters to the
9 landlords and tenants about the lack of access and provided them with the phone number of
10 Prairie Industries, which markets portable ramps. Plaintiff CRAIG YATES never received a
11 response from either restaurant (SHANGHAI CHINA/ZAOH) or the landlords.

12 20. Again, on or about May 11, 2010, June 15, 2010 and August 2, 2010, plaintiff
13 CRAIG YATES patronized the SHANGHAI CHINA RESTAURANT. On each occasion,
14 plaintiff CRAIG YATES encountered the step which denied him access. On each occasion,
15 plaintiff CRAIG YATES attempted to explain to a male employee the need for a curb-cut type
16 ramp. Plaintiff CRAIG YATES had needed to use unisex sanitary facility. Plaintiff CRAIG
17 YATES was informed that the SHANGHAI CHINA RESTAURANT did not have an accessible
18 restroom and that it would be a futile gesture for plaintiff CRAIG YATES to attempt to use the
19 restroom.

20 21. On or about May 12, 2010 and July 14, 2010, plaintiff CRAIG YATES returned
21 to ZAOH RESTAURANT. Plaintiff CRAIG YATES encountered the same step at the entrance
22 which impeded his entry. On each of these two (2) occasions, plaintiff CRAIG YATES ordered
23 from and was served on the sidewalk. On each of these occasions, plaintiff CRAIG YATES
24 spoke to a female employee about providing a curb-cut entry.

25 22. At said time(s) and place, plaintiff CRAIG YATES needed to use a restroom.
26 Plaintiff CRAIG YATES was informed that ZAOH RESTAURANT had a unisex restroom but it
27 was not accessible to wheelchair users. Therefore, plaintiff CRAIG YATES made no attempts to
28 use it as it would have been a futile gesture.

1 23. At all times stated herein, it was “readily achievable” for defendants KAAN Y.
2 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under Declaration of
3 Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO QUN CHIN TRUST,
4 U.D.T. (“Under Declaration of Trust”), dated May 16, 2006 to provide access. Defendants
5 KAAN Y. CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under
6 Declaration of Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO QUN
7 CHIN TRUST, U.D.T. (“Under Declaration of Trust”), dated May 16, 2006's building has
8 approximately forty (40) apartments, which provide the financial ability to remove architectural
9 barriers at SHANGHAI CHINA and ZAOH.

10 24. Therefore, at said times and places, plaintiff CRAIG YATES, a person with a
11 disability, encountered the following inaccessible elements of the subject restaurants which
12 constituted architectural barriers and a denial of the proper and legally-required access to a public
13 accommodation to persons with physical disabilities including, but not limited to:

- 14 a. lack of directional signage to show accessible routes of travel, i.e.
15 entrances or procedure for access assistance at each restaurant;
- 16 b. lack of an accessible entrance at each restaurant;
- 17 c. lack of a handicapped-accessible unisex public restroom for ambulatory
18 impaired persons at SHANGHAI CHINA;
- 19 d. lack of a handicapped-accessible unisex public restroom at ZAOH's
20 restaurant;
- 21 e. lack of proper signage at each restaurant;
- 22 f. lack of alternative methods of access rather than a permanent curb-cut
23 ramp at each restaurant; and
- 24 g. On personal knowledge, information and belief, other public facilities and
25 elements too numerous to list were improperly inaccessible for use by
26 persons with physical disabilities.

27 25. At all times stated herein, the existence of architectural barriers at defendants'
28 place of public accommodation evidenced “actual notice” of defendants' intent not to comply
with the Americans with Disabilities Act of 1990 either then, now or in the future.

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1 26. At all times stated herein, defendants, and each of them, did not act as reasonable
2 and prudent landlord/tenant and were “negligent per se” or at a minimum negligent for not
3 removing architectural barriers that would foreseeably prevent plaintiff CRAIG YATES from
4 receiving the same goods and services as able bodied people and some of which may and did pose
5 a threat of harm and/or personal injury to people with disabilities.

6 27. As a legal result of defendants KAAN Y. CHIN and EVA K. CHIN, as Trustees of
7 the Chin Family Trust, U.D.T. (“Under Declaration of Trust”), dated May 19, 2005; and SOO
8 QUN CHIN, as Trustee of the SOO QUN CHIN TRUST, U.D.T. (“Under Declaration of Trust”),
9 dated May 16, 2006’s failure to act as a reasonable and prudent public accommodation in
10 identifying, removing or creating architectural barriers, policies, practices and procedures that
11 denied access to plaintiff and other persons with disabilities, plaintiff suffered the damages as
12 alleged herein.

13 28. Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,
14 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,
15 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a
16 person with physical disabilities being denied access, all to his damages as prayed hereinafter in
17 an amount within the jurisdiction of this court. No claim is being made for mental and emotional
18 distress over and above that usually associated with the discrimination and physical injuries
19 claimed, and no expert testimony regarding this usual mental and emotional distress will be
20 presented at trial in support of the claim for damages.

21 29. Defendants’, and each of their, failure to remove the architectural barriers
22 complained of herein created, at the time of plaintiff CRAIG YATES’s first visit to said public
23 accommodation, and continues to create continuous and repeated exposure to substantially the
24 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.

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1 30. Plaintiff CRAIG YATES was denied his rights to equal access to a public facility
2 by defendants KAAN Y. CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T.
3 (“Under Declaration of Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the
4 SOO QUN CHIN TRUST, U.D.T. (“Under Declaration of Trust”), dated May 16, 2006, because
5 defendants KAAN Y. CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T.
6 (“Under Declaration of Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the
7 SOO QUN CHIN TRUST, U.D.T. (“Under Declaration of Trust”), dated May 16, 2006
8 maintained two (2) restaurants without access for persons with physical disabilities to its facilities,
9 including but not limited to the entrance(s) and unisex restroom(s), and other public areas as
10 stated herein, and continue to the date of filing this complaint to deny equal access to plaintiff and
11 other persons with physical disabilities in these and other ways.

12 31. On information and belief, construction alterations carried out by defendants have
13 also triggered access requirements under both California law and the Americans with Disabilities
14 Act of 1990.

15 32. Plaintiff, as described hereinbelow, seeks injunctive relief to require the
16 SHANGHAI CHINA & ZAOH to be made accessible to meet the requirements of both California
17 law and the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as
18 defendants operate each restaurant as a public facility.

19 33. Plaintiff seeks damages for violation of their civil rights on April 17, 2010,
20 May 11, 2010, May 12, 2010, June 15, 2010, July 14, 2010 and August 2, 2010 and seeks
21 statutory damages of not less than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000
22 pursuant to Civil Code §54.3, for each day after his visit that the trier of fact (court/jury)
23 determines was the date that some or all remedial work should have been completed under the
24 standard that the landlord and tenant had an ongoing duty to identify and remove architectural
25 barriers where it was readily achievable to do so, which deterred plaintiff CRAIG YATES from
26 returning to each subject public accommodation because of his knowledge and/or belief that
27 neither some or all architectural barriers had been removed and that each of said premises remains
28 inaccessible to persons with disabilities whether a wheelchair user or otherwise.

1 34. On information and belief, defendants have been negligent in their affirmative duty
2 to identify the architectural barriers complained of herein and negligent in the removal of some or
3 all of said barriers.

4 35. Because of defendants' violations, plaintiff and other persons with physical
5 disabilities are unable to use public facilities such as those owned and operated by defendants on a
6 "full and equal" basis unless each such facility is in compliance with the provisions of the
7 Americans with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et*
8 *seq.* and other accessibility law as plead herein. Plaintiff seeks an order from this court
9 compelling defendants to make the SHANGHAI CHINA & ZAOH each accessible to persons
10 with disabilities.

11 36. On information and belief, defendants have intentionally undertaken to modify and
12 alter existing building(s), and have failed to make them comply with accessibility requirements
13 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each
14 of them, in failing to provide the required accessible public facilities at the time of plaintiff's visit
15 and injuries, indicate actual and implied malice toward plaintiff, and despicable conduct carried
16 out by defendants, and each of them, with a willful and conscious disregard for the rights and
17 safety of plaintiff and other similarly situated persons, and justify a trebling of damages as
18 provided by Civil Code §§52(a) and 54.3, in order to make a more profound example of
19 defendants, and each of them, to other operators and landlords of other sushi and Chinese
20 restaurants and other public facilities, and to punish defendants and to carry out the purposes of
21 the Civil Code §§ 51, 51.5 and 54.

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1 37. Plaintiff is informed and believes and therefore alleges that defendants KAAN Y.
2 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under Declaration of
3 Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO QUN CHIN TRUST,
4 U.D.T. (“Under Declaration of Trust”), dated May 16, 2006, and each of them, caused the subject
5 building(s) which constitute the SHANGHAI CHINA & ZAOH to be constructed, altered and
6 maintained in such a manner that persons with physical disabilities were denied full and equal
7 access to, within and throughout said building(s) of the subject restaurants and were denied full
8 and equal use of said public facilities. Furthermore, on information and belief, defendants have
9 continued to maintain and operate said restaurants and/or its building(s) in such conditions up to
10 the present time, despite actual and constructive notice to such defendants that the configuration
11 of SHANGHAI CHINA & ZAOH and/or its building(s) is in violation of the civil rights of
12 persons with physical disabilities, such as plaintiff CRAIG YATES, and other members of the
13 disability community. Such construction, modification, ownership, operation, maintenance and
14 practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and
15 Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

16 38. On personal knowledge, information and belief, the basis of defendants’ actual and
17 constructive notice that the physical configuration of the facilities including, but not limited to,
18 architectural barriers constituting the subject restaurants and/or building(s) was in violation of the
19 civil rights of persons with physical disabilities, such as plaintiff, includes, but is not limited to,
20 communications with invitees and guests, plaintiff CRAIG YATES himself, owners of other
21 restaurants, hotels, motels and businesses, notices they obtained from governmental agencies upon
22 modification, improvement, or substantial repair of the subject premises and other properties
23 owned by these defendants, newspaper articles and trade publications regarding the Americans
24 with Disabilities Act of 1990 and other access laws, public service announcements by former U.S.
25 Attorney General Janet Reno between 1993 and 2000, and other similar information. Defendants’
26 failure, under state and federal law, to make the SHANGHAI CHINA & ZAOH both accessible is
27 further evidence of defendants’ conscious disregard for the rights of plaintiff and other similarly
28 situated persons with disabilities.

1 Despite being informed of such effect on plaintiff and other persons with physical disabilities due
 2 to the lack of accessible facilities, defendants, and each of them, knowingly and willfully refused
 3 to take any steps to rectify the situation and to provide full and equal access for plaintiff and other
 4 persons with physical disabilities to SHANGHAI CHINA & ZAOH. Said defendants, and each of
 5 them, have continued such practices, in conscious disregard for the rights of plaintiff and other
 6 persons with physical disabilities, up to the date of filing of this complaint, and continuing
 7 thereon. Defendants had further actual knowledge of the architectural barriers referred to herein
 8 by virtue of the demand letter addressed to the defendants and served concurrently with the
 9 summons and complaint. Said conduct, with knowledge of the effect it was and is having on
 10 plaintiff and other persons with physical disabilities, constitutes despicable conduct in conscious
 11 disregard of the rights and safety of plaintiff and of other similarly situated persons, justifying the
 12 imposition of treble damages per Civil Code §§52 and 54.3.

13 39. Plaintiff CRAIG YATES and the disability community, consisting of persons with
 14 disabilities, would, could and will return to the subject public accommodation when it is made
 15 accessible to persons with disabilities.

16 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
 17 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 18 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
 19 (On behalf of Plaintiff CRAIG YATES, an individual and Against Defendants KAAN Y.
 20 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under
 Declaration of Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO
 QUN CHIN TRUST, U.D.T. (“Under Declaration of Trust”), dated May 16, 2006 ,
 inclusive)
 (42 U.S.C. §12101, *et seq.*)

21 40. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 22 the allegations contained in paragraphs 1 through 39 of this complaint.

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1 41. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
2 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
3 protect:

4 some 43 million Americans with one or more physical or mental
5 disabilities; [that] historically society has tended to isolate and
6 segregate individuals with disabilities; [that] such forms of
7 discrimination against individuals with disabilities continue to be a
8 serious and pervasive social problem; [that] the nation's proper
9 goals regarding individuals with disabilities are to assure equality of
10 opportunity, full participation, independent living and economic
11 self-sufficiency for such individuals; [and that] the continuing
12 existence of unfair and unnecessary discrimination and prejudice
13 denies people with disabilities the opportunity to compete on an
14 equal basis and to pursue those opportunities for which our free
15 society is justifiably famous.

16 42. Congress stated as its purpose in passing the Americans with Disabilities Act of
17 1990 (42 U.S.C. §12102):

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

29 43. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
30 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
31 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
32 accommodations identified for purposes of this title was:

33 (7) PUBLIC ACCOMMODATION - The following private
34 entities are considered public accommodations for purposes of this
35 title, if the operations of such entities affect commerce -

36 ---

37 (B) a restaurant, bar or other establishment serving food or
38 drink.

42 U.S.C. §12181(7)(B)

1 44. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated against
2 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
3 privileges, advantages, or accommodations of any place of public accommodation by any person
4 who owns, leases, or leases to, or operates a place of public accommodation.”

5 45. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
6 42 U.S.C. §12182(b)(2)(a) are:

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

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

21 (iii) a failure to take such steps as may be necessary to
22 ensure that no individual with a disability is excluded, denied
23 services, segregated or otherwise treated differently than other
24 individuals because of the absence of auxiliary aids and services,
25 unless the entity can demonstrate that taking such steps would
26 fundamentally alter the nature of the good, service, facility,
27 privilege, advantage, or accommodation being offered or would
28 result in an undue burden;

(iv) a failure to remove architectural barriers, and
communication barriers that are structural in nature, in existing
facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of
a barrier under clause (iv) is not readily achievable, a failure to
make such goods, services, facilities, privileges, advantages or
accommodations available through alternative methods if such
methods are readily achievable.

The acts of defendants set forth herein were a violation of plaintiff’s rights under the ADA, Public
Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective
January 31, 1993, the standards of the ADA were also incorporated into California Civil Code
§51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

1 46. The removal of the barriers complained of by plaintiff as hereinabove alleged were
2 at all times after January 26, 1992 “readily achievable” as to the subject building(s) of
3 SHANGHAI CHINA & ZAOH pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information
4 and belief, if the removal of all the barriers complained of herein together was not “readily
5 achievable,” the removal of each individual barrier complained of herein was “readily
6 achievable.” On information and belief, defendants’ failure to remove said barriers was likewise
7 due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182
8 (b)(2)(A)(i)and (ii).

9 47. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
10 accomplishable and able to be carried out without much difficulty or expense.” The statute
11 defines relative “expense” in part in relation to the total financial resources of the entities
12 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
13 plaintiff complains of herein were and are “readily achievable” by the defendants under the
14 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
15 not “readily achievable” for defendants to remove each of such barriers, defendants have failed to
16 make the required services available through alternative methods which were readily achievable.

17 48. On information and belief, construction work on, and modifications of, the subject
18 building(s) of SHANGHAI CHINA & ZAOH occurred after the compliance date for the
19 Americans with Disabilities Act, January 26, 1992, independently triggering access requirements
20 under Title III of the ADA.

21 49. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
22 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
23 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis
24 of disability in violation of this title or have reasonable grounds for believing that plaintiff is about
25 to be subjected to discrimination in violation of §302. Plaintiff is deterred from returning to or
26 making use of the public facilities complained of herein so long as the premises and defendants’
27 policies bar full and equal use by persons with physical disabilities.

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1 50. 42 U.S.C. 12188 (a)(1) states: “Nothing in this section shall require a person with a
 2 disability to engage in a futile gesture if such person has actual notice that a person or
 3 organization covered by this title does not intend to comply with its provisions.” Pursuant to this
 4 section, plaintiff CRAIG YATES has not returned to defendants’ premises since on or about
 5 August 2, 2010, at SHANGHAI CHINA RESTAURANT and since on or about July 14, 2010 at
 6 ZAOH RESTAURANT, but on information and belief, alleges that defendants have continued to
 7 violate the law and deny the rights of plaintiff and of other persons with physical disabilities to
 8 access these public accommodation. Pursuant to 42 USC §12188(a)(2), “In cases of violations of
 9 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
 10 facilities readily accessible to and usable by individuals with disabilities to the extent required by
 11 this title.”

12 51. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
 13 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
 14 the Americans with Disabilities Act of 1990, including but not limited to an order granting
 15 injunctive relief and attorneys’ fees. Plaintiff will seek attorneys’ fees conditioned upon being
 16 deemed to be the prevailing party.

17 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
 18 **IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**
 19 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants KAAN Y.
 20 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under
 21 Declaration of Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO
 22 QUN CHIN TRUST, U.D.T. (“Under Declaration of Trust”), dated May 16, 2006,
 23 inclusive)
 24 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

25 52. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the
 26 allegations contained in paragraphs 1 through 51 of this complaint.

27 53. At all times relevant to this action, California Civil Code §54 has provided that
 28 persons with physical disabilities are not to be discriminated against because of physical handicap
 or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as
 the general public to full and free use of the streets, highways,
 sidewalks, walkways, public buildings, medical facilities, including
 hospitals, clinics, and physicians’ offices, and other public places.

1 54. California Civil Code §54.1 provides that persons with disabilities shall not be
2 denied full and equal access to places of public accommodation or facilities:

3 (a)(1) Individuals with disabilities shall be entitled to full
4 and equal access, as other members of the general public, to
5 accommodations, advantages, facilities, medical facilities, including
6 hospitals, clinics, and physicians' offices, and privileges of all
7 common carriers, airplanes, motor vehicles, railroad trains,
8 motorbuses, streetcars, boats, or any other public conveyances or
9 modes of transportation (whether private, public, franchised,
10 licensed, contracted, or otherwise provided), telephone facilities,
11 adoption agencies, private schools, hotels, lodging places, places of
12 public accommodation, amusement or resort, and other places to
13 which the general public is invited, subject only to the conditions
14 and limitations established by law, or state or federal regulation, and
15 applicable alike to all persons.

16 Civil Code §54.1(a)(1)

17 55. California Civil Code §54.1 further provides that a violation of the Americans with
18 Disabilities Act of 1990 constitutes a violation of section 54.1:

19 (d) A violation of the right of an individual under the
20 Americans with Disabilities Act of 1990 (Public Law 101-336) also
21 constitutes a violation of this section, and nothing in this section
22 shall be construed to limit the access of any person in violation of
23 that act.

24 Civil Code §54.1(d)

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1 56. Plaintiff CRAIG YATES is a person within the meaning of Civil Code §54.1
 2 whose rights have been infringed upon and violated by the defendants, and each of them, as
 3 prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants
 4 knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil
 5 Code §§54 and 54.1. Plaintiff has been and continue to be denied full and equal access to
 6 defendants' SHANGHAI CHINA & ZAOH. As a legal result, plaintiff is entitled to seek
 7 damages pursuant to a court or jury determination, in accordance with California Civil Code
 8 §54.3(a) for each day on which he visited or have been deterred from visiting the restaurants
 9 because of his knowledge and belief that the subject restaurants each is inaccessible to persons
 10 with disabilities. California Civil Code §54.3(a) provides:

11 Any person or persons, firm or corporation, who denies or interferes
 12 with admittance to or enjoyment of the public facilities as specified
 13 in Sections 54 and 54.1 or otherwise interferes with the rights of an
 14 individual with a disability under Sections 54, 54.1 and 54.2 is
 15 liable for each offense for the actual damages and any amount as
 16 may be determined by a jury, or the court sitting without a jury, up
 to a maximum of three times the amount of actual damages but in
 no case less than . . .one thousand dollars (\$1,000) and . . .
 attorney's fees as may be determined by the court in addition
 thereto, suffered by any person denied any of the rights provided in
 Sections 54, 54.1 and 54.2.

17 Civil Code §54.3(a)

18 57. On or about April 17, 2010, May 11, 2010, May 12, 2010, June 15, 2010, July 14,
 19 2010 and August 2, 2010, plaintiff CRAIG YATES suffered violations of Civil Code §§54 and
 20 54.1 in that plaintiff CRAIG YATES was denied access to entrance(s) and unisex restroom(s) and
 21 other public facilities as stated herein at SHANGHAI CHINA & ZAOH and on the basis that
 22 plaintiff CRAIG YATES was a person with physical disabilities.

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1 58. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental
2 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment
3 and worry, all of which are expectedly and naturally associated with a denial of access to a person
4 with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and
5 omissions to act constituted discrimination against plaintiff on the sole basis that plaintiff is a
6 person or an entity that represents persons with physical disabilities and unable, because of the
7 architectural barriers created and maintained by the defendants in violation of the subject laws, to
8 use the public facilities hereinabove described on a full and equal basis as other persons.

9 59. Plaintiff has been damaged by defendants', and each of their, wrongful conduct and
10 seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiff's rights
11 as a person or an entity that represents persons with physical disabilities on or about
12 April 17, 2010, May 11, 2010, May 12, 2010, June 15, 2010, July 14, 2010 and August 2, 2010,
13 and on a continuing basis since then, including statutory damages, a trebling of all of actual
14 damages, general and special damages available pursuant to §54.3 of the Civil Code according to
15 proof.

16 60. As a result of defendants', and each of their, acts and omissions in this regard,
17 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce
18 plaintiff's rights and enforce the provisions of the law protecting access for persons with physical
19 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
20 the provisions of Civil Code §54.3, plaintiff therefore will seek recovery in this lawsuit for all
21 reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,
22 plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to
23 compel the defendants to make their facilities accessible to all members of the public with
24 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to
25 the provisions of §1021.5 of the Code of Civil Procedure.

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1 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**
2 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.**
3 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants KAAN Y.
4 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under
5 Declaration of Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO
6 QUN CHIN TRUST, U.D.T. (“Under Declaration of Trust”), dated May 16, 2006,
7 inclusive)
8 (Health & Safety Code §19955, *et seq.*)

9 61. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
10 the allegations contained in paragraphs 1 through 60 of this complaint.

11 62. Health & Safety Code §19955 provides in pertinent part:

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

23 63. Health & Safety Code §19956, which appears in the same chapter as §19955,
24 provides in pertinent part, “accommodations constructed in this state shall conform to the
25 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government
26 Code” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all
27 public accommodations constructed or altered after that date. On information and belief, portions
28 of SHANGHAI CHINA & ZAOH and/or of the building(s) were constructed and/or altered after
July 1, 1970, and substantial portions of each restaurant and/or the building(s) had alterations,
structural repairs, and/or additions made to such public accommodations after July 1, 1970,
thereby requiring said restaurants and/or building to be subject to the requirements of Part 5.5,
§19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions
per Health & Safety Code §19959.

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1 64. Pursuant to the authority delegated by Government Code §4450, *et seq*, the State
2 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
3 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
4 Regulations and these regulations must be complied with as to any alterations and/or
5 modifications of SHANGHAI CHINA & ZAOH and/or the building(s) occurring after that date.
6 Construction changes occurring prior to this date but after July 1, 1970 triggered access
7 requirements pursuant to the "ASA" requirements, the American Standards Association
8 Specifications, A117.1-1961. On information and belief, at the time of the construction and
9 modification of said building, all buildings and facilities covered were required to conform to
10 each of the standards and specifications described in the American Standards Association
11 Specifications and/or those contained in Title 24 of the California Building Standards Code.

12 65. Restaurants such as the SHANGHAI CHINA & ZAOH are "public
13 accommodations or facilities" within the meaning of Health & Safety Code §19955, *et seq*.

14 66. As a result of the actions and failure to act of defendants, and as a result of the
15 failure to provide proper and legally handicapped-accessible public facilities, plaintiff was denied
16 plaintiff's rights to full and equal access to public facilities and suffered a loss of plaintiff's civil
17 rights and plaintiff's rights as a person with physical disabilities to full and equal access to public
18 facilities.

19 67. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
20 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's
21 civil rights and enforce provisions of the law protecting access for the persons with physical
22 disabilities and prohibiting discrimination against the persons with physical disabilities, and to
23 take such action both in plaintiff's own interests and in order to enforce an important right
24 affecting the public interest. Plaintiff, therefore, seeks in this lawsuit the recovery of all
25 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
26 §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953
27 and Civil Code §§54.3 and/or in the alternative, plaintiff will seek attorneys' fees, costs and
28 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).

1 Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

2 68. Plaintiff seeks injunctive relief for an order compelling defendants, and each of
3 them, to make the subject place of public accommodation readily accessible to and usable by
4 persons with disabilities.

5 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND
6 EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES
AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET
7 SEO. (THE UNRUH CIVIL RIGHTS ACT)**

8 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants KAAN Y.
9 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. ("Under
10 Declaration of Trust"), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO
11 QUN CHIN TRUST, U.D.T. ("Under Declaration of Trust"), dated May 16, 2006,
12 inclusive)
13 (Civil Code §51, 51.5)

14 69. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
15 the allegations contained in paragraphs 1 through 68 of this complaint.

16 70. Defendants' actions and omissions and failure to act as a reasonable and prudent
17 public accommodation in identifying, removing and/or creating architectural barriers, policies,
18 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
19 Unruh Act provides:

20 This section shall be known, and may be cited, as the Unruh
21 Civil Rights Act.

22 All persons within the jurisdiction of this state are free and
23 equal, and no matter what their sex, race, color, religion, ancestry,
24 national origin, or **disability** are entitled to the full and equal
25 accommodations, advantages, facilities, privileges, or services in all
26 business establishments of every kind whatsoever.

27 This section shall not be construed to confer any right or
28 privilege on a person that is conditioned or limited by law or that is
applicable alike to persons of every sex, color, race, religion,
ancestry, national origin, or **disability**.

Nothing in this section shall be construed to require any
construction, alteration, repair, structural or otherwise, or
modification of any sort whatsoever, beyond that construction,
alteration, repair, or modification that is otherwise required by other
provisions of law, to any new or existing establishment, facility,
building, improvement, or any other structure . . . nor shall anything
in this section be construed to augment, restrict, or alter in any way
the authority of the State Architect to require construction,
alteration, repair, or modifications that the State Architect otherwise
possesses pursuant to other . . . laws.

1 A violation of the right of any individual under the
2 Americans with Disabilities Act of 1990 (Public Law 101-336) shall
also constitute a violation of this section.

3 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
4 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the
5 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
6 failing to act to identify and remove barriers can be construed as a “negligent per se” act of
7 defendants, and each of them.

8 71. The acts and omissions of defendants stated herein are discriminatory in nature and
9 in violation of Civil Code §51.5:

10 No business establishment of any kind whatsoever shall
11 discriminate against, boycott or blacklist, refuse to buy from, sell to,
12 or trade with any person in this state because of the race, creed,
13 religion, color, national origin, sex, or **disability** of the person or of
the person’s partners, members, stockholders, directors, officers,
managers, superintendents, agents, employees, business associates,
suppliers, or customers.

14 As used in this section, “person” includes any person, firm
15 association, organization, partnership, business trust, corporation,
limited liability company, or company.

16 Nothing in this section shall be construed to require any
17 construction, alteration, repair, structural or otherwise, or
18 modification of any sort whatsoever, beyond that construction,
19 alteration, repair or modification that is otherwise required by other
20 provisions of law, to any new or existing establishment, facility,
21 building, improvement, or any other structure . . . nor shall anything
in this section be construed to augment, restrict or alter in any way
the authority of the State Architect to require construction,
alteration, repair, or modifications that the State Architect otherwise
possesses pursuant to other laws.

22 72. Defendants’ acts and omissions as specified have denied to the plaintiff full and
23 equal accommodations, advantages, facilities, privileges and services in a business establishment,
24 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil
25 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, “A
26 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public
27 Law 101-336) shall also constitute a violation of this section.”
28

1 Plaintiff accordingly incorporates the entirety of his above cause of action for violation of the
2 Americans with Disabilities Act at §40, *et seq.*, as if repled herein.

3 73. Further, plaintiff CRAIG YATES suffered mental distress, mental
4 suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,
5 disappointment and worry, all of which are expectedly and naturally associated with a denial of
6 access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated.
7 Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole
8 basis that plaintiff is a person or an entity that represents persons with physical disabilities and
9 unable, because of the architectural barriers created and maintained by the defendants in violation
10 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as
11 other persons.

12 74. Plaintiff CRAIG YATES is entitled to the rights and remedies of §52(a)
13 of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to
14 mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is
15 allowed by statute, according to proof if deemed to be the prevailing party.

16 **PRAYER:**

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

18 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A
19 PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
20 DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**

21 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants KAAN Y.
22 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. ("Under
23 Declaration of Trust"), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO
24 QUN CHIN TRUST, U.D.T. ("Under Declaration of Trust"), dated May 16, 2006,
25 inclusive)
26 (42 U.S.C. §12101, *et seq.*)

27 1. For injunctive relief, compelling defendants KAAN Y. CHIN and EVA K. CHIN,
28 as Trustees of the Chin Family Trust, U.D.T. ("Under Declaration of Trust"), dated May 19, 2005;
and SOO QUN CHIN, as Trustee of the SOO QUN CHIN TRUST, U.D.T. ("Under Declaration
of Trust"), dated May 16, 2006, inclusive, to make the SHANGHAI CHINA RESTAURANT &
ZAOH RESTAURANT, located at 1555 Mission Street, 1559 Mission Street, San Francisco,
California, readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181,

1 *et seq.*, and to make reasonable modifications in policies, practice, eligibility criteria and
2 procedures so as to afford full access to the goods, services, facilities, privileges, advantages and
3 accommodations being offered.

4 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed the
5 prevailing party; and

6 3. For such other and further relief as the court may deem proper.

7 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
8 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**
9 **AND 54.3, ET SEQ.**

10 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants KAAN Y.
11 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. ("Under
12 Declaration of Trust"), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO
13 QUN CHIN TRUST, U.D.T. ("Under Declaration of Trust"), dated May 16, 2006,
14 inclusive)
15 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

16 1. For injunctive relief, compelling defendants KAAN Y. CHIN and EVA K. CHIN,
17 as Trustees of the Chin Family Trust, U.D.T. ("Under Declaration of Trust"), dated May 19, 2005;
18 and SOO QUN CHIN, as Trustee of the SOO QUN CHIN TRUST, U.D.T. ("Under Declaration
19 of Trust"), dated May 16, 2006, inclusive, to make the SHANGHAI CHINA RESTAURANT &
20 ZAOH RESTAURANT, located at 1555 Mission Street, 1559 Mission Street, San Francisco,
21 California, readily accessible to and usable by individuals with disabilities, per state law.

22 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for
23 each occasion on which plaintiff was deterred from returning to the subject public
24 accommodation.

25 3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5,
26 if plaintiffs are deemed the prevailing party;

27 4. Treble damages pursuant to Civil Code §54.3;

28 5. General damages according to proof;

6. For all costs of suit;

7. Prejudgment interest pursuant to Civil Code §3291; and

8. Such other and further relief as the court may deem just and proper.

1 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE**
2 **SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE**
3 **§19955, ET. SEO.**

4 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants KAAN Y.
5 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under
6 Declaration of Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO
7 QUN CHIN TRUST, U.D.T. (“Under Declaration of Trust”), dated May 16, 2006,
8 inclusive)
9 (Health & Safety code §19955, *et seq.*)

10 1. For injunctive relief, compelling defendants KAAN Y. CHIN and EVA K. CHIN,
11 as Trustees of the Chin Family Trust, U.D.T. (“Under Declaration of Trust”), dated May 19, 2005;
12 and SOO QUN CHIN, as Trustee of the SOO QUN CHIN TRUST, U.D.T. (“Under Declaration
13 of Trust”), dated May 16, 2006, inclusive, to make the SHANGHAI CHINA RESTAURANT &
14 ZAOH RESTAURANT, located at 1555 Mission Street, 1559 Mission Street, San Francisco,
15 California, readily accessible to and usable by individuals with disabilities, per state law.

16 2. For attorneys’ fees pursuant to Code of Civil Procedure §1021.5, and/or,
17 alternatively, Health & Safety Code §19953, if plaintiff is deemed the prevailing party;

18 3. For all costs of suit;

19 4. For prejudgment interest pursuant to Civil Code §3291;

20 5. Such other and further relief as the court may deem just and proper.

21 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**
22 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**
23 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**
24 **CODE §51, ET SEO. (THE UNRUH CIVIL RIGHTS ACT)**

25 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants KAAN Y.
26 CHIN and EVA K. CHIN, as Trustees of the Chin Family Trust, U.D.T. (“Under
27 Declaration of Trust”), dated May 19, 2005; and SOO QUN CHIN, as Trustee of the SOO
28 QUN CHIN TRUST, U.D.T. (“Under Declaration of Trust”), dated May 16, 2006,
inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and
for each occasion on which plaintiff was deterred from returning to the subject public
accommodation;

2. Attorneys’ fees pursuant to Civil Code §52(a), if plaintiff is deemed the prevailing
party;

3. General damages according to proof;

- 1 4. Treble damages pursuant to Civil Code §52(a);
- 2 5. For all costs of suit;
- 3 6. Prejudgment interest pursuant to Civil Code §3291; and
- 4 7. Such other and further relief as the court may deem just and proper.

5
 6 Dated: 8/4/10, 2010 THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

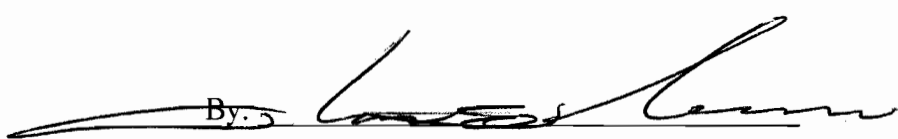
7
 8 By: 

9 THOMAS E. FRANKOVICH
 10 Attorneys for Plaintiff CRAIG YATES, an individual

11
 12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

14
 15 Dated: 8/11/10, 2010 THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

16
 17 By: 

18 THOMAS E. FRANKOVICH
 19 Attorneys for Plaintiff CRAIG YATES, an individual