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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 FRANCIE E. MOELLER *et al.*,

Case No. C 02 5849 PJH (NC)

14 Plaintiffs,

**SECOND AMENDED CLASS ACTION
COMPLAINT**

15 v.

16 TACO BELL CORP.,

**The Honorable Phyllis J. Hamilton
Courtroom 3, 3rd Floor**

17 Defendant.

18
19 Plaintiffs Francie Moeller, Edward Muegge, Katherine Corbett and Craig Thomas Yates,
20 by and through their attorneys, hereby submit their Second Amended Class Action Complaint
21 for violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.*,
22 (“ADA”), the Unruh Civil Rights Act, Cal. Civ. Code, § 51, *et seq.* (“the Unruh Act”), and the
23 California Disabled Persons Act, Cal. Civ. Code, § 54, *et seq.* (the “CDPA”).

24 **INTRODUCTION**

25 1. Over twenty years after Congress passed one of our nation’s landmark civil
26 rights law for people with disabilities, Defendant’s restaurants in California still maintain barriers
27 that prevent customers who use wheelchairs or scooters from the full, independent and equal
28 enjoyment of Defendant’s goods and services.

1 10. Plaintiff Katherine J. Corbett is and has been at all times material hereto a
2 resident of the State of California.

3 11. Ms. Corbett has post polio syndrome. Ms. Corbett has physical impairments that
4 substantially limit several major life activities, including but not limited to walking. She has a
5 record of physical impairments that substantially limit several major life activities and is
6 regarded as having physical impairments that substantially limit several major life activities. Ms.
7 Corbett uses a power wheelchair for her primary means of mobility outside of her home and has
8 a disability within the meaning of the ADA. 42 U.S.C. § 12102(2)(A).

9 12. Ms. Corbett has a physical disability and/or medical condition as those terms are
10 defined in applicable California law, including Cal. Gov't Code § 12926.

11 13. Plaintiff Edward Muegge was a resident of the State of California from 1954 to
12 2003; since 2003, he has resided in the state of Hawaii, but returns often to California for
13 medical care and to visit friends.

14 14. As a result of a spinal cord injury, Mr. Muegge has physical impairments that
15 substantially limit several major life activities, including but not limited to walking. He has a
16 record of physical impairments that substantially limit several major life activities and is
17 regarded as having physical impairments that substantially limit several major life activities. Mr.
18 Muegge uses a power scooter for his primary means of mobility and has a disability within the
19 meaning of the ADA. 42 U.S.C. § 12102(2)(A).

20 15. Mr. Muegge has a physical disability and/or medical condition as those terms are
21 defined in applicable California law, including Cal. Gov't Code § 12926.

22 16. Plaintiff Craig Thomas Yates is and has been at all times material hereto a
23 resident of the State of California.

24 17. As a result of a spinal cord injury, Mr. Yates has physical impairments that
25 substantially limit several major life activities, including but not limited to walking. He has a
26 record of physical impairments that substantially limit several major life activities and is
27 regarded as having physical impairments that substantially limit several major life activities. Mr.
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1 Yates uses a power wheelchair for his primary means of mobility and has a disability within the
2 meaning of the ADA. 42 U.S.C. § 12102(2)(A).

3 18. Mr. Yates has a physical disability and/or medical condition as those terms are
4 defined in applicable California law, including Cal. Gov't Code § 12926.

5 19. Defendant Taco Bell Corp. ("TBC") is a corporation incorporated under the
6 laws of California, with its principal place of business at 1 Glen Bell Way, Irvine, CA 92618.
7 TBC owns, operates, leases and/or leases to Taco Bell restaurants in California, including
8 combination restaurants in which Taco Bell products and products of other restaurants (for
9 example, Kentucky Fried Chicken) are sold.

10 **CLASS ACTION ALLEGATIONS**

11 20. Plaintiffs Moeller, Muegge, Yates, and Corbett seek to maintain this action under
12 Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class consists of all individuals with
13 disabilities who use wheelchairs or electric scooters for mobility who, during a time period to be
14 determined by this Court, were denied, or are currently being denied, on the basis of disability,
15 full and equal enjoyment of the goods, services, facilities, privileges, advantages, or
16 accommodations of any Taco Bell restaurant in California that was designed or constructed by,
17 or is owned, operated, leased by, or leased to, Defendant.

18 21. The class identified in paragraph 20 is believed to consist of well over 1,000
19 members who are dispersed across the State of California. Joinder of all of such class members
20 in this lawsuit is impracticable.

21 22. There are numerous questions of law and fact common to the class, including
22 without limitation, the following:

- 23 a. Whether Taco Bell restaurants in California are "public accommodations"
24 under the ADA;
- 25 b. Whether Taco Bell restaurants in California are "business establishments"
26 under the Unruh Act;

- 1 c. Whether Taco Bell restaurants in California are “places of public
- 2 accommodation” or “places to which the general public is invited” under
- 3 the CDPA;
- 4 d. Whether Taco Bell restaurants in California deny the full and equal
- 5 enjoyment of their goods, services, facilities, privileges, advantages, or
- 6 accommodations to people who use wheelchairs in violation of the ADA;
- 7 e. Whether Taco Bell restaurants in California deny full and equal
- 8 accommodations, advantages, facilities, privileges, or services to people
- 9 who use wheelchairs, in violation of the Unruh Act;
- 10 f. Whether Taco Bell restaurants in California deny full and equal access to
- 11 accommodations, advantages and facilities to people who use
- 12 wheelchairs, in violation of the CDPA;
- 13 g. What measures are legally required to bring Taco Bell restaurants in
- 14 California into compliance with the ADA, the Unruh Act and the CDPA;
- 15 h. Whether the design features at issue in this case -- which exist at many
- 16 Taco Bell restaurants -- violate state or federal law.

17 23. The claims of Plaintiffs Moeller, Muegge, Yates and Corbett are typical of the
18 claims of the members of the class. They -- like all other members of the class -- use a
19 wheelchair or scooter for mobility and claim Defendant has violated the ADA, the Unruh Act
20 and the CDPA by failing to make its Taco Bell restaurants accessible to people who use
21 wheelchairs.

22 24. Plaintiffs Moeller, Muegge, Yates, and Corbett will fairly and adequately protect
23 the interests of the class because they have retained counsel with extensive experience in
24 litigation, including class action litigation. In addition, Plaintiffs’ counsel, Timothy Fox and
25 Amy Robertson, were class counsel in a Colorado class action under the ADA concerning Taco
26 Bell restaurants. Finally, Plaintiffs Moeller, Muegge, Yates and Corbett have no interests that
27 conflict in any way with those of the class.

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2003, and for one visit that occurred in 2010 or 2011 but prior to November 3, 2011.

- b. Restaurant 3948, on Farmer’s Lane in Santa Rosa:
 - i. The entry door was too heavy, making it difficult for Ms. Moeller to open the door from her wheelchair (*id.* 20:17-24);
 - ii. The queue line was too narrow, making it difficult or impossible for Ms. Moeller to access the service counter (*id.* 20:19, 23:15-25);
 - iii. There was insufficient clear floor space at the drink machine, making it difficult for Ms. Moeller to access drinks and condiments (*id.* 39:17 - 40:15); and
 - iv. There was insufficient accessible seating and insufficient space between tables, making it difficult for Ms. Moeller to dine in the restaurant, especially when dining with other friends who use wheelchairs (*id.* 35:21 - 36:8).
 - v. Ms. Moeller is seeking minimum statutory damages for four visits to this restaurant that occurred between December 2001 and June 2003, and 42 visits that occurred between June 2003 and approximately 2008.
- c. Restaurant 4211 on Mendocino Avenue in Santa Rosa:
 - i. The access aisle at the accessible parking space was too narrow making it difficult for Ms. Moeller to park her van and use the aisle (*id.* 48:1-16);
 - ii. The entry door was too heavy, making it difficult for Ms. Moeller to open the door from her wheelchair (*id.* 67:23 - 68:1); and
 - iii. Drinks and condiments were placed out of range for Ms. Moeller to reach from her wheelchair (*id.* 60:13 - 61:2, 62:22-25).

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iv. Ms. Moeller is seeking minimum statutory damages for 6 visits from Dec. 2001 to June 2003, and for 1 visit in approximately 2007.

Katherine Corbett

29. Plaintiff Corbett has patronized the following Taco Bell Corporate restaurants and encountered the following barriers:

- a. Restaurant 4518 in San Pablo Towne Center in San Pablo:
 - i. The access aisle at the accessible parking space was too narrow, making it difficult for Ms. Corbett to park her van and use the aisle (Findings of Fact and Conclusions of Law (“FFCL”), ECF 642, at 4);
 - ii. The entry door was too heavy, making it difficult for Ms. Corbett to open the door from her wheelchair (*id.*);
 - iii. The queue line was too narrow, making it difficult or impossible for Ms. Corbett to access the service counter (*id.*);
 - iv. Drinks lids and straws were placed out of range for Ms. Corbett to reach from her wheelchair (*id.* at 5);
 - v. The accessible seating had insufficient knee clearance making it difficult for Ms. Corbett to sit at the table in her wheelchair (*id.*);
 - vi. The water closet in the women’s restroom was too low, making it difficult for Ms. Corbett to transfer from her wheelchair (*id.*);
 - vii. The pipes under the lavatory were not insulated, putting Ms. Corbett at risk for scalding and forcing her to use only cold water to wash her hands (*id.*); and
 - viii. A loose trash can in the women’s restroom obstructed Ms. Corbett’s access (*id.*).

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- ix. Ms. Corbett is seeking minimum statutory damages for five visits to this restaurant that occurred from 2002 until 2007, including a visit that occurred on Oct. 30, 2002.
- b. Restaurant 4558 on Redwood Drive in Rohnert Park:
 - i. The queue line was too narrow, making it difficult or impossible for Ms. Corbett to access the service counter (Corbett 2003 Dep. 75:22);
 - ii. There was insufficient interior accessible seating, making it difficult for Ms. Corbett to find seating to dine in the restaurant (*id.* 85:5 - 86:13);
 - iii. There was no exterior accessible seating, making it impossible for Ms. Corbett to dine in the outdoor seating area (*id.* 88:13-24); and
 - iv. The toilet seat cover dispenser was not reachable from Ms. Corbett's wheelchair (*id.* 87:1-3, 87:21 - 88:7).
 - v. Ms. Corbett is seeking minimum statutory damages for one visit to this restaurant that occurred on June 26, 2003.

Ed Muegge

30. Plaintiff Muegge has patronized the following Taco Bell Corporate restaurants and encountered the following barriers:

- a. Restaurant 3948 on Farmer's Lane in Santa Rosa:
 - i. The queue line was too narrow, making it difficult or impossible for Mr. Muegge to access the service counter (Muegge 2003 Dep. 109:2-4);
 - ii. The men's restroom door was too heavy, making it difficult for Mr. Muegge to open the door from his wheelchair (*id.* 111:13-15); and

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- iii. The pipes under the lavatory in the men’s restroom were not insulated, putting Mr. Muegge at risk for scalding (*id.* 110:23 - 111:7).
 - iv. Mr. Muegge is seeking minimum statutory damages for visits to this restaurant that occurred on the following dates: June 21, 2002, and Nov. 21, 2002.
- b. Restaurant 4211 on Mendocino Avenue in Santa Rosa:
- i. The maneuvering clearance at the men’s restroom door was insufficient, causing Mr. Muegge difficulty in getting into the restroom (Muegge 2011 Dep. 48:12 - 49:4).
 - ii. Mr. Muegge is seeking minimum statutory damages for visits to this restaurant that occurred on the following dates: Unknown day in June 2002; Apr. 22, 2005; July 1, 2010; Jan. 14, 2011 and Oct. 29, 2011.
- c. Restaurant 4558 on Redwood Drive in Rohnert Park:
- i. The entry door was too heavy, making it difficult for Mr. Muegge to open the door from his wheelchair (Muegge 2003 Dep. 82:17 - 18:8);
 - ii. The queue line was too narrow, making it difficult or impossible for Mr. Muegge to access the service counter (*id.* 83:9-16);
 - iii. There was insufficient interior accessible seating, and the seating provided had insufficient knee clearance, making it difficult for Mr. Muegge to find seating to dine in the restaurant (*id.* 89:2-19); and
 - iv. Condiments were placed out of range for Mr. Muegge to reach from his wheelchair (*id.* 92:4-8).

- 1 v. Mr. Muegge is seeking minimum statutory damages for four visits
- 2 to this restaurant that occurred between December 2001 and July
- 3 2003, including visits on Nov. 24 and Dec. 1, 2002.
- 4 d. Restaurant 4799 on East Cotati Avenue in Rohnert Park:
 - 5 i. The access aisle at the accessible parking space was too narrow,
 - 6 making it difficult for Mr. Muegge to park his van and use the
 - 7 aisle (Muegge 2003 Dep. 97:25 - 98:18); and
 - 8 ii. The queue line was too narrow, making it difficult or impossible
 - 9 for Mr. Muegge to access the service counter (*id.* 99:12-17).
 - 10 iii. Mr. Muegge is seeking minimum statutory damages for a visit to
 - 11 this restaurant that occurred on December 2, 2002, and a visit
 - 12 that occurred in approximately April 2003.
- 13 e. Restaurant 18112 on Santa Rosa Avenue in Santa Rosa:
 - 14 i. The queue line was too narrow, making it difficult or impossible
 - 15 for Mr. Muegge to access the service counter (*id.* 114:1-3);
 - 16 ii. Condiments were placed out of range for Mr. Muegge to reach
 - 17 from his wheelchair (*id.* 114:16 - 115:1); and
 - 18 iii. The accessible seating had insufficient knee clearance making it
 - 19 difficult for Mr. Muegge to sit at the table in his wheelchair (*id.*
 - 20 115:10-19).
 - 21 iv. Mr. Muegge is seeking minimum statutory damages for two visits
 - 22 to this restaurant that occurred between December 2001 and July
 - 23 2003.

24 Craig Yates

25 31. Plaintiff Yates has patronized the following Taco Bell Corporate restaurants and
26 encountered the following barriers:

- 27 a. Restaurant 4518 in San Pablo Towne Center in San Pablo: The men's
- 28 restroom door was too heavy, making it difficult for Mr. Yates to open

1 the door from his wheelchair (Yates 2011 Dep. 53:7-8). Mr. Yates is
2 seeking minimum statutory damages for one visit to this restaurant that
3 occurred on October 14, 2010.

4 b. Restaurant 4951 on Rowland Boulevard in Novato:

5 i. The queue line was too narrow, making it difficult or impossible
6 for Mr. Yates to access the service counter (Yates 2003 Dep.
7 27:16 - 28:20); and

8 ii. The accessible seating had insufficient knee clearance making it
9 difficult for Mr. Yates to sit at the table in his wheelchair (*id.*
10 30:12 - 31:3).

11 iii. Mr. Yates is seeking minimum statutory damages for eight visits
12 to this restaurant, all of which occurred between December 2001
13 and June 2003.

14 General Allegations

15 32. Each of the Taco Bell restaurants referred to in Paragraphs 28-31 above is or has
16 been during the class period owned and/or operated by TBC.

17 33. Numerous other California Taco Bell restaurants that were designed or
18 constructed by, or that are owned, operated, or leased by, or leased to, Defendant are and/or
19 have been during the class period in violation of the ADA, the Unruh Act and the CDPA,
20 including but not limited to the barriers documented in the Special Master's interim reports,
21 ECF 216-240, Plaintiffs' expert reports, and photographs taken by both parties and their
22 representatives.

23 34. Taco Bell restaurants are built according to one of a limited number of design
24 prototypes. As such, on information and belief, the discriminatory design features encountered
25 by Plaintiffs recur in Taco Bell restaurants throughout California.

26 35. Since January 26, 1992, some or all of the Taco Bell restaurants in California
27 have undergone alterations, as that term is used in the ADA, that affected, or could have
28 affected, the usability of part or all of those restaurants.

1 47. Defendant operates business establishments within the jurisdiction of the State of
2 California and, as such, is obligated to comply with the provisions of the Unruh Act, Cal. Civ.
3 Code, § 51, et seq. (“the Unruh Act”).

4 48. The conduct alleged herein violates the Unruh Act, including Cal. Civ. Code,
5 § 51, et seq.

6 49. The Unruh Act guarantees, inter alia, that persons with disabilities are entitled to
7 full and equal accommodations, advantages, facilities, privileges, or services in all business
8 establishments of every kind whatsoever within the jurisdiction of the State of California. The
9 Unruh Act also provides that a violation of the ADA is a violation of the Unruh Act.

10 50. Defendant has violated the Unruh Act by, inter alia, denying Plaintiffs and
11 members of the proposed class, as persons with disabilities, full and equal accommodations,
12 advantages, facilities, privileges, or services offered by Defendant. Defendant has also violated
13 the Unruh Act by violating the ADA, as set forth above.

14 51. Defendant has violated the Unruh Act by, inter alia, failing to operate its services
15 on a nondiscriminatory basis and failing to ensure that persons with disabilities have
16 nondiscriminatory access to its restaurants.

17 52. Pursuant to the remedies, procedures, and rights set forth in Cal. Civ. Code § 52,
18 Plaintiffs pray for judgment as set forth below.

19 53. In doing the acts and/or omissions alleged herein, Defendant wrongfully and
20 unlawfully denied access to its restaurants and their facilities to individuals with disabilities and
21 acted with knowledge of the effect its conduct was having on physically disabled persons.

22 **THIRD CLAIM FOR RELIEF**
23 **(California Disabled Persons Act)**

24 54. Plaintiffs reallege and incorporate by reference the remainder of the allegations
25 set forth in this Complaint as if fully set forth herein.

26 55. Defendant operates, within the jurisdiction of the State of California, places of
27 public accommodation and/or places to which the general public is invited and, as such, is
28 obligated to comply with the provisions of the CDPA, Cal. Civ. Code, § 54, et seq.

