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5 **ATTORNEYS FOR** Defendants
6 HEDIA PETROLEUM, INC., d/b/a
7 CAMPBELL UNION 76 and
BOZORGHADAD TRUST

8 **UNITED STATES DISTRICT COURT**
9 **NORTHER DISTRICT OF CALIFORNIA**

10
11 ERNESTINA SALDANA-NEILY,
12 Plaintiff,
13 vs.

No. C 04 4571 MJJ
HEDIA PETROLEUM INC.'S AND
BOZORGHADAD TRUST'S ANSWER
TO PLAINTIFF'S COMPLAINT

14 TACO BELL OF AMERICA, INC.;
15 DOROTHY M. HIURA TRUST; and
16 DOES 1-25; HEDIA PETROLEUM INC.,
dba CAMPBELL UNION 76;
17 BOZORGHADAD TRUST; AND DOES
26-50-Inclusive,
18 Defendants.

19 _____/
20 COME NOW defendants HEDIA PETROLEUM, INC., d/b/a CAMPBELL UNION 76 and
21 BOZORGHADAD TRUST (hereinafter referred to as "The Union 76 Defendants") and in response
22 to the complaint of plaintiff on file herein, herewith admit, deny, and aver as hereinafter set forth.

23 **I.**

24 Responding to paragraph 1 of the complaint, these responding defendants aver that to the
25 extent the allegations purport to recite the damages and other relief to which plaintiff claims to be
26 entitled, no response is required; responding to the remaining allegations therein contained, these
27 responding defendants lack sufficient information to form a belief as to the truth of the allegations
28 therein contained and on that basis deny those allegations.

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II.

Responding to paragraph 2 of the complaint, these responding defendants aver that the allegations are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, these defendants deny the remaining allegations therein contained.

III.

Responding to paragraph 3 of the complaint, these responding defendants aver that the allegations are merely legal conclusions and that no response is therefore required.

IV.

Responding to paragraph 4 of the complaint, these responding defendants aver that the allegations are merely legal conclusions and that no response is therefore required.

V.

Responding to paragraph 5 of the complaint, these responding defendants admit that Campbell Union 76 is located at 3145 S. Bascom Ave., Campbell, California; responding to the remaining allegations therein contained, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations.

VI.

Responding to paragraph 6 of the complaint, these responding defendants aver that the allegations are merely legal conclusions and that no response is therefore required.

VII.

Responding to paragraph 7 of the complaint, these responding defendants admit that Bozorhadad Trust owns the real property located at 3145 S. Bascom Ave., Campbell, California, and that Hedia Petroleum, Inc. operates a business commonly known as Campbell Union 76 at that location; responding to the remaining allegations therein contained, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations.

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VIII.

Responding to paragraph 8 of the complaint, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations.

IX.

Responding to paragraph 9 of the complaint, these responding defendants aver that to the extent the allegations are merely legal conclusions, no response is required; to the extent the allegations relate to the Taco Bell defendants, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations; to the extent that a further response to paragraph 9 of the complaint is required, these defendants deny the allegations therein contained.

X.

Responding to paragraph 10 of the complaint, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations.

XI.

Responding to paragraph 11 of the complaint, to the extent the allegations relate to the acts and/or omissions of the plaintiff and/or the Taco Bell defendants, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations; to the extent that a further response to paragraph 11 of the complaint is required, these defendants deny the allegations therein contained.

XII.

Responding to paragraph 12 of the complaint, to the extent the allegations relate to the Taco Bell defendants, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations; to the extent that a further response to paragraph 12 of the complaint is required, these defendants deny the allegations therein contained.

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XIII.

Responding to paragraph 13 of the complaint, to the extent the allegations are merely legal conclusions, no response is required; to the extent that a further response to paragraph 13 of the complaint is required, these defendants deny the allegations therein contained.

XIV.

Responding to paragraph 14 of the complaint, to the extent the allegations are merely legal conclusions, no response is required; to the extent that a further response to paragraph 14 of the complaint is required, these defendants deny the allegations therein contained.

XV.

Responding to paragraph 15 of the complaint, these responding defendants aver that to the extent the allegations purport to recite the damages and other relief to which plaintiff claims to be entitled, and to the extent the allegations are merely legal conclusions, no response is required; responding to the remaining allegations therein contained, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations.

XVI.

Responding to paragraph 16 of the complaint, these responding defendants aver that to the extent the allegations purport to recite the damages and other relief to which plaintiff claims to be entitled, and to the extent the allegations are merely legal conclusions, no response is required; responding to the remaining allegations therein contained, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations.

XVII.

Responding to paragraph 17 of the complaint, these responding defendants aver that to the extent the allegations purport to recite the damages and other relief to which plaintiff claims to be entitled, and to the extent the allegations are merely legal conclusions, no response is required; to the extent the allegations relate to the Taco Bell defendants, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that

1 basis deny those allegations; to the extent that a further response to paragraph 17 of the complaint
2 is required, these defendants deny the allegations therein contained.

3 **XVIII.**

4 Responding to paragraph 18 of the complaint, these responding defendants aver that to the
5 extent the allegations purport to recite the damages and other relief to which plaintiff claims to be
6 entitled, and to the extent the allegations are merely legal conclusions, no response is required; to
7 the extent the allegations relate to the Taco Bell defendants, these responding defendants lack
8 sufficient information to form a belief as to the truth of the allegations therein contained and on that
9 basis deny those allegations; to the extent that a further response to paragraph 18 of the complaint
10 is required, these defendants deny the allegations therein contained.

11 **XIX.**

12 Responding to paragraph 19 of the complaint, these responding defendants reallege and
13 reincorporate their averments, denials and allegations in paragraphs 1 through 18, inclusive, as
14 though fully set forth at this point.

15 **XX.**

16 Responding to paragraph 20 of the complaint, these responding defendants aver that the
17 allegations are merely legal conclusions and that no response is therefore required.

18 **XXI.**

19 Responding to paragraph 21 of the complaint, these responding defendants aver that to the
20 extent the allegations purport to recite the damages and other relief to which plaintiff claims to be
21 entitled, and to the extent the allegations are merely legal conclusions, no response is required.

22 **XXII.**

23 Responding to paragraph 22 of the complaint, these responding defendants reallege and
24 reincorporate their averments, denials and allegations in paragraphs 19 through 21, inclusive, as
25 though fully set forth at this point.

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XXIX.

Responding to paragraph 29 of the complaint, these responding defendants aver that to the extent the allegations are merely legal conclusions, no response is required; the extent the allegations relate to the Taco Bell defendants, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations; to the extent that a further response to paragraph 28 of the complaint is required, these defendants deny the allegations therein contained.

XXX.

Responding to paragraph 30 of the complaint, these responding defendants aver that to the extent the allegations are merely legal conclusions, and to the extent the allegations purport to recite the damages and other relief to which plaintiff claims to be entitled, no response is required; the extent the allegations relate to the Taco Bell defendants, these responding defendants lack sufficient information to form a belief as to the truth of the allegations therein contained and on that basis deny those allegations; to the extent that a further response to paragraph 30 of the complaint is required, these defendants deny the allegations therein contained.

XXXI.

Responding to paragraph 31 of the complaint, these responding defendants aver that to the extent the allegations are merely legal conclusions, and to the extent the allegations purport to recite the damages and other relief to which plaintiff claims to be entitled, no response is required.

XXXII.

In response to plaintiff's prayer for relief, these responding defendants aver that the allegations constitute prayers for relief and therefore no response is required. Nonetheless, these responding defendants deny that plaintiff is entitled to any injunctive relief, preventative relief, or any other relief pursuant to 42 U.S.C. § 12205, California Civil Code § 52, California Civil Code § 55, or California Health and Safety Code § 19953, or any other statute; these responding defendants deny that plaintiff is entitled to any damages, statutory damages, general damages, or treble damages; these responding defendants deny that plaintiff is entitled to any attorneys fees, litigation expenses and/or costs of this suit; and these responding defendants deny that plaintiff is entitled to any other

1 relief pursuant to her complaint.

2 **AFFIRMATIVE DEFENSES**

3 **XXXIII.**

4 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
5 FILE HEREIN, these answering defendants allege that plaintiff’s complaint, and each cause of
6 action thereof, fails to state facts sufficient to constitute a cause of action against these defendants.

7 **XXXIV.**

8 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
9 FILE HEREIN, these answering defendants allege that this court lacks subject matter jurisdiction
10 over this matter because there is no actionable wrong arising under the Americans with Disabilities
11 Act of 1990, 42 U.S.C. § 12101 *et seq.*

12 **XXXV.**

13 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
14 FILE HEREIN, these answering defendants allege that this court lacks pendant jurisdiction over all
15 claims arising under California state law, including, but not limited to, claims under California
16 Health and Safety Code § 19955 *et seq.*, California Civil Code §§ 51, 51.5, 54 *et seq.*, and California
17 Business and Professions Code § 17200 *et seq.*, because there is no actionable wrong arising under
18 the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*

19 **XXXVI.**

20 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
21 FILE HEREIN, these answering defendants allege that this court lacks subject matter jurisdiction
22 over this matter because there is no actionable wrong arising under California Health and Safety
23 Code § 19955 *et seq.*

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XXXVII.

AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that this court lacks subject matter jurisdiction over this matter because there is no actionable wrong arising under California Civil Code §§ 54, 54.1, 54.3 *et seq.*

XXXVIII.

AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that this court lacks subject matter jurisdiction over this matter because there is no actionable wrong arising under the Unruh Civil Rights Act, Cal. Civ. Code §§ 51, 51.5 *et seq.*

XXXIX.

AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that defendants are performing all readily achievable architectural barrier removal, within their control, required by law, and therefore plaintiff’s complaint against these defendants is barred.

XL.

AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that defendants are performing all repairs to any architectural barrier with alternative methods of access as required by law, and therefore plaintiff’s complaint against defendants is barred.

XLI.

AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that plaintiff’s claims are barred, in whole or in part, by the doctrines of estoppel, waiver, laches, and unclean hands.

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XLII.

AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that plaintiff has not suffered any loss or harm as a result of any act or omission of these defendants and, therefore, plaintiff’s Complaint against defendants is barred.

XLIII.

AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that plaintiff failed subsequent to the occurrence described in the complaint properly to mitigate her damages and thereby is precluded from recovering those damages which could have reasonably been avoided by the exercise of due care on her part.

XLIV.

AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege, on information and belief, that no removal of barriers or alternative methods of modification are or were “readily achievable” as defined in Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*, including but not limited to §12818) and 28 C.F.R. Part 36.104.

XLV.

AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that at all relevant times, defendants have met all federal and state statutory and regulatory obligations owed to plaintiff and all other individuals with disabilities, including individuals in wheelchairs, if any, and therefore plaintiff’s complaint against defendants is barred.

XLVI.

AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that the imposition of any punitive or exemplary damages in this matter would violate defendants’ rights to due process of law in violation of the California Constitution and the United States Constitution.

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XLVII.

AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that plaintiff failed prior to commencement of this action to exhaust all necessary administrative remedies and therefore plaintiff is precluded from maintaining this action.

XLVIII.

AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that named and/or unnamed third parties were careless, negligent or at fault for the matters alleged in the complaint; that said carelessness, negligence or fault of said named and/or unnamed third parties proximately contributed to the happening of the incident and to the injuries, loss and damage complained of by plaintiff, if any there were; that should plaintiff recover damages, these answering defendants are entitled to have the amount thereof abated, reduced or eliminated to the extent that said named and/or unnamed third parties caused or contributed to plaintiff’s injuries, if any.

AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that plaintiff was herself careless, negligent and at fault for the matters alleged in the complaint; that said carelessness, negligence or fault on plaintiff’s own part proximately contributed to the happening of the incident and to the injuries, loss and damage complained of, if any there were; that should plaintiff recover damages, defendants are entitled to have the amount thereof abated, reduced or eliminated to the extent that plaintiff caused or contributed to her injuries, if any.

AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, these answering defendants allege that plaintiff acted with full knowledge of all the facts and circumstances surrounding her injuries and assumed the risk of the matters causing her injuries, and that said matters of which plaintiff assumed the risk proximately contributed to the happening of the incident at bar and proximately caused her injuries, if any.

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WHEREFORE, these answering defendants pray for judgment as follows:

1. That plaintiff take nothing by virtue of her complaint on file herein and that this action be dismissed;
2. For costs of suit herein incurred;
3. For reasonable attorneys' fees incurred;
4. That plaintiff's requested injunction be denied; and
5. For such other and further relief as the Court may deem just and proper.

Dated: January 3, 2005

CODDINGTON, HICKS & DANFORTH

/s/

By: _____
 Richard G. Grotch
 Attorneys for Defendants
 Hedia Petroleum, Inc. d/b/a Campbell Union 76
 and Bozorghadad Trust