

1 Bill Lann Lee – CA State Bar No. 108452
Andrew Lah – CA State Bar No. 234580
2 Julia Campins – CA State Bar No. 238023
Joshua Davidson - CA State Bar No. 275168
3 LEWIS, FEINBERG, LEE, RENAHER & JACKSON, P.C.
476 – 9th Street
4 Oakland, CA 94607
Telephone: (510) 839-6824
5 Facsimile: (510) 839-7839
Email: blee@lewisfeinberg.com

Timothy P. Fox – CA State Bar No. 157750
Fox & Robertson, P.C.
104 Broadway, Suite 400
Denver, CO 80203
Telephone: (303) 595-9700
TTY: (877) 595-9706
Facsimile: (303) 595-9705
Email: tfox@foxrob.com

Additional attorneys listed below

6 *Attorneys for Plaintiffs*

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 Mohan Vallabhapurapu; Ron Sarfaty; Kenneth
11 Kilgore; Tyrey Mills, a minor, by and through his
12 next friend and mother Ginene Mills; Jenilyn Jimenez;
13 Elizabeth Baker; William Farber; Uverda Harry;
14 Kathryn Tyler; Priscilla Walker; Richard Felix;
15 Kathleen Gonzalez; Judy Cutler; Diane Dailey; Carol
16 Lacher; Bethany McClam; Erik Nieland; Carol
17 Picchi; William Showen; George Partida; Kitty Dean;
Alfred Brown; Marsha Shining Woman; Goldene
Springer; Daniel Xenos; Katherine Adams; Lynda
Bowman; Theresa Brown-Gaulitz; Jamie Coleman;
Sheila Flaherty; Lisa Lothridge; Diane Mackie; Pia
Parker; Coleen Rairdon-Brainard; Geri Samuel;
William Sheehan; Barry Smith; David Thomas; and
John Whited, on behalf of themselves and others
similarly situated,

18 Plaintiffs,

19 vs.

20 Burger King Corporation,

21 Defendant.

Case No. C11-00667-WHA (JSC)

**FIRST AMENDED
COMPLAINT**

[CLASS ACTION]

22 **INTRODUCTION**

23 1. Burger King Corporation (“BKC”) is a national corporation that leases and/or
24 subleases approximately ninety restaurants in the State of California to tenant/franchises (“BKL
25 restaurants”). This proposed class action alleges that BKC has violated state and federal laws
26 and regulations by pursuing discriminatory policies or practices that result in unlawful
27
28

1 architectural or design barriers which deny customers who use wheelchairs or scooters access to
2 services at BKL restaurants.

3 2. BKC pursues a policy or practice of failing to build, alter and maintain BKL
4 restaurants in compliance with applicable wheelchair-access regulations. State and federal law
5 provide BKC with objective requirements for architectural and design features to ensure that
6 BKL restaurants will be accessible to customers who use wheelchairs and scooters. Pursuant to
7 statutory mandate, the Department of Justice has promulgated Standards for Accessible Design
8 at 28 C.F.R. pt. 36, app. A (“DOJ Standards”), *see* 42 U.S.C. § 12186(b) (statutory mandate),
9 and the California State Architect has developed the accessibility standards set forth in the
10 California Building Code, Cal. Code Regs., tit. 24 (“Title 24”), *see* Cal. Gov’t Code § 4450
11 (statutory mandate). The DOJ Standards and Title 24 will be collectively referred to as the
12 “Disability Access Requirements.” The Disability Access Requirements contain detailed design
13 specifications for public accommodations covering a variety of architectural elements, including,
14 for example, parking lots, accessible routes, and restrooms. In addition, the applicable
15 regulations require BKC to maintain BKL restaurants in compliance with these standards.
16 During the class period, however, BKC has provided uniform, objective requirements to
17 tenant/franchisees to build, maintain or modify architectural or design features in BKL
18 restaurants *except for* many Disability Access Requirements. During the class period, BKC has
19 also regularly monitored compliance by tenant/franchises with these requirements *except for*
20 many Disability Access Requirements. As a result, BKL restaurants have -- and have had
21 during the class period -- unlawful access barriers.

22 3. These unlawful access barriers include but are not limited to entry and restroom
23 doors that are too heavy; inaccessible restrooms; inaccessible parking lots; inaccessible path of
24 travel to the service counter; inaccessible service counters; inaccessible dining areas; and
25 inaccessible drinks and self-service dispensers. These barriers have subjected Plaintiffs and the
26 proposed Class and Subclasses to injury, and will continue to do so unless enjoined.

27 4. This complaint seeks declaratory and injunctive relief to correct BKC’s policies
28 and practices to include measures necessary to ensure compliance with Disability Access

1 Requirements and to include monitoring of such measures, to remove unlawful access barriers,
2 and to prevent their recurrence so that Plaintiffs and the proposed Class and Subclasses of
3 customers who use wheelchairs or scooters will have full and equal enjoyment of BKL
4 restaurants. The complaint also seeks minimum statutory damages to compensate Class and
5 Subclass members for having been subjected to unlawful discrimination.

6 5. This case is related to a previous action against BKC filed in the United States
7 District Court for the Northern District of California in *Castaneda v. Burger King Corporation*,
8 N.D. Cal. No. C 08-4262 WHA (JL). That action was filed on September 10, 2008 and
9 certified as ten class actions on September 25, 2009. The court entered a final order approving
10 a settlement proposed by the parties on July 12, 2010. This action does not concern those ten
11 BKL restaurants.

12 6. This action concerns any California BKL restaurant not covered by the
13 *Castaneda* class certification order that, during a time period to be determined by the Court,
14 Burger King leased to or from other entities (“Remaining BKLs”). Plaintiffs believe that there
15 are 86 Remaining BKLs.

16 JURISDICTION AND VENUE

17 7. Plaintiffs’ claims arise under Title III of the Americans with Disabilities Act, 42
18 U.S.C. § 12181, *et seq.*, (“ADA”), the Unruh Civil Rights Act, Cal. Civ. Code, § 51, *et seq.*
19 (“the Unruh Act”), and the California Disabled Persons Act, Cal. Civ. Code, § 54, *et seq.* (the
20 “CDPA”).

21 8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
22 §§ 1331, 1332 and 1343, and pursuant to its supplemental jurisdiction over Plaintiffs’ claims
23 brought under the laws of the State of California. In addition, the matter in controversy here
24 exceeds \$5,000,000 and there are members of the proposed class who are citizens of states
25 different from Defendant. Therefore, this Court has diversity jurisdiction over the claims of the
26 class pursuant to 28 U.S.C. § 1332(d)(2).

1 9. The Court may grant declaratory and other relief pursuant to 28 U.S.C. §§ 2201
2 and 2202. Money damages alone are inadequate, and Plaintiffs and class members suffer and
3 will otherwise continue to suffer irreparable injury.

4 10. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b).

5 **INTRADISTRICT ASSIGNMENT**

6 11. This action arises in part in San Francisco and Alameda Counties and thus is
7 properly assigned to the San Francisco Division.

8 **PARTIES**

9 12. Plaintiff Ron Sarfaty is and has been at all times material hereto a resident of the
10 State of California. Plaintiff Sarfaty is a person with left side hemiplegia who uses a wheelchair
11 for mobility. He has a disability within the meaning of the ADA, 42 U.S.C. § 12102(2)(A), and
12 a physical disability as that term is defined in applicable California law, including California
13 Government Code section 12926. Plaintiff Sarfaty has patronized Burger King restaurants in
14 California in the past and intends to continue to patronize those restaurants in the future.
15 Specifically, Plaintiff Sarfaty has patronized Burger King restaurants including but not limited to
16 those located at 1919 Pico Blvd., Santa Monica, 21227 Sherman Way, Canoga Park, 8030 Van
17 Nuys Blvd., Panorama City, 24530 Lyons Ave., Newhall, and 29136 Roadside Dr., Agoura.

18 13. Plaintiff Kenneth Kilgore is and has been at all times material hereto a resident of
19 the State of California. Plaintiff Kilgore is a person with quadriplegia who uses a wheelchair for
20 mobility. He has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical
21 disability as that term is defined in applicable California law, including California Government
22 Code section 12926. Plaintiff Kilgore has patronized Burger King restaurants in California in
23 the past and intends to continue to patronize those restaurants in the future. Specifically,
24 Plaintiff Kilgore has patronized Burger King restaurants including but not limited to 211 N.
25 McDowell Blvd., Petaluma, and 6125 Commerce Blvd., Rohnert Park.

26 14. Plaintiff Tyrey Mills is and has been at all times material hereto a resident of the
27 State of California. He is a minor and brings this suit through his next friend, his mother Ginene
28 Mills. Tyrey Mills is a person with Down Syndrome who uses a wheelchair for mobility. He

1 has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as
2 that term is defined in applicable California law, including California Government Code section
3 12926. Plaintiff Tyrey Mills has patronized Burger King restaurants in California in the past and
4 intends to continue to patronize those restaurants in the future. Specifically, Plaintiff Tyrey
5 Mills has patronized Burger King restaurants including but not limited to 1901 Webster St.,
6 Alameda, and 2200 Otis Dr., Alameda.

7 15. Plaintiff Jenilyn Jimenez is and has been at all times material hereto a resident of
8 the State of California. Plaintiff Jimenez is a person with paraplegia who uses a wheelchair or
9 scooter for mobility. She has a disability within the meaning of the ADA, 42 U.S.C. § 12102,
10 and a physical disability as that term is defined in applicable California law, including California
11 Government Code section 12926. Plaintiff Jimenez has patronized Burger King restaurants in
12 California in the past and intends to continue to patronize those restaurants in the future.
13 Specifically, Plaintiff Jimenez has patronized Burger King restaurants including but not limited
14 to 3747 Rosecrans St., San Diego, and 680 E. San Ysidro Blvd., San Ysidro.

15 16. Plaintiff Elizabeth Baker is and has been at all times material hereto a resident of
16 the State of California. Plaintiff Baker is a person with spinal problems, degenerative joint
17 disease, and arthritis who uses a wheelchair for mobility. She has a disability within the meaning
18 of the ADA, 42 U.S.C. § 12102, and a physical disability as that term is defined in applicable
19 California law, including California Government Code section 12926. Plaintiff Baker has
20 patronized Burger King restaurants in California in the past and intends to continue to patronize
21 those restaurants in the future. Specifically, Plaintiff Baker has patronized Burger King
22 restaurants including but not limited to 619 W. Charter Way, Stockton.

23 17. Plaintiff William Farber is and has been at all times material hereto a resident of
24 the State of California. Plaintiff Farber is a person with Progressive Multiple Sclerosis who uses
25 a wheelchair for mobility. He has a disability within the meaning of the ADA, 42 U.S.C.
26 § 12102, and a physical disability as that term is defined in applicable California law, including
27 California Government Code section 12926. Plaintiff Farber has patronized Burger King
28 restaurants in California in the past and intends to continue to patronize those restaurants in the

1 future. Specifically, Plaintiff Farber has patronized Burger King restaurants including but not
2 limited to 2734 N. Tustin Ave., Orange.

3 18. Plaintiff Uverda Harry is and has been at all times material hereto a resident of
4 the State of California. Plaintiff Harry is a person with rheumatoid arthritis who uses a
5 wheelchair for mobility. She has a disability within the meaning of the ADA, 42 U.S.C.
6 § 12102, and a physical disability as that term is defined in applicable California law, including
7 California Government Code section 12926. Plaintiff Harry has patronized Burger King
8 restaurants in California in the past and intends to continue to patronize those restaurants in the
9 future. Specifically, Plaintiff Harry has patronized Burger King restaurants including but not
10 limited to 2200 Otis Dr., Alameda, and 1571 Fitzgerald Dr., Pinole.

11 19. Plaintiff Kathryn Tyler is and has been at all times material hereto a resident of
12 the State of California. Plaintiff Tyler is a person with muscular dystrophy who uses a
13 wheelchair for mobility. She has a disability within the meaning of the ADA, 42 U.S.C.
14 § 12102, and a physical disability as that term is defined in applicable California law, including
15 California Government Code section 12926. Plaintiff Tyler has patronized Burger King
16 restaurants in California in the past and intends to continue to patronize those restaurants in the
17 future. Specifically, Plaintiff Tyler has patronized Burger King restaurants including but not
18 limited to those located at 619 W. Charter Way, Stockton, 329 N. Capitol Ave., San Jose, and
19 3098 Story Rd., San Jose.

20 20. Plaintiff Mohan Vallabhapurapu is and has been at all times material hereto a
21 resident of the State of California. Plaintiff Vallabhapurapu is a person with a spinal cord injury
22 who uses a wheelchair for mobility. He has a disability within the meaning of the ADA, 42
23 U.S.C. § 12102, and a physical disability as that term is defined in applicable California law,
24 including California Government Code section 12926. Plaintiff Vallabhapurapu has patronized
25 Burger King Restaurants in California in the past and intends to continue to patronize these
26 restaurants in the future. Specifically, Plaintiff Vallabhapurapu has patronized Burger King
27 restaurants including but not limited to those located at 510 Euclid St., Anaheim, 1420 Mission
28 Ave., Oceanside, 1919 Pico Blvd., Santa Monica, 911 W. Jefferson Blvd., Los Angeles, 385

1 South Kiely, San Jose, 3630 Tyler St., Riverside, 24530 Lyons Ave., Newhall, 2600 Long
2 Beach Blvd., Long Beach, 12513 East Carson St., Hawaiian Gardens, 81-779 US Highway 111,
3 Indio, 261 Race St., San Jose, 10931 Los Alamitos Blvd., Los Alamitos, 1666 2nd St., Norco,
4 2500 East Imperial Highway, Brea, and 23125 Hemlock Ave., Moreno Valley.

5 21. Plaintiff Priscilla Walker is and has been at all times material hereto a resident of
6 the State of California. Plaintiff Walker is a person who has had a knee replacement surgery
7 and uses a wheelchair for mobility. She has a disability within the meaning of the ADA, 42
8 U.S.C. § 12102, and a physical disability as that term is defined in applicable California law,
9 including California Government Code section 12926. Plaintiff Walker has patronized Burger
10 King restaurants in the past and intends to continue to patronize those restaurants in the future.
11 Specifically, Plaintiff Walker has patronized Burger King restaurants including but not limited to
12 that located at 450 Leavesley Rd., Gilroy.

13 22. Plaintiff Richard Felix is and has been at all times material hereto a resident of
14 the State of California. Plaintiff Felix is a person who has post-polio syndrome and uses a
15 wheelchair for mobility. He has a disability within the meaning of the ADA, 42 U.S.C. § 12102,
16 and a physical disability as that term is defined in applicable California law, including California
17 Government Code section 12926. Plaintiff Felix has patronized Burger King restaurants in the
18 past and intends to continue to patronize those restaurants in the future. Specifically, Plaintiff
19 Felix has patronized Burger King restaurants including but not limited to those located at 2410
20 N. Cedar Ave., Fresno, and 4610 E. Kings Canyon Rd., Fresno.

21 23. Plaintiff Kathleen Gonzalez is and has been at all times material hereto a resident
22 of the State of California. Plaintiff Gonzalez is a person with several medical conditions which
23 require her to use a wheelchair and, more recently, a scooter for mobility. She has a disability
24 within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as that term is
25 defined in applicable California law, including California Government Code section 12926.
26 Plaintiff Gonzalez has patronized Burger King restaurants in the past and intends to continue to
27 patronize those restaurants in the future. Specifically, Plaintiff Gonzalez has patronized Burger
28

1 King restaurants including but not limited to 139 N. China Lake Blvd., Ridgecrest, and 41383
2 Big Bear Lake Blvd., Big Bear Lake.

3 24. Plaintiff Judy Cutler is and has been at all times material hereto a resident of the
4 State of California. Plaintiff Cutler is a person with a spinal cord injury who uses a wheelchair
5 for mobility. She has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a
6 physical disability as that term is defined in applicable California law, including California
7 Government Code section 12926. Plaintiff Cutler has patronized Burger King restaurants in the
8 past and intends to continue to patronize those restaurants in the future. Specifically, Plaintiff
9 Cutler has patronized Burger King restaurants including but not limited to those located at 1200
10 E Colorado St., Glendale, 9710 Central Ave., Montclair, 41383 Big Bear Lake Blvd., Big Bear
11 Lake, and 1666 2nd St., Norco.

12 25. Plaintiff Diane Dailey is and has been at all times material hereto a resident of the
13 State of California. Plaintiff Dailey is a person who, as a result of a motorcycle accident, uses a
14 wheelchair for mobility. She has a disability within the meaning of the ADA, 42 U.S.C.
15 § 12102, and a physical disability as that term is defined in applicable California law, including
16 California Government Code section 12926. Plaintiff Dailey has patronized Burger King
17 restaurants in the past and intends to continue to patronize those restaurants in the future.
18 Specifically, Plaintiff Dailey has patronized Burger King restaurants including but not limited to
19 those located at 619 W. Charter Way, Stockton, and 5315 Hopyard Rd., Pleasanton.

20 26. Plaintiff Carol Lacher is and has been at all times material hereto a resident of the
21 State of California. Plaintiff Lacher is a person with back problems and arthritis in both knees
22 who uses a wheelchair for mobility. She has a disability within the meaning of the ADA, 42
23 U.S.C. § 12102, and a physical disability as that term is defined in applicable California law,
24 including California Government Code section 12926. Plaintiff Lacher has patronized Burger
25 King restaurants in the past and intends to continue to patronize those restaurants in the future.
26 Specifically, Plaintiff Lacher has patronized Burger King restaurants including but not limited to
27 those located at 41383 Big Bear Lake Blvd., Big Bear Lake, and 4918 W. Sunset Blvd., Los
28 Angeles.

1 27. Plaintiff Bethany McClam is and has been at all times material hereto a resident
2 of the State of California. Plaintiff McClam is a person who has medical problems with her hip,
3 back, and knees and uses a wheelchair for mobility. She has a disability within the meaning of
4 the ADA, 42 U.S.C. § 12102, and a physical disability as that term is defined in applicable
5 California law, including California Government Code section 12926. Plaintiff McClam has
6 patronized Burger King restaurants in the past and intends to continue to patronize those
7 restaurants in the future. Specifically, Plaintiff McClam has patronized Burger King restaurants
8 including but not limited to those located at 1202 W. Avenue I, Lancaster, 43627 N. 15th St.
9 W, Lancaster, and 39519 10th Street West, Palmdale.

10 28. Plaintiff Erik Nieland is and has been at all times material hereto a resident of the
11 State of California. Plaintiff Nieland is a person who has muscular dystrophy and uses a
12 wheelchair for mobility. He has a disability within the meaning of the ADA, 42 U.S.C. § 12102,
13 and a physical disability as that term is defined in applicable California law, including California
14 Government Code section 12926. Plaintiff Nieland has patronized Burger King restaurants in
15 the past and intends to continue to patronize those restaurants in the future. Specifically,
16 Plaintiff Nieland has patronized Burger King restaurants including but not limited to those
17 located at 1801 Decoto Rd., Union City, and 16 Southland Mall, Hayward.

18 29. Plaintiff Carol Picchi is and has been at all times material hereto a resident of the
19 State of California. Plaintiff Picchi is a person who has cerebral palsy and uses a wheelchair for
20 mobility. She has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a
21 physical disability as that term is defined in applicable California law, including California
22 Government Code section 12926. Plaintiff Picchi has patronized Burger King restaurants in the
23 past and intends to continue to patronize those restaurants in the future. Specifically, Plaintiff
24 Picchi has patronized Burger King restaurants including but not limited to those located at 175
25 W Calaveras Blvd., Milpitas, 385 S. Kiely, San Jose, 329 N. Capitol Ave., San Jose, 261 Race
26 St., San Jose, 4040 Monterey Rd., San Jose, and 2170 Monterey Rd., San Jose.

27 30. Plaintiff William Showen is and has been at all times material hereto a resident of
28 the State of California. Plaintiff Showen has diabetes who uses a wheelchair for mobility. He

1 has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as
2 that term is defined in applicable California law, including California Government Code section
3 12926. Plaintiff Showen has patronized Burger King restaurants in the past and intends to
4 continue to patronize those restaurants in the future. Specifically, Plaintiff Showen has
5 patronized Burger King restaurants including but not limited to those located at 111 S. Harding
6 Blvd., Roseville, and 450 Leavesley Road, Gilroy.

7 31. Plaintiff George Partida is and has been at all times material hereto a resident of
8 the State of California. Plaintiff Partida is a person with quadriplegia who uses a wheelchair for
9 mobility. He has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical
10 disability as that term is defined in applicable California law, including California Government
11 Code section 12926. Plaintiff Partida has patronized Burger King restaurants in the past and
12 intends to continue to patronize those restaurants in the future. Specifically, Plaintiff Partida
13 has patronized Burger King restaurants including but not limited to those located at 2101 W.
14 Whittier Blvd., La Habra, 8845 S. Painter St., Whittier, 1919 Artesia Blvd., Redondo Beach,
15 1919 Pico Blvd., Santa Monica, 1453 W Manchester Ave., Los Angeles, 215 N. Gaffey St., San
16 Pedro, 2600 Long Beach Blvd., Long Beach, 5540 Cherry Ave., Long Beach, 12513 E. Carson
17 St., Hawaiian Gardens, and 1666 2nd St., Norco.

18 32. Plaintiff Kitty Dean is and has been at all times material hereto a resident of the
19 State of California. Plaintiff Dean is a paraplegic and uses a wheelchair. She has a disability
20 within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as that term is
21 defined in applicable California law, including California Government Code section 12926.
22 Plaintiff Dean has patronized Burger King restaurants in the past and intends to continue to
23 patronize those restaurants in the future. Specifically, Plaintiff Dean has patronized Burger
24 King restaurants including but not limited to those located at 822 N. Johnson St., El Cajon, 728
25 W. San Marcos Blvd., San Marcos, 377 Vista Village Dr., Vista, 12427 Poway Rd., Poway,
26 and 227 S. Tremont St., Oceanside.

27 33. Plaintiff Alfred Brown is and has been at all times material hereto a resident of
28 the State of California. Plaintiff Brown has various medical issues requiring him to use a

1 wheelchair. He has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a
2 physical disability as that term is defined in applicable California law, including California
3 Government Code section 12926. Plaintiff Brown has patronized Burger King restaurants in
4 the past and intends to continue to patronize those restaurants in the future. Specifically,
5 Plaintiff Brown has patronized Burger King restaurants including but not limited to that located
6 at 1541 E. 12th St., Oakland.

7 34. Plaintiff Marsha Shining Woman is and has been at all times material hereto a
8 resident of the State of California. Plaintiff Shining Woman has various medical issues and has
9 used a manual wheelchair. She has a disability within the meaning of the ADA, 42 U.S.C.
10 § 12102, and a physical disability as that term is defined in applicable California law, including
11 California Government Code section 12926. Plaintiff Shining Woman has patronized Burger
12 King restaurants in the past and intends to continue to patronize those restaurants in the future.
13 Specifically, Plaintiff Shining Woman has patronized Burger King restaurants including but not
14 limited to that located at 2055 Eureka Way, Redding.

15 35. Plaintiff Goldene Springer is and has been at all times material hereto a resident
16 of the State of California. Plaintiff Springer has various medical issues and uses a scooter. She
17 has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as
18 that term is defined in applicable California law, including California Government Code section
19 12926. Plaintiff Springer has patronized Burger King restaurants in the past and intends to
20 continue to patronize those restaurants in the future. Specifically, Plaintiff Springer has
21 patronized Burger King restaurants including but not limited to that located at 455 N. Humboldt
22 St., Willows.

23 36. Plaintiff Daniel Xenos is and has been at all times material hereto a resident of
24 the State of California. Plaintiff Xenos is a person with congestive heart failure and chronic
25 body pain who uses a scooter for mobility. He has a disability within the meaning of the ADA,
26 42 U.S.C. § 12102, and a physical disability as that term is defined in applicable California law,
27 including California Government Code section 12926. Plaintiff Xenos has patronized Burger
28 King restaurants in the past and intends to continue to patronize those restaurants in the future.

1 Specifically, Plaintiff Xenos has patronized Burger King restaurants including but not limited to
2 that located at 13446 Lincoln Way, Auburn.

3 37. Plaintiff Katherine Adams is and has been at all times material hereto a resident
4 of the State of California. Plaintiff Adams has osteoporosis, diabetes, back, and leg pains, and
5 has used a scooter when needed for approximately three years. She has a disability within the
6 meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as that term is defined in
7 applicable California law, including California Government Code section 12926. Plaintiff
8 Adams has patronized Burger King restaurants in the past and intends to continue to patronize
9 those restaurants in the future. Specifically, Plaintiff Adams has patronized Burger King
10 restaurants including but not limited to that located at 34943 Newark Blvd., Newark.

11 38. Plaintiff Lynda Bowman is and has been at all times material hereto a resident of
12 the State of California. Plaintiff Bowman is a paraplegic who uses a wheelchair for mobility.
13 She has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability
14 as that term is defined in applicable California law, including California Government Code
15 section 12926. Plaintiff Bowman has patronized Burger King restaurants in the past and intends
16 to continue to patronize those restaurants in the future. Specifically, Plaintiff Bowman has
17 patronized Burger King restaurants including but not limited to that located at 815 Highland
18 Ave., National City.

19 39. Plaintiff Jamie Coleman is and has been at all times material hereto a resident of
20 the State of California. Plaintiff Coleman has spinal stenosis and uses a manual wheelchair for
21 mobility. She has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a
22 physical disability as that term is defined in applicable California law, including California
23 Government Code section 12926. Plaintiff Coleman has patronized Burger King restaurants in
24 the past and intends to continue to patronize those restaurants in the future. Specifically,
25 Plaintiff Coleman has patronized Burger King restaurants including but not limited to that
26 located at 8030 Greenback Ln, Citrus Heights, California, 7201 Fair Oaks Blvd, Carmichael,
27 California, 635 E Capitol Expressway, San Jose, California, the San Francisco International
28 Airport, and 6735 N Golden State Blvd, Fresno, California.

1 40. Plaintiff Sheila Flaherty is and has been at all times material hereto a resident of
2 the State of California. Plaintiff Flaherty is a paraplegic and uses a wheelchair for mobility. She
3 has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as
4 that term is defined in applicable California law, including California Government Code section
5 12926. Plaintiff Flaherty has patronized Burger King restaurants in the past and intends to
6 continue to patronize those restaurants in the future. Specifically, Plaintiff Flaherty has
7 patronized Burger King restaurants including but not limited to that located at 525 Pacheco
8 Blvd, Los Banos, California, and 16025 Monterey Road, Morgan Hill, California.

9 41. Plaintiff Theresa Browne-Gaulitz is and has been at all times material hereto a
10 resident of the State of California. As a result of a spinal fusion surgery, she uses a scooter and
11 manual wheelchair. She has a disability within the meaning of the ADA, 42 U.S.C. § 12102,
12 and a physical disability as that term is defined in applicable California law, including California
13 Government Code section 12926. Plaintiff Browne-Gaulitz has patronized Burger King
14 restaurants in the past and intends to continue to patronize those restaurants in the future.
15 Specifically, Plaintiff Browne-Gaulitz has patronized Burger King restaurants including but not
16 limited to that located at 601 Colusa Ave, Yuba City, 3150 Harbor Blvd, Costa Mesa, and
17 13421 Newport Ave, Tustin.

18 42. Plaintiff Lisa Lothridge is and has been at all times material hereto a resident of
19 the State of California. As a result of liver failure, she uses a wheelchair and scooter when
20 needed. She has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical
21 disability as that term is defined in applicable California law, including California Government
22 Code section 12926. Plaintiff Lothridge has patronized Burger King restaurants in the past and
23 intends to continue to patronize those restaurants in the future. Specifically, Plaintiff Lothridge
24 has patronized Burger King restaurants including but not limited to that located at 301 West
25 Lacey Blvd., Hanford, California.

26 43. Plaintiff Diane Mackie is and has been at all times material hereto a resident of
27 the State of California. As a result a degenerative disk and joint disease, she uses an electric
28 scooter for mobility. She has a disability within the meaning of the ADA, 42 U.S.C. § 12102,

1 and a physical disability as that term is defined in applicable California law, including California
2 Government Code section 12926. Plaintiff Mackie has patronized Burger King restaurants in
3 the past and intends to continue to patronize those restaurants in the future. Specifically,
4 Plaintiff Mackie has patronized Burger King restaurants including but not limited to that located
5 at 6960 Broadway, Lemon Grove, California.

6 44. Plaintiff Pia Parker is and has been at all times material hereto a resident of the
7 State of California. She is a paraplegic and uses a scooter and a wheelchair for mobility. She
8 has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as
9 that term is defined in applicable California law, including California Government Code section
10 12926. Plaintiff Parker has patronized Burger King restaurants in the past and intends to
11 continue to patronize those restaurants in the future. Specifically, Plaintiff Parker has
12 patronized Burger King restaurants including but not limited to that located at 936 Blossom Hill
13 Road, San Jose, California.

14 45. Plaintiff Coleen Rairdon-Brainard is and has been at all times material hereto a
15 resident of the State of California. As a result of bilateral knee replacement surgery and more
16 than 40 surgeries on her back and ankles, she frequently uses a manual wheelchair for mobility
17 when outside of her house. She has a disability within the meaning of the ADA, 42 U.S.C.
18 § 12102, and a physical disability as that term is defined in applicable California law, including
19 California Government Code section 12926. Plaintiff Rairdon-Brainard has patronized Burger
20 King restaurants in the past and intends to continue to patronize those restaurants in the future.
21 Specifically, Plaintiff Rairdon-Brainard has patronized Burger King restaurants including but not
22 limited to that located at 4253 Mission Blvd., Pacific Beach, California, and 3746 Mission Ave.,
23 Oceanside, California.

24 46. Plaintiff Geri Samuel is and has been at all times material hereto a resident of the
25 State of California. As a result of injuries suffered in a car accident, she uses a manual and a
26 power wheelchair for mobility. She has a disability within the meaning of the ADA, 42 U.S.C.
27 § 12102, and a physical disability as that term is defined in applicable California law, including
28 California Government Code section 12926. Plaintiff Samuel has patronized Burger King

1 restaurants in the past and intends to continue to patronize those restaurants in the future.

2 Specifically, Plaintiff Samuel has patronized Burger King restaurants including but not limited to
3 that located at 711 E. Perkins Street, Ukiah, California.

4 47. Plaintiff William Sheehan is and has been at all times material hereto a resident of
5 the State of California. As a result of multiple back and spinal surgeries, he uses a scooter. He
6 has a disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as
7 that term is defined in applicable California law, including California Government Code section
8 12926. Plaintiff Sheehan has patronized Burger King restaurants in the past and intends to
9 continue to patronize those restaurants in the future. Specifically, Plaintiff Sheehan has
10 patronized Burger King restaurants including but not limited to that located at 14600 Valley
11 Blvd, La Puente, 12736 South Avalon Blvd, Los Angeles, 3520 Sepulveda Blvd, Los Angeles
12 and 601 E Dyer Rd, Santa Ana.

13 48. Plaintiff Barry Smith is and has been at all times material hereto a resident of the
14 State of California. As a result of a spinal cord injury, he uses an electric wheelchair. He has a
15 disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as that
16 term is defined in applicable California law, including California Government Code section
17 12926. Plaintiff Smith has patronized Burger King restaurants in the past and intends to
18 continue to patronize those restaurants in the future. Specifically, Plaintiff Smith has patronized
19 Burger King restaurants including but not limited to that located at 2090 West Hwy 88, Martell,
20 California.

21 49. Plaintiff David Thomas is and has been at all times material hereto a resident of
22 the State of California. As a result of multiple sclerosis, he uses a power wheelchair. He has a
23 disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as that
24 term is defined in applicable California law, including California Government Code section
25 12926. Plaintiff Thomas has patronized Burger King restaurants in the past and intends to
26 continue to patronize those restaurants in the future. Specifically, Plaintiff Thomas has
27 patronized Burger King restaurants including but not limited to that located at 1250 9th St. in
28 Crescent City.

1 50. Plaintiff John Whited is and has been at all times material hereto a resident of the
2 State of California. As a result of cerebellar ataxia, he uses a scooter for mobility. He has a
3 disability within the meaning of the ADA, 42 U.S.C. § 12102, and a physical disability as that
4 term is defined in applicable California law, including California Government Code section
5 12926. Plaintiff Whited has patronized Burger King restaurants in the past and intends to
6 continue to patronize those restaurants in the future. Specifically, Plaintiff Whited has
7 patronized Burger King restaurants including but not limited to that located at 635 E Capitol
8 Expressway, San Jose, California, and 6735 N Golden State Blvd, Fresno, California.

9 51. Each of the Plaintiffs is (or was during the class period) substantially limited in
10 (at least) the major life activity of walking.

11 52. Defendant Burger King Corporation is a corporation incorporated under the
12 laws of Florida, with its principal place of business at 5505 Blue Lagoon Dr., Miami, Florida
13 33126. BKC franchises, leases (or leases to), and operates fast food hamburger restaurants,
14 principally under the Burger King brand, in California.

15 **CLASS ACTION ALLEGATIONS**

16 53. Plaintiffs seek to maintain this action as a class action under Federal Rule of Civil
17 Procedure 23(b)(2) and/or Rule 23(b)(3). The class consists of all individuals who use
18 wheelchairs or electric scooters for mobility who, during a time period to be determined by the
19 Court, on the basis of disability, were denied the full and equal enjoyment of the goods,
20 services, facilities, privileges, advantages, or accommodations in any Remaining BKL because
21 of noncompliance with Disability Access Requirements pertaining to width of accessible parking
22 spaces and access aisles, excessive door force, lack of or obstructed accessible routes, and/or
23 customer self-service dispensers.

24 54. The class identified in paragraph 41 is believed to consist of more than a
25 thousand members who are dispersed across the State of California. Joinder of all such class
26 members in this lawsuit is impracticable.

27 55. There are numerous questions of law and fact common to the class, including
28 without limitation, the following:

- 1 a. Whether Remaining BKLs are “public accommodations” under the ADA;
- 2 b. Whether Remaining BKLs are “business establishments” under the Unruh
- 3 Act;
- 4 c. Whether Remaining BKLs are “places of public accommodation” or
- 5 “places to which the general public is invited” under the CDPA;
- 6 d. Whether Defendant BKC in its Remaining BKLs denies the full and equal
- 7 enjoyment of its goods, services, facilities, privileges, advantages, or
- 8 accommodations to people who use wheelchairs in violation of the ADA;
- 9 e. Whether Defendant BKC in its Remaining BKLs denies full and equal
- 10 accommodations, advantages, facilities, privileges, or services to people
- 11 who use wheelchairs, in violation of the Unruh Act;
- 12 f. Whether Defendant BKC in its Remaining BKLs denies full and equal
- 13 access to accommodations, advantages and facilities to people who use
- 14 wheelchairs, in violation of the CDPA;
- 15 g. Whether alleged violations of the ADA create independent violations of
- 16 the Unruh Act and the CDPA;
- 17 h. What measures are legally required to bring Remaining BKLs into
- 18 compliance with the ADA, the Unruh Act and the CDPA;
- 19 i. Whether BKC’s policies and practices cause the barriers at issue in the
- 20 Remaining BKLs in whole or in part; and
- 21 j. Whether the barriers at issue in this case -- excessive door force,
- 22 obstructed accessible routes, and noncompliant customer self-service
- 23 dispensers -- violate state or federal law.

24 56. Plaintiffs’ claims are typical of the claims of the members of the class. They --
25 like all other members of the plaintiff class -- use a wheelchair or scooter for mobility and claim
26 that Defendant BKC has violated the ADA, the Unruh Act, and/or the CDPA by failing to make
27 the Remaining BKLs accessible to the class of people who use wheelchairs or scooters.

28

1 privileges, advantages, or accommodations at each subclass restaurant because of
2 noncompliance with Disability Access Requirements.

3 64. Specifically, Plaintiffs seek to certify a subclass as to each of the following
4 Remaining BKLs, represented by the stated Plaintiff or Plaintiffs:

- 5 a. Remaining BKL 609 located at 2101 W. Whittier Blvd., La Habra
6 represented by Plaintiff Partida.
- 7 b. Remaining BKL 726 located at 510 S. Euclid St., Anaheim represented
8 by Plaintiff Vallabhapurapu.
- 9 c. Remaining BKL 733 located at 8845 S. Painter St., Whittier represented
10 by Plaintiff Partida.
- 11 d. Remaining BKL 780 located at 815 Highland Ave., National City
12 represented by Plaintiff Bowman.
- 13 e. Remaining BKL 814 located at 822 N. Johnson St., El Cajon represented
14 by Plaintiff Dean.
- 15 f. Remaining BKL 817 located at 1420 Mission Ave., Oceanside
16 represented by Plaintiff Vallabhapurapu.
- 17 g. Remaining BKL 835 located at 3747 Rosecrans St., San Diego
18 represented by Plaintiff Jimenez.
- 19 h. Remaining BKL 896 located at 4253 Mission Blvd., Pacific Beach
20 represented by Plaintiff Rairdon-Brainard.
- 21 i. Remaining BKL 910 located at 6960 Broadway, Lemon Grove
22 represented by Plaintiff Mackie.
- 23 j. Remaining BKL 912 located at 1919 Artesia Blvd., Redondo Beach
24 represented by Plaintiff Partida.
- 25 k. Remaining BKL 916 located at 12427 Poway Rd., Poway represented by
26 Plaintiff Dean.
- 27 l. Remaining BKL 918 located at 1919 Pico Blvd., Santa Monica
28 represented by Plaintiffs Sarfaty, Vallabhapurapu and Partida.

- 1 m. Remaining BKL 919 located at 3520 Sepulveda Blvd., Los Angeles
- 2 represented by Plaintiff Sheehan.
- 3 n. Remaining BKL 943 located at 911 W. Jefferson Blvd., Los Angeles
- 4 represented by Plaintiff Vallabhapurapu.
- 5 o. Remaining BKL 975 located at 175 W Calaveras Blvd., Milpitas
- 6 represented by Plaintiff Picchi.
- 7 p. Remaining BKL 1036 located at 21227 Sherman Way, Canoga Park
- 8 represented by Plaintiff Sarfaty.
- 9 q. Remaining BKL 1038 located at 8030 Van Nuys Blvd., Panorama City
- 10 represented by Plaintiff Sarfaty.
- 11 r. Remaining BKL 1346 located at 1453 W. Manchester Ave., Los Angeles
- 12 represented by Plaintiff Partida.
- 13 s. Remaining BKL 1417 located at 12736 South Avalon Blvd., Los Angeles
- 14 represented by Plaintiff Sheehan.
- 15 t. Remaining BKL 1549 located at 2410 N. Cedar Ave., Fresno, CA
- 16 represented by Plaintiff Felix.
- 17 u. Remaining BKL 1572 located at 385 S. Kiely, San Jose represented by
- 18 Plaintiffs Vallabhapurapu and Picchi.
- 19 v. Remaining BKL 1646 located at 3630 Tyler St., Riverside represented by
- 20 Plaintiff Vallabhapurapu.
- 21 w. Remaining BKL 1682 located at 8030 Greenback Ln., Citrus Heights
- 22 represented by Plaintiff Coleman.
- 23 x. Remaining BKL 1897 located at 215 N. Gaffey St., San Pedro
- 24 represented by Plaintiff Partida.
- 25 y. Remaining BKL 1932 located at 936 Blossom Hill Rd., San Jose
- 26 represented by Plaintiff Parker.
- 27 z. Remaining BKL 1937 located at 24530 Lyons Ave., Newhall represented
- 28 by Plaintiffs Sarfaty and Vallabhapurapu.

- 1 aa. Remaining BKL 2022 located at 601 Colusa Ave., Yuba City represented
- 2 by Plaintiff Browne-Gaulitz.
- 3 bb. Remaining BKL 2119 located at 2600 Long Beach Blvd., Long Beach
- 4 represented by Plaintiffs Vallabhapurapu and Partida.
- 5 cc. Remaining BKL 2132 located at 1200 E Colorado St., Glendale
- 6 represented by Plaintiff Cutler.
- 7 dd. Remaining BKL 2149 located at 3150 Harbor Blvd., Costa Mesa
- 8 represented by Plaintiff Browne-Gaulitz.
- 9 ee. Remaining BKL 2215 located at 13421 Newport Ave., Tustin
- 10 represented by Plaintiff Browne-Gaulitz.
- 11 ff. Remaining BKL 2268 located at 619 W. Charter Way, Stockton
- 12 represented by Plaintiffs Baker, Tyler and Dailey.
- 13 gg. Remaining BKL 2279 located at 329 N. Capitol Ave., San Jose
- 14 represented by Plaintiffs Tyler and Picchi.
- 15 hh. Remaining BKL 2319 located at 301 W. Lacey Blvd., Hanford
- 16 represented by Plaintiff Lothridge.
- 17 ii. Remaining BKL 2359 located at 29136 Roadside Dr., Agoura
- 18 represented by Plaintiff Sarfaty.
- 19 jj. Remaining BKL 2399 located at 5540 Cherry Ave., Long Beach
- 20 represented by Plaintiff Partida.
- 21 kk. Remaining BKL 2473 located at 1202 W. Ave. I, Lancaster represented
- 22 by Plaintiff McClam.
- 23 ll. Remaining BKL 2474 located at 111 S. Harding Blvd. in Roseville
- 24 represented by Plaintiff Showen.
- 25 mm. Remaining BKL 2495 located at 2200 Otis Dr., Alameda represented by
- 26 Plaintiffs Harry and Mills.
- 27 nn. Remaining BKL 2521 located at 139 N. China Lake Blvd., Ridgecrest
- 28 represented by Plaintiff Gonzalez.

- 1 oo. Remaining BKL 2555 located at 450 Leavesley Rd, Gilroy represented
- 2 by Plaintiffs Showen and Walker.
- 3 pp. Remaining BKL 2563 located at 711 E Perkins St., Ukiah represented by
- 4 Plaintiff Samuel.
- 5 qq. Remaining BKL 2671 located at 525 Pacheco Blvd., Los Banos
- 6 represented by Plaintiff Flaherty.
- 7 rr. Remaining BKL 2795 located at 5315 Hopyard Rd., Pleasanton
- 8 represented by Plaintiff Dailey.
- 9 ss. Remaining BKL 2867 located at 16025 Monterey Road, Morgan Hill
- 10 represented by Plaintiff Flaherty.
- 11 tt. Remaining BKL 2891 located at 7201 Fair Oaks Blvd., Carmichael
- 12 represented by Plaintiff Coleman.
- 13 uu. Remaining BKL 2893 located at 9710 Central Ave., Montclair
- 14 represented by Plaintiff Cutler.
- 15 vv. Remaining BKL 2901 located at 43627 N. 15th St. W, Lancaster
- 16 represented by Plaintiff McClam.
- 17 ww. Remaining BKL 2976 located at 13446 Lincoln Way, Auburn
- 18 represented by Plaintiff Xenos.
- 19 xx. Remaining BKL 3034 located at 1801 Decoto Rd., Union City
- 20 represented by Plaintiff Nieland.
- 21 yy. Remaining BKL 3147 located at 12513 E. Carson St., Hawaiian Gardens
- 22 represented by Plaintiffs Vallabhapurapu and Partida.
- 23 zz. Remaining BKL 3157 located at 211 N. McDowell Blvd., Petaluma
- 24 represented by Plaintiff Kilgore.
- 25 aaa. Remaining BKL 3160 located at 4610 E. Kings Canyon Rd., Fresno
- 26 represented by Plaintiff Felix.
- 27 bbb. Remaining BKL 3208 located at 2055 Eureka Way, Redding represented
- 28 by Plaintiff Shining Woman.

- 1 ccc. Remaining BKL 3217 located at 1571 Fitzgerald Dr., Pinole represented
2 by Plaintiff Harry.
- 3 ddd. Remaining BKL 3233 located at 81-779 Us Highway 111, Indio
4 represented by Plaintiff Vallabhapurapu.
- 5 eee. Remaining BKL 3246 located at 635 E Capitol Expressway, San Jose
6 represented by Plaintiffs Coleman and Whited.
- 7 fff. Remaining BKL 3316 located at 41383 Big Bear Lake Blvd., Big Bear
8 Lake represented by Plaintiffs Gonzalez, Cutler and Lacher.
- 9 ggg. Remaining BKL 3355 located at 680 E. San Ysidro Blvd., San Ysidro
10 represented by Plaintiff Jimenez.
- 11 hhh. Remaining BKL 3441 located at 455 N. Humboldt St. Willows
12 represented by Plaintiff Springer.
- 13 iii. Remaining BKL 3459 located at 2090 West Hwy 88, Martell represented
14 by Plaintiff Smith.
- 15 jjj. Remaining BKL 3530 located at 1250 9th St., Crescent City represented
16 by Plaintiff Thomas.
- 17 kkk. Remaining BKL 3546 located at 261 Race St., San Jose represented by
18 Plaintiffs Vallabhapurapu and Picchi.
- 19 lll. Remaining BKL 3580 located at 6125 Commerce Blvd., Rohnert Park
20 represented by Plaintiff Kilgore.
- 21 mmm. Remaining BKL 3587 located at 3746 Mission Ave., Oceanside
22 represented by Plaintiff Rairdon-Brainard.
- 23 nnn. Remaining BKL 3777 located at 2734 N. Tustin Ave., Orange
24 represented by Plaintiff Farber.
- 25 ooo. Remaining BKL 3827 located at 3098 Story Rd., San Jose represented
26 by Plaintiff Tyler.
- 27 ppp. Remaining BKL 4088 located at 227 S. Tremont St., Oceanside
28 represented by Plaintiff Dean.

- 1 qqq. Remaining BKL 4405 located at 14600 Valley Blvd., La Puente
- 2 represented by Plaintiff Sheehan.
- 3 rrr. Remaining BKL 4514 located at 1901 Webster St., Alameda represented
- 4 by Plaintiff Mills.
- 5 sss. Remaining BKL 4552 located at 601 E. Dyer Rd., Santa Ana represented
- 6 by Plaintiff Sheehan.
- 7 ttt. Remaining BKL 4641 located at 728 W. San Marcos Blvd., San Marcos
- 8 represented by Plaintiff Dean.
- 9 uuu. Remaining BKL 5150 located at 10931 Los Alamitos Blvd., Los
- 10 Alamitos represented by Plaintiff Vallabhapurapu.
- 11 vvv. Remaining BKL 5869 located at 16 Southland Mall, Hayward
- 12 represented by Plaintiff Nieland.
- 13 www. Remaining BKL 6028 located at 4040 Monterey Rd., San Jose
- 14 represented by Plaintiff Picchi.
- 15 xxx. Remaining BKL 6755 located at 2170 Monterey Rd., San Jose
- 16 represented by Plaintiff Picchi.
- 17 yyy. Remaining BKL 6816 located at 1666 2nd St., Norco represented by
- 18 Plaintiffs Vallabhapurapu, Cutler and Partida.
- 19 zzz. Remaining BKL 6931 located at 2500 E. Imperial Hwy, Brea represented
- 20 by Plaintiff Vallabhapurapu.
- 21 aaaa. Remaining BKL 6947 located at 34943 Newark Blvd., Newark
- 22 represented by Plaintiff Adams.
- 23 bbbb. Remaining BKL 9913 located at 6735 N Golden State Blvd., Fresno
- 24 represented by Plaintiffs Coleman and Whited.
- 25 cccc. Remaining BKL 10567 located at 23125 Hemlock Ave., Moreno Valley
- 26 represented by Plaintiff Vallabhapurapu.
- 27 dddd. Remaining BKL 11490 located at 4918 W. Sunset Blvd., Los Angeles
- 28 represented by Plaintiff Lacher.

1 eeee. Remaining BKL 13284 located at 1541 E. 12th St., Oakland represented
2 by Plaintiff Brown.

3 ffff. Remaining BKL 13580 located at 377 Vista Village Dr., Vista
4 represented by Plaintiff Dean.

5 gggg. Remaining BKL 15079 located at the San Francisco International Airport
6 represented by Plaintiff Coleman.

7 hhhh. Remaining BKL 16563 located at 39519 10th Street West, Palmdale
8 represented by Plaintiff McClam.

9 65. Each subclass pertains to the Remaining BKL at which the Subclass
10 Representative and members of that subclass were denied during the liability period, or are
11 currently being denied, on the basis of disability, full and equal enjoyment of the goods, services,
12 facilities, privileges, advantages, or accommodations.

13 66. The subclasses identified in paragraph 52 are each believed to consist of between
14 forty and several hundred members who are dispersed across the State of California. Joinder of
15 all of such class members in this lawsuit is impracticable.

16 67. There are numerous questions of law and fact common to each of the subclasses,
17 including without limitation, the following:

- 18 a. Whether Remaining BKLs are “public accommodations” under the ADA;
19 b. Whether Remaining BKLs are “business establishments” under the Unruh
20 Act;
21 c. Whether Remaining BKLs are “places of public accommodation” or
22 “places to which the general public is invited” under the CDPA;
23 d. Whether Defendant in the Remaining BKLs denies the full and equal
24 enjoyment of their goods, services, facilities, privileges, advantages, or
25 accommodations to people who use wheelchairs in violation of the ADA;
26 e. Whether Defendant in the Remaining BKLs denies full and equal
27 accommodations, advantages, facilities, privileges, or services to people
28 who use wheelchairs, in violation of the Unruh Act;

- 1 f. Whether Defendant in the Remaining BKLs denies full and equal access
- 2 to accommodations, advantages and facilities to people who use
- 3 wheelchairs, in violation of the CDPA;
- 4 g. Whether alleged violations of the ADA create independent violations of
- 5 the Unruh Act and the CDPA;
- 6 h. What measures are legally required to bring Remaining BKLs into
- 7 compliance with the ADA, the Unruh Act and the CDPA;
- 8 i. Whether BKC's policies and practices cause the barriers at issue in each
- 9 Remaining BKL in whole or in part; and
- 10 j. Whether the barriers at issue in each Remaining BKL violate state or
- 11 federal law.

12 68. "All mobility-impaired patrons of a particular restaurant who use wheelchairs
13 face identical facilities and identical access barriers. Their common interest in assuring that all
14 the features at the particular restaurant are in compliance will predominate over any individual
15 differences among them." *Castaneda v. Burger King Corp.*, 264 F.R.D. 557, 572 (N.D. Cal.
16 2009).

17 69. The claims of each Subclass Representative are typical of the claims of the
18 members of the subclass(es) he or she represents. They -- like all other members of the
19 subclasses -- use wheelchairs or scooters for mobility and claim that BKC violated the ADA, the
20 Unruh Act, and/or the CDPA by failing to make the Remaining BKLs accessible to the class of
21 people who use wheelchairs or scooters.

22 70. Each Subclass Representative will fairly and adequately protect the interests of
23 the subclass(es) he or she represents because he or she has retained counsel with extensive
24 experience in litigation, including class action litigation, and because no Subclass Representative
25 has interests that conflict in any way with those of the subclass he or she represents.

26 71. Each subclass meets the requirements of Rule 23(b)(2) because BKC's violations
27 of the ADA, the Unruh Act, and the CDPA are applicable to all members of each subclass.

28

1 Therefore, an injunction requiring compliance with the ADA, the Unruh Act, and the CDPA is
2 appropriate and the primary relief sought is injunctive relief.

3 72. Each subclass meets the requirements of Rule 23(b)(3) because the many
4 questions of law and fact that are common to subclass members clearly predominate over
5 individual questions affecting members of the subclass. The common issues of law and fact
6 relate to issues central to the case, such as whether Remaining BKLs are public
7 accommodations and business establishments, whether modifying Defendant's policies and
8 practices, removing barriers, and other measures, are required to comply with the ADA, Unruh
9 Act, and/or the CDPA.

10 73. Judicial economy will be served by maintenance of these subclasses in that it is
11 likely to avoid the burden that would be otherwise placed upon the judicial system by the filing
12 of numerous similar suits by people with disabilities in the State of California.

13 74. Maintaining these subclasses will also avoid the risk of inconsistent outcomes if
14 subclass members were forced to bring individual actions in various forums.

15 75. There are no obstacles to effective and efficient management of these subclasses
16 by this Court.

17 **STATEMENT OF FACTS**

18 76. BKC exercises control over the development, design, remodel, alteration,
19 maintenance, and operation of the Remaining BKLs pertaining to the architectural or design
20 features at issue.

21 77. On information and belief, many or all of the Remaining BKLs were originally
22 constructed and furnished by BKC.

23 78. BKC's construction managers oversee the construction process for new
24 construction, review plans and decor packages for remodeling, alterations and new
25 construction, and perform a final "punch list" walk through after alterations, remodeling, and
26 new construction are completed.

1 79. Additionally, BKC has a document known as a scope of work or workbench or
2 facility inspection report that operates as a checklist for alterations, remodeling and repairs. The
3 document includes the architectural or design features at issue.

4 80. Some or all of the Remaining BKLs were contractually required to be, and were,
5 remodeled in conformance with BKC's construction and design plans and specifications. A part
6 of that remodeling is an inspection of the premises by BKC employees in order to ensure that
7 remodeled restaurant comes as close to a new Burger King restaurant as possible.

8 81. Some or all of the Remaining BKLs engaged in "re-imaging" programs,
9 performed in accordance with BKC's designs and specifications.

10 82. All Remaining BKLs are required to comply with BKC's Manual of Operating
11 Data ("MOD"), which contains official mandatory restaurant operating standards, specifications
12 and procedures.

13 83. The MOD contains highly detailed requirements for the operation, design,
14 signage, interior decor, equipment systems, and various other items in Burger King restaurants.

15 84. Remaining BKLs are required to be repaired and maintained in accordance with
16 standards established and controlled by BKC.

17 85. The employee training programs for managers and employees of
18 tenant/franchisees in Remaining BKLs must conform to training standards and procedures
19 prescribed by BKC.

20 86. BKC conducts scheduled and unscheduled inspections and monitoring of some
21 or all of the Remaining BKLs to ensure that they are being maintained and operated in
22 compliance with the various BKC operational and other requirements.

23 87. BKC requires precise compliance by tenant/franchisees with its design,
24 construction, remodel, alteration, operations, repair, imaging and other requirements but not
25 Disability Access Requirements.

26 88. BKC employees conduct monitoring, inspections, and/or walkthroughs of BKLs.
27 These inspections and/or walkthroughs do not involve reviews for compliance with Disability
28 Access Requirements.

1 89. Since January 26, 1992, the date when the ADA regulations governing
2 alterations went into effect, some or all of the Remaining BKLs have undergone alterations, as
3 that term is used in the ADA, that affected, or could have affected, the usability of part or all of
4 those restaurants.

5 90. Since July 1, 1970, the date when California state access regulations went into
6 effect, some or all of the Remaining BKLs have undergone alterations, structural repairs and/or
7 additions, as those terms are used in California law, including without limitation Cal. Health &
8 Safety Code § 19959.

9 91. Since October 2006, Plaintiff Ron Sarfaty has patronized several Burger King
10 restaurants in California, including Remaining BKLs located at 1919 Pico Blvd., Santa Monica,
11 21227 Sherman Way, Canoga Park, 8030 Van Nuys Blvd., Panorama City, 24530 Lyons Ave.,
12 Newhall, and 29136 Roadside Dr., Agoura.

13 92. At Burger King restaurants, Mr. Sarfaty has encountered numerous barriers to
14 access, including for example entry and restroom doors that were very difficult to open, parking
15 lots with insufficient or inadequate accessible parking spaces, narrow or steep sidewalks/ramps,
16 inaccessible seating/dining areas, and drink machines and self-service dispensers that were
17 difficult for him to reach.

18 93. These barriers to access have denied Mr. Sarfaty full and equal access to, and
19 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
20 Sarfaty's dignity.

21 94. Since October 2006, Plaintiff Kenneth Kilgore has patronized several Burger
22 King restaurants in California, including Remaining BKLs located at 211 N. McDowell Blvd.,
23 Petaluma and 6125 Commerce Blvd., Rohnert Park.

24 95. At Burger King restaurants, Mr. Kilgore has encountered numerous barriers to
25 access, including for example entry and restroom doors that were very difficult to open, parking
26 lots with insufficient or inadequate accessible parking spaces, inaccessible restrooms, narrow or
27 steep sidewalks/ramps, inaccessible seating/dining areas, and drink machines and self-service
28 dispensers that were difficult for him to reach.

1 96. These barriers to access have denied Mr. Kilgore full and equal access to, and
2 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
3 Kilgore's dignity.

4 97. Since October 2006, Plaintiff Tyrey Mills has patronized several Burger King
5 restaurants in California, including Remaining BKLs located at 1901 Webster St., Alameda and
6 2200 Otis Dr., Alameda.

7 98. At Burger King restaurants, Tyrey Mills has encountered numerous barriers to
8 access, including for parking lots with insufficient or inadequate accessible parking spaces, entry
9 and restroom doors that were very difficult to open and inaccessible seating/dining areas.

10 99. These barriers to access have denied Tyrey Mills full and equal access to, and
11 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Tyrey
12 Mills's dignity.

13 100. Since October 2006, Plaintiff Jenilyn Jimenez has patronized several Burger King
14 restaurants in California, including Remaining BKLs located at 3747 Rosecrans St., San Diego
15 and 680 E. San Ysidro Blvd., San Ysidro.

16 101. At Burger King restaurants, Ms. Jimenez has encountered numerous barriers to
17 access, including for example entry and restroom doors that were very difficult to open, parking
18 lots with insufficient or inadequate accessible parking spaces, inaccessible restrooms, narrow or
19 steep sidewalks/ramps, inaccessible seating/dining areas, and drink machines and self-service
20 dispensers that were difficult for her to reach.

21 102. These barriers to access have denied Ms. Jimenez full and equal access to, and
22 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
23 Jimenez's dignity.

24 103. Since October 2006, Plaintiff Baker has patronized several Burger King
25 restaurants in California, including a Remaining BKL located at 619 W. Charter Way in
26 Stockton.

1 104. At Burger King restaurants, Ms. Baker has encountered numerous barriers to
2 access, including for example entry and restroom doors that were very difficult to open, and
3 drink machines and self-service dispensers that were difficult for her to reach.

4 105. These barriers to access have denied Ms. Baker full and equal access to, and
5 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
6 Baker's dignity.

7 106. Since October 2006, Plaintiff Farber patronized several Burger King restaurants
8 in California, including a Remaining BKL located at 2734 N. Tustin Ave. in Orange.

9 107. At Burger King restaurants, Mr. Farber has encountered numerous barriers to
10 access, including for example entry doors that were very difficult to open, and parking lots with
11 insufficient or inadequate accessible parking spaces.

12 108. These barriers to access have denied Mr. Farber full and equal access to, and
13 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
14 Farber's dignity.

15 109. Since October 2006, Plaintiff Harry has patronized several Burger King
16 restaurants in California, including Remaining BKLs located at 2200 Otis Dr., Alameda, and
17 1571 Fitzgerald Dr., Pinole.

18 110. At Burger King restaurants, Ms. Harry has encountered numerous barriers to
19 access, including for example entry doors that were very difficult to open, narrow or steep
20 sidewalks/ramps, seating areas that were difficult for her to use, and drink machines and self-
21 service dispensers that were difficult for her to reach.

22 111. These barriers to access have denied Ms. Harry full and equal access to, and
23 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
24 Harry's dignity.

25 112. Since October 2006, Plaintiff Kathryn Tyler has patronized several Burger King
26 restaurants in California, including Remaining BKLs located at 619 W. Charter Way, Stockton,
27 329 N. Capitol Ave., San Jose, and 3098 Story Rd., San Jose.

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1 113. At Burger King restaurants, Ms. Tyler has encountered numerous barriers to
2 access, including, for example, entry and restroom doors that were very difficult to open,
3 parking lots with insufficient or inadequate accessible parking spaces, narrow or steep
4 sidewalks/ramps, inaccessible seating/dining areas, and self-service dispensers that were difficult
5 for her to reach.

6 114. These barriers to access have denied Ms. Tyler full and equal access to, and
7 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
8 Tyler's dignity.

9 115. Since October 2006, Plaintiff Mohan Vallabhapurapu has patronized several
10 Burger King restaurants in California, including Remaining BKLs located at 510 Euclid St.,
11 Anaheim, 1420 Mission Ave., Oceanside, 1919 Pico Blvd., Santa Monica, 911 W. Jefferson
12 Blvd., Los Angeles, 385 South Kiely, San Jose, 3630 Tyler St., Riverside, 24530 Lyons Ave.,
13 Newhall, 2600 Long Beach Blvd., Long Beach, 12513 East Carson St., Hawaiian Gardens, 81-
14 779 US Highway 111, Indio, 261 Race St., San Jose, 10931 Los Alamitos Blvd., Los Alamitos,
15 1666 2nd St., Norco, 2500 East Imperial Highway, Brea, and 23125 Hemlock Ave., Moreno
16 Valley.

17 116. At Burger King restaurants, Mr. Vallabhapurapu has encountered numerous
18 barriers to access, including, for example, entry and restroom doors that were very difficult to
19 open, parking lots with insufficient or inadequate accessible parking spaces, narrow or steep
20 sidewalks/ramps, inaccessible seating/dining areas and restrooms, and drink machines and self-
21 service dispensers that were difficult for him to reach.

22 117. These barriers to access have denied Mr. Vallabhapurapu full and equal access
23 to, and enjoyment of, the goods and services of BKC, and have been frustrating and injurious to
24 Mr. Vallabhapurapu's dignity.

25 118. Since October 2006, Plaintiff Priscilla Walker has patronized several Burger
26 King restaurants in California, including the Remaining BKL located at 450 Leavesley Rd.,
27 Gilroy.

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1 119. At Burger King restaurants, Ms. Walker encountered numerous barriers to
2 access, including, for example, entry doors that were very difficult to open and counters that
3 were too high.

4 120. These barriers to access have denied Ms. Walker full and equal access to, and
5 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
6 Walker's dignity.

7 121. Since October 2006, Plaintiff Richard Felix has patronized several Burger King
8 restaurants in California, including the Remaining BKLs located at 2410 N. Cedar Ave., Fresno
9 and 4610 E. Kings Canyon Rd., Fresno.

10 122. At Burger King restaurants, Mr. Felix has encountered numerous barriers to
11 access, including, for example, self-service dispensers that were difficult for him to reach,
12 restroom doors that were very difficult to open, and inaccessible restroom stalls.

13 123. These barriers to access have denied Mr. Felix full and equal access to, and
14 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
15 Felix's dignity.

16 124. Since October 2006, Plaintiff Kathleen Gonzalez has patronized several Burger
17 King restaurants in California, including the Remaining BKLs located at 139 N. China Lake
18 Blvd., Ridgecrest and 41383 Big Bear Lake Blvd., Big Bear Lake.

19 125. At Burger King restaurants, Ms. Gonzalez has encountered numerous barriers to
20 access, including, for example, entry doors that were very difficult to open, parking lots with
21 insufficient or inadequate accessible parking spaces, narrow or steep sidewalks/ramps,
22 inaccessible seating/dining areas and restrooms, and self-service dispensers that were difficult
23 for her to reach.

24 126. These barriers to access have denied Ms. Gonzalez full and equal access to, and
25 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
26 Gonzalez's dignity.

27 127. Since October 2006, Plaintiff Judy Cutler has patronized several Burger King
28 restaurants in California, including the Remaining BKLs located at 1200 E Colorado St.,

1 Glendale, 9710 Central Ave., Montclair, 41383 Big Bear Lake Blvd., Big Bear Lake, and 1666
2 2nd St., Norco.

3 128. At Burger King restaurants, Ms. Cutler has encountered numerous barriers to
4 access, including, for example, entry doors that were very difficult to open, inaccessible
5 seating/dining areas, and self-service dispensers that were difficult for her to reach.

6 129. These barriers to access have denied Ms. Cutler full and equal access to, and
7 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
8 Cutler's dignity.

9 130. Since October 2006, Plaintiff Diane Dailey has patronized several Burger King
10 restaurants in California, including the Remaining BKLs located at 619 W. Charter Way,
11 Stockton and 5315 Hopyard Rd., Pleasanton.

12 131. At Burger King restaurants, Ms. Dailey has encountered numerous barriers to
13 access, including, for example, entry doors that were very difficult to open, inaccessible
14 seating/dining areas and restrooms, and self-service dispensers that were difficult for her to
15 reach.

16 132. These barriers to access have denied Ms. Dailey full and equal access to, and
17 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
18 Dailey's dignity.

19 133. Since October 2006, Plaintiff Carol Lacher has patronized several Burger King
20 restaurants in California, including the Remaining BKLs located at 41383 Big Bear Lake Blvd.,
21 Big Bear Lake and 4918 W. Sunset Blvd., Los Angeles.

22 134. At Burger King restaurants, Ms. Lacher has encountered numerous barriers to
23 access, including, for example, entry and restroom doors that were very difficult to open,
24 narrow or steep sidewalks/ramps, inaccessible seating/dining areas and restrooms, and self-
25 service dispensers that were difficult for her to reach.

26 135. These barriers to access have denied Ms. Lacher full and equal access to, and
27 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
28 Lacher's dignity.

1 136. Since October 2006, Plaintiff Bethany McClam has patronized several Burger
2 King restaurants in California, including the Remaining BKLs located at 1202 W. Avenue I,
3 Lancaster, 43627 N. 15th St. W, Lancaster, and 39519 10th Street West, Palmdale.

4 137. At Burger King restaurants, Ms. McClam has encountered numerous barriers to
5 access, including, for example, entry and restroom doors that were very difficult to open,
6 inaccessible seating/dining areas and restrooms, and self-service dispensers that were difficult
7 for her to reach.

8 138. These barriers to access have denied Ms. McClam full and equal access to, and
9 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
10 McClam's dignity.

11 139. Since October 2006, Plaintiff Erik Nieland has patronized several Burger King
12 restaurants in California, including the Remaining BKLs located at 1801 Decoto Rd., Union
13 City and 16 Southland Mall, Hayward.

14 140. At Burger King restaurants, Mr. Nieland has encountered numerous barriers to
15 access, including, for example, entry doors that were very difficult to open, and self-service
16 dispensers that were difficult for him to reach.

17 141. These barriers to access have denied Mr. Nieland full and equal access to, and
18 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
19 Nieland's dignity.

20 142. Since October 2006, Plaintiff Carol Picchi has patronized several Burger King
21 restaurants in California, including the Remaining BKLs located at 175 W Calaveras Blvd.,
22 Milpitas, 385 S. Kiely, San Jose, 329 N. Capitol Ave., San Jose, 261 Race St., San Jose, 4040
23 Monterey Rd., San Jose and 2170 Monterey Rd., San Jose.

24 143. At Burger King restaurants, Ms. Picchi has encountered numerous barriers to
25 access, including, for example, parking lots with insufficient or inadequate accessible parking
26 spaces, entry and restroom doors that were very difficult to open, inaccessible seating/dining
27 areas and restrooms, and self-service dispensers that were difficult for her to reach.

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1 144. These barriers to access have denied Ms. Picchi full and equal access to, and
2 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
3 Picchi's dignity.

4 145. Since October 2006, Plaintiff William Showen has patronized several Burger
5 King restaurants in California, including the Remaining BKL located at 111 S Harding Blvd.,
6 Roseville, and 450 Leavesley Road in Gilroy.

7 146. At Burger King restaurants, Mr. Showen has encountered numerous barriers to
8 access, including, for example, entry doors that were very difficult to open, and self-service
9 dispensers that were difficult for him to reach.

10 147. These barriers to access have denied Mr. Showen full and equal access to, and
11 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
12 Showen's dignity.

13 148. Since October 2006, Plaintiff George Partida has patronized several Burger King
14 restaurants in California, including the Remaining BKLs located at 2101 W. Whittier Blvd., La
15 Habra, 8845 S. Painter St., Whittier, 1919 Artesia Blvd., Redondo Beach, 1919 Pico Blvd.,
16 Santa Monica, 1453 W Manchester Ave., Los Angeles, 215 N. Gaffey St., San Pedro, 2600
17 Long Beach Blvd., Long Beach, 5540 Cherry Ave., Long Beach, 12513 E. Carson St.,
18 Hawaiian Gardens, and 1666 2nd St., Norco.

19 149. At Burger King restaurants, Mr. Partida has encountered numerous barriers to
20 access, including, for example, entry and restroom doors that were very difficult to open,
21 inaccessible seating/dining areas and self-service dispensers that were difficult for him to reach.

22 150. These barriers to access have denied Mr. Partida full and equal access to, and
23 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
24 Partida's dignity.

25 151. Since October 2006, Plaintiff Kitty Dean has patronized several Burger King
26 restaurants in California, including the Remaining BKLs located at 822 N. Johnson St., El
27 Cajon, 728 W. San Marcos Blvd., San Marcos, 377 Vista Village Dr., Vista, 12427 Poway Rd.,
28 Poway, and 227 S. Tremont St., Oceanside.

1 152. At Burger King restaurants, Ms. Dean has encountered numerous barriers to
2 access, including, for example, narrow or steep sidewalks/ramps, entry doors that were very
3 difficult to open, inaccessible seating/dining areas, and self-service dispensers that were difficult
4 for her to reach.

5 153. These barriers to access have denied Ms. Dean full and equal access to, and
6 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
7 Dean's dignity.

8 154. Since October 2006, Plaintiff Alfred Brown has patronized several Burger King
9 restaurants in California, including the Remaining BKL located at 1541 E. 12th St., Oakland.

10 155. At Burger King restaurants, Mr. Brown has encountered numerous barriers to
11 access, including, for example, entry and restroom doors that were very difficult to open,
12 inaccessible seating/dining areas, and self-service dispensers that were difficult for him to reach.

13 156. These barriers to access have denied Mr. Brown full and equal access to, and
14 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
15 Brown's dignity.

16 157. Since October 2006, Plaintiff Marsha Shining Woman has patronized several
17 Burger King restaurants in California, including the Remaining BKL located at 2055 Eureka
18 Way, Redding.

19 158. At Burger King restaurants, Ms. Shining Woman has encountered barriers to
20 access, including, for example, entry and restroom doors that were very difficult to open, and
21 self-service dispensers that were difficult for her to reach.

22 159. These barriers to access have denied Ms. Shining Woman full and equal access
23 to, and enjoyment of, the goods and services of BKC, and have been frustrating and injurious to
24 Ms. Shining Woman's dignity.

25 160. Since October 2006, Plaintiff Goldene Springer has patronized several Burger
26 King restaurants in California, including the Remaining BKL located at 455 N. Humboldt St.,
27 Willows.

1 161. At Burger King restaurants, Ms. Springer has encountered barriers to access,
2 including, for example, entry and restroom doors that were very difficult to open, inaccessible
3 seating/dining areas and restrooms, and self-service dispensers that were difficult for her to
4 reach.

5 162. These barriers to access have denied Ms. Springer full and equal access to, and
6 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
7 Springer's dignity.

8 163. Since October 2006, Plaintiff Daniel Xenos has patronized several Burger King
9 restaurants in California, including the Remaining BKL located at 13446 Lincoln Way, Auburn.

10 164. At Burger King restaurants, Mr. Xenos has encountered numerous barriers to
11 access, including, for example, entry and restroom doors that were very difficult to open.

12 165. These barriers to access have denied Mr. Xenos full and equal access to, and
13 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
14 Xenos's dignity.

15 166. Since October 2006, Plaintiff Adams has patronized several Burger King
16 restaurants in California, including the Remaining BKL located at 34943 Newark Blvd.,
17 Newark.

18 167. At Burger King restaurants, Ms. Adams has encountered numerous barriers to
19 access, including, for example, doors that were heavy and difficult or impossible for her to open,
20 queue lines that were too narrow for her to get through, and a dining area with aisles too
21 narrow for her to get to a table.

22 168. These barriers to access have denied Ms. Adams full and equal access to, and
23 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
24 Adams's dignity.

25 169. Since October 2006, Plaintiff Bowman has patronized several Burger King
26 restaurants in California, including the Remaining BKL located at 815 Highland Ave., National
27 City.

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1 170. At Burger King restaurants, Ms. Bowman has encountered numerous barriers to
2 access, including, for example, doors that were heavy and difficult or impossible for her to open.

3 171. These barriers to access have denied Ms. Bowman full and equal access to, and
4 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
5 Bowman's dignity.

6 172. Since October 2006, Plaintiff Coleman has patronized several Burger King
7 restaurants in California, including the Remaining BKLs located at 8030 Greenback Ln, Citrus
8 Heights, California, 7201 Fair Oaks Blvd, Carmichael, California, 635 E Capitol Expressway,
9 San Jose, California, the San Francisco International Airport, and 6735 N Golden State Blvd,
10 Fresno, California.

11 173. At Burger King restaurants, Ms. Coleman has encountered numerous barriers to
12 access, including, for example, doors that were heavy and difficult or impossible for her to open,
13 inaccessible restrooms, queue lines that were too narrow for her to get through, and a dining
14 area with aisles too narrow for her to get to a table, and drinks and condiments that were out of
15 reach.

16 174. These barriers to access have denied Ms. Coleman full and equal access to, and
17 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
18 Coleman's dignity.

19 175. Since October 2006, Plaintiff Flaherty has patronized several Burger King
20 restaurants in California, including the Remaining BKLs located at 525 Pacheco Blvd, Los
21 Banos, California, and 16025 Monterey Road, Morgan Hill, California.

22 176. At Burger King restaurants, Ms. Flaherty has encountered numerous barriers to
23 access, including, for example, entrance doors that were heavy and difficult for her to open,
24 narrow queue lines, and heavy restroom doors.

25 177. These barriers to access have denied Ms. Flaherty full and equal access to, and
26 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
27 Flaherty's dignity.

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1 178. Since October 2006, Plaintiff Browne-Gaulitz has patronized several Burger
2 King restaurants in California, including the Remaining BKLs located at 601 Colusa Ave, Yuba
3 City, 3150 Harbor Blvd, Costa Mesa, and 13421 Newport Ave, Tustin.

4 179. At Burger King restaurants, Ms. Browne-Gaulitz has encountered numerous
5 barriers to access, including, for example, entrance doors that were heavy and difficult for her to
6 open, and narrow queue lines.

7 180. These barriers to access have denied Ms. Browne-Gaulitz full and equal access
8 to, and enjoyment of, the goods and services of BKC, and have been frustrating and injurious to
9 Ms. Browne-Gaulitz's dignity.

10 181. Since October 2006, Plaintiff Lothridge has patronized several Burger King
11 restaurants in California, including the Remaining BKL located at 301 West Lacey Blvd.,
12 Hanford, California.

13 182. At Burger King restaurants, Ms. Lothridge has encountered numerous barriers to
14 access, including, for example, entrance doors that were heavy and difficult for her to open, and
15 lids that were out of reach.

16 183. These barriers to access have denied Ms. Lothridge full and equal access to, and
17 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
18 Lothridge's dignity.

19 184. Since October 2006, Plaintiff Mackie has patronized several Burger King
20 restaurants in California, including the Remaining BKL located at 6960 Broadway, Lemon
21 Grove, California.

22 185. At Burger King restaurants, Ms. Mackie has encountered numerous barriers to
23 access, including, for example, including heavy entrance doors, and condiments and drinks out
24 of reach.

25 186. These barriers to access have denied Ms. Mackie full and equal access to, and
26 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
27 Mackie's dignity.

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1 187. Since October 2006, Plaintiff Parker has patronized several Burger King
2 restaurants in California, including the Remaining BKL located at 936 Blossom Hill Road, San
3 Jose, California.

4 188. At Burger King restaurants, Ms. Parker has encountered numerous barriers to
5 access, including, for example, entrance doors that were heavy and difficult for her to open, and
6 narrow queue lines.

7 189. These barriers to access have denied Ms. Parker full and equal access to, and
8 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
9 Parker's dignity.

10 190. Since October 2006, Plaintiff Rairdon-Brainard has patronized several Burger
11 King restaurants in California, including the Remaining BKLs located at 4253 Mission Blvd.,
12 Pacific Beach, California, and 3746 Mission Ave., Oceanside, California.

13 191. At Burger King restaurants, Ms. Rairdon-Brainard has encountered numerous
14 barriers to access, including, for example, entrance doors that were heavy and difficult for her to
15 open, narrow queue lines, and condiments and drinks out of reach.

16 192. These barriers to access have denied Ms. Rairdon-Brainard full and equal access
17 to, and enjoyment of, the goods and services of BKC, and have been frustrating and injurious to
18 Ms. Rairdon-Brainard's dignity.

19 193. Since October 2006, Plaintiff Samuel has patronized several Burger King
20 restaurants in California, including the Remaining BKL located at 711 E. Perkins Street, Ukiah,
21 California.

22 194. At Burger King restaurants, Ms. Samuel has encountered numerous barriers to
23 access, including, for example, narrow queue lines.

24 195. These barriers to access have denied Ms. Samuel full and equal access to, and
25 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Ms.
26 Samuel's dignity.

27 196. Since October 2006, Plaintiff Sheehan has patronized several Burger King
28 restaurants in California, including the Remaining BKL located at 14600 Valley Blvd, La

1 Puente, 12736 South Avalon Blvd, Los Angeles, 3520 Sepulveda Blvd, Los Angeles and 601 E
2 Dyer Rd, Santa Ana.

3 197. At Burger King restaurants, Mr. Sheehan has encountered numerous barriers to
4 access, including, for example, steep cross slopes in parking lots, entry and restroom doors that
5 were very difficult to open, narrow queue lines, and condiments and drinks out of reach.

6 198. These barriers to access have denied Mr. Sheehan full and equal access to, and
7 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
8 Sheehan's dignity.

9 199. Since October 2006, Plaintiff Smith has patronized several Burger King
10 restaurants in California, including the Remaining BKL located at 2090 West Hwy 88, Martell,
11 California.

12 200. At Burger King restaurants, Mr. Smith has encountered numerous barriers to
13 access, including, for example, entry and restroom doors that were very difficult to open, and
14 narrow queue lines.

15 201. These barriers to access have denied Mr. Smith full and equal access to, and
16 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
17 Smith's dignity.

18 202. Since October 2006, Plaintiff Thomas has patronized several Burger King
19 restaurants in California, including the Remaining BKL located at 1250 9th St. in Crescent City.

20 203. At Burger King restaurants, Mr. Thomas has encountered numerous barriers to
21 access, including, for example, entry and restroom doors that were very difficult to open.

22 204. These barriers to access have denied Mr. Thomas full and equal access to, and
23 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
24 Thomas's dignity.

25 205. Since October 2006, Plaintiff Whited has patronized several Burger King
26 restaurants in California, including the Remaining BKL located at 635 E Capitol Expressway,
27 San Jose, California, and 6735 N Golden State Blvd, Fresno, California.

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1 206. At Burger King restaurants, Mr. Whited has encountered numerous barriers to
2 access, including, for example, entry and restroom doors that were very difficult to open,
3 narrow queue lines, and condiments and drinks out of reach.

4 207. These barriers to access have denied Mr. Whited full and equal access to, and
5 enjoyment of, the goods and services of BKC, and have been frustrating and injurious to Mr.
6 Whited's dignity.

7 208. Other potential class and subclass members report encountering similar barriers
8 at Remaining BKLs , including but not limited to barriers to accessible parking; doors that are
9 difficult to get to or to open; counters, drink machines and self-service dispensers that are hard
10 to reach; inaccessible seating/dining areas; and inaccessible restrooms.

11 209. On information and belief, BKC has engaged in acts of intentional discrimination,
12 including but not limited to the following policies or practices pertaining to Disability Access
13 Requirements:

- 14 a. designing, constructing, implementing and maintaining barriers that
15 discriminate against members of the putative class and subclasses with
16 knowledge of such discrimination and/or
- 17 b. designing, constructing, implementing and maintaining barriers that are
18 sufficiently intuitive and/or obvious as to constitute intentional conduct;
19 and/or
- 20 c. failing to act in the face of the substantial likelihood of harm to class and
21 subclass members' rights protected under federal and state law.

22 210. On information and belief, Burger King utilizes standards, criteria or methods of
23 administration that have the effect of discriminating or perpetuating the discrimination of others.

24 **FIRST CLAIM FOR RELIEF**
25 **(Americans with Disabilities Act)**

26 211. Plaintiffs reallege and incorporate by reference the allegations set forth in the
27 remainder of this Complaint as if fully set forth herein.

28 212. Title III of the ADA provides that "No individual shall be discriminated against
on the basis of disability in the full and equal enjoyment of the goods, services, facilities,

1 privileges, advantages, or accommodations of any place of public accommodation by any person
2 who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C.
3 § 12182(a). Title III also prohibits an entity from “[u]tilizing standards or criteria or methods of
4 administration that have the effect of discriminating on the basis of disability.” 42 U.S.C.
5 § 12182(b)(2)(D)(I).

6 213. Title III of the ADA also requires that individuals and entities subject to the
7 ADA are required to comply with DOJ Standards.

8 214. Remaining BKLs are places of public accommodation. 42 U.S.C.
9 § 12181(7)(B).

10 215. Defendant is subject to Title III of the ADA because it owns, operates, and/or
11 leases the Remaining BKLs.

12 216. Defendant has discriminated against Plaintiffs and members of the proposed class
13 and subclasses on the basis of disability. Defendant’s discriminatory conduct includes but is not
14 limited to:

- 15 a. Maintaining discriminatory policies and practices;
- 16 b. Discriminatory exclusion and/or denial of goods, services, facilities,
17 privileges, advantages, accommodations, and/or opportunities;
- 18 c. Provision of goods, services, facilities, privileges, advantages, and/or
19 accommodations that are not equal to those afforded non-disabled
20 individuals;
- 21 d. Failing to design and/or construct restaurants built for first occupancy
22 after January 26, 1993 so that they are readily accessible to and usable by
23 individuals with disabilities;
- 24 e. Failing to remodel or make alterations in such a manner that, to the
25 maximum extent feasible, the altered portions of the restaurants altered
26 after January 26, 1992, are readily accessible to and usable by individuals
27 with disabilities, including individuals who use wheelchairs and scooters;

- 1 f. Failing to remodel or make alterations in such a manner that, to the
2 maximum extent feasible, the path of travel to the altered area and the
3 bathrooms and drink machines serving the altered area, are readily
4 accessible to and usable by individuals with disabilities;
- 5 g. Failing to remove barriers, including but not limited to queue lines,
6 counter height, door weight, parking accessibility, to individuals with
7 disabilities where it would be readily achievable to do so;
- 8 h. Failing to make reasonable modifications in policies, practices, and/or
9 procedures as necessary to afford the goods, services, facilities,
10 privileges, advantages, and/or accommodations to individuals with
11 disabilities; and/or
- 12 i. Utilizing standards or criteria or methods of administration that have the
13 effect of discriminating on the basis of disability, or that perpetuate the
14 discrimination of tenant/franchisees who are subject to common
15 administrative control.

16 217. As such, Defendant discriminates and, in the absence of the injunction requested
17 herein, will continue in the future to discriminate against Plaintiffs and members of the proposed
18 class and subclasses on the basis of disability in the full and equal enjoyment of the goods,
19 services, facilities, privileges, advantages, accommodations and/or opportunities of Remaining
20 BKLs in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*
21 and/or its implementing regulations.

22 218. Defendant's violations of the ADA have harmed and will continue to harm
23 Plaintiffs and members of the proposed class and subclasses in the future.

24 219. Pursuant to the remedies, procedures, and rights set forth in 42 U.S.C. § 12188,
25 Plaintiffs pray for judgment as set forth below.

26 **SECOND CLAIM FOR RELIEF**
27 **(Unruh Civil Rights Act and the Unruh Act's Incorporation of the ADA)**

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

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Respectfully submitted,

Dated: June __, 2012

By: _____

Bill Lann Lee (State Bar No. 108452)
Andrew Lah (State Bar No. 234580)
Julia Campins (State Bar No. 238023)
Joshua Davidson (State Bar No. 275168)
LEWIS, FEINBERG, LEE, RENAKER
& JACKSON, P.C.
476 Ninth Street
Oakland, CA 94607
Tel: (510) 839-6824
Fax: (510) 839-7839
blee@lewisfeinberg.com
alah@lewisfeinberg.com
jcampins@lewisfeinberg.com

Timothy P. Fox (State Bar No. 157750)
FOX & ROBERTSON, P.C.
104 Broadway, Suite 400
Denver, CO 80203
Tel: (303) 595-9700
TTY: (877) 595-9706
Fax: (303) 595-9705
tfox@foxrob.com

Mari Mayeda (State Bar No. 110947)
P O Box 5138
Berkeley, CA 94705
Tel: (510) 917-1622
Fax: (510) 841-8115
marimayeda@earthlink.net

Attorneys for Plaintiffs