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13 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 FRANCIE E. MOELLER et al,

16 Plaintiffs,

17 v.

18 TACO BELL CORP.,

19 Defendant.  
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Case No. C 02 5849 MJJ ADR

**PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**Date: November 30, 2004**

**Time: 9:30 a.m.**

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17 TACO BELL CORP.,

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Case No. C 02 5849 MJJ ADR

**PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**Date: November 30, 2004**  
**Time: 9:30 a.m.**

19 \_\_\_\_\_  
20  
21 **NOTICE**

22 On November 30, 2004 at 9:30 a.m., or as soon thereafter as this motion may be heard,  
23 before the Honorable Martin J. Jenkins, Plaintiffs will, and hereby do, move for an order  
24 granting partial summary judgment in their favor in the above-captioned action. This motion is  
25 based on this Notice of Motion, and all accompanying attachments hereto.

26  
27 Case No. C 02 5849 MJJ ADR  
Plaintiffs' Motion for Partial Summary Judgment

28

1 **RELIEF SOUGHT**

2 Plaintiffs seek partial summary judgment determining that 19 corporate-owned Taco  
3 Bell restaurants in California violate Title III of the Americans with Disabilities Act, 42 U.S.C.  
4 § 12101 et seq. (“ADA”), the Unruh Civil Rights Act, Cal. Civ. Code § 51 et seq. (“Unruh” or  
5 “the Unruh Act”), and/or the California Disabled Persons Act, Cal. Civ. Code § 54 et seq. (the  
6 “CDPA”). Plaintiffs seek only a determination of liability, reserving for later proceedings the  
7 question of appropriate remedies -- declaratory, injunctive and monetary -- for such liability.

8 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

9 **ISSUES TO BE DECIDED**

10 Whether the 19 Taco Bell restaurants that are the subject of this motion are in violation  
11 of the ADA, the Unruh Act and/or the CDPA based on the date each was built or altered and  
12 the stipulated dimensions of various elements at each restaurant.

13 **SUMMARY OF ARGUMENT**

14 Plaintiffs -- a class of individuals who use wheelchairs or scooters for mobility -- bring  
15 this lawsuit against Defendant Taco Bell Corporation (“Taco Bell”) under the ADA, Unruh and  
16 CDPA, alleging that Taco Bell is in violation of these statutes because its corporate-owned  
17 restaurants in California contain architectural barriers to class members. The case addresses  
18 approximately 220 corporate-owned Taco Bell restaurants in California. Plaintiffs move for  
19 summary judgment concerning a number of the barriers in 19 of those restaurants.

20 The ADA, Unruh and CDPA all require that facilities built or altered after a designated  
21 date comply with certain standards for wheelchair access. The parties have stipulated to the  
22 dimensions of certain architectural features at the 19 corporate-owned Taco Bell restaurants at  
23 issue here. Defendant has produced documents that provide information concerning the dates  
24 of construction and dates of certain alterations at these restaurants, and Plaintiffs have obtained  
25 other such documents from the relevant building authorities. Plaintiffs move the Court to grant

1 summary judgment by applying -- to the undisputed dimensions -- the federal or California  
2 standards applicable to each restaurant on the date of construction and/or alteration.

3 For example, both the ADA and California accessibility standards state that the force  
4 required to open an interior door may not exceed five pounds. So where the parties have  
5 stipulated that the force required to open an interior door at a restaurant is 8.5 pounds, and the  
6 restaurant was built or altered at a time when the five pound requirement was in effect,  
7 Plaintiffs request that the Court grant summary judgment holding that door in question is in  
8 violation of the ADA, Unruh and CDPA. The remainder of Plaintiffs' motion follows this  
9 precise pattern: it requests that the Court grant summary judgment in Plaintiffs' favor where  
10 the dimensions to which the parties have stipulated demonstrate that an element violates  
11 accessibility standards in effect at the time the restaurant was built or altered.

12 Because the elements at issue in this motion are found in most -- and in many cases, all  
13 -- Taco Bell restaurants, the Court's decisions on these legal questions will also apply to many  
14 or all of the remaining approximately 200 corporate-owned Taco Bell restaurants in California.

### 15 FACTS

16 This motion addresses barriers in 19 corporate-owned Taco Bell restaurants in  
17 California. In order to determine whether an element is in violation of the law, it is necessary  
18 to determine which standards apply, and to apply those standards to the existing dimensions. In  
19 this case, the existing dimensions are undisputed as the result of a stipulation between the  
20 parties.<sup>1</sup> The date on which a restaurant was constructed, and the dates on which it was altered,  
21 determine which standards are applicable. Information demonstrating the dates of construction  
22 and alteration at the 19 restaurants at issue here comes from documents provided by Defendant  
23 and obtained by Plaintiffs from relevant building authorities.

---

24  
25 <sup>1</sup> See Declaration of Amy F. Robertson ("Robertson Dec.") at ¶¶ 3, 8, 12, 19, 25,  
32, 37, 42, 46, 49, 54, 59, 64, 69, 73, 78, 81, 86, & 90.

1 Plaintiffs have prepared a series of exhibits -- one for each store -- that provide  
 2 undisputed information concerning dates of construction and alteration, as well as an  
 3 explanation of which standards are made applicable based on those dates. Each exhibit  
 4 includes a table that identifies each element in violation, states the dimensions that the parties  
 5 have stipulated currently exist, and provides the applicable standard or standards with citations.

6 For example, the following row appears in the exhibit for Store 16909:

Element	Stipulated Existing Dimensions	Dimension or Standard Required When Built or Altered
Men's & women's restrooms: force required to open door.	8.5 pounds	May not exceed 5 pounds. Cal. Stds. (1994) § 3304(i.2)(1) DOJ Stds. § 4.13.11(b).

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12 The element in question is the force required to open the men's and women's restroom doors.  
 13 The parties have stipulated that it is currently 8.5 pounds. Because the store was built in 1995,  
 14 both federal and California accessibility standards apply, and both limit the force required to  
 15 open interior doors to five pounds. The men's and women's restroom doors in Store 16909 are  
 16 thus in violation of the applicable accessibility codes.

17 Where a store has been altered, a single element may be governed by standards from  
 18 several different years -- including the standard in effect when the element was built, and the  
 19 standard when it was altered. Although the substantive requirements of the standards  
 20 applicable during each alteration are generally similar if not identical, each alteration represents  
 21 another juncture at which Taco Bell was required to -- but did not -- comply with disability  
 22 access laws.

### 23 ARGUMENT

24 The ADA, Unruh, and CDPA all require facilities built or altered after a designated date  
 25 to comply with certain standards for wheelchair access. The restaurants at issue in this Motion  
 26



1 have all undergone construction or alteration subject to these standards but nevertheless have  
2 barriers to access for their customers who use wheelchairs or scooters that put them in violation  
3 of these standards, and thus of the ADA, Unruh and/or the CDPA.

4  
5 **I. Applicable Legal Standards**

6 **A. Partial Summary Judgment.**

7 Summary judgment is appropriate where “the pleadings, depositions, answers to  
8 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
9 genuine issue as to any material fact and that the moving party is entitled to judgment as a  
10 matter of law.” Fed. R. Civ. P. 56(c). A plaintiff may move for summary judgment in his  
11 favor “upon all or any part” of his claim. *Id.* Rule 56(a). “A summary judgment, interlocutory  
12 in character, may be rendered on the issue of liability alone although there is a genuine issue as  
13 to the amount of damages.” *Id.* Rule 56(c); see also id. Rule 56(d) (permitting the Court, when  
14 not rendering judgment upon the whole case, to issue an order “specifying the facts that appear  
15 without substantial controversy”).

16 A number of courts have held that partial summary judgment is appropriate where a  
17 plaintiff has demonstrated -- through undisputed facts -- violations of accessibility standards  
18 applicable under the ADA . See, e.g., Long v. Coast Resorts, Inc., 267 F.3d 918, 921-24, 926  
19 (9th Cir. 2001) (affirming in part district court’s decision granting partial summary judgment to  
20 plaintiffs based on an application of ADA accessibility standards to stipulated facts); United  
21 States v. AMC Entm’t, Inc., 245 F. Supp. 2d 1094, 1101 (C.D. Cal. 2003) (granting partial  
22 summary judgment to plaintiffs based on an application of ADA accessibility standards to  
23 undisputed dimensional information in plaintiffs’ expert’s report); Sapp v. MHI P’ship, Ltd.,  
24 199 F. Supp. 2d 578, 583 (N.D. Tex. 2002) (granting partial summary judgment to plaintiffs  
25 based on an application of ADA accessibility standards to undisputed facts).

1 The parties have stipulated to the dimensions of various elements at 19 California  
2 corporate-owned Taco Bell restaurants. As such, there is no genuine issue of fact as to any of  
3 these measurements. Documents received from Defendant Taco Bell and/or from relevant city  
4 or county building departments establish the dates on which the 19 restaurants were  
5 constructed and/or altered. Summary judgment is appropriate because the undisputed  
6 measurements of many of these architectural elements are in violation of state or federal  
7 accessibility standards that were in effect at the time that the restaurants were constructed  
8 and/or altered.

9 **B. The Americans with Disabilities Act.**

10 As this Court has recognized, the ADA was enacted in 1990 “to provide a clear and  
11 comprehensive national mandate for the elimination of discrimination against individuals with  
12 disabilities.” Moeller v. Taco Bell Corp., 220 F.R.D. 604, 606 (N.D. Cal. 2004)(quoting 42  
13 U.S.C. § 12101(b)(1)); see also PGA Tour, Inc. v. Martin, 532 U.S. 661, 675 (2001) (holding  
14 that the ADA provides a “broad mandate” to eliminate discrimination against people with  
15 disabilities). The statute recognizes that “the Nation’s proper goals regarding individuals with  
16 disabilities are to assure equality of opportunity, full participation, independent living, and  
17 economic self-sufficiency for such individuals.” 42 U.S.C. § 12101(a)(8); see Moeller, 220  
18 F.R.D. at 606.

19 Title III of the ADA prohibits disability discrimination by those who own or operate  
20 places of public accommodation -- such as Taco Bell restaurants<sup>2</sup> -- “in the full and equal  
21 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations” of that  
22 public accommodation. 42 U.S.C. § 12182(a). Title III requires that Taco Bell provide its  
23 goods and services to persons with disabilities in an integrated setting, id. § 12182(b)(1)(B),

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24  
25 <sup>2</sup> See 42 U.S.C. § 12181(7)(B) (restaurants are places of public accommodation  
under title III).

1 and that such persons be provided with equal opportunity to participate in and benefit from its  
2 stores. Id. §§ 12182(b)(1)(A)(i) - (iii).

3 Title III also addresses architectural accessibility. All facilities built for first occupancy  
4 after January 26, 1993 are required to be “readily accessible to and usable by” individuals with  
5 disabilities. Id. § 12183(a)(1). To comply with section 12183(a)(1), a facility must be built in  
6 conformance with the Department of Justice Standards for Accessible Design (“DOJ  
7 Standards” or “DOJ Stds.”).<sup>3</sup> 28 C.F.R. pt. 36, app. A; see 28 C.F.R. § 36.406 (requiring  
8 conformance with the Standards).<sup>4</sup> In facilities altered after January 26, 1992, the altered  
9 portion must comply with the DOJ Standards. 28 C.F.R. §§ 36.402(b)(2); 36.406(a). The DOJ  
10 Standards contain detailed design specifications for public accommodations covering a variety  
11 of architectural elements, including, for example, parking lots, food service lines, accessible  
12 routes, and restrooms. See generally id.; see also Moeller, 208 F.R.D. at 606.

13 **C. The Unruh Act and the California Disabled Persons Act.**

14 Both the CDPA, which was enacted in 1968, and the Unruh Act, which was amended in  
15 1987 to cover persons with disabilities, prohibit discrimination on the basis of disability in the  
16 full and equal access to the services, facilities and advantages of public accommodations. Cal.  
17 Civ. Code §§ 51(b) (Unruh) & 54.1(a)(1) (CDPA). All buildings constructed<sup>5</sup> or altered<sup>6</sup> after  
18 July 1, 1970, must comply with standards governing the physical accessibility of public

19 \_\_\_\_\_  
20 <sup>3</sup> The DOJ Standards are available on the Internet at [www.ada.gov/adastd94.pdf](http://www.ada.gov/adastd94.pdf).  
21 The Americans with Disabilities Act Architectural Guidelines (“ADAAG”), promulgated by  
22 the Architectural and Transportation Barriers Compliance Board, were adopted by the DOJ as  
its Standards for Accessible Design. See 56 Fed. Reg. 35,544, 35,546, 35,602 (July 26, 1991).  
As a result, many cases applying the DOJ Standards refer to them as “the ADAAG.”

23 <sup>4</sup> The DOJ’s Title III regulations are “entitled to deference.” Bragdon v. Abbott,  
524 U.S. 624, 646 (1998).

24 <sup>5</sup> Cal. Health & Safety Code § 19956.

25 <sup>6</sup> Cal. Health & Safety Code § 19959.

1 accommodations. Moeller, 208 F.R.D. at 607 (citing D’Lil v. Stardust Vacation Club, No.  
 2 CIV-S-00-1496 DFL PAN, 2001 WL 1825832, at \*7 (E.D. Cal. Dec. 21, 2001)). From  
 3 December 31, 1981 until the present, the standards have been set forth in Title 24 of the  
 4 California Regulatory Code (the “California Standards” or “Cal. Stds.”). People ex rel.  
 5 Deukmejian v. CHE, Inc., 197 Cal. Rptr. 484, 491 (Cal. Ct. App. 1983). Buildings constructed  
 6 between July 1, 1970 and December 31, 1981<sup>7</sup> are governed by the 1961 version of the  
 7 American National Standards Institute, Inc.’s “ANSI A117.1-1961: American National  
 8 Standard Specifications for Making Buildings and Facilities Accessible to and Usable by, The  
 9 Physically Handicapped” (“ANSI-61”). Id.<sup>8</sup>

10 Since 1981, the California Standards have stated that their purpose is “[t]o assure that  
 11 barrier-free design is incorporated in all buildings, facilities, site work and other developments  
 12 to which this Code applies to assure that they are accessible to, and usable by, physically  
 13 handicapped persons.”<sup>9</sup>

14 Also since that time, the California Standards have applied to all alterations to facilities,  
 15 requiring that the altered portion -- including a primary entrance to the building, the primary  
 16 path of travel to the altered portion of the facility, and restrooms serving the altered area -- be

---

17  
 18  
 19 <sup>7</sup> As set forth below, post-1981 alterations to these buildings are subject to the  
 20 California accessibility regulations in effect at the time of the alteration.

21 <sup>8</sup> Courtesy copies of the relevant sections of ANSI-61 and the California  
 22 Standards are attached as Exhibits A through G to the Appendix to Plaintiffs’ Motion for  
 23 Partial Summary Judgment (“Appendix”), filed herewith. Plaintiffs have designated the  
 24 California Standards by the year in which they became effective. The only exceptions to this  
 are 1987 and 1989. Plaintiffs were only able to locate the Interpretive Manual of the Office of  
 the State Architect for those years, which documents did not indicate an effective date.  
 Plaintiffs have used the dates 1987 and 1989, respectively, because those are the dates of  
 publication of the Interpretive Manuals and therefore the latest possible effective date.

25 <sup>9</sup> Cal. Stds. (1981) § 2-101(b); Cal. Stds. (1984) § 2-101(b); Cal. Stds. (1987) § 2-  
 26 102(b); Cal. Stds. (1989), § 101A; Cal. Stds. (1994) 102.1(b); Cal. Stds. (1999) 101.2.

1 brought into compliance with the then-applicable standards.<sup>10</sup> “These requirements apply to all  
 2 remodeling jobs regardless of the valuation of the job.” Office of the State Architect &  
 3 Department of Rehabilitation, California State Accessibility Standards - Title 24 CAC -  
 4 Interpretive Manual (“Title 24 Interpretive Manual”)<sup>11</sup> at 9 (1987) (emphasis in original). The  
 5 path of travel that is required to be brought into compliance “incorporates all elements  
 6 necessary to provide access to the remodeled area from the exterior arrival site. It can include  
 7 parking areas, walks, sidewalks, ramps, corridors, an elevator and doorways, etc., as necessary  
 8 to provide for arrival at the site and traversing to the actual interior area being remodeled.” Id.

9 A violation of a California Standard constitutes a violation of both the CDPA and the  
 10 Unruh Act. See, e.g., Arnold v. United Artists Theatre Circuit, Inc., 866 F. Supp. 433, 439  
 11 (N.D. Cal. 1994). A violation of the ADA also constitutes a violation of both statutes. See  
 12 Cal. Civ. Code §§ 51(f) & 54(c).

13 **II. The Taco Bell Restaurants at Issue in this Motion Violate the ADA, Unruh and/or**  
 14 **CDPA in Each of the Stages of a Typical Taco Bell Visit.**

15 Taco Bell restaurants sell Mexican food quick-serve style. As such, most Taco Bell  
 16 restaurants consist of the same basic elements: a parking lot; entrance doors; often a queue  
 17 line, that is, guide rails causing customers line up to get to the counter; a counter at which  
 18 customers place their orders, pay, and pick up their food; tableware, condiment, and drink  
 19 dispensers; a seating area; and restrooms. Some Taco Bell restaurants do not include a queue  
 20 line; some consist entirely of an outdoor walk-up counter, and thus lack the entrance doors,  
 21 dispensers and dining area. Nevertheless, customers generally interact with Taco Bell

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23  
 24 <sup>10</sup> Cal. Stds. (1981) § 2-105(b)(11)(B)(4); Cal. Stds. (1984) § 2-105(b)(11)(B)(4);  
 Cal. Stds. (1987) § 2-110(b)11.B(4); Cal. Stds. (1989), § 110A(b)(11)(B)(4); Cal. Stds. (1994)  
 25 § 110(11)(B)(4); Cal. Stds. (1999) § 1134B.2.1.

26 <sup>11</sup> Appendix, Exhibit D.

1 restaurants in very similar ways:<sup>12</sup> they arrive (from the sidewalk or parking lot); approach and  
2 go through the door; approach the counter (often through a queue line); order; pay; pick up  
3 food, drinks, condiments and tableware; sit and dine (if they choose); and use the restroom (if  
4 they choose). A typical outing to Taco Bell generally involves these common activities.

5 For customers with disabilities, each of the stages of such an outing can present barriers  
6 that prevent the full and equal enjoyment of Taco Bell's goods, services and facilities. The  
7 DOJ and California Standards both contain provisions governing each one of these areas,  
8 designed to ensure that they are "accessible to and usable by" individuals with disabilities, as  
9 required by both the ADA, 42 U.S.C. § 12183(a), and California law.<sup>13</sup> ANSI-61 -- applicable  
10 to buildings built between 1970 and 1981 -- also contains provisions governing several of these  
11 areas.

12 For ease of reference, Plaintiffs have organized the violations at the 19 restaurant into a  
13 series of tables, attached as the introductory pages to Exhibits 1 through 19 to the Robertson  
14 Declaration. Each exhibit provides the dates on which the restaurant was built and/or altered  
15 and a table showing the elements of the restaurant that are in violation, each element's  
16 stipulated existing conditions, and the standards -- with citations -- required at the time of the  
17 relevant construction or alterations. The remainder of this brief presents an overview of the  
18 accessibility standards applicable to a typical outing to Taco Bell.

19 **A. Getting to the Restaurant from the Street or from a Car or Van.**

20 Customers who use wheelchairs must be able to get to the restaurant from the street or  
21 from their cars or vans. Accordingly, both the California and DOJ Standards regulate the  
22  
23

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24 <sup>12</sup> This description excludes the drive-through window, which is not part of this  
25 litigation.

26 <sup>13</sup> See supra n. 8.

1 width, slope and cross-slope for such a path.<sup>14</sup> “Slope” or “running slope” is the tilt of the  
 2 ground parallel to the direction of travel; “cross-slope” is the tilt of the ground perpendicular to  
 3 the direction of travel. See DOJ Stds. § 3.5 (definitions). Slope is expressed as either the ratio  
 4 of the height of the rise of the ground to the length of the run, or as the percentage equivalent to  
 5 that ratio. For example, a ramp that rises one foot over a length of 12 feet is said to have a  
 6 slope of 1:12 or 8.33%. Violation of the standards governing slope and cross slope can create  
 7 barriers to people who use wheelchairs. Excessive cross slopes “make travel by wheelchairs,  
 8 including many power chairs, difficult by causing front casters to veer. They also disrupt the  
 9 balance of force used in propelling both wheels of manual chairs.” Architectural and  
 10 Transportation Barriers Compliance Board, ADAAG Manual: a guide to the Americans with  
 11 Disabilities Act Accessibility Guidelines<sup>15</sup> (“ADAAG Manual”) at 21; see also Title 24  
 12 Interpretive Manual at 123 (“Cross slopes are very difficult for wheelchair users.”)

13 California and DOJ Standards also regulate ramps and curb ramps that form parts of  
 14 accessible routes. See, e.g., DOJ Stds. §§ 4.7 (curb ramps); 4.8 (ramps); Cal. Stds. (1999)  
 15 §§ 1133B.5 (ramps); 1127B.5 (curb ramps). ANSI-61 contains basic requirements for walks  
 16 and ramps. ANSI-61 §§ 4.2.1 (walks); 5.1 (ramps).

17 As set forth in greater detail in Exhibits 1 through 19 to the Robertson Declaration,  
 18 Taco Bell violates the applicable standards for accessible routes, ramps and/or curb ramps at  
 19 the following 15 restaurants: 757; 991; 2423; 2755; 2801; 3007; 3231; 3579; 4704; 5539;  
 20 15614; 16909; 18687; 19509; and 21018.

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23  
 24 <sup>14</sup> See, e.g., DOJ Stds. §§ 4.3.3 (width), 4.3.7 (slope and cross slope); ANSI-61  
 25 § 4.2.1 (width); Cal. Stds. (1999) §§ 1133B.7.1 (width); 1133B.5.1 (slope); 1133B.7.1.3 (cross  
 26 slope).

26 <sup>15</sup> Excerpts from the ADAAG Manual are contained in Appendix Exhibit H.

1           **B.       Parking and Getting out of a Van or Car.**

2           Both the DOJ and California Standards regulate parking, and require a certain number  
3 of accessible and van accessible parking spaces be provided based on the total number of  
4 parking spaces in the lot. See, e.g., DOJ Stds. § 4.1.2(5)(a); Cal. Stds. (1999) § 1129B.1 &  
5 Table 11B-6. Accessible parking spaces must be of a certain width, and must adjoin a five-  
6 foot-wide access aisle, which provides room for a person using a wheelchair to transfer in and  
7 out of a car. DOJ Stds. § 4.1.2(5)(a); Cal. Stds. (1999) § 1129B.4.1. Van accessible parking  
8 spaces have the same width as accessible spaces, but are required to adjoin an eight-foot-wide  
9 access aisle. DOJ Stds. § 4.1.2(5)(a) & (b); Cal. Stds. (1999) § 1129B.4.2.<sup>16</sup> This extra space  
10 permits a wheelchair-user to deploy a ramp or lift from his van, and have enough space to roll  
11 completely off the ramp or lift, so that it can be retracted back into the van. See ADAAG  
12 Manual at 32.

13           DOJ and California Standards also require signage indicating that a parking space is  
14 accessible or van accessible and limit the allowable slope and cross slope of accessible spaces  
15 and their access aisles. See, e.g., DOJ Stds. § 4.6.3; Cal. Stds. (1999) § 1129B.4.4. The latter  
16 requirement is imposed because “level surfaces are important for wheelchair transfer to and  
17 from vehicles.” Id. With too much slope, a manual wheelchair can roll away from the vehicle  
18 before a person can transfer into it, leaving the person stranded and chairless.

19           The California Standards contain the additional requirement that a sign be posted at the  
20 entrance to each parking lot stating: “Unauthorized vehicles parked in designated accessible  
21 spaces not displaying distinguishing placards or license plates issued for persons with  
22 disabilities may be towed away at owner’s expense. Towed vehicles may be reclaimed at \_\_\_  
23 \_\_\_ or by telephoning \_\_\_.’ Blank spaces are to be filled in with appropriate  
24 \_\_\_\_\_

25           <sup>16</sup> The California Standards did not require van accessible parking spaces until  
26 1994. Cal. Stds. (1994) § 3107A(b)2.



1 information as a permanent part of the sign.” See, e.g. Cal. Stds. (1999) § 1129B.5. This  
2 makes sense: parking for people with disabilities is illusory if it can be used with impunity by  
3 those who do not need it. In many of the 19 Taco Bell restaurants at issue in this motion, the  
4 signs had been posted, but no information had been provided to fill in the blanks. The threat of  
5 towing -- designed to limit the use of accessible spaces to those who are authorized -- thus  
6 becomes an empty and useless threat.

7 As set forth in greater detail in Exhibits 1 through 19 to the Robertson Declaration,  
8 Taco Bell violates the applicable standards for parking lots at all 19 restaurants.

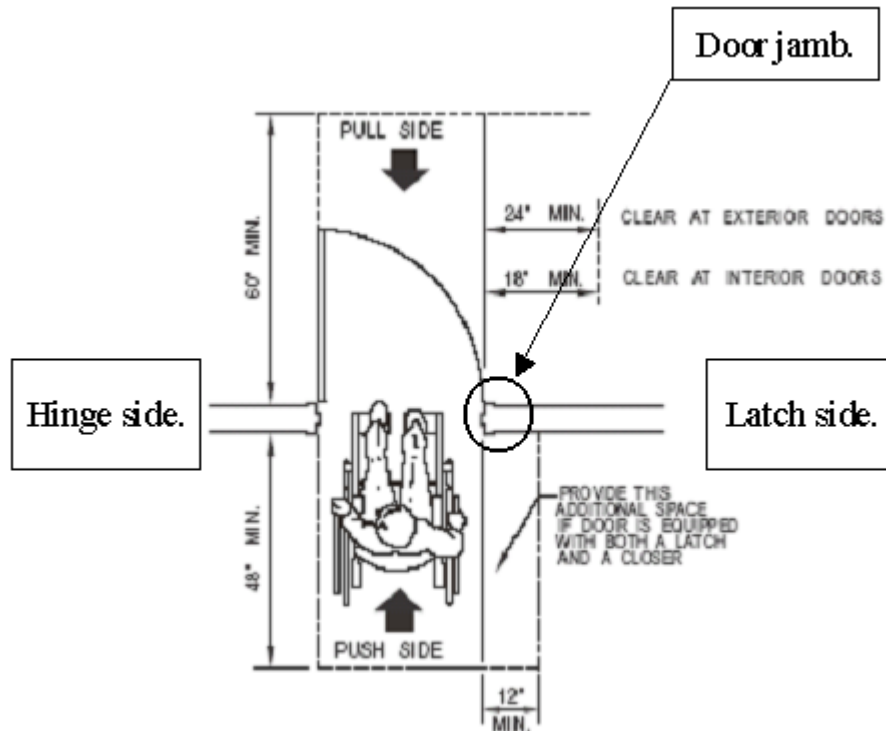
9 **C. Getting Through the Door.**

10 Customers who use wheelchairs must be able to open and get through the door in order  
11 to patronize a Taco Bell restaurant. The DOJ and California Standards and ANSI-61 regulate  
12 doors, including the width, and the maneuvering clearance required in front and back, and to  
13 each side, of a door. See, e.g., DOJ Stds. § 4.13.5 (width); 4.13.6 & Fig. 25 (maneuvering  
14 clearances); Cal. Stds. (1987) § 2-3304(e) (width); 2-3304(h)(2) (clearances); ANSI-61  
15 §§ 5.3.1 (width); 5.3.2 (clearances). The California Standards require that all primary  
16 entrances be made accessible. See, e.g., Cal. Stds. (1987) § 3301(f)(1). A “primary entrance”  
17 is “any entrance to a facility which has a substantial flow of pedestrian traffic to any specific  
18 major function of the facility.” Id. at § 2-417.

19 Maneuvering clearances are generally described in terms of the push and pull sides of  
20 the door -- that is, whether the door is swinging into the maneuvering space (pull side) or away  
21 from it (push side) -- and the approach. A door may be approached straight on (front), from the  
22 hinge side, or from the latch side. Examples of the application of this terminology can be seen  
23 in DOJ Standards Figure 25 and the 2002 California Standards, Figures 11B-26A and 26B.

24 The diagram below was taken from Figure 11B-26A, with annotations added to show  
25 the hinge and latch side approaches, and the location of the door jamb. Thus, for example, the

1 1999 California Standards require a clear width of twelve inches on the push side beyond the  
 2 door jamb for a front approach where the door has a closer and a latch. Id. Fig. 11B-26A(a).  
 3 This is shown in the lower right-hand side of the diagram. In addition, as indicated, a clear area  
 4 of 18 inches is required beyond the door jamb on the pull side for interior doors; 24 inches for  
 5 exterior doors. The depth of the clear area on the push side is required to be at least 48 inches  
 6 and on the pull side, 60 inches. The remainder of Figures 11B-26A and 26B provide diagrams  
 7 for other approaches and required maneuvering clearances.



23 These clearances are necessary in order for people who use wheelchairs to be able to get  
 24 through a door independently. Clearance beyond the door jamb "is essential. This  
 25 maneuvering space is necessary for anyone using a wheelchair . . . because the person cannot

1 easily move or step back while opening the door. . . . Latch side clearance is needed on the  
2 push side to be able to operate a latch and maneuver through the door against the force of the  
3 closer.” ADAAG Manual at 56; see also generally id. at 55-57.

4 The DOJ and California Standards govern the force necessary to open the door<sup>17</sup> and the  
5 usability of door hardware. See, e.g., DOJ Stds. § 4.13.9 (requiring door hardware to be  
6 “usable with one hand without grasping, tight pinching or twisting of the wrist”); Cal. Stds.  
7 (1987) § 2-3304(c)(3) (requiring that doors shall be operable without requiring the ability to  
8 grasp the opening hardware). By limiting the force necessary to open the door and requiring  
9 that door hardware be usable without the ability to grasp, the standards ensure that individuals  
10 with impaired strength and/or manual dexterity are able to use doors independently.

11 The California Standards also require doormats to be secured, id. § 3301(f)(3), so that  
12 they do not bunch under the wheels of a wheelchair and become an obstruction. See Title 24  
13 Interpretive Manual at 81.

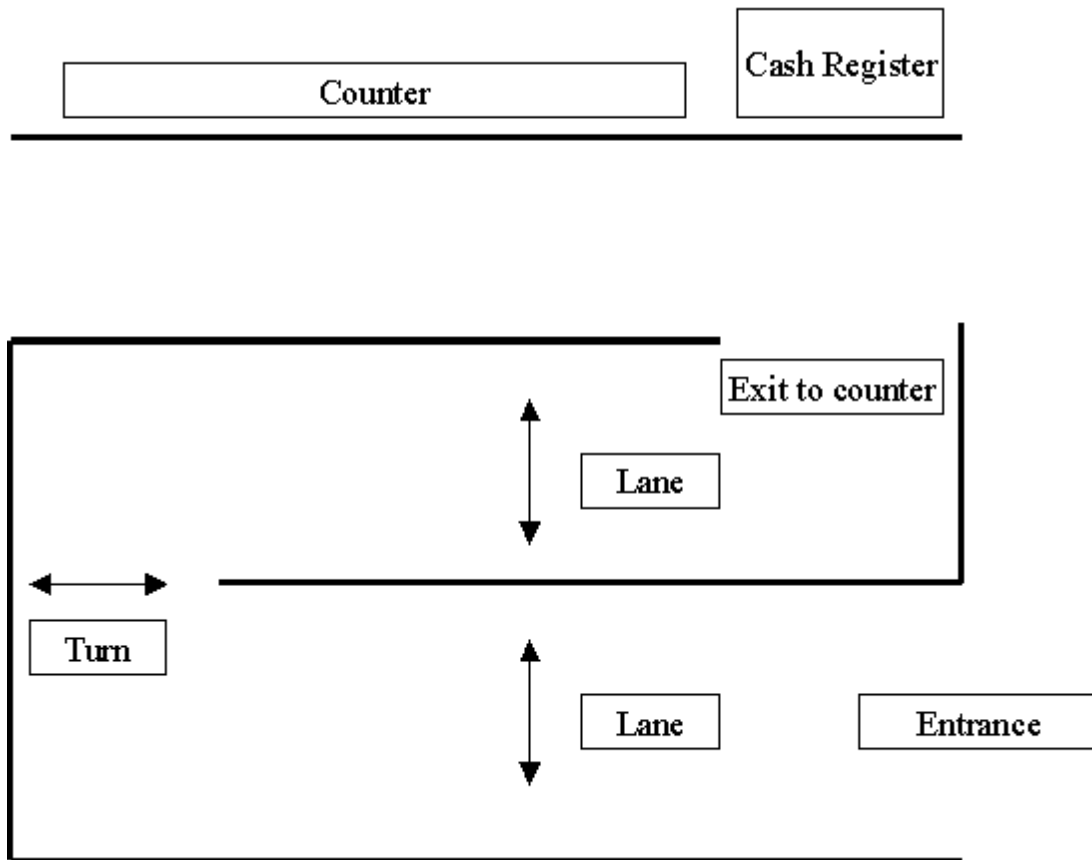
14 As set forth in greater detail in Exhibits 1 through 19 to the Robertson Declaration,  
15 Taco Bell violates the applicable standards for doors at the following 16 restaurants: 112; 757;  
16 991; 2755; 2778; 2801; 3007; 3053; 3132; 4704; 5539; 15614; 16909; 18687; 19509; and  
17 21018.

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24 <sup>17</sup> The California Standards govern door force with respect to both exterior and  
25 interior doors. See, e.g., Cal. Stds. (1987) § 2-3303(l)(2). The DOJ Standards only govern  
26 door force with respect to interior doors. DOJ Stds. § 4.13.11(b). In addition, the DOJ  
Standards govern the time the door takes to close. Id. 4.13.10.

1 **D. Getting Through the Queue Line to the Counter.**

2 Queue lines are the barriers that are put in place to cause customers to form a single line  
 3 as they approach the counter, order and pick up their food. At Taco Bell restaurants, queue  
 4 lines are generally arranged like this:



21 Carlos Azalde, Defendant’s Rule 30(b)(6) witness for queue lines and other issues testified that  
 22 queue lines were implemented in Taco Bell restaurants between 1983 and 1985 (Azalde Depo.  
 23 at 14-15),<sup>18</sup> so the earliest standard that would apply would be that in the 1981 version of the  
 24 California Standards. The queue lines in the restaurants at issue in this motion fall under one

25 \_\_\_\_\_  
 26 <sup>18</sup> Robertson Dec. Ex. 22.

1 of two standards. The queue lines installed between 1983 and 1993 fall under the requirement  
2 from the 1981, 1984, 1987 and 1989 versions of the California Standards that cafeteria lines be  
3 36 inches wide.<sup>19</sup> Cal. Stds. (1981) § 2-611(C)(4); Cal. Stds. (1984) § 2-611(d)(4); Cal. Stds.  
4 (1987) § 2-611(d)(4); Cal. Stds. (1989) § 611(d)(4).

5 Queue lines installed after January 26, 1993 continue to be required to meet the 36-inch  
6 California Standard for cafeteria lines, Cal. Stds. (1994) § 3103A(b)4; Cal. Stds. (1999)  
7 § 1104B.5.5; Cal. Stds. (2002) § 1104B.5.5, but must also comply with the requirements of the  
8 DOJ Standards: either (1) that each lane be at least 36 inches wide with a turning radius of at  
9 least 60 inches where a 180-degree turn is required; DOJ Stds. §§ 4.3.3 & 4.2.3, see also id.  
10 § 5.5 (food service lines must be 36 inches wide); or (2) that each lane be at least 42 inches  
11 wide with a width of at least 48 inches at the point of the turn. Id. § 4.3.3 & Fig. 7(b).

12 Taco Bell's queue lines must comply with these DOJ Standards because they are part of  
13 an "accessible route," which is defined as "[a] continuous unobstructed path connecting all  
14 accessible elements and spaces of a building or facility." DOJ Stds. § 3.5. Doors and counters  
15 are "elements" under the DOJ Standards. See id. (defining element), §§ 4.3.9 (doors), 5.2 &  
16 7.2 (counters). As the route that customers are expected to follow from the door to the counter,  
17 the queue line must comply with the requirements governing such routes, including those set  
18 forth in the preceding paragraph.

19 As set forth in greater detail in Exhibits 1 through 19 to the Robertson Declaration,  
20 Taco Bell violates the applicable standards for queue lines at the following 11 restaurants: 757;  
21 991; 2423; 2755; 2778; 2801; 3132; 3579; 5539; 16909; and 19509.

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24  
25 <sup>19</sup> Mr. Azalde agreed that Taco Bell's queue lines were "food service lines."  
26 Deposition of Carlos Azalde in Colorado Cross Disability Coalition v. Taco Bell Corp., Civil  
27 Action No. 97-B-2135 (D. Colo.) at 35. (Robertson Dec. Ex. 23.)

1 The California Standards also govern counter height, requiring counters to be between  
2 28 and 34 inches high. Cal. Stds. (1994) § 3105A(l)4. This limitation is important in light of  
3 the fact that people using wheelchairs are not able to reach as high as people who are able to  
4 walk. The counters in restaurants 757 and 16909 are 36 inches high, and thus violate the  
5 applicable California Standard.

6 **E. Getting Drinks, Condiments and Tableware.**

7 In Taco Bell restaurants, after a customer has picked up his food, he proceeds to an area  
8 in which drinks, condiments and tableware are available from self-service dispensers. Both the  
9 DOJ and the California Standards govern the height of controls and dispensers, and the  
10 minimum clear floor space adjacent to such elements. See, e.g., DOJ Stds. § 5.6 (tableware  
11 and condiment areas must comply with section 4.2, which addresses clear floor space reach  
12 ranges); Cal. Stds. (1987) § 2-522(c) (clear floor space and reach ranges).

13 As set forth in greater detail in Exhibits 1 through 19 to the Robertson Declaration,  
14 Taco Bell violates the applicable standards for dispensers at the following ten restaurants:  
15 2755; 2801; 3007; 3579; 4704; 5539; 15614; 16909; 19509; and 21018.

16 **F. Sitting Down to Eat**

17 Although many Taco Bell customers take their meal “to go,” each Taco Bell offers seats  
18 and tables, permitting customers to eat in the restaurant if they choose. The tables and, for the  
19 most part, the seats, are fixed; however, a person using a wheelchair is unable to sit where a  
20 fixed seat abuts a fixed table. As such, both the DOJ and the California Standards require that  
21 five percent of all fixed seats or tables be accessible to people with disabilities. See, e.g., DOJ  
22 Stds. § 4.1.3(18); see also Cal. Stds. (1987) § 2-611(d)(3) (one in 20 seats must be accessible);  
23 Cal. Stds. (1994) § 3105A(l)1 (five percent of fixed seats must be accessible). In addition, the  
24 DOJ Standards and -- since 1994 -- the California Standards prescribe the precise

1 measurements for knee clearance at accessible seating positions and the clear floor space  
2 adjacent thereto. DOJ Stds. § 4.32.2; Cal. Stds. (1994) § 3105A(1)2 & 3.<sup>20</sup>

3 As set forth in greater detail in Exhibits 1 through 19 to the Robertson Declaration,  
4 Taco Bell violates the applicable standards for seating at the following six restaurants: 2423;  
5 2801; 3007; 3132; 4704; 15614; and 18687.

6 **G. Using the Restroom.**

7 The DOJ and California Standards and ANSI-61 all contain provisions governing  
8 restrooms, including: sinks (which are generally referred to as “lavatories”); toilets (which are  
9 generally referred to as “water closets”); urinals; grab bars; and amenities such as soap and  
10 paper towel dispensers. See, e.g., DOJ Stds. §§ 4.19 (lavatories); 4.16 (water closets); 4.18  
11 (urinals); 4.26 (grab bars); 4.22.7 (dispensers); Cal. Stds. (1987) §§ 5-1504 (lavatories); 5-  
12 1502 (water closets); 5-1503 (urinals); 2-1711(h)(1) (grab bars); 2-511(b)(2) (dispensers);  
13 ANSI-61 §§ 5.6.3 (lavatories); 5.6.2(5) (water closets); 5.6.5 (urinals); 5.6.2(4) (grab bars);  
14 5.6.6 (dispensers).

15 Failure of any of these elements to comply can make a restroom difficult or impossible  
16 to use for a person in a wheelchair. For example, water closets must be of a certain height and  
17 distance from other objects in order to permit people who use wheelchairs to transfer onto the  
18 seat. See ADAAG Manual at 67. The height and clearances of lavatories and dispensers are  
19 carefully calibrated to ensure that people who use wheelchairs can pull up under the lavatory,  
20 open the tap, and access soap and towels. See id. at 75-76. Lavatory pipes are required to be  
21 insulated, see DOJ Stds. § 4.19.4; Cal. Stds. § 5-1504(b), because, “[w]hen an individual loses  
22 the use of his or her legs, a loss of feeling usually occurs . . . Persons with no sensation in their

23  
24  
25 <sup>20</sup> An excellent illustration of the need for adequate knee clearance is set forth in  
26 the ADAAG Manual. See id. at 113.

1 lower extremities could be seriously burned without their knowledge on exposed pipes.” Title  
2 24 Interpretive Manual at 157.

3 In addition, door widths, clearances and weights must be compliant in order to ensure  
4 that a person using a wheelchair can get into the restroom in the first place.

5 As set forth in greater detail in Exhibits 1 through 19 to the Robertson Declaration,  
6 Taco Bell violates the applicable standards for restrooms at all 19 restaurants.

7 **Conclusion**

8 For the reasons set forth above and in the exhibits to this brief, Plaintiffs respectfully  
9 request that this Court grant partial summary judgment in their favor, holding that the elements  
10 listed in Exhibits 1 through 19 to the Robertson Declaration are in violation of the applicable  
11 standards.

12 Respectfully submitted,

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14  
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