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3:02-CV-1788 AMBAOSIO V. BOLLWEEVIL

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CMP.

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FILED

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COPY: U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: 

DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 FAUSTINO AMBAOSIO

12 Plaintiff,

13 vs.

14 BOLLWEEVIL, ANTHONY VORROWS, aka
15 Mr. VARROWS, ALAMEDA SURVIORS
16 TRUST, AND DOES 1-10, Inclusive,

17 Defendants.
18

Case No. '02 CV 1788 L (JAH)
)
) COMPLAINT FOR DAMAGES RE:
) VIOLATION OF CIVIL RIGHTS ON
) BASIS OF DISCRIMINATION IN
) PUBLIC ACCOMMODATIONS; UNFAIR,
) UNLAWFUL AND FRAUDULENT BUSINESS
) PRACTICES; NEGLIGENT INFLECTION
) OF EMOTIONAL DISTRESS;
) INTENTIONAL INFLECTION OF
) EMOTIONAL DISTRESS; DEMAND FOR
) JURY TRIAL
)
)
)

19 I

20 JURISDICTION AND VENUE

21 1. (a) Jurisdiction of this action is invoked on the basis of 28
22 USC 1331 and 1343, 42 USC 12101-12102, 12181-12183 and 12201, et.
23 seq. Jurisdiction is also invoked pursuant to 42 USC 1981 [Civil
24 Rights Act of 1991], et seq, which is applicable to causes of
25 action where persons with disabilities have been denied their
26 civil rights and Title II, section 201, et. seq. of the 1964 Civil
27 Rights Act. Venue in the Southern Judicial District of California
28 in the United States District Court is in accord with 28. U.S.C.

1 section 1391(b) because a substantial part of plaintiff's claims
2 arose within the Judicial District of the United States District
3 Court of the Southern District of California.

4 (b) Supplemental Jurisdiction. The Judicial District of the
5 United States District Court of the Southern District of
6 California has supplemental jurisdiction over the state claims
7 alleged in this Complaint pursuant to 28 U.S.C. section 1367(a).
8 Supplemental jurisdiction is appropriate in this action on the
9 basis that all the causes of action or claims derived from federal
10 law and those arising under state law, as herein alleged, arose
11 from a common nucleus of operative facts. The common nucleus of
12 operative facts, include, but are not limited to, the incidents
13 whereby plaintiff was denied full and equal access to Defendant's
14 facilities, goods, and/or services in violation of both federal
15 and state laws when plaintiff attempted to enter, use, and/or exit
16 Defendant's facilities as described within this Complaint.
17 Further, due to this denial of full and equal access Plaintiff and
18 other person's with disabilities were injured. Based upon such
19 allegations the state actions, as stated herein, are so related to
20 the federal actions that they form part of the same case or
21 controversy, and the actions would ordinarily be expected to be
22 tried in one judicial proceeding.

23 **II**

24 **PARTIES**

25 2. Defendant(s), **BOLLWEEVIL** is and at all times herein mentioned
26 were duly organized business, association, or corporation duly
27 authorized to exist and operate within the State of California and
28 County of San Diego and the owner, operator or lessee of the

1 premises located at **169 South Rancho Santa Fe Road, San Marcos,**
2 **California.**

3 3. Plaintiff is informed and believes and thereon alleges that
4 defendants **ANTHONY VORROWS aka MR VORROWS, ALAMEDA SURVIORS TRUST,**
5 were at all times herein was and are the owners, joint operator
6 and/or controlling party, leasors, tenants of the property, which
7 is the subject of this action and in some manner responsible for
8 the violations of law as alleged herein.

9 4. Plaintiff is informed and believes and thereon alleges that
10 each of the named defendants herein operates a business and
11 or/facility of public accommodation as defined and described
12 within **42 USC 12181 (7) (B)** of the American with Disabilities Act
13 [ADA] and as such must comply with the ADA under provisions of
14 Title III therein.

15 5. Plaintiff is ignorant of the defendants sued as Does 1-10
16 herein, and therefore sues them in their fictitious names as Doe
17 defendants. Plaintiff is informed and believes and thereon alleges
18 that Does 1-10 are the owners, operators, lessees or tenants of
19 the subject property and each of the Doe defendants at all times
20 herein was acting as the agent and or representative of each other
21 and thereby are responsible in some manner for the injuries and
22 damages complained of herein. Plaintiff will seek leave of court
23 to amend this complaint to name Doe defendants when the same is
24 ascertained.

25 **III**

26 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

27 6. Plaintiff is disabled and confined to a wheelchair. He has no
28 control over his lower extremities and must use a wheelchair to

1 transport himself and to effect the basic necessities of his
2 everyday existence. Plaintiff's disability substantially limits
3 one or more of life's major activities and therefore he is
4 disabled as defined under 42 USC 12102(2) (A) (B) (C).

5 7. On or about **JUNE 10, 2002** plaintiff attempted to enter the
6 subject premises of the defendants herein to utilize goods and/or
7 services offered by defendants. When Plaintiff attempted to enter
8 said facility, plaintiff had difficulty entering and using the
9 facility because it failed to comply with Federal ADA Access
10 Guidelines For Building and Facilities [hereinafter "ADAAG"]
11 and/or the State of California's Title 24 Building Code
12 Requirements.

13 8. The specific difficulty Plaintiff had in entering and utilizing
14 Defendants' facility and which amount to a violation of ADAAG and
15 Title 24 of the California Building Code are:

- 16 (a) **Site Entrance Sign does not exist and is a violation of CA**
17 **Title 24 1129B.5;**
- 18 (b) **Site entrance signage is not filled out with the telephone**
19 **number of the tow company that has vehicle as required by**
20 **Title 24 1129B.5.;**
- 21 (c) **Site entrance signage is not filled out with the address to**
22 **reclaim vehicle in the event a vehicle is towed as required**
23 **by Title 24 1129B.5.;**
- 24 (d) **There are no van accessible parking spaces as required by**
25 **ADAAG 4.1.2(5) (b) & CA Title 24 1129B.4.2;**
- 26 (e) **There are no van accessible parking signs as required by**
27 **ADAAG 4.1.2(5) (B) & CA Title 24 1129B.4.2;**
28

- 1 (f) There are no van accessible aisles as required by ADAAG
2 4.6.3 & CA Title 24 1129B.4.2;
- 3 (g) There is no van accessible aisle on the passenger side of
4 the van accessible parking stall as required by ADAAG 4.6.4
5 & CA Title 24 1129B.5;
- 6 (h) There is no visible route of travel from any designated
7 disabled parking space to any accessible entrance which
8 violates ADAAG 4.1.3(2), 4.3.2(2) & CA Title 24 1114B.1.2;
- 9 (i) Bathroom does not have the International Symbol of
10 Accessibility as required by ADAAG 4.30.6 & CA Title 24
11 1117B.5.9;
- 12 (j) Bathroom does not have Raised Braille Characters on wall
13 signage as required by ADAAG 4.30.4 & CA Title 24
14 1117B.5.6.1 & .2;
- 15 (k) Bathroom does not have wall mount signage on the latch
16 side of the door as required by ADAAG 4.1.2(7)(d) & CA
17 Title 24 1117B.5.1.1&5.6.3;
- 18 (l) Bathroom wall mount signage is not located 60 from the
19 floor as required by ADAAG 4.30.6 & CA Title 24 1117B.5.9;
- 20 (m) Bathroom faucet fixtures are not lever type as required by
21 ADAAG 4.27.4 & CA Title 24 1508.1 & .2;
- 22 (n) Bathroom door signage does not distinctively contrast with
23 the color of the door which violates CA Title 24 1115B.5;
- 24 (o) The bathroom stall door fails to have the required 34 inch
25 clear opening width as required by CA Title 24 1115B.7.1.4;
- 26 (p) Bathroom side grab bar does not extend beyond the water
27 closer at least 24 inches as required by ADAAG 4.17.6 & CA
28 Title 24 1115B.8.1;

- 1 (q) Bathroom side grab bar does not extend to a minimum of 54
2 inches from the rear wall as required by ADAAG 4.17.6;
- 3 (r) The rear grab bar is not the required minimum 36 inches in
4 length which violates ADAAG 4.17.6 & CA Title 24 1115B.8.1;
- 5 (s) Water closet mounting location from the corner wall is not
6 proper per ADAAG 4.17.3 & CA Title 24 1115B.7.1.2.;
- 7 (t) Water closet mounting location from the opposite wall is
8 not proper per CA Title 24 1115B.7.1.2;
- 9 (u) Toilet Seat covers are not at the proper height which
10 violates ADAAG 4.23.7 & CA Title 24 1115B.9.2;
- 11 (v) Paper Towel Operating Lever is not at the proper height
12 which violates ADAAG 4.23.7 & CA Title 24 1115B.9.2;
- 13 (w) Coat hook height is not proper which violates ADAAG 4.2.5 &
14 CA Title 24 1118B4.1 through B.6;
- 15 (x) The mirror mounting height is not correct which violates
16 ADAAG 4.19.6 & CA Title 24 1115B.9.1.2;
- 17 (y) The toilet flush valve is not located on the wide side
18 which violates ADAAG 4.16.5 & CA Title 24 1502.0;
- 19 (z) The urinal rim height exceeds the 17 inch maximum which
20 violates ADAAG 4.187.2 & CA Title 24 1503.2.2;
- 21 (aa) The urinal flush valve is above the required 44 inch height
22 from the floor which violates ADAAG 4.18.4 & CA Title 24
23 1503.2.1;
- 24 (bb) The toilet stall is not the proper size which violates
25 ADAAG 4.17.3 & CA Title 24 1115B.1;
- 26 (cc) The toilet seat is not at the proper height which violates
27 ADAAG 4.16.3 & CA Title 24 1502.0;
- 28

1 (dd) There are not handles on both sides to the toilet stall
2 compartment door as required by ADAAG 4.13.9 & CA Title 24
3 1115B.7.1.4.;

4 (ee) The hot water and pipes are not insulated or configured to
5 protect from contact which violates ADAAG 4.24.6;

6 9. Plaintiff is informed and believes and thereon alleges that
7 defendants' facility has in excess of **Sixty (60) violations of**
8 **ADAAG and/or Title 24** at their facility.

9 10. These violations are believed to have existed for a
10 significant period of time and with defendant's specific
11 knowledge.

12 11. Based upon the above facts, Plaintiff as been discriminated
13 against and will continue to be discriminated against unless and
14 until Defendants are enjoined and forced to cease and desist from
15 continuing to discriminate against Plaintiff and others similarly
16 situated.

17 12. Pursuant to federal [ADA] and state law [California Title 24],
18 Defendants are required to remove barriers to their existing
19 facilities. Defendants have been put on notice pursuant to the ADA
20 and the California Civil Code prior to the statutory effect of the
21 ADA on January 26, 1992 that Defendants and each of them had a
22 duty to remove barriers to persons with disabilities such as
23 plaintiff. Defendants also knew or should have known that
24 individuals such as plaintiff with a disability are not required
25 to give notice to a governmental agency prior to filing suit
26 alleging Defendants' failure to remove architectural barriers.

27 13. Plaintiff believes and thereon allege that Defendants'
28 facility, as described herein, have other access violations not

1 directly experienced by Plaintiff, which preclude or limit access
2 by others with disabilities, including, but not limited to, Space
3 Allowances, Reach Ranges, Accessible Routes, Protruding Objects,
4 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
5 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
6 Lifts), Windows, Doors, Entrances, Drinking Fountains, and Water
7 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
8 Mirrors, Sinks, Storage, Handrails, Grab Bars, Telephones,
9 Controls and Operating Mechanisms, Alarms, Detectable Warnings and
10 Signage. Accordingly, Plaintiff alleges Defendants are required to
11 remove all architectural barriers, known or unknown. Also,
12 Plaintiff alleges Defendants are required to utilize the ADA
13 checklist for Readily Achievable Barrier Removal approved by the
14 United States Department of Justice and created by Adaptive
15 Environments.

16 14. Plaintiff desires to return to Defendants' places of business
17 and utilize their facilities without being discriminated against
18 in the immediate future.

19 **IV**

20 **FIRST CAUSE OF ACTION**

21 **(Violation of Civil Rights-American With Disabilities Act)**

22 15. Plaintiff realleges the allegations in paragraphs 1 through 14
23 as though set forth fully herein.

24 **Claim 1: Denial of Full and Equal Access**

25 16. Based on the facts asserted above Plaintiff has been denied
26 full and equal access to Defendants' goods, services, facilities,
27 privileges, advantages, or accommodations. Defendant **BOLLWEEVIL** is
28 a public accommodation owned, leased and/or operated by Defendants

1 and each of them. Defendants' existing facilities and/or services
2 failed to provide full and equal access to Defendants' facility as
3 required by 42 U.S.C. Section 12182(a). Thus, Plaintiff was
4 subjected to discrimination in violation of 42 U.S.C.
5 12182(b)(2)(A)(ii)(iv); 42 USC 1981 and 42 U.S.C. Section 12188
6 because Plaintiff was denied equal access to Defendants' existing
7 facilities.

8 17. Plaintiff has a physical impairment as alleged herein because
9 his condition affects one or more of the following body systems:
10 neurological, musculoskeletal, special sense organs, and/or
11 cardiovascular. Further, his physical impairments substantially
12 limits one or more of the following major life activities:
13 walking. In addition, Plaintiff cannot perform one or more of the
14 said major life activities in the manner speed, and duration when
15 compared to the average person. Moreover, Plaintiff has a history
16 of or has been classified as having a physical impairment as
17 required by 42 U.S.C. section 12102(2)(A).

18 **Claim 2: Failure To Remove Architectural Barriers**

19 18. Based upon the facts alleged herein, Plaintiff was denied
20 full and equal access to Defendants' goods, services, facilities,
21 privileges, advantages, or accommodations within a public
22 accommodation owned leased, and/or operated by the named
23 Defendants. Defendants individually and collectively failed to
24 remove barriers as required by 42 U.S.C. 12182(a). Plaintiff is
25 informed and believes, and thus alleges that architectural
26 barriers which are structural in nature exist at the following
27 physical elements of Defendants' facilities:

1 Space Allowance and Reach Ranges, Accessible Route, Protruding
2 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
3 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts
4 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains
5 and Water Coolers, Water Closets, Toilet Stalls, Urinals,
6 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
7 Controls and Operating Mechanisms, Alarms, Detectable Warnings,
8 Signage, and Telephones. Pursuant to 42 USC section
9 12182(b)(2)(iv), Title III requires places of public accommodation
10 to remove architectural barriers that are structural in nature
11 within existing facilities. Failure to remove such barriers and
12 disparate treatment against a person who has a known association
13 with a person with a disability are forms of prohibited
14 discrimination. Accordingly, Plaintiff was subjected to
15 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42
16 USC 12182 (b)(2)(A)(iv); 42 USC 1981 and 42 USC 12188.

17 **Claim 3: Failure To Modify Practices, Policies And Procedures**

18 19. Based on the facts alleged in this Complaint Defendants failed
19 and refused to provide a reasonable alternative by modifying its
20 practices, policies and procedures in that they failed to have a
21 scheme, plan, or design to assist Plaintiff and/or others
22 similarly situated in entering and utilizing Defendants' services,
23 as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was
24 subjected to discrimination in violation of 42 U.S.C. section
25 12182(b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C. section 12188
26 because Plaintiff was denied equal access to Defendants' existing
27 facilities.

1 20. As a result of the wrongful and discriminatory practices of
2 defendants, plaintiff has suffered actual damages consisting of
3 special damages and general damages in an amount to be determined
4 at time of trial herein.

5 21. Pursuant to the provisions of 42 USC 12188 plaintiff seeks
6 injunctive relief and an order directing defendants to cease and
7 desist from discriminating against plaintiff and others similarly
8 situated and for an order that defendants comply with the
9 Americans With Disabilities Act forthwith.

10 22. Under the provisions of 42 USC 12205 Plaintiff is entitled to
11 an award of reasonable attorneys fees and requests that the court
12 grant such fees as are appropriate.

13 V

14 **SECOND CAUSE OF ACTION**

15 **(Violation of Civil Rights 42 U.S.C. 1991)**

16 23. Plaintiff realleges the allegations of the First Cause of
17 Action as though set forth fully herein.

18 24. The provisions of 42 U.S.C. 1981 (As amended by the Civil
19 Rights Act of 1991) provide that Plaintiff as a person with
20 disabilities cannot be discriminated against with regard to the
21 ability to enter into, to make or to enforce contracts. In
22 enacting the Civil Rights Act of 1991 congress established a three
23 tier system of remedies for a broad range of discretionary
24 conduct, including violations of the Americans With Disabilities
25 Act, wherein disabled individuals such as plaintiff are denied
26 equal access to facilities they wish to conduct business in and
27 therefore are precluded from making, entering into and enforcing
28

1 contracts that plaintiff and others similarly situated may desire
2 to effect.

3 25. Defendants, because they have individually and/or collectively
4 denied plaintiff access to their premises, goods and services,
5 have denied him the right to make, enter into or enforce a
6 contract and therefor have violated the provisions of 42 U.S.C.
7 1991 all to Plaintiff's damage in an amount to be determined at
8 time of trial herein.

9 26. As a result of Defendants' actions Plaintiff was humiliated,
10 embarrassed and discouraged and upset emotionally and physically
11 and suffered damages according to proof.

12 27. The actions of the Defendants were intentional, outrageous and
13 done with reckless disregard of Plaintiff's rights and therefore
14 entitle him to an award of punitive damages.

15 28. By reason of Defendants' actions Plaintiff was caused to incur
16 costs and expenses of litigation, including attorney's fees, to
17 seek and redress his civil rights. Plaintiff therefore seeks an
18 award of costs and attorney's fees associated with the necessity
19 of bringing this lawsuit.

20 **VI**

21 **THIRD CAUSE OF ACTION**

22 **(Violation Of Civil Rights Under California Accessibility Laws)**

23 29. Plaintiff realleges the allegations of the Second Cause of
24 Action as though set forth fully herein.

25 **(a) Denial Of Full And Equal Access**

26 30. Plaintiff has been denied full and equal access to Defendants'
27 goods services, facilities, privileges, advantages, or
28 accommodations within a public accommodation owned, leased, and/or

1 operated by Defendants in violation of California Civil Code
2 Sections 54 and 54.1; California Health and Safety Code Section
3 19955 and California Government Code Section 12948. The actions of
4 Defendants also violate the provisions of Title 24 of the State of
5 California Building Codes with regard to accessibility for persons
6 with disabilities by failing to provide access to Defendants
7 facilities due to violations pertaining to accessible routes,
8 ground and floor surfaces, parking and passenger loading zones,
9 curb ramps, ramps, stairs, elevators, platform lifts (wheelchair
10 lifts), windows, doors, toilet stalls, urinals, lavatories and
11 mirrors, sinks, storage, handrails, grab bars, controls and
12 operating mechanisms, alarms, detectable warnings, signage and
13 telephones.

14 31. On the above basis Plaintiff has been wrongfully discriminated
15 against.

16 **(b) Failure To Modify Practices, Policies And Procedures**

17 32. Defendants have failed and refused and continue to fail and
18 refuse to provide a reasonable alternative to allow plaintiff
19 equal access to their facility by modifying their practices,
20 policies, and procedures in that that they failed to have a
21 scheme, plan, or design to assist Plaintiff and others similarly
22 situated in entering and utilizing Defendants' goods or services
23 as required by California Civil Code section 54 and 54.1.
24 Accordingly Defendants have wrongfully discriminated against
25 Plaintiff.

26 **VII**

27 **FOURTH CAUSE OF ACTION**

28 **(Violation of The Unruh Civil Rights Act)**

1 33. Plaintiff realleges the allegations of the Third Cause of
2 Action as though set forth fully herein.

3 34. Section 51(b) of the Cal. Civ. Code [The Unruh Civil Rights
4 Act], provides in pertinent part:

5 "All persons within the jurisdiction of this state are
6 free and equal, and no matter what their sex, race, color,
7 religion, ancestry, national origin, disability, or medical
8 condition is entitled to the full and equal accommodations,
9 advantages, facilities, privileges, or services in all
10 business establishments of every kind whatsoever."

11 35. Defendants have violated the provisions of Civ. Code 51 (b) by
12 failing and refusing to provide free and equal access to Plaintiff
13 to their facility on the same basis as other persons not disabled.
14 By their failure to provide equal access to Plaintiff as herein
15 alleged, Defendants have also violated 42 U.S.C. section
16 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).

17 36. By reason of their acts and denial of Plaintiff's civil rights
18 Defendants also violated the provisions of Cal. Civ. Code section
19 52, which makes a person or entity in violation of Cal.Civ. Code
20 51 liable in the amount of \$4,000 per violation of said statute.

21 37. Defendants and each of them, at all times prior to and
22 including **JUNE 10, 2002** respectively and continuing to the present
23 time, knew that persons with physical disabilities were denied
24 their rights of equal access to all portions of this public
25 facility. Despite such knowledge, Defendants, and each of them,
26 failed and refused to take steps to comply with the applicable
27 access statutes and despite knowledge of the resulting problems
28

1 and denial of civil rights suffered by Plaintiff and other
2 similarly situated persons with disabilities.

3 38. Defendants and each of them have failed and refused to take
4 action to grant full and equal access to persons with physical
5 disabilities. Defendants have carried out a course of conduct of
6 refusing to respond to, or correct complaints about unequal access
7 and have refused to comply with their legal obligations to make
8 the subject facility accessible pursuant the ADAAG and the
9 California Building Code [Title 24 of the California Code of
10 Regulations]. Such actions and continuing course of conduct by
11 Defendants, and each of them, evidence despicable conduct in
12 conscious disregard of the rights and/or safety of Plaintiff and
13 those similarly situated and thus justify an award of treble
14 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code
15 or alternatively an award of punitive damages in an appropriate
16 amount.
17
18
19

20 39. Plaintiff has suffered emotional and physical damage and
21 continues to suffer such damages all in an amount to be determined
22 at time of trial.

23 40. Under the provisions of Cal. Civ. Code section 55 Plaintiff
24 seeks an award of reasonable attorney's fees and costs as a result
25 of having to bring this action. Plaintiff requests the court to
26 award such fees in an appropriate amount.
27
28

VIII

FIFTH CAUSE OF ACTION

(Unfair And Unlawful Business Practice)

1
2
3
4 41. Plaintiff realleges the allegations of the Fourth Cause of
5 Action as though set forth fully herein.

6 42. California Business and Professions Code Section 17200 states
7 in pertinent part:

8 "As used in this chapter, unfair competition shall mean and
9 include any unlawful, unfair or fraudulent business act..."

10 43. Defendants, as alleged herein, are in violation of the
11 Americans With Disabilities Act and Title 24 of the California
12 Building Code, in that they have denied equal access to their
13 places of public accommodation to Plaintiff and others similarly
14 situated to Plaintiff. Defendants have failed and refused and
15 continue to refuse to comply with equal access laws all in
16 violation of 42 USC 12181-12183; 42 USC 1981; and 42 USC 12188. In
17 addition the complained of acts are in violation of California
18 Civil Code Sections 51, 52, 54, and 54.1, California Health and
19 Safety Code section 19955 and California Government Code section
20 12948 all of which require Defendants to provide equal access to
21 their facility to disabled persons such as plaintiff. Defendants
22 are also in violation of the indicated statutes because of their
23 failure to remove architectural barriers, which prevent equal
24 access to their facility by disabled persons and because of their
25 failure to modify their practices, policies and procedures to have
26
27
28

1 a scheme, plan, or design to assist Plaintiff and others similarly
2 situated to enter and utilize Defendants' services as required by
3 the Unruh Act.

4
5 44. Defendants' acts are unlawful and unfair and are therefore in
6 violation of California Business and Professions Code section
7 17200.

8
9 45. Pursuant to the provisions of California Business and
10 Professions Code section 17201 Plaintiff is a person as identified
11 within said section and therefore allowed to bring this action on
12 behalf of himself and the general public to effectuate California
13 Business and Professions Code 17200 as provided for within
14 Business and Professions Code section 17204.

15
16 46. Thus, Plaintiff, under Bus & Prof. Code section 17200 seeks
17 injunctive relief, on behalf of himself and the general public,
18 requiring Defendants to remedy the disabled access violations
19 present within Defendants' facility and that Defendants be ordered
20 to cease and desist from continuing in noncompliance with disabled
21 access statutes and regulations.

22
23 **IX**

24 **SIXTH CAUSE OF ACTION**

25 **(Negligent Infliction of Emotional Distress)**

26 47. Plaintiff relleges the allegations of the Fourth Cause of
27 Action as though set forth fully herein.
28

1 48. Defendants and each of them owed a duty to Plaintiff to make
2 their facility accessible and to keep Plaintiff reasonably safe
3 from known dangers and risks of harm. This duty arises by virtue
4 of the legal duties proscribed by various federal and state
5 statutes including, but not limited to, ADA, ADAAG, California
6 Civil Code sections 51, 52, 54, 54.1 and Title 24 of the
7 California Code of Regulations. Defendants had a duty of due care
8 not to do or cause anything to happen that would subject Plaintiff
9 to undue stress, embarrassment, chagrin, and discouragement.
10

11 49. Defendants breached their duty of care to Plaintiff by the
12 actions and inaction complained of herein and as a result thereof
13 Plaintiff was shocked, discouraged, embarrassed and outraged at
14 the callousness and disregard of Defendants. Defendants knew or
15 had reason to know that by denying Plaintiff equal access to their
16 facility and failing and refusing to remove architectural
17 barriers, Plaintiff would suffer emotional and/or mental distress
18 because of such discrimination and disparate treatment. Defendants
19 breached their duty of care to plaintiff by the perpetration of
20 the acts outlined herein.
21

22 50. As a proximate result of the actions of Defendants Plaintiff
23 did suffer emotional and mental stress and pain and suffering all
24 in an amount to be determined at time of trial.
25

26
27 X

28 **SEVENTH CAUSE OF ACTION**

1 **(Intentional Infliction of Emotional Distress)**

2 51. Plaintiff realleges the allegations of the Fourth Cause of
3 Action as though set forth fully herein.

4 52. The actions of Defendants and each of them are despicable,
5 intentional and done with conscious disregard of the rights and
6 safety of Plaintiff and as such should be regarded as outrageous.

7 53. As a proximate result of Defendants' actions Plaintiff has
8 suffered severe emotional and mental distress all to his damage in
9 an amount to be determined at time of trial.

10 54. Plaintiff seeks an award of punitive damages for this claim as
11 the actions of Defendants are tantamount to outrageous conduct and
12 subject them to exemplary damages.

13 **DEMAND FOR JURY**

14 55. Plaintiff respectfully requests that the claims made herein be
15 heard and determined by a jury.

16 WHEREFORE PLAINTIFF PRAYS:

- 17 1. For general damages according to proof;
- 18 2. For special damages according to proof;
- 19 3. For damages pursuant to Cal. Civil Code section 52, in the
20 amount of \$4,000 for each and every offense of California Civil
21 Code section 51, Title 24 of the California Building Code and the
22 Americans With Disabilities Act.
- 23 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and
24 California Business and Professions Code section 17200
- 25 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42
26 U.S.C. 1981, 42 U.S.C. 12205 and Cal. Civ. Code section 55;
- 27 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
- 28 7. For punitive damages according to proof;

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
FAUSTINO AMBAOSIO

DEFENDANTS
BOLLWEEVIL, ANTHONY VARROWS, aka
Mr. VARROWS, ALAMEDA SURVIVORS
TRUST, AND DOORS, INC. d/b/a
Doors, Inc. d/b/a

FILED
02 SEP 19 1992

San Diego

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Roy L. Landers (619)296-7898
7840 Mission Center CT, Suite 101
San Diego, CA 92108

Attorneys (If Known) DEPUTY
02 CV 1788 L (JAH)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State 1 1 DEF
- Citizen of Another State 2 2 DEF
- Citizen or Subject of a Foreign Country 3 3 DEF
- Incorporated or Principal Place of Business In This State 4 4 DEF
- Incorporated and Principal Place of Business In Another State 5 5 DEF
- Foreign Nation 6 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

42 USC 12101-12102, 12181-12183 and 12201, et seq.
Discrimination on basis of disability (Public Accommodations)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 8/29/02 SIGNATURE OF ATTORNEY OF RECORD [Signature]
FOR OFFICE USE ONLY RECEIPT # 86402 AMOUNT 150.00 APPLYING IFP JUDGE MAG. JUDGE

9/9/02 VB