

USDC SCAN INDEX SHEET



JPP 8/29/03 12:13

3:03-CV-01739 AMBAOSIO V. PIZZA HUT INC

\*1\*

\*CMP.\*

FILED

03 AUG 28 PM 3:58

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LAW OFFICES OF ROY L. LANDERS  
ROY L. LANDERS (BAR #64920)  
7840 MISSION CENTER COURT, SUITE 101  
SAN DIEGO, CALIFORNIA 92108  
TELEPHONE (619) 296-7898  
FACSIMILE (619) 296-5611

BY:

DEPUTY

*dms*

Attorney for Plaintiff, Faustino Ambaosio

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FAUSTINO AMBAOSIO

Plaintiff,

vs.

PIZZA HUT, INC., RLLW, INC.,  
GARY LINDSTROM and Does 1-10,

Defendants

Case No.: **03 CV 01739 B**

LAB

) COMPLAINT FOR DAMAGES RE:  
) VIOLATION OF CIVIL RIGHTS ON  
) BASIS OF DISCRIMINATION IN  
) PUBLIC ACCOMMODATIONS; UNFAIR,  
) UNLAWFUL AND FRAUDULENT BUSINESS  
) PRACTICES; NEGLIGENT INFLICTION  
) OF EMOTIONAL DISTRESS;  
) INTENTIONAL INFLICTION OF  
) EMOTIONAL DISTRESS; DEMAND FOR  
) JURY TRIAL

I

**JURISDICTION AND VENUE**

1. (a) Jurisdiction of this action is invoked on the basis of 28 USC 1331 and 1343, 42 USC 12101-12102, 12181-12183 and 12201, et seq. Jurisdiction is also invoked pursuant to 42 USC 1981 [Civil Rights Act of 1991], et seq, which is applicable to causes of

CR

1 action where persons with disabilities have been denied their  
2 civil rights. Venue in the Southern Judicial District of  
3 California in the United States District Court is in accord with  
4 28. U.S.C. section 1391(b) because a substantial part of  
5 plaintiff's claims arose within the Judicial District of the  
6 United States District Court of the Southern District of  
7 California.

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

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

II

PARTIES

2. Defendant, Pizza Hut, Inc. is and at all times herein mentioned was a duly organized business or corporation duly authorized to exist and operate a business within the State of California and County of San Diego with its principle business located at 456 Felecita Street Escondido, CA 92025.

3. Plaintiff is informed and believes and thereon alleges that defendant Rllw, Inc. is the owner, partner or managing agent of defendant Pizza Hut, Inc. and is in some manner responsible for the claimed assertions of violations of law and damages as alleged by plaintiff.

4. Plaintiff is informed and believes and thereon alleges that defendant Gary Lindstrom is the owner of the property upon which the business is sited and is the landlord and/or part owner and operator of defendant Pizza Hut, Inc.

5. Plaintiff is ignorant of the defendants sued as Doe defendants herein and therefore sues them in their fictitious name as doe defendants. Plaintiff is informed and believes and thereon alleges that each doe defendant herein is in some manner responsible for the violation of the laws as complained of herein, for the discriminatory actions alleged and the resulting damages and injuries to plaintiff. On such information and believe plaintiff further alleges that each defendant herein in so doing the things complained of were acting as the agent, officer, director, owner, and or employee of each other.

6. Plaintiff is informed and believes and thereon alleges that each of the named defendants herein operates a business and

1 or/facility of public accommodation as defined and described  
2 within 42 USC 12181(7) (A) (B) of the American with Disabilities Act  
3 [ADA] and as such must comply with the ADA under provisions of  
4 Title III therein.

5 **III**

6 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

7 7. Plaintiff is disabled and confined to a wheelchair. He has no  
8 control over his lower extremities and must use a wheelchair to  
9 transport himself and to affect the basic necessities of his  
10 everyday existence. Plaintiff's disability substantially limits  
11 one or more of life's major activities [walking] and therefore he  
12 is disabled as defined under 42 USC 12102(2) (A) (B) (C).

13 8. On or about June 30, 2003 plaintiff patronized the subject  
14 premises of the defendants herein to purchase food, beverage  
15 and/or services offered by defendants. When Plaintiff attempted to  
16 utilize the goods and/or services offered by defendants he had  
17 difficulty entering and using the facility because it failed to  
18 comply with federal ADA Access Guidelines For Building and  
19 Facilities [hereinafter "ADAAG"] and/or the State of California's  
20 Title 24 Building Code Requirements.

21 9. The specific difficulty Plaintiff had in entering and utilizing  
22 Defendants' facility and which amount to a violation of ADAAG and  
23 Title 24 of the California Building Code are:

- 24 (a) There is a lack of site entrance signage as required by CA  
25 Title 24 1129B.5.  
26 (b) Disabled access aisle laces required NO PARKING language as  
27 required by CA Title 1129 B.4.1&2.  
28

- 1 (c) Lack of proper van accessible parking space as required by  
2 ADAAG 4.1.2(5)(b) and Title 24 1129B.4.2.
- 3 (d) Lack of proper van accessible aisle as required by ADAAG  
4 4.6.3 and Title 24 1129B.4.2.
- 5 (e) Lack of proper position of van accessible aisle in violation  
6 of ADAAG 4.6.3 and Title 24 1129B.4.2.
- 7 (f) Lack of appropriate regular access aisle as required by Title  
8 24 section 1129B.4.1.
- 9 (g) Need additional signage pursuant to ADAAG 4.6.4. and Title 24  
10 1117B.5.9.
- 11 (h) Facility lacks shortest route of travel for the disabled as  
12 required by ADAAG 4.6.2.
- 13 (i) Facility lacks appropriate parking emblem as required by  
14 ADAAG 4.6.4 and Title 24 1129B.5.5&2.
- 15 (j) Site entrance signage is not posted at entrances as required  
16 by ADAAG 4.1.3(16)(b) and Title 24 1127B.3.
- 17 (k) Restroom signage lacks Braille characters as required by  
18 ADAAG 4.30.4 and Title 24 1117B.5.1.1 & 5.6.3.
- 19 (l) Wall mount signage is less than 60 inches as required by  
20 ADAAG 4.23.7 and Title 24 1115B.9.2.
- 21 (m) Wall mount signage latch side of door does not comply with  
22 ADAAG 4.1.2(7)(d) and Title 24 1117B.5.1.1 & 5.6.3.
- 23 (n) Door mount signage (men's & women's) does not comply with  
24 Title 24 1115B.5.
- 25 (o) Faucet fixtures do not comply with ADAAG 4.27.4 and Title 24  
26 1508.1&2.
- 27
- 28

- 1 (p) Faucets exceed max of 5lbs force to activate-ADAAG 4.27.4 and  
2 Title 24 1508.1&2. and other wise do not comply with said  
3 section.
- 4 (q) Toilet water closet mounting location is improper-ADAAG  
5 4.17.3 and Title 24 1115B.7.1.2.
- 6 (r) Bathroom accessories/fixtures are not at proper height' as  
7 required by ADAAG 4.23.7 and Title 24 1115B.9.2.
- 8 (s) Urinal rim height is too high and in violation of ADAAG  
9 4.18.4 and Title 24 1503.2.2.
- 10 (t) Bathroom stall door does not comply with ADAAG 4.23.4 & CA  
11 Title 24 1115B.7.1.4.
- 12 (u) Bathroom hardware on door inside/outside does not comply with  
13 ADAAG 4.13.9 and Title 24 1115B.7.1.4.

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

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

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

18 13. Plaintiff desires to return to Defendants' place of business  
19 and utilize its facilities without being discriminated  
20 against in the immediate future.

21 **IV**

22 **FIRST CAUSE OF ACTION**

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

24 14. Plaintiff realleges the allegations in paragraphs 1 through 13  
25 as though set forth fully herein.

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

27 15. Based on the facts asserted above Plaintiff has been denied  
28 full and equal access to Defendants' goods, services, facilities,



1 privileges, advantages, or accommodations. Defendants are a public  
2 accommodation owned, leased and/or operated by the named  
3 defendants herein. Defendants' existing facilities and/or services  
4 failed to provide full and equal access to Defendants' facility as  
5 required by 42 U.S.C. section 12182(a). Thus, Plaintiff was  
6 subjected to discrimination in violation of 42 U.S.C.  
7 12182(b) (2) (A) (ii) (iv); 42 USC 1981 and 42 U.S.C. section 12188  
8 because Plaintiff was denied equal access to Defendant's existing  
9 facility.

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

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

21 17. Based upon the facts alleged herein, Plaintiff was denied  
22 full and equal access to Defendants' goods, services, facilities,  
23 privileges, advantages, or accommodations within a public  
24 accommodation owned leased, and/or operated by the named  
25 Defendants. Defendants individually and collectively failed to  
26 remove barriers as required by 42 U.S.C. 12182(a). Plaintiff is  
27 informed and believes, and thus alleges that architectural  
28

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

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

20 18. Based on the facts alleged in this Complaint Defendants failed  
21 and refused to provide a reasonable alternative by modifying their  
22 practices, policies and procedures in that they failed to have a  
23 scheme, plan, or design to assist Plaintiff and/or others  
24 similarly situated in entering and utilizing Defendants' services,  
25 as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was  
26 subjected to discrimination in violation of 42 U.S.C. section  
27 12182(b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C. section 12188  
28

1 because Plaintiff was denied equal access to Defendants' existing  
2 facilities.

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

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

12 21. Under the provisions of section 42 USC 12205 plaintiff is  
13 entitled to an award of reasonably attorneys fees and requests  
14 that the court grant such fees as are appropriate.

15 V

16 **SECOND CAUSE OF ACTION**

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

18 22. Plaintiff realleges the allegations of the First Cause of  
19 Action as though set forth fully herein.

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

1 therefore are precluded from making, entering into and enforcing  
2 contracts that plaintiff and others similarly situated may desire  
3 to effect.

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

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

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

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

21 VI

22 THIRD CAUSE OF ACTION

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

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

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

27 29. Plaintiff has been denied full and equal access to Defendants'  
28 goods, services, facilities, privileges, advantages, or

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

15 30. On the above basis Plaintiff has been wrongfully discriminated  
16 against.

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

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

25 Accordingly, Defendants have wrongfully discriminated against  
26 Plaintiff.

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VII

FOURTH CAUSE OF ACTION

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

32. Plaintiff realleges the allegations of the Third Cause of Action as though set forth fully herein.

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

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

34. Defendants have violated the provisions of Civ. Code 51(b) by failing and refusing to provide free and equal access to Plaintiff to their facility on the same basis as other persons not disabled.

By its failure to provide equal access to Plaintiff as herein alleged, Defendants have also violated 42 U.S.C. section

12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).

35. By reason of their acts and denial of Plaintiff's civil rights

Defendants also violated the provisions of Cal. Civ. Code section

52, which makes a person or entity in violation of Cal.Civ. Code

51 liable for the actual damages to a Plaintiff including treble

damages where appropriate.

36. Defendants at all times prior to and including June 30, 2003,

respectively and continuing to the present time knew that persons

with physical disabilities were denied their rights of equal

1 access to all portions of this public facility. Despite such  
2 knowledge, Defendants failed and refused to take steps to comply  
3 with the applicable access statutes and despite knowledge of the  
4 resulting problems and denial of civil rights suffered by  
5 Plaintiff and others similarly situated persons with disabilities.  
6

7 37. Defendants have failed and refused to take action to grant  
8 full and equal access to persons with physical disabilities.

9 Defendants have carried out a course of conduct of refusing to  
10 respond to, or correct complaints about unequal access and have  
11 refused to comply with their legal obligation to make the subject  
12 facility accessible pursuant to the ADAAG and the California  
13 Building Code [Title 24 of the California Code of Regulations].  
14

15 Such actions and continuing course of conduct by Defendants  
16 evidence despicable conduct in conscious disregard of the rights  
17 and/or safety of Plaintiff and those similarly situated and thus  
18 justify an award of treble damages pursuant to section 52(a) and  
19 54.3(a) of the Cal.Civ. Code or alternatively an award of punitive  
20 damages in an appropriate amount.  
21

22 38. Plaintiff has suffered emotional and physical damage and  
23 continues to suffer such damages all in an amount to be determined  
24 at time of trial.  
25

26 39. Under the provisions of Cal. Civ. Code section 55 Plaintiff  
27 seeks an award of reasonable attorney's fees and costs as a result  
28

1 of having to bring this action. Plaintiff requests the court to  
2 award such fees in an appropriate amount.

3  
4 **VIII**

5 **FIFTH CAUSE OF ACTION**

6 **(Unfair And Unlawful Business Practice)**

7 40. Plaintiff realleges the allegations of the Fourth Cause of  
8 Action as though set forth fully herein.

9 41. California Business and Professions Code Section 17200 states  
10 in pertinent part:

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

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



1 access to its facility by disabled persons and because of their  
2 failure to modify practices, policies and procedures to have a  
3 scheme, plan, or design to assist Plaintiff and others similarly  
4 situated to enter and utilize Defendants' services as required by  
5 the Unruh Act.  
6

7 43. Defendant's acts are unlawful and unfair and are therefore in  
8 violation of California Business and Professions Code section  
9 17200.  
10

11 44. Pursuant to the provisions of California Business and  
12 Professions Code section 17201 Plaintiff is a person as identified  
13 within said section and therefore allowed to bring this action on  
14 behalf of himself and the general public to effectuate California  
15 Business and Professions Code 17200 as provided for within  
16 Business and Professions Code section 17204.  
17

18 45. Plaintiff, under Bus & Prof. Code section 17200 seeks  
19 injunctive relief, on behalf of himself and the general public,  
20 requiring Defendants to remedy the disabled access violations  
21 present within Defendants' facility and that Defendants be ordered  
22 to cease and desist from continuing in noncompliance with disabled  
23 access statutes and regulations.  
24

25 //

26 //

27 //

28

IX

SIXTH CAUSE OF ACTION

**(Negligent Infliction of Emotional Distress)**

1  
2  
3  
4  
5 46. Plaintiff relleges the allegations of the Fourth Cause of  
6 Action as though set forth fully herein.

7 47. Defendants owe a duty to Plaintiff to make their facility  
8 accessible and to keep Plaintiff reasonably safe from known  
9 dangers and risks of harm. This duty arises by virtue of the legal  
10 duties proscribed by various federal and state statutes including,  
11 but not limited to the ADA, ADAAG, California Civil Code sections  
12 51, 52, 54, 54.1 and Title 24 of the California Code of  
13 Regulations. Defendants have a duty of due care not to do or cause  
14 anything to happen that would subject Plaintiff to undue stress,  
15 embarrassment, chagrin, and discouragement.  
16  
17

18 48. Defendants breached their duty of care to Plaintiff by the  
19 actions and inaction complained of herein and as a result thereof  
20 Plaintiff was shocked, discouraged, embarrassed and outraged at  
21 the callousness and disregard of Defendants. Defendants knew or  
22 had reason to know that by denying Plaintiff equal access to their  
23 facility and failing and refusing to remove architectural  
24 barriers, Plaintiff would suffer emotional and/or mental distress  
25 because of such discrimination and disparate treatment. Defendants  
26 breached their duty of care to plaintiff by the perpetration of  
27 the acts outlined herein.  
28

1 49. As a proximate result of the actions of Defendants Plaintiff  
2 did suffer emotional and mental distress and pain and suffering  
3 all in an amount to be determined at time of trial.  
4

5 X

6 **SEVENTH CAUSE OF ACTION**

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

8 50. Plaintiff realleges the allegations of the Fourth Cause of  
9 Action as though set forth fully herein.

10 51. The actions of Defendants are despicable, intentional and done  
11 with conscious disregard of the rights and safety of Plaintiff and  
12 as such should be regarded as outrageous.

13 52. As a proximate result of Defendants' actions Plaintiff has  
14 suffered severe emotional and mental distress all to his damage in  
15 an amount to be determined at time of trial.

16 53. Plaintiff seeks an award of punitive damages for this claim,  
17 as the actions of Defendants are tantamount to outrageous conduct  
18 and subjects them to exemplary damages

19 **DEMAND FOR JURY**

20 54. Plaintiff respectfully requests that the claims made herein be  
21 heard and determined by a jury.

22 WHEREFORE PLAINTIFF PRAYS:

- 23 1. For general damages according to proof;  
24 2. For special damages according to proof;  
25 3. For damages pursuant to Cal. Civil Code section 52, in the  
26 amount of \$4,000 for each and every offense of California Civil  
27 Code section 51, Title 24 of the California Building Code and the  
28 Americans With Disabilities Act.

- 1 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and
- 2 California Business and Professions Code section 17200
- 3 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42
- 4 U.S.C. 1981, 42 U.S.C. 12205 and Cal. Civ. Code section 55;
- 5 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
- 6 7. For punitive damages according to proof;
- 7 8. For a Jury Trial;
- 8 9. For costs of suit incurred herein and;
- 9 10. For such other and further relief as the court deems proper.

10 Respectfully submitted,

11 7/22/03

*Roy L. Landers*

12 Attorney for Plaintiff, Faustino Ambaasio

# 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

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

(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

## DEFENDANTS FILED

PIZZA HUT, INC. et al.  
03 AUG 28 PM 3:58

County of Residence of First Listed Defendant San Diego  
SOUTHERN DISTRICT OF CALIFORNIA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  
BY: \_\_\_\_\_ DEPUTY \_\_\_\_\_

Attorneys (If Known)

**03 CV 01739 B LAB**

## 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                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## 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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<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	SOCIAL SECURITY	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 <input type="checkbox"/> 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"/> 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))	<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 8/25/03 SIGNATURE OF ATTORNEY OF RECORD Roy L. Landers

FOR OFFICE USE ONLY  
RECEIPT # 096802 AMOUNT \$150.00 APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

CR