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3:03-CV-1132 JONES V. ONE DAY PAINT AND

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\*CMP\*

12197

1 ROY L. LANDERS (BAR #64920) **FILED**  
2 **LAW OFFICES OF ROY L. LANDERS**  
3 7840 MISSION CENTER COURT, SUITE 510 PM 2:08  
4 SAN DIEGO, CALIFORNIA 921083 JUN  
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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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Attorney for Plaintiff: **DAN JONES**

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DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**DAN JONES**

Plaintiff,

vs.

**1 DAY PAINT & BODY CENTERS, 1 DAY  
PAINT & BODY CENTERS, INC., AND  
DOES 1-10, Inclusive,**

Defendants.

Case No.: **03 CV 01 132 BTM 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**

**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 action where persons with disabilities have been denied their civil rights and Title II, section 201, et. seq. of the 1964 Civil Rights Act. Venue in the Southern Judicial District of California in the United States District Court is in accord with 28. U.S.C. section 1391(b) because a substantial part of plaintiff's claims arose within the Judicial District of the United States District Court of the Southern District of California.

*[Signature]*



1 and described within **42 USC 12181(7)(F)** of the American with Disabilities Act [ADA] and  
2 as such must comply with the ADA under provisions of Title III therein.

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

10 **III**

11 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

12 6. Plaintiff is disabled and confined to a wheelchair. He has no control over his lower  
13 extremities and must use a wheelchair to transport himself and to effect the basic  
14 necessities of his everyday existence. Plaintiff's disability substantially limits one or more  
15 of life's major activities and therefore he is disabled as defined under 42 USC  
16 12102(2)(A)(B)(C).

17 7. On or about MAY 8, 2003 plaintiff attempted to enter the subject premises of the  
18 defendants herein to utilize goods and/or services offered by defendants. When Plaintiff  
19 attempted to enter said facility, plaintiff had difficulty entering and using the facility because  
20 it failed to comply with Federal ADA Access Guidelines For Building and Facilities  
21 [hereinafter "ADAAG"] and/or the State of California's Title 24 Building Code  
22 Requirements.

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

- 25 1. No Site Entrance Signage (Does Not Exist), (CA Title 24 1129B.5);
- 26 2. No Site Entrance Signage (Not Filled Out - Reclaim at.), (CA Title 24  
27 1129B.5);

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3. No Site Entrance Signage (Not Filled Out – Telephone number:), (CA Title 24 1129B.5);
4. No Site Entrance Signage (Size not less than 17" x 22" ), (CA Title 24 1129B.5);
5. No Site Entrance Signage (Lettering not less than 1" in Height), (CA Title 24 1129B.5);
6. No Site Entrance Signage (Warning Information), (CA Title 24 1129B.5);
7. No Designated Disabled "VAN ACCESSIBLE" Parking Space, (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2);
8. No Designated Disabled "VAN ACCESSIBLE" Parking Space Width, (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2);
9. No Designated Disabled "VAN ACCESSIBLE" Parking Space Length, (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2);
10. No Designated Disabled "VAN ACCESSIBLE" Parking Space Signage, (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2);
11. No Designated Parking Stalls – Correct Number of Stalls, (ADAAG 4.1.2(5)(a) & CA Title 24 1129B.1);
12. Improper Regular Access Aisle, (CA Title 24 1129B.4.1);
13. Improper Regular Access Aisle Width, (CA Title 24 1129B.4.1);
14. Improper Regular Access Aisle Length, (CA Title 24 1129B.4.1);
15. No Van Accessible Aisle, (ADAAG 4.6.3 & CA Title 24 1129B.4.2);
16. No Van Accessible Aisle Width, (ADAAG 4.6.3 & CA Title 24 1129B.4.2);
17. No Van Accessible Aisle Length, (ADAAG 4.6.3 & CA Title 24 1129B.4.2);
18. No Van Accessible Aisle (Passenger Side), (ADAAG 4.6.3 & CA Title 24 1129B.4.2);
19. No Signage Installed (Each Space), (ADAAG 4.6.4 & CA Title 24 1129B.5);
20. No Additional Signage (Van Accessible), (ADAAG 4.6.4 & CA Title 24 1129B.5);

- 1 21. No Access Route - A Route of Travel, (ADAAG 4.1.3(2), 4.3.2(2) & CA Title  
2 24 1114B.1.2);
- 3 22. No Shortest Route of Travel, (ADAAG 4.6.2);
- 4 23. No Designated Disabled Parking Space Signage – Proper Height, (ADAAG  
5 4.6.4 & CA Title 24 1129B.5);
- 6 24. No Parking Space Emblem, (ADAAG 4.6.4 & CA Title 24 1129B.5.1 & .2);
- 7 25. No Entrance – Signage at Every Entrance/Exit, Accessibility, (ADAAG  
8 4.1.3(16)(b) & CA Title 24 1127B.3);
- 9 26. No Bathroom – International Symbol of Accessibility, (ADAAG 4.30.6 & CA  
10 Title 24 1117B.5.9);
- 11 27. No Raised Braille Characters (Restroom Signage), (ADAAG 4.30.4 & CA  
12 Title 24 1117B.5.6.1 & .2);
- 13 28. No Wall Mount Signage (Latch Side of Door), (ADAAG 4.1.2(7)(d) and CA  
14 Title 24 1117B.5.1.1 & .5.6.3);
- 15 29. No Wall Mount Signage (60 inches from the floor), (ADAAG 4.30.6 & CA Title  
16 24 1117B.5.9);
- 17 30. No Door Mount Signage (Men's & Women's), (CA Title 24 1115B.5);
- 18 31. No Door Signage (Color Distinctively Contrast w/Door Color), (CA Title 24  
19 1115B.5);
- 20 32. Improper Faucet Fixtures (One Hand Operable), (ADAAG 4.27.4 & CA Title  
21 24 1508.1 & .2);
- 22 33. Improper Faucets (Max 5 lb Force to Activate), (ADAAG 4.27.4 & CA Title 24  
23 1508.1 & .2) ;
- 24 34. Improper Faucets (Lever-Type), (ADAAG 4.27.4 & CA Title 24 1508.1 & .2);
- 25 35. No Grab Bar – Parallel Mounting Height, (ADAAG 4.17.6 & CA Title 24  
26 1115B.8.1);
- 27 36. No Grab Bar – Side Proper Extension Beyond Water Closet (24 inches),  
28 (ADAAG 4.17.6 & CA Title 24 1115B.8.1);

- 1 37. No Grab Bar - (Side Min 42 inch Long), (ADAAG 4.14.6 & CA Title 24
- 2 1115B.8.1);
- 3 38. No Grab Bar - (Side Attached Max 12 inches from Rear Wall), (ADAAG
- 4 4.17.6);
- 5 39. No Grab Bar - (Side Forward Ends Located/Extends a Min 54 inches from
- 6 Back Wall), (ADAAG 4.17.6);
- 7 40. No Grab Bar - (Rear Grab Bar Length 36" Min), (ADAAG 4.17.6 & CA Title
- 8 24 1115B.8.1);
- 9 41. No Grab Bar - (Rear Grab Bar Attached to Corner Wall Length 6" Min),
- 10 (ADAAG 4.17.6 & CA Title 24 1115B.8.1);
- 11 42. Improper Accessories/Fixtures - Proper Height (Paper Towel Operating
- 12 Lever), (ADAAG 4.23.7 & CA Title 24 1115B.9.2);
- 13 43. Improper Flush Valve - Correct Side, (ADAAG 4.16.5 & CA Title 24 1502.0);
- 14 44. Improper Hardware - Opening Door Knobs, (ADAAG 4.13.9 & CA Title 24
- 15 1133B.2.5.1);
- 16 45. No Drain & Hot Water Pipes - Insulated or Covered, (ADAAG 4.24.6);
- 17 46. No Kick Plate at Doors, (CA Title 24 1133B.2.6);

18 9. Plaintiff is informed and believes and thereon alleges that defendants' facility has in  
19 excess of **FORTY (40) Violations** of ADAAG and/or Title 24 at their facility.

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

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

25 12. Pursuant to federal {ADA} and state law [California Title 24], Defendants are required  
26 to remove barriers to their existing facilities. Defendants have been put on notice pursuant  
27 to the ADA and the California Civil Code prior to the statutory effect of the ADA on January  
28 26, 1992 that Defendants and each of them had a duty to remove barriers to persons with

1 disabilities such as plaintiff. Defendants also knew or should have known that individuals  
2 such as plaintiff with a disability are not required to give notice to a governmental agency  
3 prior to filing suit alleging Defendants' failure to remove architectural barriers.

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

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

#### 18 IV

#### 19 FIRST CAUSE OF ACTION

#### 20 (Violation of Civil Rights-American With Disabilities Act)

21 15. Plaintiff re-alleges the allegations in paragraphs 1 through 14 as though set forth fully  
22 herein.

#### 23 **Claim 1: Denial of Full and Equal Access**

24 16. Based on the facts asserted above Plaintiff has been denied full and equal access to  
25 Defendants' goods, services, facilities, privileges, advantages, or accommodations.

26 Defendant 1-DAY PAINT & BODY CENTERS is a public accommodation owned, leased  
27 and/or operated by Defendants and each of them. Defendants' existing facilities and/or  
28 services failed to provide full and equal access to Defendants' facility as required by 42



1 U.S.C. Section 12182(a). Thus, Plaintiff was subjected to discrimination in violation of 42  
2 U.S.C. 12182(b)(2)(A)(ii)(iv); 42 USC 1981 and 42 U.S.C. section 12188 because Plaintiff  
3 was denied equal access to Defendants' existing facilities.

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

### 11 **Claim 2: Failure To Remove Architectural Barriers**

12 18. Based upon the facts alleged herein, Plaintiff was denied full and equal access to  
13 Defendants' goods, services, facilities, privileges, advantages, or accommodations within a  
14 public accommodation owned leased, and/or operated by the named Defendants.

15 Defendants individually and collectively failed to remove barriers as required by 42 U.S.C.  
16 12182(a). Plaintiff is informed and believes, and thus alleges that architectural barriers  
17 which are structural in nature exist at the following physical elements of Defendants'  
18 facilities:

19 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and  
20 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,  
21 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking  
22 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,  
23 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,  
24 Detectable Warnings, Signage, and Telephones. Pursuant to 42 USC section  
25 12182(b)(2)(iv), Title III requires places of public accommodation to remove architectural  
26 barriers that are structural in nature within existing facilities. Failure to remove such  
27 barriers and disparate treatment against a person who has a known association with a  
28 person with a disability are forms of prohibited discrimination. Accordingly, Plaintiff was

1 subjected to discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC 12182  
2 (b)(2)(A)(iv); 42 USC 1981 and 42 USC 12188.

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

4 19. Based on the facts alleged in this Complaint Defendants failed and refused to provide  
5 a reasonable alternative by modifying its practices, policies and procedures in that they  
6 failed to have a scheme, plan, or design to assist Plaintiff and/or others similarly situated in  
7 entering and utilizing Defendants' services, as required by 42 U.S.C. section 12188(a).

8 Thus, Plaintiff was subjected to discrimination in violation of 42 U.S.C. section  
9 12182(b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C. section 12188 because Plaintiff was  
10 denied equal access to Defendants' existing facilities.

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

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

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

20 **V**

21 **SECOND CAUSE OF ACTION**

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

23 23. Plaintiff re-alleges the allegations of the First Cause of Action as though set forth fully  
24 herein.

25 24. The provisions of 42 U.S.C. 1981 (As amended by the Civil Rights Act of 1991) provide  
26 that Plaintiff as a person with disabilities cannot be discriminated against with regard to the  
27 ability to enter into, to make or to enforce contracts. In enacting the Civil Rights Act of 1991  
28 congress established a three tier system of remedies for a broad range of discretionary

1 conduct, including violations of the Americans With Disabilities Act, wherein disabled  
2 individuals such as plaintiff are denied equal access to facilities they wish to conduct  
3 business in and therefore are precluded from making, entering into and enforcing contracts  
4 that plaintiff and others similarly situated may desire to effect.

5 25. Defendants, because they have individually and/or collectively denied plaintiff access  
6 to their premises, goods and services, have denied him the right to make, enter into or  
7 enforce a contract and therefore 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 herein.

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

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

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

## 18 VI

### 19 THIRD CAUSE OF ACTION

#### 20 (Violation Of Civil Rights Under California Accessibility Laws)

21 29. Plaintiff re-alleges the allegations of the Second Cause of Action as though set forth  
22 fully herein.

#### 23 (a) Denial Of Full And Equal Access

24 30. Plaintiff has been denied full and equal access to Defendants' goods services,  
25 facilities, privileges, advantages, or accommodations within a public accommodation  
26 owned, leased, and/or operated by Defendants in violation of California Civil Code  
27 Sections 54 and 54.1; California Health and Safety Code Section 19955 and California  
28 Government Code Section 12948. The actions of Defendants also violate the provisions of

1 Title 24 of the State of California Building Codes with regard to accessibility for persons  
2 with disabilities by failing to provide access to Defendants facilities due to violations  
3 pertaining to accessible routes, ground and floor surfaces, parking and passenger loading  
4 zones, curb ramps, ramps, stairs, elevators, platform lifts (wheelchair lifts), windows,  
5 doors, toilet stalls, urinals, lavatories and mirrors, sinks, storage, handrails, grab bars,  
6 controls and operating mechanisms, alarms, detectable warnings, signage and  
7 telephones.

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

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

10 32. Defendants have failed and refused and continue to fail and refuse to provide a  
11 reasonable alternative to allow plaintiff equal access to their facility by modifying their  
12 practices, policies, and procedures in that that they failed to have a scheme, plan, or  
13 design to assist Plaintiff and others similarly situated in entering and utilizing Defendants'  
14 goods or services as required by California Civil Code section 54 and 54.1. Accordingly  
15 Defendants have wrongfully discriminated against Plaintiff.

16 **VII**

17 **FOURTH CAUSE OF ACTION**

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

19 33. Plaintiff re-alleges the allegations of the Third Cause of Action as though set forth fully  
20 herein.

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

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

35. Defendants have violated the provisions of Civ. Code 51 (b) by

1 failing and refusing to provide free and equal access to Plaintiff to their facility on the same  
2 basis as other persons not disabled. By their failure to provide equal access to Plaintiff as  
3 herein alleged, Defendants have also violated 42 U.S.C. section 12182(b)(2)(A)(iv) as  
4 provided in Cal. Civ. Codes section 51(f).  
5

6 36. By reason of their acts and denial of Plaintiff's civil rights Defendants also violated the  
7 provisions of Cal. Civ. Code section 52, which makes a person or entity in violation of Cal.  
8 Civ. Code 51 liable in the amount of \$4,000 per violation of said statute.  
9

10 37. Defendants and each of them, at all times prior to and including MAY 8, 2003  
11 respectively and continuing to the present time, knew that persons with physical disabilities  
12 were denied their rights of equal access to all portions of this public facility. Despite such  
13 knowledge, Defendants, and each of them, failed and refused to take steps to comply with  
14 the applicable access statutes and despite knowledge of the resulting problems and denial  
15 of civil rights suffered by Plaintiff and other similarly situated persons with disabilities.  
16

17 38. Defendants and each of them have failed and refused to take action to grant full and  
18 equal access to persons with physical disabilities. Defendants have carried out a course of  
19 conduct of refusing to respond to, or correct complaints about unequal access and have  
20 refused to comply with their legal obligations to make the subject facility accessible  
21 pursuant the ADAAG and the California Building Code [Title 24 of the California Code of  
22 Regulations]. Such actions and continuing course of conduct by Defendants, and each of  
23 them, evidence despicable conduct in conscious disregard of the rights and/or safety of  
24 Plaintiff and those similarly situated and thus justify an award of treble damages pursuant  
25 to section 52(a) and 54.3(a) of the Cal. Civ. Code or alternatively an award of punitive  
26 damages in an appropriate amount.  
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1 39. Plaintiff has suffered emotional and physical damage and continues to suffer such  
2 damages all in an amount to be determined at time of trial.

3 40. Under the provisions of Cal. Civ. Code section 55 Plaintiff seeks an award of  
4 reasonable attorney's fees and costs as a result of having to bring this action. Plaintiff  
5 requests the court to award such fees in an appropriate amount.  
6

7 **VIII**

8 **FIFTH CAUSE OF ACTION**

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

10 41. Plaintiff re-alleges the allegations of the Fourth Cause of Action as though set forth  
11 fully herein.

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

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

15 43. Defendants, as alleged herein, are in violation of the Americans With Disabilities Act  
16 and Title 24 of the California Building Code, in that they have denied equal access to their  
17 places of public accommodation to Plaintiff and others similarly situated to Plaintiff.

18 Defendants have failed and refused and continue to refuse to comply with equal access  
19 laws all in violation of 42 USC 12181-12183; 42 USC 1981; and 42 USC 12188. In addition  
20 the complained of acts are in violation of California Civil Code Sections 51, 52, 54, and 54.1,  
21 California Health and Safety Code section 19955 and California Government Code section  
22 12948 all of which require Defendants to provide equal access to their facility to disabled  
23 persons such as plaintiff. Defendants are also in violation of the indicated statutes because  
24 of their failure to remove architectural barriers, which prevent equal access to their facility  
25 by disabled persons and because of their failure to modify their practices, policies and  
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1 procedures to have a scheme, plan, or design to assist Plaintiff and others similarly  
2 situated to enter and utilize Defendants' services as required by the Unruh Act.

3  
4 44. Defendants' acts are unlawful and unfair and are therefore in violation of California  
5 Business and Professions Code section 17200.

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

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

17 **IX**

18 **SIXTH CAUSE OF ACTION**

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

20  
21 47. Plaintiff re-alleges the allegations of the Fourth Cause of Action as though set forth  
22 fully herein.

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

3  
4 49. Defendants breached their duty of care to Plaintiff by the actions and inaction  
5 complained of herein and as a result thereof Plaintiff was shocked, discouraged,  
6 embarrassed and outraged at the callousness and disregard of Defendants. Defendants  
7 knew or had reason to know that by denying Plaintiff equal access to their facility and  
8 failing and refusing to remove architectural barriers, Plaintiff would suffer emotional and/or  
9 mental distress because of such discrimination and disparate treatment. Defendants  
10 breached their duty of care to plaintiff by the perpetration of the acts outlined herein.

11  
12 50. As a proximate result of the actions of Defendants Plaintiff did suffer emotional and  
13 mental stress and pain and suffering all in an amount to be determined at time of trial.

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16 **SEVENTH CAUSE OF ACTION**

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

18 51. Plaintiff re-alleges the allegations of the Fourth Cause of Action as though set forth  
19 fully herein.

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

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

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

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///



**DEMAND FOR JURY**

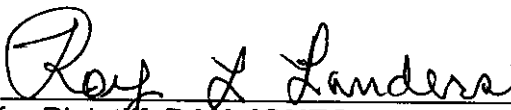
55. Plaintiff respectfully requests that the claims made herein be heard and determined by a jury.

**WHEREFORE PLAINTIFF PRAYS:**

1. For general damages according to proof;
2. For special damages according to proof;
3. For damages pursuant to Cal. Civil Code section 52, in the amount of \$4,000 for each and every offense of California Civil Code section 51, Title 24 of the California Building Code and the Americans With Disabilities Act.
4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and California Business and Professions Code section 17200
5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42 U.S.C. 1981, 42 U.S.C. 12205 and Cal. Civ. Code section 55;
6. For treble damages pursuant to Cal. Civ. Code 52 (a);
7. For punitive damages according to proof;
8. For a Jury Trial;
9. For costs of suit incurred herein and;
10. For such other and further relief as the court deems proper.

Respectfully submitted.

DATED: 5-30-03

  
\_\_\_\_\_  
Attorney for Plaintiff, DAN JONES

# 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

DAN JONES

(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**  
1 DAY PAINT & BODY CENTERS, et al.  
03 JUN -5 PM 2:07  
County of Residence of First Listed Plaintiff San Diego  
DISTRICT COURT OF THE SOUTHERN DISTRICT OF CALIFORNIA  
(ON U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  
DEPUTY

Attorneys (If Known)  
**03 CV 01132 BTM JAH**

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

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 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)

- (For Diversity Cases Only)
- Citizen of This State  1 DEF  1
- Citizen of Another State  2 DEF  2
- Citizen or Subject of a Foreign Country  3 DEF  3
- Incorporated or Principal Place of Business In This State  4 DEF  4
- Incorporated and Principal Place of Business In Another State  5 DEF  5
- Foreign Nation  6 DEF  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 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"/> 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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <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"/> 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 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <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)) <b>FEDERAL TAX SUITS</b> <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 5-30-03 SIGNATURE OF ATTORNEY OF RECORD Roy L. Landers

FOR OFFICE USE ONLY  
RECEIPT # 44594 AMOUNT \$ 150.00 APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

6/5/03 VB