

USDC SCAN INDEX SHEET



SWD 4/29/04 8:43

3:04-CV-00869 RIVERA V. 4 S ENTERPRISES

1

CMP.

1 LAW OFFICES OF ROY L. LANDERS
2 ROY L. LANDERS (BAR #64920)
3 LaTOYA S. REDD (BAR # 218342)
4 7840 MISSION CENTER COURT, SUITE 101
5 SAN DIEGO, CALIFORNIA 92108
6 TELEPHONE (619) 296-7898
7 FACSIMILE (619) 296-5611

8 Attorney for Plaintiff, Ismael Rivera

FILED

04 APR 26 PM 6:39

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

DEPUTY

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00869

K (RBB)

11 ISMAEL RIVERA,

12 Plaintiff,

13 vs.

14 4 S ENTERPRISES, LLC dba SUPER 8
15 MOTEL and DOES 1-10, Inclusive,
16 Defendants.

Case No.:

COMPLAINT FOR DAMAGES RE:
VIOLATION OF CIVIL RIGHTS ON BASIS
OF DISCRIMINATION IN PUBLIC
ACCOMMODATIONS; NEGLIGENT
INFLECTION OF EMOTIONAL DISTRESS;
INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS; DECLARATORY
RELIEF; DEMAND FOR JURY TRIAL

17 I

18 JURISDICTION AND VENUE

19 1. (a) Jurisdiction of this action is invoked on the basis of 28 USC 1331 and 1343, 42 USC 12101-
20 12102, 12181-12183 and 12201, et. seq., which is applicable to causes of action where persons with
21 disabilities have been denied their civil rights. Venue in the Southern Judicial District of California
22 in the United States District Court is in accord with 28. U.S.C. Section 1391(b) because a
23 substantial part of Plaintiff's claims arose within the Judicial District of the United States District
24 Court of the Southern District of California.

25 (b) Supplemental Jurisdiction. The Judicial District of the United States District Court of the
26 Southern District of California has supplemental jurisdiction over the state claims alleged in this
27 Complaint pursuant to 28 U.S.C. section 1367(a). Supplemental jurisdiction is appropriate in this
28 action on the basis that all the causes of action or claims derived from federal law and those arising

CR

1 under state law, as herein alleged, arose from a common nucleus of operative facts. The common
2 nucleus of operative facts, include, but are not limited to, the incidents whereby Plaintiff was denied
3 full and equal access to Defendant's facilities, goods, and/or services in violation of both federal and
4 state laws when Plaintiff attempted to enter, use, and/or exit Defendant's facilities as described
5 within this Complaint. Further, due to this denial of full and equal access, Plaintiff and other
6 person's with disabilities were injured. Based upon such allegations, the state actions, as stated
7 herein, are so related to the federal actions that they form part of the same case or controversy, and
8 the actions would ordinarily be expected to be tried in one judicial proceeding.

9 **II**

10 **PARTIES**

11 2. Defendant, 4 S Enterprises, LLC, dba Super 8 Motel was and at all times herein mentioned, a
12 duly organized business, association, or corporation duly authorized to exist and operate within the
13 State of California and County of San Diego and the owner, lessee, or tenant of the premises located
14 at 3700 Pio Pico Carlsbad, California 92008.

15 3. Plaintiff is informed and believes and thereon alleges that defendant 4 S Enterprises, LLC is the
16 owner and/or landlord of the subject property upon which Defendant's business is sited.

17 4. Plaintiff is informed and believes and thereon alleges that each of the named defendants herein
18 operate a business and or/facility of public accommodation as defined and described within 42 USC
19 12181(7)(a) of the American with Disabilities Act [ADA] and, as such, must comply with the ADA
20 under provisions of Title III therein.

21 5. Plaintiff is ignorant of the Defendants sued as Does 1-10 herein, and therefore sues them in their
22 fictitious names as Doe Defendants. Plaintiff is informed and believes and thereon alleges that Does
23 1-10 are the owners, operators, lessees or tenants of the subject property and each of the Doe
24 Defendants at all times herein were acting as the agent and or representative of each other and,
25 thereby, are responsible in some manner for the injuries and damages complained of herein.

26 Plaintiff will seek leave of the court to amend this complaint to name Doe Defendants when the
27 same is ascertained.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

III

GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

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

7. On or about, February 13, 2004 and at least two times thereafter Plaintiff patronized the premises of Defendants to utilize goods and/or services offered by Defendants. When Plaintiff attempted to gain access to the goods and/or services offered by Defendants he encountered access barriers because the premises failed to comply with federal ADA Access Guidelines For Building and Facilities [hereinafter "ADAAG"]; Department of Justice [DOJ] regulations at 28 CFR. 36.201; 36.304 and/or the State of California's Title 24 Building Code Requirements. In addition plaintiff was told on more than one occasion that a room would not be available for disabled persons until sometime in the summer of 2004. Plaintiff is informed and believes and thereon alleges that defendants had no disable rooms available to him or any other person similarly disabled and told him that disable rooms were occupied until the middle of the summer in order to discourage plaintiff from attempting to rent a room for use anytime in the future.

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

TOTAL NUMBER OF VIOLATIONS (107)

- 22 1 Site Entrance Signage (Does Not Exist)
23 (CA Title 24 1129B.5)
- 24 1 Site Entrance Signage (Not Filled Out - Reclaim at:)
25 (CA Title 24 1129B.5)
- 26 1 Site Entrance Signage (Not Filled Out - Telephone number:)
27 (CA Title 24 1129B.5)
- 28 1 Site Entrance Signage (Size not less than 17" x 22")
(CA Title 24 1129B.5)

- 1 1 Site Entrance Signage (Lettering not less than 1" in Height)
2 (CA Title 24 1129B.5)
- 3 1 Site Entrance Signage (Warning Information)
4 (CA Title 24 1129B.5)
- 5 1 Designated Disabled "VAN ACCESSIBLE" Parking - Space
6 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 7 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Width
8 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 9 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Length
10 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 11 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Signage
12 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 13 1 Warning - Access Aisle - (**NO PARKING**)
14 (CA Title 24 1129B.4.1 & 2)
- 15 1 Warning - Access Aisle - (12" High Minimum)
16 (CA Title 24 1129B.4.1 & 2)
- 17 1 Van Accessible Aisle - Exist/Improper
18 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 19 1 Van Accessible Aisle - Width
20 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 21 1 Van Accessible Aisle - Length
22 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 23 1 Van Accessible Aisle - (Passenger Side)
24 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 25 1 Signage Installed - (Each Space)
26 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 27 1 Additional Signage - (Van Accessible)
28 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 29 1 Designated Disabled Parking Space Signage - Proper Height
30 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 31 1 Seating - Dining, Banquet & Bar Facilities - (Min Requirement
32 5%)

- 1 (ADAAG 5.1 & CA Title 24 1104B.5.4)
- 2 1 Seating - Dining, Banquet & Bar Facilities - (Clear Space 30"
- 3 x 48" Min)
- 4 (ADAAG 4.2.4.1 & CA Title 24 1122B.3)
- 5 1 Seating - Dining, Banquet & Bar Facilities - (Knee Space
- 6 27"H, 30"W, 19"D)
- 7 (ADAAG 4.32.3 & CA Title 24 1122B.3)
- 8 1 Seating - Dining, Banquet & Bar Facilities - (Table Height
- 9 28"-34")
- 10 (ADAAG 4.32.4 & CA Title 24 1122B.4)
- 11 1 Seating - Dining, Banquet & Bar Facilities - (Access Aisles
- 12 Min Width 36")
- 13 (ADAAG 5.3 & CA Title 24 1104B.5.4)
- 14 1 Seating - Dining, Banquet & Bar Facilities - (Equivalent
- 15 Services & Décor @ Accessible Seating), (ADAAG 5.4 & CA Title
- 16 24 1104B.5.4)
- 17 4 Grab Bar - Parallel Mounting Height
- 18 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 19 4 Grab Bar - Side Proper Extension Beyond Water Closet (24
- 20 inches)
- 21 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 22 4 Grab Bar - (Side Min 42 inch Long)
- 23 (ADAAG 4.14.6 & CA Title 24 1115B.8.1)
- 24 4 Grab Bar - (Side Attached Max 12 inches from Rear Wall)
- 25 (ADAAG 4.17.6)
- 26 4 Grab Bar - (Side Forward Ends Located/Extends a Min 54 inches
- 27 from Back Wall)
- 28 (ADAAG 4.17.6)
- 4 Grab Bar - (Rear Grab Bar Length 36" Min)
- (ADAAG 4.17.6 & CA Title 24 1115B.8.1)

- 1 4 Grab Bar - (Rear Grab Bar Attached to Corner Wall Length 6"
2 Min)
3 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 4 2 Drain & Hot Water Pipes - Insulated or Covered
5 (ADAAG 4.24.6)
- 6 2 Bathing Facilities - Minimum Number 1%
7 (ADA 4.23.8 & CA Title 24 1115B.6)
- 8 2 Bathing Facilities - Seat in Tub Clear Floor Space 30" x 60"
9 Parallel Approach
10 (ADA 4.20.2 & CA Title 24 1115B.6.1.1)
- 11 2 Bathing Facilities - Seat in Tub Clear Floor Space 48" x 60"
12 Perpendicular Approach
13 (ADA 4.20.2 & CA Title 24 1115B.6.1.1)
- 14 2 Bathing Facilities - Seat at Head of Tub 30" x 75" Parallel
15 Approach
16 (ADA 4.20.3 & CA Title 24 1115B.6.1.1)
- 17 2 Bathing Facilities - Seat in Tub 15" Minimum Width
18 (CA Title 24 1115B.6.1.2)
- 19 2 Bathing Facilities - Grab Bar Structural Strength 250lbf load
20 (ADA 4.26.3 & CA Title 24 1115B.6.1.2 &
21 1115B.8.3.1-4)
- 22 2 Bathing Facilities - Grab Bar - Control Side of Tub 24",
23 starting at Edge of Tub
24 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 25 2 Bathing Facilities - Side of Tub has **Two** grab Bars 24" Long,
26 9 & 33" -36" above Floor
27 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 28 2 Bathing Facilities - Side of Tub has **One** grab Bar 24" Long,
33" -36" above Floor
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 29 2 Bathing Facilities - Side of Tub has **One** grab Bar 24" Long,
9" above Tub
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 30 //

Grab Bars Location with Seat at Head of Tub

2 Bathing Facilities - Side of Tub has **Two** grab Bars 48" Long,
9" & 33" -36" above Tub

(ADA 4.20.4 & CA Title 24 1115B.6.1.3)

2 Bathing Facilities - Side of Tub has **One** grab Bars 48" Long,
9" above Tub

(ADA 4.20.4 & CA Title 24 1115B.6.1.3)

2 Bathing Facilities - Side of Tub has **One** grab Bars 48" Long,
33" - 36" above Tub

(ADA 4.20.4 & CA Title 24 1115B.6.1.3)

Controls

2 Controls - Operable with One Hand

(ADA 4.27.4 & CA Title 24 1115B.6.1.4)

2 Controls - Operable with 5lb Force Max

(ADA 4.27.4 & CA Title 24 1115B.6.1.4)

2 Controls - Located on the Foot Wall Below Grab bar

(ADA 4.20.5 & CA Title 24 1115B.6.1.4)

Shower Spray Unit

1 Shower Spray Unit

(ADA 4.20.6 & CA Title 24 1115B.6.1.5)

Showers

1 Shower - No Shower Curbs

(ADAAG 4.21.7)

1 Shower Thresh-hold ½" Max

(CA Title 24 1115B.6.2.2)

1 Shower - Grab Bars Mounted 33" - 36" Above Floor

(CA Title 24 1115B.8.2 - .8.4)

1 Controls - Operable with One Hand

(ADA 4.27.4)

1 Controls - Operable with 5lb Force Max

(ADA 4.27.4 & CA Title 24 1115B.6.2.4.1)

1 Controls - Located 40", +/-1" Above the Shower Floor

(ADA 4.20.5 & CA Title 24 1115B.6.1.4))

1 Shower- Minimum Clear Floor Space

1 (ADAAG 4.21.2 & CA Title 24 1115B.6.2.1)

2 1 Shower-Minimum Shower Size

3 (ADAAG 4.21.2 & CA Title 24 1115B.6.2.1)

4 1 Fully accessible rooms are provided in the number required.

5 (ADAAG 9.1.2 & CA Title 24 1111B.4.2)

6 1 Fully accessible rooms with **roll-in** showers are provided in
7 the number required.

8 (ADAAG 9.1.2 & CA Title 24 1111B.4.2)

9 1 Accessible unit(s), sleeping room(s) or suite(s) are on an
10 accessible route

11 (ADAAG 9.2.2 & CA Title 24 1111B.2)

12 1 At least one bath tub or shower in each accessible sleeping
13 room or suite is accessible.

14 (ADAAG 9.2.2 (6) (e) & CA Title 24 1111B.4.6.6)

15 1 Ridged Pool Seat

16 (CA Title 24 1104B.4.3.4.1.2)

17 1 Pool Seat with Two Armrests

18 (CA Title 24 1104B.4.3.4.1.3)

19 1 Pool Seat Capable of Unassisted Operation

20 (CA Title 24 1104B.4.3.4.2)

21 1 Pool Seat Designed for 300 lbs Capacity

22 (CA Title 24 1104B.4.3.4.4)

23 1 Shelving Height - 48" Max

24 (ADAAG 4.25 & CA Title 24 1118B.4.1)

25 9. Based upon the above facts, Plaintiff as been discriminated against and will continue to be
26 discriminated against unless and until Defendants are enjoined and forced to cease and desist from
27 continuing to discriminate against Plaintiff and others similarly situated.

28 10. Pursuant to Federal [ADA], Title 28 CFR 36.201; 36.203; 36.304; 36.305 and state law
[California Title 24], Defendants are required to remove barriers to their existing facilities.

Defendants have been put on notice pursuant to the ADA and California Civil Codes [51,52] prior
to the statutory effect of the ADA on January 26, 1992 that Defendants and each of them had a duty

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

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

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

18 **IV**

19 **FIRST CAUSE OF ACTION**

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

21 13. Plaintiff realleges the allegations in paragraphs 1 through 12 as though set forth fully herein.

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

23 14. Based on the facts asserted above Plaintiff has been denied full and equal access to Defendants'
24 goods, services, facilities, privileges, advantages, or accommodations. Defendant business is a
25 public accommodation owned, leased and/or operated by Defendants and each of them. Defendants'
26 existing facilities and/or services failed to provide full and equal access to Defendants' facility as
27 required by 42 U.S.C. section 12182(a). Thus, Plaintiff was subjected to discrimination in violation
28

1 of 42 U.S.C. 12182(b)(2)(A)(ii)(iv) and 42 U.S.C. section 12188 because Plaintiff was denied equal
2 access to Defendants' existing facilities.

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

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

11 16. Based upon the facts alleged herein, Plaintiff was denied full and equal access to Defendants'
12 goods, services, facilities, privileges, advantages, or accommodations within a public
13 accommodation owned leased, and/or operated by the named Defendants. Defendants individually
14 and collectively failed to remove barriers as required by 42 U.S.C. 12182(a) and 28 CFR 36.304.
15 Plaintiff is informed and believes, and thus alleges that architectural barriers which are structural in
16 nature exist at the following physical elements of Defendants' facilities:
17 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor
18 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform
19 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
20 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars,
21 and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
22 Pursuant to 42 USC section 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires places of public
23 accommodation to remove architectural barriers that are structural in nature within existing
24 facilities. Failure to remove such barriers and disparate treatment against a person who has a known
25 association with a person with a disability are forms of prohibited discrimination. Accordingly,
26 Plaintiff was subjected to discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC
27 12182 (b)(2)(A)(iv) and 42 USC 12188.

28 //

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

2 17. Based on the facts alleged in this Complaint Defendants failed and refused to provide a
3 reasonable alternative by modifying its practices, policies and procedures in that they failed to have
4 a scheme, plan, or design to assist Plaintiff and/or others similarly situated in entering and utilizing
5 Defendants' services, as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was subjected to
6 discrimination in violation of 42 U.S.C. section 12182(b)(2)(A)(iv); 28 CFR 36.302 and 42 U.S.C.
7 section 12188 because Plaintiff was denied equal access to Defendants' existing facilities.

8 18. As a result of the wrongful and discriminatory practices of defendants, plaintiff has suffered
9 actual damages consisting of special damages and general damages in an amount to be determined
10 at time of trial herein.

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

15 20. Under the provisions of 42 USC 12205 plaintiff is entitled to an award of reasonably attorneys
16 fees and requests that the court grant such fees as are appropriate.

17 **VI**

18 **SECOND CAUSE OF ACTION**

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

20 21. Plaintiff realleges the allegations of the First Cause of Action as though set forth fully herein.

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

22 22. Plaintiff has been denied full and equal access to Defendants' goods services, facilities,
23 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or
24 operated by Defendants in violation of California Civil Code Sections 54 and 54.1 and California
25 Health and Safety Code Section 19955. The actions of Defendants also violate the provisions of
26 Title 24 of the State of California Building Codes with regard to accessibility for persons with
27 disabilities by failing to provide access to Defendants facilities due to violations pertaining to
28 accessible routes, ground and floor surfaces, parking and passenger loading zones, curb ramps,

1 ramps, stairs, elevators, platform lifts (wheelchair lifts), windows, doors, toilet stalls, urinals,
2 lavatories and mirrors, sinks, storage, handrails, grab bars, controls and operating mechanisms
3 alarms, detectable warnings, signage and telephones.

4 23. On the above basis Plaintiff has been wrongfully discriminated against.

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

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

12 **VII**

13 **THIRD CAUSE OF ACTION**

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

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

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

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

23 27. Defendants have violated the provisions of Civ. Code 51 (b) by
24 failing and refusing to provide free and equal access to Plaintiff to their facility on the same basis as
25 other persons not disabled. By their failure to provide equal access to Plaintiff as herein alleged,
26 Defendants have also violated 42 U.S.C. section 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes
27 section 51(f).
28

1 28. By reason of their acts and denial of Plaintiff's civil rights Defendants also violated the
2 provisions of Cal. Civ. Code section 52, which makes a person or entity in violation of Cal.Civ.
3 Code 51 liable for the actual damages to a Plaintiff including treble damages where appropriate.
4

5 29. Defendants and each of them, at all times prior to and including February 2004, respectively and
6 continuing to the present time, knew that persons with physical disabilities were denied their rights
7 of equal access to all portions of this public facility. Despite such knowledge, Defendants, and each
8 of them, failed and refused to take steps to comply with the applicable access statutes and despite
9 knowledge of the resulting problems and denial of civil rights suffered by Plaintiff and other
10 similarly situated persons with disabilities.
11

12 30. Defendants and each of them have failed and refused to take action to grant full and equal
13 access to person with physical disabilities. Defendants have carried out a course of conduct of
14 refusing to respond to, or correct complaints about unequal access and have refused to comply with
15 their legal obligations to make the subject facility accessible pursuant the ADAAG and the
16 California Building Code [Title 24 of the California Code of Regulations]. Such actions and
17 continuing course of conduct by Defendants, and each of them, evidence despicable conduct in
18 conscious disregard of the rights and/or safety of Plaintiff and those similarly situated and thus
19 justify an award of treble damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code or
20 alternatively an award of punitive damages in an appropriate amount.
21
22

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

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

VIII

FOURTH CAUSE OF ACTION

(Negligent Infliction of Emotional Distress)

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

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

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

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

IX

FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

37. Plaintiff realleges the allegations of the Fourth Cause of Action as though set forth fully herein.

1 38. The actions of Defendants and each of them are despicable, intentional and done with conscious
2 disregard of the rights and safety of Plaintiff and as such should be regarded as outrageous.

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

5 40. Plaintiff seeks an award of punitive damages for this claim as the actions of Defendants are
6 tantamount to outrageous conduct and subject them to exemplary damages.

7 X

8 **SIXTH CAUSE OF ACTION**

9 **(DECLARATORY RELIEF)**

10 41. Plaintiff realleges and incorporates by reference each and every allegation contained in
11 paragraphs 1-40 of this complaint as though set forth fully herein.

12 42. An actual controversy now exists in that plaintiff is informed and believes and thereon alleges
13 that defendants' premises are in violation of the disabled access laws of the State of California
14 including, but not limited to, Civil Code Sections 51, et seq., Section 52, et seq., Title 24 of the
15 California Code of Regulations and Title III of the Americans with Disabilities Act and the
16 Americans with Disabilities Access Guidelines (ADAAG).

17 43. A declaration of plaintiff's rights is necessary and appropriate in order for the parties to this
18 action to know their respective rights and duties. Accordingly, the court should make a declaration
19 of the rights of the parties.

20 **DEMAND FOR JURY**

21 44. Plaintiff respectfully requests that the claims made herein be 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 amount of \$4,000 for each and every
26 offense of California Civil Code section 51, Title 24 of the California Building Code and the
27 Americans with Disabilities Act.

28 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and for declaratory relief;

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

8
9 Respectfully submitted,

10 Dated: 4/19/04

THE LAW OFFICES OF ROY L. LANDERS

By: *Roy L. Landers*
Attorney for Plaintiff,
Ismael Rivera

CIVIL COVER SHEET

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.)

(a) **PLAINTIFFS**

ISMAEL RIVERA,

San Diego

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

DEFENDANTS

4 S ENTERPRISES, LLC et al.

FILED
04 APR 26 PM 6:38
San Diego
COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (IN U.S. PLAINTIFF CASES ONLY)
U.S. DISTRICT COURT
SAN DIEGO, CALIFORNIA

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

(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)

'04 CV 00869 K (RBB)

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 Incorporated or Principal Place of Business in This State 4 4 DEF

Citizen of Another State 2 2 DEF Incorporated and Principal Place of Business in Another State 5 5 DEF

Citizen or Subject of a Foreign Country 3 3 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 137 PROPERTY RIGHTS <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	
<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(u)) <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	

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 4/26/04 **SIGNATURE OF ATTORNEY OF RECORD** *[Signature]*

FOR OFFICE USE ONLY
RECEIPT # 103205 **AMOUNT** 150- **APPLYING OFF** MS **JUDGE** _____ **MAG. JUDGE** _____