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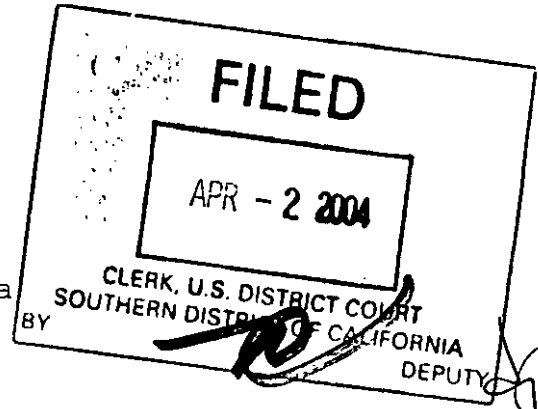
3:04-CV-00692 RIVERA V. HARBORVIEW INN LLC

1

CMP.

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 ISMAEL RIVERA

12 Plaintiff,

13 vs.

14 HARBORVIEW INN, LLC and CHANTU
15 PATEL, dba DAYS INN AND DOES 1-
16 10 Inclusive,

17 Defendants.

18) Case No 04 CV 0692 L (WMC)
19)
20) COMPLAINT FOR DAMAGES RE:
21) VIOLATION OF CIVIL RIGHTS ON
22) BASIS OF DISCRIMINATION IN
23) PUBLIC ACCOMMODATIONS; NEGLIGENT
24) INFLECTION OF EMOTIONAL
25) DISTRESS; INTENTIONAL INFLECTION
26) OF EMOTIONAL DISTRESS;
27) DECLARATORY RELIEF; DEMAND FOR
28) JURY TRIAL

19 I

20 JURISDICTION AND VENUE

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

1 Judicial District of the United States District Court of the
2 Southern District of California.

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

22 **II**

23 **PARTIES**

24 2. Defendants Harborview Inn, LLC and Chantu Patel, dba Days Inn
25 were and at all times herein mentioned was a duly organized
26 business, association, or corporation duly authorized to exist and
27 operate within the State of California and County of San Diego and
28

1 the owners, lessees, or tenants of the premises located at 1501
2 Carmelo Drive Oceanside, California 92054.

3 3. Plaintiff is informed and thereon alleges that defendant
4 Harborview Inn, LLC is also the owner and/or landlord of the
5 subject property upon which defendant business is sited.

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

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

22 III

23 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

24 6. Plaintiff is a male who is disabled and confined to a
25 wheelchair. He has no control over his lower extremities and must
26 use a wheelchair to transport himself and to affect the basic
27 necessities of his everyday existence. Plaintiff's disability
28 substantially limits one or more of life's major activities and

1 therefore he is disabled as defined under 42 USC
2 12102(2)(A)(B)(C).

3 7. On or about February 20, 2004 plaintiff patronized the premises
4 of defendants to utilize goods and/or services offered by
5 defendants. When Plaintiff attempted to gain access to the goods
6 and/or services offered by defendants he encountered access
7 barriers because the premises failed to comply with federal ADA
8 Access Guidelines For Building and Facilities [hereinafter
9 "ADAAG"]; Department of Justice [DOJ] regulations at 28 CFR.
10 36.201; 36.304 and/or the State of California's Title 24 Building
11 Code Requirements.

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

15 1 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)

16 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Width
17 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)

18 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Length
19 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)

20 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Signage
21 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)

22 3 Warning – Access Aisle - (NO PARKING)
23 (CA Title 24 1129B.4.1 & 2)

24 3 Warning – Access Aisle - (12" High Minimum)
25 (CA Title 24 1129B.4.1 & 2)

26 1 Regular Access Aisle – Exist/Improper
27 (CA Title 24 1129B.4.1)

28 1 Regular Access Aisle - Width
(CA Title 24 1129B.4.1)

- 1 1 Regular Access Aisle - Length
2 (CA Title 24 1129B.4.1)
- 3 1 Van Accessible Aisle – Exist/Improper
4 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 5 1 Van Accessible Aisle - Width
6 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 7 1 Van Accessible Aisle - Length
8 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 9 1 Van Accessible Aisle - (Passenger Side)
10 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 11 1 Accessible Aisle – 2% Grade
12 (ADAAG 4.6.3 & CA Title 24 1129B.4.4)
- 13 5 Signage Installed - (Each Space)
14 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 15 1 Additional Signage - (Van Accessible)
16 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 17 1 Access Route - A Visible Route of Travel
18 (ADAAG 4.1.3(2), 4.3.2(2) & CA Title 24 1114B.1.2)
- 19 1 Shortest Route of Travel to Accessible Entrance
20 (ADAAG 4.6.2)
- 21 5 Designated Disabled Parking Space Signage – Proper Height
22 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 23 1 Disabled Parking Stall Positioned Incorrectly (No Travel Behind Other Vehicles)
24 (CA Title 24 1129.B.4.3)
- 25 1 Curb Ramp Location/Improper
26 (ADAAG 4.7.1)
- 27 1 Number of Slopes in Curb Ramp
28 (ADAAG 4.7.2 & CA Title 24 1127B.5.2)
- 1 Curb Ramp - Projects into Vehicular Traffic Lanes
(ADAAG 4.7.6)
- 4 Seating – Dining, Banquet & Bar Facilities – (Min Requirement 5%)

1 (ADAAG 5.1 & CA Title 24 1104B.5.4)

2 4 Seating – Dining, Banquet & Bar Facilities – (Clear Space 30" x 48" Min))
3 (ADAAG 4.2.4.1 & CA Title 24 1122B.3)

4 4 Seating – Dining, Banquet & Bar Facilities – (Knee Space 27"H, 30"W, 19"D)
5 (ADAAG 4.32.3 & CA Title 24 1122B.3)

6 4 Seating – Dining, Banquet & Bar Facilities – (Table Height 28"-34")
7 (ADAAG 4.32.4 & CA Title 24 1122B.4)

8 4 Seating – Dining, Banquet & Bar Facilities – (Access Aisles Min Width 36")
9 (ADAAG 5.3 & CA Title 24 1104B.5.4)

10 4 Seating – Dining, Banquet & Bar Facilities – (Equivalent Services & Décor @
11 Accessible Seating), (ADAAG 5.4 & CA Title 24 1104B.5.4)

12 4 Seating – Dining, Banquet & Bar Facilities – (Accessible Seating Integrated
13 w/General Seating)
(ADAAG 5.4 & CA Title 24 1104B.5.4)

14 4 Accessories/Fixtures – Proper Height (Shower Head)
15 (ADAAG 4.23.7 & CA Title 24 1115B.9.2)

16 4 Drain & Hot Water Pipes – Insulated or Covered
17 (ADAAG 4.24.6)

18 3 Bathing Facilities – Minimum Number 1%
19 (ADA 4.23.8 & CA Title 24 1115B.6)

20 3 Bathing Facilities – Seat in Tub Clear Floor Space 30" x 60" Parallel Approach
(ADA 4.20.2 & CA Title 24 1115B.6.1.1)

21 3 Bathing Facilities – Seat in Tub Clear Floor Space 48" x 60" Perpendicular
22 Approach
(ADA 4.20.2 & CA Title 24 1115B.6.1.1)

23 3 Bathing Facilities – Seat at Head of Tub 30" x75" Parallel Approach
24 (ADA 4.20.3 & CA Title 24 1115B.6.1.1)

25 3 Bathing Facilities – Seat in Tub 15" Minimum Width
26 (CA Title 24 1115B.6.1.2)

27 3 Bathing Facilities – Grab Bar Structural Strength 250lbf load
28 (ADA 4.26.3 & CA Title 24 1115B.6.1.2 & 1115B.8.3.1-4)

- 1 3 Bathing Facilities – Grab Bar – Control Side of Tub 24", starting at Edge of Tub
2 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 3 3 Bathing Facilities – Side of Tub has **Two** grab Bars 24" Long, 9 & 33" –36" above
4 Floor
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 5 3 Bathing Facilities – Side of Tub has **One** grab Bar 24" Long, 33" –36" above Floor
6 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 7 3 Bathing Facilities – Side of Tub has **One** grab Bar 24" Long, 9" above Tub
8 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

Grab Bars Location with Seat at Head of Tub

- 9 3 Bathing Facilities – Side of Tub has **Two** grab Bars 48" Long, 9" & 33" –36" above
10 Tub
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 11 3 Bathing Facilities – Side of Tub has **One** grab Bars 48" Long, 9" above Tub
12 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 13 3 Bathing Facilities – Side of Tub has **One** grab Bars 48" Long, 33" – 36" above Tub
14 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

Controls

- 15 4 Controls – Located on the Foot Wall Below Grab bar
16 (ADA 4.20.5 & CA Title 24 1115B.6.1.4)
- 17 3 Fully accessible rooms are provided in the number required.
18 (ADAAG 9.1.2 & CA Title 24 1111B.4.2)
- 19 3 Accessible unit(s), sleeping room(s) or suite(s) are on an accessible route
20 (ADAAG 9.2.2 & CA Title 24 1111B.2)
- 21 3 At least one bath tub or shower in each accessible sleeping room or suite is
22 accessible.
23 (ADAAG 9.2.2 (6)(e) & CA Title 24 1111B.4.6.6)
- 24 1 Ridged Pool Seat
25 (CA Title 24 1104B.4.3.4.1.2)
- 26 1 Pool Seat with Two Armrests
27 (CA Title 24 1104B.4.3.4.1.3)
- 28 1 Pool Seat Capable of Unassisted Operation

1 (CA Title 24 1104B.4.3.4.2)

2 1 Pool Seat Designed for 300 lbs Capacity
3 (CA Title 24 1104B.4.3.4.4)

4 4 Controls on Dispensers, Receptacles, or Other Types of Equipment
5 (ADAAG 9.2.2(7) & CA Title 24 1111B.4.4)

6 4 Operating Mechanisms – Tight Grasping, Pinching or Twisting of the Wrist
7 (ADAAG 4.27.4 & ca title 24 1117B.6.3)

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

13 10. Pursuant to federal [ADA], Title 28 CFR 36.201; 36.203;
14 36.304; 36.305 and state law [California Title 24], Defendants are
15 required to remove barriers to their existing facilities.

16 Defendants have been put on notice pursuant to the ADA and
17 California Civil Codes [51,52] prior to the statutory effect of
18 the ADA on January 26, 1992 that Defendants and each of them had a
19 duty to remove barriers to persons with disabilities such as
20 plaintiff. Defendants also knew or should have known that
21 individuals such as plaintiff with a disability are not required
22 to give notice to a governmental agency prior to filing suit
23 alleging Defendants' failure to remove architectural barriers.

24 11. Plaintiff believes and thereon allege that Defendants'
25 facilities, as described herein, have other access violations not
26 directly experienced by Plaintiff, which preclude or limit access
27 by others with disabilities, including, but not limited to, Space
28 Allowances, Reach Ranges, Accessible Routes, Protruding Objects,
Ground and Floor Surfaces, Parking and Passenger Loading Zones,

1 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
2 Lifts), Windows, Doors, Entrances, Drinking Fountains, and Water
3 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
4 Mirrors, Sinks, Storage, Handrails, Grab Bars, Telephones,
5 Controls and Operating Mechanisms, Alarms, Detectable Warnings and
6 Signage. Accordingly, Plaintiff alleges Defendants are required to
7 remove all architectural barriers, known or unknown. Also,
8 Plaintiff alleges Defendants are required to utilize the ADA
9 checklist for Readily Achievable Barrier Removal approved by the
10 United States Department of Justice and created by Adaptive
11 Environments.

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

15 IV

16 FIRST CAUSE OF ACTION

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

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

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

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

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

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

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

15 16. Based upon the facts alleged herein, Plaintiff was denied
16 full and equal access to Defendants' goods, services, facilities,
17 privileges, advantages, or accommodations within a public
18 accommodation owned leased, and/or operated by the named
19 Defendants. Defendants individually and collectively failed to
20 remove barriers as required by 42 U.S.C. 12182(a) and 28 CFR
21 36.304. Plaintiff is informed and believes, and thus alleges that
22 architectural barriers which are structural in nature exist at the
23 following physical elements of Defendants' facilities:
24 Space Allowance and Reach Ranges, Accessible Route, Protruding
25 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
26 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts
27 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains
28 and Water Coolers, Water Closets, Toilet Stalls, Urinals,

1 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
2 Controls and Operating Mechanisms, Alarms, Detectable Warnings,
3 Signage, and Telephones. Pursuant to 42 USC section
4 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires places of
5 public accommodation to remove architectural barriers that are
6 structural in nature within existing facilities. Failure to remove
7 such barriers and disparate treatment against a person who has a
8 known association with a person with a disability are forms of
9 prohibited discrimination. Accordingly, Plaintiff was subjected to
10 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42
11 USC 12182 (b)(2)(A)(iv) and 42 USC 12188.

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

13 17. Based on the facts alleged in this Complaint Defendants failed
14 and refused to provide a reasonable alternative by modifying its
15 practices, policies and procedures in that they failed to have a
16 scheme, plan, or design to assist Plaintiff and/or others
17 similarly situated in entering and utilizing Defendants' services,
18 as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was
19 subjected to discrimination in violation of 42 U.S.C. section
20 12182(b)(2)(A)(iv); 28 CFR 36.302 and 42 U.S.C. section 12188
21 because Plaintiff was denied equal access to Defendants' existing
22 facilities.

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

27 19. Pursuant to the provisions of 42 USC 12188 plaintiff seeks
28 injunctive relief and an order directing defendants to cease and

1 desist from discriminating against plaintiff and others similarly
2 situated and for an order that defendants comply with the
3 Americans With Disabilities Act forthwith.

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

7 **VI**

8 **SECOND CAUSE OF ACTION**

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

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

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

13 22. Plaintiff has been denied full and equal access to Defendants'
14 goods services, facilities, privileges, advantages, or
15 accommodations within a public accommodation owned, leased, and/or
16 operated by Defendants in violation of California Civil Code
17 Sections 54 and 54.1 and California Health and Safety Code Section
18 19955. The actions of Defendants also violate the provisions of
19 Title 24 of the State of California Building Codes with regard to
20 accessibility for persons with disabilities by failing to provide
21 access to Defendants facilities due to violations pertaining to
22 accessible routes, ground and floor surfaces, parking and
23 passenger loading zones, curb ramps, ramps, stairs, elevators,
24 platform lifts (wheelchair lifts), windows, doors, toilet stalls,
25 urinals, lavatories and mirrors, sinks, storage, handrails, grab
26 bars, controls and operating mechanisms
27 alarms, detectable warnings, signage and telephones.

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

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

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

13 **VII**

14 **THIRD CAUSE OF ACTION**

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

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

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

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

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

1 alleged, Defendants have also violated 42 U.S.C. section
2 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).
3
4 28. By reason of their acts and denial of Plaintiff's civil rights
5 Defendants also violated the provisions of Cal. Civ. Code section
6 52, which makes a person or entity in violation of Cal.Civ. Code
7 51 liable for the actual damages to a Plaintiff including treble
8 damages where appropriate.

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

19
20 30. Defendants and each of them have failed and refused to take
21 action to grant full and equal access to person with physical
22 disabilities. Defendants have carried out a course of conduct of
23 refusing to respond to, or correct complaints about unequal access
24 and have refused to comply with their legal obligations to make
25 the subject facility accessible pursuant the ADAAG and the
26 California Building Code [Title 24 of the California Code of
27 Regulations]. Such actions and continuing course of conduct by
28

1 Defendants, and each of them, evidence despicable conduct in
2 conscious disregard of the rights and/or safety of Plaintiff and
3 those similarly situated and thus justify an award of treble
4 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code
5 or alternatively an award of punitive damages in an appropriate
6 amount.
7

8 31. Plaintiff has suffered emotional and physical damage and
9 continues to suffer such damages all in an amount to be determined
10 at time of trial.
11

12 32. Under the provisions of Cal. Civ. Code section 55 Plaintiff
13 seeks an award of reasonable attorney's fees and costs as a result
14 of having to bring this action. Plaintiff requests the court to
15 award such fees in an appropriate amount.
16

17 **VIII**

18 **FOURTH CAUSE OF ACTION**

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

20 33. Plaintiff relleges the allegations of the Third Cause of
21 Action as though set forth fully herein.
22

23 34. Defendants and each of them owed a duty to Plaintiff to make
24 their facility accessible and to keep Plaintiff reasonably safe
25 from known dangers and risks of harm. This duty arises by virtue
26 of the legal duties proscribed by various federal and state
27 statutes including, but not limited to, ADA, ADAAG, California
28 Civil Code sections 51, 52, 54, 54.1 and Title 24 of the

1 California Code of Regulations. Defendants had a duty of due care
2 not to do or cause anything to happen that would subject Plaintiff
3 to undue stress, embarrassment, chagrin, and discouragement.
4

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

16
17 36. As a proximate result of the actions of Defendants Plaintiff
18 did suffer emotional and mental stress and pain and suffering all
19 in an amount to be determined at time of trial.

20 **IX**

21 **FIFTH CAUSE OF ACTION**

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

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

25 38. The actions of Defendants and each of them are despicable,
26 intentional and done with conscious disregard of the rights and
27 safety of Plaintiff and as such should be regarded as outrageous.
28

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

4 40. Plaintiff seeks an award of punitive damages for this claim as
5 the actions of Defendants are tantamount to outrageous conduct and
6 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
11 every allegation contained in paragraphs 1-40 of this complaint as
12 though set forth fully herein.

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

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

24 **DEMAND FOR JURY**

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

27 WHEREFORE PLAINTIFF PRAYS:

28 1. For general damages according to proof;

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

14 Respectfully submitted,

15 Dated: 3/26/04

Ray L. Sanders
Attorney for Plaintiff, Ismael Rivera

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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.)

(a) PLAINTIFFS

ISMAEL RIVERA:

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

San Diego

DEFENDANTS

FILED

HARBORVIEW INN, LLC and
CHANTU PATEL, et al.

(IN U.S. PLAINTIFF CASES ONLY)

San Diego

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

CLERK, U.S. DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA
ATTORNEYS (If Known)
DEPUTY

(c) Attorney's (Firm Name, Address, and Telephone Number) BY

Roy L. Landers (619) 296-7898
7840 Mission Center CT, Suite 101
San Diego, CA 92108

'04 CV 0692 L (WMC)

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	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	<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 Rega. <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 <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	CIVIL RIGHTS <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	PRISONER PETITIONS <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	LABOR <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	SOCIAL SECURITY <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)) 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):

DATE: 4/2/04
SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY
RECEIPT # 102468 AMOUNT 150- APPLYING IFF MS JUDGE _____ MAG. JUDGE _____