

USDC SCAN INDEX SHEET



GEP 7/13/04 9:09

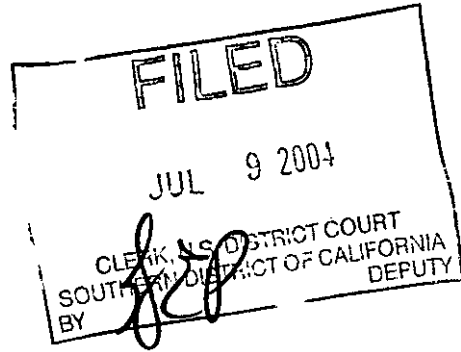
3:04-CV-01392 RIVERA V. ISAKOVICH

1

CMP.

92801

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



Attorney for Plaintiff, Ismael Rivera

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

04 CV 1392 L

(WMC)

ISMAEL RIVERA,

Case No.:

Plaintiff,

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

vs.

GEORGE ISAKOVICH, dba PACIFIC
INN; SALLY ISAKOVICH AND DOES 1-10,
INCLUSIVE

Defendants.

I

JURISDICTION AND VENUE

1. (a) Jurisdiction of this action is invoked on the basis of 28 USC 1331 and 1343, 42 USC 12101-12102, 12181-12183 and 12201, et. seq., which is applicable to causes of action where persons with disabilities have been denied their civil rights. 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.

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

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, George Isakavich, dba Pacific Inn was and at all times herein mentioned, was a duly
12 organized business, association, or corporation duly authorized to exist and operate within the State
13 of California and County of San Diego and the owner, lessee, or tenant of the premises located at
14 901 North Coast Highway Oceanside, California 92054.

15 3. Plaintiff is informed and believes and thereon alleges that defendants George Isakavich and Sally
16 Isakavich are the owners and/or landlords of the subject property upon which Defendants' business
17 is sited.

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

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

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

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 May 3, 2004 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.

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:

1 Site Entrance Signage (Does Not Exist)

(CA Title 24 1129B.5)

1 Site Entrance Signage (Not Filled Out - Reclaim at:)

(CA Title 24 1129B.5)

1 Site Entrance Signage (Not Filled Out – Telephone number:)

(CA Title 24 1129B.5)

1 Site Entrance Signage (Size not less than 17" x 22")

(CA Title 24 1129B.5)

1 Site Entrance Signage (Lettering not less than 1" in Height)

(CA Title 24 1129B.5)

1 Site Entrance Signage (Warning Information)

(CA Title 24 1129B.5)

- 1 1 Designated Disabled "VAN ACCESSIBLE" Parking - Space
2 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 3 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Width
4 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 5 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Length
6 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 7 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Signage
8 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 9 2 Designated Parking Stalls – Correct Number of Stalls
10 (ADAAG 4.1.2(5)(a) & CA Title 24 1129B.1)
- 11 1 Warning – Access Aisle - (NO PARKING)
12 (CA Title 24 1129B.4.1 & 2)
- 13 1 Warning – Access Aisle - (12" High Minimum)
14 (CA Title 24 1129B.4.1 & 2)
- 15 1 Regular Access Aisle – Exist/Improper
16 (CA Title 24 1129B.4.1)
- 17 1 Regular Access Aisle - Width
18 (CA Title 24 1129B.4.1)
- 19 1 Regular Access Aisle - Length
20 (CA Title 24 1129B.4.1)
- 21 1 Van Accessible Aisle – Exist/Improper
22 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 23 1 Van Accessible Aisle - Width
24 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 25 1 Van Accessible Aisle - Length
26 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 27 1 Van Accessible Aisle - (Passenger Side)
28 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)

- 1 2 Signage Installed - (Each Space)
2 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 3 1 Additional Signage - (Van Accessible)
4 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 5 2 Access Route - A Visible Route of Travel
6 (ADAAG 4.1.3(2), 4.3.2(2) & CA Title 24 1114B.1.2)
- 7 2 Shortest Route of Travel to Accessible Entrance
8 (ADAAG 4.6.2)
- 9 2 Designated Disabled Parking Space Signage – Proper Height
10 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 11 2 Parking Space Emblem – Proper Size
12 (ADAAG 4.6.4 & CA Title 24 1129B.5.1 &.2)
- 13 2 Disabled Parking Stall Positioned Correctly (No Travel Behind Other Vehicles)
14 (CA Title 24 1129.B.4.3)
- 15 4 Stairway - Warning
16 (CA Title 24 1133B.4.4 & 1127B.4)
- 17 1 Entrance – Signage at Every Entrance/Exit, Accessibility
18 (ADAAG 4.1.3(16)(b) & CA Title 24 1127B.3)
- 19 14 Faucet Fixtures - (One Hand Operable)
20 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 21 14 Faucets Fixtures - (Max 5 lb Force to Activate)
22 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 23 14 Faucets Fixtures - (Lever-Type)
24 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 25 14 Grab Bar – Parallel Mounting Height
26 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 27 14 Grab Bar – Side Proper Extension Beyond Water Closet (24 inches)
28 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)

- 1 14 Grab Bar - (Side Min 42 inch Long)
2 (ADAAG 4.14.6 & CA Title 24 1115B.8.1)
- 3 14 Grab Bar – (Side Attached Max 12 inches from Rear Wall)
4 (ADAAG 4.17.6)
- 5 14 Grab Bar – (Side Forward Ends Located/Extends a Min 54 inches from Back Wall)
6 (ADAAG 4.17.6)
- 7 14 Grab Bar – (Rear Grab Bar Length 36" Min)
8 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 9 14 Grab Bar – (Rear Grab Bar Attached to Corner Wall Length 6" Min)
10 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 11 7 Drain & Hot Water Pipes – Insulated or Covered
12 (ADAAG 4.24.6)
- 13 1 Bathing Facilities – Minimum Number 1%
14 (ADA 4.23.8 & CA Title 24 1115B.6)
- 15 4 Bathing Facilities – Seat in Tub Clear Floor Space 30" x 60" Parallel Approach
16 (ADA 4.20.2 & CA Title 24 1115B.6.1.1)
- 17 4 Bathing Facilities – Seat in Tub Clear Floor Space 48" x 60" Perpendicular
18 Approach (ADA 4.20.2 & CA Title 24 1115B.6.1.1)
- 19 4 Bathing Facilities – Seat at Head of Tub 30" x75" Parallel Approach
20 (ADA 4.20.3 & CA Title 24 1115B.6.1.1)
- 21 4 Bathing Facilities – Seat in Tub 15" Minimum Width
22 (CA Title 24 1115B.6.1.2)
- 23 4 Bathing Facilities – Grab Bar Structural Strength 250lbf load
24 (ADA 4.26.3 & CA Title 24 1115B.6.1.2 & 1115B.8.3.1-4)
- 25 8 Bathing Facilities – Grab Bar – Control Side of Tub 24", starting at Edge of Tub
26 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 27 8 Bathing Facilities – Side of Tub has Two grab Bars 24" Long, 9 & 33" –36" above
28 Floor (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

1 4 Bathing Facilities – Side of Tub has **One** grab Bar 24" Long, 33" –36" above Floor
2 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

3 4 Bathing Facilities – Side of Tub has **One** grab Bar 24" Long, 9" above Tub
4 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

5 **Grab Bars Location with Seat at Head of Tub**

6 8 Bathing Facilities – Side of Tub has **Two** grab Bars 48" Long, 9" & 33" –36" above
7 Tub (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

8 4 Bathing Facilities – Side of Tub has **One** grab Bars 48" Long, 9" above Tub
9 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

10 4 Bathing Facilities – Side of Tub has **One** grab Bars 48" Long, 33" – 36" above Tub
11 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

12 **Controls**

13 7 Controls - Operable with One Hand
14 (ADA 4.27.4 & CA Title 24 1115B.6.1.4)

15 7 Controls – Operable with 5lb Force Max
16 (ADA 4.27.4 & CA Title 24 1115B.6.1.4)

17 7 Controls – Located on the Foot Wall Below Grab bar
18 (ADA 4.20.5 & CA Title 24 1115B.6.1.4)

19 **Shower Spray Unit**

20 1 Shower Spray Unit – Free Moving
21 (ADA 4.20.6 & CA Title 24 1115B.6.1.5)

22 1 Shower Spray Unit – 60" Hose
23 (ADA 4.20.6 & CA Title 24 1115B.6.1.5)

24 //

25 1 Shower Spray Unit – 27" reach From Seat
26 (ADA 4.20.6 & CA Title 24 1115B.6.1.5)

27 1 Shower Spray Unit – 48" ,±" Max Height
28 (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 3" – 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 Controls – Centerline of Controls 18"-24" from Rear Seat

(CA Title 24 1115B.6.2.4.1)

1 Controls – Located on Wall Adjacent to Seat

(CA Title 24 1115B.6.2.4.1)

1 Shower- Minimum Clear Floor Space

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

1 Shower-Minimum Shower Size

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

6 Fully accessible rooms are provided in the number required.

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

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

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

4 Accessible unit(s), sleeping room(s) or suite(s) are on an accessible route

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

1 4 At least one bathtub or shower in each accessible sleeping room or suite is
2 accessible.(ADAAG 9.2.2 (6)(e) & CA Title 24 1111B.4.6.6)

3 1 Ridged Pool Seat

4 (CA Title 24 1104B.4.3.4.1.2)

5 1 Pool Seat with Two Armrests

6 (CA Title 24 1104B.4.3.4.1.3)

7 1 Pool Seat Capable of Unassisted Operation

8 (CA Title 24 1104B.4.3.4.2)

9 1 Pool Seat Designed for 300 lbs Capacity

10 (CA Title 24 1104B.4.3.4.4)

11 1 Shower Seat

12 (ADAAG 4.21.3)

13 7 Controls on Dispensers, Receptacles, or Other Types of Equipment

14 (ADAAG 9.2.2(7) & CA Title 24 1111B.4.4)

15 7 Operating Mechanisms – Tight Grasping, Pinching or Twisting of the Wrist

16 (ADAAG 4.27.4 & ca title 24 1117B.6.3)

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

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

22 Defendants have been put on notice pursuant to the ADA and California Civil Codes [51,52] prior
23 to the statutory effect of the ADA on January 26, 1992 that Defendants and each of them had a duty
24 to remove barriers to persons with disabilities such as plaintiff. Defendants also knew or should
25 have known that individuals such as Plaintiff with a disability are not required to give notice to a
26 governmental agency prior to filing suit alleging Defendants' failure to remove architectural
27 barriers.
28

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

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

14 IV

15 FIRST CAUSE OF ACTION

16 (Violation of Civil Rights-American With Disabilities Act)

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

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

19 14. Based on the facts asserted above Plaintiff has been denied full and equal access to Defendants'
20 goods, services, facilities, privileges, advantages, or accommodations. Defendant business is a
21 public accommodation owned, leased and/or operated by Defendants and each of them. Defendants'
22 existing facilities and/or services failed to provide full and equal access to Defendants' facility as
23 required by 42 U.S.C. Section 12182(a). Thus, Plaintiff was subjected to discrimination in violation
24 of 42 U.S.C. 12182(b)(2)(A)(ii)(iv) and 42 U.S.C. section 12188 because Plaintiff was denied equal
25 access to Defendants' existing facilities.

26 15. Plaintiff has a physical impairment as alleged herein because his condition affects one or more
27 of the following body systems: neurological, musculoskeletal, special sense organs, and/or
28 cardiovascular. Further, his physical impairments substantially limits one or more of the following

1 major life activities: [walking]. In addition, Plaintiff cannot perform one or more of the said major
2 life activities in the manner speed, and duration when compared to the average person. Moreover,
3 Plaintiff has a history of or has been classified as having a physical impairment as required by 42
4 U.S.C. section 12102(2)(A).

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

6 16. Based upon the facts alleged herein, Plaintiff was denied full and equal access to Defendants'
7 goods, services, facilities, privileges, advantages, or accommodations within a public
8 accommodation owned leased, and/or operated by the named Defendants. Defendants individually
9 and collectively failed to remove barriers as required by 42 U.S.C. 12182(a) and 28 CFR 36.304.

10 Plaintiff is informed and believes, and thus alleges that architectural barriers which are structural in
11 nature exist at the following physical elements of Defendants' facilities:

12 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor
13 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform
14 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
15 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars,
16 and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

17 Pursuant to 42 USC section 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires places of public
18 accommodation to remove architectural barriers that are structural in nature within existing
19 facilities. Failure to remove such barriers and disparate treatment against a person who has a known
20 association with a person with a disability are forms of prohibited discrimination. Accordingly,
21 Plaintiff was subjected to discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC
22 12182 (b)(2)(A)(iv) and 42 USC 12188.

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

24 17. Based on the facts alleged in this Complaint Defendants failed and refused to provide a
25 reasonable alternative by modifying its practices, policies and procedures in that they failed to have
26 a scheme, plan, or design to assist Plaintiff and/or others similarly situated in entering and utilizing
27 Defendants' services, as required by 42 U.S.C. Section 12188(a). Thus, Plaintiff was subjected to
28

1 discrimination in violation of 42 U.S.C. section 12182(b)(2)(A)(iv); 28 CFR 36.302 and 42 U.S.C.
2 section 12188 because Plaintiff was denied equal access to Defendants' existing facilities.

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

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

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

12 **VI**

13 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

7 **VII**

8 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

26 29. Defendants and each of them, at all times prior to and including May 2004, respectively and
27 continuing to the present time, knew that persons with physical disabilities were denied their rights
28 of equal access to all portions of this public facility. Despite such knowledge, Defendants, and each

1 of them, failed and refused to take steps to comply with the applicable access statutes and despite
2 knowledge of the resulting problems and denial of civil rights suffered by Plaintiff and other
3 similarly situated persons with disabilities.

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

14
15
16 31. Plaintiff has suffered emotional and physical damage and continues to suffer such damages all
17 in an amount to be determined at time of trial.

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

21
22 **VIII**

23 **FOURTH CAUSE OF ACTION**

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

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

26
27 34. Defendants and each of them owed a duty to Plaintiff to make their facility accessible and to
28 keep Plaintiff reasonably safe from known dangers and risks of harm. This duty arises by virtue of

1 the legal duties proscribed by various federal and state statutes including, but not limited to, ADA,
2 ADAAG, California Civil Code sections 51, 52, 54, 54.1 and Title 24 of the California Code of
3 Regulations. Defendants had a duty of due care not to do or cause anything to happen that would
4 subject Plaintiff to undue stress, embarrassment, chagrin, and discouragement.
5

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

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

17 **IX**

18 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 //

28 //

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

X

SIXTH CAUSE OF ACTION

(DECLARATORY RELIEF)

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

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

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

DEMAND FOR JURY

44. 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 for declaratory relief;
5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 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;

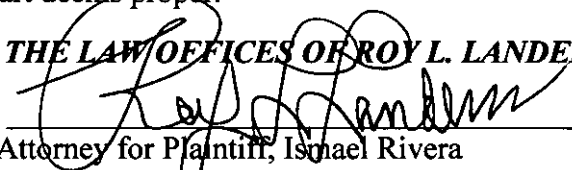
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. For such other and further relief as the court deems proper.

Respectfully submitted,

Dated: 7/7/04

THE LAW OFFICES OF ROY L. LANDERS

By: 
Attorney for Plaintiff, Ismael Rivera

