

USDC SCAN INDEX SHEET



NMC 3/11/04 7:12  
3:04-CV-00504 RIVERA V. J S FOODS  
\*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 MAR 10 AM 10:40

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 ISMAEL RIVERA

12 Plaintiff,

13 vs.

14 J S FOODS, dba BURGER KING,  
15 SMIEDT MANAGEMENT, INC.,  
16 JOSEPHSON MANAGEMENT, INC., VONS  
17 COMPANIES, INC. AND DOES 1-10  
18 Inclusive,

19 Defendants.

Case No.:

'04 CV 0504

J(BLM)

) 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

20 I

21 JURISDICTION AND VENUE

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

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 J S Foods, dba Burger King, Smiedt Management, Inc.  
25 and Josephson Management, Inc. were and at all times herein  
26 mentioned were duly organized businesses, associations, or  
27 corporations duly authorized to exist and operate within the State  
28 of California and County of San Diego and the owners, lessees, or

1 tenants of the premises located at 242 North El Camino Real  
2 Encinitas, California 92024.

3 3. Plaintiff is informed and believes and thereon alleges that  
4 defendant Vons Companies, Inc. is 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)(b) 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 January 28, 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 (a) Site lacks NO PARKING signage as required by Title 24  
16 1129B.4.1&2.

17 (b) Warning signage does not meet the requirements of Title 24  
18 1129B.4.1&2

19 (c) Lack of access route of travel as required by ADAAG  
20 4.1.3(2); 4.3.2(2) and Title 24 1114B.1.2

21 (d) Dining seating does not comply with ADAAG 5.1 and Title 24  
22 1104B.5.4; ADAAG 4.2.4.1 and Title 24 1122B.3; 4.32.3;  
23 4.32.4; 5.3 and title 24 1104B.5.4;

24 (e) Bathroom international symbol does not comply with ADAAG  
25 4.30.6; 4.30.4 and Title 24 1117B.5.9 and 1117B.5.5.2

26 (f) Facility lacks raised Braille characters as required by  
27 ADAAG 4.30.4 and Title 24 1117B.5.6.1&2.  
28

- 1 (g) Wall mount signage (latch side) is lacking - ADAAG  
2 4.1.2(7)(d) and Title 24 1117B5.1.1 and 5.6.3.
- 3 (h) Wall mount signage does not comply with 60-inch requirement  
4 of ADAAG 4.30.6 and Title 24 1117B.5.9.
- 5 (i) Bathroom grab bars do not comply with ADAAG 4.14.6; 4.17.6  
6 and Title 24 1115B.8.1.
- 7 (j) Water closet mounting/location does not meet the  
8 requirements of ADAAG 4.17.3 and Title 24 1115B.7.1.2;  
9 ADAAG 4.23.4 and Title 24 1115B. 7.1.4
- 10 (k) Width between walls does not comply with ADAAG 4.23.4 and  
11 title 24 1115B.7.1.4
- 12 (l) Hardware-door knobs are non-compliant with ADAAG 4.13.9 and  
13 Title 24 1133B.2.5.1
- 14 (m) Door kick plate does not comply with Title 24 1133B.2.6

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

20 10. Pursuant to federal [ADA], Title 28 CFR 36.201; 36.203;  
21 36.304; 36.305 and state law [California Title 24], Defendants are  
22 required to remove barriers to their existing facilities.  
23 Defendants have been put on notice pursuant to the ADA and  
24 California Civil Codes [51,52] prior to the statutory effect of  
25 the ADA on January 26, 1992 that Defendants and each of them had a  
26 duty to remove barriers to persons with disabilities such as  
27 plaintiff. Defendants also knew or should have known that  
28 individuals such as plaintiff with a disability are not required

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

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

#### 23 IV

#### 24 FIRST CAUSE OF ACTION

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

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

28 //

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

2 14. Based on the facts asserted above Plaintiff has been denied  
3 full and equal access to Defendants' goods, services, facilities,  
4 privileges, advantages, or accommodations. Defendant business is a  
5 public accommodation owned, leased and/or operated by Defendants  
6 and each of them. Defendants' existing facilities and/or services  
7 failed to provide full and equal access to Defendants' facility as  
8 required by 42 U.S.C. section 12182(a). Thus, Plaintiff was  
9 subjected to discrimination in violation of 42 U.S.C.  
10 12182(b) (2) (A) (ii) (iv) and 42 U.S.C. section 12188 because  
11 Plaintiff was denied equal access to Defendants' existing  
12 facilities.

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

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

24 16. Based upon the facts alleged herein, Plaintiff was denied  
25 full and equal access to Defendants' goods, services, facilities,  
26 privileges, advantages, or accommodations within a public  
27 accommodation owned leased, and/or operated by the named  
28 Defendants. Defendants individually and collectively failed to



1 remove barriers as required by 42 U.S.C. 12182(a) and 28 CFR  
2 36.304. Plaintiff is informed and believes, and thus alleges that  
3 architectural barriers which are structural in nature exist at the  
4 following physical elements of Defendants' facilities:

5 Space Allowance and Reach Ranges, Accessible Route, Protruding  
6 Objects, Ground and Floor Surfaces, Parking and Passenger Loading  
7 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts  
8 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains  
9 and Water Coolers, Water Closets, Toilet Stalls, Urinals,  
10 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and  
11 Controls and Operating Mechanisms, Alarms, Detectable Warnings,  
12 Signage, and Telephones. Pursuant to 42 USC section  
13 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires places of  
14 public accommodation to remove architectural barriers that are  
15 structural in nature within existing facilities. Failure to remove  
16 such barriers and disparate treatment against a person who has a  
17 known association with a person with a disability are forms of  
18 prohibited discrimination. Accordingly, Plaintiff was subjected to  
19 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42  
20 USC 12182 (b)(2)(A)(iv) and 42 USC 12188.

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

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

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

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

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

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

16 **VI**

17 **SECOND CAUSE OF ACTION**

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

19 21. Plaintiff realleges the allegations of the First Cause of  
20 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'  
23 goods services, facilities, privileges, advantages, or  
24 accommodations within a public accommodation owned, leased, and/or  
25 operated by Defendants in violation of California Civil Code  
26 Sections 54 and 54.1 and California Health and Safety Code Section  
27 19955. The actions of Defendants also violate the provisions of  
28 Title 24 of the State of California Building Codes with regard to

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

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

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

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

21 **VII**

22 **THIRD CAUSE OF ACTION**

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

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

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

28 "All persons within the jurisdiction of this state are  
free and equal, and no matter what their sex, race, color,

1 religion, ancestry, national origin, disability, or medical  
2 condition is entitled to the full and equal accommodations,  
3 advantages, facilities, privileges, or services in all  
business establishments of every kind whatsoever."

4 27. Defendants have violated the provisions of Civ. Code 51 (b) by  
5 failing and refusing to provide free and equal access to Plaintiff  
6 to their facility on the same basis as other persons not disabled.  
7 By their failure to provide equal access to Plaintiff as herein  
8 alleged, Defendants have also violated 42 U.S.C. section  
9 12182(b) (2) (A) (iv) as provided in Cal. Civ. Codes section 51(f).  
10

11 28. By reason of their acts and denial of Plaintiff's civil rights  
12 Defendants also violated the provisions of Cal. Civ. Code section  
13 52, which makes a person or entity in violation of Cal.Civ. Code  
14 51 liable for the actual damages to a Plaintiff including treble  
15 damages where appropriate.  
16

17 29. Defendants and each of them, at all times prior to and  
18 including January 2004, respectively and continuing to the present  
19 time, knew that persons with physical disabilities were denied  
20 their rights of equal access to all portions of this public  
21 facility. Despite such knowledge, Defendants, and each of them,  
22 failed and refused to take steps to comply with the applicable  
23 access statutes and despite knowledge of the resulting problems  
24 and denial of civil rights suffered by Plaintiff and other  
25 similarly situated persons with disabilities.  
26  
27  
28

1 30. Defendants and each of them have failed and refused to take  
2 action to grant full and equal access to person with physical  
3 disabilities. Defendants have carried out a course of conduct of  
4 refusing to respond to, or correct complaints about unequal access  
5 and have refused to comply with their legal obligations to make  
6 the subject facility accessible pursuant the ADAAG and the  
7 California Building Code [Title 24 of the California Code of  
8 Regulations]. Such actions and continuing course of conduct by  
9 Defendants, and each of them, evidence despicable conduct in  
10 conscious disregard of the rights and/or safety of Plaintiff and  
11 those similarly situated and thus justify an award of treble  
12 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code  
13 or alternatively an award of punitive damages in an appropriate  
14 amount.  
15  
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18 31. Plaintiff has suffered emotional and physical damage and  
19 continues to suffer such damages all in an amount to be determined  
20 at time of trial.

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

FOURTH CAUSE OF ACTION

**(Negligent Infliction of Emotional Distress)**

33. Plaintiff relleges 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.

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

4  
5 **IX**

6 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

19 **X**

20 **SIXTH CAUSE OF ACTION**

21 **(DECLARATORY RELIEF)**

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

25 42. An actual controversy now exists in that plaintiff is informed  
26 and believes and thereon alleges that defendants' premises are in  
27 violation of the disabled access laws of the State of California  
28 including, but not limited to, Civil Code Sections 51, et seq.,  
Section 52, et seq., Title 24 of the California Code of

1 Regulations and Title III of the Americans with Disabilities Act  
2 and the Americans with Disabilities Access Guidelines (ADAAG).

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

7 DEMAND FOR JURY

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

10 WHEREFORE PLAINTIFF PRAYS:

11 1. For general damages according to proof;

12 2. For special damages according to proof;

13 3. For damages pursuant to Cal. Civil Code section 52, in the  
14 amount of \$4,000 for each and every offense of California Civil  
15 Code section 51, Title 24 of the California Building Code and the  
16 Americans with Disabilities Act.

17 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and  
18 California Business and Professions Code section 17200

19 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42  
20 U.S.C. 12205 and Cal. Civ. Code section 55;

21 6. For treble damages pursuant to Cal. Civ. Code 52 (a);

22 7. For punitive damages according to proof;

23 8. For a Jury Trial;

24 9. For costs of suit incurred herein and;

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

26 Respectfully submitted,

27 Dated: 2/26/04

Ray L. Anderson  
Attorney for Plaintiff, Ismael Rivera



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

8 Attorneys for Plaintiff, Ismael Rivera

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 ISMAEL RIVERA,

12 Plaintiff,

13 vs.

14 JS FOODS, dba BURGER  
15 KING, SMIEDT MANAGEMENT, INC.,  
16 JOSEPHSON MANAGEMENT, INC.,  
17 VONS COMPANIES, INC. AND DOES  
18 1-10, INCLUSIVE.,  
19 Defendant(s)

) Case No.:

)  
) PLAINTIFF'S EARLY NEUTRAL  
) EVALUATION STATEMENT

) DATE:

) TIME:

) DEPT:

) HON:

20 COMES NOW PLAINTIFF AND SUBMITS THE FOLLOWING regarding the  
21 nature of the claim herein, the specific violations defendant(s)  
22 are alleged to have at the subject facility and the damages:

23 **ACCESS BARRIERS ENCOUNTERED BY PLAINTIFF AT THE FACILITY:**

- 24 (a) Site lacks NO PARKING signage as required by Title 24  
25 1129B.4.1&2.
- 26 (b) Warning signage does not meet the requirements of Title  
27 24 1129B.4.1&2
- 28 (c) Lack of access route of travel as required by ADAAG  
4.1.3(2); 4.3.2(2) and Title 24 1114B.1.2

- 1 (d) Dining seating does not comply with ADAAG 5.1 and Title  
2 24 1104B.5.4; ADAAG 4.2.4.1 and Title 24 1122B.3; 4.32.3;  
3 4.32.4; 5.3 and title 24 1104B.5.4;
- 4 (e) Bathroom international symbol does not comply with ADAAG  
5 4.30.6; 4.30.4 and Title 24 1117B.5.9 and 1117B.5.5.2
- 6 (f) Facility lacks raised Braille characters as required by  
7 ADAAG 4.30.4 and Title 24 1117B.5.6.1&2.
- 8 (g) Wall mount signage (latch side) is lacking - ADAAG  
9 4.1.2(7) (d) and Title 24 1117B5.1.1 and 5.6.3.
- 10 (h) Wall mount signage does not comply with 60-inch  
11 requirement of ADAAG 4.30.6 and Title 24 1117B.5.9.
- 12 (i) Bathroom grab bars do not comply with ADAAG 4.14.6;  
13 4.17.6 and Title 24 1115B.8.1.
- 14 (j) Water closet mounting/location does not meet the  
15 requirements of ADAAG 4.17.3 and Title 24 1115B.7.1.2;  
16 ADAAG 4.23.4 and Title 24 1115B. 7.1.4
- 17 (k) Width between walls does not comply with ADAAG 4.23.4 and  
18 title 24 1115B.7.1.4
- 19 (l) Hardware-door knobs are non-compliant with ADAAG 4.13.9  
20 and Title 24 1133B.2.5.1
- 21 (m) Door kick plate does not comply with Title 24 1133B.2.6

22 **PLAINTIFF' S ALLEGED DAMAGES:**

23 Violation of civil rights in denying equal access to public  
24 accommodation and attendant emotional and mental stress  
25 resulting therefrom.

26 //

27 //

28 //

1 DEMAND FOR SETTLEMENT:  
2 Statutory Entitlement per California Civil Code \$4,000.00  
3 Attorneys fees and Costs \$7,200.00  
4  
5 Total Demand for Settlement \$11,200.00  
6 Dated: \_\_\_\_\_  
7 Attorney for Plaintiff

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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

### DEFENDANTS

J S FOODS, et al. **FILED**

(b) County of Residence of First Listed Plaintiff

San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed

DL SAN PD 9910: 40

(IN U.S. PLAINTIFF CASES ONLY)

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

(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) BY:

DEPUTY

**'04 CV 0504 J(BLM)**

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth-in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regt. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<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 <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

### V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

### VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

42 USC 12101-12102, 12181-12183 and 12201, et seq.  
Discrimination on basis of disability (Public Accommodations)

### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

### VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2-27-04

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 101804

AMOUNT 156.00

APPLYING IFP

JUDGE

MAG. JUDGE