

USDC SCAN INDEX SHEET



NMC 4/14/04 13:55
3:04-CV-00744 RIVERA V. KIM
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CMP.

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FILED

04 APR 12 AM 8:48

CLERK, 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 CHANG KYH KIM, dba, MOTEL 9; YOUNG
15 KI KIM, dba, MOTEL 9 and DOES 1-10
16 Inclusive,

17 Defendants.

Case No.: '04 CV - 744 - JM (JFS)

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

18 I

19 JURISDICTION AND VENUE

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

26 (b) Supplemental Jurisdiction. The Judicial District of the United States District Court of the
27 Southern District of California has supplemental jurisdiction over the state claims alleged in this
28 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

CR

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

9 **II**

10 **PARTIES**

11 2. Defendant, Chang Kyh Kim and Yound Ki Kim, dba, Motel 9, was and at all times herein
12 mentioned, were a duly organized business, association, or corporation duly authorized to exist and
13 operate within the State of California and County of San Diego and the owner, lessee, or tenant of
14 the premises located at 822 North Coast Hwy., Oceanside, California 92054.

15 3. Plaintiff is informed and believes and thereon alleges that defendants, Chang Kyh Kim and
16 Young Ki Kim, are the owners and/or landlords of the subject property upon which Defendants'
17 business 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.

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III

GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

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

7. On or about February 17, 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:

- a) Site Entrance Signage is lacking as required by CA Title 24 1129B.5;
- b) Designated Disabled "VAN ACCESSIBLE" Parking is lacking as required by ADAAG 4.1.2(5)(b) and CA Title 24 1129.B.4.2;
- c) Site lacks designated Parking Stalls as required by ADAAG 4.1.2(5)(a) and CA Title 24 1129B.1;
- d) Site lacks warning signage and access aisle as required by CA Title 24 1129B.4.1 and 2;
- e) Site lacks Van Accessible Aisle as required by ADAAG 4.6.3 and CA Title 24 1129B.4.2;
- f) Site lack Van Accessible Aisle as required by CA Title 24 1129B.4.4;
- g) Site lacks additional Van Accessible signage as required by ADAAG 4.6.4 and CA Title 24 1129B.5, 1129B.5.1 and.2;
- h) Site lacks designated Access Route(s) as required by ADAAG 4.1.3(2), 4.3.2(2) and CA Title 24 1114B.1.2;
- i) Site lacks Shortest Route of Travel to Accessible Entrance as required by ADAAG 4.6.2;

- 1 j) Site's Disabled Parking Stall is positioned incorrectly in violation of CA Title 24
2 1129.B.4.3;
- 3 k) Threshold does not meet the requirement of ADAAG 4.1.3.8 and CA Title 1133B.2.4.1;
- 4 l) Site's handrails do not comply with ADAAG 4.9.4, 4.26.3, 4.9.4(7) and CA Title 24
5 1003.3.36a;
- 6 m) Site's handrails do not comply with ADAAG 4.9.4(2) and CA Title 24 1133B.4.2.2;
- 7 n) Site's Stairway Signage is lacking as required by CA Title 24 1133B.4.4 and 1127B.4;
- 8 o) Site's Stairway is lacking as required by ADAAG 4.9.3 and CA Title 24 1133B.4.5.2;
- 9 p) Site Entrance Signage is lacking at every exit as required by ADAAG 4.1.3(16)(b) and CA
10 Title 24 1127B.3;
- 11 q) Wheelchair occupant lacks access to each type of functional activity on the premises as
12 required by ADAAG 5.1 and CA Title 24 1104B.5.3;
- 13 r) Facility's access area is lacking as required by CA Title 24 1105B.3.2;
- 14 s) Facility's bathroom hardware is lacking as required by ADAAG 4.27.4 and CA Title 24
15 1508.1 and .2;
- 16 t) Facility's entry door is lacking a required by ADAAG 4.13.5 and CA Title 24 1133B.2.2
17 and 1003.3.1(a);
- 18 u) Bathing facility grab bars do not meet the requirements of ADAAG 4.17.6; ADAAG 4.14.6
19 and CA Title 24 1115B.8.1;
- 20 v) Water Closet Mounting/Location does not comply with ADAAG 4.17.3 and CA Title 24
21 115B.7.1.2;
- 22 w) Facility's hardware does not comply with ADAAG 4.13.9 and CA Title 24 1133B.2.5.1;
- 23 x) Bathing Facilities do not meet the requirements of ADA 4.23.8; ADA 4.20.2; ADA 4.20.3
24 CA Title 24 1115B.6; and CA Title 24 1115B.6.1.1;
- 25 y) Bathing Facilities do not meet the requirements of CA Title 24 1115B.6.1.2)
- 26 z) Bathing Facilities Grab Bar Structural Strength do the meet the requirements of ADA 4.26.3
27 and CA Title 24 1115B.8.3.1-4;
- 28

- 1 aa) Bathing Facilities Grab Bars do not meet the requirement of ADA 4.20.4 and CA Title 24
2 1115B.6.1.3;
- 3 bb) Facility controls are not in compliance with ADA 4.27.4 and CA Title 24, 1115B.6.1.4 and
4 CA Title 24 1115B.6.2.4.1;
- 5 cc) Facility controls are not in compliance with ADA 4.20.5;
- 6 dd) Shower Spray Unit does not comply with ADA 4.20.6 and CA Title 24 1115B.6.1.5;
- 7 ee) Facility showers are lacking as required by ADAAG 4.21.7 and CA Title 24 1115B.6.2.2;
- 8 ff) Shower Grab Bars are lacking as required by CA Title 24 1115B.8.2 - .8.4;
- 9 gg) Facility Shower is not in compliance with ADAAG 4.21.2, ADAAG 4.21.3 and CA Title 24
10 1115B.6.2.1;
- 11 hh) The facility lacks fully accessible rooms as required by ADAAG 9.1.2 and CA Title 24
12 1111B.4.2;
- 13 ii) Designated accessible rooms are not on an accessible route as required by ADAAG 9.2.2
14 and CA Title 24 1111B.2;
- 15 jj) Facility does not have at least one bath tub or shower in each accessible sleeping room or
16 suite as required by ADAAG 9.2.2 (6)(e) and CA Title 24 1111B.4.6.6;
- 17 kk) Shelving Height is not in compliance with ADAAG 4.25 and CA Title 24 1118B.4.1;
- 18 ll) Facility's hardware is not in compliance with ADAAG 9.2.2(7) and CA Title 24 1111B.4.4;
- 19 mm) Facility's hardware is not in compliance with ADAAG 4.27.4 and ca title 24
20 1117B.6.3;
- 21 nn) Wheelchair occupant lacks access to each type of functional activity on the premises as
22 required by ADAAG 5.1 and CA Title 24 1104B.5.4;
- 23 oo) Wheelchair occupant lacks access to each type of functional activity on the premises as
24 required by ADAAG 4.2.4.1 and CA Title 24 1122B.3;
- 25 pp) Wheelchair occupant lacks access to each type of functional activity on the premises as
26 required by ADAAG 4.32.3 and CA Title 24 1122B.3;
- 27 qq) Wheelchair occupant lacks access to each type of functional activity on the premises as
28 required by ADAAG 4.32.4 and CA Title 24 1122B.4;

1 rr) Wheelchair occupant lacks access to each type of functional activity on the premises as
2 required by ADAAG 5.3 and CA Title 24 1104B.5.4;

3 ss) Wheelchair occupant lacks access to each type of functional activity on the premises as
4 required by ADAAG 5.4.

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

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

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

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

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

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IV

FIRST CAUSE OF ACTION

(Violation of Civil Rights-American With Disabilities Act)

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

Claim 1: Denial of Full and Equal Access

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

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

Claim 2: Failure To Remove Architectural Barriers

16. Based upon the facts alleged herein, Plaintiff was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned leased, and/or operated by the named Defendants. Defendants individually and collectively failed to remove barriers as required by 42 U.S.C. 12182(a) and 28 CFR 36.304. Plaintiff is informed and believes, and thus alleges that architectural barriers which are structural in nature exist at the following physical elements of Defendants' facilities:
Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform

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

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

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

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

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

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

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VI

SECOND CAUSE OF ACTION

(Violation Of Civil Rights Under California Accessibility Laws)

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

(a) Denial Of Full And Equal Access

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

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

(b) Failure To Modify Practices, Policies And Procedures

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

VII

THIRD CAUSE OF ACTION

(Violation of The Unruh Civil Rights Act)

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

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

1 "All persons within the jurisdiction of this state are
2 free and equal, and no matter what their sex, race, color,
3 religion, ancestry, national origin, disability, or medical
4 condition is entitled to the full and equal accommodations,
5 advantages, facilities, privileges, or services in all
6 business establishments of every kind whatsoever."
7

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

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

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

22 30. Defendants and each of them have failed and refused to take action to grant full and equal
23 access to person with physical disabilities. Defendants have carried out a course of conduct of
24 refusing to respond to, or correct complaints about unequal access and have refused to comply with
25 their legal obligations to make the subject facility accessible pursuant the ADAAG and the
26 California Building Code [Title 24 of the California Code of Regulations]. Such actions and
27 continuing course of conduct by Defendants, and each of them, evidence despicable conduct in
28 conscious disregard of the rights and/or safety of Plaintiff and those similarly situated and thus

1 justify an award of treble damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code or
2 alternatively an award of punitive damages in an appropriate amount.

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

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

8 **VIII**

9 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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IX

FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

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

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

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

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

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.

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1 **DEMAND FOR JURY**

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

3 WHEREFORE PLAINTIFF PRAYS:

4 1. For general damages according to proof;

5 2. For special damages according to proof;

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

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

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

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

13 7. For punitive damages according to proof;

14 8. For a Jury Trial;

15 9. For costs of suit incurred herein and;

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

17
18 Respectfully submitted,

19 Dated: 4/12/09

THE LAW OFFICES OF ROY L LANDERS

By: [Signature]

Attorney for Plaintiff,
Ismael Rivera

CIVIL COVER SHEET

This JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

ISMAEL RIVERA,

San Diego

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

CHANG KYH KEM, et al

FILED
04 APR 12 AM 8:48
San Diego

County of Residence of First Listed Defendant

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)

DEPUTY

'04 CV - 744 - JM (JFS)

I. 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"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Services
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract		PRISONER PETITIONS	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 1609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input checked="" type="checkbox"/> 444 Welfare				<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

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

VI. CAUSE OF ACTION

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

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

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$
- CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE 4/12/04

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 102732 AMOUNT 150- APPLYING FEE MS JUDGE MAG. JUDGE