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3:03-CV-00425 RIVERA V. MCDONALDS RESTAURANT

1

CMP.

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ISMAEL RIVERA

11 Plaintiff,

12 vs.

13 Mc DONALD'S RESTAURANT,
14 PALUMBO ENTERPRISES, CASSU
15 INVESTMENT GROUP, LTD, AND DOES
16 1-10, Inclusive,

17 Defendants.

Case No.:

'03GV 004256-JFS

COMPLAINT FOR DAMAGES RE:
VIOLATION OF CIVIL RIGHTS ON
BASIS OF DISCRIMINATION IN PUBLIC
ACCOMMODATIONS; UNFAIR,
UNLAWFUL AND FRAUDULENT
BUSINESS PRACTICES; NEGLIGENT
INFLECTION OF EMOTIONAL
DISTRESS; INTENTIONAL INFLECTION
OF EMOTIONAL DISTRESS: DEMAND
FOR JURY TRIAL

18 I

19 JURISDICTION AND VENUE

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21
22 1. (a) Jurisdiction of this action is invoked on the basis of 28 USC 1331 and 1343, 42 USC 12101-
23 12102, 12181-12183 and 12201, et. seq. Jurisdiction is also invoked pursuant to 42 USC 1981
24 [Civil Rights Act of 1991], et seq, which is applicable to causes of action where persons with
25 disabilities have been denied their civil rights and Title II, section 201, et. seq. of the 1964 Civil
26 Rights Act. Venue in the Southern Judicial District of California in the United States District Court
27 is in accord with 28. U.S.C. section 1391(b) because a substantial part of plaintiff's claims arose
28 within the Judicial District of the United States District Court of the Southern District of California.

1

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

13 **II**

14 **PARTIES**

15 2. Defendant(s), **Mc DONALD'S RESTAURANT**, is and at all times herein mentioned were duly
16 organized business, association, or corporation duly authorized to exist and operate within the State
17 of California and County of San Diego and the owner, operator or lessee of the premises located at
18 **6326 MISSION GORGE, SAN DIEGO, CALIFORNIA.**

19 3. Plaintiff is informed and believes and thereon alleges that defendants **Mc DONALD'S**
20 **RESTAURANT, PALUMBO ENTERPRISES, CASSU INVESTMENT GROUP, LTD**, were
21 at all times herein was and are the owners, lessors, tenants and controlling parties of the property,
22 which is the subject of this action and in some manner responsible for the violations of law as
23 alleged herein.

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

1 5. Plaintiff is ignorant of the defendants sued as Does 1-10 herein, and therefore sues them in their
2 fictitious names as Doe defendants. Plaintiff is informed and believes and thereon alleges that Does
3 1-10 are the owners, operators, lessees or tenants of the subject property and each of the Doe
4 defendants at all times herein was acting as the agent and or representative of each other and
5 thereby are responsible in some manner for the injuries and damages complained of herein. Plaintiff
6 will seek leave of court to amend this complaint to name Doe defendants when the same is
7 ascertained.

8 **III**

9 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

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

14 7. On or about **DECEMBER 5, 2002** plaintiff attempted to enter the subject premises of the
15 defendants herein to utilize goods and/or services offered by defendants. When Plaintiff attempted
16 to enter said facility, plaintiff had difficulty entering and using the facility because it failed to
17 comply with Federal ADA Access Guidelines For Building and Facilities [hereinafter "ADAAG"]
18 and/or the State of California's Title 24 Building Code Requirements.

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

- 21 **1. No Site Entrance Signage (Does Not Exist), (CA Title 24 1129B.5);**
- 22 **2. No Site Entrance Signage (Not Filled Out - Reclaim at:)' (CA Title 24 1129B.5);**
- 23 **3. No Site Entrance Signage (Not Filled Out – Telephone number:), (CA Title 24**
24 **1129B.5);**
- 25 **4. No Site Entrance Signage (Size not less than 17" x 22"), (CA Title 24 1129B.5);**
- 26 **5. No Site Entrance Signage (Lettering not less than 1" in Height), (CA Title 24**
27 **1129B.5);**
- 28 **6. No Site Entrance Signage (Warning Information), (CA Title 24 1129B.5);**

- 1 7. **No Designated Disabled "VAN ACCESSIBLE" Parking Space, (ADAAG**
2 **4.1.2(5)(b) & CA Title 24 1129.B.4.2);**
- 3 8. **No Designated Disabled "VAN ACCESSIBLE" Parking Space Width, (ADAAG**
4 **4.1.2(5)(b) & CA Title 24 1129.B.4.2);**
- 5 9. **No Designated Disabled "VAN ACCESSIBLE" Parking Space Length,**
6 **(ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2);**
- 7 10. **No Designated Disabled "VAN ACCESSIBLE" Parking Space Signage,**
8 **(ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2);**
- 9 11. **No Designated Parking Stalls – Correct Number of Stalls, (ADAAG 4.1.2(5)(a)**
10 **& CA Title 24 1129B.1);**
- 11 12. **No Van Accessible Aisle, (ADAAG 4.6.3 & CA Title 24 1129B.4.2);**
- 12 13. **No Van Accessible Aisle Width, (ADAAG 4.6.3 & CA Title 24 1129B.4.2);**
- 13 14. **No Van Accessible Aisle Length, (ADAAG 4.6.3 & CA Title 24 1129B.4.2);**
- 14 15. **No Van Accessible Aisle (Passenger Side), (ADAAG 4.6.3 & CA Title 24**
15 **1129B.4.2);**
- 16 16. **No Signage Installed (Each Space), (ADAAG 4.6.4 & CA Title 24 1129B.5);**
- 17 17. **No Additional Signage (Van Accessible), (ADAAG 4.6.4 & CA Title 24**
18 **1129B.5);**
- 19 18. **Improper Designated Disabled Parking Space Signage – Proper Height,**
20 **(ADAAG 4.6.4 & CA Title 24 1129B.5);**
- 21 19. **Improper Parking Space Emblem, (ADAAG 4.6.4 & CA Title 24 1129B.5.1**
22 **&.2);**
- 23 20. **Improper Grab Bar – Side Proper Extension Beyond Water Closet (24 inches),**
24 **(ADAAG 4.17.6 & CA Title 24 1115B.8.1);**
- 25 21. **Improper Grab Bar - (Side Min 42 inch Long), (ADAAG 4.14.6 & CA Title 24**
26 **1115B.8.1);**
- 27 22. **Improper Grab Bar – (Side Forward Ends Located/Extends a Min 54 inches**
28 **from Back Wall), (ADAAG 4.17.6);**

23. **Improper Grab Bar – (Rear Grab Bar Length 36" Min), (ADAAG 4.17.6 & CA Title 24 1115B.8.1);**
24. **Improper Grab Bar – (Rear Grab Bar Attached to Corner Wall Length 6" Min), (ADAAG 4.17.6 & CA Title 24 1115B.8.1);**
25. **Improper Water Closet (Clear Space in Front Min 48 inches – Front-Transfer Stall), (ADAAG 4.17.3 & CA Title 24 1115B.7.1.2);**
26. **Improper Water Closet (Clear Space in Front Min 32 inches – Lateral-Transfer Stall), (ADAAG 4.17.3 & CA Title 24 1115B.1);**
27. **Improper Mirror – Mounting Height, (ADAAG 4.19.6 & CA Title 24 1115B.9.1.2);**
28. **Improper Flush Valve – Correct Side, (ADAAG 4.16.5 & CA Title 24 1502.0);**
29. **Improper Urinal Rim Height 17" Max, (ADAAG 4.18.2 & CA Title 24 1503.2.1);**
30. **Improper Flush Valve Urinal – Correct Height 44" Max, (ADAAG 4.18.4 & CA Title 24 1503.2.2);**
31. **Improper Toilet Stall – Proper Size, (ADAAG 4.17.3 & CA Title 24 1115B.1);**
32. **Improper Hardware – Handle Inside/Outside Compartment Door, (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)**

9. Plaintiff is informed and believes and thereon alleges that defendants' facility has in excess of **FORTY (40) violations** of ADAAG and/or Title 24 at their facility.

10. These violations are believed to have existed for a significant period of time and with defendant's specific knowledge.

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

12. Pursuant to federal {ADA} and state law [California Title 24], Defendants are required to remove barriers to their existing facilities. Defendants have been put on notice pursuant to the ADA and the California Civil Code prior to the statutory effect of the ADA on January 26, 1992 that

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

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

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

18 **IV**

19 **FIRST CAUSE OF ACTION**

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

21 15. Plaintiff re-alleges the allegations in paragraphs 1 through 14 as though set forth fully herein.

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

23 16. Based on the facts asserted above Plaintiff has been denied full and equal access to Defendants'
24 goods, services, facilities, privileges, advantages, or accommodations. Defendant **Mc DONALD'S**
25 **RESTAURANT**, is a public accommodation owned, leased and/or operated by Defendants and
26 each of them. Defendants' existing facilities and/or services failed to provide full and equal access
27 to Defendants' facility as required by 42 U.S.C. Section 12182(a). Thus, Plaintiff was subjected to
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1 discrimination in violation of 42 U.S.C. 12182(b)(2)(A)(ii)(iv); 42 USC 1981 and 42 U.S.C. section
2 12188 because Plaintiff was denied equal access to Defendants' existing facilities.

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

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

11 18. Based upon the facts alleged herein, Plaintiff was denied full and equal access to Defendants'
12 goods, services, facilities, privileges, advantages, or accommodations within a public
13 accommodation owned leased, and/or operated by the named Defendants. Defendants individually
14 and collectively failed to remove barriers as required by 42 U.S.C. 12182(a). Plaintiff is informed
15 and believes, and thus alleges that architectural barriers which are structural in nature exist at the
16 following physical elements of Defendants' facilities:

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

22 Pursuant to 42 USC section 12182(b)(2)(iv), Title III requires places of public accommodation to
23 remove architectural barriers that are structural in nature within existing facilities. Failure to remove
24 such barriers and disparate treatment against a person who has a known association with a person
25 with a disability are forms of prohibited discrimination. Accordingly, Plaintiff was subjected to
26 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC 12182 (b)(2)(A)(iv); 42 USC
27 1981 and 42 USC 12188.

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

2 19. Based on the facts alleged in this Complaint Defendants failed and refused to provide a
3 reasonable alternative by modifying its practices, policies and procedures in that they failed to have
4 a scheme, plan, or design to assist Plaintiff and/or others similarly situated in entering and utilizing
5 Defendants' services, as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was subjected to
6 discrimination in violation of 42 U.S.C. section 12182(b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C.
7 section 12188 because Plaintiff was denied equal access to Defendants' existing facilities.

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

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

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

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18 **V**

19 **SECOND CAUSE OF ACTION**

20 **(Violation of Civil Rights 42 U.S.C. 1991)**

21 23. Plaintiff re-alleges the allegations of the First Cause of Action as though set forth fully herein.

22 24. The provisions of 42 U.S.C. 1981 (As amended by the Civil Rights Act of 1991) provide that
23 Plaintiff as a person with disabilities cannot be discriminated against with regard to the ability to
24 enter into, to make or to enforce contracts. In enacting the Civil Rights Act of 1991 congress
25 established a three tier system of remedies for a broad range of discretionary conduct, including
26 violations of the Americans With Disabilities Act, wherein disabled individuals such as plaintiff are
27 denied equal access to facilities they wish to conduct business in and therefore are precluded from
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1 making, entering into and enforcing contracts that plaintiff and others similarly situated may desire
2 to effect.

3 25. Defendants, because they have individually and/or collectively denied plaintiff access to their
4 premises, goods and services, have denied him the right to make, enter into or enforce a contract
5 and therefore have violated the provisions of 42 U.S.C. 1991 all to Plaintiff's damage in an amount
6 to be determined at time of trial herein.

7 26. As a result of Defendants' actions Plaintiff was humiliated, embarrassed and discouraged and
8 upset emotionally and physically and suffered damages according to proof.

9 27. The actions of the Defendants were intentional, outrageous and done with reckless disregard of
10 Plaintiff's rights and therefore entitle him to an award of punitive damages.

11 28. By reason of Defendants' actions Plaintiff was caused to incur costs and expenses of litigation,
12 including attorney's fees, to seek and redress his civil rights. Plaintiff therefore seeks an award of
13 costs and attorney's fees associated with the necessity of bringing this lawsuit.

14 **VI**

15 **THIRD CAUSE OF ACTION**

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

17 29. Plaintiff re-alleges the allegations of the Second Cause of Action as though set forth fully
18 herein.

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

20 30. Plaintiff has been denied full and equal access to Defendants' goods services, facilities,
21 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or
22 operated by Defendants in violation of California Civil Code Sections 54 and 54.1; California
23 Health and Safety Code Section 19955 and California Government Code Section 12948. The
24 actions of Defendants also violate the provisions of Title 24 of the State of California Building
25 Codes with regard to accessibility for persons with disabilities by failing to provide access to
26 Defendants facilities due to violations pertaining to accessible routes, ground and floor surfaces,
27 parking and passenger loading zones, curb ramps, ramps, stairs, elevators, platform lifts (wheelchair
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1 lifts), windows, doors, toilet stalls, urinals, lavatories and mirrors, sinks, storage, handrails, grab
2 bars, controls and operating mechanisms, alarms, detectable warnings, signage and telephones.

3 31. On the above basis Plaintiff has been wrongfully discriminated against.

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

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

11 **VII**

12 **FOURTH CAUSE OF ACTION**

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

14 33. Plaintiff re-alleges the allegations of the Third Cause of Action as though set forth fully herein.

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

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

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

27 36. By reason of their acts and denial of Plaintiff's civil rights Defendants also violated the
28 provisions of Cal. Civ. Code section 52, which makes a person or entity in violation of Cal. Civ.
Code 51 liable in the amount of \$4,000 per violation of said statute.

1 37. Defendants and each of them, at all times prior to and including **DECEMBER 5, 2002**
2 respectively and continuing to the present time, knew that persons with physical disabilities were
3 denied their rights of equal access to all portions of this public facility. Despite such knowledge,
4 Defendants, and each of them, failed and refused to take steps to comply with the applicable access
5 statutes and despite knowledge of the resulting problems and denial of civil rights suffered by
6 Plaintiff and other similarly situated persons with disabilities.
7

8 38. Defendants and each of them have failed and refused to take action to grant full and equal
9 access to persons with physical disabilities. Defendants have carried out a course of conduct of
10 refusing to respond to, or correct complaints about unequal access and have refused to comply with
11 their legal obligations to make the subject facility accessible pursuant the ADAAG and the
12 California Building Code [Title 24 of the California Code of Regulations]. Such actions and
13 continuing course of conduct by Defendants, and each of them, evidence despicable conduct in
14 conscious disregard of the rights and/or safety of Plaintiff and those similarly situated and thus
15 justify an award of treble damages pursuant to section 52(a) and 54.3(a) of the Cal. Civ. Code or
16 alternatively an award of punitive damages in an appropriate amount.
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18 39. Plaintiff has suffered emotional and physical damage and continues to suffer such damages all
19 in an amount to be determined at time of trial.
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21 40. Under the provisions of Cal. Civ. Code section 55 Plaintiff seeks an award of reasonable
22 attorney's fees and costs as a result of having to bring this action. Plaintiff requests the court to
23 award such fees in an appropriate amount.
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26 **VIII**
27 **FIFTH CAUSE OF ACTION**
28 **(Unfair And Unlawful Business Practice)**

41. Plaintiff re-alleges the allegations of the Fourth Cause of Action as though set forth fully herein.

1 42. California Business and Professions Code Section 17200 states in pertinent part:

2 "As used in this chapter, unfair competition shall mean and
3 include any unlawful, unfair or fraudulent business act..."

4 43. Defendants, as alleged herein, are in violation of the Americans With Disabilities Act and Title
5 24 of the California Building Code, in that they have denied equal access to their places of public
6 accommodation to Plaintiff and others similarly situated to Plaintiff. Defendants have failed and
7 refused and continue to refuse to comply with equal access laws all in violation of 42 USC 12181-
8 12183; 42 USC 1981; and 42 USC 12188. In addition the complained of acts are in violation of
9 California Civil Code Sections 51, 52, 54, and 54.1, California Health and Safety Code section 19955
10 and California Government Code section 12948 all of which require Defendants to provide equal
11 access to their facility to disabled persons such as plaintiff. Defendants are also in violation of the
12 indicated statutes because of their failure to remove architectural barriers, which prevent equal
13 access to their facility by disabled persons and because of their failure to modify their practices,
14 policies and procedures to have a scheme, plan, or design to assist Plaintiff and others similarly
15 situated to enter and utilize Defendants' services as required by the Unruh Act.

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18 44. Defendants' acts are unlawful and unfair and are therefore in violation of California Business
19 and Professions Code section 17200.

20
21 45. Pursuant to the provisions of California Business and Professions Code section 17201 Plaintiff
22 is a person as identified within said section and therefore allowed to bring this action on behalf of
23 himself and the general public to effectuate California Business and Professions Code 17200 as
24 provided for within Business and Professions Code section 17204.

25
26 46. Thus, Plaintiff, under Bus & Prof. Code section 17200 seeks injunctive relief, on behalf of
27 himself and the general public, requiring Defendants to remedy the disabled access violations
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1 present within Defendants' facility and that Defendants be ordered to cease and desist from
2 continuing in noncompliance with disabled access statutes and regulations.

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4 **IX**

5 **SIXTH CAUSE OF ACTION**

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

7 47. Plaintiff re-alleges the allegations of the Fourth Cause of Action as though set forth fully herein.

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

15 49. Defendants breached their duty of care to Plaintiff by the actions and inaction complained of
16 herein and as a result thereof Plaintiff was shocked, discouraged, embarrassed and outraged at the
17 callousness and disregard of Defendants. Defendants knew or had reason to know that by denying
18 Plaintiff equal access to their facility and failing and refusing to remove architectural barriers,
19 Plaintiff would suffer emotional and/or mental distress because of such discrimination and disparate
20 treatment. Defendants breached their duty of care to plaintiff by the perpetration of the acts outlined
21 herein.
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23 50. As a proximate result of the actions of Defendants Plaintiff did suffer emotional and mental
24 stress and pain and suffering all in an amount to be determined at time of trial.
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4 **X**

5 **SEVENTH CAUSE OF ACTION**

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

7 51. Plaintiff re-alleges the allegations of the Fourth Cause of Action as though set forth fully herein.

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

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

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

14 **DEMAND FOR JURY**

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

16 **WHEREFORE PLAINTIFF PRAYS:**

17 **1. For general damages according to proof;**

18 **2. For special damages according to proof;**

19 **3. For damages pursuant to Cal. Civil Code section 52, in the amount of \$4,000 for each and**
20 **every offense of California Civil Code section 51, Title 24 of the California Building Code and**
21 **the Americans With Disabilities Act.**

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

24 **5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42 U.S.C. 1981, 42 U.S.C. 12205**
25 **and Cal. Civ. Code section 55;**

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

27 **7. For punitive damages according to proof;**

28 **8. For a Jury Trial;**


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9. For costs of suit incurred herein and;

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

Respectfully submitted.

DATED: 2-19-03



Attorney for Plaintiff, ISMAEL RIVERA

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.)

I. (a) PLAINTIFFS

ISMAEL RIVERA

03 MAR -3 PM 2:53
San Diego

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

DEFENDANTS

MCDONALD'S RESTAURANT, PALUMBO ENTERPRISES, CASSU INVESTMENT GROUP, LTD, AND DOES 1-10 Inclusive. San Diego

County of Residence of First Listed (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)

'03 CV 00425 L JFS

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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
Citizen of Another State
Citizen or Subject of a Foreign Country
DEF 1 Incorporated or Principal Place of Business in This State
DEF 2 Incorporated and Principal Place of Business in Another State
DEF 3 Foreign Nation

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

Table with 5 main columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like 110 Insurance, 310 Airplane, 362 Personal Injury, etc.

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: X UNDER F.R.C.P. 23 CHECK IF THIS IS A CLASS ACTION DEMAND 5 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S) (See instructions): JUDGE DOCKET NUMBER

DATE 2-19-03 SIGNATURE OF ATTORNEY OF RECORD Roy L. Landers