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3:04-CV-00788 RIVERA V. SUCPERITY CORP

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\*CMP.\*

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Attorney for Plaintiff, ISMAEL RIVERA

BY 

DEPUTY

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ISMAEL RIVERA,

11 Plaintiff,

12 vs.

13 SUCPERITY CORPORATION, dba,  
14 RAMADA LIMITED; PERFORMANCE  
HOTELS, LLC, dba, RAMADA LIMITED  
15 OCEANSIDE; and DOES 1-10 Inclusive ,

16 Defendants.

Case No.: '04 CV - 788 - JN (WIC)

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

17  
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

CR

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

## 10 II

### 11 PARTIES

12 2. Defendant, Performance Hotels LLC, dba, Ramada Limited Oceanside, was and at all times  
13 herein mentioned, was a duly organized business, association, or corporation duly authorized to  
14 exist and operate within the State of California and County of San Diego and the owner, lessee, or  
15 tenant of the premises located at 1440 Mission Avenue, Oceanside, California 92054.

16 3. Plaintiff is informed and believes and thereon alleges that defendant, SUCPERITY  
17 CORPORATION, dba, RAMADA LIMITED, is the owner and/or landlord of the subject property  
18 upon which Defendant's business is sited.

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

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

1 Plaintiff will seek leave of the court to amend this complaint to name Doe Defendants when the  
2 same is ascertained.

3 **III**

4 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

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

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

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

18 1 Site Entrance Signage (Not Filled Out - Reclaim at:)

19 (CA Title 24 1129B.5)

20 1 Site Entrance Signage (Not Filled Out - Telephone number:)

21 (CA Title 24 1129B.5)

22 1 Designated Disabled "VAN ACCESSIBLE" Parking - Space

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

24 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Width

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

26 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Length

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

- 1 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Signage  
2 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 3 3 Warning – Access Aisle - (NO PARKING)  
4 (CA Title 24 1129B.4.1 & 2)
- 5 3 Warning – Access Aisle - (12" High Minimum)  
6 (CA Title 24 1129B.4.1 & 2)
- 7 1 Regular Access Aisle – Exist/Improper  
8 (CA Title 24 1129B.4.1)
- 9 1 Regular Access Aisle - Width  
10 (CA Title 24 1129B.4.1)
- 11 1 Regular Access Aisle - Length  
12 (CA Title 24 1129B.4.1)
- 13 1 Van Accessible Aisle – Exist/Improper  
14 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 15 1 Van Accessible Aisle - Width  
16 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 17 1 Van Accessible Aisle - Length  
18 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 19 1 Van Accessible Aisle - (Passenger Side)  
20 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 21 1 Van Accessible Aisle – 2% Grade  
22 (ADAAG 4.6.3 & CA Title 24 1129B.4.4)
- 23 1 Additional Signage - (Van Accessible)  
24 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 25 1 Curb Ramp Location/Improper  
26 (ADAAG 4.7.1)
- 27 1 Curb Ramp - Projects into Vehicular Traffic Lanes  
28 (ADAAG 4.7.6)

- 1 8 Faucet Fixtures - (One Hand Operable)  
2 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 3 8 Faucets Fixtures - (Max 5 lb Force to Activate)  
4 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 5 8 Faucets Fixtures - (Lever-Type)  
6 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 7 4 Grab Bar – Side Proper Extension Beyond Water Closet (24 inches)  
8 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 9 4 Grab Bar - (Side Min 42 inch Long)  
10 (ADAAG 4.14.6 & CA Title 24 1115B.8.1)
- 11 4 Grab Bar – (Side Attached Max 12 inches from Rear Wall)  
12 (ADAAG 4.17.6)
- 13 4 Grab Bar – (Side Forward Ends Located/Extends a Min 54 inches from Back Wall)  
14 (ADAAG 4.17.6)
- 15 4 Water Closet Mounting/Location – Corner Wall  
16 (ADAAG 4.17.3 & CA Title 24 115B.7.1.2)
- 17 4 Water Closet Mounting/Location – Opposite Wall  
18 (CA Title 24 115B.7.1.2)
- 19 4 Water Closet Mounting/Location – Both Walls (Front-Transfer Stall)  
20 (ADAAG 4.23.4 & CA Title 24 1115B.7.1.4)
- 21 4 Width Between Walls – Front Transfer Stall  
22 (ADAAG 4.23.4 & CA Title 24 1115B.7.1.4)
- 23 8 Hardware – Opening Door Knobs  
24 (ADAAG 4.13.9 & CA Title 24 1133B.2.5.1)
- 25 4 Hardware – Opening Door Lock/Latch  
26 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)
- 27 1 Bathing Facilities – Minimum Number 1%  
28 (ADA 4.23.8 & CA Title 24 1115B.6)

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- 1 **Bathing Facilities – Seat in Tub Clear Floor Space 30” x 60” Parallel Approach**  
(ADA 4.20.2 & CA Title 24 1115B.6.1.1)
- 1 **Bathing Facilities – Seat in Tub Clear Floor Space 48” x 60” Perpendicular Approach**  
(ADA 4.20.2 & CA Title 24 1115B.6.1.1)
- 1 **Bathing Facilities – Seat at Head of Tub 30” x75” Parallel Approach**  
(ADA 4.20.3 & CA Title 24 1115B.6.1.1)
- 1 **Bathing Facilities – Seat in Tub 15” Minimum Width**  
(CA Title 24 1115B.6.1.2)
- 6 **Bathing Facilities – Grab Bar Structural Strength 250lbf load**  
(ADA 4.26.3 & CA Title 24 1115B.6.1.2 & 1115B.8.3.1-4)
- 3 **Bathing Facilities – Grab Bar – Control Side of Tub 24”, starting at Edge of Tub**  
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 3 **Bathing Facilities – Side of Tub has Two grab Bars 24” Long, 9 & 33” –36” above Floor**  
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 2 **Bathing Facilities – Side of Tub has One grab Bar 24” Long, 33” –36” above Floor**  
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 2 **Bathing Facilities – Side of Tub has One grab Bar 24” Long, 9” above Tub**  
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- Grab Bars Location with Seat at Head of Tub**
- 3 **Bathing Facilities – Side of Tub has Two grab Bars 48” Long, 9” & 33” –36” above Tub**  
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 2 **Bathing Facilities – Side of Tub has One grab Bars 48” Long, 9” above Tub**  
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 2 **Bathing Facilities – Side of Tub has One grab Bars 48” Long, 33” – 36” above Tub**  
(ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- Shower Spray Unit**
- 1 **Shower Spray Unit – 27” reach From Seat**  
(ADA 4.20.6 & CA Title 24 1115B.6.1.5)

1 Shower Spray Unit – 48” ,±” Max Height  
2 (ADA 4.20.6 & CA Title 24 1115B.6.1.5)

3 **Showers**

4 **Shower - No Shower Curbs**  
5 (ADAAG 4.21.7)

6 **Shower Thresh-hold ½” Max**  
7 (CA Title 24 1115B.6.2.2)

8 **Shower - Grab Bars Mounted 3” – 36” Above Floor**  
9 (CA Title 24 1115B.8.2 - .8.4)

10 **Controls - Operable with One Hand**  
11 (ADA 4.27.4)

12 **Controls – Operable with 5lb Force Max**  
13 (ADA 4.27.4 & CA Title 24 1115B.6.2.4.1)

14 **Controls – Located 40”, =/-1” Above the Shower Floor**  
15 (ADA 4.20.5 & CA Title 24 1115B.6.1.4)

16 **Controls – Centerline of Controls 18”-24” from Rear Seat**  
17 (CA Title 24 1115B.6.2.4.1)

18 **Controls – Located on Wall Adjacent to Seat**  
19 (CA Title 24 1115B.6.2.4.1)

20 **Shower- Minimum Clear Floor Space**  
21 (ADAAG 4.21.2 & CA Title 24 1115B.6.2.1)

22 **Shower-Minimum Shower Size**  
23 (ADAAG 4.21.2 & CA Title 24 1115B.6.2.1)

24 **Fully accessible rooms are provided in the number required.**  
25 (ADAAG 9.1.2 & CA Title 24 1111B.4.2)

26 **Fully accessible rooms with roll-in showers are provided in the number required.**  
27 (ADAAG 9.1.2 & CA Title 24 1111B.4.2)

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1 3 Accessible unit(s), sleeping room(s) or suite(s) are on an accessible route

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

3 2 At least one bathtub or shower in each accessible sleeping room or suite is accessible.

4 (ADAAG 9.2.2 (6)(e) & CA Title 24 1111B.4.6.6)

5 4 Beds – Access to Beds along Both Sides of Bed is not less than 36”

6 (ADA 9.2.2(1) & CA Title 24 1111B.4.3)

7 1 Shower Seat

8 (ADAAG 4.21.3).

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

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

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

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

1 required to utilize the ADA checklist for Readily Achievable Barrier Removal approved by the  
2 United States Department of Justice and created by Adaptive Environments.

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

5 IV

6 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

8 Pursuant to 42 USC section 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires places of public  
9 accommodation to remove architectural barriers that are structural in nature within existing  
10 facilities. Failure to remove such barriers and disparate treatment against a person who has a known  
11 association with a person with a disability are forms of prohibited discrimination. Accordingly,  
12 Plaintiff was subjected to discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC  
13 12182 (b)(2)(A)(iv) and 42 USC 12188.

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

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

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

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

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

3 VI

4 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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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:

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

27. Defendants have violated the provisions of Civ. Code 51 (b) by

**failing and refusing to provide free and equal access to Plaintiff to their facility on the same basis as**

**other persons not disabled. By their failure to provide equal access to Plaintiff as herein alleged,**

**Defendants have also violated 42 U.S.C. section 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes**

**section 51(f).**

28. By reason of their acts and denial of Plaintiff's civil rights Defendants also violated the

provisions of Cal. Civ. Code section 52, which makes a person or entity in violation of Cal.Civ.

Code 51 liable for the actual damages to a Plaintiff including treble damages where appropriate.

29. Defendants and each of them, at all times prior to and including March 2004, respectively and

continuing to the present time, knew that persons with physical disabilities were denied their rights

**of equal access to all portions of this public facility. Despite such knowledge, Defendants, and each**

**of them, failed and refused to take steps to comply with the applicable access statutes and despite**

**knowledge of the resulting problems and denial of civil rights suffered by Plaintiff and other**

**similarly situated persons with disabilities.**

30. Defendants and each of them have failed and refused to take action to grant full and equal

access to person with physical disabilities. Defendants have carried out a course of conduct of

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

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

## 16 VIII

### 17 FOURTH CAUSE OF ACTION

#### 18 (Negligent Infliction of Emotional Distress)

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

20  
21 34. Defendants and each of them owed a duty to Plaintiff to make their facility accessible and to  
22 keep Plaintiff reasonably safe from known dangers and risks of harm. This duty arises by virtue of  
23 the legal duties proscribed by various federal and state statutes including, but not limited to, ADA,  
24 ADAAG, California Civil Code sections 51, 52, 54, 54.1 and Title 24 of the California Code of  
25 Regulations. Defendants had a duty of due care not to do or cause anything to happen that would  
26 subject Plaintiff to undue stress, embarrassment, chagrin, and discouragement.  
27  
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1 35. Defendants breached their duty of care to Plaintiff by the actions and inaction complained of  
2 herein and as a result thereof Plaintiff was shocked, discouraged, embarrassed and outraged at the  
3 callousness and disregard of Defendants. Defendants knew or had reason to know that by denying  
4 Plaintiff equal access to their facility and failing and refusing to remove architectural barriers,  
5 Plaintiff would suffer emotional and/or mental distress because of such discrimination and disparate  
6 treatment. Defendants breached their duty of care to plaintiff by the perpetration of the acts outlined  
7 herein.  
8

9  
10 36. As a proximate result of the actions of Defendants Plaintiff did suffer emotional and mental  
11 stress and pain and suffering all in an amount to be determined at time of trial.

12 **IX**

13 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

22 **X**

23 **SIXTH CAUSE OF ACTION**

24 **(DECLARATORY RELIEF)**

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

27 42. An actual controversy now exists in that plaintiff is informed and believes and thereon alleges  
28 that defendants' premises are in violation of the disabled access laws of the State of California

1 including, but not limited to, Civil Code Sections 51, et seq., Section 52, et seq., Title 24 of the  
2 California Code of Regulations and Title III of the Americans with Disabilities Act and the  
3 Americans with Disabilities Access Guidelines (ADAAG).

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

7 **DEMAND FOR JURY**

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

9 WHEREFORE PLAINTIFF PRAYS:

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

23  
24 Respectfully submitted,

25 Dated: 4/14/04

26 By: \_\_\_\_\_

**THE LAW OFFICES OF ROY L. LANDERS**  
*Roy L. Landers*  
Attorney for Plaintiff,  
Ismael Rivera



# 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. The 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

SUCPERITY CORPORATION, et al

FILED  
SDH APR 16 AM 8:36  
San Diego

County of Residence of First Listed  
(IN U.S. PLAINTIFF CASES ONLY)  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
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:

'04 CV - 788 - JM (WMC)

DEPUTY

### 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 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | DEF <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"/> 193 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	<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 Regs. <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 <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<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 SSD 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: xx

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 4/16/04

SIGNATURE OF ATTORNEY OF RECORD

*Roy L. Landers*

FOR OFFICE USE ONLY

RECEIPT # 102899 AMOUNT 150- APPLYING IFF MS JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_