

ORIGINAL



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

8 Attorney for Plaintiff, FAUSTINO AMBAOSIO

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CENTRAL DIST. OF CALIF.
SANTA ANA
BY: D

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

SACV04-799 JVS (ANx)

12 FAUSTINO AMBAOSIO,
13

14 Plaintiff,

15 vs.

16 CONSTANCE L. BONOMO, dba,
17 AQUA MOTEL; JEAN LINGER, dba,
18 AQUA MOTEL; LORINE BONOMO,
19 dba, AQUA MOTEL; and, DOES 1-10
20 Inclusive,

21 Defendants.

Case No.:

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

DOCKETED ON CM
JUL - 8 2004
BY CB 071

I

22 JURISDICTION AND VENUE

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

1

1 arose within the Judicial District of the United States District Court of the Central
2 District of California.

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

17 II

18 PARTIES

19 2. Defendants, Constance L. Bonomo, dba, Aqua Motel; Jean Linger, dba, Aqua
20 Motel; and Jean Linger, dba, Aqua Motel were and at all times herein mentioned,
21 were a duly organized business, association, or corporation duly authorized to exist
22 and operate within the State of California and County of Orange and the owners,
23 lessees, or tenants of the premises located at 317 17th Street, Santa Ana, California
24 92705.

25 3. Plaintiff is informed and believes and thereon alleges that defendants Constance L.
26 Bonomo; Jean Linger; and Lorine Bonomo are the owners and/or landlords of the
27 subject property upon which Defendants' business is sited.
28

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

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

14 III

15 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

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

21 7. On or about April 27, 2004, Plaintiff patronized the premises of Defendants to
22 utilize goods and/or services offered by Defendants. When Plaintiff attempted to
23 gain access to the goods and/or services offered by Defendants he encountered access
24 barriers because the premises failed to comply with federal ADA Access Guidelines
25 For Building and Facilities [hereinafter "ADAAG"]; Department of Justice [DOJ]
26 regulations at 28 CFR. 36.201; 36.304 and/or the State of California's Title 24
27 Building Code Requirements.

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

- 4 1 Site Entrance Signage (Does Not Exist)
5 (CA Title 24 1129B.5)
- 6 1 Site Entrance Signage (Not Filled Out - Reclaim at:)
7 (CA Title 24 1129B.5)
- 8 1 Site Entrance Signage (Not Filled Out – Telephone number:)
9 (CA Title 24 1129B.5)
- 10 1 Site Entrance Signage (Size not less than 17” x 22”)
11 (CA Title 24 1129B.5)
- 12 1 Site Entrance Signage (Lettering not less than 1” in Height)
13 (CA Title 24 1129B.5)
- 14 1 Site Entrance Signage (Warning Information)
15 (CA Title 24 1129B.5)
- 16 1 Designated Disabled "VAN ACCESSIBLE" Parking - Space
17 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 18 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Width
19 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 20 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Length
21 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 22 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Signage
23 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 24 1 Designated Parking Stalls – Correct Number of Stalls
25 (ADAAG 4.1.2(5)(a) & CA Title 24 1129B.1)
- 26 1 Warning – Access Aisle - (NO PARKING)
27 (CA Title 24 1129B.4.1 & 2)
- 28 1 Warning – Access Aisle - (12” High Minimum)
(CA Title 24 1129B.4.1 & 2)

- 1 1 Regular Access Aisle – Exist/Improper
2 (CA Title 24 1129B.4.1)
- 3 1 Regular Access Aisle - Width
4 (CA Title 24 1129B.4.1)
- 5 1 Regular Access Aisle - Length
6 (CA Title 24 1129B.4.1)
- 7 1 Van Accessible Aisle – Exist/Improper
8 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 9 1 Van Accessible Aisle - Width
10 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 11 1 Van Accessible Aisle - Length
12 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 13 1 Van Accessible Aisle - (Passenger Side)
14 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 15 1 Van Accessible Aisle – 2% Grade
16 (ADAAG 4.6.3 & CA Title 24 1129B.4.4)
- 17 1 Signage Installed - (Each Space)
18 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 19 1 Additional Signage - (Van Accessible)
20 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 21 1 Access Route - A Visible Route of Travel
22 (ADAAG 4.1.3(2), 4.3.2(2) & CA Title 24 1114B.1.2)
- 23 1 Shortest Route of Travel to Accessible Entrance
24 (ADAAG 4.6.2)
- 25 1 Designated Disabled Parking Space Signage – Proper Height
26 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 27 1 Parking Space Emblem – Proper Size
28 (ADAAG 4.6.4 & CA Title 24 1129B.5.1 &.2)

- 1 1 Disabled Parking Stall Positioned Correctly (No Travel Behind Other
2 Vehicles)
3 (CA Title 24 1129.B.4.3)
- 4 1 Entrance – Signage at Every Entrance/Exit, Accessibility
5 (ADAAG 4.1.3(16)(b) & CA Title 24 1127B.3)
- 6 2 Faucet Fixtures - (One Hand Operable)
7 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 8 2 Faucets Fixtures - (Max 5 lb Force to Activate)
9 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 10 2 Faucets Fixtures - (Lever-Type)
11 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 12 2 Grab Bar – Parallel Mounting Height
13 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 14 2 Grab Bar – Side Proper Extension Beyond Water Closet (24 inches)
15 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 16 2 Grab Bar - (Side Min 42 inch Long)
17 (ADAAG 4.14.6 & CA Title 24 1115B.8.1)
- 18 2 Grab Bar – (Side Attached Max 12 inches from Rear Wall)
19 (ADAAG 4.17.6)
- 20 2 Grab Bar – (Side Forward Ends Located/Extends a Min 54 inches from Back
21 Wall)
22 (ADAAG 4.17.6)
- 23 2 Grab Bar – (Rear Grab Bar Length 36" Min)
24 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 25 2 Grab Bar – (Rear Grab Bar Attached to Corner Wall Length 6" Min)
26 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 27 4 Hardware – Opening Door Knobs
28 (ADAAG 4.13.9 & CA Title 24 1133B.2.5.1)

- 1 2 Hardware – Opening Door Lock/Latch
2 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)
- 3 2 Hardware – Handle Inside/Outside Compartment Door
4 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)
- 5 1 Drain & Hot Water Pipes – Insulated or Covered
6 (ADAAG 4.24.6)
- 7 1 Bathing Facilities – Minimum Number 1%
8 (ADA 4.23.8 & CA Title 24 1115B.6)
- 9 1 Bathing Facilities – Seat in Tub Clear Floor Space 30” x 60” Parallel Approach
10 (ADA 4.20.2 & CA Title 24 1115B.6.1.1)
- 11 1 Bathing Facilities – Seat in Tub Clear Floor Space 48” x 60” Perpendicular
12 Approach
13 (ADA 4.20.2 & CA Title 24 1115B.6.1.1)
- 14 1 Bathing Facilities – Seat at Head of Tub 30” x75” Parallel Approach
15 (ADA 4.20.3 & CA Title 24 1115B.6.1.1)
- 16 1 Bathing Facilities – Seat in Tub 15” Minimum Width
17 (CA Title 24 1115B.6.1.2)
- 18 1 Bathing Facilities – Grab Bar Structural Strength 250lbf load
19 (ADA 4.26.3 & CA Title 24 1115B.6.1.2 & 1115B.8.3.1-4)
- 20 1 Bathing Facilities – Grab Bar – Control Side of Tub 24”, starting at Edge of
21 Tub
22 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 23 1 Bathing Facilities – Side of Tub has **Two** grab Bars 24” Long, 9 & 33” –36”
24 above Floor
25 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)
- 26 1 Bathing Facilities – Side of Tub has **One** grab Bar 24” Long, 33” –36” above
27 Floor
28 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

1 1 Bathing Facilities – Side of Tub has **One** grab Bar 24” Long, 9” above Tub
2 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

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

4 1 Bathing Facilities – Side of Tub has **Two** grab Bars 48” Long, 9” & 33” –36”
5 above Tub
6 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

7 1 Bathing Facilities – Side of Tub has **One** grab Bars 48” Long, 9” above Tub
8 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

9 1 Bathing Facilities – Side of Tub has **One** grab Bars 48” Long, 33” – 36” above
10 Tub
11 (ADA 4.20.4 & CA Title 24 1115B.6.1.3)

12 **Controls**

13 1 Controls - Operable with One Hand
14 (ADA 4.27.4 & CA Title 24 1115B.6.1.4)

15 1 Controls – Operable with 5lb Force Max
16 (ADA 4.27.4 & CA Title 24 1115B.6.1.4)

17 1 Controls – Located on the Foot Wall Below Grab bar
18 (ADA 4.20.5 & CA Title 24 1115B.6.1.4)

19 1 Fully accessible rooms are provided in the number required.
20 (ADAAG 9.1.2 & CA Title 24 1111B.4.2)

21 1 Accessible unit(s), sleeping room(s) or suite(s) are on an accessible route
22 (ADAAG 9.2.2 & CA Title 24 1111B.2)

23 1 At least one bathtub or shower in each accessible sleeping room or suite is
24 accessible.
25 (ADAAG 9.2.2 (6)(e) & CA Title 24 1111B.4.6.6)

26 1 Ridged Pool Seat
27 (CA Title 24 1104B.4.3.4.1.2)

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1 1 Pool Seat with Two Armrests

2 (CA Title 24 1104B.4.3.4.1.3)

3 1 Pool Seat Capable of Unassisted Operation

4 (CA Title 24 1104B.4.3.4.2)

5 1 Pool Seat Designed for 300 lbs Capacity

6 (CA Title 24 1104B.4.3.4.4)

7 1 Operating Mechanisms – Tight Grasping, Pinching or Twisting of the Wrist

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

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

13 10. Pursuant to Federal [ADA], Title 28 CFR 36.201; 36.203; 36.304; 36.305 and
14 state law [California Title 24], Defendants are required to remove barriers to their
15 existing facilities. Defendants have been put on notice pursuant to the ADA and
16 California Civil Codes [51,52] prior to the statutory effect of the ADA on January 26,
17 1992 that Defendants and each of them had a duty to remove barriers to persons with
18 disabilities such as plaintiff. Defendants also knew or should have known that
19 individuals such as Plaintiff with a disability are not required to give notice to a
20 governmental agency prior to filing suit alleging Defendants' failure to remove
21 architectural barriers.

22 11. Plaintiff believes and thereon allege that Defendants' facilities, as described
23 herein, have other access violations not directly experienced by Plaintiff, which
24 preclude or limit access by others with disabilities, including, but not limited to,
25 Space Allowances, Reach Ranges, Accessible Routes, Protruding Objects, Ground
26 and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
27 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
28 Drinking Fountains, and Water Coolers, Water Closets, Toilet Stalls, Urinals,

1 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, Telephones, Controls
2 and Operating Mechanisms, Alarms, Detectable Warnings and Signage. Accordingly,
3 Plaintiff alleges Defendants are required to remove all architectural barriers, known
4 or unknown. Also, Plaintiff alleges Defendants are required to utilize the ADA
5 checklist for Readily Achievable Barrier Removal approved by the United States
6 Department of Justice and created by Adaptive Environments.

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

9 **IV**

10 **FIRST CAUSE OF ACTION**

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

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

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

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

23 15. Plaintiff has a physical impairment as alleged herein because his condition affects
24 one or more of the following body systems: neurological, musculoskeletal, special
25 sense organs, and/or cardiovascular. Further, his physical impairments substantially
26 limits one or more of the following major life activities: [walking]. In addition,
27 Plaintiff cannot perform one or more of the said major life activities in the manner
28 speed, and duration when compared to the average person. Moreover, Plaintiff has a

1 history of or has been classified as having a physical impairment as required by 42
2 U.S.C. section 12102(2)(A).

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

4 16. Based upon the facts alleged herein, Plaintiff was denied full and equal access to
5 Defendants' goods, services, facilities, privileges, advantages, or accommodations
6 within a public accommodation owned leased, and/or operated by the named
7 Defendants. Defendants individually and collectively failed to remove barriers as
8 required by 42 U.S.C. 12182(a) and 28 CFR 36.304. Plaintiff is informed and
9 believes, and thus alleges that architectural barriers which are structural in nature
10 exist at the following physical elements of Defendants' facilities:

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

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

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

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

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

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

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

14 VI

15 SECOND CAUSE OF ACTION

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

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

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

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

1 urinals, lavatories and mirrors, sinks, storage, handrails, grab bars, controls and
2 operating mechanisms
3 alarms, detectable warnings, signage and telephones.

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

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

6 24. Defendants have failed and refused and continue to fail and refuse to provide a
7 reasonable alternative to allow plaintiff equal access to their facility by modifying
8 their practices, policies, and procedures in that that they failed to have s scheme, plan,
9 or design to assist Plaintiff and others similarly situated in entering and utilizing
10 Defendants' goods or services as required by California Civil Code section 54 and
11 54.1. Accordingly Defendants have wrongfully discriminated against Plaintiff.

12 **VII**

13 **THIRD CAUSE OF ACTION**

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

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

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

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

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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 April 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 refusing to respond to, or correct complaints about unequal access and have refused to comply with their legal obligations to make the subject facility accessible pursuant the ADAAG and the California Building Code [Title 24 of the California Code of Regulations]. Such actions and continuing course of conduct by Defendants, and each of them, evidence despicable conduct in conscious disregard of the rights and/or safety of Plaintiff and those similarly situated and thus justify an award of treble damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code or alternatively an award of punitive damages in an appropriate amount.

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

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

6 **VIII**

7 **FOURTH CAUSE OF ACTION**

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

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

11 34. Defendants and each of them owed a duty to Plaintiff to make their facility
12 accessible and to keep Plaintiff reasonably safe from known dangers and risks of
13 harm. This duty arises by virtue of the legal duties proscribed by various federal and
14 state statutes including, but not limited to, ADA, ADAAG, California Civil Code
15 sections 51, 52, 54, 54.1 and Title 24 of the California Code of Regulations.

16 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
19 complained of herein and as a result thereof Plaintiff was shocked, discouraged,
20 embarrassed and outraged at the callousness and disregard of Defendants. Defendants
21 knew or had reason to know that by denying Plaintiff equal access to their facility and
22 failing and refusing to remove architectural barriers, Plaintiff would suffer emotional
23 and/or mental distress because of such discrimination and disparate treatment.

24 Defendants breached their duty of care to plaintiff by the perpetration of the acts
25 outlined herein.

26 36. As a proximate result of the actions of Defendants Plaintiff did suffer emotional
27 and mental stress and pain and suffering all in an amount to be determined at time of
28 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.

1 WHEREFORE PLAINTIFF PRAYS:

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

15 **DEMAND FOR JURY**

16 Plaintiff respectfully requests that the claims made herein be heard and determined by

17 a jury.

18 Respectfully submitted,

19 Dated: 6/14/04

THE LAW OFFICES OF ROY L. LANDERS

By: Roy L. Landers

Attorney for Plaintiff,
Faustino Ambaosio

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