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8 **LODGED**

MAR - 4 2004

9 CLERK, U.S. DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 EASTERN DIVISION

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 EASTERN DIVISION

**ED CV 04 - 00258**

VAP (SGL)

15 BY FAUSTINO AMBAOSIO

Case No.:

16 Plaintiff,

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; DEMAND  
FOR JURY TRIAL

17 vs.

18 JO JO'S CALIFORNIA FAMILY  
19 RESTAURANT, INC. dba COCO'S  
20 RESTAURANT, STUBBLEFIELD  
21 CONSTRUCTION CO. AND DOES 1-10  
22 Inclusive,

23 Defendants.

I

JURISDICTION AND VENUE

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

Complaint for Damages re Violation of Civil Rights 1 MAR - 9 2004

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

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

22 **II**

23 **PARTIES**

24 2. Defendant Jo Jo's California Family Restaurant, Inc., dba  
25 Coco's Restaurant and at all times herein mentioned were duly  
26 organized businesses, associations, or corporations duly  
27 authorized to exist and operate within the State of California and  
28

1 County of San Bernardino and the owners, lessees, or tenants of  
2 the premises located at 2442 Highland, Highland, California.

3 3. Plaintiff is informed and believes and thereon alleges that  
4 defendant Stubblefield Construction, Co. is the owner and/or  
5 landlord of the subject property upon which defendant business is  
6 sited.

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

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

23 **III**

24 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

25 6. Plaintiff is a male who is disabled and confined to a  
26 wheelchair. He has no control over his lower extremities and must  
27 use a wheelchair to transport himself and to affect the basic  
28 necessities of his everyday existence. Plaintiff's disability

1 substantially limits one or more of life's major activities and  
2 therefore he is disabled as defined under 42 USC  
3 12102(2) (A) (B) (C).

4 7. On or about September 11, 2003 plaintiff patronized the  
5 premises of defendants to utilize goods and/or services offered by  
6 defendants. When Plaintiff attempted to gain access to the goods  
7 and/or services offered by defendants he encountered access  
8 barriers because the premises failed to comply with federal ADA  
9 Access Guidelines For Building and Facilities [hereinafter  
10 "ADAAG"]; Department of Justice [DOJ] regulations at 28 CFR.  
11 36.201; 36.304 and/or the State of California's Title 24 Building  
12 Code Requirements.

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

- 16 (a) Site entrance is lacking as required by Title 24 1129B.5
- 17 (b) Site lacks NO PARKING signage as required by Title 24  
18 1129B.4.1&2.
- 19 (c) Lack of access aisle (NO PARKING) warning signage as  
20 required by Title 24 1129B.4. 1&2.
- 21 (d) Site lacks designated van accessible parking as required by  
22 ADAAG 4.6.3 and Title 24 1129B.4.2.
- 23 (e) Lack of van accessible aisle as required by ADAAG 4.6.3 and  
24 Title 24 1129B.4.2
- 25 (f) No signage in accord with ADAAG 4.6.4 and Title 24 1129B.5
- 26 (g) Curb ramp has too many slopes - ADAAG 4.7.2 and Title 24  
27 1127B.5.2.

- 1 (h) Entrance signage is not in accord with ADAAG 4.1.3(16) (b)  
2 and Title 24 1127B.3.
- 3 (i) Curb ramp does not comply with ADAAG 4.7.1. and Title 24  
4 1127B.5.2.
- 5 (j) Curb ramp projects into vehicular traffic lanes - ADAAG  
6 4.7.6.
- 7 (k) Parking space emblem does not comply with ADAAG 4.6.4 and  
8 Title 24 1129B.5
- 9 (l) Hardware does not comply with ADAAG 4.13.9 and Title 24  
10 1115B.7.1.4.
- 11 (m) Faucet fixtures do not comply with ADAAG 4.27.4 and Title  
12 24 1508. 1&2.
- 13 (n) Water closet mounting/location does not comply with ADAAG  
14 4.23.4 and Title 24 1115B.7.1.4
- 15 (o) Width between walls (front transfer stall) do not comply  
16 with ADAAG 4.23.4 and Title 24 1115B.y.1.4
- 17 (p) Toilet stall size does not comply with ADAAG 4.17.3 and  
18 Title 24 1115B.1

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

24 10. Pursuant to federal [ADA], Title 28 CFR 36.201; 36.203;  
25 36.304; 36.305 and state law [California Title 24], Defendants are  
26 required to remove barriers to their existing facilities.  
27 Defendants have been put on notice pursuant to the ADA and  
28 California Civil Codes [51,52] prior to the statutory effect of

1 the ADA on January 26, 1992 that Defendants and each of them had a  
2 duty to remove barriers to persons with disabilities such as  
3 plaintiff. Defendants also knew or should have known that  
4 individuals such as plaintiff with a disability are not required  
5 to give notice to a governmental agency prior to filing suit  
6 alleging Defendants' failure to remove architectural barriers.

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

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

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1 IV

2 FIRST CAUSE OF ACTION

3 **(Violation of Civil Rights-American with Disabilities Act)**

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

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

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

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

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1                   **Claim 2: Failure to Remove Architectural Barriers**

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

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

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

2 22. Plaintiff has been denied full and equal access to Defendants'  
3 goods services, facilities, privileges, advantages, or  
4 accommodations within a public accommodation owned, leased, and/or  
5 operated by Defendants in violation of California Civil Code  
6 Sections 54 and 54.1 and California Health and Safety Code Section  
7 19955. The actions of Defendants also violate the provisions of  
8 Title 24 of the State of California Building Codes with regard to  
9 accessibility for persons with disabilities by failing to provide  
10 access to Defendants facilities due to violations pertaining to  
11 accessible routes, ground and floor surfaces, parking and  
12 passenger loading zones, curb ramps, ramps, stairs, elevators,  
13 platform lifts (wheelchair lifts), windows, doors, toilet stalls,  
14 urinals, lavatories and mirrors, sinks, storage, handrails, grab  
15 bars, controls and operating mechanisms  
16 alarms, detectable warnings, signage and telephones.

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

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

20 24. Defendants have failed and refused and continue to fail and  
21 refuse to provide a reasonable alternative to allow plaintiff  
22 equal access to their facility by modifying their practices,  
23 policies, and procedures in that that they failed to have s  
24 scheme, plan, or design to assist Plaintiff and others similarly  
25 situated in entering and utilizing Defendants' goods or services  
26 as required by California Civil Code section 54 and 54.1.  
27 Accordingly Defendants have wrongfully discriminated against  
28 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 September 2003, respectively and continuing to the present time, knew that persons with physical disabilities were

1 denied their rights of equal access to all portions of this public  
2 facility. Despite such knowledge, Defendants, and each of them,  
3 failed and refused to take steps to comply with the applicable  
4 access statutes and despite knowledge of the resulting problems  
5 and denial of civil rights suffered by Plaintiff and other  
6 similarly situated persons with disabilities.  
7

8 30. Defendants and each of them have failed and refused to take  
9 action to grant full and equal access to person with physical  
10 disabilities. Defendants have carried out a course of conduct of  
11 refusing to respond to, or correct complaints about unequal access  
12 and have refused to comply with their legal obligations to make  
13 the subject facility accessible pursuant the ADAAG and the  
14 California Building Code [Title 24 of the California Code of  
15 Regulations]. Such actions and continuing course of conduct by  
16 Defendants, and each of them, evidence despicable conduct in  
17 conscious disregard of the rights and/or safety of Plaintiff and  
18 those similarly situated and thus justify an award of treble  
19 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code  
20 or alternatively an award of punitive damages in an appropriate  
21 amount.  
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25 31. Plaintiff has suffered emotional and physical damage and  
26 continues to suffer such damages all in an amount to be determined  
27 at time of trial.  
28

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

6 **VIII**

7 **FOURTH CAUSE OF ACTION**

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

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

12 34. Defendants and each of them owed a duty to Plaintiff to make  
13 their facility accessible and to keep Plaintiff reasonably safe  
14 from known dangers and risks of harm. This duty arises by virtue  
15 of the legal duties proscribed by various federal and state  
16 statutes including, but not limited to, ADA, ADAAG, California  
17 Civil Code sections 51, 52, 54, 54.1 and Title 24 of the  
18 California Code of Regulations. Defendants had a duty of due care  
19 not to do or cause anything to happen that would subject Plaintiff  
20 to undue stress, embarrassment, chagrin, and discouragement.  
21

22 35. Defendants breached their duty of care to Plaintiff by the  
23 actions and inaction complained of herein and as a result thereof  
24 Plaintiff was shocked, discouraged, embarrassed and outraged at  
25 the callousness and disregard of Defendants. Defendants knew or  
26 had reason to know that by denying Plaintiff equal access to their  
27 facility and failing and refusing to remove architectural  
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1 barriers, Plaintiff would suffer emotional and/or mental distress  
2 because of such discrimination and disparate treatment. Defendants  
3 breached their duty of care to plaintiff by the perpetration of  
4 the acts outlined herein.  
5

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

10 **IX**

11 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

24 **X**

25 **SIXTH CAUSE OF ACTION**

26 **(DECLARATORY RELIEF)**

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

1 42. An actual controversy now exists in that plaintiff is informed  
2 and believes and thereon alleges that defendants' premises are in  
3 violation of the disabled access laws of the State of California  
4 including, but not limited to, Civil Code Sections 51, et seq.,  
5 Section 52, et seq., Title 24 of the California Code of  
6 Regulations and Title III of the Americans with Disabilities Act  
7 and the Americans with Disabilities Access Guidelines (ADAAG).

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

12 WHEREFORE PLAINTIFF PRAYS:

- 13 1. For general damages according to proof;
- 14 2. For special damages according to proof;
- 15 3. For damages pursuant to Cal. Civil Code section 52, in the  
16 amount of \$4,000 for each and every offense of California Civil  
17 Code section 51, Title 24 of the California Building Code and the  
18 Americans with Disabilities Act.
- 19 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and  
20 California Business and Professions Code section 17200
- 21 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42  
22 U.S.C. 12205 and Cal. Civ. Code section 55;
- 23 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
- 24 7. For punitive damages according to proof;
- 25 8. For a Jury Trial;
- 26 9. For costs of suit incurred herein and;
- 27 10. For such other and further relief as the court deems proper.

28 Respectfully submitted,

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DEMAND FOR JURY

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

Dated: 2/5/04

  
\_\_\_\_\_  
Attorney for Plaintiff, Faustino  
Ambrosio