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

Attorney for Plaintiff, Faustino Ambaosio

FILED
MAR 11 11 33 AM '04
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

FAUSTINO AMBAOSIO) Case No.: SACV 04-300-AHS(Mcx)
Plaintiff,)
vs.) COMPLAINT FOR DAMAGES RE:
WENDY'S INTERNATIONAL, INC., dba) VIOLATION OF CIVIL RIGHTS ON
WENDY'S HAMBURGERS, CONCAL) BASIS OF DISCRIMINATION IN
ASSOCIATES, INC. AND DOES 1-10) PUBLIC ACCOMMODATIONS; UNFAIR,
Inclusive,) UNLAWFUL AND FRAUDULENT BUSINESS
Defendants.) PRACTICES; NEGLIGENT INFLECTION
OF EMOTIONAL DISTRESS;
INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS; DEMAND FOR
JURY TRIAL

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DOCKETED ON CM
MAR 24 2004
BY LRS 067

JURISDICTION AND VENUE

I
1. (a) Jurisdiction of this action is invoked on the basis of 28 USC 1331 and 1343, 42 USC 12101-12102, 12181-12183 and 12201, et. seq., which is applicable to causes of action where persons with disabilities have been denied their civil rights. Venue in the Central Judicial District of California (Eastern Division) in the United States District Court is in accord with 28. U.S.C. section

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1 1391(b) because a substantial part of plaintiff's claims arose
2 within the Judicial District of the United States District Court
3 of the Central District of California.

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

23 II

24 PARTIES

25 2. Defendant Wendy's International, Inc., dba Wendy's Hamburgers
26 was and at all times herein mentioned was a duly organized
27 business, association, or corporation duly authorized to exist and
28 operate within the State of California and County of Orange and

1 the owner, lessee, or tenant of the premises located at 1737 East
2 17th Street Santa Ana, California.

3 3. Plaintiff is informed and believes and thereon alleges that
4 defendant Concal Associates, Inc. is the owner and/or landlord of
5 the subject property upon which defendant business is sited.

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

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

22 III

23 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

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

1 therefore he is disabled as defined under 42 USC
2 12102(2) (A) (B) (C).

3 7. On or about October 20, 2003 plaintiff patronized the premises
4 of defendants to utilize goods and/or services offered by
5 defendants. When Plaintiff attempted to gain access to the goods
6 and/or services offered by defendants he encountered access
7 barriers because the premises failed to comply with federal ADA
8 Access Guidelines For Building and Facilities [hereinafter
9 "ADAAG"]; Department of Justice [DOJ] regulations at 28 CFR.
10 36.201; 36.304 and/or the State of California's Title 24 Building
11 Code Requirements.

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

- 15 (a) Lack of site entrance signage as required by Title 24
16 1129B.5
- 17 (b) Lack of access aisle (NO PARKING) warning sign as required
18 by Title 24 1129B.4.1&2.
- 19 (c) Lack of designated van accessible parking space as required
20 by ADAAG 4.1.2(5) (b) and Title 24 1129B.4.2.
- 21 (d) Lack of van accessible aisle as required by ADAAG 4.6.3 and
22 Title 24 1129B.4.2.
- 23 (e) No signage in accord with ADAAG 4.6.4 and Title 24 1129B.5.
- 24 (f) Entrance signage is not at every entrance/exit as required
25 by ADAAG 4.1.3(16) (b) and Title 241127B.3.
- 26 (g) Curb ramp location does not comply with ADAAG 4.7.1.

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- 1 (h) Bathroom international symbol of accessibility does not
2 meet the requirements of ADAAG 4.30.6 and Title 24
3 1117B.5.9.
- 4 (i) Lack of raised Braille characters on restroom door as
5 required by ADAAG 4.30.4 and Title 24 1117B.5.6.1 & 2.
- 6 (j) Wall mount signage does not meet the requirements of ADAAG
7 4.30.6; 4.1.2(7)(d) and Title 24 1117B.5.1.1 & 5.6.3,
8 1117B.5.9
- 9 (k) Grab bars do not comply with ADAAG 4.17.6; 4.14.6 and Title
10 24 1117B.8.1.
- 11 (l) Water closet mounting/location does not comply with Title
12 24 1115B.7.1.2
- 13 (m) Accessories/fixtures are not are proper height as required
14 by ADAAG 4.23.7 and Title 24 1115B.9.2
- 15 (n) Flush valve is not on correct side as required by ADAAG
16 4.16.5 and Title 24 1502.0
- 17 (o) Hardware does not comply with ADAAG 4.13.9 and Title 24
18 1115B.7.1.4
- 19 (p) Urinal rim height is too high and in violation of ADAAG
20 4.18.2 and Title 24 1503.2.1
- 21 (q) Toilet stall in not properly sized and in violation of
22 ADAAG 4.17.3 and Title 24 1115B.1
- 23 (r) Drain and hot water pipes are not insulated or covered as
24 required by ADAAG 4.24.6
- 25 (s) Door kick plates do not meet the requirements of Title 24
26 1133B.2.6

27 9. Based upon the above facts, Plaintiff as been discriminated
28 against and will continue to be discriminated against unless and

1 until Defendants are enjoined and forced to cease and desist from
2 continuing to discriminate against Plaintiff and others similarly
3 situated.

4 10. Pursuant to federal [ADA], Title 28 CFR 36.201; 36.203;
5 36.304; 36.305 and state law [California Title 24], Defendants are
6 required to remove barriers to their existing facilities.

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

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

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

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

7 **IV**

8 **FIRST CAUSE OF ACTION**

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

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

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

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

24 15. Plaintiff has a physical impairment as alleged herein because
25 his condition affects one or more of the following body systems:
26 neurological, musculoskeletal, special sense organs, and/or
27 cardiovascular. Further, his physical impairments substantially
28 limits one or more of the following major life activities:

1 [walking]. In addition, Plaintiff cannot perform one or more of
2 the said major life activities in the manner speed, and duration
3 when compared to the average person. Moreover, Plaintiff has a
4 history of or has been classified as having a physical impairment
5 as required by 42 U.S.C. section 12102(2)(A).

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

7 16. Based upon the facts alleged herein, Plaintiff was denied
8 full and equal access to Defendants' goods, services, facilities,
9 privileges, advantages, or accommodations within a public
10 accommodation owned leased, and/or operated by the named
11 Defendants. Defendants individually and collectively failed to
12 remove barriers as required by 42 U.S.C. 12182(a) and 28 CFR
13 36.304. Plaintiff is informed and believes, and thus alleges that
14 architectural barriers which are structural in nature exist at the
15 following physical elements of Defendants' facilities:

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

1 prohibited discrimination. Accordingly, Plaintiff was subjected to
2 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42
3 USC 12182 (b)(2)(A)(iv) and 42 USC 12188.

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

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

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

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

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

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VI

SECOND CAUSE OF ACTION

(Violation Of Civil Rights Under California Accessibility Laws)

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

(a) Denial Of Full And Equal Access

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

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

(b) Failure To Modify Practices, Policies And Procedures

24. Defendants have failed and refused and continue to fail and refuse to provide a reasonable alternative to allow plaintiff equal access to their facility by modifying their practices,

1 policies, and procedures in that that they failed to have s
2 scheme, plan, or design to assist Plaintiff and others similarly
3 situated in entering and utilizing Defendants' goods or services
4 as required by California Civil Code section 54 and 54.1.
5 Accordingly Defendants have wrongfully discriminated against
6 Plaintiff.

7 **VII**

8 **THIRD CAUSE OF ACTION**

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

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

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

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

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

26 28. By reason of their acts and denial of Plaintiff's civil rights
27 Defendants also violated the provisions of Cal. Civ. Code section
28 52, which makes a person or entity in violation of Cal.Civ. Code

1 51 liable for the actual damages to a Plaintiff including treble
2 damages where appropriate.

3 29. Defendants and each of them, at all times prior to and
4 including October 2003, respectively and continuing to the present
5 time, knew that persons with physical disabilities were denied
6 their rights of equal access to all portions of this public
7 facility. Despite such knowledge, Defendants, and each of them,
8 failed and refused to take steps to comply with the applicable
9 access statutes and despite knowledge of the resulting problems
10 and denial of civil rights suffered by Plaintiff and other
11 similarly situated persons with disabilities.
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14 30. Defendants and each of them have failed and refused to take
15 action to grant full and equal access to person with physical
16 disabilities. Defendants have carried out a course of conduct of
17 refusing to respond to, or correct complaints about unequal access
18 and have refused to comply with their legal obligations to make
19 the subject facility accessible pursuant the ADAAG and the
20 California Building Code [Title 24 of the California Code of
21 Regulations]. Such actions and continuing course of conduct by
22 Defendants, and each of them, evidence despicable conduct in
23 conscious disregard of the rights and/or safety of Plaintiff and
24 those similarly situated and thus justify an award of treble
25 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code
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1 or alternatively an award of punitive damages in an appropriate
2 amount.

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

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

12 VIII

13 FOURTH CAUSE OF ACTION

14 (Unfair And Unlawful Business Practice)

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

17 34. California Business and Professions Code Section 17200 states
18 in pertinent part:

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

21 35. Defendants, as alleged herein, are in violation of the
22 Americans With Disabilities Act and Title 24 of the California
23 Building Code, in that they have denied equal access to their
24 places of public accommodation to Plaintiff and others similarly
25 situated to Plaintiff. Defendants have failed and refused and
26 continue to refuse to comply with equal access laws all in
27 violation of 42 USC 12181-12183; 28 CFR 36.304 and 42 USC 12188.
28

1 In addition the complained of acts are in violation of California
2 Civil Code Sections 51,52, 54,and 54.1,; California Health and
3 Safety Code section 19955 all of which require Defendants to
4 provide equal access to their facility to disabled persons such as
5 plaintiff. Defendants are also in violation of the indicated
6 statutes because of their failure to remove architectural
7 barriers, which prevent equal access to their facility by disabled
8 persons and because of their failure to modify their practices,
9 policies and procedures to have a scheme, plan, or design to
10 assist Plaintiff and others similarly situated to enter and
11 utilize Defendants' services as required by the Unruh Act.

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14 36. Defendants' acts are unlawful and unfair and are therefore in
15 violation of California Business and Professions Code section
16 17200.

17
18 37. Pursuant to the provisions of California Business and
19 Professions Code section 17201 Plaintiff is a person as identified
20 within said section and therefore allowed to bring this action on
21 behalf of himself and the general public to effectuate California
22 Business and Professions Code 17200 as provided for within
23 Business and Professions Code section 17204.

24
25 38. Thus, Plaintiff, under Bus & Prof. Code section 17200 seeks
26 injunctive relief, on behalf of himself and the general public,
27 requiring Defendants to remedy the disabled access violations
28 present within Defendants' facility and that Defendants be ordered

1 to cease and desist from continuing in noncompliance with disabled
2 access statutes and regulations.

3 **IX**

4 **FIFTH CAUSE OF ACTION**

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

6
7 39. Plaintiff relleges the allegations of the Fourth Cause of
8 Action as though set forth fully herein.

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

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

3 42. As a proximate result of the actions of Defendants Plaintiff
4 did suffer emotional and mental stress and pain and suffering all
5 in an amount to be determined at time of trial.
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7 X

8 **SIXTH CAUSE OF ACTION**

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

10 43. Plaintiff realleges the allegations of the Fifth Cause of
11 Action as though set forth fully herein.

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

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

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

21 WHEREFORE PLAINTIFF PRAYS:

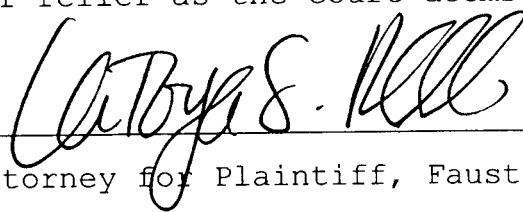
- 22 1. For general damages according to proof;
23 2. For special damages according to proof;
24 3. For damages pursuant to Cal. Civil Code section 52, in the
25 amount of \$4,000 for each and every offense of California Civil
26 Code section 51, Title 24 of the California Building Code and the
27 Americans With Disabilities Act.

28

- 1 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and
- 2 California Business and Professions Code section 17200
- 3 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42
- 4 U.S.C. 12205 and Cal. Civ. Code section 55;
- 5 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
- 6 7. For punitive damages according to proof;
- 7 8. For a Jury Trial;
- 8 9. For costs of suit incurred herein and;
- 9 10. For such other and further relief as the court deems proper.

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Dated: 3/9/04



Attorney for Plaintiff, Faustino
Ambaosio

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

Dated: 3/9/04



Attorney for Plaintiff, Faustino
Ambaosio