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

12 FAUSTINO AMBAOSIO,

13 Plaintiff,

14 vs.

15 DONALD DUNKLEMAN, dba,
16 McDONALDS; McDONALDS
CORPORATION; and DOES 1-10 Inclusive,

17 Defendants.

Case No.: SACV04-627 AHS (MLGx)

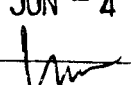
COMPLAINT FOR DAMAGES RE:
VIOLATION OF CIVIL RIGHTS ON BASIS
OF DISCRIMINATION IN PUBLIC
ACCOMMODATIONS; NEGLIGENT
INFLECTION OF EMOTIONAL DISTRESS;
INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS; DECLARATORY
RELIEF; DEMAND FOR JURY TRIAL

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19 I

20 **JURISDICTION AND VENUE**

21 1. (a) Jurisdiction of this action is invoked on the basis of 28 USC 1331 and 1343, 42 USC 12101-
22 12102, 12181-12183 and 12201, et. seq., which is applicable to causes of action where persons with
23 disabilities have been denied their civil rights. Venue in the Central Judicial District of California in
24 the United States District Court is in accord with 28. U.S.C. Section 1391(b) because a substantial
25 part of Plaintiff's claims arose within the Judicial District of the United States District Court of the
26 Central District of California.

27 (b) Supplemental Jurisdiction. The Judicial District of the United States District Court of the
28 Central District of California has supplemental jurisdiction over the state claims alleged in this

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

11 II

12 PARTIES

13 2. Defendant, Donald Dunkleman, dba, McDonalds was and at all times herein mentioned, was a
14 duly organized business, association, or corporation duly authorized to exist and operate within the
15 State of California and County of Santa Ana and the owner, lessee, or tenant of the premises located
16 at 1011 17th Street, Santa Ana, California 92701.

17 3. Plaintiff is informed and believes and thereon alleges that defendant McDonalds Corporation is
18 the owner and/or landlord of the subject property upon which Defendants' 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)(b) 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.
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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 April 4, 2004, Plaintiff patronized the premises of Defendants to utilize goods and/or
10 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 Warning – Access Aisle - (NO PARKING)

23 (CA Title 24 1129B.4.1 & 2)

24 1 Warning – Access Aisle - (12" High Minimum)

25 (CA Title 24 1129B.4.1 & 2)

26 1 Van Accessible Aisle – Exist/Improper

27 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)

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- 1 1 Van Accessible Aisle - Width
2 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 3 1 Van Accessible Aisle - Length
4 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 5 1 Van Accessible Aisle - (Passenger Side)
6 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 7 1 Access Route - A Visible Route of Travel
8 (ADAAG 4.1.3(2), 4.3.2(2) & CA Title 24 1114B.1.2)
- 9 1 Seating – Dining, Banquet & Bar Facilities – (Min Requirement 5%)
10 (ADAAG 5.1 & CA Title 24 1104B.5.4)
- 11 1 Seating – Dining, Banquet & Bar Facilities – (Clear Space 30” x 48” Min))
12 (ADAAG 4.2.4.1 & CA Title 24 1122B.3)
- 13 1 Seating – Dining, Banquet & Bar Facilities – (Knee Space 27”H, 30”W, 19”D)
14 (ADAAG 4.32.3 & CA Title 24 1122B.3)
- 15 1 Seating – Dining, Banquet & Bar Facilities – (Table Height 28”-34”)
16 (ADAAG 4.32.4 & CA Title 24 1122B.4)
- 17 1 Seating – Dining, Banquet & Bar Facilities – (Access Aisles Min Width 36”)
18 (ADAAG 5.3 & CA Title 24 1104B.5.4)
- 19 1 Seating – Dining, Banquet & Bar Facilities – (Equivalent Services & Décor @ Accessible
20 Seating), (ADAAG 5.4 & CA Title 24 1104B.5.4)
- 21 1 Seating – Dining, Banquet & Bar Facilities – (Accessible Seating Integrated w/General
22 Seating)
23 (ADAAG 5.4 & CA Title 24 1104B.5.4)
- 24 2 Bathroom – International Symbol of Accessibility at Accessible Restroom
25 (ADAAG 4.30.6 & CA Title 24 1117B.5.9)
- 26 2 Bathroom – International Symbol of Accessibility - Pictogram Min 6” High
27 (ADAAG 4.30.4 & CA Title 24 1117B.5.5.2)
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- 1 2 Bathroom – International Symbol of Accessibility – Verbal Description Below
2 (ADAAG 4.30.4 & CA Title 24 1117B.5.5.2)
- 3 2 Raised Braille Characters - (Restroom Wall Signage)
4 (ADAAG 4.30.4 & CA Title 24 1117B.5.6.1 & .2)
- 5 2 Wall Mount Signage (Latch Side of Door)
6 (ADAAG 4.1.2(7)(d) and CA Title 24 1117B.5.1.1 & .5.6.3)
- 7 2 Wall Mount Signage (60 inches from the floor)
8 (ADAAG 4.30.6 & CA Title 24 1117B.5.9)
- 9 4 Faucet Fixtures - (One Hand Operable)
10 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 11 4 Faucets Fixtures - (Max 5 lb Force to Activate)
12 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 13 4 Faucets Fixtures - (Lever-Type)
14 (ADAAG 4.27.4 & CA Title 24 1508.1 & .2)
- 15 2 Water Closet (Clear Space in Front Min 48 inches – Front-Transfer Stall)
16 (ADAAG 4.17.3 & CA Title 24 1115B.7.1.2)
- 17 2 Accessories/Fixtures – Proper Height (Toilet Seat Covers)
18 (ADAAG 4.23.7 & CA Title 24 1115B.9.2)
- 19 2 Toilet Stall – Proper Size
20 (ADAAG 4.17.3 & CA Title 24 1115B.1)
- 21 2 Hardware – Opening Door Lock/Latch
22 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)
- 23 2 Hardware – Handle Inside/Outside Compartment Door
24 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)
- 25 4 Kick Plate at Doors
26 (CA Title 24 1133B.2.6)
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1 9. Based upon the above facts, Plaintiff as been discriminated against and will continue to be
2 discriminated against unless and until Defendants are enjoined and forced to cease and desist from
3 continuing to discriminate against Plaintiff and others similarly situated.

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

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

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

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IV

FIRST CAUSE OF ACTION

(Violation of Civil Rights-American With Disabilities Act)

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

Claim 1: Denial of Full and Equal Access

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

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

Claim 2: Failure To Remove Architectural Barriers

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

Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform

1 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
2 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars,
3 and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
4 Pursuant to 42 USC section 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires places of public
5 accommodation to remove architectural barriers that are structural in nature within existing
6 facilities. Failure to remove such barriers and disparate treatment against a person who has a known
7 association with a person with a disability are forms of prohibited discrimination. Accordingly,
8 Plaintiff was subjected to discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC
9 12182 (b)(2)(A)(iv) and 42 USC 12188.

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

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

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

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

24 20. Under the provisions of 42 USC 12205 Plaintiff is entitled to an award of reasonably attorneys
25 fees and requests that the court 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 and California Health and Safety Code Section 19955. 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, policies, and procedures in that that they failed to have s scheme, plan, or design to assist Plaintiff and others similarly situated in entering and utilizing Defendants' goods or services as required by California Civil Code section 54 and 54.1. Accordingly Defendants have wrongfully discriminated against Plaintiff.

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:

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

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

8 failing and refusing to provide free and equal access to Plaintiff to their facility on the same basis as
9 other persons not disabled. By their failure to provide equal access to Plaintiff as herein alleged,
10 Defendants have also violated 42 U.S.C. section 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes
11 section 51(f).

12 28. By reason of their acts and denial of Plaintiff's civil rights Defendants also violated the
13 provisions of Cal. Civ. Code section 52, which makes a person or entity in violation of Cal.Civ.
14 Code 51 liable for the actual damages to a Plaintiff including treble damages where appropriate.

15 29. Defendants and each of them, at all times prior to and including April 2004, respectively and
16 continuing to the present time, knew that persons with physical disabilities were denied their rights
17 of equal access to all portions of this public facility. Despite such knowledge, Defendants, and each
18 of them, failed and refused to take steps to comply with the applicable access statutes and despite
19 knowledge of the resulting problems and denial of civil rights suffered by Plaintiff and other
20 similarly situated persons with disabilities.

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

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

12 FOURTH CAUSE OF ACTION

13 (Negligent Infliction of Emotional Distress)

14 33. Plaintiff realleges the allegations of the Third Cause of Action as though set forth fully herein.
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16 34. Defendants and each of them owed a duty to Plaintiff to make their facility accessible and to
17 keep Plaintiff reasonably safe from known dangers and risks of harm. This duty arises by virtue of
18 the legal duties proscribed by various federal and state statutes including, but not limited to, ADA,
19 ADAAG, California Civil Code sections 51, 52, 54, 54.1 and Title 24 of the California Code of
20 Regulations. Defendants had a duty of due care not to do or cause anything to happen that would
21 subject Plaintiff to undue stress, embarrassment, chagrin, and discouragement.
22

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

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

6 **IX**

7 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

16 **X**

17 **SIXTH CAUSE OF ACTION**

18 **(DECLARATORY RELIEF)**

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

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

26 43. A declaration of Plaintiff's rights is necessary and appropriate in order for the parties to this
27 action to know their respective rights and duties. Accordingly, the court should make a declaration
28 of the rights of the parties.

WHEREFORE PLAINTIFF PRAYS:

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

14
15 **DEMAND FOR JURY**

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

17 Respectfully submitted,

18 Dated: 5/24/64

THE LAW OFFICES OF ROY L. LANDERS

19 By: Roy L. Landers
Attorney for Plaintiff,
Faustino Ambaosio