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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 MARCY AUER,

11 Plaintiff,

12 v.

13 HANFORD HOTELS, INC., a California  
14 corporation, HANFORD HOTELS, LLC, a  
15 California Limited Liability Company, dba  
16 EXECUTIVE INN, aka LA QUINTA INNS &  
17 SUITES; CITY OF HAYWARD, a  
18 municipal corporation, and DOES ONE to  
19 FIFTY, inclusive,

20 Defendants.

) Case No. C-03-1453 WHA

) Civil Rights

) COMPLAINT FOR INJUNCTIVE RELIEF  
) AND DAMAGES: DENIAL OF CIVIL  
) RIGHTS OF A DISABLED PERSON IN  
) VIOLATION OF THE AMERICANS WITH  
) DISABILITIES ACT OF 1990; VIOLATION  
) OF CALIFORNIA'S CIVIL RIGHTS  
) STATUTES; GENERAL NEGLIGENCE

) JURY TRIAL REQUESTED

21 Plaintiff **MARCY AUER** complains of defendants **HANFORD HOTELS, INC., a**  
22 **California corporation, HANFORD HOTELS, LLC, a California Limited Liability**  
23 **Company, dba EXECUTIVE INN, aka LA QUINTA INNS & SUITES; CITY OF HAYWARD,**  
24 **a municipal corporation, and DOES ONE to FIFTY, inclusive, and alleges as follows:**

25 **JURISDICTION AND VENUE**

26 1. The Court has jurisdiction of this action pursuant to 28 **USC** § 1331 for  
27 violations of the **Americans with Disabilities Act of 1990**, (42 **USC** § 12101, *et seq.*)  
28 specifically Title II and Title III of the ADA. Pursuant to pendant jurisdiction, attendant and

1 related causes of action, arising from the same facts, are also brought under California law,  
2 including, but not limited to, violations of **California Health & Safety Code** § 19955, *et seq.*,  
3 including **California Code of Regulations**, Title 24, § 19959, **California Civil Code** §§ 51,  
4 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55.

5 2. The Court has jurisdiction of this action pursuant to 28 **USC** § 1331 and 1343  
6 for violations of the **Americans with Disabilities Act of 1990** (42 **USC** § 12101, *et seq.*).

7 3. Under the doctrine of pendant and supplemental jurisdiction, this Court has  
8 jurisdiction over Plaintiff's claims arising under California state law.

9 4. Venue is proper in this court pursuant to 28 **USC** § 1391(b) and is founded on  
10 the fact that the real property which is the subject of this action is located in this district, at  
11 Hayward, Alameda County, California, and that Plaintiff's causes of action arose in this  
12 district.  
13

#### 14 INTRODUCTION

15 5. **LA QUINTA INNS** is located at 20777 Hesperian Boulevard, Hayward,  
16 California. Said motel is owned and operated by defendants **HANFORD HOTELS, INC.**, a  
17 **California corporation**, **HANFORD HOTELS, LLC**, a **California Limited Liability**  
18 **Company**, dba **EXECUTIVE INN**, aka **LA QUINTA INNS & SUITES**; **CITY OF HAYWARD**,  
19 **a municipal corporation**, and **DOES ONE to FIFTY, inclusive**.  
20

21 6. **CITY OF HAYWARD**, a **municipal corporation**, is a public entity established  
22 under the laws of the State of California. **CITY OF HAYWARD**, a **municipal corporation**,  
23 is located in Alameda County, California.  
24

25 7. Plaintiff is informed and believes, and based thereon alleges that Defendant  
26 **CITY OF HAYWARD**, a **municipal corporation**, receives federal monies for its programs  
27 and activities, and that **CITY OF HAYWARD**, a **municipal corporation**, is thus subject to  
28

1 §504 of the *Rehabilitation Act*.

2 8. **Title II** of the *Americans with Disabilities Act of 1990* (42 *USC* §12131 *et*  
3 *seq.*) prohibits a **public entity** from excluding persons with disabilities from participating in,  
4 or denying the benefits of, the goods, services, programs and activities of the entity or  
5 otherwise discriminating against persons on the basis of disability. The regulations  
6 implementing Title II of the ADA generally require that, when a public entity alters any  
7 existing facility in any manner that affects usability, the altered portions must be made  
8 accessible to and usable by individuals with disabilities. 28 *CFR* § 35.15

9 9. **Title III** of the *Americans with Disabilities Act of 1990* (42 *USC* §12181, *et*  
10 *seq.*) prohibits **private entites** and individuals who own, lease, or operate public  
11 accommodations from discriminating against any individual on the basis of disability in the  
12 full and equal enjoyment of the goods, services, facilities, privileges, advantages, or  
13 accommodations of any place of public accommodation.

14 10. Defendants **HANFORD HOTELS, INC., a California corporation, HANFORD**  
15 **HOTELS, LLC, a California Limited Liability Company, dba EXECUTIVE INN, aka LA**  
16 **QUINTA INNS & SUITES; CITY OF HAYWARD, a municipal corporation, and DOES**  
17 **ONE to FIFTY, inclusive**, own and operate an establishment for services to the public and  
18 at which Defendants failed to provide barrier free access to said establishment in conformity  
19 with both Federal and California legal requirements. Further, Defendants failed to provide  
20 compliance as follows:

21 **A. Parking**

22 1. Number. There are three parking lots, one between Hesperian Boulevard  
23 and West "A" Street, one on the North side of the building and one at the rear of  
24 the building.

25 a. Hesperian Boulevard to West A Street Parking Lot. There is a total  
26 of 67 parking spaces, including two accessible parking spaces. No  
27  
28

1 accessible van parking is provided in violation of California Title 24  
2 § 1129B.1, Table 11B-7 and ADAAG 4.1.2(5)(a) .

3 b. Back Parking Lot. There is a total of 57 parking spaces, including  
4 two accessible parking spaces. No accessible van parking is  
5 provided in violation of California Title 24 § 1129B.1, Table 11B-7  
6 and ADAAG 4.1.2(5)(a).

7 c. Side Parking Lot. There is a total of 57 parking spaces, including  
8 two accessible parking spaces. No accessible van parking is  
9 provided in violation of California Title 24 § 1129B.1, Table 11B-7  
10 and ADAAG 4.1.2(5)(a).

11 2. Side Parking Lot.

12 a. Loading Aisle Placement. The loading aisle is on the driver's side  
13 of the accessible parking space in violation of California Title 24 §  
14 1129B.4.1.

15 b. Accessible Route. Accessible Route. An accessible route from the  
16 parking is not provided to the entrance as required by California  
17 Title 24 § 1114B.1.2 and ADAAG 4.6.2. It is necessary to travel  
18 through the vehicular way to get to the building entrance.

19 3. Back Parking Lot

20 a. Loading Aisle Placement. The loading aisle is on the driver's side  
21 of the accessible parking space in violation of California Title 24 §  
22 1129B.4.1.

23 b. Access Loading Aisle Width. The accessible loading aisles are less  
24 than 5' in width. Van parking spaces must have a loading and  
25 unloading aisle a minimum of 8' wide. See California Title 24 §  
26 1129B.4.2 and ADAAG 4.6.3. Accessible auto parking spaces  
27 must have a minimum 5' loading and unloading passenger side  
28 aisle. See California Title 24 § 1129B.4.1 and ADAAG 4.6.3.

c. Slope. The slope of the accessible parking spaces and loading  
aisles is greater than 2% in violation of California Title 24 §  
1129B.4.4 and ADAAG 4.6.3.

4. Tow-Away Signs

The tow-away signs to the parking lots do not provide a telephone number  
or address for reclaiming a towed vehicle in violation of California Title 24  
§ 1129B.4.5.

///

1 **B. Accessible Route**

2 An accessible route from the street to the entrance is not provided in violation of  
3 California Title 24 § 1114B.1.2 and ADAAG 4.1.2(1).

4 **C. Lobby**

- 5 1. Entrance Doors Opening Pressure. More than 8.5 pounds of pressure are  
6 required to open the door in violation of California Title 24 § 1133B.2.5.  
7 2. Counter. The Counter is more than 36" in height in violation of ADAAG  
8 7.2 and California Title 24 § 1122B.4.

9 **D. Entrance Door from West A Street**

10 The landing does not appear to provide the required depth or strike side  
11 clearance before the door in violation of California Title 24 § 1133B.2.4.2 and  
12 ADAAG 4.13.6.

13 **E. Entrance Door to Back Parking Lot**

14 The entrance door does not have the required strike side clearance in violation of  
15 California Title 24 § 1133B.2.4.3 and ADAAG 4.13.6.

16 **F. Entrance from Corridor to Pool Area**

17 The entrance door does not have the required strike side clearance in violation of  
18 California Title 24 § 1133B.2.4.3 and ADAAG 4.13.6.

19 **G. Swimming Pool**

20 The swimming pool should be surveyed for architectural barriers. The swimming  
21 pool does not have a lift. California Title 24 § 11-4B.4.3 requires that pools have  
22 lifts which are independently operable and provide a rigid seat.

23 **H. Guest Rooms**

- 24 1. Number of Accessible Guest Rooms. There are 146 total guest rooms,  
25 including 23 suites. There are 4 designated accessible guest rooms with  
26 roll-in showers. For 146 total guest rooms, 7 accessible guest rooms  
27 should be provided, including 2 accessible guest rooms with roll-in  
28 showers. See California Title 24 § 1111B.4.2 and ADAAG 9.1.2.  
2. Classes of Accessible Sleeping Accommodations. An accessible guest  
room is not included among the 23 suites. In addition, all the designated  
accessible guest rooms contain only one bed, though guest rooms with  
two beds are provided at the hotel in violation of California Title 24 §  
1111B.4.1 and ADAAG 9.1.4.

1 3. "Accessible" Guest Room 120 Bathroom Shower

- 2 1. Clear Floor Space. A clear floor space that is either a 60" diameter  
3 circle or a space allowing a t-type turn is not provided in the  
4 bathroom in violation of ADAAG 4.22.3 and California Title 24 §  
5 1111B.4.6.2.
- 6 2. Toilet Clear Floor Space. The door to the shower swings into the  
7 required clear floor space of the toilet in violation of California Title  
8 24 § 1115B.7.1.2 and ADAAG 4.23.2.
- 9 3. Shower Bench. A shower bench affixed to the wall is not provided  
10 in violation of California Title 24 § 1115B.6.2.4.5.

11 The above barriers interfered with Plaintiff's access of the facilities and continue to deter  
12 Plaintiff from visiting said facilities, and as a legal result, Plaintiff **MARCY AUER** suffers  
13 violations of her civil rights to full and equal enjoyment of goods, services, facilities and  
14 privileges, and has and will suffer embarrassment and humiliation.

15 **FACTUAL ALLEGATIONS**

16 11. Plaintiff **MARCY AUER** is, and at all times relevant to this Complaint is, a  
17 "physically handicapped person," "physically disabled person," and a "person with a  
18 disability," as these terms are used under California law and under federal laws including,  
19 but not limited to, Title III of the ***Americans with Disabilities Act of 1990***. (The terms  
20 "physically handicapped person," "physically disabled person," and a "person with a  
21 disability" will be used interchangeably throughout this Complaint.) Plaintiff is a "person with  
22 a disability," as defined by all applicable California and United State's laws. Plaintiff **MARCY**  
23 **AUER** is severely limited in the use of her legs, being wheelchair bound.

24 12. Defendants **HANFORD HOTELS, INC.**, a California corporation, **HANFORD**  
25 **HOTELS, LLC**, a California Limited Liability Company, dba **EXECUTIVE INN**, aka **LA**  
26 **QUINTA INNS & SUITES**; **CITY OF HAYWARD**, a municipal corporation, and **DOES**  
27 **ONE to FIFTY, inclusive**, at all times relevant herein were and are the owners and  
28

1 operators; lessors and/or lessees, franchisers and/or franchisees, of public facilities known  
2 as the "**LA QUINTA INNS & SUITES**" motel, located at Hayward, California, subject to the  
3 requirements of California state law requiring full and equal access to public facilities  
4 pursuant to **California Health & Safety Code** § 19955, *et seq.*, **California Civil Code** §§  
5 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to Title III of the **Americans with**  
6 **Disabilities Act of 1990**, and to all other legal requirements referred to in this Complaint.

7  
8 Plaintiff does not know the relative responsibilities of defendants in the operation of the  
9 facilities herein complained of, and alleges a joint venture and common enterprise by all  
10 such defendants.

11 13. Plaintiff is informed and believes, and based thereon alleges Defendants  
12 **HANFORD HOTELS, INC., a California corporation, HANFORD HOTELS, LLC, a**  
13 **California Limited Liability Company, dba EXECUTIVE INN, aka LA QUINTA INNS &**  
14 **SUITES; CITY OF HAYWARD, a municipal corporation, and DOES ONE to FIFTY,**  
15 **inclusive** (hereinafter alternatively referred to collectively as "defendants"), at all times  
16 relevant herein were and are owners, possessors, builders and keepers of the "**LA QUINTA**  
17 **INNS & SUITES**" in Hayward, California.

18  
19 14. Plaintiff is informed and believes, and based thereon alleges Defendants  
20 **HANFORD HOTELS, INC., a California corporation, HANFORD HOTELS, LLC, a**  
21 **California Limited Liability Company, dba EXECUTIVE INN, aka LA QUINTA INNS &**  
22 **SUITES; CITY OF HAYWARD, a municipal corporation, and DOES ONE to FIFTY,**  
23 **inclusive** are the owners and operators of the subject "**LA QUINTA INNS & SUITES**" motel,  
24 at all times relevant to this Complaint. Plaintiff is informed and believes that each of the  
25 defendants herein is the agent, employee or representative of each of the other defendants,  
26 and performed all acts and omissions stated herein within the scope of such agency or  
27  
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1 employment or representative capacity and is responsible in some manner for the acts and  
2 omissions of the other defendants in legally causing the damages complained of herein, and  
3 have approved or ratified each of the acts or omissions of each other defendant, as herein  
4 described.

5 15. Plaintiff **MARCY AUER** does not know the true names and capacities of  
6 defendants **HANFORD HOTELS, INC., a California corporation, HANFORD HOTELS,**  
7 **LLC, a California Limited Liability Company, dba EXECUTIVE INN, aka LA QUINTA**  
8 **INNS & SUITES; CITY OF HAYWARD, a municipal corporation, and DOES ONE to**  
9 **FIFTY, inclusive**, their business capacities, their ownership connection to the property and  
10 business, nor their relative responsibilities in causing the access violations herein  
11 complained of, and alleges a joint venture and common enterprise by all such defendants.  
12 Plaintiff is informed and believes that each of the defendants herein, including DOES ONE  
13 to FIFTY, inclusive, is the agent, ostensible agent, master, servant, employer, employee,  
14 representative, franchiser, franchisee, joint venturer, partner, and associate, or such similar  
15 capacity, of each of the other defendants, and was at all times acting and performing, or  
16 failing to act or perform, with the authorization, consent, permission or ratification of each of  
17 the other defendants, and is responsible in some manner for the acts and omissions of the  
18 other defendants in legally causing the violations and damages complained of herein, and  
19 have approved or ratified each of the acts or omissions of each other defendant, as herein  
20 described. Plaintiff will seek leave to amend this Complaint when the true names,  
21 capacities, connections and responsibilities of defendants **HANFORD HOTELS, INC., a**  
22 **California corporation, HANFORD HOTELS, LLC, a California Limited Liability**  
23 **Company, dba EXECUTIVE INN, aka LA QUINTA INNS & SUITES; CITY OF HAYWARD,**  
24 **a municipal corporation, and DOES ONE to FIFTY, inclusive**, are ascertained.  
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27  
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1           16. Plaintiff is informed and believes that all named defendants, including DOES  
2 ONE to FIFTY, inclusive, conspired to commit the acts described herein, or alternatively,  
3 aided and abetted one another in the performance of the wrongful acts hereinafter alleged.

4           17. Defendants **HANFORD HOTELS, INC., a California corporation, HANFORD**  
5 **HOTELS, LLC, a California Limited Liability Company, dba EXECUTIVE INN, aka LA**  
6 **QUINTA INNS & SUITES; CITY OF HAYWARD, a municipal corporation, and DOES**  
7 **ONE to FIFTY, inclusive**, are the owners and operators of "LA QUINTA INNS & SUITES"  
8 motel, located at Hayward, California. This motel, including, but not limited to, parking  
9 spaces and access aisles and access routes, are each a part of a "public accommodation or  
10 facility" subject to the requirements of *California Health & Safety Code* § 19955, *et seq.*,  
11 and of *California Civil Code* §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this  
12 "LA QUINTA INNS & SUITES" motel was constructed after 1990 which has subjected the  
13 "LA QUINTA INNS & SUITES" motel to handicapped access requirements per *California*  
14 *Health & Safety Code* § 19959, and applicable portions of *California Code of*  
15 *Regulations*, Title 24, (the State Building Code).

16           18. On or about December 19, 2002, Plaintiff **MARCY AUER**, visited the "LA  
17 **QUINTA INNS & SUITES"** motel in Hayward, California for the purpose of obtaining  
18 overnight accommodations. Defendants **HANFORD HOTELS, INC., a California**  
19 **corporation, HANFORD HOTELS, LLC, a California Limited Liability Company, dba**  
20 **EXECUTIVE INN, aka LA QUINTA INNS & SUITES; CITY OF HAYWARD, a municipal**  
21 **corporation, and DOES ONE to FIFTY, inclusive**, interfered with Plaintiff's access to the  
22 "LA QUINTA INNS & SUITES" motel as set forth in Paragraph 10 above.

23           Said acts and omissions denied Plaintiff legal handicapped access to the "LA  
24 **QUINTA INNS & SUITES"** motel according to federal and state law.

1 19. Plaintiff encountered and/or is informed and believes that the following  
2 architectural barriers, which violate the requirements of the **California Code of Regulations**  
3 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those  
4 similarly situated full and equal access to the subject public facility as set forth in Paragraph  
5 10 above.

6 20. Defendants, and each of them, discriminated against Plaintiff **MARCY AUER**  
7 on the basis of her physical disability, and interfered with her access to the "**LA QUINTA**  
8 **INNS & SUITES**" establishment, in violation of both California law including, but not limited  
9 to, **California Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the  
10 "Prohibition of Discrimination" provision and §503, the "Prohibition Against Retaliation or  
11 Coercion" provision of the **Americans with Disabilities Act of 1990**.

12 21. As a result of the actions and failure to act of defendants, and each of them,  
13 and as a result of the failure to provide appropriate handicapped parking, proper  
14 handicapped signage, proper handicapped accessible entryways, and handicapped  
15 accommodations, Plaintiff **MARCY AUER** suffered and will suffer a loss of her civil rights to  
16 full and equal access to public facilities, and further suffered and will suffer emotional  
17 distress, mental distress, mental suffering, mental anguish, which includes shame,  
18 humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and  
19 naturally associated with a person with a physical disability being denied access to a public  
20 accommodation, all to her damages as prayed hereinafter in an amount within the  
21 jurisdiction of this court.

22  
23  
24  
25 **I. FIRST CAUSE OF ACTION:**  
26 **VIOLATION OF *THE AMERICANS WITH DISABILITIES ACT OF***  
27 **(42 *USC* §12101 *et seq.*)**

28 22. Plaintiff repleads and incorporates by reference, as if fully set forth again

1 herein, the allegations contained in paragraphs 1 through 21 of this Complaint and  
2 incorporates them herein as if separately repled.

3 23. Pursuant to law, in 1990 the United States Congress made findings per 42  
4 **USC** § 12101 regarding persons with physical disabilities, finding that laws were needed to  
5 more fully protect 43 million Americans with one or more physical or mental disabilities;  
6 [that] historically society has tended to isolate and segregate individuals with disabilities;  
7 [that] such forms of discrimination against individuals with disabilities continue to be a  
8 serious and pervasive social problem; [that] the nation’s proper goals regarding individuals  
9 with disabilities are to assure equality of opportunity, full participation, independent living  
10 and economic self-sufficiency for such individuals; [and that] the continuing existence of  
11 unfair and unnecessary discrimination and prejudice denies people with disabilities the  
12 opportunity to compete on an equal basis and to pursue those opportunities for which our  
13 free society is justifiably famous.  
14

15  
16 24. Congress stated as its purpose in passing the **Americans with Disabilities**  
17 **Act of 1990** (42 **USC** § 12102):

18 It is the purpose of this act (1) to provide a clear and comprehensive  
19 national mandate for the elimination of discrimination against individuals with  
20 disabilities; (2) to provide clear, strong, consistent, enforceable standards  
21 addressing discrimination against individuals with disabilities; (3) to ensure  
22 that the Federal government plays a central role in enforcing the standards  
23 established in this act on behalf of individuals with disabilities; and (4) to  
24 invoke the sweep of Congressional authority, including the power to enforce  
25 the 14th Amendment and to regulate commerce, in order to address the  
26 major areas of discrimination faced day to day by people with disabilities.

27 25. As part of the **Americans with Disabilities Act of 1990**, Public Law 101-336  
28 (hereinafter the “ADA”), Congress passed “Title III - Public Accommodations and Services  
Operated by Private Entities” (42 **USC** § 12181 *et seq.*). Among the public accommodations  
identified for purposes of this title were “an inn, hotel, motel, or other place of lodging . . .”

1 26. Pursuant to 42 **USC** § 12182,

2 “No individual shall be discriminated against on the basis of disability in  
3 the full and equal enjoyment of the goods, services, facilities, privileges,  
4 advantages, or accommodations of any place of public accommodation by  
5 any person who owns, leases (or leases to), or operates a place of public  
6 accommodation.”

7 27. Among the general prohibitions against discrimination were included in 42

8 **USC** §12182(b)(1)(A)(i):

9 **Denial of participation.** It shall be discriminatory to subject an  
10 individual or class of individuals on the basis of a disability or disabilities of  
11 such individual or class, directly, or through contractual, licensing, or other  
12 arrangements, to a denial of the opportunity of the individual or class to  
13 participate in or benefit from the goods, services, facilities, privileges,  
14 advantages, or accommodations of an entity.

15 28. Among the general prohibitions against discrimination were included in 42

16 **USC** §12182(b)(1)(E):

17 **Association** -- It shall be discriminatory to exclude or otherwise deny  
18 equal goods, services, facilities, privileges, advantages, accommodations, or  
19 other opportunities to an individual or entity because of the known disability of  
20 an individual with whom the individual or entity is known to have a relationship  
21 or association.

22 The acts of defendants set forth herein were a violation of Plaintiff’s rights under the ADA,  
23 Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36 et seq.

24 29. Among the general prohibitions against discrimination were included in 42

25 **USC** § 12182(b)(2)(A)(i) and 42 **USC** § 12182(b)(2)(A)(ii):

26 **Discrimination.** For purposes of subsection (a), discrimination  
27 includes -

28 (i) the imposition or application of eligibility criteria that  
screen out or tend to screen out an individual with a disability or  
any class of individuals with disabilities from fully and equally  
enjoying any goods, services, facilities, privileges, advantages,  
or accommodations, unless such criteria can be shown to be  
necessary for the provision of the goods, services, facilities,  
privileges, advantages, or accommodations being offered;

1 (ii) a failure to make reasonable modifications in policies,  
2 practices, or procedures, when such modifications are necessary  
3 to afford such goods, services, facilities, privileges, advantages,  
4 or accommodations to individuals with disabilities, unless the  
entity can demonstrate that making such modifications would  
fundamentally alter the nature of such goods, services, facilities,  
privileges, advantages, or accommodations.

5 30. Plaintiff alleges that constructing the eligibility requirements, policies, practices  
6 and procedure for entry to the "**LA QUINTA INNS & SUITES**" facility by persons with  
7 disabilities and their companions as established by the defendants can be simply modified  
8 to eliminate disparate and discriminatory treatment of persons with disabilities by properly  
9 constructing barrier free handicapped access for safe and full and equal enjoyment of the  
10 "**LA QUINTA INNS & SUITES**" motel as that enjoyed by other people.

12 31. The specific prohibition against retaliation and coercion is included in the  
13 ***Americans With Disabilities Act of 1990*** § 503(b) and the *Remedies and Procedures* in §  
14 503(c):

16 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to  
17 coerce, intimidate, threaten, or interfere with any individual in the exercise or  
18 enjoyment of, or on account of his or her having exercised or enjoyed, or on  
19 account of his or her having aided or encouraged any other individual in the  
20 exercise or enjoyment of, any right granted or protected by this Act.

21 (c) Remedies and Procedure. - The remedies and procedures  
22 available under sections 107, 203, and 308 of this Act shall be available to  
23 aggrieved persons for violations of subsections (a) and (b), with respect to  
24 Title I, Title II and Title III, respectively.

25 32. Among the specific prohibitions against discrimination were included, in 42  
26 ***USC*** § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications  
27 barriers that are structural in nature, in existing facilities...where such removal is readily  
28 achievable;" and (v) "where and entity can demonstrate that the removal of a barrier under  
clause (iv) is not readily achievable, a failure to make such goods, services, facilities,  
privileges, advantages, or accommodations available through alternative methods if such

1 methods are readily achievable.” The acts of Defendants set forth herein were a violations  
2 of Plaintiff’s rights under the “ADA,” Public Law 101-336, and the regulations promulgated  
3 thereunder, 28 **CFR** Part 36, *et seq.*

4 33. The removal of the barriers complained of by Plaintiff as hereinabove alleged  
5 were at all times after 1990 “readily achievable.” On information and belief, if the removal of  
6 all the barriers complained of here together were not “readily achievable,” the removal of  
7 each individual barrier complained of herein was “readily achievable.”

8  
9 34. Per 42 **USC** § 12181(9), “The term ‘readily achievable’ means easily  
10 accomplishable and able to be carried out without much difficulty or expense.” The statute  
11 and attendant regulations define relative “expense” in relation to the total financial resources  
12 of the entities involved, including any “parent” companies. Plaintiff alleges that properly  
13 repairing each of the items that Plaintiff complains of herein is readily achievable, including,  
14 but not limited to, correcting and repairing the items set forth in Paragraph 10 above.

15  
16 The changes needed to remove barriers to access for the disabled were and are  
17 “readily achievable” by the defendants under standards set forth under 42 **USC** § 12181 of  
18 the **Americans with Disabilities Act of 1990**. (Further, if it was not “readily achievable” for  
19 defendants to remove all such barriers, defendants have failed to make the required  
20 services available through alternative methods, although such methods are achievable as  
21 required by 42 **USC** §12181(b)(2)(a)(iv), (v).)

22  
23 35. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §  
24 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil**  
25 **Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to  
26 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable  
27 grounds for believing that she is about to be subjected to discrimination in violation of  
28

1 **Americans With Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of  
2 the public facilities complained of herein for the purpose of lodging so long as defendants  
3 continue to apply policies, practices and procedures to screen out and refuse to allow entry  
4 and service to persons with disabilities such as Plaintiff's.

5 36. Defendants', and each of their acts and omissions of failing to provide barrier  
6 free handicapped access for Plaintiff, were tantamount to interference, coercion or  
7 intimidation pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** §  
8 12203):

9  
10 It shall be unlawful to coerce, intimidate, threaten, or interfere with any  
11 individual in the exercise or enjoyment of, or on account of his or her having  
12 encouraged any other individual in the exercise or enjoyment of, any right  
granted or protected by this Act.

13 37. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §  
14 12188), "Nothing in this section shall require a person with a disability to engage in a futile  
15 gesture if such person has actual notice that a person or organization covered by this title  
16 does not intend to comply with its provisions." Pursuant to this last section, Plaintiff, on  
17 information and belief, alleges that defendants have continued to violate the law and deny  
18 the rights of Plaintiff and other disabled persons to access this public accommodation for  
19 the purpose of lodging. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),

20  
21 "...Where appropriate, injunctive relief shall also include requiring the  
22 provision of an auxiliary aid or service, modifications of a policy, or provision  
of alternative methods, to the extent required by this title."

23 38. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the **Civil**  
24 **Rights Act of 1964** (42 **USC** § 2000a-3(a), and pursuant to federal regulations adopted to  
25 implement the **Americans with Disabilities Act of 1990**, including, but not limited to, an  
26 order granting injunctive relief and attorneys' fees. Such attorneys' fees, "including litigation  
27 expenses and costs," are further specifically provided for by §505 of Title III.  
28

1 **II. SECOND CAUSE OF ACTION**

2 BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH  
3 PHYSICAL DISABILITIES (**California Health & Safety Code** § 19955, *et*  
4 *seq.*) (Injunctive Relief only as to municipal Defendant)

5 39. Plaintiff repleads and incorporates by reference, as if fully set forth again  
6 herein, the allegations contained in paragraphs 1 through 38 of this Complaint and  
7 incorporate them herein as if separately repled.

8 40. **California Health & Safety Code** § 19955 provides in pertinent part:

9 The purpose of this part is to insure that public accommodations or  
10 facilities constructed in this state with private funds adhere to the provisions of  
11 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the  
12 *Government Code*. For the purposes of this part “public accommodation or  
13 facilities” means a building, structure, facility, complex, or improved area  
14 which is used by the general public and shall include auditoriums, hospitals,  
15 theaters, restaurants, hotels, motels, stadiums, and convention centers.  
16 When sanitary facilities are made available for the public, clients or  
17 employees in such accommodations or facilities, they shall be made available  
18 for the handicapped.

19 41. **California Health & Safety Code** § 19956, which appears in the same  
20 chapter as §19955, provides in pertinent part, “accommodations constructed in this state  
21 shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of  
22 Title 1 of the *Government Code*...” **California Health & Safety Code** § 19956 was  
23 operative July 1, 1970, and is applicable to all public accommodations constructed or altered  
24 after that date. On information and belief, portions of “**LA QUINTA INNS & SUITES**” and/or  
25 of its buildings, were constructed and/or altered after July 1, 1970, and substantial portions  
26 of said building had alterations, structural repairs, and/or additions made to such public  
27 accommodations after July 1, 1970, thereby requiring said public accommodations and/or  
28 buildings to be subject to the requirements of Part 5.5, **California Health & Safety Code** §  
19955, *et seq.*, upon such alteration, structural repairs or additions per **California Health &**  
**Safety Code** § 19959.



1 42. Pursuant to the authority delegated by **California Government Code** § 4450,  
2 *et seq.*, the State Architect promulgated regulations for the enforcement of these provisions.  
3 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the  
4 California State Architect's Regulations and these regulations must be complied with as to  
5 any alterations and/or modifications of the "**LA QUINTA INNS & SUITES**" occurring after  
6 that date. Construction changes occurring prior to this date but after July 1, 1970 triggered  
7 access requirements pursuant to the "ASA" requirements, the **American Standards**  
8 **Association Specifications**, A117.1-1961. On information and belief, at the time of the  
9 construction and modification of said building, all buildings and facilities covered were  
10 required to conform to each of the standards and specifications described in the **American**  
11 **Standards Association Specifications** and/or those contained in Title 24 of the **California**  
12 **Administrative Code**, (now known as Title 24, **California Code of Regulations**.)

13  
14  
15 43. Public facilities, such as "**LA QUINTA INNS & SUITES**" are public  
16 accommodations or facilities within the meaning of **California Health & Safety Code** §  
17 19955, *et seq.*

18 44. It is difficult or impossible for persons with physical disabilities who use  
19 wheelchairs, canes, walkers and service animals to travel about in public to use a motel with  
20 the defects set forth in Paragraph 10 above as required by Title 24 of the **California Code**  
21 **of Regulations** and the **Americans with Disabilities Act Access Guidelines (ADAAG)**.  
22 Thus, when public accommodations fail to provide handicap accessible public facilities,  
23 persons with physical disabilities are unable to enter and use said facilities, and are denied  
24 full and equal access to and use of that facility that is enjoyed by other members of the  
25 general public.  
26

27  
28 45. Plaintiff **MARCY AUER** and other similarly situated persons with physical

1 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and  
2 service animals are unable to use public facilities on a “full and equal” basis unless each  
3 such facility is in compliance with the provisions of the **California Health & Safety Code** §  
4 19955, *et seq.* Plaintiff is a member of that portion of the public whose rights are protected  
5 by the provisions of **California Health & Safety Code** § 19955, *et seq.*

6           46. The **California Health & Safety Code** was enacted “[t]o ensure that public  
7 accommodations or facilities constructed in this state with private funds adhere to the  
8 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*  
9 *Code.*” Such public accommodations are defined to include motels.

10           47. Plaintiff is further informed and believes that as of the date of filing this  
11 Complaint, Defendants have not made accessible the facilities at the subject motel as set  
12 forth in Paragraph 10 above.

13           48. Plaintiff **MARCY AUER** is informed and believes, and therefore alleges, that  
14 Defendants **HANFORD HOTELS, INC., a California corporation, HANFORD HOTELS,**  
15 **LLC, a California Limited Liability Company, dba EXECUTIVE INN, aka LA QUINTA**  
16 **INNS & SUITES; CITY OF HAYWARD, a municipal corporation, and DOES ONE to**  
17 **FIFTY, inclusive**, and each of them, caused the subject buildings constituting “**LA QUINTA**  
18 **INNS & SUITES**” to be constructed, altered and maintained in such a manner that persons  
19 with physical disabilities were denied full and equal access to, within and throughout said  
20 buildings and were denied full and equal use of said public facilities, and despite knowledge  
21 and actual and constructive notice to such Defendants that the configuration of the motel  
22 and/or buildings was in violation of the civil rights of persons with physical disabilities, such  
23 as Plaintiff. Such construction, modification, ownership, operation, maintenance and  
24 practices of such public facilities are in violation of law as stated in Part 5.5, **California**

1 **Health & Safety Code** § 19955, *et seq.*, and elsewhere in the laws of California.

2 49. On information and belief, the subject building constituting the public facilities  
3 of "**LA QUINTA INNS & SUITES**" denied full and equal access to Plaintiff and other persons  
4 with physical disabilities in other respects due to non-compliance with requirement of Title  
5 24 of the **California Code of Regulations** and **California Health & Safety Code** § 19955,  
6 *et seq.*

7  
8 50. The basis of Plaintiff's aforementioned information and belief is the various  
9 means upon which Defendants must have acquired such knowledge, including, but not  
10 limited to, this lawsuit, other access lawsuits, communications with operators of other motels  
11 and other property owners regarding denial access, communications with Plaintiff and other  
12 persons with disabilities, communications with other patrons who regularly visit there,  
13 communications with owners of other businesses, notices and advisories they obtained from  
14 governmental agencies through the mails, at seminars, posted bulletins, television, radio,  
15 public service announcements, or upon modification, improvement, alteration or substantial  
16 repair of the subject premises and other properties owned by these Defendants, newspaper  
17 articles and trade publications regarding the **Americans with Disabilities Act of 1990** and  
18 other access law, and other similar information. The scope and means of the knowledge of  
19 each defendant is within each defendant's exclusive control and cannot be ascertained  
20 except through discovery.  
21

22  
23 51. As a result of Defendants' acts and omissions in this regard, Plaintiff has been  
24 required to incur legal expenses and hire attorneys in order to enforce her civil rights and  
25 enforce provisions of the law protecting access for persons with physical disabilities and  
26 prohibiting discrimination against persons with physical disabilities, and to take such action  
27 both in her own interests and in order to enforce an important right affecting the public  
28

1 interest. Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable  
2 attorneys' fees incurred, pursuant to the provisions of the **California Code of Civil**  
3 **Procedure** § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to **California**  
4 **Health & Safety Code** § 19953 and **California Civil Code** §§ 54.3 and 55.

5 52. Defendants, and each of them, at times prior to and including December 19,  
6 2002, and continuing to the present time, knew that persons with physical disabilities were  
7 denied their rights of equal access to all portions of this public facility. Despite such  
8 knowledge, Defendants failed and refused to take steps to comply with the applicable  
9 access statutes; and despite knowledge of the resulting problems and denial of civil rights  
10 thereby suffered by Plaintiff **MARCY AUER** and other similarly situated persons with  
11 disabilities, including the specific notices referred to in paragraph 50 of this Complaint.  
12 Defendants have failed and refused to take action to grant full and equal access to persons  
13 with physical disabilities in the respects complained of hereinabove. Defendants and each  
14 of them have carried out a course of conduct of refusing to respond to, or correct complaints  
15 about, denial of handicap access. Such actions and continuing course of conduct by  
16 Defendants, evidence despicable conduct in conscious disregard for the rights or safety of  
17 Plaintiff and of other similarly situated persons, justifying an award of exemplary and  
18 punitive damages pursuant to **California Civil Code** § 3294.

19 53. Defendants' actions have also been oppressive to persons with physical  
20 disabilities and of other members of the public, and have evidenced actual or implied  
21 malicious intent toward those members of the public, such as Plaintiff and other persons  
22 with physical disabilities who have been denied the proper access they are entitled to by  
23 law. Further, Defendants' refusals on a day-to-day basis to correct these problems  
24 evidence despicable conduct in conscious disregard for the rights of Plaintiff and other  
25  
26  
27  
28

1 members of the public with physical disabilities.

2 54. Plaintiff prays for an award of punitive damages against Defendants, and each  
3 of them, pursuant to **California Civil Code** § 3294 in an amount sufficient to make a more  
4 profound example of Defendants and discourage owners, operators, franchisers and  
5 franchisees of other public facilities from willful disregard of the rights of persons with  
6 physical disabilities. Plaintiff does not know the financial worth of Defendants, or the  
7 amount of punitive damages sufficient to accomplish the public purposes of **California Civil**  
8 **Code** § 3294 and seeks leave to amend this Complaint when such facts are known.  
9

10 55. As a result of the actions and failure of Defendants, and each of them, and as  
11 a result of the failure to provide proper accessible public facilities, Plaintiff **MARCY AUER**  
12 was denied her civil rights, including her right to full and equal access to public facilities, was  
13 embarrassed and humiliated, suffered physical, psychological and mental injuries and  
14 emotional distress, mental distress, mental suffering, mental anguish, which includes  
15 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly  
16 and naturally associated with a person with a physical disability being denied access to a  
17 public accommodation.  
18

19 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

20 **III. THIRD CAUSE OF ACTION**  
21 VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS (**California Civil Code**  
22 §§ 54, 54.1 and 54.3) (Injunctive Relief only as to Municipal Defendant)

23 56. Plaintiff repleads and incorporates by reference as if fully set forth again  
24 herein, the allegations contained in paragraphs 1 through 55 of this Complaint and  
25 incorporates them herein as if separately repled.

26 57. The public facilities above-described constitute public facilities and public  
27 accommodations within the meaning of **California Health & Safety Code** § 19955 *et seq.*  
28

1 and were facilities to which members of the public are invited. The aforementioned acts and  
2 omissions of defendants, and each of them, constitute a denial of equal access to and use  
3 and enjoyment of these facilities by persons with disabilities, including Plaintiff **MARCY**  
4 **AUER**. Said acts and omissions are also in violation of provisions of Title 24 of the  
5 **California Code of Regulations**.

6  
7 58. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and  
8 the denial by defendants of such rights and entitlements are set forth in **California Civil**  
9 **Code** §§ 54, 54.1 and 54.3, to wit:

10 Individuals with disabilities shall have the same right as the...general  
11 public to full and free use of the streets, highways, sidewalks, walkways,  
12 public buildings, public facilities, and other public places. **California Civil**  
13 **Code** § 54(a).

14 Individuals with disabilities shall be entitled to full and equal access, as  
15 other members of the general public, to accommodations, advantages,  
16 facilities, and privileges of all common carriers, airplanes, motor vehicles,  
17 railroad trains, motor buses, streetcars, boats, or any other public  
18 conveyances or modes of transportation (whether private, public, franchised,  
19 licensed, contracted, or otherwise provided), telephone facilities, adoption  
20 agencies, private schools, hotels, lodging places, places of public  
21 accommodation, amusement or resort, and other places to which the general  
22 public is invited, subject only to the conditions and limitations established by  
23 law, or state or federal regulation, and applicable alike to all persons.  
24 **California Civil Code** § 54.1(a).

25  
26 59. On or about December 19, 2002, Plaintiff **MARCY AUER** suffered violations of  
27 **California Civil Code** §§ 54 and 54.1 in that she was denied full and equal enjoyment of the  
28 goods, services, facilities and privileges of said "**LA QUINTA INNS & SUITES**", as set forth  
in paragraph 10 above. Plaintiff was also denied full and equal access to other particulars,  
including, but not limited to, those described hereinabove. Plaintiff was also denied use of  
facilities that she was entitled to under Title III of the **Americans with Disabilities Act of**  
**1990**.

60. As a result of the denial of full and equal enjoyment of the goods, services,

1 facilities and privileges of defendants' "**LA QUINTA INNS & SUITES**" motel due to the acts  
2 and omissions of defendants, and each of them, in owning, operating and maintaining this  
3 subject public facility, Plaintiff suffered violations of her civil rights, including, but not limited  
4 to, rights under **California Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer  
5 physical injury, emotional distress, mental distress, mental suffering, mental anguish, which  
6 includes shame, humiliation, embarrassment, anger, chagrin, disappointment and worry,  
7 expectedly and naturally associated with a disabled person's denial of full and equal  
8 enjoyment of goods, services, privileges, etc. all to her damages as prayed hereinafter in an  
9 amount within the jurisdiction of the court. Defendants' actions and omissions to act  
10 constituted discrimination against Plaintiff on the sole basis that Plaintiff was physically  
11 disabled.  
12

13           61. Plaintiff seeks damages for the violation of her rights as a disabled person on  
14 or about December 19, 2002, according to proof, pursuant to **California Civil Code** § 54.3,  
15 including a trebling of all statutory and actual damages, general and special, available  
16 pursuant to **California Civil Code** § 54.3(a).  
17

18           62. As a result of defendants' acts and omissions in this regard, Plaintiff **MARCY**  
19 **AUER** has been required to incur legal expenses and hire attorneys in order to enforce her  
20 rights and enforce provisions of the law protecting the full and equal enjoyment of goods,  
21 services, facilities, privileges of public facilities by the disabled, and those individuals  
22 associated with or accompanied by a person with disabilities, and prohibiting discrimination  
23 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable  
24 attorneys' fees incurred pursuant to the provisions of **California Civil Code** § 54.3.  
25 Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for damages to  
26 Plaintiff, but also to compel the defendants to make their goods, services, facilities and  
27  
28

1 privileges available and accessible to all members of the public with physical disabilities,  
2 justifying public interest attorneys' fees pursuant to the provisions of **California Code of**  
3 **Civil Procedure** § 1021.5.

4 63. The acts and omissions of defendants in failing to provide the required  
5 accessible facilities subsequent to the enactment date and compliance date of the  
6 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and  
7 alterations to its handicapped parking, handicapped signage, pathways, and other elements  
8 as hereinabove stated, after being notified by patrons before and after the time of Plaintiff's  
9 visit and injuries, on or about December 19, 2002, and all times prior thereto with the  
10 knowledge that persons with disabilities would enter defendants' premises, the reason given  
11 therefor, was an established policy, practice and procedure of refusing and denying entry,  
12 thereby denying lodging and other services to a person with disabilities and the companions  
13 thereof, evidence malice and oppression toward Plaintiff and other disabled persons.

14 64. Such despicable conduct, as that incorporated herein by reference and  
15 specifically set forth in Paragraph 19, was carried out by defendants with a willful and  
16 conscious disregard for the law and the rights of Plaintiff and of other disabled persons, and  
17 was oppressive in that such conduct subjected Plaintiff "to cruel and unjust hardship in  
18 conscious disregard" for the law and Plaintiff's rights, and justifies exemplary and punitive  
19 damages pursuant to **California Civil Code** § 3294, in amounts sufficient to make an  
20 example of defendants and to punish defendants and to carry out the purposes of  
21 **California Civil Code** § 3294.

22 65. Defendants have failed to establish a nondiscriminatory criteria, policy,  
23 practice and procedure for entry into said "**LA QUINTA INNS & SUITES**" motel as  
24 hereinabove described.



1 66. As a result of defendants' continuing failure to provide for the full and equal  
2 enjoyment of goods, services, facilities and privileges of said "**LA QUINTA INNS & SUITES**"  
3 as hereinabove described, Plaintiff has continually been denied her rights to full and equal  
4 enjoyment of the subject motel, as it would be a "futile gesture" to attempt to patronize said  
5 "**LA QUINTA INNS & SUITES**" with the discriminatory policy in place as hereinabove  
6 described.

7  
8 67. The acts and omissions of defendants as complained of herein in failing to  
9 provide the required accessible facilities subsequent to the enactment date and compliance  
10 date of the *Americans with Disabilities Act of 1990* and refusal to make remedial  
11 modifications and alternations to the architectural barriers as stated herein and in failing to  
12 establish practices, policies and procedures to allow safe access by persons who are  
13 disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully  
14 excluding Plaintiff and other members of the public who are physically disabled, from full  
15 and equal enjoyment of the subject "**LA QUINTA INNS & SUITES**" as hereinabove  
16 described. Such acts and omissions are the continuing cause of humiliation and mental and  
17 emotional suffering of Plaintiff in that these actions continue to treat Plaintiff as an inferior  
18 and second class citizen and serve to discriminate against her on the sole basis that she is  
19 a physically disabled. Plaintiff is unable, so long as such acts and omissions of defendants  
20 continue, to achieve full and equal enjoyment of the goods and services of said "**LA**  
21 **QUINTA INNS & SUITES**" as described hereinabove. The acts of defendants have legally  
22 caused and will continue to cause irreparable injury to Plaintiff if not enjoined by this court.

23  
24  
25 68. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin any  
26 continuing refusal by defendants to permit entry to said "**LA QUINTA INNS & SUITES**" and  
27 to serve Plaintiff or others similarly situated, and to require defendants to comply forthwith  
28

1 with the applicable statutory requirements relating to the full and equal enjoyment of goods  
2 and services as described hereinabove for disabled persons. Such injunctive relief is  
3 provided by **California Civil Code** § 55. Plaintiff further requests that the court award  
4 statutory costs and attorneys' fees to Plaintiff pursuant to **California Civil Code** § 55 and  
5 **California Code of Civil Procedure** § 1021.5, all as hereinafter prayed for.

6 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees  
7 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary  
8 damages.

9  
10 **IV. FOURTH CAUSE OF ACTION**  
11 **VIOLATIONS OF UNRUH CIVIL RIGHTS ACT**  
12 **(California Civil Code §§ 51 and 51.5)**

13 69. Plaintiff repleads and incorporates by reference, as if fully set forth again  
14 herein, the allegations contained in paragraphs 1 through 68 of this Complaint and  
15 incorporates them herein as if separately repled.

16 70. Defendants' acts and omissions as specified with regard to the discriminatory  
17 treatment of Plaintiff **MARCY AUER** on the basis of her physical disabilities, have been in  
18 violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have  
19 denied to Plaintiff her rights to "full and equal accommodations, advantages, facilities,  
20 privileges or services in all business establishments of every kind whatsoever."

21 71. **California Civil Code** § 51 also provides that "[a] violation of the right of any  
22 individual under the **Americans with Disabilities Act of 1990** (Public Law 101-336) shall  
23 also constitute a violation of this section."

24 72. **California Civil Code** § 51.5 also provides that "[n]o business establishment  
25 of any kind whatsoever shall discriminate against, boycott, or blacklist, refuse to buy from,  
26 sell to, or trade with any person in this state because of the race, creed, religion, color,  
27  
28

1 national origin, sex, disability of the person or of the person's partners, members,  
2 stockholders, directors, officers, managers, superintendents, agents, employees, business  
3 associates, suppliers, or customers."

4 73. As a result of the violation of Plaintiff's civil rights protected by **California Civil**  
5 **Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of **California Civil**  
6 **Code** § 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h)  
7 to mean "special and general damages"), as well as reasonable attorneys' fees and costs,  
8 as allowed by statute, according to proof. Further, pursuant to paragraphs 19, 20, 21, 43  
9 and 51, Plaintiff seeks appropriate exemplary damages under **California Civil Code** § 3294  
10 against Defendants **HANFORD HOTELS, INC., and HANFORD HOTELS, LLC**, only.  
11

12 WHEREFORE, Plaintiff prays for relief against defendants, and each of them, as  
13 follows.  
14

15 **V. FIFTH CAUSE OF ACTION**  
16 **GENERAL NEGLIGENCE (All Defendants except Municipal Defendant)**

17 74. Plaintiff repleads and incorporates by reference, as if fully set forth again  
18 herein, the allegations contained in paragraphs 1 through 73 of this Complaint and  
19 incorporates them herein as if separately repled.

20 75. Defendants, and each of them, are in the business of renting motel rooms to  
21 the general public.

22 76. Plaintiff is severely disabled and was at the time of her visit to Defendant's  
23 premises with the purpose of obtaining overnight accommodations in order to attend her  
24 husband's funeral being held in Hayward.

25 77. On or about December 19, 2002, Plaintiff, Marcy Auer was upon Defendant's  
26 property in an "accessible" room. On the morning of December 20, 2002, Mrs. Auer went to  
27 take a shower, sliding out of her wheelchair onto the plastic chair in the shower. As she  
28

1 leaned forward to push her wheelchair out of the shower, the chair tipped causing Mrs. Auer  
2 to fall to the shower floor. As a result of falling in the shower, Plaintiff suffered severe  
3 bruising and injuries to her legs and feet, and other physical and emotional injuries.

4 78. As a proximate result of the negligence of the defendant(s), and each of them,  
5 Plaintiff was hurt and injured in her health, strength, and activity, sustaining injury to her  
6 nervous system and person, all of which injuries have caused, and continue to cause,  
7 Plaintiff great mental, physical, and nervous pain and suffering. Plaintiff is informed and  
8 believes and based thereon alleges that such injuries will result in some permanent  
9 disability. As a result of such injuries, Plaintiff has suffered general damages in an amount  
10 to be determined according to proof at trial.  
11

12 79. As a further proximate result of the negligence of the defendants and each of  
13 them, Plaintiff has incurred and will incur medical and related expenses in an amount to be  
14 determined according to proof at trial.  
15

16 WHEREFORE, Plaintiff prays that this court award damages and provide relief as  
17 follows:

18 **PRAYER FOR RELIEF**

19 Plaintiff prays that this court award damages and provide relief as follows:

20 1. Grant injunctive relief requiring that defendants establish a non-discriminatory  
21 criteria policy, practice and procedure permitting entry into the "**LA QUINTA INNS &**  
22 **SUITES**" motel in Hayward, California, for the purpose of services according to **California**  
23 **Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, *et seq.*, and Title III of the **Americans with**  
24 **Disabilities Act of 1990**, and grant injunctive relief requiring that Defendants repair and  
25 render safe to handicapped persons, and otherwise make handicapped-accessible, all  
26 public areas of the motel and make such facilities "readily accessible to and usable by  
27  
28

1 individuals with disabilities,” according to the standards of Title 24 of the **California**  
2 **Administrative Code, California Health & Safety Code** § 19955 *et seq.*, and Title III of the  
3 **Americans with Disabilities Act of 1990** and the standards of **ADAAG**; and prohibiting  
4 operation of the "LA QUINTA INNS & SUITES", located in Hayward, California, as a public  
5 facility until Defendants provide full and equal enjoyment of goods and services as  
6 described hereinabove to physically disabled persons, including Plaintiff;

7  
8 2. General damages according to proof;

9 3. Statutory and “actual” damages, including general damages and special  
10 damages, according to proof, pursuant to **California Civil Code** §§ 52, and 54.3, and that  
11 these damages be trebled;

12 4. Prejudgment interest on all compensatory damages;

13 5. Punitive and exemplary damages pursuant to the standards and purposes of  
14 **California Civil Code** § 3294;

15 6. Remedies and Procedures available under **Americans with Disabilities Act**  
16 **of 1990** §§ 107, 203 and 308;

17 7. Award Plaintiff all litigation expenses, all costs of this proceeding and all  
18 reasonable attorneys’ fees as provided by law, including, but not limited to, those  
19 recoverable pursuant to the provisions of **California Civil Code** §§ 52, 54.3, and 55,  
20 **California Code of Civil Procedure** § 1021.5, and **Americans with Disabilities Act of**  
21 **1990** §308 of Title III; and  
22  
23

24 ///

25 8. Grant such other and further relief as the court may deem just and proper.  
26

27 Dated: April 1, 2003

28 \_\_\_\_\_  
Jason K. Singleton, Attorney for

Plaintiff, **MARCY AUER**

**REQUEST FOR JURY TRIAL**

Plaintiffs hereby request a jury for all claims for which a jury is permitted.

Dated: April 1, 2003

\_\_\_\_\_  
Jason K. Singleton, Attorney for  
Plaintiff, **MARCY AUER**