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3:02-CV-01785 CARLOCK V. AIBERTOS TACO SHOP

1

CMP.

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FILED

02 SEP -9 PM 3:19

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

'02 CV 01785 (M) (LSP)

11 GAYNOR CARLOCK

12 Plaintiff,

13 vs.

14 AIBERTOS TACO SHOP, FELIPE
15 OSORIA, GARY ORLANSKY, AND DOES
16 1-10, Inclusive,

17 Defendants.

) Case No.:

) COMPLAINT FOR DAMAGES RE:
) VIOLATION OF CIVIL RIGHTS ON
) BASIS OF DISCRIMINATION IN
) PUBLIC ACCOMMODATIONS; UNFAIR,
) UNLAWFUL AND FRAUDULENT BUSINESS
) PRACTICES; NEGLIGENT INFLICTION
) OF EMOTIONAL DISTRESS;
) INTENTIONAL INFLICTION OF
) EMOTIONAL DISTRESS; DEMAND FOR
) JURY TRIAL

18
19 I

20 JURISDICTION AND VENUE

21 1. (a) Jurisdiction of this action is invoked on the basis of 28
22 USC 1331 and 1343, 42 USC 12101-12102, 12181-12183 and 12201, et.
23 seq. Jurisdiction is also invoked pursuant to 42 USC 1981 [Civil
24 Rights Act of 1991], et seq, which is applicable to causes of
25 action where persons with disabilities have been denied their
26 civil rights and Title II, section 201, et. seq. of the 1964 Civil
27 Rights Act. Venue in the Southern Judicial District of California
28 in the United States District Court is in accord with 28. U.S.C.

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

4 (b) Supplemental Jurisdiction. The Judicial District of the
5 United States District Court of the Southern District of
6 California has supplemental jurisdiction over the state claims
7 alleged in 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(s), **AIBERTOS TACO SHOP** is and at all times herein
26 mentioned were duly organized business, association, or
27 corporation duly authorized to exist and operate within the State
28 of California and County of San Diego and the owner, operator or

1 lessee of the premises located at **2704 University Avenue, San**
2 **Diego, California.**

3 3. Plaintiff is informed and believes and thereon alleges that
4 defendants **GARY ORLANSKY**, were at all times herein was and are the
5 owners, joint operator and/or controlling party, lessors, tenants
6 of the property, which is the subject of this action and in some
7 manner responsible for the violations of law as alleged herein.

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

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

24 **III**

25 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

26 6. Plaintiff is disabled and confined to a wheelchair. He has no
27 control over his lower extremities and must use a wheelchair to
28 transport himself and to effect the basic necessities of his

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

4 7. On or about **April 27, 2002** plaintiff attempted to enter the
5 subject premises of the defendants herein to utilize goods and/or
6 services offered by defendants. When Plaintiff attempted to enter
7 said facility, plaintiff had difficulty entering and using the
8 facility because it failed to comply with Federal ADA Access
9 Guidelines For Building and Facilities [hereinafter "ADAAG"]
10 and/or the State of California's Title 24 Building Code
11 Requirements.

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

- 15 **(a) Site Entrance Sign does not exist and is a violation of CA**
16 **Title 24 1129B.5;**
- 17 **(b) Site entrance signage is not filled out with the telephone**
18 **number of the tow company that has vehicle as required by**
19 **Title 24 1129B.5.;**
- 20 **(c) Site entrance signage is not filled out with the address to**
21 **reclaim vehicle in the event a vehicle is towed as required**
22 **by Title 24 1129B.5.;**
- 23 **(d) There is no regular access aisle with at any regular access**
24 **aisle as required by CA Title 24 1129B.4.1;**
- 25 **(e) There are no van accessible parking spaces as required by**
26 **ADAAG 4.1.2(5)(b) & CA Title 24 1129B.4.2;**
- 27 **(f) There are no van accessible parking signs as required by**
28 **ADAAG 4.1.2(5)(B) & CA Title 24 1129B.4.2;**

- 1 (g) There are no van accessible aisles as required by ADAAG
2 4.6.3 & CA Title 24 1129B.4.2;
- 3 (h) There are not the correct number of disabled parking stalls
4 as required by ADAAG 4.1.2(5) (a) & CA Title 24 1129B.1;
- 5 (i) There is no van accessible aisle on the passenger side of
6 the van accessible parking stall as required by ADAAG 4.6.4
7 & CA Title 24 1129B.5;
- 8 (j) There are no signs installed at every disabled parking
9 stall to indicate or inform of any disabled parking stalls
10 as required by ADAAG 4.6.4 & CA Title 24 1129B.5;
- 11 (k) There is no visible access route from the parking lot to
12 any accessible entrance as required by ADAAG 4.1.3(2) ,
13 4.3.2(2) & CA Title 24 1114B.1.2;
- 14 (l) There are no disabled parking space emblems in any parking
15 stalls as required by ADAAG 4.6.4 & CA Title 24 1133B.2.5.1
16 &.2;
- 17 (m) There is no kick plate at the entrance door as required by
18 CA Title 24 1133B.2.6;

19 9. Plaintiff is informed and believes and thereon alleges that
20 defendants' facility has in excess of **Seventeen (17) violations of**
21 **ADAAG and/or Title 24** at their facility.

22 10. These violations are believed to have existed for a
23 significant period of time and with defendant's specific
24 knowledge.

25 11. Based upon the above facts, Plaintiff as been discriminated
26 against and will continue to be discriminated against unless and
27 until Defendants are enjoined and forced to cease and desist from
28

1 continuing to discriminate against Plaintiff and others similarly
2 situated.

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

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

1 United States Department of Justice and created by Adaptive
2 Environments.

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

6 IV

7 FIRST CAUSE OF ACTION

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

9 15. Plaintiff realleges the allegations in paragraphs 1 through 14
10 as though set forth fully herein.

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

12 16. Based on the facts asserted above Plaintiff has been denied
13 full and equal access to Defendants' goods, services, facilities,
14 privileges, advantages, or accommodations. Defendant **AIBERTOS TACO**
15 **SHOP** is a public accommodation owned, leased and/or operated by
16 Defendants and each of them. Defendants' existing facilities
17 and/or services failed to provide full and equal access to
18 Defendants' facility as required by 42 U.S.C. Section 12182(a).
19 Thus, Plaintiff was subjected to discrimination in violation of 42
20 U.S.C. 12182(b)(2)(A)(ii)(iv); 42 USC 1981 and 42 U.S.C. Section
21 12188 because Plaintiff was denied equal access to Defendants'
22 existing facilities.

23 17. Plaintiff has a physical impairment as alleged herein because
24 his condition affects one or more of the following body systems:
25 neurological, musculoskeletal, special sense organs, and/or
26 cardiovascular. Further, his physical impairments substantially
27 limits one or more of the following major life activities:
28 walking. In addition, Plaintiff cannot perform one or more of the

1 said major life activities in the manner speed, and duration when
2 compared to the average person. Moreover, Plaintiff has a history
3 of or has been classified as having a physical impairment as
4 required by 42 U.S.C. section 12102(2)(A).

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

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

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

1 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42
2 USC 12182 (b)(2)(A)(iv); 42 USC 1981 and 42 USC 12188.

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

4 19. Based on the facts alleged in this Complaint Defendants failed
5 and refused to provide a reasonable alternative by modifying its
6 practices, policies and procedures in that they failed to have a
7 scheme, plan, or design to assist Plaintiff and/or others
8 similarly situated in entering and utilizing Defendants' services,
9 as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was
10 subjected to discrimination in violation of 42 U.S.C. section
11 12182(b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C. section 12188
12 because Plaintiff was denied equal access to Defendants' existing
13 facilities.

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

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

23 22. Under the provisions of 42 USC 12205 Plaintiff is entitled to
24 an award of reasonable attorneys fees and requests that the court
25 grant such fees as are appropriate.

26 **V**

27 **SECOND CAUSE OF ACTION**

28 **(Violation of Civil Rights 42 U.S.C. 1991)**

1 23. Plaintiff realleges the allegations of the First Cause of
2 Action as though set forth fully herein.

3 24. The provisions of 42 U.S.C. 1981 (As amended by the Civil
4 Rights Act of 1991) provide that Plaintiff as a person with
5 disabilities cannot be discriminated against with regard to the
6 ability to enter into, to make or to enforce contracts. In
7 enacting the Civil Rights Act of 1991 congress established a three
8 tier system of remedies for a broad range of discretionary
9 conduct, including violations of the Americans With Disabilities
10 Act, wherein disabled individuals such as plaintiff are denied
11 equal access to facilities they wish to conduct business in and
12 therefore are precluded from making, entering into and enforcing
13 contracts that plaintiff and others similarly situated may desire
14 to effect.

15 25. Defendants, because they have individually and/or collectively
16 denied plaintiff access to their premises, goods and services,
17 have denied him the right to make, enter into or enforce a
18 contract and therefor have violated the provisions of 42 U.S.C.
19 1991 all to Plaintiff's damage in an amount to be determined at
20 time of trial herein.

21 26. As a result of Defendants' actions Plaintiff was humiliated,
22 embarrassed and discouraged and upset emotionally and physically
23 and suffered damages according to proof.

24 27. The actions of the Defendants were intentional, outrageous and
25 done with reckless disregard of Plaintiff's rights and therefore
26 entitle him to an award of punitive damages.

27 28. By reason of Defendants' actions Plaintiff was caused to incur
28 costs and expenses of litigation, including attorney's fees, to

1 seek and redress his civil rights. Plaintiff therefore seeks an
2 award of costs and attorney's fees associated with the necessity
3 of bringing this lawsuit.

4 **VI**

5 **THIRD CAUSE OF ACTION**

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

7 29. Plaintiff realleges the allegations of the Second Cause of
8 Action as though set forth fully herein.

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

10 30. Plaintiff has been denied full and equal access to Defendants'
11 goods services, facilities, privileges, advantages, or
12 accommodations within a public accommodation owned, leased, and/or
13 operated by Defendants in violation of California Civil Code
14 Sections 54 and 54.1; California Health and Safety Code Section
15 19955 and California Government Code Section 12948. The actions of
16 Defendants also violate the provisions of Title 24 of the State of
17 California Building Codes with regard to accessibility for persons
18 with disabilities by failing to provide access to Defendants
19 facilities due to violations pertaining to accessible routes,
20 ground and floor surfaces, parking and passenger loading zones,
21 curb ramps, ramps, stairs, elevators, platform lifts (wheelchair
22 lifts), windows, doors, toilet stalls, urinals, lavatories and
23 mirrors, sinks, storage, handrails, grab bars, controls and
24 operating mechanisms, alarms, detectable warnings, signage and
25 telephones.

26 31. On the above basis Plaintiff has been wrongfully discriminated
27 against.

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

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

10 **VII**

11 **FOURTH CAUSE OF ACTION**

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

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

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

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

23 35. Defendants have violated the provisions of Civ. Code 51 (b) by
24 failing and refusing to provide free and equal access to Plaintiff
25 to their facility on the same basis as other persons not disabled.
26 By their failure to provide equal access to Plaintiff as herein
27 alleged, Defendants have also violated 42 U.S.C. section
28 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).

1 36. By reason of their acts and denial of Plaintiff's civil rights
2 Defendants also violated the provisions of Cal. Civ. Code section
3 52, which makes a person or entity in violation of Cal.Civ. Code
4 51 liable in the amount of \$4,000 per violation of said statute.
5

6 37. Defendants and each of them, at all times prior to and
7 including **April 27, 2002** respectively and continuing to the
8 present time, knew that persons with physical disabilities were
9 denied their rights of equal access to all portions of this public
10 facility. Despite such knowledge, Defendants, and each of them,
11 failed and refused to take steps to comply with the applicable
12 access statutes and despite knowledge of the resulting problems
13 and denial of civil rights suffered by Plaintiff and other
14 similarly situated persons with disabilities.
15

16
17 38. Defendants and each of them have failed and refused to take
18 action to grant full and equal access to persons with physical
19 disabilities. Defendants have carried out a course of conduct of
20 refusing to respond to, or correct complaints about unequal access
21 and have refused to comply with their legal obligations to make
22 the subject facility accessible pursuant the ADAAG and the
23 California Building Code [Title 24 of the California Code of
24 Regulations]. Such actions and continuing course of conduct by
25 Defendants, and each of them, evidence despicable conduct in
26 conscious disregard of the rights and/or safety of Plaintiff and
27 those similarly situated and thus justify an award of treble
28

1 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code
2 or alternatively an award of punitive damages in an appropriate
3 amount.

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

8 40. Under the provisions of Cal. Civ. Code section 55 Plaintiff
9 seeks an award of reasonable attorney's fees and costs as a result
10 of having to bring this action. Plaintiff requests the court to
11 award such fees in an appropriate amount.
12

13 **VIII**

14 **FIFTH CAUSE OF ACTION**

15 **(Unfair And Unlawful Business Practice)**

16 41. Plaintiff realleges the allegations of the Fourth Cause of
17 Action as though set forth fully herein.

18 42. California Business and Professions Code Section 17200 states
19 in pertinent part:

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

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

1 violation of 42 USC 12181-12183; 42 USC 1981; and 42 USC 12188. In
2 addition the complained of acts are in violation of California
3 Civil Code Sections 51, 52, 54, and 54.1, California Health and
4 Safety Code section 19955 and California Government Code section
5 12948 all of which require Defendants to provide equal access to
6 their facility to disabled persons such as plaintiff. Defendants
7 are also in violation of the indicated statutes because of their
8 failure to remove architectural barriers, which prevent equal
9 access to their facility by disabled persons and because of their
10 failure to modify their practices, policies and procedures to have
11 a scheme, plan, or design to assist Plaintiff and others similarly
12 situated to enter and utilize Defendants' services as required by
13 the Unruh Act.

14
15
16
17 44. Defendants' acts are unlawful and unfair and are therefore in
18 violation of California Business and Professions Code section
19 17200.

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

26
27 46. Thus, Plaintiff, under Bus & Prof. Code section 17200 seeks
28 injunctive relief, on behalf of himself and the general public,

1 requiring Defendants to remedy the disabled access violations
2 present within Defendants' facility and that Defendants be ordered
3 to cease and desist from continuing in noncompliance with disabled
4 access statutes and regulations.
5

6 **IX**

7 **SIXTH CAUSE OF ACTION**

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

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

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

22 49. Defendants breached their duty of care to Plaintiff by the
23 actions and inaction complained of herein and as a result thereof
24 Plaintiff was shocked, discouraged, embarrassed and outraged at
25 the callousness and disregard of Defendants. Defendants knew or
26 had reason to know that by denying Plaintiff equal access to their
27 facility and failing and refusing to remove architectural
28

1 barriers, Plaintiff would suffer emotional and/or mental distress
2 because of such discrimination and disparate treatment. Defendants
3 breached their duty of care to plaintiff by the perpetration of
4 the acts outlined herein.
5

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

10 X

11 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

24 **DEMAND FOR JURY**

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

27 WHEREFORE PLAINTIFF PRAYS:

- 28
1. For general damages according to proof;
 2. For special damages according to proof;

- 1 3. For damages pursuant to Cal. Civil Code section 52, in the
2 amount of \$4,000 for each and every offense of California Civil
3 Code section 51, Title 24 of the California Building Code and the
4 Americans With Disabilities Act.
- 5 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and
6 California Business and Professions Code section 17200
- 7 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42
8 U.S.C. 1981, 42 U.S.C. 12205 and Cal. Civ. Code 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 Respectfully submitted,

15 DATED: 9-5-02


16 ROY L. LANDERS

17 Attorney for Plaintiff,
18 GAYNOR CARLOCK
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The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
GAYNOR CARLOCK

DEFENDANTS
BERTOS TACO SHOP, FELIPE OSORIA, GARY ORLANSKY, AND DOES 1-10, Inclusive,

FILED

02 SEP -9

PM 0118

San Diego

San Diego

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

County of Residence of First Listed (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Roy L. Landers (619)296-7898
7840 Mission Center CT, Suite 101
San Diego, CA 92108

Attorney's (Firm Name, Address, and Telephone Number) (If Known)

'02 CV 01785 JM (LSP)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|--------------------------------|---|----------------------------|--------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

42 USC 12101-12102, 12181-12183 and 12201, et seq.
Discrimination on basis of disability (Public Accommodations)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE 8/24/02 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 86397 AMOUNT 150.10 APPLYING IFP JUDGE MAG. JUDGE

9/9/02 VB