



RXC 8/12/02 9:34

3:02-CV-01589 CARLOCK V. CAFE LAMAZE

1

CMP.

FILED

102 AUG -9 PM 3:20
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Handwritten Signature]

DEPUTY

1 LAW OFFICES OF ROY L. LANDERS
2 ROY L. LANDERS (BAR #64920)
3 7840 MISSION CENTER COURT, SUITE
4 SAN DIEGO, CALIFORNIA 92108
TELEPHONE (619) 296-7898
FACSIMILE (619) 296-5611

5 Attorney for Plaintiff, GAYNOR CARLOCK

6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 GAYNOR CARLOCK
12 Plaintiff,
13 vs.
14 CAFÉ LAMAZE, FREDDIE & PENELOPE
15 EVARKIO TRUST, AND DOES 1-10,
16 Inclusive,
17 Defendants.

) Case No. **'02 CV 1589 B (LSP)**
)
) COMPLAINT FOR DAMAGES RE:
) VIOLATION OF CIVIL RIGHTS ON
) BASIS OF DISCRIMINATION IN
) PUBLIC ACCOMMODATIONS; UNFAIR,
) UNLAWFUL AND FRAUDULENT BUSINESS
) PRACTICES; NEGLIGENT INFLECTION
) OF EMOTIONAL DISTRESS;
) INTENTIONAL INFLECTION OF
) EMOTIONAL DISTRESS; DEMAND FOR
) JURY TRIAL
)
)
)

18
19 I

20
21 JURISDICTION AND VENUE

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

[Handwritten Signature]

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), **CAFÉ LAMAZE** is and at all times herein mentioned
26 were duly organized business, association, or corporation duly
27 authorized to exist and operate within the State of California and
28

1 County of San Diego and the owner, operator or lessee of the
2 premises located at **1441 HIGHLAND AVENUE, SAN DIEGO, CALIFORNIA.**

3 3. Plaintiff is informed and believes and thereon alleges that
4 defendants **FREDDIE & PENELOPE EVARKIO TRUST**, were at all times
5 herein was and are the owners, lessors, tenants and controlling
6 parties of the property, which is the subject of this action and
7 in some manner responsible for the violations of law as alleged
8 herein.

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

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

25 **III**

26 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

27 6. Plaintiff is disabled and confined to a wheelchair. He has no
28 control over his lower extremities and must use a wheelchair to

1 transport himself and to effect the basic necessities of his
2 everyday existence. Plaintiff's disability substantially limits
3 one or more of life's major activities and therefore he is
4 disabled as defined under 42 USC 12102(2)(A)(B)(C).

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

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

- 16 (a) Bathroom lacks international symbol of accessibility as
17 required by ADAAG 4.30.6 and Title 24 1117B.5.9;
- 18 (b) Bathroom grab bars are not at the proper mounting height as
19 required by ADAAG 4.17.6 & CA Title 24 1115B.8.1;
- 20 (c) Bathroom grab bars do not extend to at least 24 inches
21 beyond the water closet as required by ADAAG 4.17.6 & CA
22 Title 24 1115B.8.1;
- 23 (d) Bathroom grab bars forward ends do not extend to at least
24 54 inches from the back wall as required by ADAAG 4.17.6;
- 25 (e) The rear grab bar is not at least 36 inches in length as
26 required by ADAAG 4.17.6 & CA Title 24 1115B.8.1;
- 27 (f) The side grab bar is not at least 42 in length as required
28 by ADAAG 4.17.6 & CA Title 24 1115B.8.1;

- 1 (g) The clear space in front of the water closet is not at
2 least 48 inches in length, if it is a front transfer stall
3 type which violates ADDAG 4.17.3 and CA Title 24 115B7.1.2;
4 (h) The clear space in front of the water closet is not at
5 least 32 inches in length, if it is a lateral transfer
6 stall type which violates ADDAG 4.17.3 and CA Title 24
7 115B7.1;
8 (i) Bathroom accessories and fixtures, (i.e. Toilet Seat
9 Covers), are at improper height and in violation of ADAAG
10 4.23.7 and Title 24 1115B.9.2;
11 (j) Bathroom accessories and fixtures, (i.e. Paper Towel
12 Operating Lever), are at improper height and in violation
13 of ADAAG 4.23.7 and Title 24 1115B.9.2;
14 (k) Toilet stall size is improper and in violation of ADAAG
15 4.17.3 and Title 24 1115B.1;
16 (l) Restroom lacks proper raised Braille characters as required
17 by ADAAG 4.30.4. and title 24 1117B.5.6.1.&2;
18 (m) Wall mount signage does not comply with ADAAG 4.1.2(7) and
19 Title 24 1117B.5.1.1. & 5.6.3;

20 Wall mount signage distance from floor is in violation of ADAAG
21 4.30.6 and Title 24 1117B.5.9;

22 9. Plaintiff is informed and believes and thereon alleges that
23 defendants' facility has in excess of Sixty (60) violations of
24 ADAAG and/or Title 24 at their facility.

25 10. These violations are believed to have existed for a
26 significant period of time and with defendant's specific
27 knowledge.

1 11. Based upon the above facts, Plaintiff as been discriminated
2 against and will continue to be discriminated against unless and
3 until Defendants are enjoined and forced to cease and desist from
4 continuing to discriminate against Plaintiff and others similarly
5 situated.

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

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

1 Plaintiff alleges Defendants are required to utilize the ADA
2 checklist for Readily Achievable Barrier Removal approved by the
3 United States Department of Justice and created by Adaptive
4 Environments.

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

8 **IV**

9 **FIRST CAUSE OF ACTION**

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

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

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

14 16. Based on the facts asserted above Plaintiff has been denied
15 full and equal access to Defendants' goods, services, facilities,
16 privileges, advantages, or accommodations. Defendant **CAFÉ LAMAZE**
17 is a public accommodation owned, leased and/or operated by
18 Defendants and each of them. Defendants' existing facilities
19 and/or services failed to provide full and equal access to
20 Defendants' facility as required by 42 U.S.C. section 12182(a).
21 Thus, Plaintiff was subjected to discrimination in violation of 42
22 U.S.C. 12182(b)(2)(A)(ii)(iv); 42 USC 1981 and 42 U.S.C. section
23 12188 because Plaintiff was denied equal access to Defendants'
24 existing facilities.

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

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

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

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

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

1 with a person with a disability are forms of prohibited
2 discrimination. Accordingly, Plaintiff was subjected to
3 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42
4 USC 12182 (b)(2)(A)(iv); 42 USC 1981 and 42 USC 12188.

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

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

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

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

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

SECOND CAUSE OF ACTION**(Violation of Civil Rights 42 U.S.C. 1991)**

1
2
3
4 23. Plaintiff realleges the allegations of the First Cause of
5 Action as though set forth fully herein.

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

18 25. Defendants, because they have individually and/or collectively
19 denied plaintiff access to their premises, goods and services,
20 have denied him the right to make, enter into or enforce a
21 contract and therefor have violated the provisions of 42 U.S.C.
22 1991 all to Plaintiff's damage in an amount to be determined at
23 time of trial herein.

24 26. As a result of Defendants' actions Plaintiff was humiliated,
25 embarrassed and discouraged and upset emotionally and physically
26 and suffered damages according to proof.
27
28

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

4 28. By reason of Defendants' actions Plaintiff was caused to incur
5 costs and expenses of litigation, including attorney's fees, to
6 seek and redress his civil rights. Plaintiff therefore seeks an
7 award of costs and attorney's fees associated with the necessity
8 of bringing this lawsuit.

9 **VI**

10 **THIRD CAUSE OF ACTION**

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

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

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

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

1 operating mechanisms, alarms, detectable warnings, signage and
2 telephones.

3 31. On the above basis Plaintiff has been wrongfully discriminated
4 against.

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

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

13 Accordingly Defendants have wrongfully discriminated against
14 Plaintiff.

15 **VII**

16 **FOURTH CAUSE OF ACTION**

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

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

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

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

28 35. Defendants have violated the provisions of Civ. Code 51 (b) by
failing and refusing to provide free and equal access to Plaintiff
to their facility on the same basis as other persons not disabled.

1 By their failure to provide equal access to Plaintiff as herein
2 alleged, Defendants have also violated 42 U.S.C. section
3 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).
4
5 36. By reason of their acts and denial of Plaintiff's civil rights
6 Defendants also violated the provisions of Cal. Civ. Code section
7 52, which makes a person or entity in violation of Cal.Civ. Code
8 51 liable in the amount of \$4,000 per violation of said statute.
9
10 37. Defendants and each of them, at all times prior to and
11 including **JUNE 10, 2002** respectively and continuing to the present
12 time, knew that persons with physical disabilities were denied
13 their rights of equal access to all portions of this public
14 facility. Despite such knowledge, Defendants, and each of them,
15 failed and refused to take steps to comply with the applicable
16 access statutes and despite knowledge of the resulting problems
17 and denial of civil rights suffered by Plaintiff and other
18 similarly situated persons with disabilities.
19
20 38. Defendants and each of them have failed and refused to take
21 action to grant full and equal access to persons with physical
22 disabilities. Defendants have carried out a course of conduct of
23 refusing to respond to, or correct complaints about unequal access
24 and have refused to comply with their legal obligations to make
25 the subject facility accessible pursuant the ADAAG and the
26 California Building Code [Title 24 of the California Code of
27 Regulations]. Such actions and continuing course of conduct by
28

1 Defendants, and each of them, evidence despicable conduct in
2 conscious disregard of the rights and/or safety of Plaintiff and
3 those similarly situated and thus justify an award of treble
4 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code
5 or alternatively an award of punitive damages in an appropriate
6 amount.
7

8 39. Plaintiff has suffered emotional and physical damage and
9 continues to suffer such damages all in an amount to be determined
10 at time of trial.
11

12 40. Under the provisions of Cal. Civ. Code section 55 Plaintiff
13 seeks an award of reasonable attorney's fees and costs as a result
14 of having to bring this action. Plaintiff requests the court to
15 award such fees in an appropriate amount.
16

17 VIII

18 FIFTH CAUSE OF ACTION

19 (Unfair And Unlawful Business Practice)

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

22 42. California Business and Professions Code Section 17200 states
23 in pertinent part:

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

26 43. Defendants, as alleged herein, are in violation of the
27 Americans With Disabilities Act and Title 24 of the California
28 Building Code, in that they have denied equal access to their

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

17
18
19
20 44. Defendants' acts are unlawful and unfair and are therefore in
21 violation of California Business and Professions Code section
22 17200.

23
24 45. Pursuant to the provisions of California Business and
25 Professions Code section 17201 Plaintiff is a person as identified
26 within said section and therefore allowed to bring this action on
27 behalf of himself and the general public to effectuate California
28

1 Business and Professions Code 17200 as provided for within
2 Business and Professions Code section 17204.

3 46. Thus, Plaintiff, under Bus & Prof. Code section 17200 seeks
4 injunctive relief, on behalf of himself and the general public,
5 requiring Defendants to remedy the disabled access violations
6 present within Defendants' facility and that Defendants be ordered
7 to cease and desist from continuing in noncompliance with disabled
8 access statutes and regulations.
9

10
11 **IX**

12 **SIXTH CAUSE OF ACTION**

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

14 47. Plaintiff relleges the allegations of the Fourth Cause of
15 Action as though set forth fully herein.
16

17 48. Defendants and each of them owed a duty to Plaintiff to make
18 their facility accessible and to keep Plaintiff reasonably safe
19 from known dangers and risks of harm. This duty arises by virtue
20 of the legal duties proscribed by various federal and state
21 statutes including, but not limited to, ADA, ADAAG, California
22 Civil Code sections 51, 52, 54, 54.1 and Title 24 of the
23 California Code of Regulations. Defendants had a duty of due care
24 not to do or cause anything to happen that would subject Plaintiff
25 to undue stress, embarrassment, chagrin, and discouragement.
26

27 49. Defendants breached their duty of care to Plaintiff by the
28 actions and inaction complained of herein and as a result thereof

1 Plaintiff was shocked, discouraged, embarrassed and outraged at
2 the callousness and disregard of Defendants. Defendants knew or
3 had reason to know that by denying Plaintiff equal access to their
4 facility and failing and refusing to remove architectural
5 barriers, Plaintiff would suffer emotional and/or mental distress
6 because of such discrimination and disparate treatment. Defendants
7 breached their duty of care to plaintiff by the perpetration of
8 the acts outlined herein.
9

10
11 50. As a proximate result of the actions of Defendants Plaintiff
12 did suffer emotional and mental stress and pain and suffering all
13 in an amount to be determined at time of trial.

14 **X**

15 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

28 **DEMAND FOR JURY**

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

3 WHEREFORE PLAINTIFF PRAYS:

4 1. For general damages according to proof;

5 2. For special damages according to proof;

6 3. For damages pursuant to Cal. Civil Code section 52, in the
7 amount of \$4,000 for each and every offense of California Civil
8 Code section 51, Title 24 of the California Building Code and the
9 Americans With Disabilities Act.

10 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and
11 California Business and Professions Code section 17200

12 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42
13 U.S.C. 1981, 42 U.S.C. 12205 and Cal. Civ. Code section 55;

14 6. For treble damages pursuant to Cal. Civ. Code 52 (a);

15 7. For punitive damages according to proof;

16 8. For a Jury Trial;

17 9. For costs of suit incurred herein and;

18 10. For such other and further relief as the court deems proper.

19 Respectfully submitted,

20 8/6/02

21 Attorney for Plaintiff, GAYNOR CARLOCK

CIVIL COVER SHEET

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

CAROLAN MEREDES & PENELOPE EVARDO TRUST,

San Diego

San Diego

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

02 CV 1589 B (LSP) DISTRICT COURT, San Diego (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

Attorneys (If Known)

02 CV 1589 B (LSP)

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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
Citizen of Another State
Citizen or Subject of a Foreign Country
DEF 1, 2, 3
DEF 4, 5, 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Real Estate, Personal Injury, etc.

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 8/6/02 SIGNATURE OF ATTORNEY OF RECORD Roy L. Landers RECEIPT # 083454 AMOUNT \$150.00 APPLYING IFP JUDGE MAG. JUDGE