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3:02-CV-00993 CARLOCK V. TROPICS TAVERN  
\*1\*  
\*CMP.\*

1 LAW OFFICES OF ROY L. LANDERS  
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3 7840 MISSION CENTER COURT, SUITE 101  
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FILED

02 MAY 21 PM 3:38

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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11 Attorney for Plaintiff, GAYNOR CARLOCK

BY: 

DEPUTY

12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA

'02 CV 0993 (JFS)

14 GAYNOR CARLOCK

) Case No.:

15 Plaintiff,

) 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

16 vs.

17 TROPICS TAVERN, FRED  
18 STRICKLAND., AND DOES 1-10,  
19 Inclusive,

20 Defendants.

21 I

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.

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), **TROPICS TAVERN** are 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 1767 Palm Avenue, Imperial  
2 Beach, California.

3 3. Plaintiff is informed and believes and thereon alleges that  
4 defendant Fred Strickland, is at all times herein was and is the  
5 owners, joint operator and/or controlling party of the property,  
6 which is the subject of this action and in some manner responsible  
7 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 March 30, 2002 plaintiff attempted to enter the  
5 subject premises of the defendants herein to utilize goods and/or  
6 services offered by defendant(s) **Tropics Tavern**. When Plaintiff  
7 attempted to enter said facility, plaintiff had difficulty  
8 entering and using said facility because it failed to comply with  
9 Federal ADA Access Guidelines For Building and Facilities  
10 [hereinafter "ADAAG"] and/or the State of California's Title 24  
11 Building Code 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 signage does not exist as required by Title 24  
16 1129B.5.

17 (b) There is no van accessible parking space for the disabled as  
18 required by ADAAG 4.1.2(5)(b) and Title 24 1129B.4.2.

19 (c) There is no van accessible aisle as required by ADAAG 4.6.3.  
20 and Title 24 1129B.4.2.

21 (d) Bathroom lacks international symbol of accessibility as  
22 required by ADAAG 4.30.6 and Title 24 1117B.5.9.

23 (e) Bathroom grab bars are at improper extensions and in violation  
24 of ADAAG 4.17.6 and Title 24 1115B.8.1.

25 (f) Bathroom accessories and fixtures are at improper height and  
26 in violation of ADAAG 4.23.7 and Title 24 1115B.9.2.

1 (g) There is improper clearance space between toilet water closet  
2 and transfer stall in violation of ADAAG 4.17.3 and Title 24  
3 1115B.

4 (h) Toilet stall size is improper and in violation of ADAAG 4.17.3  
5 and Title 24 1115B.1.

6 (i) Restroom lacks proper raised Braille characters as required by  
7 ADAAG 4.30.4. and title 24 1117B.5.6.1.&2.

8 (j) Wall mount signage does not comply with ADAAG 4.1.2(7) and  
9 Title 24 1117B.5.1.1. & 5.6.3.

10 (k) Wall mount signage distance from floor is in violation of  
11 ADAAG 4.30.6 and Title 24 1117B.5.9.

12 (l) The facility lacks the required visual/audible emergency  
13 alarms as required by ADAAG 4.28.2, 4.28.3 and Title 24 1114B.2.4.

14 (m) The drain and hot water pipes lack insulation or is not  
15 configured to prevent contact and is in violation of ADAAG 4.24.6.

16 (n) The top of the urinal rim is higher than the required 17"  
17 maximum and is in violation of ADAAG 4.18.2 and CA Title 24  
18 1503.2.1.

19 9. Plaintiff is informed and believes and thereon alleges that  
20 defendants' facility has in excess of Sixty (60) 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.

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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 **Tropics**  
15 **Tavern** 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.

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

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

**VII**

**FOURTH CAUSE OF ACTION**

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

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

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

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

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. By their failure to provide equal access to Plaintiff as herein

1 alleged, Defendants have also violated 42 U.S.C. section  
2 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).  
3  
4 36. By reason of their acts and denial of Plaintiff's civil rights  
5 Defendants also violated the provisions of Cal. Civ. Code section  
6 52, which makes a person or entity in violation of Cal.Civ. Code  
7 51 liable in the amount of \$4,000 per violation of said statute.  
8  
9 37. Defendants and each of them, at all times prior to and  
10 including **March 30, 2002** respectively and continuing to the  
11 present time, knew that persons with physical disabilities were  
12 denied their rights of equal access to all portions of this public  
13 facility. Despite such knowledge, Defendants, and each of them,  
14 failed and refused to take steps to comply with the applicable  
15 access statutes and despite knowledge of the resulting problems  
16 and denial of civil rights suffered by Plaintiff and other  
17 similarly situated persons with disabilities.  
18  
19 38. Defendants and each of them have failed and refused to take  
20 action to grant full and equal access to persons with physical  
21 disabilities. Defendants have carried out a course of conduct of  
22 refusing to respond to, or correct complaints about unequal access  
23 and have refused to comply with their legal obligations to make  
24 the subject facility accessible pursuant the ADAAG and the  
25 California Building Code [Title 24 of the California Code of  
26 Regulations]. Such actions and continuing course of conduct by  
27 Defendants, and each of them, evidence despicable conduct in  
28

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

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

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

15  
16 **VIII**

17 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

16  
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19 44. Defendants' acts are unlawful and unfair and are therefore in  
20 violation of California Business and Professions Code section  
21 17200.

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



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

8 **IX**

9 **SIXTH CAUSE OF ACTION**

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

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

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

24  
25 49. Defendants breached their duty of care to Plaintiff by the  
26 actions and inaction complained of herein and as a result thereof  
27 Plaintiff was shocked, discouraged, embarrassed and outraged at  
28 the callousness and disregard of Defendants. Defendants knew or

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

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

12 **X**

13 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

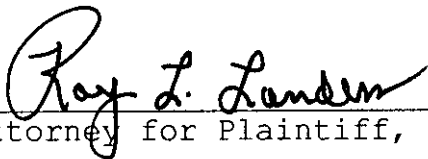
26 **DEMAND FOR JURY**

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

WHEREFORE PLAINTIFF PRAYS:

- 1 1. For general damages according to proof;
- 2 2. For special damages according to proof;
- 3 3. For damages pursuant to Cal. Civil Code section 52, in the
- 4 amount of \$4,000 for each and every offense of California Civil
- 5 Code section 51, Title 24 of the California Building Code and the
- 6 Americans With Disabilities Act.
- 7 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and
- 8 California Business and Professions Code section 17200
- 9 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42
- 10 U.S.C. 1981, 42 U.S.C. 12205 and Cal. Civ. Code section 55;
- 11 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
- 12 7. For punitive damages according to proof;
- 13 8. For a Jury Trial;
- 14 9. For costs of suit incurred herein and;
- 15 10. For such other and further relief as the court deems proper.

16 Respectfully submitted,

17   
18 \_\_\_\_\_  
Attorney for Plaintiff, GAYNOR CARLOCK

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

San Diego

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

**DEFENDANTS TROPICS TAVERN,  
FRED STRICKLAND, AND DOES  
1-10, Inclusive**

San Diego  
County of Residence of First Listed Plaintiff (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 0993 DEPUTY (JFS)

**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 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <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	FEDERAL TAX SUITS
<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))	<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:**  DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 5/20/02 SIGNATURE OF ATTORNEY OF RECORD Roy L. Landers  
 FOR OFFICE USE ONLY RECEIPT # 80993 AMOUNT \$ 50.00 APPLYING IN JUDGE MAG. JUDGE

5/21/02 RB