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8 **LODGED**

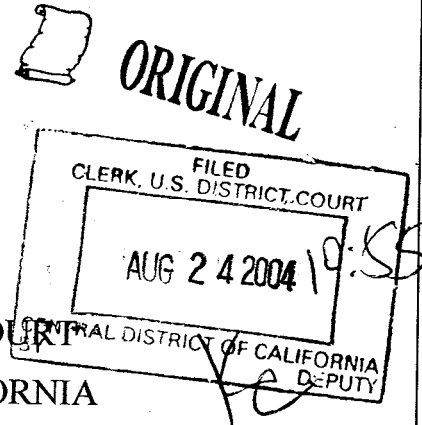
9 AUG 23 2004

10 CLERK, U.S. DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION AT SANTA ANA
13 DEPUTY

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 SOUTHERN DIVISION



17 GAYNOR CARLOCK,

18 Plaintiff,

19 vs.

20 EL POLLO LOCO, INC.; MOO H. KEA
21 AND DOES 1-10, INCLUSIVE,

22 Defendants.

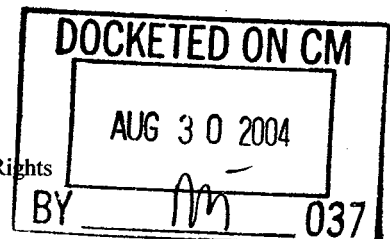
23 Case No.: SACV04-1020 DOC (PJWx)

24 COMPLAINT FOR DAMAGES RE:
25 VIOLATION OF CIVIL RIGHTS ON
26 BASIS OF DISCRIMINATION IN
27 PUBLIC ACCOMMODATIONS;
28 NEGLIGENCE INFLECTION OF
EMOTIONAL DISTRESS;
INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS;
DECLARATORY RELIEF; DEMAND
FOR JURY TRIAL

29 I

30 **JURISDICTION AND VENUE**

31 1. (a) Jurisdiction of this action is invoked on the basis of 28 USC 1331 and 1343,42
32 USC 12101-12102, 12181-12183 and 12201, et. seq., which is applicable to causes of
33 action where persons with disabilities have been denied their civil rights. Venue in
34 the Central Judicial District of California in the United States District Court is in
35 accord with 28. U.S.C. Section 1391(b) because a substantial part of Plaintiff's claims
36 arose within the Judicial District of the United States District Court of the Central
37 District of California.
38



41 H/S
42 20
43 ADR

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

15 II

16 PARTIES

17 2. Defendant, El Pollo Loco, Inc. was and at all times herein mentioned, was a duly
18 organized business, association, or corporation duly authorized to exist and operate
19 within the State of California and County of Orange and the owner, lessee, or tenant
20 of the premises located at 1201 South Beach Boulevard Anaheim, California 92804.

21 3. Plaintiff is informed and believes and thereon alleges that defendant Moo H. Kea is
22 the owner and/or landlord of the subject property upon which Defendants' business is
23 sited.

24 4. Plaintiff is informed and believes and thereon alleges that each of the named
25 defendants herein operate a business and or/facility of public accommodation as
26 defined and described within 42 USC 12181(7)(b) of the American with Disabilities
27 Act [ADA] and, as such, must comply with the ADA under provisions of Title III
28 therein.

1 5. Plaintiff is ignorant of the Defendants sued as Does 1-10 herein, and therefore sues
2 them in their fictitious names as Doe Defendants. Plaintiff is informed and believes
3 and thereon alleges that Does 1-10 are the owners, operators, lessees or tenants of the
4 subject property and each of the Doe Defendants at all times herein were acting as the
5 agent and or representative of each other and, thereby, are responsible in some
6 manner for the injuries and damages complained of herein. Plaintiff will seek leave of
7 the court to amend this complaint to name Doe Defendants when the same is
8 ascertained.

9 III

10 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

11 6. Plaintiff is a male who is disabled and confined to a wheelchair. He has no
12 control over his lower extremities and must use a wheelchair to transport himself and
13 to affect the basic necessities of his everyday existence. Plaintiff's disability
14 substantially limits one or more of life's major activities and therefore he is disabled
15 as defined under section 42 USC 12102(2)(A)(B)(C).

16 7. On or about June 8, 2004 Plaintiff patronized the premises of Defendants to utilize
17 goods and/or services offered by Defendants. When Plaintiff attempted to gain
18 access to the goods and/or services offered by Defendants he encountered access
19 barriers because the premises failed to comply with federal ADA Access Guidelines
20 For Building and Facilities [hereinafter "ADAAG"]; Department of Justice [DOJ]
21 regulations at 28 CFR. 36.201; 36.304 and/or the State of California's Title 24
22 Building Code Requirements.

23 8. The specific difficulty Plaintiff had in entering and utilizing Defendants' facility
24 and which amount to a violation of ADAAG, DOJ regulations and Title 24 of the
25 California Building Code are:

- 26 1 Designated Disabled "VAN ACCESSIBLE" Parking - Space
27 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
28

- 1 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Width
2 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 3 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Length
4 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 5 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Signage
6 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 7 1 Warning – Access Aisle - (NO PARKING)
8 (CA Title 24 1129B.4.1 & 2)
- 9 1 Warning – Access Aisle - (12" High Minimum)
10 (CA Title 24 1129B.4.1 & 2)
- 11 1 Regular Access Aisle – Exist/Improper
12 (CA Title 24 1129B.4.1)
- 13 1 Regular Access Aisle - Width
14 (CA Title 24 1129B.4.1)
- 15 1 Regular Access Aisle - Length
16 (CA Title 24 1129B.4.1)
- 17 1 Van Accessible Aisle – Exist/Improper
18 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 19 1 Van Accessible Aisle - Width
20 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 21 1 Van Accessible Aisle - Length
22 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 23 1 Van Accessible Aisle - (Passenger Side)
24 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 25 1 Accessible Aisle – 2% Grade
26 (ADAAG 4.6.3 & CA Title 24 1129B.4.4)
- 27 1 Additional Signage - (Van Accessible)
28 (ADAAG 4.6.4 & CA Title 24 1129B.5)

- 1 1 Curb Ramp Location/Improper
2 (ADAAG 4.7.1)
- 3 1 Curb Ramp - Projects into Vehicular Traffic Lanes
4 (ADAAG 4.7.6)
- 5 1 Entrance – Signage at Every Entrance/Exit, Accessibility
6 (ADAAG 4.1.3(16)(b) & CA Title 24 1127B.3)
- 7 2 Bathroom – International Symbol of Accessibility at Accessible
8 Restroom (ADAAG 4.30.6 & CA Title 24 1117B.5.9)
- 9 2 Bathroom – International Symbol of Accessibility - Pictogram Min 6”
10 High (ADAAG 4.30.4 & CA Title 24 1117B.5.5.2)
- 11 2 Bathroom – International Symbol of Accessibility – Verbal Description
12 Below(ADAAG 4.30.4 & CA Title 24 1117B.5.5.2)
- 13 2 Raised Braille Characters - (Restroom Wall Signage)
14 (ADAAG 4.30.4 & CA Title 24 1117B.5.6.1 & .2)
- 15 2 Wall Mount Signage (Latch Side of Door)
16 (ADAAG 4.1.2(7)(d) and CA Title 24 1117B.5.1.1 & .5.6.3)
- 17 2 Wall Mount Signage (60 inches from the floor)
18 (ADAAG 4.30.6 & CA Title 24 1117B.5.9)
- 19 2 Accessories/Fixtures – Proper Height (Toilet Seat Covers)
20 (ADAAG 4.23.7 & CA Title 24 1115B.9.2)
- 21 2 Accessories/Fixtures – Proper Height (Paper Towel Operating Lever)
22 (ADAAG 4.23.7 & CA Title 24 1115B.9.2)
- 23 2 Accessories/Fixtures – Proper Height (Soap Dispenser)
24 (ADAAG 4.23.7 & CA Title 24 1115B.9.2)
- 25 1 Urinal Rim Height 17" Max
26 (ADAAG 4.18.2 & CA Title 24 1503.2.1)
- 27 2 Toilet Tissue – Location from end of water closet 12” Max
28 (ADA 4.16.6 & CA Title 24 1115B.9.3)

1 4 Hardware – Opening Door Knobs

2 (ADAAG 4.13.9 & CA Title 24 1133B.2.5.1)

3 2 Hardware – Opening Door Lock/Latch

4 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)

5 4 Hardware – Handle Inside/Outside Compartment Door

6 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)

7 9. Based upon the above facts, Plaintiff has been discriminated against and will
8 continue to be discriminated against unless and until Defendants are enjoined and
9 forced to cease and desist from continuing to discriminate against Plaintiff and others
10 similarly situated.

11 10. Pursuant to Federal [ADA], Title 28 CFR 36.201; 36.203; 36.304; 36.305 and
12 state law [California Title 24], Defendants are required to remove barriers to their
13 existing facilities. Defendants have been put on notice pursuant to the ADA and
14 California Civil Codes [51,52] prior to the statutory effect of the ADA on January 26,
15 1992 that Defendants and each of them had a duty to remove barriers to persons with
16 disabilities such as plaintiff. Defendants also knew or should have known that
17 individuals such as Plaintiff with a disability are not required to give notice to a
18 governmental agency prior to filing suit alleging Defendants' failure to remove
19 architectural barriers.

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

1 Plaintiff alleges Defendants are required to remove all architectural barriers, known
2 or unknown. Also, Plaintiff alleges Defendants are required to utilize the ADA
3 checklist for Readily Achievable Barrier Removal approved by the United States
4 Department of Justice and created by Adaptive Environments.

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

7 **IV**

8 **FIRST CAUSE OF ACTION**

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

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

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

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

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

1 of 42 U.S.C. section 12182(b)(2)(A)(iv); 28 CFR 36.302 and 42 U.S.C. section 12188
2 because Plaintiff was denied equal access to Defendants' existing facilities.

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

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

10 20. Under the provisions of 42 USC 12205 Plaintiff is entitled to an award of
11 reasonably attorneys fees and requests that the court grant such fees as are
12 appropriate.

13 VI

14 SECOND CAUSE OF ACTION

15 (Violation Of Civil Rights Under California Accessibility Laws)

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

18 (a) Denial Of Full And Equal Access

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

1 urinals, lavatories and mirrors, sinks, storage, handrails, grab bars, controls and
2 operating mechanisms
3 alarms, detectable warnings, signage and telephones.

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

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

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

12 **VII**

13 **THIRD CAUSE OF ACTION**

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

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

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

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

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

1 Plaintiff as herein 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 28. By reason of their acts and denial of Plaintiff's civil rights Defendants also
5 violated the provisions of Cal. Civ. Code section 52, which makes a person or entity
6 in violation of Cal.Civ. Code 51 liable for the actual damages to a Plaintiff including
7 treble damages where appropriate.
8

9
10 29. Defendants and each of them, at all times prior to and including June 2004,
11 respectively and continuing to the present time, knew that persons with physical
12 disabilities were denied their rights of equal access to all portions of this public
13 facility. Despite such knowledge, Defendants, and each of them, failed and refused to
14 take steps to comply with the applicable access statutes and despite knowledge of the
15 resulting problems and denial of civil rights suffered by Plaintiff and other similarly
16 situated persons with disabilities.
17
18

19
20 30. Defendants and each of them have failed and refused to take action to grant full
21 and equal access to person with physical disabilities. Defendants have carried out a
22 course of conduct of refusing to respond to, or correct complaints about unequal
23 access and have refused to comply with their legal obligations to make the subject
24 facility accessible pursuant the ADAAG and the California Building Code [Title 24
25 of the California Code of Regulations]. Such actions and continuing course of
26
27
28 conduct by Defendants, and each of them, evidence despicable conduct in conscious

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

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

9
10 32. Under the provisions of Cal. Civ. Code section 55 Plaintiff seeks an award of
11 reasonable attorney's fees and costs as a result of having to bring this action. Plaintiff
12 requests the court to award such fees in an appropriate amount.
13

14 **VIII**

15 **FOURTH CAUSE OF ACTION**

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

17
18 33. Plaintiff realleges the allegations of the Third Cause of Action as though set forth
19 fully herein.

20
21 34. Defendants and each of them owed a duty to Plaintiff to make their facility
22 accessible and to keep Plaintiff reasonably safe from known dangers and risks of
23 harm. This duty arises by virtue of the legal duties proscribed by various federal and
24 state statutes including, but not limited to, ADA, ADAAG, California Civil Code
25 sections 51, 52, 54, 54.1 and Title 24 of the California Code of Regulations.
26
27
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1 Defendants had a duty of due care not to do or cause anything to happen that would
2 subject Plaintiff to undue stress, embarrassment, chagrin, and discouragement.

3
4 35. Defendants breached their duty of care to Plaintiff by the actions and inaction
5 complained of herein and as a result thereof Plaintiff was shocked, discouraged,
6 embarrassed and outraged at the callousness and disregard of Defendants. Defendants
7 knew or had reason to know that by denying Plaintiff equal access to their facility and
8 failing and refusing to remove architectural barriers, Plaintiff would suffer emotional
9 and/or mental distress because of such discrimination and disparate treatment.
10

11 Defendants breached their duty of care to plaintiff by the perpetration of the acts
12 outlined herein.
13

14
15 36. As a proximate result of the actions of Defendants Plaintiff did suffer emotional
16 and mental stress and pain and suffering all in an amount to be determined at time of
17 trial.
18

19
20 **IX**

21 **FIFTH CAUSE OF ACTION**

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

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

25 38. The actions of Defendants and each of them are despicable, intentional and done
26 with conscious disregard of the rights and safety of Plaintiff and as such should be
27 regarded at outrageous.
28

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

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

7 **X**

8 **SIXTH CAUSE OF ACTION**
9 **(DECLARATORY RELIEF)**

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

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

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

21 **WHEREFORE PLAINTIFF PRAYS:**

- 22 1. For general damages according to proof;
23 2. For special damages according to proof;
24 3. For damages pursuant to Cal. Civil Code section 52, in the amount of \$4,000 for
25 each and every offense of California Civil Code section 51, Title 24 of the California
26 Building Code and the Americans with Disabilities Act.
27 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and for declaratory relief;
28

- 1 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42 U.S.C. 12205 and
2 Cal. Civ. Code section 55;
3 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
4 7. For punitive damages according to proof;
5 8. For a Jury Trial;
6 9. For costs of suit incurred herein and;
7 10. For such other and further relief as the court deems proper.
8

9 **DEMAND FOR JURY**

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

12 Respectfully submitted,

THE LAW OFFICES OF ROY L. LANDERS

13
14 Dated: 8/15/04

By:

Roy L. Landers
Attorney for Plaintiff, Gaynor Carlock

1 ROY L. LANDERS (BAR # 64920)
 2 LAW OFFICES OF ROY L. LANDERS
 3 7840 Mission Center Court, Suite 101
 4 San Diego, CA 92108
 5 Telephone: (619) 296-7898
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Attorneys for Plaintiff: Gaynor Carlock

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 NOV 30 2004
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION AT SANTA ANA
 BY _____ DEPUTY

FILED
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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12 GAYNOR CARLOCK,

13 Plaintiff,

14 vs.

15 EL POLLO LOCO, INC.,; MOO H. KEA
 16 AND DOES 1-10, INCLUSIVE,

17 Defendants.

Case No.: SA CV 04-1020 DOC (PJWx)

**STIPULATION RE NOTICE OF
 SETTLEMENT; STIPULATION FOR
 DISMISSAL AND ORDER ON
 STIPULATION FOR DISMISSAL**

20 Plaintiff, Gaynor Carlock, and Defendants *El Pollo Loco, Inc., Moo H. Kea; and*
 21 *Does 1-10 Inclusive*, hereby notify the court that the parties have reached settlement
 22 in this matter and, therefore, stipulate to the following:

- 23 1. **IT IS HEREBY STIPULATED** by and between the parties to this action
 24 through their designated counsel, that *El Pollo Loco, Inc., Moo H. Kea; and*
 25 *Does 1-10 Inclusive* named as defendants in the above-captioned action, be
 26 and hereby are **DISMISSED WITHOUT PREJUDICE** pursuant to Federal
 27 Rules of Civil Procedure Rule 41(a) (1).
 28

STIPULATION FOR DISMISSAL & ORDER THEREON
 Carlock vs. El Pollo Loco, Inc., et al.
 Case No. SA CV 04 1020 DOC (PJWx)
 Page 1 of 3

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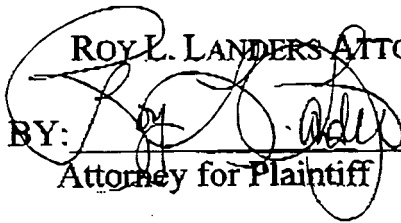
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- 2. Upon fully executing the Settlement procedures outlined in the Stipulated Settlement and Release Agreement Plaintiff, will file a Stipulation for Dismissal **WITH PREJUDICE** with the court.
- 3. The parties anticipate a complete dismissal of this action shall be filed on or before December 6, 2004.
- 4. Counsel for Plaintiff will prepare a written Release and Settlement Agreement.
- 5. The District Court Judge shall retain jurisdiction over all disputes between (among) the parties arising out of the settlement agreement, including but not limited to interpretation and enforcement of the terms of the settlement agreement.

SO STIPULATED.

IN WITNESS WHEREOF THE UNDERSIGNED PARTIES HAVE READ THE FOREGOING AND FULLY UNDERSTAND IT.

ROY L. LANDERS ATTORNEY AT LAW

 BY: _____
 Attorney for Plaintiff

DATED: 11-23, 2004

THARPE & HOWELL

DATED: _____, 2004

BY: PLEASE SEE ATTACHED

 Attorney for Defendant

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///
///

- 1 2. Upon fully executing the Settlement procedures outlined in the Stipulated
- 2 Settlement and Release Agreement Plaintiff, will file a Stipulation for
- 3 Dismissal **WITH PREJUDICE** with the court.
- 4 3. The parties anticipate a complete dismissal of this action shall be filed on or
- 5 before December 6, 2004.
- 6 4. Counsel for Plaintiff will prepare a written Release and Settlement Agreement.
- 7 5. The District Court Judge shall retain jurisdiction over all disputes between
- 8 (among) the parties arising out of the settlement agreement, including but not
- 9 limited to interpretation and enforcement of the terms of the settlement
- 10 agreement.

SO STIPULATED.

**IN WITNESS WHEREOF THE UNDERSIGNED PARTIES HAVE
READ THE FOREGOING AND FULLY UNDERSTAND IT.**

ROY L. LANDERS ATTORNEY AT LAW

DATED: _____, 2004 BY: _____
Attorney for Plaintiff

THARPE & HOWELL

DATED: 11/30, 2004 BY: 
Attorney for Defendant

///
///
///

ORDER ON STIPULATION FOR DISMISSAL

Pursuant to the settlement reached between the parties in the above-captioned action, and the parties having so stipulated, this matter is hereby ordered **DISMISSED WITHOUT PREJUDICE** against all defendants. Upon completion of the Settlement procedures, outlined in the Stipulated Settlement and Release Agreement, Plaintiff will file a Stipulation for Dismissal **WITH PREJUDICE** with the court. The District Court Judge shall retain jurisdiction over all disputes between (among) the parties arising out of the settlement agreement, including but not limited to interpretation and enforcement of the terms of the settlement agreement.

DATED: November 30, 2004

David O. Carter

JUDGE OF THE U.S. DISTRICT COURT

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