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3 7840 MISSION CENTER COURT, SUITE 101  
4 SAN DIEGO, CALIFORNIA 92108  
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J/S

Attorney for Plaintiff, Gaynor Carlock

7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 CENTRAL DIVISION

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U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.

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ORIGINAL

11  
12 GAYNOR CARLOCK,

13 Plaintiff,

14 vs.

15 DEAN SORGDRAGER AND TERRY  
16 SORGDRAGER, dba KENTUCKY  
17 FRIED CHICKEN; THOMAS C. HEIN,  
18 TRUSTEE OF THE THOMAS C. HEIN  
19 TRUST AND DOES 1-10, INCLUSIVE,

20 Defendants.

Case No.: SACV 04-1448 AMS (AN) X

COMPLAINT FOR DAMAGES RE:  
VIOLATION OF CIVIL RIGHTS ON  
BASIS OF DISCRIMINATION IN  
PUBLIC ACCOMMODATIONS;  
NEGLIGENT INFLECTION OF  
EMOTIONAL DISTRESS;  
INTENTIONAL INFLECTION OF  
EMOTIONAL DISTRESS;  
DECLARATORY RELIEF; DEMAND  
FOR JURY TRIAL

21  
22 I

23 JURISDICTION AND VENUE

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

202

Complaint for Damages re: Violation of Civil Rights

Page 1 of 16

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1 arose within the Judicial District of the United States District Court of the Central  
2 District of California.

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

## 17 II

### 18 PARTIES

19 2. Defendants Dean Sorgdrager and Terry Sorgdrager, dba Kentucky Fried Chicken  
20 was and at all times herein mentioned, was a duly organized business, association, or  
21 corporation duly authorized to exist and operate within the State of California and  
22 County of Orange and the owners, lessees, or tenants of the premises located at 6851  
23 Beach Blvd, Buena Park, California 90621.

24 3. Plaintiff is informed and believes and thereon alleges that defendant Thomas C.  
25 Hein is the Trustee of the Thomas C. Hein Trust, which is the owner and/or landlord  
26 of the subject property upon which Defendants' business is sited.

27 4. Plaintiff is informed and believes and thereon alleges that each of the named  
28 defendants herein operate a business and or/facility of public accommodation as

1 defined and described within 42 USC 12181(7)(b) of the American with Disabilities  
2 Act [ADA] and, as such, must comply with the ADA under provisions of Title III  
3 therein.

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

### 12 III

#### 13 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

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

19 7. On or about June 26, 2004 Plaintiff patronized the premises of Defendants to  
20 utilize goods and/or services offered by Defendants. When Plaintiff attempted to  
21 gain access to the goods and/or services offered by Defendants he encountered access  
22 barriers because the premises failed to comply with federal ADA Access Guidelines  
23 For Building and Facilities [hereinafter "ADAAG"]; Department of Justice [DOJ]  
24 regulations at 28 CFR. 36.201; 36.304 and/or the State of California's Title 24  
25 Building Code Requirements.

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

- 1 1 Site Entrance Signage (Does Not Exist)  
2 (CA Title 24 1129B.5)
- 3 1 Site Entrance Signage (Not Filled Out - Reclaim at:)  
4 (CA Title 24 1129B.5)
- 5 1 Site Entrance Signage (Not Filled Out – Telephone number:)  
6 (CA Title 24 1129B.5)
- 7 1 Site Entrance Signage (Size not less than 17" x 22" )  
8 (CA Title 24 1129B.5)
- 9 1 Site Entrance Signage (Lettering not less than 1" in Height)  
10 (CA Title 24 1129B.5)
- 11 1 Site Entrance Signage (Warning Information)  
12 (CA Title 24 1129B.5)
- 13 1 Designated Disabled "VAN ACCESSIBLE" Parking - Space  
14 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 15 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Width  
16 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 17 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Length  
18 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 19 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Signage  
20 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 21 1 Warning – Access Aisle - (NO PARKING)  
22 (CA Title 24 1129B.4.1 & 2)
- 23 1 Warning – Access Aisle - (12" High Minimum)  
24 (CA Title 24 1129B.4.1 & 2)
- 25 1 Regular Access Aisle – Exist/Improper  
26 (CA Title 24 1129B.4.1)
- 27 1 Regular Access Aisle - Width  
28 (CA Title 24 1129B.4.1)

- 1 1 Regular Access Aisle - Length  
2 (CA Title 24 1129B.4.1)
- 3 1 Van Accessible Aisle – Exist/Improper  
4 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 5 1 Van Accessible Aisle - Width  
6 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 7 1 Van Accessible Aisle - Length  
8 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 9 1 Van Accessible Aisle - (Passenger Side)  
10 (ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 11 1 Additional Signage - (Van Accessible)  
12 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 13 1 Lack of Access Route - A Visible Route of Travel  
14 (ADAAG 4.1.3(2), 4.3.2(2) & CA Title 24 1114B.1.2)
- 15 1 Threshold – Max Change in level ½”  
16 (ADAAG 4.1.3.8 & CA Title 1133B.2.4.1)
- 17 1 Entrance – Proper Directional Signage  
18 (ADAAG 4.30.7(c) & CA Title 24 1117B.5.1.1.1 & 5.3)
- 19 1 Lack of Entrance – Signage at Every Entrance/Exit, Accessibility  
20 (ADAAG 4.1.3(16)(b) & CA Title 24 1127B.3)
- 21 1 Lack of Wheelchair – Access to Each Type of Functional Activity  
22 (ADAAG 5.1 & CA Title 24 1104B.5.3)
- 23 1 Access - Office Area  
24 (CA Title 24 1105B.3.2)
- 25 1 Seating – Dining, Banquet & Bar Facilities – (Min Requirement 5%)  
26 (ADAAG 5.1 & CA Title 24 1104B.5.4)
- 27
- 28

- 1 1 Seating – Dining, Banquet & Bar Facilities – (Clear Space 30” x 48”  
2 Min)) (ADAAG 4.2.4.1 & CA Title 24 1122B.3)
- 3 1 Seating – Dining, Banquet & Bar Facilities – (Knee Space 27”H, 30”W,  
4 19”D)(ADAAG 4.32.3 & CA Title 24 1122B.3)
- 5 1 Seating – Dining, Banquet & Bar Facilities – (Table Height 28”-34” )  
6 (ADAAG 4.32.4 & CA Title 24 1122B.4)
- 7 1 Seating – Dining, Banquet & Bar Facilities – (Access Aisles Min Width  
8 36” ) (ADAAG 5.3 & CA Title 24 1104B.5.4)
- 9 1 Seating – Dining, Banquet & Bar Facilities – (Equivalent Services &  
10 Décor @ Accessible Seating ), (ADAAG 5.4 & CA Title 24 1104B.5.4)
- 11 1 Seating – Dining, Banquet & Bar Facilities – (Accessible Seating  
12 Integrated w/General Seating)  
13 (ADAAG 5.4 & CA Title 24 1104B.5.4)
- 14 2 Bathroom – International Symbol of Accessibility at Accessible  
15 Restroom (ADAAG 4.30.6 & CA Title 24 1117B.5.9)
- 16 2 Bathroom – International Symbol of Accessibility - Pictogram Min 6”  
17 High (ADAAG 4.30.4 & CA Title 24 1117B.5.5.2)
- 18 2 Bathroom – International Symbol of Accessibility – Verbal Description  
19 Below(ADAAG 4.30.4 & CA Title 24 1117B.5.5.2)
- 20 2 Raised Braille Characters - (Restroom Wall Signage)  
21 (ADAAG 4.30.4 & CA Title 24 1117B.5.6.1 & .2)
- 22 2 Wall Mount Signage (Latch Side of Door)  
23 (ADAAG 4.1.2(7)(d) and CA Title 24 1117B.5.1.1 & .5.6.3)
- 24 2 Wall Mount Signage (60 inches from the floor)  
25 (ADAAG 4.30.6 & CA Title 24 1117B.5.9)
- 26 2 Grab Bar – Side Proper Extension Beyond Water Closet (24 inches)  
27 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 28

- 1 2 Grab Bar - (Side Min 42 inch Long)
- 2 (ADAAG 4.14.6 & CA Title 24 1115B.8.1)
- 3 2 Grab Bar – (Side Forward Ends Located/Extends a Min 54 inches from
- 4 Back Wall) (ADAAG 4.17.6)
- 5 2 Grab Bar – (Rear Grab Bar Length 36" Min)
- 6 (ADAAG 4.17.6 & CA Title 24 1115B.8.1)
- 7 2 Accessories/Fixtures – Proper Height (Toilet Seat Covers)
- 8 (ADAAG 4.23.7 & CA Title 24 1115B.9.2)
- 9 2 Mirror – Mounting Height
- 10 (ADAAG 4.19.6 & CA Title 24 1115B.9.1.2)
- 11 1 Urinal Rim Height 17" Max
- 12 (ADAAG 4.18.2 & CA Title 24 1503.2.1)
- 13 1 Flush Valve Urinal – Correct Height 44" Max
- 14 (ADAAG 4.18.4 & CA Title 24 1503.2.2)
- 15 4 Hardware – Opening Door Knobs
- 16 (ADAAG 4.13.9 & CA Title 24 1133B.2.5.1)
- 17 2 Hardware – Opening Door Lock/Latch
- 18 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)
- 19 2 Hardware – Handle Inside/Outside Compartment Door
- 20 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)
- 21 2 Drain & Hot Water Pipes – Not Insulated or Covered
- 22 (ADAAG 4.24.6)

23 9. Based upon the above facts, Plaintiff as been discriminated against and will  
 24 continue to be discriminated against unless and until Defendants are enjoined and  
 25 forced to cease and desist from continuing to discriminate against Plaintiff and others  
 26 similarly situated.

27 10. Pursuant to Federal [ADA], Title 28 CFR 36.201; 36.203; 36.304; 36.305 and  
 28 state law [California Title 24], Defendants are required to remove barriers to their

1 existing facilities. Defendants have been put on notice pursuant to the ADA and  
2 California Civil Codes [51,52] prior to the statutory effect of the ADA on January 26,  
3 1992 that Defendants and each of them had a duty to remove barriers to persons with  
4 disabilities such as plaintiff. Defendants also knew or should have known that  
5 individuals such as Plaintiff with a disability are not required to give notice to a  
6 governmental agency prior to filing suit alleging Defendants' failure to remove  
7 architectural barriers.

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

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

#### 23 IV

#### 24 FIRST CAUSE OF ACTION

#### 25 (Violation of Civil Rights-American With Disabilities Act)

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

#### 28 **Claim 1: Denial of Full and Equal Access**



1 14. Based on the facts asserted above Plaintiff has been denied full and equal access  
2 to Defendants' goods, services, facilities, privileges, advantages, or accommodations.  
3 Defendant business is a public accommodation owned, leased and/or operated by  
4 Defendants and each of them. Defendants' existing facilities and/or services failed to  
5 provide full and equal access to Defendants' facility as required by 42 U.S.C. Section  
6 12182(a). Thus, Plaintiff was subjected to discrimination in violation of 42 U.S.C.  
7 12182(b)(2)(A)(ii)(iv) and 42 U.S.C. section 12188 because Plaintiff was denied  
8 equal access to Defendants' existing facilities.

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

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

18 16. Based upon the facts alleged herein, Plaintiff was denied full and equal access to  
19 Defendants' goods, services, facilities, privileges, advantages, or accommodations  
20 within a public accommodation owned leased, and/or operated by the named  
21 Defendants. Defendants individually and collectively failed to remove barriers as  
22 required by 42 U.S.C. 12182(a) and 28 CFR 36.304. Plaintiff is informed and  
23 believes, and thus alleges that architectural barriers which are structural in nature  
24 exist at the following physical elements of Defendants' facilities:

25 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground  
26 and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
27 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,  
28 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals,

1 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
2 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
3 Pursuant to 42 USC section 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires  
4 places of public accommodation to remove architectural barriers that are structural in  
5 nature within existing facilities. Failure to remove such barriers and disparate  
6 treatment against a person who has a known association with a person with a  
7 disability are forms of prohibited discrimination. Accordingly, Plaintiff was subjected  
8 to discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC 12182  
9 (b)(2)(A)(iv) and 42 USC 12188.

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

11 17. Based on the facts alleged in this Complaint Defendants failed and refused to  
12 provide a reasonable alternative by modifying its practices, policies and procedures in  
13 that they failed to have a scheme, plan, or design to assist Plaintiff and/or others  
14 similarly situated in entering and utilizing Defendants' services, as required by 42  
15 U.S.C. Section 12188(a). Thus, Plaintiff was subjected to discrimination in violation  
16 of 42 U.S.C. section 12182(b)(2)(A)(iv); 28 CFR 36.302 and 42 U.S.C. section 12188  
17 because Plaintiff was denied equal access to Defendants' existing facilities.

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

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

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

28 //

1 VI

2 SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

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**VII**

**THIRD CAUSE OF ACTION**

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

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

26. 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."

27. 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 alleged, Defendants have also violated 42 U.S.C. section 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).

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

29. Defendants and each of them, at all times prior to and including June 2004, respectively and continuing to the present time, knew that persons with physical disabilities were denied their rights of equal access to all portions of this public

1 facility. Despite such knowledge, Defendants, and each of them, failed and refused to  
2 take steps to comply with the applicable access statutes and despite knowledge of the  
3 resulting problems and denial of civil rights suffered by Plaintiff and other similarly  
4 situated persons with disabilities.  
5

6  
7 30. Defendants and each of them have failed and refused to take action to grant full  
8 and equal access to person with physical disabilities. Defendants have carried out a  
9 course of conduct of refusing to respond to, or correct complaints about unequal  
10 access and have refused to comply with their legal obligations to make the subject  
11 facility accessible pursuant the ADAAG and the California Building Code [Title 24  
12 of the California Code of Regulations]. Such actions and continuing course of  
13 conduct by Defendants, and each of them, evidence despicable conduct in conscious  
14 disregard of the rights and/or safety of Plaintiff and those similarly situated and thus  
15 justify an award of treble damages pursuant to section 52(a) and 54.3(a) of the  
16 Cal.Civ. Code or alternatively an award of punitive damages in an appropriate  
17 amount.  
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22 31. Plaintiff has suffered emotional and physical damage and continues to suffer such  
23 damages all in an amount to be determined at time of trial.  
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25 32. Under the provisions of Cal. Civ. Code section 55 Plaintiff seeks an award of  
26 reasonable attorney's fees and costs as a result of having to bring this action. Plaintiff  
27 requests the court to award such fees in an appropriate amount.  
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VIII

**FOURTH CAUSE OF ACTION**

**(Negligent Infliction of Emotional Distress)**

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

34. Defendants and each of them owed a duty to Plaintiff to make their facility accessible and to keep Plaintiff reasonably safe from known dangers and risks of harm. This duty arises by virtue of the legal duties proscribed by various federal and state statutes including, but not limited to, ADA, ADAAG, California Civil Code sections 51, 52, 54, 54.1 and Title 24 of the California Code of Regulations.

Defendants had a duty of due care not to do or cause anything to happen that would subject Plaintiff to undue stress, embarrassment, chagrin, and discouragement.

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

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

1 36. As a proximate result of the actions of Defendants Plaintiff did suffer emotional  
2 and mental stress and pain and suffering all in an amount to be determined at time of  
3 trial.  
4

5 **IX**

6 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

19 **X**

20 **SIXTH CAUSE OF ACTION**

21 **(DECLARATORY RELIEF)**

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

24 42. An actual controversy now exists in that plaintiff is informed and believes and  
25 thereon alleges that Defendants' premises are in violation of the disabled access laws  
26 of the State of California including, but not limited to, Civil Code Sections 51, et seq.,  
27 Section 52, et seq., Title 24 of the California Code of Regulations and Title III of the  
28

1 Americans with Disabilities Act and the Americans with Disabilities Access  
2 Guidelines (ADAAG).

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

6 WHEREFORE PLAINTIFF PRAYS:

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

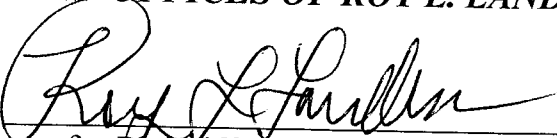
20 **DEMAND FOR JURY**

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

23 Respectfully submitted,

***THE LAW OFFICES OF ROY L. LANDERS***

24  
25 Dated: 12/19/04

26 By:   
27 Attorney for Plaintiff, Gaynor Carlock  
28



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4 Attorney for Plaintiff(s): Gaynor Carlock

2005 MAR 10 PM 2:11  
 U.S. DISTRICT COURT  
 CENTRAL DIST. OF CALIF.  
 SANTA ANA

8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA

12 GAYNOR CARLOCK,

14 Plaintiff,

16 vs.

17 DEAN SORDRAGER AND TERRY  
 18 SORDRAGER, dba, KENTUCKY  
 19 FRIED CHICKEN; THOMAS C. HEIN,  
 20 TRUSTEE OF THE THOMAS C. HEIN  
 TRUST AND DOES 1-10,

22 Defendants

Case No.: SACV 04-1448 AHS (ANx)  
 NOTICE OF SETTLEMENT  
 COMPLAINT FILED: 12/17/04

DOCKETED ON CM  
 MAR 11 2005  
 BY [Signature] 024

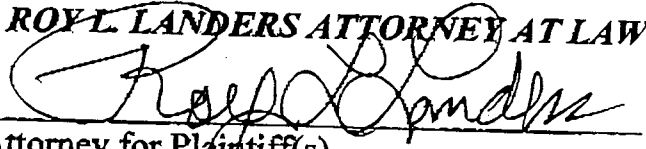
25 Plaintiff, Gaynor Carlock, and Defendants Dean Sorgdrager and Terry Sorgdrager, et  
 26 al, hereby notify the court that the parties have reached settlement in this matter.  
 27 Counsel for Plaintiff and Defendants are in the process of preparing a written Release  
 28 and Settlement Agreement and Stipulated Dismissal. The Complaint shall be

1 dismissed with prejudice in its entirety as to all parties and all claims. The parties  
2 anticipate a complete dismissal of this action shall be filed on or before March 31,  
3 2005. The parties respectfully request the court vacate all currently scheduled court  
4 appearances, including Rule 26 (f) dates and schedule s Settlement Disposition  
5 Conference in this matter.

6 Respectfully submitted,

ROY L. LANDERS ATTORNEY AT LAW

9 DATED: 3/10, 2005

BY:   
Attorney for Plaintiff(s)  
Gaynor Carlock

LEWIS BRISBOIS BISGAARD & SMITH

16 DATED: \_\_\_\_\_, 2005

BY: \_\_\_\_\_  
Ernest Slome, Esq.  
Attorney for Defendants  
Dean Sorgdrager and Terry Sorgdrager, et al.,

1 dismissed with prejudice in its entirety as to all parties and all claims. The parties  
2 anticipate a complete dismissal of this action shall be filed on or before March 31,  
3 2005. The parties respectfully request the court vacate all currently scheduled court  
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5 Conference in this matter.

6 Respectfully submitted,


**ROY L. LANDERS ATTORNEY AT LAW**

9 DATED: \_\_\_\_\_, 2005

BY: \_\_\_\_\_  
Attorney for Plaintiff(s)  
Gaynor Carlock

**LEWIS BRISBOIS BISGAARD & SMITH**

16 DATED: 3 - 8 - 2005

BY:   
Ernest Slome, Esq.  
Attorney for Defendants  
Dean Sorgdrager and Terry Sorgdrager, et al.,

FILED  
 CLERK U.S. DISTRICT COURT  
 MAR 11 2005  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY *[Signature]* DEPUTY

DOCKETED ON CM  
 MAR 14 2005  
 BY *[Signature]* 024

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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION

10	GAYNOR CARLOCK,	)	SA CV 04-1448-AHS (ANx)
11		)	
12	Plaintiff(s),	)	ORDER STAYING ACTION
13	v.	)	PENDING FINAL SETTLEMENT
14	DEAN SORDRAGER, et al.,	)	AND REMOVING CASE FROM
15		)	ACTIVE CASELOAD
16	Defendant(s).	)	

On March 10, 2005, counsel for the parties filed a "Notice of Settlement." The Court hereby orders all proceedings in the case stayed pending final settlement.

It is further ordered that this action is removed from the Court's active caseload, subject to the right, upon good cause shown within thirty (30) days, to reopen the action if settlement is not consummated. The Court retains full jurisdiction over this action and this order shall not prejudice any party in the action.

IT IS SO ORDERED.  
 Dated: March // , 2005.

*[Signature]*  
 ALICEMARIE H. STOTLER  
 UNITED STATES DISTRICT JUDGE

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