

LAW OFFICES OF ROY L. LANDERS
ROY L. LANDERS (BAR #64920)
7840 MISSION CENTER COURT, SUITE 101
SAN DIEGO, CALIFORNIA 92108
TELEPHONE (619) 296-7898
FACSIMILE (619) 296-5611

Attorney for Plaintiff, Gaynor Carlock

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

2004 SEP 24 AM 10:15
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SAN DIEGO, CALIF.

FILED

GAYNOR CARLOCK,

Plaintiff,

vs.

RICKY FOSNIGHT, dba
McDONALD'S; McDONALD'S
CORPORATION AND DOES 1-10,
INCLUSIVE,
Defendants.

Case No.: CV04-7955 TJH (SSx)
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; UNFAIR
AND UNLAWFUL BUSINESS
PRACTICE; DEMAND FOR JURY
TRIAL

I

JURISDICTION AND VENUE

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

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1 Act [ADA] and, as such, must comply with the ADA under provisions of Title III
2 therein.

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

11 III

12 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

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

18 7. On or about June 1, 2004 Plaintiff patronized the premises of Defendants to utilize
19 goods and/or services offered by Defendants. When Plaintiff attempted to gain
20 access to the goods and/or services offered by Defendants he encountered access
21 barriers because the premises failed to comply with federal ADA Access Guidelines
22 For Building and Facilities [hereinafter "ADAAG"]; Department of Justice [DOJ]
23 regulations at 28 CFR. 36.201; 36.304 and/or the State of California's Title 24
24 Building Code Requirements.

25 8. The specific difficulty Plaintiff had in entering and utilizing Defendants' facility
26 and which amount to a violation of ADAAG, DOJ regulations and Title 24 of the
27 California Building Code are:
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- 1 Designated Disabled "VAN ACCESSIBLE" Parking - Space
(ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Width
(ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Length
(ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 1 Designated Disabled "VAN ACCESSIBLE" Parking Space - Signage
(ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2)
- 1 Warning – Access Aisle - (NO PARKING)
(CA Title 24 1129B.4.1 & 2)
- 1 Warning – Access Aisle - (12" High Minimum)
(CA Title 24 1129B.4.1 & 2)
- 1 Regular Access Aisle – Exist/Improper
(CA Title 24 1129B.4.1)
- 1 Regular Access Aisle - Width
(CA Title 24 1129B.4.1)
- 1 Regular Access Aisle - Length
(CA Title 24 1129B.4.1)
- 1 Van Accessible Aisle – Exist/Improper
(ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 1 Van Accessible Aisle - Width
(ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 1 Van Accessible Aisle - Length
(ADAAG 4.6.3 & CA Title 24 1129B.4.2)
- 1 Van Accessible Aisle - (Passenger Side)
(ADAAG 4.6.3 & CA Title 24 1129B.4.2)

- 1 1 Signage Installed - (Each Space)
2 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 3 1 Additional Signage - (Van Accessible)
4 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 5 1 Shortest Route of Travel to Accessible Entrance
6 (ADAAG 4.6.2)
- 7 1 Designated Disabled Parking Space Signage – Proper Height
8 (ADAAG 4.6.4 & CA Title 24 1129B.5)
- 9 2 Parking Space Emblem – Proper Size
10 (ADAAG 4.6.4 & CA Title 24 1129B.5.1 &.2)
- 11 1 Curb Ramp Location/Improper
12 (ADAAG 4.7.1)
- 13 2 Curb Ramp - Projects into Vehicular Traffic Lanes
14 (ADAAG 4.7.6)
- 15 2 Bathroom – International Symbol of Accessibility at Accessible Restroom
16 (ADAAG 4.30.6 & CA Title 24 1117B.5.9)
- 17 2 Bathroom – International Symbol of Accessibility - Pictogram Min 6” High
18 (ADAAG 4.30.4 & CA Title 24 1117B.5.5.2)
- 19 2 Bathroom – International Symbol of Accessibility – Verbal Description Below
20 (ADAAG 4.30.4 & CA Title 24 1117B.5.5.2)
- 21 2 Raised Braille Characters - (Restroom Wall Signage)
22 (ADAAG 4.30.4 & CA Title 24 1117B.5.6.1 &.2)
- 23 2 Wall Mount Signage (Latch Side of Door)
24 (ADAAG 4.1.2(7)(d) and CA Title 24 1117B.5.1.1 &.5.6.3)
- 25 2 Wall Mount Signage (60 inches from the floor)
26 (ADAAG 4.30.6 & CA Title 24 1117B.5.9)
- 27 2 Water Closet Mounting/Location – Both Walls (Front-Transfer Stall)
28 (ADAAG 4.23.4 & CA Title 24 1115B.7.1.4)

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- 2 2 Width Between Walls – Front Transfer Stall
3 (ADAAG 4.23.4 & CA Title 24 1115B.7.1.4)
- 4 2 Accessories/Fixtures – Proper Height (Toilet Seat Covers)
5 (ADAAG 4.23.7 & CA Title 24 1115B.9.2)
- 6 2 Accessories/Fixtures – Proper Height (Dryer)
7 (ADAAG 4.23.7 & CA Title 24 1115B.9.2)
- 8 2 Mirror – Mounting Height
9 (ADAAG 4.19.6 & CA Title 24 1115B.9.1.2)
- 10 1 Urinal Rim Height 17" Max
11 (ADAAG 4.18.2 & CA Title 24 1503.2.1)
- 12 2 Toilet Stall – Proper Size
13 (ADAAG 4.17.3 & CA Title 24 1115B.1)
- 14 2 Hardware – Opening Door Lock/Latch
15 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)
- 16 2 Hardware – Handle Inside/Outside Compartment Door
17 (ADAAG 4.13.9 & CA Title 24 1115B.7.1.4)
- 18 4 Kick Plate at Doors
19 (CA Title 24 1133B.2.6)

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

24 10. Pursuant to Federal [ADA], Title 28 CFR 36.201; 36.203; 36.304; 36.305 and
25 state law [California Title 24], Defendants are required to remove barriers to their
26 existing facilities. Defendants have been put on notice pursuant to the ADA and
27 California Civil Codes [51,52] prior to the statutory effect of the ADA on January 26,
28 1992 that Defendants and each of them had a duty to remove barriers to persons with

1 disabilities such as plaintiff. Defendants also knew or should have known that
2 individuals such as Plaintiff with a disability are not required to give notice to a
3 governmental agency prior to filing suit alleging Defendants' failure to remove
4 architectural barriers.

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

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

20 IV

21 FIRST CAUSE OF ACTION

22 (Violation of Civil Rights-American With Disabilities Act)

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

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

26 14. Based on the facts asserted above Plaintiff has been denied full and equal access
27 to Defendants' goods, services, facilities, privileges, advantages, or accommodations.
28 Defendant business is a public accommodation owned, leased and/or operated by

1 Defendants and each of them. Defendants' existing facilities and/or services failed to
2 provide full and equal access to Defendants' facility as required by 42 U.S.C. Section
3 12182(a). Thus, Plaintiff was subjected to discrimination in violation of 42 U.S.C.
4 12182(b)(2)(A)(ii)(iv) and 42 U.S.C. section 12188 because Plaintiff was denied
5 equal access to Defendants' existing facilities.

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

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

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

22 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground
23 and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
24 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
25 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals,
26 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
27 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
28 Pursuant to 42 USC section 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires

1 places of public accommodation to remove architectural barriers that are structural in
2 nature within existing facilities. Failure to remove such barriers and disparate
3 treatment against a person who has a known association with a person with a
4 disability are forms of prohibited discrimination. Accordingly, Plaintiff was subjected
5 to discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC 12182
6 (b)(2)(A)(iv) and 42 USC 12188.

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

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

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

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

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

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VI

SECOND CAUSE OF ACTION

(Violation Of Civil Rights Under California Accessibility Laws)

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

(a) Denial Of Full And Equal Access

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

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

(b) Failure To Modify Practices, Policies And Procedures

24. 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 s 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.

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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.
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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.
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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
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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 IX

7 **SEVENTH CAUSE OF ACTION**

8 44. Plaintiff realleges and incorporates by reference each and every allegation
9 contained in paragraphs 1-43 of this complaint as though set forth fully herein.

10 45. Pursuant to the provisions of California Business and Professions Code section
11 17200 and 17204 plaintiff has standing to bring this action on behalf of himself and
12 the general public based upon the allegation that the act or acts of defendants herein
13 are unlawful, unfair or fraudulent. Plaintiff brings this action, in part, on the basis that
14 defendants' actions are unlawful and unfair as alleged within this complaint and that
15 plaintiff, as a member of the public, brings this action on behalf of him and the
16 general public.

17 46. Pursuant to the provisions of section 17200 plaintiff seeks relief for the past acts
18 of discrimination against him and the general public and persons similarly situated as
19 he and for injunctive relief to enjoin further and future continued discrimination by
20 defendants in the denial of access to public accommodations as required under the
21 ADA, ADAAG and Title 24 of the California Building Code.

22 WHEREFORE PLAINTIFF PRAYS:

- 23 1. For general damages according to proof;
24 2. For special damages according to proof;
25 3. For damages pursuant to Cal. Civil Code section 52, in the amount of \$4,000 for
26 each and every offense of California Civil Code section 51, Title 24 of the California
27 Building Code and the Americans with Disabilities Act.
28

- 1 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a); Unfair and Unlawful
- 2 Business Practices and for declaratory relief;
- 3 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42 U.S.C. 12205 and
- 4 Cal. Civ. Code section 55;
- 5 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
- 6 7. For punitive damages according to proof;
- 7 8. For a Jury Trial;
- 8 9. For costs of suit incurred herein and;
- 9 10. For such other and further relief as the court deems proper.

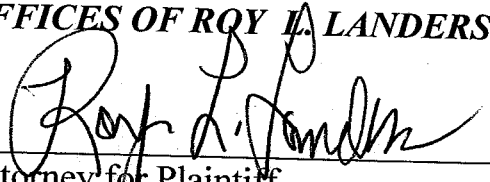
10 **DEMAND FOR JURY**

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

13 Respectfully submitted,

THE LAW OFFICES OF ROY L. LANDERS

14
15 Dated: 9/12/04

16 By: 
17 Attorney for Plaintiff,
18 Gaynor Carlock