

1 LAW OFFICES OF ROY L. LANDERS  
2 ROY L. LANDERS (BAR #64920)  
3 LaTOYA S. REDD, (BAR# 218342)  
4 7840 MISSION CENTER COURT, SUITE 101  
5 SAN DIEGO, CALIFORNIA 92108  
6 TELEPHONE (619) 296-7898  
7 FACSIMILE (619) 296-5611

8 Attorney for Plaintiff, Gaynor Carlock

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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 WESTERN DIVISION

12 CV04-2665

JFW

PIWx

13 GAYNOR CARLOCK,

14 Plaintiff,

15 vs.

16 MAHENDRA PATEL AND HEMA K. PATEL )  
17 dba BROADWAY MOTEL AND DOES 1-10 )  
18 Inclusive,

19 Defendants.

) Case No.:  
)  
) 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  
)  
)  
)

21 I

22 JURISDICTION AND VENUE

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

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1 1391(b) because a substantial part of plaintiff's claims arose  
2 within the Judicial District of the United States District Court  
3 of the Central District of California.

4 (b) Supplemental Jurisdiction. The Judicial District of the  
5 United States District Court of the Central District of California  
6 has supplemental jurisdiction over the state claims alleged in  
7 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. Defendants, Mahendra Patel and Hema K. Patel, dba Broadway  
26 Motel were and at all times herein mentioned was a duly organized  
27 business, association, or corporation duly authorized to exist and  
28 operate within the State of California and County of Los Angeles

1 and the owner, lessee, or tenant of the premises located at 301  
2 West 49<sup>th</sup> Street Los Angeles, California.

3 3. Plaintiff is informed and believes and thereon alleges that  
4 defendants Mahendra Patel and Hema K. Patel are also the owners  
5 and/or landlords of the subject property upon which defendant  
6 business is sited.

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

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

23 **III**

24 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

25 6. Plaintiff is a male who is disabled and confined to a  
26 wheelchair. He has no control over his lower extremities and must  
27 use a wheelchair to transport himself and to affect the basic  
28 necessities of his everyday existence. Plaintiff's disability

1 substantially limits one or more of life's major activities and  
2 therefore he is disabled as defined under 42 USC  
3 12102(2) (A) (B) (C).

4 7. On or about July 13, 2003 plaintiff patronized the premises of  
5 defendants to utilize goods and/or services offered by defendants.  
6 When Plaintiff attempted to gain access to the goods and/or  
7 services offered by defendants he encountered access barriers  
8 because the premises failed to comply with federal ADA Access  
9 Guidelines For Building and Facilities [hereinafter "ADAAG"];  
10 Department of Justice [DOJ] regulations at 28 CFR. 36.201; 36.304  
11 and/or the State of California's Title 24 Building Code  
12 Requirements.

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

- 16 (a) Lack of site entrance signage as required by Title 24  
17 1129B.5
- 18 (b) Lack of access aisle (NO PARKING) warning sign as required  
19 by Title 24 1129B.4.1&2.
- 20 (c) Lack of designated van accessible parking space as required  
21 by ADAAG 4.1.2(5) (b) and Title 24 1129B.4.2.; ADAAG  
22 4.1.2(5) (a) and Title 24 1129B.1.
- 23 (d) Lack of van accessible aisle as required by ADAAG 4.6.3 and  
24 Title 24 1129B.4.2.
- 25 (e) No signage in accord with ADAAG 4.6.4 and Title 24 1129B.5.
- 26 (f) Lack of access route of travel as required by ADAAG  
27 4.1.3(2) and Title 24 1114B.1.2.
- 28 (g) Lack of shortest route of travel per ADAAG 4.6.2

- 1 (h) Disable parking does not comply with Title 24 1129B.4.3  
2 (i) Entrance lacks signage in accord with ADAAG 4.1.3(16) (b)  
3 and Title 24 1127B.3.  
4 (j) Threshold does not meet the requirements of ADAAG 4.1.3.8  
5 and Title 24 1133B.2.4.1  
6 (k) Faucet fixtures do not comply with ADAAG 4.27.4 and Title  
7 24 1508.1&2.  
8 (l) Faucets exceed 5lb force in violation of ADAAG 4.27.4 and  
9 Title 24 1508.1&2.  
10 (m) Bathroom grab bars do not comply with ADAAG 4.17.6 and  
11 Title 24 1115B.8.1; ADAAG 4.14.6 and Title 24 1115B.8.1  
12 (n) Bathroom hardware does not comply with ADAAG 4.13.9 and  
13 Title 24 1115B 7.1.4.  
14 (o) Facility lacks fully accessible rooms as required by ADAAG  
15 9.1.2 and Title 24 111B4.2  
16 (p) Lack of accessible rooms with roll-in showers as required  
17 by ADAAG 9.1.2. and Title 24 1111B4.2.  
18 (q) Lack of accessible units as required by ADAAG 9.2.2. and  
19 title 24 1111B.2.  
20 (r) Facility does not comply with the provisions of ADAAG  
21 9.2.2(6) (e) and Title 24 1111B.4.6.6

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

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

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

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

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

4 **IV**

5 **FIRST CAUSE OF ACTION**

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

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

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

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

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

1 history of or has been classified as having a physical impairment  
2 as required by 42 U.S.C. section 12102(2)(A).

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

4 16. Based upon the facts alleged herein, Plaintiff was denied  
5 full and equal access to Defendants' goods, services, facilities,  
6 privileges, advantages, or accommodations within a public  
7 accommodation owned leased, and/or operated by the named  
8 Defendants. Defendants individually and collectively failed to  
9 remove barriers as required by 42 U.S.C. 12182(a) and 28 CFR  
10 36.304. Plaintiff is informed and believes, and thus alleges that  
11 architectural barriers which are structural in nature exist at the  
12 following physical elements of Defendants' facilities:

13 Space Allowance and Reach Ranges, Accessible Route, Protruding  
14 Objects, Ground and Floor Surfaces, Parking and Passenger Loading  
15 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts  
16 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains  
17 and Water Coolers, Water Closets, Toilet Stalls, Urinals,  
18 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and  
19 Controls and Operating Mechanisms, Alarms, Detectable Warnings,  
20 Signage, and Telephones. Pursuant to 42 USC section  
21 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires places of  
22 public accommodation to remove architectural barriers that are  
23 structural in nature within existing facilities. Failure to remove  
24 such barriers and disparate treatment against a person who has a  
25 known association with a person with a disability are forms of  
26 prohibited discrimination. Accordingly, Plaintiff was subjected to  
27 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42  
28 USC 12182 (b)(2)(A)(iv) and 42 USC 12188.





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

2 22. Plaintiff has been denied full and equal access to Defendants'  
3 goods services, facilities, privileges, advantages, or  
4 accommodations within a public accommodation owned, leased, and/or  
5 operated by Defendants in violation of California Civil Code  
6 Sections 54 and 54.1; California Health and Safety Code Section  
7 19955 and California Government Code Section 12948. The actions of  
8 Defendants also violate the provisions of Title 24 of the State of  
9 California Building Codes with regard to accessibility for persons  
10 with disabilities by failing to provide access to Defendants  
11 facilities due to violations pertaining to accessible routes,  
12 ground and floor surfaces, parking and passenger loading zones,  
13 curb ramps, ramps, stairs, elevators, platform lifts (wheelchair  
14 lifts), windows, doors, toilet stalls, urinals, lavatories and  
15 mirrors, sinks, storage, handrails, grab bars, controls and  
16 operating mechanisms  
17 alarms, detectable warnings, signage and telephones.

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

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

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

1 Accordingly Defendants have wrongfully discriminated against  
2 Plaintiff.

3 **VII**

4 **THIRD CAUSE OF ACTION**

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

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

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

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

16 27. Defendants have violated the provisions of Civ. Code 51 (b) by  
17 failing and refusing to provide free and equal access to Plaintiff  
18 to their facility on the same basis as other persons not disabled.  
19 By their failure to provide equal access to Plaintiff as herein  
20 alleged, Defendants have also violated 42 U.S.C. section  
21 12182 (b) (2) (A) (iv) as provided in Cal. Civ. Codes section 51(f).

22 28. By reason of their acts and denial of Plaintiff's civil rights  
23 Defendants also violated the provisions of Cal. Civ. Code section  
24 52, which makes a person or entity in violation of Cal.Civ. Code  
25 51 liable for the actual damages to a Plaintiff including treble  
26 damages where appropriate.

27 29. Defendants and each of them, at all times prior to and  
28 including July 2003, respectively and continuing to the present

1 time, knew that persons with physical disabilities were denied  
2 their rights of equal access to all portions of this public  
3 facility. Despite such knowledge, Defendants, and each of them,  
4 failed and refused to take steps to comply with the applicable  
5 access statutes and despite knowledge of the resulting problems  
6 and denial of civil rights suffered by Plaintiff and other  
7 similarly situated persons with disabilities.  
8

9  
10 30. Defendants and each of them have failed and refused to take  
11 action to grant full and equal access to person with physical  
12 disabilities. Defendants have carried out a course of conduct of  
13 refusing to respond to, or correct complaints about unequal access  
14 and have refused to comply with their legal obligations to make  
15 the subject facility accessible pursuant the ADAAG and the  
16 California Building Code [Title 24 of the California Code of  
17 Regulations]. Such actions and continuing course of conduct by  
18 Defendants, and each of them, evidence despicable conduct in  
19 conscious disregard of the rights and/or safety of Plaintiff and  
20 those similarly situated and thus justify an award of treble  
21 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code  
22 or alternatively an award of punitive damages in an appropriate  
23 amount.  
24  
25

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

1 32. Under the provisions of Cal. Civ. Code section 55 Plaintiff  
2 seeks an award of reasonable attorney's fees and costs as a result  
3 of having to bring this action. Plaintiff requests the court to  
4 award such fees in an appropriate amount.  
5

6 **VIII**

7 **FOURTH CAUSE OF ACTION**

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

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

11 34. California Business and Professions Code Section 17200 states  
12 in pertinent part:

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

15 35. Defendants, as alleged herein, are in violation of the  
16 Americans With Disabilities Act and Title 24 of the California  
17 Building Code, in that they have denied equal access to their  
18 places of public accommodation to Plaintiff and others similarly  
19 situated to Plaintiff. Defendants have failed and refused and  
20 continue to refuse to comply with equal access laws all in  
21 violation of 42 USC 12181-12183; 28 CFR 36.304 and 42 USC 12188.  
22 In addition the complained of acts are in violation of California  
23 Civil Code Sections 51,52, 54,and 54.1,; California Health and  
24 Safety Code section 19955 all of which require Defendants to  
25 provide equal access to their facility to disabled persons such as  
26 plaintiff. Defendants are also in violation of the indicated  
27  
28

1 statutes because of their failure to remove architectural  
2 barriers, which prevent equal access to their facility by disabled  
3 persons and because of their failure to modify their practices,  
4 policies and procedures to have a scheme, plan, or design to  
5 assist Plaintiff and others similarly situated to enter and  
6 utilize Defendants' services as required by the Unruh Act.  
7

8 36. Defendants' acts are unlawful and unfair and are therefore in  
9 violation of California Business and Professions Code section  
10 17200.  
11

12 37. Pursuant to the provisions of California Business and  
13 Professions Code section 17201 Plaintiff is a person as identified  
14 within said section and therefore allowed to bring this action on  
15 behalf of himself and the general public to effectuate California  
16 Business and Professions Code 17200 as provided for within  
17 Business and Professions Code section 17204.  
18

19 38. Thus, Plaintiff, under Bus & Prof. Code section 17200 seeks  
20 injunctive relief, on behalf of himself and the general public,  
21 requiring Defendants to remedy the disabled access violations  
22 present within Defendants' facility and that Defendants be ordered  
23 to cease and desist from continuing in noncompliance with disabled  
24 access statutes and regulations.  
25

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IX

FIFTH CAUSE OF ACTION

**(Negligent Infliction of Emotional Distress)**

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4  
5 39. Plaintiff relleges the allegations of the Fourth Cause of  
6 Action as though set forth fully herein.

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

18 41. Defendants breached their duty of care to Plaintiff by the  
19 actions and inaction complained of herein and as a result thereof  
20 Plaintiff was shocked, discouraged, embarrassed and outraged at  
21 the callousness and disregard of Defendants. Defendants knew or  
22 had reason to know that by denying Plaintiff equal access to their  
23 facility and failing and refusing to remove architectural  
24 barriers, Plaintiff would suffer emotional and/or mental distress  
25 because of such discrimination and disparate treatment. Defendants  
26 breached their duty of care to plaintiff by the perpetration of  
27 the acts outlined herein.  
28

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

5 X

6 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

19 WHEREFORE PLAINTIFF PRAYS:

- 20 1. For general damages according to proof;  
21 2. For special damages according to proof;  
22 3. For damages pursuant to Cal. Civil Code section 52, in the  
23 amount of \$4,000 for each and every offense of California Civil  
24 Code section 51, Title 24 of the California Building Code and the  
25 Americans With Disabilities Act.  
26 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and  
27 California Business and Professions Code section 17200  
28 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42  
U.S.C. 12205 and Cal. Civ. Code section 55;



- 1 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
- 2 7. For punitive damages according to proof;
- 3 8. For a Jury Trial;
- 4 9. For costs of suit incurred herein and;
- 5 10. For such other and further relief as the court deems proper.

6 Respectfully submitted,

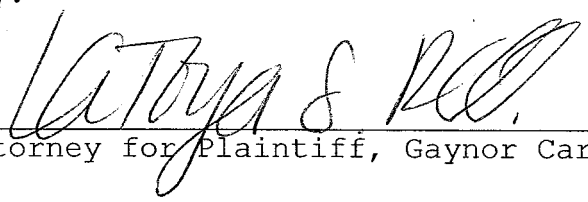
7 Dated: 4/13/04

  
\_\_\_\_\_  
Attorney for Plaintiff, Gaynor Carlock

10 **DEMAND FOR JURY TRIAL**

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

14 Dated: 4/13/04

  
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Attorney for Plaintiff, Gaynor Carlock

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