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3:03-CV-01648 DEGROOTE ESTATE V. SILVER STORE LLC

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FEDERAL DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **ORGANIZATION FOR ACCESSIBLE**
13 **RIGHTS IN THE NEW MILLENIUM**
14 **SUING ON BEHALF OF THE ESTATE**
15 **OF WALTER LEE DEGROOTE,**
16 **DOROTHY DEGROOTE AND ITS**
17 **MEMBERS; THE ESTATE OF WALTER**
18 **LEE DEGROOTE; and DOROTHY**
19 **DEGROOTE, An Individual,**

20 Plaintiffs,

21 v.

22 **THE SILVER STORE LLC, a.k.a.**
23 **THE SILVER STORE PACIFIC**
24 **COAST TRADING CO, a.k.a.**
25 **PACIFIC COAST TRADING**
26 **COMPANY; JOSEPH GEORGE**
27 **STABILE and MARY CELESTE**
28 **STABILE; THE LIBRARY**
ASSOCIATION OF LA JOLLA;

And

DOES 1 THROUGH 10, Inclusive.

Defendants.

Case No.: '03 CV 1648 K POR

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE 19995;
BUSINESS & PROFESSIONS CODE
17200 et. seq.]

NEGLIGENCE

[CIVIL CODE 1714(a), 2338,
3333, 3294; EVIDENCE CODE
669(a)]

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b); L.R.
38.1

INTRODUCTION

OK

1
2 Plaintiffs ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE NEW
3 MILLENIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE DEGROOTE,
4 DOROTHY DEGROOTE AND ITS MEMBERS; THE ESTATE OF WALTER LEE
5 DEGROOTE; and DOROTHY DEGROOTE, An Individual, herein complain, by
6 filing this Civil Complaint in accordance with rule 8 of the
7 Federal Rules of Civil Procedure in the Judicial District of the
8 United States District Court of the Southern District of
9 California, that Defendants have in the past, and presently are,
10 engaging in discriminatory practices against individuals with
11 disabilities, specifically including minorities with disabilities.
12 Plaintiffs allege this civil action and others substantial similar
13 thereto are necessary to compel access compliance because
14 empirical research on the effectiveness of Title III of the
15 Americans with Disabilities Act indicates the Title has failed to
16 achieve full and equal access simply by the executive branch of
17 the Federal Government funding and promoting voluntary compliance
18 efforts. Further, empirical research shows when individuals with
19 disabilities give actual notice of potential access problems to
20 places of public accommodation without a federal civil rights
21 civil action, the public accommodations do not remove the access
22 barriers. Therefore, Plaintiffs make the following allegations in
23 this federal civil rights action:

24 **JURISDICTION AND VENUE**

25 1. The federal jurisdiction of this action is based on the
26 Americans with Disabilities Act, 42 United States Code 12101-
27 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
28 District of the United States District Court of the Southern

1 District of California is in accordance with 28 U.S.C. § 1391(b)
2 because a substantial part of Plaintiffs' claims arose within the
3 Judicial District of the United States District Court of the
4 Southern District of California.

5
6 **SUPPLEMENTAL JURISDICTION**

7 2. The Judicial District of the United States District Court of
8 the Southern District of California has supplemental jurisdiction
9 over the state claims as alleged in this Complaint pursuant to 28
10 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
11 in this action is because all the causes of action or claims
12 derived from federal law and those arising under state law, as
13 herein alleged, arose from common nucleus of operative facts. The
14 common nucleus of operative facts, include, but are not limited
15 to, the incidents where DECEASED PLAINTIFF'S MEMBER WALTER LEE
16 DEGROOTE; and PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE
17 were denied full and equal access to Defendants' facilities,
18 goods, and/or services in violation of both federal Defendants'
19 facilities as described within paragraphs 7 through 15 of this
20 Complaint. Defendant THE SILVER STORE LLC, a.k.a. THE SILVER
21 STORE PACIFIC COAST TRADING CO, a.k.a. PACIFIC COAST TRADING
22 COMPANY is located at 7909 Girard Avenue, La Jolla, California,
23 92037-4233. Plaintiffs are informed and believe and thereon
24 allege that JOSEPH GEORGE STABILE and MARY CELESTE STABILE are the
25 owners, operators, franchisers, franchisees, and/or lessors of the
26 THE SILVER STORE LLC, a.k.a. THE SILVER STORE PACIFIC COAST
27 TRADING CO, a.k.a. PACIFIC COAST TRADING COMPANY. Defendants
28

1 JOSEPH GEORGE STABILE and MARY CELESTE STABILE are located at
2 10235 Saunders Drive, San Diego, California, 92131. Plaintiffs
3 are further informed and believe and thereon allege that Defendant
4 THE LIBRARY ASSOCIATION OF LA JOLLA is the owner, operator and or
5 lessor of the property located at 7909 Girard Avenue, La Jolla,
6 California 92037-4233, Assessor's Parcel Number 350.091.17.

7 Defendant THE LIBRARY ASSOCIATION OF LA JOLLA is located at 1008
8 Wall Street, La Jolla, California 92037.

9 4. The words "Plaintiffs" and "Plaintiff" as used herein
10 specifically include the ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE
11 NEW MILLENNIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE
12 DEGROOTE, DOROTHY DEGROOTE AND ITS MEMBERS; THE ESTATE OF WALTER
13 LEE DEGROOTE; and DOROTHY DEGROOTE, An Individual, and persons
14 associated with its Members who accompanied Members to Defendants'
15 facilities.

16 5. Defendants Does 1 through 10, were at all times relevant
17 herein subsidiaries, employers, employees, and/or agents of THE
18 SILVER STORE LLC, a.k.a. THE SILVER STORE PACIFIC COAST TRADING
19 CO, a.k.a. PACIFIC COAST TRADING COMPANY; JOSEPH GEORGE STABILE
20 and MARY CELESTE STABILE; and THE LIBRARY ASSOCIATION OF LA JOLLA.
21 Plaintiffs are ignorant of the true names and capacities of
22 Defendants sued herein as Does 1 through 10, inclusive, and
23 therefore sues these Defendants by such fictitious names.
24 Plaintiffs will pray leave of the court to amend this complaint to
25 allege the true names and capacities of the Does when ascertained.

26 6. Plaintiffs are informed and believe, and thereon allege,
27 that Defendants and each of them herein were, at all times
28

1 relevant to the action, the owner, franchisee, lessee, general
2 partner, limited partner, agent, employee, representing partner,
3 or joint venturer of the remaining Defendants and were acting
4 within the course and scope of that relationship. Plaintiffs are
5 further informed and believe, and thereon allege, that each of the
6 Defendants herein gave consent to, ratified, and/or authorized the
7 acts alleged herein to each of the remaining Defendants.

8
9 **CONCISE SET OF FACTS**

10 7. DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE had a physical
11 impairment and due to this impairment he has learned to
12 successfully operate a wheelchair.

13 8. On August 18, 2002, DECEASED PLAINTIFF'S MEMBER WALTER LEE
14 DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE went
15 to Defendants' THE SILVER STORE LLC, A.K.A. THE SILVER STORE
16 PACIFIC COAST TRADING CO, A.K.A. PACIFIC COAST TRADING COMPANY
17 establishment to utilize their goods and/or services.

18 9. When DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
19 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE patronized
20 Defendants' THE SILVER STORE LLC, A.K.A. THE SILVER STORE PACIFIC
21 COAST TRADING CO, A.K.A. PACIFIC COAST TRADING COMPANY
22 establishment, they had difficulty using the entrance facilities
23 at Defendants' establishment because they failed to comply with
24 ADA Access Guidelines For Buildings and Facilities (hereafter
25 referred to as "ADAAG") and/or California's Title 24 Building Code
26 Requirements. Defendants failed to remove obstructions in the
27 entrance, stairs, customer service counter and interior path of
28 travel facilities at Defendants' establishment.

1 10. DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; and
2 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE personally
3 experienced difficulty with said access barriers in Defendants'
4 THE SILVER STORE LLC, A.K.A. THE SILVER STORE PACIFIC COAST
5 TRADING CO, A.K.A. PACIFIC COAST TRADING COMPANY establishment.
6 For example, the front entrance to Defendant's facilities fails to
7 be accessible, as there are two (2) sets of stairs leading to the
8 entrance of Defendants' establishment, therefore making it
9 completely inaccessible to disabled patrons using wheelchairs; the
10 requirement is for site development and grading to be designed to
11 provide access to all entrances and exterior ground floor exits.
12 Additionally, there fails to be signage posted on the doors and/or
13 windows indicating this facility is accessible; this is a
14 requirement. In addition, there is a three-inch (3") threshold at
15 the entrance to the facility; the requirement is to provide a
16 maximum threshold of one-half inch ($\frac{1}{2}$ "), with a beveled edge; or
17 one-fourth inch ($\frac{1}{4}$ ") un-beveled. Lastly, the metal frame at the
18 bottom of the entrance doors lack proper clearance; the
19 requirement is for the bottom ten inches (10") of all doors to
20 have a smooth, uninterrupted surface to allow the door to be
21 opened by a wheelchair footrest without creating a trap or
22 hazardous condition.

23
24 11. Additional violations exist at Defendants' establishment
25 other than those personally experienced by Plaintiffs. For
26 example, the stairs have inappropriate handrails; the requirement
27 is to provide handrails that are thirty-four to thirty-eight
28 inches (34" - 38") above the nosing of the treads, on both sides

1 that extend the one-foot (1') beyond the top nosing and one-foot
2 (1'), plus the tread width, beyond the bottom nosing. The ends
3 are to be returned, terminated in newel posts or extend out into
4 the landing. Additionally, the handrails fail to provide gripping
5 surface; the requirement is to provide handrails that are between
6 one and one-fourth inch and one and one-half inch (1 ¼" x 1 ½")
7 with no sharp edges. There also fails to be non-skid material on
8 the steps; this is required at each riser. Also, there fails to
9 be striping for the visually impaired; the requirement is for all
10 stairs outside a building to provide a two-inch (2") strip of
11 clearly contrasting color to the upper approach and all treads.
12 The entrance door has exterior and interior hardware that require
13 tight grasping to operate; the requirement is to provide hardware
14 that does not require tight grasping and/or twisting of the wrist
15 to operate. Additionally, there is a loose mat placed on the
16 exterior side of the entrance door; the requirement is for all
17 mats to be securely fastened on all four edges or be removed.
18 Within the facility, the customer service counter does provide a
19 lowered section, however, it fails to be accessible as it is only
20 twenty-four inches (24") long; the requirement is for a clear
21 space that is a minimum of thirty-six inches (36") in length.
22 Lastly, the interior path of travel is less than thirty-six inches
23 (36") in some areas; the requirement is to provide a constant
24 clear path of travel that is at least thirty-six inches (36").
25
26 12. Based on these facts, Plaintiffs allege DECEASED PLAINTIFF'S
27 MEMBER WALTER LEE DEGROOTE; and PLAINTIFF'S MEMBER AND PLAINTIFF
28

1 DOROTHY DEGROOTE were discriminated against each time they
2 patronized Defendants' establishment.

3 13. Pursuant to federal and state law, Defendants are required
4 to remove barriers to their existing facilities. Further,
5 Defendants had actual knowledge of their barrier removal duties
6 under the Americans with Disabilities Act and the Civil Code
7 before January 26, 1992. Also, Defendants should have known that
8 individuals with disabilities are not required to give notice to a
9 governmental agency before filing suit alleging Defendants failed
10 to remove architectural barriers. Plaintiffs believe and herein
11 allege Defendants' facilities have access violations not directly
12 experienced by DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
13 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE which preclude
14 or limit access by others with disabilities, including, but not
15 limited to, Space Allowance and Reach Ranges, Accessible Route,
16 Protruding Objects, Ground and Floor Surfaces, Parking and
17 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators,
18 Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
19 Drinking Fountains and Water Coolers, Water Closets, Toilet
20 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
21 Handrails, Grab Bars, and Controls and Operating Mechanisms,
22 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
23 Plaintiffs allege Defendants are required to remove all
24 architectural barriers, known or unknown. Also, Plaintiffs allege
25 Defendants are required to utilize the ADA checklist for Readily
26 Achievable Barrier Removal approved by the United States
27 Department of Justice and created by Adaptive Environments.
28

1 14. PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE desire to
2 return to Defendants' place of business in the immediate future.

3 15. DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; and
4 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were extremely
5 upset due to Defendants' conduct. Further, DECEASED PLAINTIFF'S
6 MEMBER WALTER LEE DEGROOTE experienced pain in his legs, back,
7 arms, shoulders and wrists when he attempted to enter, use, and
8 exit Defendants' establishment.

9 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

10 16. THE SILVER STORE LLC, a.k.a. THE SILVER STORE PACIFIC COAST
11 TRADING CO, a.k.a. PACIFIC COAST TRADING COMPANY; and JOSEPH
12 GEORGE STABILE and MARY CELESTE STABILE are the commercial tenants
13 of the subject property. THE LIBRARY ASSOCIATION OF LA JOLLA is
14 the current commercial landlord.

15 17. Plaintiffs aver that the Defendants are liable for the
16 following claims as alleged below:
17

18 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

19 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The**
20 **Americans With Disabilities Act Of 1990**

21 CLAIM I: **Denial Of Full And Equal Access**

22 18. Based on the facts plead at ¶¶ 7-15 above and elsewhere in
23 this complaint, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
24 and PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were denied
25 full and equal access to Defendants' goods, services, facilities,
26 privileges, advantages, or accommodations. Plaintiffs allege
27 Defendants are a public accommodation owned, leased and/or
28

1 operated by Defendants. Defendants' existing facilities and/or
2 services failed to provide full and equal access to Defendants'
3 facility as required by 42 U.S.C. § 12182(a). Thus, DECEASED
4 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
5 PLAINTIFF DOROTHY DEGROOTE were subjected to discrimination in
6 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
7 U.S.C. § 12188 because Plaintiffs were denied equal access to
8 Defendants' existing facilities.

9 19. DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE had physical
10 impairments as alleged in ¶ 7 above because his conditions affect
11 one or more of the following body systems: neurological,
12 musculoskeletal, special sense organs, and/or cardiovascular.
13 Further, his said physical impairments substantially limited one
14 or more of the following major life activities: walking. In
15 addition, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE could
16 not perform one or more of the said major life activities in the
17 manner, speed, and duration when compared to the average person.
18 Moreover, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE had a
19 history of or was classified as having a physical impairment as
20 required by 42 U.S.C. § 12102(2)(A).

21 CLAIM II: **Failure To Make Alterations In Such A Manner That The**
22 **Altered Portions Of The Facility Are Readily Accessible And Usable**
23 **By Individuals With Disabilities**

24 20. Based on the facts plead at ¶¶ 7-15 above and elsewhere in
25 this complaint, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
26 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were denied full
27 and equal access to Defendants' goods, services, facilities,
28

1 privileges, advantages, or accommodations within a public
2 accommodation owned, leased, and/or operated by Defendants.
3 Defendants altered their facility in a manner that affects or
4 could affect the usability of the facility or a part of the
5 facility after January 26, 1992. In performing the alteration,
6 Defendants failed to make the alteration in such a manner that, to
7 the maximum extent feasible, the altered portions of the facility
8 are readily accessible to and usable by individuals with
9 disabilities, including individuals who use wheelchairs, in
10 violation of 42 U.S.C. §12183(a)(2).

11 21. Additionally, the Defendants undertook an alteration that
12 affects or could affect the usability of or access to an area of
13 the facility containing a primary function after January 26, 1992.
14 Defendants further failed to make the alterations in such a manner
15 that, to the maximum extent feasible, the path of travel to the
16 altered area and the bathrooms serving the altered area, are
17 readily accessible to and usable by individuals with disabilities
18 in violation 42 U.S.C. §12183(a)(2).

19 22. Pursuant to 42 U.S.C. §12183(a), this failure to make the
20 alterations in a manner that, to the maximum extent feasible, are
21 readily accessible to and usable by individuals with disabilities
22 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
23 Therefore, Defendants discriminated against DECEASED PLAINTIFF'S
24 MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF
25 DOROTHY DEGROOTE in violation of 42 U.S.C. § 12182(a).

26 23. Thus, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
27 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were subjected
28

1 to discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
2 §12182(a) and 42 U.S.C. §12188 because said Members and DECEASED
3 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were denied equal access to
4 Defendants' existing facilities.

5 CLAIM III: **Failure To Remove Architectural Barriers**

6 24. Based on the facts plead at ¶¶ 7-15 above and elsewhere in
7 this complaint, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
8 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE were denied full
9 and equal access to Defendants' goods, services, facilities,
10 privileges, advantages, or accommodations within a public
11 accommodation owned, leased, and/or operated by Defendants.
12 Defendants failed to remove barriers as required by 42 U.S.C. §
13 12182(a). Plaintiffs are informed and believe, and thus allege
14 that architectural barriers which are structural in nature exist
15 at the following physical elements of Defendants' facilities:
16 Space Allowance and Reach Ranges, Accessible Route, Protruding
17 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
18 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts
19 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains
20 and Water Coolers, Water Closets, Toilet Stalls, Urinals,
21 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
22 Controls and Operating Mechanisms, Alarms, Detectable Warnings,
23 Signage, and Telephones. Title III requires places of public
24 accommodation to remove architectural barriers that are structural
25 in nature to existing facilities. [See, 42 United States Code
26 12182(b)(2)(A)(iv).] Failure to remove such barriers and
27 disparate treatment against a person who has a known association
28

1 with a person with a disability are forms of discrimination. [See
2 42 United States Code 12182(b)(2)(A)(iv).] Thus, DECEASED
3 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
4 PLAINTIFF DOROTHY DEGROOTE were subjected to discrimination in
5 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
6 U.S.C. § 12188 because said Members and DECEASED PLAINTIFF'S
7 MEMBER WALTER LEE DEGROOTE were denied equal access to Defendants'
8 existing facilities.

9 CLAIM IV: Failure To Modify Practices, Policies And Procedures

10 25. Based on the facts plead at ¶¶ 7-15 above and elsewhere in
11 this complaint, Defendants failed and refused to provide a
12 reasonable alternative by modifying its practices, policies and
13 procedures in that they failed to have a scheme, plan, or design
14 to assist Plaintiff's Members and DECEASED PLAINTIFF'S MEMBER
15 WALTER LEE DEGROOTE and/or others similarly situated in entering
16 and utilizing Defendants' services, as required by 42 U.S.C. §
17 12188(a). Thus, said Members and DECEASED PLAINTIFF'S MEMBER
18 WALTER LEE DEGROOTE were subjected to discrimination in violation
19 of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188
20 because said Members and DECEASED PLAINTIFF'S MEMBER WALTER LEE
21 DEGROOTE were denied equal access to Defendants' existing
22 facilities.

23 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
24 CALIFORNIA ACCESSIBILITY LAWS

25 CLAIM I: Denial Of Full And Equal Access

26 26. Based on the facts plead at ¶¶ 7-15 above and elsewhere in
27 this complaint, Plaintiff's Members and DECEASED PLAINTIFF'S
28

1 MEMBER WALTER LEE DEGROOTE were denied full and equal access to
2 Defendants' goods, services, facilities, privileges, advantages,
3 or accommodations within a public accommodation owned, leased,
4 and/or operated by Defendants as required by Civil Code Sections
5 54 and 54.1. Defendants' facility violated California's Title 24
6 Accessible Building Code by failing to provide access to
7 Defendants' facilities due to violations pertaining to the Space
8 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
9 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
10 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
11 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
12 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
13 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
14 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
15 Telephones.

16
17 27. These violations denied DECEASED PLAINTIFF'S MEMBER WALTER
18 LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE
19 full and equal access to Defendants' facility. Thus, said Members
20 and DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were subjected
21 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
22 because Plaintiffs were denied full, equal and safe access to
23 Defendants' facility, causing severe emotional distress.

24 CLAIM II: **Failure To Modify Practices, Policies And Procedures**

25 28. Based on the facts plead at ¶¶ 7-15 above and elsewhere
26 herein this complaint, Defendants failed and refused to provide a
27 reasonable alternative by modifying its practices, policies, and
28 procedures in that they failed to have a scheme, plan, or design

1 to assist Plaintiff's Members and DECEASED PLAINTIFF'S MEMBER
2 WALTER LEE DEGROOTE and/or others similarly situated in entering
3 and utilizing Defendants' services as required by Civil Code §
4 54.1. Thus, said Members and DECEASED PLAINTIFF'S MEMBER WALTER
5 LEE DEGROOTE were subjected to discrimination in violation of
6 Civil Code § 54.1.

7 **CLAIM III: Violation Of The Unruh Act**

8 29. Based on the facts plead at ¶¶ 7-15 above and elsewhere
9 herein this complaint and because Defendants violated the Civil
10 Code § 51 by failing to comply with 42 United States Code
11 12182(b)(2)(A)(iv), Defendants did and continue to discriminate
12 against DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
13 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE and persons
14 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

15 **Treble Damages Pursuant To Claims I, II, III Under The California**
16 **Accessibility Laws**

17 30. Defendants, each of them, at times prior to and including
18 during the month of August, 2002, respectively, and continuing to
19 the present time, knew that persons with physical disabilities
20 were denied their rights of equal access to all portions of this
21 public facility. Despite such knowledge, Defendants, and each of
22 them, failed and refused to take steps to comply with the
23 applicable access statutes; and despite knowledge of the resulting
24 problems and denial of civil rights thereby suffered by DECEASED
25 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
26 PLAINTIFF DOROTHY DEGROOTE and other similarly situated persons
27 with disabilities. Defendants, and each of them, have failed and
28

1 refused to take action to grant full and equal access to persons
2 with physical disabilities in the respects complained of
3 hereinabove. Defendants, and each of them, have carried out a
4 course of conduct of refusing to respond to, or correct complaints
5 about, denial of disabled access and have refused to comply with
6 their legal obligations to make the subject THE SILVER STORE LLC,
7 A.K.A. THE SILVER STORE PACIFIC COAST TRADING CO, A.K.A. PACIFIC
8 COAST TRADING COMPANY facility accessible pursuant to the
9 Americans With Disability Act Access Guidelines (ADAAG) and Title
10 24 of the California Code of Regulations (also known as the
11 California Building Code). Such actions and continuing course of
12 conduct by Defendants, and each of them, evidence despicable
13 conduct in conscious disregard of the rights and/or safety of
14 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S
15 MEMBER AND PLAINTIFF DOROTHY DEGROOTE and of other similarly
16 situated persons, justifying an award of treble damages pursuant
17 to sections 52(a) and 54.3(a) of the California Civil Code.

18 31. Defendants', and each of their, actions have also been
19 oppressive to persons with physical disabilities and of other
20 members of the public, and have evidenced actual or implied
21 malicious intent toward those members of the public, such as
22 Plaintiffs and other persons with physical disabilities who have
23 been denied the proper access to which they are entitled by law.
24 Further, Defendants', and each of their, refusals on a day-to-day
25 basis to correct these problems evidence despicable conduct in
26 conscious disregard for the rights of DECEASED PLAINTIFF'S MEMBER
27 WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY
28

1 DEGROOTE and other members of the public with physical
2 disabilities.

3 32. Plaintiffs pray for an award of treble damages against
4 Defendants, and each of them, pursuant to California Civil Code
5 sections 52(a) and 54.3(a), in an amount sufficient to make a more
6 profound example of Defendants and encourage owners and operators
7 of other public facilities from willful disregard of the rights of
8 persons with disabilities. Plaintiffs do not know the financial
9 worth of Defendants, or the amount of treble damages sufficient to
10 accomplish the public purposes of section 52(a) of the California
11 Civil Code and section 54.3 of the California Civil Code.

12 33. Wherefore, Plaintiffs pray for damages and relief as
13 hereinafter stated.
14

15
16 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS - Violation of**
17 **Business and Professions Code section 17200 et seq.**

18 34. Plaintiffs incorporate by reference herein the facts plead
19 at ¶¶ 7-15 above and elsewhere in this complaint.

20 35. Defendants failed to remove obstructions in the entrance,
21 stairs, customer service counters and interior path of travel
22 facilities in Defendants' THE SILVER STORE LLC, A.K.A. THE SILVER
23 STORE PACIFIC COAST TRADING CO, A.K.A. PACIFIC COAST TRADING
24 COMPANY establishment. Pursuant to federal law, Defendants are
25 required to remove barriers to their existing facilities. Title
26 III of the Americans With Disabilities Act requires places of
27 public accommodation to remove architectural barriers that are
28 structural in nature to existing facilities. [42 United States

1 Code 12182(b)(2)(A)(iv).] Failure to remove such barriers and
2 disparate treatment against a person who has a known association
3 with a person with a disability are forms of discrimination. [See
4 42 United States Code 12182(b)(2)(A)(iv).] Thus, DECEASED
5 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
6 PLAINTIFF DOROTHY DEGROOTE were subjected to discrimination in
7 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
8 U.S.C. § 12188 because said Members and DECEASED PLAINTIFF'S
9 MEMBER WALTER LEE DEGROOTE were denied equal access to Defendants'
10 existing facilities. Also, Defendants' facilities failed to
11 provide full and equal access to Defendants' facility as required
12 by 42 U.S.C. § 12182(a). Thus, DECEASED PLAINTIFF'S MEMBER WALTER
13 LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE
14 was subjected to discrimination in violation of 42 United States
15 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because DECEASED
16 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
17 PLAINTIFF DOROTHY DEGROOTE were denied equal access to Defendants'
18 existing facilities. Additionally, as a result of said access
19 barriers, Defendants failed and refused to provide a reasonable
20 alternative by modifying its practices, policies and procedures in
21 that they failed to have a scheme, plan, or design to assist
22 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S
23 MEMBER AND PLAINTIFF DOROTHY DEGROOTE and/or others similarly
24 situated in entering and utilizing Defendants' services, as
25 required by 42 U.S.C. § 12188(a). Thus, said Members and DECEASED
26 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were subjected to
27 discrimination in violation of 42 United States Code
28

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Members and
2 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were denied equal
3 access to Defendants' existing facilities.

4 36. Pursuant to state law, Defendants are also required to remove
5 barriers to their existing facilities. These violations denied
6 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S
7 MEMBER AND PLAINTIFF DOROTHY DEGROOTE full and equal access to
8 Defendants' facilities. Thus, said Members and DECEASED
9 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were subjected to
10 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
11 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S
12 MEMBER AND PLAINTIFF DOROTHY DEGROOTE were denied full, equal and
13 safe access to Defendants' facility. Further, Defendants'
14 facility, and other goods, services, and/or facilities provided to
15 the public by Defendants are not accessible to and usable by
16 persons with disabilities as required by Health and Safety Code §
17 19955 which requires private entities to make their facility
18 accessible before and after remodeling, and to remove
19 architectural barriers on and after AB 1077 went into effect.
20 Additionally, Defendants failed and refused to provide a
21 reasonable alternative by modifying its practices, policies, and
22 procedures in that they failed to have a scheme, plan, or design
23 to assist DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE;
24 PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE and/or others
25 similarly situated in entering and utilizing Defendants' services
26 as required by Civil Code § 54.1. Thus, said Members and DECEASED
27 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE were subjected to
28

1 discrimination in violation of Civil Code § 54.1. Also, under the
2 Unruh Act, Defendants violated the Civil Code § 51 by failing to
3 comply with 42 United States Code 12182(b)(2)(A)(iv), Defendants
4 did and continue to discriminate against DECEASED PLAINTIFF'S
5 MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF
6 DOROTHY DEGROOTE and persons similarly situated in violation of
7 Civil Code §§ 51, 52, and 54.1. Further, Defendants had actual
8 knowledge of their barrier removal duties under the Americans with
9 Disabilities Act, the California Civil Code, and the California
10 Health & Safety Code before January 26, 1992.

11 37. Business and Professions Code section 17200 defines "unfair
12 competition" and prohibited activities as, ". . . **any unlawful,**
13 **unfair or fraudulent business act or practice** and unfair,
14 deceptive, untrue or misleading advertising and any act prohibited
15 by Chapter 1 (commencing with Section 17500) of Part 3 of Division
16 7 of the Business and Professions Code." (emphasis added).

17 Defendants' acts and omissions alleged herein are violations of
18 the above-enumerated federal and state statutory requirements and
19 public policy and therefore constitute unfair competition and/or
20 prohibited activities as such violations are *unlawful, unfair or*
21 *fraudulent business acts or practices*. Defendants' alleged
22 unlawful, unfair, or fraudulent business acts or practices are
23 specifically prohibited by the specific introductory language of
24 B&P section 17200 that is stated in the conjunctive.
25

26 Consequently, Plaintiffs allege that Defendants' acts and
27 omissions constitute a violation specifically of this section
28 17200 of the Business and Professions Code.

1 38. Plaintiffs seek injunctive relief requiring Defendants to
2 remedy the disabled access violations present at the Defendants'
3 facilities. Ancillary to this injunctive relief, Plaintiffs also
4 request restitution for amounts paid by DECEASED PLAINTIFF'S
5 MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF
6 DOROTHY DEGROOTE who attempted to visit and patronize Defendants'
7 facilities during the time period that the subject premises have
8 been in violation of the disabled access laws of the State of
9 California.

10 39. Plaintiffs seek, on behalf of the general public, injunctive
11 relief requiring Defendants to comply with the disabled access
12 laws of the State of California at facilities throughout the State
13 of California built, owned, operated, and/or controlled by
14 Defendants.

15 40. WHEREFORE, Plaintiffs pray for judgment as hereinafter set
16 forth.

17
18 FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS- Negligence

19 41. Based on the facts plead at ¶¶ 7-15 above and elsewhere in
20 this complaint, Defendants owed DECEASED PLAINTIFF'S MEMBER WALTER
21 LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE a
22 statutory duty to make their facility accessible and owed DECEASED
23 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
24 PLAINTIFF DOROTHY DEGROOTE a duty to keep DECEASED PLAINTIFF'S
25 MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF
26 DOROTHY DEGROOTE reasonably safe from known dangers and risks of
27 harm. This said duty arises by virtue of legal duties proscribed
28 by various federal and state statutes including, but not limited

1 to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
2 California Administrative Code and applicable 1982 Uniform
3 Building Code standards as amended.

4 42. Title III of the ADA mandates removal of architectural
5 barriers and prohibits disability discrimination. As well,
6 Defendants' facility, and other goods, services, and/or facilities
7 provided to the public by Defendants are not accessible to and
8 usable by persons with disabilities as required by Health and
9 Safety Code § 19955 which requires private entities to make their
10 facility accessible before and after remodeling, and to remove
11 architectural barriers on and after AB 1077 went into effect.

12 43. Therefore, Defendants engaged in discriminatory conduct in
13 that they failed to comply with known duties under the ADA, ADAAG,
14 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
15 should have known that their acts of nonfeasance would cause
16 DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S
17 MEMBER AND PLAINTIFF DOROTHY DEGROOTE emotional, bodily and
18 personal injury. Plaintiffs allege that there was bodily injury
19 in this matter because when DECEASED PLAINTIFF'S MEMBER WALTER LEE
20 DEGROOTE attempted to enter, use, and exit Defendants'
21 establishment, DECEASED PLAINTIFF'S MEMBER WALTER LEE DEGROOTE
22 experienced pain in his legs, back, arms, shoulders, and wrists.
23 Plaintiffs further allege that such conduct was done in reckless
24 disregard of the probability of said conduct causing DECEASED
25 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE to suffer bodily or
26 personal injury, anger, embarrassment, depression, anxiety,
27 mortification, humiliation and distress. Plaintiffs allege that
28

1 such conduct caused DECEASED PLAINTIFF'S MEMBER WALTER LEE
2 DEGROOTE; PLAINTIFF'S MEMBER AND PLAINTIFF DOROTHY DEGROOTE to
3 suffer the injuries of mental and emotional distress, including,
4 but not limited to, anger, embarrassment, depression, anxiety,
5 mortification, humiliation, distress, and fear of physical injury.

6 Plaintiffs additionally allege that such conduct caused DECEASED
7 PLAINTIFF'S MEMBER WALTER LEE DEGROOTE; PLAINTIFF'S MEMBER AND
8 PLAINTIFF DOROTHY DEGROOTE to suffer damages as a result of these
9 injuries.
10

11 DEMAND FOR JUDGMENT FOR RELIEF:

12 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
13 3281, and 3333;

14 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
15 each and every offense of Civil Code § 51, Title 24 of the
16 California Building Code, ADA, and ADA Accessibility Guidelines;

17 C. In the alternative to the damages pursuant to Cal. Civil
18 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
19 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
20 54.1, Title 24 of the California Building Code, ADA, and ADA
21 Accessibility Guidelines;
22

23 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
24 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
25 Defendants to remove all architectural barriers in, at, or on
26 their facilities related to the following: Space Allowance and
27 Reach Ranges, Accessible Route, Protruding Objects, Ground and
28

1 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
2 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
3 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
4 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
5 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
6 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

7
8 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
9 § 12205, and Cal. Civil Code § 55;

10 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
11 and 54.3(a);

12 G. For Restitution pursuant to Business and Professions section
13 17200;

14 H. A Jury Trial and;

15 I. For such other further relief as the court deems proper.

16 Respectfully submitted:

17
18 PINNOCK & WAKEFIELD

19 Dated: August 18, 2003

By:

20 THEODORE A. PINNOCK, ESQ.
21 MICHELLE L. WAKEFIELD, ESQ.
22 Attorneys for Plaintiffs
23
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28

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. PLAINTIFFS ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE NEW MILLENNIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE DEGROOTE, DOROTHY DEGROOTE, AND ITS MEMBERS, THE ESTATE OF WALTER LEE DEGROOTE; and DOROTHY DEGROOTE, An Individual

DEFENDANTS THE SILVER STORE LLC, a.k.a. THE SILVER STORE PACIFIC COAST TRADING CO, a.k.a. PACIFIC COAST TRADING COMPANY; JOSEPH GEORGE STABILE and MARY CELESTE STABILE; THE LIBRARY ASSOCIATION OF LA JOLLA; And DOES 1 Through 10, Inclusive.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego (IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Theodore A. Pinnock, Esq. SBN: 153434 Michelle L. Wakefield, Esq. SBN 200424 Pinnock & Wakefield 3033 Fifth Avenue, Suite 410 San Diego, California 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN) '03 CV 1648 K POR

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

- PT DEF Citizen of This State
PT DEF Citizen of Another State
PT DEF Citizen or Subject of a Foreign Country
1 Incorporated or Principal Place of Business in This State
2 Incorporated and Principal Place of Business in Another State
3 Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.o.p. 23 DEMAND \$ TO BE DETERMINED AT TRIAL JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE August 18, 2003

SIGNATURE OF ATTORNEY OF RECORD

Handwritten notes: #096533 \$150.00 etc.