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ORIGINAL  
DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
SAN FRANCISCO, CALIF.

FILED

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

SACV 04-751 JVS (RZx)

12 ISMAEL RIVERA,

13 Plaintiff,

14 vs.

15 ROY MILLER, dba KENTUCKY FRIED  
16 CHICKEN; ROY MILLER ENT., INC.  
17 AND DOES 1-10, INCLUSIVE,  
18 Defendants.

Case No.:

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

19 I  
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21 JURISDICTION AND VENUE

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

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

## 15 II

### 16 PARTIES

17 2. Defendant, Roy Miller, dba Kentucky Fried Chicken was and at all times herein  
18 mentioned, was a duly organized business, association, or corporation duly  
19 authorized to exist and operate within the State of California and County of Orange  
20 and the owner, lessee, or tenant of the premises located at 700 South El Camino Real  
21 San Clemente, California 92672.

22 3. Plaintiff is informed and believes and thereon alleges that defendants Roy Miller  
23 and Roy Miller Ent., Inc. are the owners and/or landlords of the subject property upon  
24 which Defendants' business is sited.

25 4. Plaintiff is informed and believes and thereon alleges that each of the named  
26 defendants herein operate a business and or/facility of public accommodation as  
27 defined and described within 42 USC 12181(7)(b) of the American with Disabilities  
28

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 April 2, 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:

28 a. Site entrance signage is in violation of CA Title 24 1129B.5

- 1 b. Lack of van accessible parking as required by ADAAG 4.1.2.(5)(b) and Title 24
- 2 1129B.4.2
- 3 c. Lack of access aisle NO PARKING signage per Title 24 1129B.4.1&2
- 4 d. Lack of van accessible aisle as required by ADAAG 4.6.3 and Title 24 1129B.4.2;
- 5 ADAAG 4.6.4 and Title 24 1129B.5
- 6 e. Lack of proper access route of travel as required by ADAAG 4.1.3(2); 4.3.2(2)
- 7 and Title 24 1114B.1.2
- 8 f. Lack of designated disabled parking space signage as required by ADAAG 4.6.4
- 9 g. Lack of entrance signage per ADAAG 4.1.3(16)(b) and title 24 1129B.3
- 10 h. Lack of appropriate seating per ADAAG 4.2.4.1 and Title 24 1122B.3; 5.1 and
- 11 Title 24 1104B.5.4; 4.32.3; 4.32.4 and Title 24 1122B.3&4; 5.3; 5.4
- 12 i. Counters do not comply with ADAAG 4.23.3; 4.32.4 and Title 24 1122B. 1&4;
- 13 1122B.3 ADAAG 4.32.3; 4.2.4; 4.32.2
- 14 j. Bathroom signage does not comply with ADAAG 4.30.6; 4.30.4; and Title 24
- 15 1117B.5.5.2; 1117B.5.6.1&2
- 16 k. Wall mount signage does not comply with ADAG 4.1.2(7)(d) and title 24 1117B.
- 17 5.1.1.&5.6.3; ADAG 4.30.6 and title 24 1117B.5.9
- 18 l. Grab bars does not comply with ADAAG 4.17.6 and Ttitle 24 1115B.8.1;
- 19 ADAAG 4.14.6
- 20 m. Accessories/fixtures do not comply with ADAAG 4.23.7 and Title 24 1115B.9.2
- 21 n. Flush valve is not on correct side as required by ADAAG 4.16.5 and Title 24
- 22 1502.0
- 23 o. Drain and hot water pipes are not insulated or covered per ADAAG 4.24.6

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

1 10. Pursuant to Federal [ADA], Title 28 CFR 36.201; 36.203; 36.304; 36.305 and  
2 state law [California Title 24], Defendants are required to remove barriers to their  
3 existing facilities. Defendants have been put on notice pursuant to the ADA and  
4 California Civil Codes [51,52] prior to the statutory effect of the ADA on January 26,  
5 1992 that Defendants and each of them had a duty to remove barriers to persons with  
6 disabilities such as plaintiff. Defendants also knew or should have known that  
7 individuals such as Plaintiff with a disability are not required to give notice to a  
8 governmental agency prior to filing suit alleging Defendants' failure to remove  
9 architectural barriers.

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

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

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IV

**FIRST CAUSE OF ACTION**

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

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

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

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

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

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

16. Based upon the facts alleged herein, Plaintiff was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned leased, and/or operated by the named Defendants. Defendants individually and collectively failed to remove barriers as required by 42 U.S.C. 12182(a) and 28 CFR 36.304. Plaintiff is informed and

1 believes, and thus alleges that architectural barriers which are structural in nature  
2 exist at the following physical elements of Defendants' facilities:  
3 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground  
4 and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
5 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,  
6 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals,  
7 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
8 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
9 Pursuant to 42 USC section 12182(b)(2)(iv) and 28 CFR 36.304 Title III requires  
10 places of public accommodation to remove architectural barriers that are structural in  
11 nature within existing facilities. Failure to remove such barriers and disparate  
12 treatment against a person who has a known association with a person with a  
13 disability are forms of prohibited discrimination. Accordingly, Plaintiff was subjected  
14 to discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC 12182  
15 (b)(2)(A)(iv) and 42 USC 12188.

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

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

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

27 19. Pursuant to the provisions of 42 USC 12188 plaintiff seeks injunctive relief and  
28 an order directing defendants to cease and desist from discriminating against plaintiff

1 and others similarly situated and for an order that defendants comply with the  
2 Americans With Disabilities Act forthwith.

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

6 **VI**

7 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

26 24. Defendants have failed and refused and continue to fail and refuse to provide a  
27 reasonable alternative to allow plaintiff equal access to their facility by modifying  
28 their practices, policies, and procedures in that that they failed to have s scheme, plan,



1 or design to assist Plaintiff and others similarly situated in entering and utilizing  
2 Defendants' goods or services as required by California Civil Code section 54 and  
3 54.1. Accordingly Defendants have wrongfully discriminated against Plaintiff.

4 **VII**

5 **THIRD CAUSE OF ACTION**

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

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

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

11 "All persons within the jurisdiction of this state are  
12 free and equal, and no matter what their sex, race, color,  
13 religion, ancestry, national origin, disability, or medical  
14 condition is entitled to the full and equal accommodations,  
15 advantages, facilities, privileges, or services in all  
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 to their facility on the  
18 same basis as other persons not disabled. By their failure to provide equal access to  
19 Plaintiff as herein alleged, Defendants have also violated 42 U.S.C. section  
20 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).

21 28. By reason of their acts and denial of Plaintiff's civil rights Defendants also  
22 violated the provisions of Cal. Civ. Code section 52, which makes a person or entity  
23 in violation of Cal.Civ. Code 51 liable for the actual damages to a Plaintiff including  
24 treble damages where appropriate.  
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1 29. Defendants and each of them, at all times prior to and including April 2004,  
2 respectively and continuing to the present time, knew that persons with physical  
3 disabilities were denied their rights of equal access to all portions of this public  
4 facility. Despite such knowledge, Defendants, and each of them, failed and refused to  
5 take steps to comply with the applicable access statutes and despite knowledge of the  
6 resulting problems and denial of civil rights suffered by Plaintiff and other similarly  
7 situated persons with disabilities.  
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11 30. Defendants and each of them have failed and refused to take action to grant full  
12 and equal access to person with physical disabilities. Defendants have carried out a  
13 course of conduct of refusing to respond to, or correct complaints about unequal  
14 access and have refused to comply with their legal obligations to make the subject  
15 facility accessible pursuant the ADAAG and the California Building Code [Title 24  
16 of the California Code of Regulations]. Such actions and continuing course of  
17 conduct by Defendants, and each of them, evidence despicable conduct in conscious  
18 disregard of the rights and/or safety of Plaintiff and those similarly situated and thus  
19 justify an award of treble damages pursuant to section 52(a) and 54.3(a) of the  
20 Cal.Civ. Code or alternatively an award of punitive damages in an appropriate  
21 amount.  
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26 31. Plaintiff has suffered emotional and physical damage and continues to suffer such  
27 damages all in an amount to be determined at time of trial.  
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1 32. Under the provisions of Cal. Civ. Code section 55 Plaintiff seeks an award of  
2 reasonable attorney's fees and costs as a result of having to bring this action. Plaintiff  
3 requests the court to award such fees in an appropriate amount.  
4

5 **VIII**

6 **FOURTH CAUSE OF ACTION**

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

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

12 34. Defendants and each of them owed a duty to Plaintiff to make their facility  
13 accessible and to keep Plaintiff reasonably safe from known dangers and risks of  
14 harm. This duty arises by virtue of the legal duties proscribed by various federal and  
15 state statutes including, but not limited to, ADA, ADAAG, California Civil Code  
16 sections 51, 52, 54, 54.1 and Title 24 of the California Code of Regulations.  
17

18 Defendants had a duty of due care not to do or cause anything to happen that would  
19 subject Plaintiff to undue stress, embarrassment, chagrin, and discouragement.  
20

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

2 Defendants breached their duty of care to plaintiff by the perpetration of the acts  
3 outlined herein.  
4

5 36. As a proximate result of the actions of Defendants Plaintiff did suffer emotional  
6 and mental stress and pain and suffering all in an amount to be determined at time of  
7 trial.  
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10 **IX**

11 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

24 **X**

25 **SIXTH CAUSE OF ACTION**

26 **(DECLARATORY RELIEF)**

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

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

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

10 WHEREFORE PLAINTIFF PRAYS:

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

**DEMAND FOR JURY**

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

Respectfully submitted,

*THE LAW OFFICES OF ROY L. LANDERS*

Dated: 6/21/04

By: Roy L. Landers  
Attorney for Plaintiff,  
Ismael Rivera