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

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U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

11 ISMAEL RIVERA

12 Plaintiff,

13 vs.

14 786 INVESTMENT, INC. dba  
15 HIGHLAND TEXCO, SHELL  
16 OIL, EQUILON ENTERPRISES, LLC AND  
17 DOES 1-10 Inclusive,

18 Defendants.

11 EDCV04-177 RT (SGLx)  
12 ) Case No.:  
13 )  
14 ) COMPLAINT FOR DAMAGES RE:  
15 ) VIOLATION OF CIVIL RIGHTS ON  
16 ) BASIS OF DISCRIMINATION IN  
17 ) PUBLIC ACCOMMODATIONS; UNFAIR,  
18 ) UNLAWFUL AND FRAUDULENT BUSINESS  
19 ) PRACTICES; NEGLIGENT INFLICTION  
20 ) OF EMOTIONAL DISTRESS;  
21 ) INTENTIONAL INFLICTION OF  
22 ) EMOTIONAL DISTRESS; DEMAND FOR  
23 ) JURY TRIAL

24 I

25 JURISDICTION AND VENUE

26 1. (a) Jurisdiction of this action is invoked on the basis of 28  
27 USC 1331 and 1343, 42 USC 12101-12102, 12181-12183 and 12201, et.  
28 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 (Eastern Division) 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

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

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

22 **II**

23 **PARTIES**

24 2. Defendants 786 Investment, Inc., dba Highland Texco, and Shell  
25 Oil were and at all times herein mentioned were duly organized  
26 businesses, associations, or corporations duly authorized to exist  
27 and operate within the State of California and County of San  
28

1 Bernardino and the owner, lessee, or tenant of the premises  
2 located at 2402 Highland Highland, California.

3 3. Plaintiff is informed and believes and thereon alleges that  
4 defendant Equilon Enterprises, LLC is the owners and/or landlords  
5 of the subject property upon which defendant business is sited.

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

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

### 22 III

#### 23 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

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

1 therefore he is disabled as defined under 42 USC  
2 12102(2) (A) (B) (C).

3 7. On or about September 19, 2003 plaintiff patronized the  
4 premises of defendants to utilize goods and/or services offered by  
5 defendants. When Plaintiff attempted to gain access to the goods  
6 and/or services offered by defendants he encountered access  
7 barriers because the premises failed to comply with federal ADA  
8 Access Guidelines For Building and Facilities [hereinafter  
9 "ADAAG"]; Department of Justice [DOJ] regulations at 28 CFR.  
10 36.201; 36.304 and/or the State of California's Title 24 Building  
11 Code Requirements.

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

- 15 (a) Lack of site entrance signage as required by Title 24  
16 1129B.5
- 17 (b) Lack of access aisle (NO PARKING) warning sign as required  
18 by Title 24 1129B.4.1&2.
- 19 (c) Lack of designated van accessible parking space as required  
20 by ADAAG 4.1.2(5) (b) and Title 24 1129B.4.2.; ADAAG  
21 4.1.2(5) (a) and Title 24 1129B.1.
- 22 (d) Lack of van accessible aisle as required by ADAAG 4.6.3 and  
23 Title 24 1129B.4.2.
- 24 (e) No signage in accord with ADAAG 4.6.4 and Title 24 1129B.5.
- 25 (f) Designated disabled parking space signage is not at proper  
26 height per ADAAG 4.6.4 and Title 24 1129B.5.
- 27 (g) Access route of travel does not comply with ADAAG 4.6.2.
- 28 (h) Curb location is improper - ADAAG 4.7.1.

- 1 (i) Curb ramp minimum width does not comply with ADAAG 4.7.3  
2 and Title 24 1127B.5.2.
- 3 (j) Entrance signage is not at every entrance/exit as required  
4 by ADAAG 4.1.3(16) (b) and Title 241127B.3.
- 5 (k) Entrance directional signage does not comply with ADAAG  
6 4.30.7 (c) and Title 24 1117B.5.1.1.1 and 5.3.
- 7 (l) Threshold in more than maximum level per ADAAG 4.1.3.8 and  
8 Title 1133B.2.4.1.
- 9 (m) Accessories/fixtures are not at proper height per ADAAG  
10 4.23.7 and Title 24 1115B.9.2.
- 11 (n) Hardware does not comply with ADAAG 4.13.9 and Title 24  
12 1115B.7.1.4.

13 9. Based upon the above facts, Plaintiff as been discriminated  
14 against and will continue to be discriminated against unless and  
15 until Defendants are enjoined and forced to cease and desist from  
16 continuing to discriminate against Plaintiff and others similarly  
17 situated.

18 10. Pursuant to federal [ADA], Title 28 CFR 36.201; 36.203;  
19 36.304; 36.305 and state law [California Title 24], Defendants are  
20 required to remove barriers to their existing facilities.  
21 Defendants have been put on notice pursuant to the ADA and  
22 California Civil Codes [51,52] prior to the statutory effect of  
23 the ADA on January 26, 1992 that Defendants and each of them had a  
24 duty to remove barriers to persons with disabilities such as  
25 plaintiff. Defendants also knew or should have known that  
26 individuals such as plaintiff with a disability are not required  
27 to give notice to a governmental agency prior to filing suit  
28 alleging Defendants' failure to remove architectural barriers.

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

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

21 **IV**

22 **FIRST CAUSE OF ACTION**

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

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

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

27 14. Based on the facts asserted above Plaintiff has been denied  
28 full and equal access to Defendants' goods, services, facilities,

1 privileges, advantages, or accommodations. Defendant business is a  
2 public accommodation owned, leased and/or operated by Defendants  
3 and each of them. Defendants' existing facilities and/or services  
4 failed to provide full and equal access to Defendants' facility as  
5 required by 42 U.S.C. section 12182(a). Thus, Plaintiff was  
6 subjected to discrimination in violation of 42 U.S.C.

7 12182(b)(2)(A)(ii)(iv) and 42 U.S.C. section 12188 because  
8 Plaintiff was denied equal access to Defendants' existing  
9 facilities.

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

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

21 16. Based upon the facts alleged herein, Plaintiff was denied  
22 full and equal access to Defendants' goods, services, facilities,  
23 privileges, advantages, or accommodations within a public  
24 accommodation owned leased, and/or operated by the named  
25 Defendants. Defendants individually and collectively failed to  
26 remove barriers as required by 42 U.S.C. 12182(a) and 28 CFR  
27 36.304. Plaintiff is informed and believes, and thus alleges that  
28

1 architectural barriers which are structural in nature exist at the  
2 following physical elements of Defendants' facilities:

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

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

20 17. Based on the facts alleged in this Complaint Defendants failed  
21 and refused to provide a reasonable alternative by modifying its  
22 practices, policies and procedures in that they failed to have a  
23 scheme, plan, or design to assist Plaintiff and/or others  
24 similarly situated in entering and utilizing Defendants' services,  
25 as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was  
26 subjected to discrimination in violation of 42 U.S.C. section  
27 12182(b)(2)(A)(iv); 28 CFR 36.302 and 42 U.S.C. section 12188

28



1 because Plaintiff was denied equal access to Defendants' existing  
2 facilities.

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

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

12 20. Under the provisions of 42 USC 12205 plaintiff is entitled to  
13 an award of reasonable attorneys fees and requests that the court  
14 grant such fees as are appropriate.

15 **VI**

16 **SECOND CAUSE OF ACTION**

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

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

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

21 22. Plaintiff has been denied full and equal access to Defendants'  
22 goods services, facilities, privileges, advantages, or  
23 accommodations within a public accommodation owned, leased, and/or  
24 operated by Defendants in violation of California Civil Code  
25 Sections 54 and 54.1; California Health and Safety Code Section  
26 19955 and California Government Code Section 12948. The actions of  
27 Defendants also violate the provisions of Title 24 of the State of  
28 California Building Codes with regard to accessibility for persons

1 with disabilities by failing to provide access to Defendants  
2 facilities due to violations pertaining to accessible routes,  
3 ground and floor surfaces, parking and passenger loading zones,  
4 curb ramps, ramps, stairs, elevators, platform lifts (wheelchair  
5 lifts), windows, doors, toilet stalls, urinals, lavatories and  
6 mirrors, sinks, storage, handrails, grab bars, controls and  
7 operating mechanisms  
8 alarms, detectable warnings, signage and telephones.

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

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

12 24. Defendants have failed and refused and continue to fail and  
13 refuse to provide a reasonable alternative to allow plaintiff  
14 equal access to their facility by modifying their practices,  
15 policies, and procedures in that that they failed to have a  
16 scheme, plan, or design to assist Plaintiff and others similarly  
17 situated in entering and utilizing Defendants' goods or services  
18 as required by California Civil Code section 54 and 54.1.  
19 Accordingly Defendants have wrongfully discriminated against  
20 Plaintiff.

21 **VII**

22 **THIRD CAUSE OF ACTION**

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

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

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

28 "All persons within the jurisdiction of this state are  
free and equal, and no matter what their sex, race, color,

1 religion, ancestry, national origin, disability, or medical  
2 condition is entitled to the full and equal accommodations,  
3 advantages, facilities, privileges, or services in all  
business establishments of every kind whatsoever."

4 27. Defendants have violated the provisions of Civ. Code 51 (b) by  
5 failing and refusing to provide free and equal access to Plaintiff  
6 to their facility on the same basis as other persons not disabled.  
7 By their failure to provide equal access to Plaintiff as herein  
8 alleged, Defendants have also violated 42 U.S.C. section  
9 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).  
10

11 28. By reason of their acts and denial of Plaintiff's civil rights  
12 Defendants also violated the provisions of Cal. Civ. Code section  
13 52, which makes a person or entity in violation of Cal.Civ. Code  
14 51 liable for the actual damages to a Plaintiff including treble  
15 damages where appropriate.  
16

17 29. Defendants and each of them, at all times prior to and  
18 including September 2003, respectively and continuing to the  
19 present time, knew that persons with physical disabilities were  
20 denied their rights of equal access to all portions of this public  
21 facility. Despite such knowledge, Defendants, and each of them,  
22 failed and refused to take steps to comply with the applicable  
23 access statutes and despite knowledge of the resulting problems  
24 and denial of civil rights suffered by Plaintiff and other  
25 similarly situated persons with disabilities.  
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1 30. Defendants and each of them have failed and refused to take  
2 action to grant full and equal access to person with physical  
3 disabilities. Defendants have carried out a course of conduct of  
4 refusing to respond to, or correct complaints about unequal access  
5 and have refused to comply with their legal obligations to make  
6 the subject facility accessible pursuant the ADAAG and the  
7 California Building Code [Title 24 of the California Code of  
8 Regulations]. Such actions and continuing course of conduct by  
9 Defendants, and each of them, evidence despicable conduct in  
10 conscious disregard of the rights and/or safety of Plaintiff and  
11 those similarly situated and thus justify an award of treble  
12 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code  
13 or alternatively an award of punitive damages in an appropriate  
14 amount.  
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18 31. Plaintiff has suffered emotional and physical damage and  
19 continues to suffer such damages all in an amount to be determined  
20 at time of trial.

21 32. Under the provisions of Cal. Civ. Code section 55 Plaintiff  
22 seeks an award of reasonable attorney's fees and costs as a result  
23 of having to bring this action. Plaintiff requests the court to  
24 award such fees in an appropriate amount.  
25

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1 VIII

2 FOURTH CAUSE OF ACTION

3 (Unfair And Unlawful Business Practice)

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

6 34. California Business and Professions Code Section 17200 states  
7 in pertinent part:

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

10 35. Defendants, as alleged herein, are in violation of the  
11 Americans With Disabilities Act and Title 24 of the California  
12 Building Code, in that they have denied equal access to their  
13 places of public accommodation to Plaintiff and others similarly  
14 situated to Plaintiff. Defendants have failed and refused and  
15 continue to refuse to comply with equal access laws all in  
16 violation of 42 USC 12181-12183; 28 CFR 36.304 and 42 USC 12188.  
17 In addition the complained of acts are in violation of California  
18 Civil Code Sections 51,52, 54,and 54.1,; California Health and  
19 Safety Code section 19955 all of which require Defendants to  
20 provide equal access to their facility to disabled persons such as  
21 plaintiff. Defendants are also in violation of the indicated  
22 statutes because of their failure to remove architectural  
23 barriers, which prevent equal access to their facility by disabled  
24 persons and because of their failure to modify their practices,  
25 policies and procedures to have a scheme, plan, or design to  
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1 assist Plaintiff and others similarly situated to enter and  
2 utilize Defendants' services as required by the Unruh Act.

3 36. Defendants' acts are unlawful and unfair and are therefore in  
4 violation of California Business and Professions Code section  
5 17200.  
6

7 37. Pursuant to the provisions of California Business and  
8 Professions Code section 17201 Plaintiff is a person as identified  
9 within said section and therefore allowed to bring this action on  
10 behalf of himself and the general public to effectuate California  
11 Business and Professions Code 17200 as provided for within  
12 Business and Professions Code section 17204.  
13

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

21 **IX**

22 **FIFTH CAUSE OF ACTION**

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

24  
25 39. Plaintiff relleges the allegations of the Fourth Cause of  
26 Action as though set forth fully herein.

27 40. Defendants and each of them owed a duty to Plaintiff to make  
28 their facility accessible and to keep Plaintiff reasonably safe

1 from known dangers and risks of harm. This duty arises by virtue  
2 of the legal duties proscribed by various federal and state  
3 statutes including, but not limited to, ADA, ADAAG, California  
4 Civil Code sections 51, 52, 54, 54.1 and Title 24 of the  
5 California Code of Regulations. Defendants had a duty of due care  
6 not to do or cause anything to happen that would subject Plaintiff  
7 to undue stress, embarrassment, chagrin, and discouragement.

8  
9 41. Defendants breached their duty of care to Plaintiff by the  
10 actions and inaction complained of herein and as a result thereof  
11 Plaintiff was shocked, discouraged, embarrassed and outraged at  
12 the callousness and disregard of Defendants. Defendants knew or  
13 had reason to know that by denying Plaintiff equal access to their  
14 facility and failing and refusing to remove architectural  
15 barriers, Plaintiff would suffer emotional and/or mental distress  
16 because of such discrimination and disparate treatment. Defendants  
17 breached their duty of care to plaintiff by the perpetration of  
18 the acts outlined herein.

19  
20  
21 42. As a proximate result of the actions of Defendants Plaintiff  
22 did suffer emotional and mental stress and pain and suffering all  
23 in an amount to be determined at time of trial.

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1 X

2 SIXTH CAUSE OF ACTION

3 (Intentional Infliction of Emotional Distress)

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

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

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

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

15 WHEREFORE PLAINTIFF PRAYS:

16 1. For general damages according to proof;

17 2. For special damages according to proof;

18 3. For damages pursuant to Cal. Civil Code section 52, in the  
19 amount of \$4,000 for each and every offense of California Civil  
20 Code section 51, Title 24 of the California Building Code and the  
21 Americans With Disabilities Act.

22 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and  
23 California Business and Professions Code section 17200

24 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42  
25 U.S.C. 12205 and Cal. Civ. Code section 55;

26 6. For treble damages pursuant to Cal. Civ. Code 52 (a);

27 7. For punitive damages according to proof;

28 8. For a Jury Trial;



1 9. For costs of suit incurred herein and;  
2 10. For such other and further relief as the court deems proper.

3 Respectfully submitted,

4 **DEMAND FOR JURY**

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

7  
8 Dated: 1/28/04

  
Attorney for Plaintiff, Ismael Rivera

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