

ORIGINAL

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DDP(RZ)

JAMES COLLINS,
Plaintiff,

v.

MARIE CALLENDER VENTURES, INC.,
dba MARIE CALLENDER'S RESTAURANT
& BAKERY #59; FRANCIS D. LARSON;
RAYMOND JAMES LARSON, JR.; DIANE
RUTH LARSON; and DOES ONE TO TEN,
inclusive,

Defendants.

Case No. 01-11211

Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES: DENIAL OF CIVIL
RIGHTS OF A DISABLED PERSON IN
VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990; VIOLATION
OF CALIFORNIA'S CIVIL RIGHTS
STATUTES

JURY TRIAL REQUESTED

ENTERED ON ICMS
JAN - 3
CV

Plaintiff JAMES COLLINS complains of defendants MARIE CALLENDER
VENTURES, INC., dba MARIE CALLENDER'S RESTAURANT & BAKERY #59; FRANCIS
D. LARSON; RAYMOND JAMES LARSON, JR.; DIANE RUTH LARSON; and DOES ONE
TO TEN, inclusive,, and alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 28 USC § 1331 for
violations of the *Americans with Disabilities Act of 1990*, (42 USC § 12101, et seq.)
Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the

1

1 same facts, are also brought under California law, including but not limited to violations of
2 **California Health & Safety Code** § 19955, *et seq.*, including **California Code of**
3 **Regulations**, Title 24, § 19959, **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1,
4 54.3 and 55.

5
6 2. Venue is proper in this court pursuant to 28 **USC** § 1391(b) and is founded on
7 the fact that the real property which is the subject of this action is located in this district, at
8 Rancho Mirage, California, and that Plaintiff's causes of action arose in this district.

9 **INTRODUCTION**

10 3. **Marie Callender's Restaurant & Bakery #59** is located at 69-830 Highway
11 111, Rancho Mirage, California. Said retail store is owned and operated by defendants
12 **MARIE CALLENDER VENTURES, INC., dba MARIE CALLENDER'S RESTAURANT &**
13 **BAKERY #59; FRANCIS D. LARSON; RAYMOND JAMES LARSON, JR.; DIANE RUTH**
14 **LARSON; and DOES ONE TO TEN, inclusive.**

15
16 Defendants **MARIE CALLENDER VENTURES, INC., dba MARIE CALLENDER'S**
17 **RESTAURANT & BAKERY #59; FRANCIS D. LARSON; RAYMOND JAMES LARSON,**
18 **JR.; DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive,** operate an
19 establishment for services to the public and at which Defendants failed to provide barrier
20 free access to said establishment in conformity with both Federal and California legal
21 requirements. Further, Defendants failed to provide compliance as follows:

22 **A. Parking**

23
24 The parking lot serving this facility contained five accessible spaces. The
25 following violations were noted:

26 1. There were a total of five Accessible parking spaces within the structure. With
27
28

1 minimum required by Title 24 1133B.2.4.3.

2 2. Inner door has only 2 inches strike side clearance when 18 inches is the
3 minimum required by Title 24 § 1133B.2.4.3.

4 3. The inner door required more than 5 LBF to operate when 5 LBF is the
5 maximum allowed by Title 24 § 1133B.2.5.

6
7 **D. Access to Tables and Raised Portion of Dining Area**

8 1. There were no accessible seating spaces. A minimum of 5% is required by
9 Title 24 § 1104B.5.4.

10 2. There is a separate dining area, which is at times reserved for private groups.
11 This area is raised two steps above the floor level of the restaurant. There is
12 no access to this section of the dining area as required by Title 24 § 1120B.1.

13 3. There are no handrails for the steps as required by Title 24 § 1003.3.3.6a.

14
15 **E. Restroom**

16 1. The design and construction of the men's restroom is such that it prevents
17 usage by persons who use wheelchairs and cannot stand or walk independent
18 of such wheelchairs. See Title 24 § 1115B.7, 8, 9.

19 The above barriers interfered with Plaintiff's access and continue to deter Plaintiff from
20 visiting said facilities, and as a legal result, Plaintiff **JAMES COLLINS** suffers violation of his
21 civil rights to full and equal enjoyment of goods, services, facilities and privileges, and has
22 and will suffer embarrassment and humiliation.

23
24 **FACTUAL ALLEGATIONS**

25 4. Plaintiff **JAMES COLLINS** is, and at all times relevant to this Complaint is, a
26 "physically handicapped person, "physically disabled person," and a "person with a
27 disability," as these terms are used under California law and under federal laws including,
28

1 but not limited to, Title III of the *Americans with Disabilities Act of 1990*. (The terms
2 “physically handicapped person,” “physically disabled person,” and a “person with a
3 disability” will be used interchangeably throughout this Complaint.) Plaintiff is a “person with
4 a disability,” as defined by all applicable California and United State’s laws. Plaintiff **JAMES
5 COLLINS** is severely limited in the use of his legs.
6

7 5. Defendants **MARIE CALLENDER VENTURES, INC., dba MARIE
8 CALLENDER'S RESTAURANT & BAKERY #59; FRANCIS D. LARSON; RAYMOND
9 JAMES LARSON, JR.; DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive**, at all
10 times relevant herein were and are the owners and operators; lessors and/or lessees,
11 franchisers and/or franchisees, of public facilities known as “**Marie Callender’s Restaurant
12 & Bakery #59,**” located at Rancho Mirage, California, subject to the requirements of
13 California state law requiring full and equal access to public facilities pursuant to *California
14 Health & Safety Code* § 19955, *et seq.*, *California Civil Code* §§ 51, 51.5, 52(a), 52.1, 54,
15 54.1, 54.3 and 55, and subject to Title III of the *Americans with Disabilities Act of 1990*,
16 and to all other legal requirements referred to in this Complaint. Plaintiff does not know the
17 relative responsibilities of defendants in the operation of the facilities herein complained of,
18 and alleges a joint venture and common enterprise by all such defendants.
19

20 6. Defendants **MARIE CALLENDER VENTURES, INC., dba MARIE
21 CALLENDER'S RESTAURANT & BAKERY #59; FRANCIS D. LARSON; RAYMOND
22 JAMES LARSON, JR.; DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive**
23 (hereinafter alternatively referred to collectively as “defendants”), at all times relevant herein
24 were and are owners, possessors, builders and keepers of the “**Marie Callender’s
25 Restaurant & Bakery #59** ” in Rancho Mirage, California.
26
27
28

1 7. Defendants **MARIE CALLENDER VENTURES, INC., dba MARIE**
2 **CALLENDER'S RESTAURANT & BAKERY #59; FRANCIS D. LARSON; RAYMOND**
3 **JAMES LARSON, JR.; DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive** are
4 the owners and operators of the subject "**Marie Callender's Restaurant & Bakery #59**"
5 store, at all times relevant to this Complaint. Plaintiff is informed and believes that each of
6 the defendants herein is the agent, employee or representative of each of the other
7 defendants, and performed all acts and omissions stated herein within the scope of such
8 agency or employment or representative capacity and is responsible in some manner for the
9 acts and omissions of the other defendants in legally causing the damages complained of
10 herein, and have approved or ratified each of the acts or omissions of each other defendant,
11 as herein described.
12

13 8. Plaintiff **JAMES COLLINS** does not know the true names and capacities of
14 defendants **MARIE CALLENDER VENTURES, INC., dba MARIE CALLENDER'S**
15 **RESTAURANT & BAKERY #59; FRANCIS D. LARSON; RAYMOND JAMES LARSON,**
16 **JR.; DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive,** their business
17 capacities, their ownership connection to the property and business, nor their relative
18 responsibilities in causing the access violations herein complained of, and alleges a joint
19 venture and common enterprise by all such defendants. Plaintiff is informed and believes
20 that each of the defendants herein, including **DOES ONE TO TEN, inclusive,** is the agent,
21 ostensible agent, master, servant, employer, employee, representative, franchiser,
22 franchisee, joint venturer, partner, and associate, or such similar capacity, of each of the
23 other defendants, and was at all times acting and performing, or failing to act or perform,
24 with the authorization, consent, permission or ratification of each of the other defendants,
25 and is responsible in some manner for the acts and omissions of the other defendants in
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1 legally causing the violations and damages complained of herein, and have approved or
2 ratified each of the acts or omissions of each other defendant, as herein described. Plaintiff
3 will seek leave to amend this Complaint when the true names, capacities, connections and
4 responsibilities of defendants **MARIE CALLENDER VENTURES, INC., dba MARIE**
5 **CALLENDER'S RESTAURANT & BAKERY #59; FRANCIS D. LARSON; RAYMOND**
6 **JAMES LARSON, JR.; DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive,** are
7 ascertained.
8

9 9. Plaintiff is informed and believes that all named defendants, including DOES
10 ONE TO TEN, inclusive, conspired to commit the acts described herein, or alternatively,
11 aided and abetted one another in the performance of the wrongful acts hereinafter alleged.

12 10. Defendants **MARIE CALLENDER VENTURES, INC., dba MARIE**
13 **CALLENDER'S RESTAURANT & BAKERY #59; FRANCIS D. LARSON; RAYMOND**
14 **JAMES LARSON, JR.; DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive,** are
15 the owners and operators of "**Marie Callender's Restaurant & Bakery #59**" store, located
16 at Rancho Mirage, California. This retail store, including, but not limited to, parking spaces
17 and access aisles and access routes, are each a part of a "public accommodation or facility"
18 subject to the requirements of *California Health & Safety Code* § 19955, *et seq.*, and of
19 *California Civil Code* §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this "**Marie**
20 **Callender's Restaurant & Bakery #59**" store was constructed after 1990 which has
21 subjected the "**Marie Callender's Restaurant & Bakery #59**" store to handicapped access
22 requirements per *California Health & Safety Code* § 19959, and applicable portions of
23 *California Code of Regulations*, Title 24, (the State Building Code).
24
25

26 11. On or about January 7, 2001, Plaintiff **JAMES COLLINS** visited the "**Marie**
27 **Callender's Restaurant & Bakery #59**" store in Rancho Mirage, California for the purpose
28

1 of dining. Defendants **MARIE CALLENDER VENTURES, INC., dba MARIE**
2 **CALLENDER'S RESTAURANT & BAKERY #59; FRANCIS D. LARSON; RAYMOND**
3 **JAMES LARSON, JR.; DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive,**
4 interfered with Plaintiff's access to the "**Marie Callender's Restaurant & Bakery #59**" store
5 as set forth in Paragraph 3 above.
6

7 Said acts and omissions denied Plaintiff legal handicapped access to the "**Marie**
8 **Callender's Restaurant & Bakery #59**" store according to federal and state law.

9 12. Plaintiff encountered and/or is informed and believes that the following
10 architectural barriers, which violate the requirements of the **California Code of Regulations**
11 Title 24 and **ADAAG**, existed and continue to exist thereby denying Plaintiff and those
12 similarly situated full and equal access to the subject public facility as set forth in Paragraph
13 3 above.
14

15 13. Defendants, and each of them, discriminated against Plaintiff **JAMES**
16 **COLLINS** on the basis of his physical disability, and interfered with his access to the "**Marie**
17 **Callender's Restaurant & Bakery #59**" establishment, in violation of both California law
18 including, but not limited to, **California Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of
19 Title III, §302, the "Prohibition of Discrimination" provision and §503, the "Prohibition Against
20 Retaliation or Coercion" provision of the **Americans with Disabilities Act of 1990**.
21

22 14. As a result of the actions and failure to act of defendants, and each of them,
23 and as a result of the failure to provide appropriate handicapped parking, proper
24 handicapped signage, proper handicapped accessible entryways, and handicapped
25 accommodations for dressing rooms, Plaintiff **JAMES COLLINS** suffered and will suffer a
26 loss of his civil rights to full and equal access to public facilities, and further suffered and will
27 suffer emotional distress, mental distress, mental suffering, mental anguish, which includes
28

1 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
2 and naturally associated with a person with a physical disability being denied access to a
3 public accommodation, all to his damages as prayed hereinafter in an amount within the
4 jurisdiction of this court.

5
6 **I. FIRST CAUSE OF ACTION:**

7 VIOLATION OF ***THE AMERICANS WITH DISABILITIES ACT OF 1990*** (On
8 Behalf of Plaintiff **JAMES COLLINS** and Against Defendants **MARIE**
9 **CALLENDER VENTURES, INC., dba MARIE CALLENDER'S RESTAURANT &**
10 **BAKERY #59; FRANCIS D. LARSON; RAYMOND JAMES LARSON, JR.;**
11 **DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive)** (42 **USC** §12101
12 *et seq.*)

13
14 15. Plaintiff repleads and incorporates by reference, as if fully set forth again
15 herein, the allegations contained in paragraphs 1 through 14 of this Complaint and
16 incorporates them herein as if separately repled.

17
18 16. Pursuant to law, in 1990 the United States Congress made findings per 42
19 **USC** § 12101 regarding persons with physical disabilities, finding that laws were needed to
20 more fully protect 43 million Americans with one or more physical or mental disabilities;
21 [that] historically society has tended to isolate and segregate individuals with disabilities;
22 [that] such forms of discrimination against individuals with disabilities continue to be a
23 serious and pervasive social problem; [that] the nation's proper goals regarding individuals
24 with disabilities are to assure equality of opportunity, full participation, independent living
25 and economic self-sufficiency for such individuals; [and that] the continuing existence of
26 unfair and unnecessary discrimination and prejudice denies people with disabilities the
27 opportunity to compete on an equal basis and to pursue those opportunities for which our
28 free society is justifiably famous.

17. Congress stated as its purpose in passing the ***Americans with Disabilities***
Act of 1990 (42 **USC** § 12102):

1 It is the purpose of this act (1) to provide a clear and comprehensive
2 national mandate for the elimination of discrimination against individuals with
3 disabilities; (2) to provide clear, strong, consistent, enforceable standards
4 addressing discrimination against individuals with disabilities; (3) to ensure that
5 the Federal government plays a central role in enforcing the standards
6 established in this act on behalf of individuals with disabilities; and (4) to invoke
7 the sweep of Congressional authority, including the power to enforce the 14th
8 Amendment and to regulate commerce, in order to address the major areas of
9 discrimination faced day to day by people with disabilities.
10

11 18. As part of the ***Americans with Disabilities Act of 1990***, Public Law 101-336
12 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
13 Operated by Private Entities" (42 ***USC*** § 12181 *et seq.*). Among the public accommodations
14 identified for purposes of this title were "a bakery, restaurant, bar or other establishment
15 serving food or drink, grocery store, clothing store, hardware store, shopping center or other
16 sales or rental establishment."
17

18 19. Pursuant to 42 ***USC*** § 12182,

19 "No individual shall be discriminated against on the basis of disability in
20 the full and equal enjoyment of the goods, services, facilities, privileges,
21 advantages, or accommodations of any place of public accommodation by any
22 person who owns, leases (or leases to), or operates a place of public
23 accommodation."
24

25 20. Among the general prohibitions against discrimination were included in 42
26 ***USC*** §12182(b)(1)(A)(i):

27 **Denial of participation.** It shall be discriminatory to subject an
28 individual or class of individuals on the basis of a disability or disabilities of

1 such individual or class, directly, or through contractual, licensing, or other
2 arrangements, to a denial of the opportunity of the individual or class to
3 participate in or benefit from the goods, services, facilities, privileges,
4 advantages, or accommodations of an entity.

5 21. Among the general prohibitions against discrimination were included in 42

6 **USC §12182(b)(1)(E):**

7 **Association** – It shall be discriminatory to exclude or otherwise deny
8 equal goods, services, facilities, privileges, advantages, accommodations, or
9 other opportunities to an individual or entity because of the known disability of
10 an individual with whom the individual or entity is known to have a relationship
11 or association.

12 The acts of defendants set forth herein were a violation of Plaintiff's rights under the ADA,
13 Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36 et seq.

14 22. Among the general prohibitions against discrimination were included in 42

15 **USC § 12182(b)(2)(A)(i) and 42 USC § 12182(b)(2)(A)(ii):**

16 **Discrimination.** For purposes of subsection (a), discrimination
17 includes -
18

19 (i) the imposition or application of eligibility criteria that screen out or
20 tend to screen out an individual with a disability or any class of individuals with
21 disabilities from fully and equally enjoying any goods, services, facilities,
22 privileges, advantages, or accommodations, unless such criteria can be shown
23 to be necessary for the provision of the goods, services, facilities, privileges,
24 advantages, or accommodations being offered;

25 (ii) a failure to make reasonable modifications in policies, practices, or
26 procedures, when such modifications are necessary to afford such goods,
27 services, facilities, privileges, advantages, or accommodations to individuals
28 with disabilities, unless the entity can demonstrate that making such

1 modifications would fundamentally alter the nature of such goods, services,
2 facilities, privileges, advantages, or accommodations.

3 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices
4 and procedure for entry to the "**Marie Callender's Restaurant & Bakery #59**" facility by
5 persons with disabilities and their companions as established by the defendants can be
6 simply modified to eliminate disparate and discriminatory treatment of persons with
7 disabilities by properly constructing barrier free handicapped access for safe and full and
8 equal enjoyment of the "**Marie Callender's Restaurant & Bakery #59**" store as that
9 enjoyed by other people.
10

11 24. The specific prohibition against retaliation and coercion is included in the
12 ***Americans With Disabilities Act of 1990*** § 503(b) and the *Remedies and Procedures* in §
13 503(c):
14

15 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to
16 coerce, intimidate, threaten, or interfere with any individual in the exercise or
17 enjoyment of, or on account of his or her having exercised or enjoyed, or on
18 account of his or her having aided or encouraged any other individual in the
19 exercise or enjoyment of, any right granted or protected by this Act.

20 (c) Remedies and Procedure. - The remedies and procedures available
21 under sections 107, 203, and 308 of this Act shall be available to aggrieved
22 persons for violations of subsections (a) and (b), with respect to Title I, Title II
23 and Title III, respectively.

24 25. Among the specific prohibitions against discrimination were included, in 42
25 **USC § 12182(b)(2)(a)(iv)**, "A failure to remove architectural barriers, and communications
26 barriers that are structural in nature, in existing facilities...where such removal is readily
27 achievable;" and (v) "where and entity can demonstrate that the removal of a barrier under
28 clause (iv) is not readily achievable, a failure to make such goods, services, facilities,

1 privileges, advantages, or accommodations available through alternative methods if such
2 methods are readily achievable." The acts of Defendants set forth herein were a violations
3 of Plaintiff's rights under the "ADA," Public Law 101-336, and the regulations promulgated
4 thereunder, 28 *CFR* Part 36, *et seq.*

5
6 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
7 were at all times after 1990 "readily achievable." On information and belief, if the removal of
8 all the barriers complained of here together were not "readily achievable," the removal of
9 each individual barrier complained of herein was "readily achievable."

10 27. Per 42 *USC* § 12181(9), "The term 'readily achievable' means easily
11 accomplishable and able to be carried out without much difficulty or expense." The statute
12 and attendant regulations define relative "expense" in relation to the total financial resources
13 of the entities involved, including any "parent" companies. Plaintiff alleges that properly
14 repairing each of the items that Plaintiff complains of herein is readily achievable, including
15 but not limited to correcting and repairing the items set forth in Paragraph 3 above.

16
17 The changes needed to remove barriers to access for the disabled were and are
18 "readily achievable" by the defendants under standards set forth under 42 *USC* § 12181 of
19 the ***Americans with Disabilities Act of 1990***. (Further, if it was not "readily achievable" for
20 defendants to remove all such barriers, defendants have failed to make the required
21 services available through alternative methods, although such methods are achievable as
22 required by 42 *USC* §12181(b)(2)(a)(iv), (v).)

23
24 28. Pursuant to the ***Americans with Disabilities Act of 1990***, §308 (42 *USC* §
25 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the ***Civil***
26 ***Rights Act of 1964*** §204(a), (42 *USC* § 2000a-3(a)), as Plaintiff is being subjected to
27 discrimination on the basis of disability in violation of this title and/or Plaintiff has reasonable
28

1 grounds for believing that he is about to be subjected to discrimination in violation of
2 **Americans With Disabilities Act of 1990 §302.** Plaintiff cannot return to or make use of
3 the public facilities complained of herein for the purpose of entry and provision of goods and
4 service so long as defendants continue to apply eligibility criteria, policies, practices and
5 procedures to screen out and refuse to allow entry and service to persons with disabilities
6 such as Plaintiff's.

7
8 29. Defendants', and each of their acts and omissions of failing to provide barrier
9 free handicapped access for Plaintiff, were tantamount to interference, coercion or
10 intimidation pursuant to **Americans With Disabilities Act of 1990 §503(b) (now 42 USC §**
11 **12203):**

12
13 It shall be unlawful to coerce, intimidate, threaten, or interfere with any
14 individual in the exercise or enjoyment of, or on account of his or her having
15 encouraged any other individual in the exercise or enjoyment of, any right
16 granted or protected by this Act.

17 30. Per **Americans With Disabilities Act of 1990 § 308(a)(1) (now 42 USC §**
18 **12188)**, "Nothing in this section shall require a person with a disability to engage in a futile
19 gesture if such person has actual notice that a person or organization covered by this title
20 does not intend to comply with its provisions." Pursuant to this last section, Plaintiff, on
21 information and belief, alleges that defendants have continued to violate the law and deny
22 the rights of Plaintiff and other disabled persons to access this public accommodation for
23 the purpose of lodging. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),

24
25 "...Where appropriate, injunctive relief shall also include requiring the
26 provision of an auxiliary aid or service, modifications of a policy, or provision of
27 alternative methods, to the extent required by this title."

28 31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the **Civil**

1 **Rights Act of 1964** (42 USC § 2000a-3(a), and pursuant to federal regulations adopted to
2 implement the **Americans with Disabilities Act of 1990**, including but not limited to an
3 order granting injunctive relief and attorneys' fees. Such attorneys' fees, "including litigation
4 expenses and costs," are further specifically provided for by §505 of Title III.

5
6 **II. SECOND CAUSE OF ACTION**

7 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH**
8 **PHYSICAL DISABILITIES (On Behalf of Plaintiff JAMES COLLINS and**
9 **Against Defendants MARIE CALLENDER VENTURES, INC., dba MARIE**
10 **CALLENDER'S RESTAURANT & BAKERY #59; FRANCIS D. LARSON;**
11 **RAYMOND JAMES LARSON, JR.; DIANE RUTH LARSON; and DOES ONE**
12 **TO TEN, inclusive) (California Health & Safety Code § 19955, et seq.)**

13
14 32. Plaintiff repleads and incorporates by reference, as if fully set forth again
15 herein, the allegations contained in paragraphs 1 through 31 of this Complaint and
16 incorporate them herein as if separately repled.

17
18 33. **California Health & Safety Code § 19955** provides in pertinent part:

19
20 The purpose of this part is to insure that public accommodations or
21 facilities constructed in this state with private funds adhere to the provisions of
22 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
23 *Government Code*. For the purposes of this part "public accommodation or
24 facilities" means a building, structure, facility, complex, or improved area which
25 is used by the general public and shall include auditoriums, hospitals, theaters,
26 restaurants, hotels, motels, stadiums, and convention centers. When sanitary
27 facilities are made available for the public, clients or employees in such
28 accommodations or facilities, they shall be made available for the
handicapped.

34. **California Health & Safety Code § 19956**, which appears in the same
chapter as §19955, provides in pertinent part, "accommodations constructed in this state
shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of
Title 1 of the *Government Code*..." **California Health & Safety Code § 19956** was

1 operative July 1, 1970, and is applicable to all public accommodations constructed or altered
2 after that date. On information and belief, portions of "**Marie Callender's Restaurant &**
3 **Bakery #59**" and/or of its buildings, were constructed and/or altered after July 1, 1970, and
4 substantial portions of said building had alterations, structural repairs, and/or additions made
5 to such public accommodations after July 1, 1970, thereby requiring said public
6 accommodations and/or buildings to be subject to the requirements of Part 5.5, **California**
7 **Health & Safety Code § 19955, et seq.**, upon such alteration, structural repairs or additions
8 per **California Health & Safety Code § 19959**.

10 35. Pursuant to the authority delegated by **California Government Code § 4450,**
11 **et seq.**, the State Architect promulgated regulations for the enforcement of these provisions.
12 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
13 California State Architect's Regulations and these regulations must be complied with as to
14 any alterations and/or modifications of the "**Marie Callender's Restaurant & Bakery #59**"
15 occurring after that date. Construction changes occurring prior to this date but after July 1,
16 1970 triggered access requirements pursuant to the "ASA" requirements, the **American**
17 **Standards Association Specifications, A117.1-1961**. On information and belief, at the
18 time of the construction and modification of said building, all buildings and facilities covered
19 were required to conform to each of the standards and specifications described in the
20 **American Standards Association Specifications** and/or those contained in Title 24 of the
21 **California Administrative Code**, (now known as Title 24, **California Code of**
22 **Regulations**.)

25 36. Public facilities, such as "**Marie Callender's Restaurant & Bakery #59**" are
26 public accommodations or facilities within the meaning of **California Health & Safety Code**
27 **§ 19955, et seq.**

1 37. It is difficult or impossible for persons with physical disabilities who use
2 wheelchairs, canes, walkers and service animals to travel about in public to use a retail
3 store with the defects set forth in Paragraph 3 above as required by Title 24 of the
4 **California Code of Regulations** and the **Americans with Disabilities Act Access**
5 **Guidelines (ADAAG)**. Thus, when public accommodations fail to provide handicap
6 accessible public facilities, persons with physical disabilities are unable to enter and use
7 said facilities, and are denied full and equal access to and use of that facility that is enjoyed
8 by other members of the general public.

10 38. Plaintiff **JAMES COLLINS** and other similarly situated persons with physical
11 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
12 service animals are unable to use public facilities on a "full and equal" basis unless each
13 such facility is in compliance with the provisions of the **California Health & Safety Code §**
14 **19955, et seq.** Plaintiff is a member of that portion of the public whose rights are protected
15 by the provisions of **California Health & Safety Code § 19955, et seq.**

17 39. The **California Health & Safety Code** was enacted "[t]o ensure that public
18 accommodations or facilities constructed in this state with private funds adhere to the
19 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government*
20 *Code.*" Such public accommodations are defined to include restaurants.

22 40. Plaintiff is further informed and believes that as of the date of filing this
23 Complaint, Defendants have not made accessible the facilities at the subject store as set
24 forth in Paragraph 3 above.

25 41. Plaintiff **JAMES COLLINS** is informed and believes, and therefore alleges,
26 that Defendants **MARIE CALLENDER VENTURES, INC., dba MARIE CALLENDER'S**
27 **RESTAURANT & BAKERY #59; FRANCIS D. LARSON; RAYMOND JAMES LARSON,**
28

1 **JR.; DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive,** and each of them,
2 caused the subject buildings constituting "**Marie Callender's Restaurant & Bakery #59**" to
3 be constructed, altered and maintained in such a manner that persons with physical
4 disabilities were denied full and equal access to, within and throughout said buildings and
5 were denied full and equal use of said public facilities, and despite knowledge and actual
6 and constructive notice to such Defendants that the configuration of the store and/or
7 buildings was in violation of the civil rights of persons with physical disabilities, such as
8 Plaintiff. Such construction, modification, ownership, operation, maintenance and practices
9 of such public facilities are in violation of law as stated in Part 5.5, **California Health &**
10 **Safety Code § 19955, et seq.,** and elsewhere in the laws of California.
11

12 42. On information and belief, the subject building constituting the public facilities
13 of "**Marie Callender's Restaurant & Bakery #59**" denied full and equal access to Plaintiff
14 and other persons with physical disabilities in other respects due to non-compliance with
15 requirement of Title 24 of the **California Code of Regulations** and **California Health &**
16 **Safety Code § 19955, et seq.**
17

18 43. The basis of Plaintiff's aforementioned information and belief is the various
19 means upon which Defendants must have acquired such knowledge, including but not
20 limited to this lawsuit, other access lawsuits, communications with operators of other stores
21 and other property owners regarding denial access, communications with Plaintiff and other
22 persons with disabilities, communications with other patrons who regularly visit there,
23 communications with owners of other businesses, notices and advisories they obtained from
24 governmental agencies through the mails, at seminars, posted bulletins, television, radio,
25 public service announcements, or upon modification, improvement, alteration or substantial
26 repair of the subject premises and other properties owned by these Defendants, newspaper
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1 articles and trade publications regarding the *Americans with Disabilities Act of 1990* and
2 other access law, and other similar information. The scope and means of the knowledge of
3 each defendant is within each defendant's exclusive control and cannot be ascertained
4 except through discovery.

5
6 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
7 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
8 enforce provisions of the law protecting access for persons with physical disabilities and
9 prohibiting discrimination against persons with physical disabilities, and to take such action
10 both in his own interests and in order to enforce an important right affecting the public
11 interest. Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable
12 attorneys' fees incurred, pursuant to the provisions of the *California Code of Civil*
13 *Procedure* § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to *California*
14 *Health & Safety Code* § 19953 and *California Civil Code* §§ 54.3 and 55.

15
16 45. Defendants, and each of them, at times prior to and including January 7, 2001,
17 and continuing to the present time, knew that persons with physical disabilities were denied
18 their rights of equal access to all portions of this public facility. Despite such knowledge,
19 Defendants failed and refused to take steps to comply with the applicable access statutes;
20 and despite knowledge of the resulting problems and denial of civil rights thereby suffered
21 by Plaintiff **JAMES COLLINS** and other similarly situated persons with disabilities, including
22 the specific notices referred to in paragraph 43 of this Complaint. Defendants have failed
23 and refused to take action to grant full and equal access to persons with physical disabilities
24 in the respects complained of hereinabove. Defendants and each of them have carried out
25 a course of conduct of refusing to respond to, or correct complaints about, denial of
26 handicap access. Such actions and continuing course of conduct by Defendants, evidence
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1 despicable conduct in conscious disregard for the rights or safety of Plaintiff and of other
2 similarly situated persons, justifying an award of exemplary and punitive damages pursuant
3 to **California Civil Code** § 3294.

4 46. Defendants' actions have also been oppressive to persons with physical
5 disabilities and of other members of the public, and have evidenced actual or implied
6 malicious intent toward those members of the public, such as Plaintiff and other persons
7 with physical disabilities who have been denied the proper access they are entitled to by
8 law. Further, Defendants' refusals on a day-to-day basis to correct these problems
9 evidence despicable conduct in conscious disregard for the rights of Plaintiff and other
10 members of the public with physical disabilities.

11 47. Plaintiff prays for an award of punitive damages against Defendants, and each
12 of them, pursuant to **California Civil Code** § 3294 in an amount sufficient to make a more
13 profound example of Defendants and discourage owners, operators, franchisers and
14 franchisees of other public facilities from willful disregard of the rights of persons with
15 physical disabilities. Plaintiff does not know the financial worth of Defendants, or the
16 amount of punitive damages sufficient to accomplish the public purposes of **California Civil**
17 **Code** § 3294 and seeks leave to amend this Complaint when such facts are known.

18 48. As a result of the actions and failure of Defendants, and each of them, and as
19 a result of the failure to provide proper accessible public facilities, Plaintiff **JAMES COLLINS**
20 was denied his civil rights, including his right to full and equal access to public facilities, was
21 embarrassed and humiliated, suffered physical, psychological and mental injuries and
22 emotional distress, mental distress, mental suffering, mental anguish, which includes
23 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly
24 and naturally associated with a person with a physical disability being denied access to a
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1 public accommodation.

2 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

3 **III. THIRD CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**

5 (On Behalf of Plaintiff **JAMES COLLINS** and Against Defendants **MARIE**
6 **CALLENDER VENTURES, INC., dba MARIE CALLENDER'S RESTAURANT**
7 **& BAKERY #59; FRANCIS D. LARSON; RAYMOND JAMES LARSON, JR.;**
8 **DIANE RUTH LARSON; and DOES ONE TO TEN, inclusive) (*California***

9 ***Civil Code* §§ 54, 54.1 and 54.3)**

10 49. Plaintiff repleads and incorporates by reference as if fully set forth again
11 herein, the allegations contained in paragraphs 1 through 48 of this Complaint and
12 incorporates them herein as if separately repled.

13 50. The public facilities above-described constitute public facilities and public
14 accommodations within the meaning of ***California Health & Safety Code* § 19955 et seq.**
15 and were facilities to which members of the public are invited. The aforementioned acts and
16 omissions of defendants, and each of them, constitute a denial of equal access to and use
17 and enjoyment of these facilities by persons with disabilities, including Plaintiff **JAMES**
18 **COLLINS**. Said acts and omissions are also in violation of provisions of Title 24 of the
19 ***California Code of Regulations***.

20 51. The rights of Plaintiff, the entitlement of Plaintiff to full and equal access and
21 the denial by defendants of such rights and entitlements are set forth in ***California Civil***
22 ***Code* §§ 54, 54.1 and 54.3**, to wit:

23 Individuals with disabilities shall have the same right as the...general
24 public to full and free use of the streets, highways, sidewalks, walkways, public
25 buildings, public facilities, and other public places. ***California Civil Code* §**
26 **54(a)**.

27 Individuals with disabilities shall be entitled to full and equal access, as
28 other members of the general public, to accommodations, advantages,

1 facilities, and privileges of all common carriers, airplanes, motor vehicles,
2 railroad trains, motor buses, streetcars, boats, or any other public
3 conveyances or modes of transportation (whether private, public, franchised,
4 licensed, contracted, or otherwise provided), telephone facilities, adoption
5 agencies, private schools, hotels, lodging places, places of public
6 accommodation, amusement or resort, and other places to which the general
7 public is invited, subject only to the conditions and limitations established by
8 law, or state or federal regulation, and applicable alike to all persons.

9 **California Civil Code § 54.1(a).**

10 52. On or about January 7, 2001, Plaintiff **JAMES COLLINS** suffered violations of
11 **California Civil Code §§ 54 and 54.1** in that he was denied full and equal enjoyment of the
12 goods, services, facilities and privileges of said **Marie Callender's Restaurant & Bakery**
13 **#59**, as set forth in paragraph 3 above. Plaintiff was also denied full and equal access to
14 other particulars, including but not limited to those described hereinabove. Plaintiff was also
15 denied use of facilities that he was entitled to under Title III of the **Americans with**
16 **Disabilities Act of 1990**.

17
18 53. As a result of the denial of full and equal enjoyment of the goods, services,
19 facilities and privileges of defendants' **Marie Callender's Restaurant & Bakery #59** store
20 due to the acts and omissions of defendants, and each of them, in owning, operating and
21 maintaining this subject public facility, Plaintiff suffered violations of his civil rights, including
22 but not limited to rights under **California Civil Code §§ 54, 54.1, and 54.3**, and has and will
23 suffer physical injury, emotional distress, mental distress, mental suffering, mental anguish,
24 which includes shame, humiliation, embarrassment, anger, chagrin, disappointment and
25 worry, expectedly and naturally associated with a disabled person's denial of full and equal
26 enjoyment of goods, services, privileges, etc. all to his damages as prayed hereinafter in an
27 amount within the jurisdiction of the court. Defendants' actions and omissions to act
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1 constituted discrimination against Plaintiff on the sole basis that Plaintiff was physically
2 disabled.

3 54. Plaintiff seeks damages for the violation of his rights as a disabled person on
4 or about January 7, 2001, according to proof, pursuant to **California Civil Code § 54.3**,
5 including a trebling of all statutory and actual damages, general and special, available
6 pursuant to **California Civil Code § 54.3(a)**.

7
8 55. As a result of defendants' acts and omissions in this regard, Plaintiff **JAMES**
9 **COLLINS** has been required to incur legal expenses and hire attorneys in order to enforce
10 his rights and enforce provisions of the law protecting the full and equal enjoyment of goods,
11 services, facilities, privileges of public facilities by the disabled, and those individuals
12 associated with or accompanied by a person with disabilities, and prohibiting discrimination
13 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable
14 attorneys' fees incurred pursuant to the provisions of **California Civil Code § 54.3**.
15 Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for damages to
16 Plaintiff, but also to compel the defendants to make their goods, services, facilities and
17 privileges available and accessible to all members of the public with physical disabilities,
18 justifying public interest attorneys' fees pursuant to the provisions of **California Code of**
19 **Civil Procedure § 1021.5**.

20
21
22 56. The acts and omissions of defendants in failing to provide the required
23 accessible facilities subsequent to the enactment date and compliance date of the
24 **Americans with Disabilities Act of 1990**, and refusal to make remedial modifications and
25 alterations to its handicapped parking, handicapped signage, pathways, and other elements
26 as hereinabove stated, after being notified by patrons before and after the time of Plaintiff's
27 visit and injuries, on or about January 7, 2001, and all times prior thereto with the knowledge
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1 that persons with disabilities would enter defendants' premises, the reason given therefor,
2 was an established policy, practice and procedure of refusing and denying entry, thereby
3 denying lodging and other services to a person with disabilities and the companions thereof,
4 evidence malice and oppression toward Plaintiff and other disabled persons.

5
6 57. Such despicable conduct, as that incorporated herein by reference and
7 specifically set forth in Paragraph 11, was carried out by defendants with a willful and
8 conscious disregard for the law and the rights of Plaintiff and of other disabled persons, and
9 was oppressive in that such conduct subjected Plaintiff "to cruel and unjust hardship in
10 conscious disregard" for the law and Plaintiff's rights, and justifies exemplary and punitive
11 damages pursuant to **California Civil Code** § 3294, in amounts sufficient to make an
12 example of defendants and to punish defendants and to carry out the purposes of
13 **California Civil Code** § 3294.
14

15 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
16 practice and procedure for entry into said "**Marie Callender's Restaurant & Bakery #59**"
17 store as hereinabove described.

18 59. As a result of defendants' continuing failure to provide for the full and equal
19 enjoyment of goods, services, facilities and privileges of said "**Marie Callender's**
20 **Restaurant & Bakery #59**" as hereinabove described, Plaintiff has continually been denied
21 his rights to full and equal enjoyment of the subject retail store, as it would be a "futile
22 gesture" to attempt to patronize said "**Marie Callender's Restaurant & Bakery #59**" with
23 the discriminatory policy in place as hereinabove described.
24

25 60. The acts and omissions of defendants as complained of herein in failing to
26 provide the required accessible facilities subsequent to the enactment date and compliance
27 date of the **Americans with Disabilities Act of 1990** and refusal to make remedial
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1 modifications and alternations to the architectural barriers as stated herein and in failing to
2 establish practices, policies and procedures to allow safe access by persons who are
3 disabled are continuing on a day-to-day basis to have the effect of wrongfully and willfully
4 excluding Plaintiff and other members of the public who are physically disabled, from full
5 and equal enjoyment of the subject "**Marie Callender's Restaurant & Bakery #59**" as
6 hereinabove described. Such acts and omissions are the continuing cause of humiliation
7 and mental and emotional suffering of Plaintiff in that these actions continue to treat Plaintiff
8 as an inferior and second class citizen and serve to discriminate against him on the sole
9 basis that he is a physically disabled. Plaintiff is unable, so long as such acts and omissions
10 of defendants continue, to achieve full and equal enjoyment of the goods and services of
11 said "**Marie Callender's Restaurant & Bakery #59**" as described hereinabove. The acts of
12 defendants have legally caused and will continue to cause irreparable injury to Plaintiff if not
13 enjoined by this court.
14
15

16 61. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin any
17 continuing refusal by defendants to permit entry to said "**Marie Callender's Restaurant &**
18 **Bakery #59**" and to serve Plaintiff or others similarly situated, and to require defendants to
19 comply forthwith with the applicable statutory requirements relating to the full and equal
20 enjoyment of goods and services as described hereinabove for disabled persons. Such
21 injunctive relief is provided by *California Civil Code* § 55. Plaintiff further requests that the
22 court award statutory costs and attorneys' fees to Plaintiff pursuant to *California Civil Code*
23 § 55 and *California Code of Civil Procedure* § 1021.5, all as hereinafter prayed for.
24

25 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
26 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
27 damages.
28

1 **IV. FOURTH CAUSE OF ACTION**

2 VIOLATIONS OF **UNRUH CIVIL RIGHTS ACT** (On Behalf of Plaintiff **JAMES**
3 **COLLINS** and Against Defendants **MARIE CALLENDER VENTURES, INC.,**
4 **dba MARIE CALLENDER'S RESTAURANT & BAKERY #59; FRANCIS D.**
5 **LARSON; RAYMOND JAMES LARSON, JR.; DIANE RUTH LARSON; and**
6 **DOES ONE TO TEN, inclusive**) (*California Civil Code* §§ 51 and 51.5)

7 62. Plaintiff repleads and incorporates by reference, as if fully set forth again
8 herein, the allegations contained in paragraphs 1 through 61 of this Complaint and
9 incorporates them herein as if separately repled.

10 63. Defendants' acts and omissions as specified with regard to the discriminatory
11 treatment of Plaintiff **JAMES COLLINS** on the basis of his physical disabilities, have been in
12 violation of *California Civil Code* §§ 51 and 51.5, the *Unruh Civil Rights Act*, and have
13 denied to Plaintiff his rights to "full and equal accommodations, advantages, facilities,
14 privileges or services in all business establishments of every kind whatsoever."

15 64. *California Civil Code* § 51 also provides that "[a] violation of the right of any
16 individual under the *Americans with Disabilities Act of 1990* (Public Law 101-336) shall
17 also constitute a violation of this section."

18 65. *California Civil Code* § 51.5 also provides that "[n]o business establishment
19 of any kind whatsoever shall discriminate against, boycott, or blacklist, refuse to buy from,
20 sell to, or trade with any person in this state because of the race, creed, religion, color,
21 national origin, sex, disability of the person or of the person's partners, members,
22 stockholders, directors, officers, managers, superintendents, agents, employees, business
23 associates, suppliers, or customers."

24 66. As a result of the violation of Plaintiff's civil rights protected by *California Civil*
25 *Code* §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of *California Civil*
26 *Code* § 52, including a trebling of actual damages (defined by *California Civil Code* § 52(h)
27 to mean "special and general damages"), as well as reasonable attorneys' fees and costs,
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1 as allowed by statute, according to proof. Further, pursuant to paragraphs 11, 12, 13, 35
2 and 43, Plaintiff seeks appropriate exemplary damages under **California Civil Code §**
3 **3294.**

4 WHEREFORE, Plaintiff prays that this court award damages and provide relief as
5 follows:
6

7 **PRAYER FOR RELIEF**

8 Plaintiff prays that this court award damages and provide relief as follows:

9 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
10 criteria policy, practice and procedure permitting entry into the **Marie Callender's**
11 **Restaurant & Bakery #59** store in Rancho Mirage, California, for the purpose of services
12 according to **California Civil Code §§ 51, 51.5, 52, 54, 54.1, 54.3, et seq.**, and Title III of
13 the **Americans with Disabilities Act of 1990**, and grant injunctive relief requiring that
14 Defendants repair and render safe to handicapped persons, and otherwise make
15 handicapped-accessible, all public areas of the store, including, but not limited to, all barriers
16 to access identified in Paragraph Three of this Complaint, and make such facilities "readily
17 accessible to and usable by individuals with disabilities," according to the standards of Title
18 24 of the **California Administrative Code, California Health & Safety Code § 19955 et**
19 **seq.**, and Title III of the **Americans with Disabilities Act of 1990** and the standards of
20 **ADAAG**; and prohibiting operation of the **Marie Callender's Restaurant & Bakery #59**,
21 located in Rancho Mirage, California, as a public facility until Defendants provide full and
22 equal enjoyment of goods and services as described hereinabove to physically disabled
23 persons, including Plaintiff;
24
25

26 2. General damages according to proof;

27 3. Statutory and "actual" damages, including general damages and special
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1 damages, according to proof, pursuant to **California Civil Code** §§ 52, and 54.3, and that
2 these damages be trebled;

3 4. Prejudgment interest on all compensatory damages;

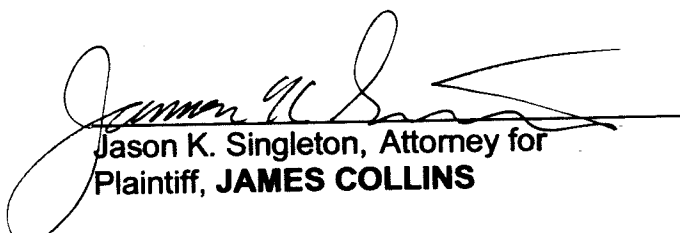
4 5. Punitive and exemplary damages pursuant to the standards and purposes of
5 **California Civil Code** § 3294;

6 6. Remedies and Procedures available under **Americans with Disabilities Act**
7 **of 1990** §§ 107, 203 and 308;

8 7. Award Plaintiff all litigation expenses, all costs of this proceeding and all
9 reasonable attorneys' fees as provided by law, including but not limited to those recoverable
10 pursuant to the provisions of **California Civil Code** §§ 52, 54.3, and 55, **California Code of**
11 **Civil Procedure** § 1021.5, and **Americans with Disabilities Act of 1990** §308 of Title III;
12 and
13

14 8. Grant such other and further relief as the court may deem just and proper.
15

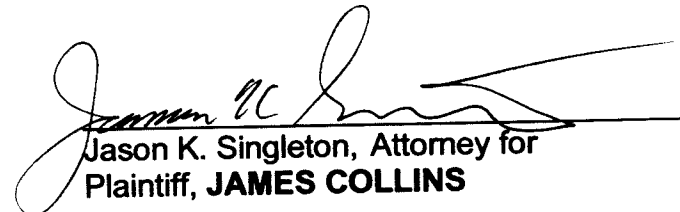
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17 Dated: December 21, 2001


Jason K. Singleton, Attorney for
Plaintiff, **JAMES COLLINS**

18
19
20 **REQUEST FOR JURY TRIAL**

21 Plaintiffs hereby request a jury for all claims for which a jury is permitted.
22

23 Dated: December 21, 2001


Jason K. Singleton, Attorney for
Plaintiff, **JAMES COLLINS**