

1 JASON K. SINGLETON, State Bar # 166170
2 LAW OFFICES OF JASON K. SINGLETON
3 611 "L" Street, Suite "A"
4 Eureka, CA 95501
5 (707) 441-1177
6 FAX: 441-1533

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CENTRAL DIST. OF CALIF.
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FILED

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 JAMES COLLINS,
11 Plaintiff,

12 v.

13 SEARS, ROEBUCK & CO., a New York
14 corporation, dba SEARS TOWER,
15 MANHATTAN HACIENDA PROPERTY
16 CO., LLC, a California Limited Liability
17 Company, and DOES ONE TO TEN,
18 inclusive,

17 Defendants.

) Case No. 01-02521 RJK (AJWx)

) 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

19 Plaintiff JAMES COLLINS complains of defendants SEARS, ROEBUCK & CO., a New
20 York Corporation, dba SEARS TOWER, MANHATTAN HACIENDA PROPERTY CO., LLC, a
21 California Limited Liability Company, and DOES ONE TO TEN, inclusive, and alleges as follows:

22 JURISDICTION AND VENUE

23 1. The Court has jurisdiction of this action pursuant to 28 USC § 1331 for violations of the
24 *Americans with Disabilities Act of 1990*, (42 USC § 12101, et seq.) Pursuant to pendant jurisdiction,
25 attendant and related causes of action, arising from the same facts, are also brought under California
26 law, including but not limited to violations of *California Health & Safety Code* § 19955, et seq.,
27 including *California Code of Regulations*, Title 24, § 19959, *California Civil Code* § 50152(a),

CIVIL RIGHTS DIVISION
MAR 20 2001
[Signature]

1 52.1, 54, 54.1, 54.3 and 55.

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

5 **INTRODUCTION**

6
7 3. **SEARS TOWER** is located at 5601 Santa Monica Boulevard, Hollywood, California.
8 Said retail store is owned and operated by defendants **SEARS, ROEBUCK & CO., a New York**
9 **Corporation, dba SEARS TOWER, MANHATTAN HACIENDA PROPERTY CO., LLC, a**
10 **California Limited Liability Company, and DOES ONE TO TEN, inclusive.**

11 Defendants **SEARS, ROEBUCK & CO., a New York Corporation, dba SEARS TOWER,**
12 **MANHATTAN HACIENDA PROPERTY CO., LLC, a California Limited Liability Company,**
13 **and DOES ONE TO TEN, inclusive,** operate an establishment for services to the public and at which
14 Defendants failed to provide barrier free access to said establishment in conformity with both Federal
15 and California legal requirements. Further, Defendants failed to provide compliance as follows:

16
17 **I. EXTERIOR SURVEY:**

18 **A. NORTH SIDE:**

19 1. There is no complying path of travel from the public sidewalk to the store
20 entrance in violation of California Title 24 § 1127B.

21
22 2. One of the 6 accessible parking spaces on the northeast side requires a person to
23 travel behind a parked vehicle other than their own in violation of California Title 24 § 1129B.1 /
24 Table 11B-7.

25 3. There are no detectable warnings where the path of travel from the north store
26 exit/entrance crosses the parking lot driveway in violation of California Title 24 § 1133B.8.5.

27 4. The sidewalk on the northeast side of Sears is 31" wide in violation of California
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1 Title 24 § 1023.1; 1133B.3 & 7.

2 5. There is no curb between the sidewalk and driveway in violation of California
3 Title 24 § 1127B.5..8.

4 6. The pass thru window at the Watch Repair Office is 41" high, but there is a 33"
5 high shelf extending 11" off the wall reducing the width of the sidewalk to less than 48" in
6 violation of California Title 24 § 1023.1; 1133B.3 & 7.

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8 7. The entry door on H & R Block is 47" high in violation of California Title 24 §
9 1004.14, 1133B.2.2.4.

10 8. The entry door on H & R Block only has a 5" high smooth surface in violation of
11 California Title 24 § 1003.15, 1133B.2.6.

12 **B. SOUTH SIDE:**

13 1. The entry stairs to the closed entrance on the south side have 1 handrail down the
14 center but no complying handrails on both sides in violation of California Title 24 § 1006.9a,
15 1133B.4.1.

16 2. The handrails do not extend past the bottom or top tread in violation of California
17 Title 24 § 1006.9.2a, 1133B.4.2.2.

18 3. There are no tread markings on the stairs in violation of California Title 24 §
19 1006.16.1, 1133B.4.4.

20 4. The entrance off Santa Monica Boulevard does not have a ramp and the path of
21 travel from Santa Monica Boulevard to the entrance is extremely long with no complying path of
22 travel in violation off California Title 24 § 1127B.

23 5. There is insufficient signage in this area indicating the long path of travel to the
24 accessible entrance in violation of California Title 24 § 1127B.3.

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1 **II. INTERIOR SURVEY**

2 **A. FIRST FLOOR:**

3 1. The door opening pressure to the Optical Shop on the east side of the Patio is 8
4 pounds in violation of California Title 24 § 1004.13, 1133B.2.5.1.

5 2. The door opening pressure to the Home Appliances Shop on the west side of the
6 Patio is 8 pounds in violation of California Title 24 § 1004.13, 1133B.2.5.1.

7 3. The slope of the exterior entry landing varies from 2% to 4.4% in violation of
8 California Title 24 § 1004.9.2.1a, 1133B.1.1 which requires a 60" clear level landing with less
9 than a 2% slope in the direction of the door swing, and 44" in the opposite direction of the door
10 swing.

11 4. This is a 4-story building without a public elevator in violation of California Title
12 24 § 1103B.1 which requires retail sales facilities to have an elevator to all levels.

13 5. The exit stairs by the Shoe Department to the upper and lower floors do not have
14 handrails that extend past the top and bottom treads in violation of California Title 24 §
15 1006.9.2a, 1133B.4.2.2.

16 6. The handrails are 2.5" in diameter in violation of California Title 24 § 1006.9.2a,
17 1133B.4.2.6.

18 7. The handrails are 43" high in violation of California Title 24 § 1006.9.2a.1,
19 1133B.4.2.1.

20 8. The center handrail is not continuous in violation of California Title 24 §
21 1006.9.2a, 1133B.4.2.4.

22 9. There are non-complying tread markings in violation of California Title 24 §
23 1006.16.1, 1133B.4.4.

24 10. The bottom 2 treads extend into the path of travel leading to the stairs to the lower
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1 floor which can be a tripping hazard.

2 11. The jewelry counter has a section that is 35" high by 40" wide in violation of
3 California Title 24 § 1122B.4.

4 12. The exit stairs at the northeast corner to the upper and lower floors do not have
5 handrails that extend 12" past the top and bottom landings in violation of California Title 24 §
6 1006.9.2a, 1133B.4.2.2.

7 13. The handrails are 2.5" in diameter in violation of California Title 24 §
8 1006.9.2a.6, 1133B.4.2.6.

9 14. The handrails are 43" high in violation of California Title 24 § 1006.9.2a.1,
10 1133B.4.2.1.

11 15. The center handrail is not continuous in violation of California Title 24 §
12 1006.9.2a, 1133B.4.2.4.

13 16. There are non-complying tread markings in violation of California Title 24 §
14 1006.16.1, 1133B.4.4.

15 17. The perfume counter is 42" high by 40" wide in violation of California Title 24 §
16 1122B.4.

17 18. The door to the men's restroom in the lower level (or basement) requires 7.5
18 pounds of pressure to open in violation of California Title 24 § 1004.13, 1133B.2.5.1.

19 19. There is no visual emergency warning device in violation of California Title 24 §
20 1114B.2.5.

21 20. The handrails on the exit stairs on the north side of the building do not extend 12"
22 past the top and bottom treads as required by California Title 24 § 1006.9.2a, 1133B.4.2.2.

23 21. The handrails are 2.5" in diameter in violation of California Title 24 §
24 1006.9.2a.6, 1133B.4.2.6.

1 22. The handrails are 41" high in violation of California Title 24 § 1006.9.2a.1,
2 1133B.4.2.1.

3 23. The center rail is not continuous in violation of California Title 24 § 1006.9.2a,
4 1133B.4.2.4.

5 24. There are non-complying tread markings in violation of California Title 24 §
6 1006.16.1, 1133B.4.4.

7 25. The Hardware door #3 has a round knob in violation of California Title 24 §
8 1004.14, 1133B.2.2.4.

9 26. The sales counter in the tool area is 36" high in violation of California Title 24 §
10 1122B.4.

11 27. The handrails on the exit stairs on the northwest corner of the building do not
12 extend 12" past the top and bottom treads as required by California Title 24 § 1006.9.2a,
13 1133B.4.2.2.

14 28. The handrails are 2.5" in diameter in violation of California Title 24 §
15 1006.9.2a.6, 1133B.4.2.6.

16 28. The handrails are 41" high in violation of California Title 24 § 1006.9.2a.1,
17 1133B.4.2.1.

18 29. The center rail is not continuous in violation of California Title 24 § 1006.9.2a,
19 1133B.4.2.4.

20 30. There are non-complying tread markings in violation of California Title 24 §
21 1006.16.1, 1133B.4.4.

22 31. Most of the doors to the stockroom have round knobs in violation of California
23 Title 24 § 1004.14, 1133B.2.2.4.

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1 **B. SECOND FLOOR:**

2 1. The handrails on the exit stairs on the northwest corner of the building do not
3 extend 12" past the top and bottom treads as required by California Title 24 § 1006.9.2a,
4 1133B.4.2.2.

5 2. The handrails are 2.5" in diameter in violation of California Title 24 §
6 1006.9.2a.6, 1133B.4.2.6.

7 3. The handrails are 41" high in violation of California Title 24 § 1006.9.2a.1,
8 1133B.4.2.1.

9 4. The center rail is not continuous in violation of California Title 24 § 1006.9.2a,
10 1133B.4.2.4.

11 5. There are non-complying tread markings in violation of California Title 24 §
12 1006.16.1, 1133B.4.4.

13 6. The counter top is 42" high in the photography studio in violation of California
14 Title 24 § 1122B.4.

15 7. The handrails on the exit stairs on the northeast corner of the building do not
16 extend 12" past the top and bottom treads as required by California Title 24 § 1006.9.2a,
17 1133B.4.2.2.

18 8. The handrails are 2.5" in diameter in violation of California Title 24 §
19 1006.9.2a.6, 1133B.4.2.6.

20 9. The handrails are 41" high in violation of California Title 24 § 1006.9.2a.1,
21 1133B.4.2.1.

22 10. The center rail is not continuous in violation of California Title 24 § 1006.9.2a,
23 1133B.4.2.4.

24 11. There are non-complying tread markings in violation of California Title 24 §
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1 1006.16.1, 1133B.4.4.

2 12. The cash register in home furnishings is 42" high in violation of California Title
3 24 § 1122B.4.

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

8
9 **FACTUAL ALLEGATIONS**

10 4. Plaintiff **JAMES COLLINS** is, and at all times relevant to this Complaint was, a
11 "physically handicapped person, "physically disabled person," and a "person with a disability," as these
12 terms are used under California law and under federal laws including, but not limited to, Title III of the
13 *Americans with Disabilities Act of 1990*. (The terms "physically handicapped person," "physically
14 disabled person," and a "person with a disability" will be used interchangeably throughout this
15 Complaint.) Plaintiff is a "person with a disability," as defined by all applicable California and United
16 State's laws. Plaintiff **JAMES COLLINS** is severely limited in the use of his legs.

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18 5. Defendants **SEARS, ROEBUCK & CO.**, a New York Corporation, dba **SEARS**
19 **TOWER, MANHATTAN HACIENDA PROPERTY CO., LLC**, a California Limited Liability
20 **Company, and DOES ONE TO TEN, inclusive**, at all times relevant herein were and are the owners
21 and operators; lessors and/or lessees, franchisers and/or franchisees, of public facilities known as the
22 "SEARS TOWER" store, located at Hollywood, California, subject to the requirements of California
23 state law requiring full and equal access to public facilities pursuant to *California Health & Safety Code*
24 § 19955, *et seq.*, *California Civil Code* §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to
25 Title III of the *Americans with Disabilities Act of 1990*, and to all other legal requirements referred to in
26 this Complaint. Plaintiff does not know the relative responsibilities of defendants in the operation of the
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1 facilities herein complained of, and alleges a joint venture and common enterprise by all such
2 defendants.

3 6. Defendants **SEARS, ROEBUCK & CO., a New York Corporation, dba SEARS**
4 **TOWER, MANHATTAN HACIENDA PROPERTY CO., LLC, a California Limited Liability**
5 **Company, and DOES ONE TO TEN, inclusive** (hereinafter alternatively referred to collectively as
6 “defendants”), at all times relevant herein were and are owners, possessors, builders and keepers of the
7 “SEARS TOWER ” in Hollywood, California.

8 7. Defendants **SEARS, ROEBUCK & CO., a New York Corporation, dba SEARS**
9 **TOWER, MANHATTAN HACIENDA PROPERTY CO., LLC, a California Limited Liability**
10 **Company, and DOES ONE TO TEN, inclusive** are the owners and operators of the subject “SEARS
11 **TOWER”** store, at all times relevant to this Complaint. Plaintiff is informed and believes that each of
12 the defendants herein is the agent, employee or representative of each of the other defendants, and
13 performed all acts and omissions stated herein within the scope of such agency or employment or
14 representative capacity and is responsible in some manner for the acts and omissions of the other
15 defendants in legally causing the damages complained of herein, and have approved or ratified each of
16 the acts or omissions of each other defendant, as herein described.

17 8. Plaintiff **JAMES COLLINS** does not know the true names and capacities of defendants
18 **SEARS, ROEBUCK & CO., a New York Corporation, dba SEARS TOWER, MANHATTAN**
19 **HACIENDA PROPERTY CO., LLC, a California Limited Liability Company, and DOES ONE**
20 **TO TEN, inclusive**, their business capacities, their ownership connection to the property and business,
21 nor their relative responsibilities in causing the access violations herein complained of, and alleges a
22 joint venture and common enterprise by all such defendants. Plaintiff is informed and believes that each
23 of the defendants herein, including **DOES ONE TO TEN, inclusive**, is the agent, ostensible agent,
24 master, servant, employer, employee, representative, franchiser, franchisee, joint venturer, partner, and
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1 associate, or such similar capacity, of each of the other defendants, and was at all times acting and
2 performing, or failing to act or perform, with the authorization, consent, permission or ratification of
3 each of the other defendants, and is responsible in some manner for the acts and omissions of the other
4 defendants in legally causing the violations and damages complained of herein, and have approved or
5 ratified each of the acts or omissions of each other defendant, as herein described. Plaintiff will seek
6 leave to amend this Complaint when the true names, capacities, connections and responsibilities of
7 defendants **SEARS, ROEBUCK & CO., a New York Corporation, dba SEARS TOWER,**
8 **MANHATTAN HACIENDA PROPERTY CO., LLC, a California Limited Liability Company,**
9 **and DOES ONE TO TEN, inclusive,** are ascertained.

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

14 10. Defendants **SEARS, ROEBUCK & CO., a New York Corporation, dba SEARS**
15 **TOWER, MANHATTAN HACIENDA PROPERTY CO., LLC, a California Limited Liability**
16 **Company, and DOES ONE TO TEN, inclusive,** are the owners and operators of "SEARS TOWER"
17 store, located at Hollywood, California. This retail store, including, but not limited to, parking spaces
18 and access aisles and access routes, are each a part of a "public accommodation or facility" subject to
19 the requirements of *California Health & Safety Code* § 19955, *et seq.*, and of *California Civil Code* §§
20 51, 52(a), 54, 54.1, *et seq.* On information and belief, this "SEARS TOWER" store was constructed
21 and/ or altered after 1990 which has subjected the "SEARS TOWER" store to handicapped access
22 requirements per *California Health & Safety Code* § 19959, and applicable portions of *California Code*
23 *of Regulations*, Title 24, (the State Building Code).

24 11. On or about July 13, 2000, Plaintiff **JAMES COLLINS,** visited the "SEARS TOWER"
25 store in Hollywood, California for the purpose of making a purchase. Defendants **SEARS, ROEBUCK**
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1 & CO., a New York Corporation, dba SEARS TOWER, MANHATTAN HACIENDA
2 PROPERTY CO., LLC, a California Limited Liability Company, and DOES ONE TO TEN,
3 inclusive, interfered with Plaintiff's access to the "SEARS TOWER" store as set forth in Paragraph 3
4 above.

5 Said acts and omissions denied Plaintiff legal handicapped access to the "SEARS TOWER"
6 store according to federal and state law.

7
8 12. Plaintiff encountered and/or is informed and believes that the following architectural
9 barriers, which violate the requirements of the *California Code of Regulations* Title 24 and *ADAAG*,
10 existed and continue to exist thereby denying Plaintiff and those similarly situated full and equal access
11 to the subject public facility as set forth in Paragraph 3 above.

12 13. Defendants, and each of them, discriminated against Plaintiff JAMES COLLINS on the
13 basis of his physical disability, and interfered with his access to the "SEARS TOWER" establishment,
14 in violation of both California law including, but not limited to, *California Civil Code* §§ 51, 51.5, 54,
15 54.1, and a violation of Title III, §302, the "Prohibition of Discrimination" provision and §503, the
16 "Prohibition Against Retaliation or Coercion" provision of the *Americans with Disabilities Act of 1990*.

17
18 14. As a result of the actions and failure to act of defendants, and each of them, and as a
19 result of the failure to provide appropriate handicapped parking, proper handicapped signage, proper
20 handicapped accessible entryways, and handicapped accommodations for dressing rooms, Plaintiff
21 JAMES COLLINS suffered and will suffer a loss of his civil rights to full and equal access to public
22 facilities, and further suffered and will suffer emotional distress, mental distress, mental suffering,
23 mental anguish, which includes shame, humiliation, embarrassment, anger, chagrin, disappointment and
24 worry, expectedly and naturally associated with a person with a physical disability being denied access
25 to a public accommodation, all to his damages as prayed hereinafter in an amount within the jurisdiction
26 of this court.
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1 I.

FIRST CAUSE OF ACTION:

2 VIOLATION OF *THE AMERICANS WITH DISABILITIES ACT OF 1990* (On Behalf of
3 Plaintiff JAMES COLLINS and Against Defendants SEARS, ROEBUCK & CO., a New
4 York Corporation, dba SEARS TOWER, MANHATTAN HACIENDA PROPERTY CO.,
5 LLC, a California Limited Liability Company, and DOES ONE TO TEN, inclusive) (42
6 *USC* §12101 *et seq.*)

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

10 16. Pursuant to law, in 1990 the United States Congress made findings per 42 *USC* § 12101
11 regarding persons with physical disabilities, finding that laws were needed to more fully protect
12 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended
13 to isolate and segregate individuals with disabilities; [that] such forms of discrimination against
14 individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's
15 proper goals regarding individuals with disabilities are to assure equality of opportunity, full
16 participation, independent living and economic self-sufficiency for such individuals; [and that] the
17 continuing existence of unfair and unnecessary discrimination and prejudice denies people with
18 disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our
19 free society is justifiably famous.

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

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

3 18. As part of the *Americans with Disabilities Act of 1990*, Public Law 101-336 (hereinafter
4 the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private
5 Entities" (42 *USC* § 12181 *et seq.*). Among the public accommodations identified for purposes of this
6 title were "a bakery, restaurant, bar or other establishment serving food or drink, grocery store, clothing
7 store, hardware store, shopping center or other sales or rental establishment."
8

9 19. Pursuant to 42 *USC* § 12182,

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

14 20. Among the general prohibitions against discrimination were included in 42 *USC*
15 §12182(b)(1)(A)(i):

16 **Denial of participation.** It shall be discriminatory to subject an individual or
17 class of individuals on the basis of a disability or disabilities of such individual or class,
18 directly, or through contractual, licensing, or other arrangements, to a denial of the
19 opportunity of the individual or class to participate in or benefit from the goods, services,
20 facilities, privileges, advantages, or accommodations of an entity.

21 21. Among the general prohibitions against discrimination were included in 42 *USC*
22 §12182(b)(1)(E):

23 **Association** -- It shall be discriminatory to exclude or otherwise deny equal
24 goods, services, facilities, privileges, advantages, accommodations, or other opportunities
25 to an individual or entity because of the known disability of an individual with whom the
26 individual or entity is known to have a relationship or association.
27

28 The acts of defendants set forth herein were a violation of Plaintiff's rights under the ADA, Public Law

1 101-336, and the regulations promulgated thereunder, 28 *CFR* Part 36 et seq.

2 22. Among the general prohibitions against discrimination were included in 42 *USC* §
3 12182(b)(2)(A)(i) and 42 *USC* § 12182(b)(2)(A)(ii):

4 **Discrimination.** For purposes of subsection (a), discrimination includes -

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

10 (ii) a failure to make reasonable modifications in policies, practices, or
11 procedures, when such modifications are necessary to afford such goods, services,
12 facilities, privileges, advantages, or accommodations to individuals with disabilities,
13 unless the entity can demonstrate that making such modifications would fundamentally
14 alter the nature of such goods, services, facilities, privileges, advantages, or
15 accommodations.

16 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices and
17 procedure for entry to the "SEARS TOWER" facility by persons with disabilities and their companions
18 as established by the defendants can be simply modified to eliminate disparate and discriminatory
19 treatment of persons with disabilities by properly constructing barrier free handicapped access for safe
20 and full and equal enjoyment of the "SEARS TOWER" store as that enjoyed by other people.

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

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

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

6 25. Among the specific prohibitions against discrimination were included, in 42 *USC* §
7 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications barriers that are
8 structural in nature, in existing facilities...where such removal is readily achievable;" and (v) "where
9 and entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a
10 failure to make such goods, services, facilities, privileges, advantages, or accommodations available
11 through alternative methods if such methods are readily achievable." The acts of Defendants set forth
12 herein were a violations of Plaintiff's rights under the "ADA," Public Law 101-336, and the regulations
13 promulgated thereunder, 28 *CFR* Part 36, *et seq.*

14
15 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged were at all
16 times after 1990 "readily achievable." On information and belief, if the removal of all the barriers
17 complained of here together were not "readily achievable," the removal of each individual barrier
18 complained of herein was "readily achievable."

19
20 27. Per 42 *USC* § 12181(9), "The term 'readily achievable' means easily accomplishable and
21 able to be carried out without much difficulty or expense." The statute and attendant regulations define
22 relative "expense" in relation to the total financial resources of the entities involved, including any
23 "parent" companies. Plaintiff alleges that properly repairing each of the items that Plaintiff complains of
24 herein is readily achievable, including but not limited to correcting and repairing the items set forth in
25 Paragraph 3 above.

26
27 The changes needed to remove barriers to access for the disabled were and are "readily
28 achievable" by the defendants under standards set forth under 42 *USC* § 12181 of the *Americans with*

1 **Disabilities Act of 1990.** (Further, if it was not "readily achievable" for defendants to remove all such
2 barriers, defendants have failed to make the required services available through alternative methods,
3 although such methods are achievable as required by 42 *USC* §12181(b)(2)(a)(iv), (v).)

4 28. Pursuant to the *Americans with Disabilities Act of 1990*, §308 (42 *USC* § 12188 *et seq.*),
5 Plaintiff is entitled to the remedies and procedures set forth in the *Civil Rights Act of 1964* §204(a), (42
6 *USC* § 2000a-3(a)), as Plaintiff is being subjected to discrimination on the basis of disability in violation
7 of this title and/or Plaintiff has reasonable grounds for believing that he is about to be subjected to
8 discrimination in violation of *Americans With Disabilities Act of 1990* §302. Plaintiff cannot return to
9 or make use of the public facilities complained of herein for the purpose of entry and provision of goods
10 and service so long as defendants continue to apply eligibility criteria, policies, practices and procedures
11 to screen out and refuse to allow entry and service to persons with disabilities such as Plaintiff's.

12
13 29. Defendants', and each of their acts and omissions of failing to provide barrier free
14 handicapped access for Plaintiff, were tantamount to interference, coercion or intimidation pursuant to
15 *Americans With Disabilities Act of 1990* §503(b) (now 42 *USC* § 12203):

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

20 30. Per *Americans With Disabilities Act of 1990* § 308(a)(1) (now 42 *USC* § 12188),
21 "Nothing in this section shall require a person with a disability to engage in a futile gesture if such
22 person has actual notice that a person or organization covered by this title does not intend to comply
23 with its provisions." Pursuant to this last section, Plaintiff, on information and belief, alleges that
24 defendants have continued to violate the law and deny the rights of Plaintiff and other disabled persons
25 to access this public accommodation for the purpose of lodging. Therefore, Plaintiff seeks injunctive
26 relief pursuant to §308(a)(2),
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1 "... Where appropriate, injunctive relief shall also include requiring the provision
2 of an auxiliary aid or service, modifications of a policy, or provision of alternative
3 methods, to the extent required by this title."

4 31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the *Civil Rights Act of*
5 *1964* (42 USC § 2000a-3(a), and pursuant to federal regulations adopted to implement the *Americans*
6 *with Disabilities Act of 1990*, including but not limited to an order granting injunctive relief and
7 attorneys' fees. Such attorneys' fees, "including litigation expenses and costs," are further specifically
8 provided for by §505 of Title III.

9 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

10 **II. SECOND CAUSE OF ACTION**
11 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL**
12 **DISABILITIES (On Behalf of Plaintiff JAMES COLLINS and Against Defendants SEARS,**
13 **ROEBUCK & CO., a New York Corporation, dba SEARS TOWER, MANHATTAN**
14 **HACIENDA PROPERTY CO., LLC, a California Limited Liability Company, and DOES**
15 **ONE TO TEN, inclusive) (California Health & Safety Code § 19955, et seq.)**

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

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

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

1 34. *California Health & Safety Code* § 19956, which appears in the same chapter as §19955,
2 provides in pertinent part, “accommodations constructed in this state shall conform to the provisions of
3 Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the *Government Code*...”
4 *California Health & Safety Code* § 19956 was operative July 1, 1970, and is applicable to all public
5 accommodations constructed or altered after that date. On information and belief, portions of “SEARS
6 TOWER” and/or of its buildings, were constructed and/or altered after July 1, 1970, and substantial
7 portions of said building had alterations, structural repairs, and/or additions made to such public
8 accommodations after July 1, 1970, thereby requiring said public accommodations and/or buildings to
9 be subject to the requirements of Part 5.5, *California Health & Safety Code* § 19955, *et seq.*, upon such
10 alteration, structural repairs or additions per *California Health & Safety Code* § 19959.

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

23 36. Public facilities, such as “SEARS TOWER” are public accommodations or facilities
24 within the meaning of *California Health & Safety Code* § 19955, *et seq.*

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

7
8 38. Plaintiff **JAMES COLLINS** and other similarly situated persons with physical
9 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and service animals
10 are unable to use public facilities on a "full and equal" basis unless each such facility is in compliance
11 with the provisions of the *California Health & Safety Code* § 19955, *et seq.* Plaintiff is a member of
12 that portion of the public whose rights are protected by the provisions of *California Health & Safety*
13 *Code* § 19955, *et seq.*

14
15 39. The *California Health & Safety Code* was enacted "[t]o ensure that public
16 accommodations or facilities constructed in this state with private funds adhere to the provisions of
17 Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government Code*." Such public
18 accommodations are defined to include retail stores.

19
20 40. Plaintiff is further informed and believes that as of the date of filing this Complaint,
21 Defendants have not made accessible the facilities at the subject store as set forth in Paragraph 3 above.

22
23 41. Plaintiff **JAMES COLLINS** is informed and believes, and therefore alleges, that
24 Defendants **SEARS, ROEBUCK & CO., a New York Corporation, dba SEARS TOWER,**
25 **MANHATTAN HACIENDA PROPERTY CO., LLC, a California Limited Liability Company,**
26 **and DOES ONE TO TEN, inclusive,** and each of them, caused the subject buildings constituting
27 "SEARS TOWER" to be constructed, altered and maintained in such a manner that persons with
28 physical disabilities were denied full and equal access to, within and throughout said buildings and were

1 denied full and equal use of said public facilities, and despite knowledge and actual and constructive
2 notice to such Defendants that the configuration of the store and/or buildings was in violation of the civil
3 rights of persons with physical disabilities, such as Plaintiff. Such construction, modification,
4 ownership, operation, maintenance and practices of such public facilities are in violation of law as stated
5 in Part 5.5, *California Health & Safety Code* § 19955, *et seq.*, and elsewhere in the laws of California.

6
7 42. On information and belief, the subject building constituting the public facilities of
8 "SEARS TOWER" denied full and equal access to Plaintiff and other persons with physical disabilities
9 in other respects due to non-compliance with requirement of Title 24 of the *California Code of*
10 *Regulations* and *California Health & Safety Code* § 19955, *et seq.*

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

22
23
24 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has been required to
25 incur legal expenses and hire attorneys in order to enforce his civil rights and enforce provisions of the
26 law protecting access for persons with physical disabilities and prohibiting discrimination against
27 persons with physical disabilities, and to take such action both in his own interests and in order to
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1 enforce an important right affecting the public interest. Plaintiff, therefore, seeks damages in this
2 lawsuit for recovery of all reasonable attorneys' fees incurred, pursuant to the provisions of the
3 *California Code of Civil Procedure* § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to
4 *California Health & Safety Code* § 19953 and *California Civil Code* §§ 54.3 and 55.

5 45. Defendants, and each of them, at times prior to and including July 13, 2000, and
6 continuing to the present time, knew that persons with physical disabilities were denied their rights of
7 equal access to all portions of this public facility. Despite such knowledge, Defendants failed and
8 refused to take steps to comply with the applicable access statutes; and despite knowledge of the
9 resulting problems and denial of civil rights thereby suffered by Plaintiff **JAMES COLLINS** and other
10 similarly situated persons with disabilities, including the specific notices referred to in paragraph 43 of
11 this Complaint. Defendants have failed and refused to take action to grant full and equal access to
12 persons with physical disabilities in the respects complained of hereinabove. Defendants and each of
13 them have carried out a course of conduct of refusing to respond to, or correct complaints about, denial
14 of handicap access. Such actions and continuing course of conduct by Defendants, evidence despicable
15 conduct in conscious disregard for the rights or safety of Plaintiff and of other similarly situated persons,
16 justifying an award of exemplary and punitive damages pursuant to *California Civil Code* § 3294.

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

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

5 48. As a result of the actions and failure of Defendants, and each of them, and as a result of
6 the failure to provide proper accessible public facilities, Plaintiff **JAMES COLLINS** was denied his
7 civil rights, including his right to full and equal access to public facilities, was embarrassed and
8 humiliated, suffered physical, psychological and mental injuries and emotional distress, mental distress,
9 mental suffering, mental anguish, which includes shame, humiliation, embarrassment, anger, chagrin,
10 disappointment and worry, expectedly and naturally associated with a person with a physical disability
11 being denied access to a public accommodation.
12

13 WHEREFORE, Plaintiff prays for damages as hereinafter stated.
14

15 **III. THIRD CAUSE OF ACTION**

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

17 (On Behalf of Plaintiff **JAMES COLLINS** and Against Defendants **SEARS, ROEBUCK &**
18 **CO., a New York Corporation, dba SEARS TOWER, MANHATTAN HACIENDA**
19 **PROPERTY CO., LLC, a California Limited Liability Company, and DOES ONE TO**
20 **TEN, inclusive) (*California Civil Code* §§ 54, 54.1 and 54.3)**

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

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

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

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

7 Individuals with disabilities shall be entitled to full and equal access, as other
8 members of the general public, to accommodations, advantages, facilities, and privileges
9 of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars,
10 boats, or any other public conveyances or modes of transportation (whether private,
11 public, franchised, licensed, contracted, or otherwise provided), telephone facilities,
12 adoption agencies, private schools, hotels, lodging places, places of public
13 accommodation, amusement or resort, and other places to which the general public is
14 invited, subject only to the conditions and limitations established by law, or state or
15 federal regulation, and applicable alike to all persons. *California Civil Code* § 54.1(a).

16 52. On or about July 13, 2000, Plaintiff **JAMES COLLINS** suffered violations of *California*
17 *Civil Code* §§ 54 and 54.1 in that he was denied full and equal enjoyment of the goods, services,
18 facilities and privileges of said **SEARS TOWER**, as set forth in paragraph 3 above. Plaintiff was also
19 denied full and equal access to other particulars, including but not limited to those described
20 hereinabove. Plaintiff was also denied use of facilities that he was entitled to under Title III of the
21 *Americans with Disabilities Act of 1990*.

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

6
7 54. Plaintiff seeks damages for the violation of his rights as a disabled person on or about
8 July 13, 2000, according to proof, pursuant to *California Civil Code* § 54.3, including a trebling of all
9 statutory and actual damages, general and special, available pursuant to *California Civil Code* § 54.3(a).

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

20
21 56. The acts and omissions of defendants in failing to provide the required accessible
22 facilities subsequent to the enactment date and compliance date of the *Americans with Disabilities Act*
23 *of 1990*, and refusal to make remedial modifications and alterations to its handicapped parking,
24 handicapped signage, pathways, and other elements as hereinabove stated, after being notified by
25 patrons before and after the time of Plaintiff's visit and injuries, on or about July 13, 2000, and all times
26 prior thereto with the knowledge that persons with disabilities would enter defendants' premises, the
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1 reason given therefor, was an established policy, practice and procedure of refusing and denying entry,
2 thereby denying lodging and other services to a person with disabilities and the companions thereof,
3 evidence malice and oppression toward Plaintiff and other disabled persons.

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

11 58. Defendants have failed to establish a nondiscriminatory criteria, policy, practice and
12 procedure for entry into said "SEARS TOWER" store as hereinabove described.

13 59. As a result of defendants' continuing failure to provide for the full and equal enjoyment
14 of goods, services, facilities and privileges of said "SEARS TOWER" as hereinabove described,
15 Plaintiff has continually been denied his rights to full and equal enjoyment of the subject retail store, as
16 it would be a "futile gesture" to attempt to patronize said "SEARS TOWER" with the discriminatory
17 policy in place as hereinabove described.

18 60. The acts and omissions of defendants as complained of herein in failing to provide the
19 required accessible facilities subsequent to the enactment date and compliance date of the *Americans*
20 *with Disabilities Act of 1990* and refusal to make remedial modifications and alternations to the
21 architectural barriers as stated herein and in failing to establish practices, policies and procedures to
22 allow safe access by persons who are disabled are continuing on a day-to-day basis to have the effect of
23 wrongfully and willfully excluding Plaintiff and other members of the public who are physically
24 disabled, from full and equal enjoyment of the subject "SEARS TOWER" as hereinabove described.

1 Such acts and omissions are the continuing cause of humiliation and mental and emotional suffering of
2 Plaintiff in that these actions continue to treat Plaintiff as an inferior and second class citizen and serve
3 to discriminate against him on the sole basis that he is a physically disabled. Plaintiff is unable, so long
4 as such acts and omissions of defendants continue, to achieve full and equal enjoyment of the goods and
5 services of said "SEARS TOWER" as described hereinabove. The acts of defendants have legally
6 caused and will continue to cause irreparable injury to Plaintiff if not enjoined by this court.
7

8 61. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin any
9 continuing refusal by defendants to permit entry to said "SEARS TOWER" and to serve Plaintiff or
10 others similarly situated, and to require defendants to comply forthwith with the applicable statutory
11 requirements relating to the full and equal enjoyment of goods and services as described hereinabove for
12 disabled persons. Such injunctive relief is provided by *California Civil Code* § 55. Plaintiff further
13 requests that the court award statutory costs and attorneys' fees to Plaintiff pursuant to *California Civil*
14 *Code* § 55 and *California Code of Civil Procedure* § 1021.5, all as hereinafter prayed for.
15

16 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees and costs
17 of suit, as allowed by statute and according to proof, and appropriate exemplary damages.
18

19 **IV. FOURTH CAUSE OF ACTION**

20 **VIOLATIONS OF *UNRUH CIVIL RIGHTS ACT* (On Behalf of Plaintiff JAMES COLLINS**
21 **and Against Defendants SEARS, ROEBUCK & CO., a New York Corporation, dba SEARS**
22 **TOWER, MANHATTAN HACIENDA PROPERTY CO., LLC, a California Limited**
23 **Liability Company, and DOES ONE TO TEN, inclusive) (*California Civil Code* §§ 51 and**
24 **51.5)**

25 62. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the
26 allegations contained in paragraphs 1 through 61 of this Complaint and incorporates them herein as if
27 separately repled.
28

63. Defendants' acts and omissions as specified with regard to the discriminatory treatment
of Plaintiff JAMES COLLINS on the basis of his physical disabilities, have been in violation of
California Civil Code §§ 51 and 51.5, the *Unruh Civil Rights Act*, and have denied to Plaintiff his

1 rights to "full and equal accommodations, advantages, facilities, privileges or services in all business
2 establishments of every kind whatsoever."

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

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

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

17 WHEREFORE, Plaintiff prays that this court award damages and provide relief as follows:

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20 **PRAYER FOR RELIEF**

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

22
23 1. Grant injunctive relief requiring that defendants establish a non-discriminatory criteria
24 policy, practice and procedure permitting entry into the **SEARS TOWER** store in Hollywood,
25 California, for the purpose of services according to *California Civil Code* §§ 51, 51.5, 52, 54, 54.1, 54.3,
26 *et seq.*, and Title III of the *Americans with Disabilities Act of 1990*, and grant injunctive relief requiring
27 that Defendants repair and render safe to handicapped persons, and otherwise make handicapped-
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1 accessible, all public areas of the store, including but not limited to:

2 **I. EXTERIOR SURVEY:**

3 **A. NORTH SIDE:**

4 1. Provide a complying path of travel from the public sidewalk to the store entrance
5 in compliance with California Title 24 § 1127B.

6 2. Provide for the 6 accessible parking spaces on the northeast side not require a
7 person to travel behind a parked vehicle other than their own in compliance with California Title
8 24 § 1129B.1 / Table 11B-7.

9 3. Place detectable warnings where the path of travel from the north store
10 exit/entrance crosses the parking lot driveway in compliance with California Title 24 §
11 1133B.8.5.

12 4. Expand the sidewalk on the northeast side of Sears in compliance with California
13 Title 24 § 1023.1; 1133B.3 & 7.

14 5. Place a curb cut between the sidewalk and driveway in compliance with
15 California Title 24 § 1127B.5..8.

16 6. Remodel the pass thru window at the Watch Repair Office and shelf extending
17 off the wall enlarging the width of the sidewalk to 48" in compliance with California Title 24 §
18 1023.1; 1133B.3 & 7.

19 7. Remodel the entry door on H & R Block in compliance with California Title 24 §
20 1004.14, 1133B.2.2.4.

21 8. Correct the entry door on H & R Block to include a smooth surface in compliance
22 with California Title 24 § 1003.15, 1133B.2.6.

23 **B. SOUTH SIDE:**

24 1. Install complying handrails on both sides of the entry stairs to the closed entrance
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1 on the south side that have 1 handrail down the center in compliance with California Title 24 §
2 1006.9a, 1133B.4.1.

3 2. Extend the handrails past the bottom or top tread in compliance with California
4 Title 24 § 1006.9.2a, 1133B.4.2.2.

5 3. Place tread markings on the stairs in compliance with California Title 24 §
6 1006.16.1, 1133B.4.4.

7 4. Correct the entrance off Santa Monica Boulevard to include a ramp if necessary
8 and provide for a complying path of travel from Santa Monica Boulevard to the entrance in
9 compliance with California Title 24 § 1127B.

10 5. Provide sufficient signage in this area indicating the long path of travel to the
11 accessible entrance in compliance with California Title 24 § 1127B.3.

12
13 **II. INTERIOR SURVEY**

14 **A. FIRST FLOOR:**

15 1. Reduce the door opening pressure to the Optical Shop on the east side of the
16 Patio in compliance with California Title 24 § 1004.13, 1133B.2.5.1.

17 2. Reduce the door opening pressure to the Home Appliances Shop on the west side
18 of the Patio in compliance with California Title 24 § 1004.13, 1133B.2.5.1.

19 3. Remodel the slope of the exterior entry landing varies in compliance with
20 California Title 24 § 1004.9.2.1a, 1133B.1.1 which requires a 60" clear level landing with less
21 than a 2% slope in the direction of the door swing, and 44" in the opposite direction of the door
22 swing.

23 4. Provide a public elevator in this 4-story building in compliance with California
24 Title 24 § 1103B.1 which requires retail sales facilities to have an elevator to all levels.

25 5. Provide handrails that extend past the top and bottom treads in the exit stairs by
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1 the Shoe Department to the upper and lower floors in compliance with California Title 24 §
2 1006.9.2a, 1133B.4.2.2.

3 6. Replace the handrails in compliance with California Title 24 § 1006.9.2a,
4 1133B.4.2.6.

5 7. Lower the handrails in compliance with California Title 24 § 1006.9.2a.1,
6 1133B.4.2.1.

7 8. Replace the center handrail with one that is continuous in compliance with
8 California Title 24 § 1006.9.2a, 1133B.4.2.4.

9 9. Place complying tread markings in compliance with California Title 24 §
10 1006.16.1, 1133B.4.4.

11 10. Remove the bottom 2 treads which extend into the path of travel leading to the
12 stairs to the lower floor which can be a tripping hazard.

13 11. Replace the jewelry counter with a section that is in compliance with California
14 Title 24 § 1122B.4.

15 12. Replace that handrails in the exit stairs at the northeast corner to the upper and
16 lower floors with one that extend 12" past the top and bottom landings in compliance with
17 California Title 24 § 1006.9.2a, 1133B.4.2.2.

18 13. Replace the handrails so the diameter is in compliance with California Title 24 §
19 1006.9.2a.6, 1133B.4.2.6.

20 14. Lower the handrails in compliance with California Title 24 § 1006.9.2a.1,
21 1133B.4.2.1.

22 15. Replace the center handrail so it is continuous in compliance with California Title
23 24 § 1006.9.2a, 1133B.4.2.4.

24 16. Provide complying tread markings in compliance with California Title 24 §
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1 1006.16.1, 1133B.4.4.

2 17. Lower the perfume counter in compliance with California Title 24 § 1122B.4.

3 18. Lower the pounds of pressure required to open the door to the men's restroom in
4 the lower level (or basement) in compliance with California Title 24 § 1004.13, 1133B.2.5.1.

5 19. Install a visual emergency warning device in compliance with California Title 24
6 § 1114B.2.5.

7 20. Replace the handrails on the exit stairs on the north side of the building to extend
8 12" past the top and bottom treads as required by California Title 24 § 1006.9.2a, 1133B.4.2.2.

9 21. Replace the handrails with a diameter in compliance with California Title 24 §
10 1006.9.2a.6, 1133B.4.2.6.

11 22. Lower the handrails in compliance with California Title 24 § 1006.9.2a.1,
12 1133B.4.2.1.

13 23. Install a center rail which is continuous in compliance with California Title 24 §
14 1006.9.2a, 1133B.4.2.4.

15 24. Place complying tread markings on the steps in compliance with California Title
16 24 § 1006.16.1, 1133B.4.4.

17 25. Replace the Hardware door #3 knob in compliance with California Title 24 §
18 1004.14, 1133B.2.2.4.

19 26. Lower the sales counter in the tool area in compliance with California Title 24 §
20 1122B.4.

21 27. Replace the handrails on the exit stairs on the northwest corner of the building to
22 extend 12" past the top and bottom treads as required by California Title 24 § 1006.9.2a,
23 1133B.4.2.2.

24 28. Replace the handrails with a diameter in compliance with California Title 24 §
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1 1006.9.2a.6, 1133B.4.2.6.

2 29. Lower the handrails in compliance with California Title 24 § 1006.9.2a.1,
3 1133B.4.2.1.

4 30. Install a center rail which is continuous in compliance with California Title 24 §
5 1006.9.2a, 1133B.4.2.4.

6 31. Place complying tread markings on the steps in compliance with California Title
7 24 § 1006.16.1, 1133B.4.4.

8 32. Replace the knobs of the doors to the stockroom in compliance with California
9 Title 24 § 1004.14, 1133B.2.2.4.

10
11 **B. SECOND FLOOR:**

12 1. Replace the handrails on the exit stairs on the northwest corner of the building to
13 extend 12" past the top and bottom treads as required by California Title 24 § 1006.9.2a,
14 1133B.4.2.2.

15 2. Replace the handrails with a diameter in compliance with California Title 24 §
16 1006.9.2a.6, 1133B.4.2.6.

17 3. The handrails are 41" high in compliance with California Title 24 § 1006.9.2a.1,
18 1133B.4.2.1.

19 4. Install a center rail which is continuous in compliance with California Title 24 §
20 1006.9.2a, 1133B.4.2.4.

21 5. Install complying tread markings on the steps in compliance with California Title
22 24 § 1006.16.1, 1133B.4.4.

23 6. Lower the counter top in the photography studio in compliance with California
24 Title 24 § 1122B.4.

25 7. Replace the handrails on the exit stairs on the northeast corner of the building to
26

27
28

1 **Civil Code** § 3294;

2 6. Remedies and Procedures available under *Americans with Disabilities Act of 1990* §§
3 107, 203 and 308;

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

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

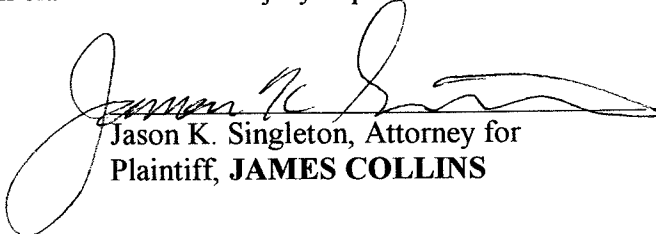
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11 Dated: March 9, 2001


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

12
13 **REQUEST FOR JURY TRIAL**

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

15
16 Dated: March 9, 2001


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