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CENTRAL DISTRICT OF CALIFORNIA
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ATTORNEY FOR PLAINTIFF,
JAMES COLLINS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES COLLINS,

Plaintiff,

v.

) Case No. 01-9922 DT (Mex)
)
) Civil Rights

CITY OF INDIO, a Public Entity; SEARS,
ROEBUCK & CO., a New York corporation;
PASEO GROUP, a California Limited
Partnership; THE INDIO FASHION MALL
MERCHANTS ASSOCIATION, INC., a
California Corporation, and DOES ONE TO
TEN, inclusive,

Defendants.

) 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

Plaintiff JAMES COLLINS complains of defendants CITY OF INDIO, a Public Entity;
SEARS, ROEBUCK & CO., a New York Corporation; PASEO GROUP, a California Limited
Partnership; THE INDIO FASHION MALL MERCHANTS ASSOCIATION, INC., a California
Corporation, 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 same facts, are
also brought under California law, including but not limited to violations of *California Health &*

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1 **Safety Code** § 19955, *et seq.*, including **California Code of Regulations**, Title 24, § 19959,
2 **California Civil Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55.

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

6
7 **INTRODUCTION**

8 3. **The Indio Fashion Mall** is located at 82227 Highway 111, Indio, California. Said
9 retail mall is owned and operated by defendants **CITY OF INDIO, a Public Entity; SEARS,**
10 **ROEBUCK & CO., a New York Corporation; PASEO GROUP, a California Limited**
11 **Partnership; THE INDIO FASHION MALL MERCHANTS ASSOCIATION, INC., a California**
12 **Corporation, and DOES ONE TO TEN, inclusive.**

13
14 Defendants **CITY OF INDIO, a Public Entity; SEARS, ROEBUCK & CO., a New York**
15 **Corporation; PASEO GROUP, a California Limited Partnership; THE INDIO FASHION**
16 **MALL MERCHANTS ASSOCIATION, INC., a California Corporation, and DOES ONE TO**
17 **TEN, inclusive,** operate an establishment for services to the public and at which Defendants
18 failed to provide barrier free access to said establishment in conformity with both Federal and
19 California legal requirements. Further, Defendants failed to provide compliance as follows:

20 **Exterior Survey:**

21 **North Side.**

- 22
23 1) Three accessible parking spaces. North side of Sears.
- 24 a. Two parking spaces are 8'6" wide in violation of California Title 24 §
25 1129B.4.1.
 - 26 b. The designated parking spaces do not have access aisle in violation of
27 California Title 24 § 1129B.4.1.
 - 28 c. Spaces are faded in violation of California Title 24 § 1129B.4.1.

- 1 2) Two Designated Parking Spaces. Facing each other. North of Sears.
- 2 a. The striping has faded in violation of California Title 24 § 1129B.4.1.
- 3 3) Two accessible parking spaces, Northeast of Sears.
- 4 a. The striping has faded in violation of California Title 24 § 1129B.4.1.
- 5 b. An individual must travel behind a parked vehicle other than their own in
- 6 violation of California Title 24 § 1129B.4.3.
- 7
- 8 4) People can walk directly across to the curb ramp from two parking spaces, the
- 9 others must travel down the driveway to the curbcut/ramp which is unnecessary
- 10 and dangerous in violation of California Title 24 § 1129B.4.3.

11 **East Side Of Mall:**

- 12 5) Curbcut on the east side of the mall creates a 7% to 8% cross slope on the
- 13 north/south sidewalk in violation of California Title 24 § 1133B.7.1.3
- 14

15 **South Side Of The Mall.**

- 16 6) The sidewalk is about 7'11" wide with a 3'10" wide mid-block curbcut (to outside
- 17 curbface) adjoining the driveway and provides wheelchair access from the parking
- 18 lot to the sidewalk. The remaining 4' of the sidewalk permits pedestrian traffic on
- 19 the east / west sidewalk instead of the mid-block curbcut in violation of California
- 20 Title 24 § 1127B.5.2
- 21
- 22 7) There is only one accessible parking space on this side of the mall and complying
- 23 spaces should be placed pursuant to California Title 24 § 1129B.1.
- 24 8) North/south sidewalk on east side of the truck dock ends at a curb on the south
- 25 end of the sidewalk in violation of California Title 24 § 1127B.5.1.

26 **West Side Of Truck Loading Dock.**

- 27 9) Mid-block curbcut on west of Truck Loading Dock is 3'11" wide to outside curbface
- 28 in violation of California Title 24 § 1127B.5.2

- 1 10) Designated Parking Space. Across from the Sears Merchandise Pick-Up.
- 2 a. One side of the striped space is about 16'6" long in violation of California
- 3 Title 24 § 1129B.4.1.
- 4 b. Parking space striping is faded in violation of California Title 24 § 1129B.4.1.
- 5 11) The slope of 10' wide loading ramp adjacent to Sears Merchandise Pick Up is 11%
- 6 to 12% and cannot be used as a complying entrance.
- 7
- 8 12) There is one designated parking space with fading stripes on south side in violation
- 9 of California Title 24 § 1129B.4.1
- 10 13) Curb with no curbcut next to loading ramp is in violation of California Title 24 §
- 11 1127B.5.1.
- 12 14) Sidewalk In Front Of Four Entry/exits.
- 13 a. The sidewalk is about 36" wide in violation of California Title 24 §
- 14 1133B.7.1.
- 15 b. Exterior entry door landings is about 3'4" in direction of door swing in
- 16 violation of California Title 24 § §1115B.4.2, 1133B.2.4, & 1003.3.1.6a.
- 17 c. Has 6"-7" high curb without a curbcut to access the sidewalk in violation of
- 18 California Title 24 § 1127B.5.1.
- 19
- 20 15) Four Entry / Exits.
- 21 a. The door buzzers are 44" to 60" high in violation of California Title 24 §
- 22 1118B.5, California Title 24 § 1118B.6.
- 23
- 24 16) Asphalt Curbramp.
- 25 a. Running slope of 76" long curbramp varies from 10% to 10.5% in violation of
- 26 California Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2.
- 27 b. Slope of Left side flare is 13.8% and slope of right side flare is 16% in
- 28 violation of California Title 24 § 1127B.5.3

- 1 c. The walking surface is about 36" wide in violation of California Title 24 §
2 1127B.5.2
- 3 d. There is no 12" wide grooved surface across the top of the ramp in violation
4 of California Title 24 § 1127B.5.7
- 5 e. Curbramp extends into driveway in violation of ADAAG 4.7.6 & 4.6.3.
- 6
- 7 17) There is about a 10" wide by ¾" to 1" deep cutout in the pavement that is a tripping
8 hazard in violation of California Title 24 § 1133B.7.1.
- 9 18) The East/West sidewalk ends at a curb on the southwest corner of the Mall in
10 violation of California Title 24 § 1127B.5.1.

11 **West Side:**

- 12 19) Two designated parking spaces.
- 13 a. Slope of the first space varies from 3% to 5% in violation of California Title
14 24 § 1129B.4.4
- 15 b. Two spaces require a person to travel behind a parked vehicle other than
16 their own to access the sidewalk in violation of California Title 24 §
17 1129B.4.3.
- 18
- 19 20) Asphalt Curbramp.
- 20 a. Running slope of 72" long curbramp varies from 7% to 14% in violation of
21 California Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2.
- 22 b. Slope of left side flare is 25% and slope of right side flare is 23% in violation
23 of California Title 24 § 1127B.5.3
- 24 c. The walking surface is about 36" wide in violation of California Title 24 §
25 1127B.5.2
- 26 d. There is no 12" wide grooved surface across the top of the ramp in violation
27 of California Title 24 § 1127B.5.7
- 28

- 1 e. The curbramp extends into driveway in violation of ADAAG 4.7.6 & 4.6.3.
- 2 21) Three designated Parking Spaces. Adjacent to "Factory To You" store.
- 3 a. One parking space requires an individual to travel behind a parked vehicle
- 4 other than their own in violation of California Title 24 § 1129B.4.3.
- 5 22) Curbcut. Adjacent to "Factory To You" store.
- 6 a. The running slope varies from 6.5% to 9.1% in violation of California Title 24
- 7 § 1127B.5.3 ADAAG 4.7.2 & 4.8.2
- 8 b. Slope of left side flare is 20% and slope of right side flare is 29% in violation
- 9 of California Title 24 § 1127B.5.3
- 10 c. No 12" wide grooved surface across top and sides in violation of California
- 11 Title 24 § 1127B.
- 12 d. Slight asphalt build-up at the bottom of the ramp and then into a swail in
- 13 violation of California Title 24 § 1127B.5.5
- 14
- 15
- 16 23) The sidewalk ends at a curb on the northwest corner of the "Factory To You" in
- 17 violation of California Title 24 § 1127B.5.1.
- 18 24) There are non-accessible entrances to the "Factory To You" store without signage
- 19 indicating the location of the accessible entrances in violation of California Title 24
- 20 § 1117B.5 through 1117B.5.10.
- 21

22 **North Side.**

- 23 25) The sidewalk along the north side of "Factory To You" is 3'6" wide in violation of
- 24 California Title 24 § 1133B.7.1.
- 25 26) There is a hole in the pavement that is a tripping hazard the north side of the
- 26 "Factory To You" in violation of California Title 24 § 1133B.7.1.
- 27 27) An 11' Long 10' Wide Curbramp -- Northeast corner of "Factory To You".
- 28 a. The running slope is 7.2% at bottom, 12% in the middle, and about 13%

- 1 near the top in violation of California Title 24 § 1133B.5.3
- 2 b. No 12" wide grooved surface across the top in violation of California Title 24
- 3 § 1127B.5.7
- 4 c. Right side flare slope is 62% and left side flare slope is 71% in violation of
- 5 California Title 24 § 1127B.5.3
- 6 d. Slope of top landing is 3.2% in violation of California Title 24 § 1127B.5.4
- 7
- 8 28) There is a 3.5" by 4.5" by 1.5" deep hole in the sidewalk on northeast corner of
- 9 "Factory To You" in violation of California Title 24 § 1133B.7.1.
- 10 29) Slope of exterior entry door landing to door on north side of Mall and east of
- 11 "Factory To You" is 3% to 4% in violation of California Title 24 § 1115B.4.2,
- 12 1133B.2.4, & 1003.3.1.6a.
- 13
- 14 30) Curbcut.
- 15 a. The running slope is 10% at the bottom and 10.7% near the top in violation
- 16 of California Title 24 § 1133B.5.3
- 17 b. Slope of left side flare is 21% and slope of the right side flare is 25% in
- 18 violation of California Title 24 § 1127B.5.3
- 19 c. The curbcut is 3'8" wide at the bottom in violation of California Title 24 §
- 20 1127B.5.2
- 21
- 22 31) The cross slope of the East/West sidewalk varies from 7% to 9% for about 60' in
- 23 violation of California Title 24 § 1133B.7.1.3
- 24 32) The running slope of the East/West sidewalk adjacent to the Mall entry is up to
- 25 12% for up to 30" in violation of California Title 24 § 1133B.5 as a pedestrian ramp.
- 26 California Title 24 § 1023.1 /1133B.7.3
- 27 33) East West Sidewalk. Near West Entrance to Mall with four double doors.
- 28 a. The sidewalk has a 6% to 8% cross slope and a 5% direction of travel slope

1 in violation of California Title 24 § 1133B.7.1.3

2 b. There is a zero curb face in front of the Mall entry in violation of California
3 Title 24 § 1133B.8.3 through 1133B.8.5, 1127B.5.8

4 34) Three Entries. Lead to the mall business.

5 a. The sidewalk is about 36" wide in violation of California Title 24 §
6 1133B.7.1.

7
8 b. Exterior entry door landings are about 3'4" in direction of door swing in
9 violation of California Title 24 § 1115B.4.2, 1133B.2.4, & 1003.3.1.6a.

10 c. Has 6"-7" high curb without a curbcut to access the sidewalk in violation of
11 California Title 24 § 1127B.5.1.

12 35) Sidewalk. Adjacent to B-8.

13 a. The cross slope varies from 3% to 4.8% in violation of California Title 24 §
14 1133B.7.1.3

15
16 b. There are ¾" wide by ½" deep grooves in the walkway that can be a tripping
17 hazard in violation of California Title 24 § 1133B.7.1.

18 36) Curbcut. Across from Mall Middle Entry where sidewalk from public sidewalk
19 terminates at the driveway.

20 a. The bottom gutter slopes upward at 12% in violation of California Title 24 §
21 1127B.5.3

22
23 b. Slope of right side flare is 18% and slope of left side flare is 18.5% in
24 violation of California Title 24 § 1127B.5.3

25 c. There is no top landing in violation of California Title 24 § 1127B.5.4

26 d. The running slope is up to 10% in violation of California Title 24 §
27 1127B.5.3, ADAAG 4.7.2 & 4.8.2

28 37) There is a steel plate in the North/South sidewalk from the public sidewalk that is

1 raised 3/4" to 1 1/2" in violation of California Title 24 § 1133B.7.1.

2 38) Curbcut. Adjacent to Main Entrance.

3 a. Running slope is 8.5% at bottom in violation of California Title 24 §
4 1133B.7.1.

5 b. No 1/2" lip at the bottom in violation of California Title 24 § 1127B.5.5

6
7 **Property On West Side Of The Mall.**

8 39) Mattress Factory Direct.

9 a. There is a zero curb face in front of the entrance in violation of California
10 Title 24 § 1133B.8.3 through 1133B.8.5, 1127B.5.8

11 **82013 Highway 111; Sandoval Real Estate.**

12 40) One Designated Parking Space.

13 a. Access aisle on driver's side in violation of California Title 24 § 1129B.4.1.

14 b. There is a swail running through the space in violation of California Title 24
15 § 1129B.4.4

16
17 41) Curbcut. Front of Meat Market, 82001-A

18 a. Slope at bottom is 8.2% at bottom and 8.9% near top in violation of
19 California Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2.

20 42) Asphalt Curbramp. Front of Valley Meat Market.

21 a. No 12" wide grooved surface at top in violation of California Title 24 §
22 1127B.5.7

23
24 b. Slope is 9.4% at bottom and 8.3% at top in violation of California Title 24 §
25 1127B.5.3, ADAAG 4.7.2 & 4.8.2.

26 c. Slope of left side flare is 51% and right side flare is vertical upward in
27 violation of California Title 24 § 1127B.5.3

28 d. No 1/2" lip at bottom in violation of California Title 24 § 1127B.5.5

- 1 43) Curbramp. West side of liquor store.
- 2 a. Extends into drive aisle about 36" in violation of ADAAG 4.7.6
- 3 b. Running slope is about 15% - 17% in violation of California Title 24 §
- 4 1127B.5.3, ADAAG 4.7.2 & 4.8.2
- 5 c. About 36" wide in violation of California Title 24 § 1133B.7.1.
- 6
- 7 44) Designated Parking Space. Adjacent to Mulan Chinese Food.
- 8 a. Not located near a curbcut in violation of California Title 24 § 1129B.4.3.
- 9 45) Two Designated Parking Spaces. Adjacent to Wells Fargo Bank.
- 10 a. A person is required to travel behind a parked vehicle other than their own
- 11 to access a building in violation of California Title 24 § 1129B.4.3.
- 12 b. There is not a curbcut to the sidewalk in front of the parking spaces in
- 13 violation of California Title 24 § 1127B.5.1.
- 14
- 15 46) Designated Parking Space. Next to Wells Fargo Bank.
- 16 a. Parking space striping is fading in violation of California Title 24 §
- 17 1129B.4.1.

18 **General Notes re Parking:**

19 There are about 19 designated parking spaces in the Mall parking lot and about

20 five in the West Side Strip Center parking lot, for a total 24 designated parking spaces.

21 Provide complying parking spaces per California Title 24 § 1129B.1--Table 11B-6.

22

23 **Mall Interior.**

- 24 1) Three Telephones.
- 25 a. All three are 54 ½" high in violation of California Title 24 § 1117B.2.6.
- 26 b. Where a bank of telephones in the interior of a building consists of three or
- 27 more public pay telephones, at least one public pay telephone in each such
- 28 bank shall be equipped with a shelf and outlet in compliance with ADAAG

1 4.13.(17)(d), 4.31.9(2).

- 2 c. There are four or more public phones and no Texttype Telephone (TTD) for
3 people with a hearing disability in violation of California Title 24 §
4 1117B.2.9.1

5 2) Men's Restroom. Three Lavatories

- 6 a. The entry door has 4'8" in direction of door swing in violation of California
7 Title 24 § 1115B.4.2, 1133B.2.4, & 1003.3.1.6a.
8 b. The seat cover dispenser in the designated Water Closet Stall is up behind
9 the water closet in violation of California Title 24 § 1115B.9.1.2
10 c. The seat cover dispenser is up 56" high in violation of California Title 24 §
11 1115B.9.1.2
12 d. There is not a complying opening handle on both sides of the stall door in
13 violation of California Title 24 § 1115B.7.1.4
14 e. There is a 28" high knee space under the lavatory in violation of California
15 Title 24 § 1504.1
16 f. The soap dispensers are 53" high in violation of California Title 24 §
17 1115B.9.1.2
18

19 3) Drinking Fountain. Adjacent to Gottschalks.

- 20 a. Extends 18" off the wall with 8" extending into path of travel between 27" –
21 80" high in violation of California Title 24 § 1117B.1.2.
22 b. The bubbler is 38" high in violation of California Title 24 § 1507.2.1.
23 c. A pipe under the drinking fountain restricts the knee clearance to 22" high in
24 violation of California Title 24 § 1507.1.
25
26

27 The above barriers interfered with Plaintiff's access and continue to deter Plaintiff from
28 visiting said facilities, and as a legal result, Plaintiff **JAMES COLLINS** suffers violation of his civil

1 rights to full and equal enjoyment of goods, services, facilities and privileges, and has and will
2 suffer embarrassment and humiliation.

3 **FACTUAL ALLEGATIONS**

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

12
13 5. Defendants **CITY OF INDIO, a Public Entity; SEARS, ROEBUCK & CO., a New**
14 **York Corporation; PASEO GROUP, a California Limited Partnership; THE INDIO FASHION**
15 **MALL MERCHANTS ASSOCIATION, INC., a California Corporation, and DOES ONE TO**
16 **TEN, inclusive,** at all times relevant herein were and are the owners and operators; lessors
17 and/or lessees, franchisers and/or franchisees, of public facilities known as the "**Indio Fashion**
18 **Mall,**" located at Indio, California, subject to the requirements of California state law requiring full
19 and equal access to public facilities pursuant to ***California Health & Safety Code*** § 19955, et
20 seq., ***California Civil Code*** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to Title
21 II and Title III of the ***Americans with Disabilities Act of 1990***, and to all other legal
22 requirements referred to in this Complaint. Plaintiff does not know the relative responsibilities of
23 defendants in the operation of the facilities herein complained of, and alleges a joint venture and
24 common enterprise by all such defendants.

25
26
27 6. Defendants **CITY OF INDIO, a Public Entity; SEARS, ROEBUCK & CO., a New**
28 **York Corporation; PASEO GROUP, a California Limited Partnership; THE INDIO FASHION**

1 **MALL MERCHANTS ASSOCIATION, INC., a California Corporation, and DOES ONE TO**
2 **TEN, inclusive** (hereinafter alternatively referred to collectively as "defendants"), at all times
3 relevant herein were and are owners, possessors, builders and keepers of the "Indio Fashion
4 **Mall "** in Indio, California.

5
6 7. Defendants **CITY OF INDIO, a Public Entity; SEARS, ROEBUCK & CO., a New**
7 **York Corporation; PASEO GROUP, a California Limited Partnership; THE INDIO FASHION**
8 **MALL MERCHANTS ASSOCIATION, INC., a California Corporation, and DOES ONE TO**
9 **TEN, inclusive** are the owners and operators of the subject "Indio Fashion Mall" at all times
10 relevant to this Complaint. Plaintiff is informed and believes that each of the defendants herein
11 is the agent, employee or representative of each of the other defendants, and performed all acts
12 and omissions stated herein within the scope of such agency or employment or representative
13 capacity and is responsible in some manner for the acts and omissions of the other defendants
14 in legally causing the damages complained of herein, and have approved or ratified each of the
15 acts or omissions of each other defendant, as herein described.

16
17 8. Plaintiff **JAMES COLLINS** does not know the true names and capacities of
18 defendants **CITY OF INDIO, a Public Entity; SEARS, ROEBUCK & CO., a New York**
19 **Corporation; PASEO GROUP, a California Limited Partnership; THE INDIO FASHION**
20 **MALL MERCHANTS ASSOCIATION, INC., a California Corporation, and DOES ONE TO**
21 **TEN, inclusive**, their business capacities, their ownership connection to the property and
22 business, nor their relative responsibilities in causing the access violations herein complained
23 of, and alleges a joint venture and common enterprise by all such defendants. Plaintiff is
24 informed and believes that each of the defendants herein, including **DOES ONE TO TEN,**
25 **inclusive**, is the agent, ostensible agent, master, servant, employer, employee, representative,
26 franchiser, franchisee, joint venturer, partner, and associate, or such similar capacity, of each of
27 the other defendants, and was at all times acting and performing, or failing to act or perform,
28

1 with the authorization, consent, permission or ratification of each of the other defendants, and is
2 responsible in some manner for the acts and omissions of the other defendants in legally
3 causing the violations and damages complained of herein, and have approved or ratified each of
4 the acts or omissions of each other defendant, as herein described. Plaintiff will seek leave to
5 amend this Complaint when the true names, capacities, connections and responsibilities of
6 defendants **CITY OF INDIO, a Public Entity; SEARS, ROEBUCK & CO., a New York**
7 **Corporation; PASEO GROUP, a California Limited Partnership; THE INDIO FASHION**
8 **MALL MERCHANTS ASSOCIATION, INC., a California Corporation, and DOES ONE TO**
9 **TEN, inclusive**, are ascertained.

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

15 10. Defendants **CITY OF INDIO, a Public Entity; SEARS, ROEBUCK & CO., a New**
16 **York Corporation; PASEO GROUP, a California Limited Partnership; THE INDIO FASHION**
17 **MALL MERCHANTS ASSOCIATION, INC., a California Corporation, and DOES ONE TO**
18 **TEN, inclusive**, are the owners and operators of "Indio Fashion Mall" located at Indio,
19 California. This shopping mall, including, but not limited to, parking spaces and access aisles
20 and access routes, are each a part of a "public accommodation or facility" subject to the
21 requirements of *California Health & Safety Code* § 19955, *et seq.*, and of *California Civil*
22 *Code* §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this "Indio Fashion Mall" was
23 constructed after 1990 which has subjected the "Indio Fashion Mall" to handicapped access
24 requirements per *California Health & Safety Code* § 19959, and applicable portions of
25 *California Code of Regulations*, Title 24, (the State Building Code).

27 11. On or about October 17, 2001, Plaintiff **JAMES COLLINS**, visited the "Indio
28 **Fashion Mall**" in Indio, California for the purpose of making a purchase. Defendants **CITY OF**

1 **INDIO, a Public Entity; SEARS, ROEBUCK & CO., a New York Corporation; PASEO**
2 **GROUP, a California Limited Partnership; THE INDIO FASHION MALL MERCHANTS**
3 **ASSOCIATION, INC., a California Corporation, and DOES ONE TO TEN, inclusive,**
4 interfered with Plaintiff's access to the "**Indio Fashion Mall**" as set forth in Paragraph 3 above.

5 Said acts and omissions denied Plaintiff legal handicapped access to the "**Indio Fashion**
6 **Mall**" according to federal and state law.

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

12
13 13. Defendants, and each of them, discriminated against Plaintiff **JAMES COLLINS**
14 on the basis of his physical disability, and interfered with his access to the "**Indio Fashion Mall**"
15 establishment, in violation of both California law including, but not limited to, *California Civil*
16 *Code* §§ 51, 51.5, 54, 54.1, and violations of Title II, §202, Title III, §302, the "Prohibition of
17 Discrimination" provisions and §503, the "Prohibition Against Retaliation or Coercion" provision
18 of the *Americans with Disabilities Act of 1990*.

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

1 I. **FIRST CAUSE OF ACTION AGAINST**
2 **ALL DEFENDANTS EXCEPT CITY OF INDIO:**
3 **VIOLATION OF TITLE III OF *THE AMERICANS WITH DISABILITIES ACT OF 1990***
4 **(42 *USC* §12101 *et seq.*)**

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

8 16. Pursuant to law, in 1990 the United States Congress made findings per 42 *USC* §
9 12101 regarding persons with physical disabilities, finding that laws were needed to more fully
10 protect 43 million Americans with one or more physical or mental disabilities; [that] historically
11 society has tended to isolate and segregate individuals with disabilities; [that] such forms of
12 discrimination against individuals with disabilities continue to be a serious and pervasive social
13 problem; [that] the nation's proper goals regarding individuals with disabilities are to assure
14 equality of opportunity, full participation, independent living and economic self-sufficiency for
15 such individuals; [and that] the continuing existence of unfair and unnecessary discrimination
16 and prejudice denies people with disabilities the opportunity to compete on an equal basis and
17 to pursue those opportunities for which our free society is justifiably famous.

18
19 17. Congress stated as its purpose in passing the ***Americans with Disabilities Act of***
20 **1990 (42 *USC* § 12102):**

21 It is the purpose of this act (1) to provide a clear and comprehensive national
22 mandate for the elimination of discrimination against individuals with disabilities; (2)
23 to provide clear, strong, consistent, enforceable standards addressing
24 discrimination against individuals with disabilities; (3) to ensure that the Federal
25 government plays a central role in enforcing the standards established in this act on
26 behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional
27 authority, including the power to enforce the 14th Amendment and to regulate
28

1 commerce, in order to address the major areas of discrimination faced day to day
2 by people with disabilities.

3 18. As part of the **Americans with Disabilities Act of 1990**, Public Law 101-336
4 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
5 Operated by Private Entities" (42 **USC** § 12181 *et seq.*). Among the public accommodations
6 identified for purposes of this title were "a bakery, restaurant, bar or other establishment serving
7 food or drink, grocery store, clothing store, hardware store, shopping center or other sales or
8 rental establishment."
9

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

11 "No individual shall be discriminated against on the basis of disability in the
12 full and equal enjoyment of the goods, services, facilities, privileges, advantages,
13 or accommodations of any place of public accommodation by any person who
14 owns, leases (or leases to), or operates a place of public accommodation."
15

16 20. Among the general prohibitions against discrimination were included in 42 **USC**
17 §12182(b)(1)(A)(i):

18 **Denial of participation.** It shall be discriminatory to subject an individual
19 or class of individuals on the basis of a disability or disabilities of such individual or
20 class, directly, or through contractual, licensing, or other arrangements, to a denial
21 of the opportunity of the individual or class to participate in or benefit from the
22 goods, services, facilities, privileges, advantages, or accommodations of an entity.
23

24 21. Among the general prohibitions against discrimination were included in 42 **USC**
25 §12182(b)(1)(E):

26 **Association** -- It shall be discriminatory to exclude or otherwise deny equal
27 goods, services, facilities, privileges, advantages, accommodations, or other
28 opportunities to an individual or entity because of the known disability of an

1 individual with whom the individual or entity is known to have a relationship or
2 association.

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

5 22. Among the general prohibitions against discrimination were included in 42 *USC* §
6 12182(b)(2)(A)(i) and 42 *USC* § 12182(b)(2)(A)(ii):

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

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

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

20 23. Plaintiff alleges that constructing the eligibility requirements, policies, practices and
21 procedure for entry to the "**Indio Fashion Mall**" facility by persons with disabilities and their
22 companions as established by the defendants can be simply modified to eliminate disparate and
23 discriminatory treatment of persons with disabilities by properly constructing barrier free
24 handicapped access for safe and full and equal enjoyment of the "**Indio Fashion Mall**" as that
25 enjoyed by other people.
26
27
28

1 24. The specific prohibition against retaliation and coercion is included in the
2 **Americans With Disabilities Act of 1990** § 503(b) and the *Remedies and Procedures* in §
3 503(c):

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

9
10 (c) Remedies and Procedure. - The remedies and procedures available
11 under sections 107, 203, and 308 of this Act shall be available to aggrieved
12 persons for violations of subsections (a) and (b), with respect to Title I, Title II and
13 Title III, respectively.

14
15 25. Among the specific prohibitions against discrimination were included, in 42 **USC** §
16 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and communications barriers that
17 are structural in nature, in existing facilities...where such removal is readily achievable;" and (v)
18 "where and entity can demonstrate that the removal of a barrier under clause (iv) is not readily
19 achievable, a failure to make such goods, services, facilities, privileges, advantages, or
20 accommodations available through alternative methods if such methods are readily achievable."
21 The acts of Defendants set forth herein were a violations of Plaintiff's rights under the "ADA,"
22 Public Law 101-336, and the regulations promulgated thereunder, 28 **CFR** Part 36, *et seq.*

23
24 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged were
25 at all times after 1990 "readily achievable." On information and belief, if the removal of all the
26 barriers complained of here together were not "readily achievable," the removal of each
27 individual barrier complained of herein was "readily achievable."

28 27. Per 42 **USC** § 12181(9), "The term 'readily achievable' means easily

1 accomplishable and able to be carried out without much difficulty or expense.” The statute and
2 attendant regulations define relative “expense” in relation to the total financial resources of the
3 entities involved, including any “parent” companies. Plaintiff alleges that properly repairing each
4 of the items that Plaintiff complains of herein is readily achievable, including but not limited to
5 correcting and repairing the items set forth in Paragraph 3 above.

6
7 The changes needed to remove barriers to access for the disabled were and are “readily
8 achievable” by the defendants under standards set forth under 42 **USC** § 12181 of the
9 **Americans with Disabilities Act of 1990**. (Further, if it was not “readily achievable” for
10 defendants to remove all such barriers, defendants have failed to make the required services
11 available through alternative methods, although such methods are achievable as required by 42
12 **USC** §12181(b)(2)(a)(iv), (v).)

13
14 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** § 12188
15 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil Rights Act of**
16 **1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to discrimination on the
17 basis of disability in violation of this title and/or Plaintiff has reasonable grounds for believing
18 that he is about to be subjected to discrimination in violation of **Americans With Disabilities**
19 **Act of 1990** §302. Plaintiff cannot return to or make use of the public facilities complained of
20 herein for the purpose of entry and provision of goods and service so long as defendants
21 continue to apply eligibility criteria, policies, practices and procedures to screen out and refuse
22 to allow entry and service to persons with disabilities such as Plaintiff’s.

23
24 29. Defendants’, and each of their acts and omissions of failing to provide barrier free
25 handicapped access for Plaintiff, were tantamount to interference, coercion or intimidation
26 pursuant to **Americans With Disabilities Act of 1990** §503(b) (now 42 **USC** § 12203):

27 It shall be unlawful to coerce, intimidate, threaten, or interfere with any
28 individual in the exercise or enjoyment of, or on account of his or her having

1 encouraged any other individual in the exercise or enjoyment of, any right granted
2 or protected by this Act.

3 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §
4 12188), "Nothing in this section shall require a person with a disability to engage in a futile
5 gesture if such person has actual notice that a person or organization covered by this title does
6 not intend to comply with its provisions." Pursuant to this last section, Plaintiff, on information
7 and belief, alleges that defendants have continued to violate the law and deny the rights of
8 Plaintiff and other disabled persons to access this public accommodation for the purpose of
9 lodging. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),
10

11 "...Where appropriate, injunctive relief shall also include requiring the
12 provision of an auxiliary aid or service, modifications of a policy, or provision of
13 alternative methods, to the extent required by this title."
14

15 31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the **Civil Rights**
16 **Act of 1964** (42 **USC** § 2000a-3(a), and pursuant to federal regulations adopted to implement
17 the **Americans with Disabilities Act of 1990**, including but not limited to an order granting
18 injunctive relief and attorneys' fees. Such attorneys' fees, "including litigation expenses and
19 costs," are further specifically provided for by §505 of Title III.
20

21 **II. SECOND CAUSE OF ACTION AGAINST DEFENDANT CITY OF INDIO ONLY:**
22 **VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT OF 1990**
(42 **USC** §12101 *et seq.*)

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

26 33. Pursuant to 42 **USC** § 12132, "Subject to the provisions of this subchapter, no
27 qualified individual with a disability shall, by reason of such disability, be excluded from
28 participation in or be denied the benefits of the services, programs, or activities of a public entity,

1 or be subjected to discrimination by any such entity.”

2 34. Among the general prohibitions against discrimination under Title II were included
3 in 28 *CFR* §35.130(b)(1):

4 A public entity, in providing any aid, benefit, or service, may not, directly or
5 through contractual, licensing, or other arrangements, on the basis of disability --

6 (i) Deny a qualified individual with a disability the opportunity to
7 participate in or benefit from the aid, benefit, or service;

8 (ii) Afford a qualified individual with a disability an opportunity to
9 participate in or benefit from the aid, benefit, or service that is not equal to
10 that afforded others;

11 35. Among the general prohibitions against discrimination were included in 28 *CFR* §
12 35.130(b)(3):

13 (3) A public entity may not, directly or through contractual or other
14 arrangements, utilize criteria or methods of administration:

15 (i) That have the effect of subjecting qualified individuals with
16 disabilities to discrimination on the basis of disability;

17 (ii) That have the purpose or effect of defeating or substantially
18 impairing accomplishment of the objectives of the public entity's program
19 with respect to individuals with disabilities; or
20
21
22

23 The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA, Public
24 Law 101-336, and the regulations promulgated thereunder, 28 *CFR* Part 35 et seq.

25 36. Among the general prohibitions against discrimination were included in 28 *CFR* §
26 35.130(b)(4):

27 (4) A public entity may not, in determining the site or location of a
28 facility, make selections --

1 (i) That have the effect of excluding individuals with disabilities
2 from, denying them the benefits of, or otherwise subjecting them to
3 discrimination; or

4 (ii) That have the purpose or effect of defeating or substantially
5 impairing the accomplishment of the objectives of the service, program, or
6 activity with respect to individuals with disabilities.
7

8 37. Among the general prohibitions against discrimination were included in 28 *CFR* §
9 35.130(b)(7) and (8):

10 (7) A public entity shall make reasonable modifications in policies,
11 practices, or procedures when the modifications are necessary to avoid
12 discrimination on the basis of disability, unless the public entity can demonstrate
13 that making the modifications would fundamentally alter the nature of the service,
14 program, or activity.
15

16 (8) A public entity shall not impose or apply eligibility criteria that
17 screen out or tend to screen out an individual with a disability or any class of
18 individuals with disabilities from fully and equally enjoying any service, program,
19 or activity, unless such criteria can be shown to be necessary for the provision of
20 the service, program, or activity being offered.
21

22 38. Plaintiff alleges that the requirements, policies, practices, and procedures for entry
23 to the **CITY OF INDIO's** facilities, including the "**Indio Fashion Mall,**" by persons with
24 disabilities and their companions as established by the defendants can be simply modified to
25 eliminate disparate and discriminatory treatment of persons with disabilities by properly
26 constructing barrier free handicapped access for safe and full and equal enjoyment of the **CITY**
27 **OF INDIO** facilities as that enjoyed by other people. 28 *CFR* § 35.133(a) requires:

28 "A public accommodation shall maintain in operable working condition

1 those features of facilities and equipment that are required to be readily accessible
2 to and usable by persons with disabilities by the Act or this part.”

3 39. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the Civil Rights
4 Act of 1964 (42 USC § 2000a-3(a)), and pursuant to federal regulations adopted to implement
5 the Americans with Disabilities Act of 1990, including but not limited to an order granting
6 injunctive relief and attorneys' fees.

7
8 40. Defendant **CITY OF INDIO** violated Title II of the Americans With Disabilities Act of
9 1990 by virtue of this named Defendant's discriminatory policy of failing to provide Plaintiff with
10 access to all areas of the **CITY OF INDIO** facilities.

11 WHEREFORE, Plaintiff prays for relief as hereinafter stated.

12 **III. THIRD CAUSE OF ACTION AGAINST DEFENDANT CITY OF INDIO ONLY:**
13 **VIOLATION OF §504 OF THE *REHABILITATION ACT* (29 USC § 794)**

14 41. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
15 the allegations contained in paragraphs 1 through 40 of this Complaint and incorporates them
16 herein as if separately repled.

17
18 42. Plaintiff is entitled to meaningful access to Defendant's facility by virtue of the
19 federal funding that Defendant **CITY OF INDIO** received and as set forth above, this named
20 Defendant failed to provide meaningful access to an otherwise qualified individual.

21 WHEREFORE, Plaintiff prays for relief as hereinafter stated.

22 **IV. FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS:**
23 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL**
24 **DISABILITIES (*California Health & Safety Code* § 19955, *et seq.*)**

25 43. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
26 the allegations contained in paragraphs 1 through 42 of this Complaint and incorporate them
27 herein as if separately repled.

28 44. ***California Health & Safety Code* § 19955** provides in pertinent part:

1 The purpose of this part is to insure that public accommodations or facilities
2 constructed in this state with private funds adhere to the provisions of Chapter 7
3 (commencing with Sec. 4450) of Division 5 of Title 1 of the *Government Code*. For
4 the purposes of this part "public accommodation or facilities" means a building,
5 structure, facility, complex, or improved area which is used by the general public
6 and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels,
7 stadiums, and convention centers. When sanitary facilities are made available for
8 the public, clients or employees in such accommodations or facilities, they shall be
9 made available for the handicapped.
10

11 45. **California Health & Safety Code** § 19956, which appears in the same chapter as
12 §19955, provides in pertinent part, "accommodations constructed in this state shall conform to
13 the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
14 *Government Code*..." **California Health & Safety Code** § 19956 was operative July 1, 1970,
15 and is applicable to all public accommodations constructed or altered after that date. On
16 information and belief, portions of "**Indio Fashion Mall**" and/or of its buildings, were constructed
17 and/or altered after July 1, 1970, and substantial portions of said building had alterations,
18 structural repairs, and/or additions made to such public accommodations after July 1, 1970,
19 thereby requiring said public accommodations and/or buildings to be subject to the requirements
20 of Part 5.5, **California Health & Safety Code** § 19955, *et seq.*, upon such alteration, structural
21 repairs or additions per **California Health & Safety Code** § 19959.
22

23
24 46. Pursuant to the authority delegated by **California Government Code** § 4450, *et*
25 *seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
26 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
27 California State Architect's Regulations and these regulations must be complied with as to any
28 alterations and/or modifications of the "**Indio Fashion Mall**" occurring after that date.

1 Construction changes occurring prior to this date but after July 1, 1970 triggered access
2 requirements pursuant to the "ASA" requirements, the **American Standards Association**
3 **Specifications**, A117.1-1961. On information and belief, at the time of the construction and
4 modification of said building, all buildings and facilities covered were required to conform to
5 each of the standards and specifications described in the **American Standards Association**
6 **Specifications** and/or those contained in Title 24 of the **California Administrative Code**, (now
7 known as Title 24, **California Code of Regulations**.)

8
9 47. Public facilities, such as "Indio Fashion Mall" are public accommodations or
10 facilities within the meaning of **California Health & Safety Code** § 19955, *et seq.*

11 48. It is difficult or impossible for persons with physical disabilities who use
12 wheelchairs, canes, walkers and service animals to travel about in public to use a shopping
13 center/mall with the defects set forth in Paragraph 3 above as required by Title 24 of the
14 **California Code of Regulations** and the **Americans with Disabilities Act Access Guidelines**
15 **(ADAAG)**. Thus, when public accommodations fail to provide handicap accessible public
16 facilities, persons with physical disabilities are unable to enter and use said facilities, and are
17 denied full and equal access to and use of that facility that is enjoyed by other members of the
18 general public.

19
20 49. Plaintiff **JAMES COLLINS** and other similarly situated persons with physical
21 disabilities whose physical conditions require the use of wheelchairs, canes, walkers and
22 service animals are unable to use public facilities on a "full and equal" basis unless each such
23 facility is in compliance with the provisions of the **California Health & Safety Code** § 19955, *et*
24 *seq.* Plaintiff is a member of that portion of the public whose rights are protected by the
25 provisions of **California Health & Safety Code** § 19955, *et seq.*

26
27 50. The **California Health & Safety Code** was enacted "[t]o ensure that public
28 accommodations or facilities constructed in this state with private funds adhere to the provisions

1 of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the *Government Code*.” Such
2 public accommodations are defined to include shopping malls.

3 51. Plaintiff is further informed and believes that as of the date of filing this Complaint,
4 Defendants have not made accessible the facilities at the subject mall as set forth in Paragraph
5 3 above.

6 52. Plaintiff **JAMES COLLINS** is informed and believes, and therefore alleges, that
7 Defendants **CITY OF INDIO, a Public Entity; SEARS, ROEBUCK & CO., a New York**
8 **Corporation; PASEO GROUP, a California Limited Partnership; THE INDIO FASHION**
9 **MALL MERCHANTS ASSOCIATION, INC., a California Corporation, and DOES ONE TO**
10 **TEN, inclusive**, and each of them, caused the subject buildings constituting “**Indio Fashion**
11 **Mall**” to be constructed, altered and maintained in such a manner that persons with physical
12 disabilities were denied full and equal access to, within and throughout said buildings and were
13 denied full and equal use of said public facilities, and despite knowledge and actual and
14 constructive notice to such Defendants that the configuration of the mall and/or buildings was in
15 violation of the civil rights of persons with physical disabilities, such as Plaintiff. Such
16 construction, modification, ownership, operation, maintenance and practices of such public
17 facilities are in violation of law as stated in Part 5.5, *California Health & Safety Code* § 19955,
18 *et seq.*, and elsewhere in the laws of California.

19 53. On information and belief, the subject building constituting the public facilities of
20 “**Indio Fashion Mall**” denied full and equal access to Plaintiff and other persons with physical
21 disabilities in other respects due to non-compliance with requirement of Title 24 of the
22 *California Code of Regulations* and *California Health & Safety Code* § 19955, *et seq.*

23 54. The basis of Plaintiff’s aforementioned information and belief is the various means
24 upon which Defendants must have acquired such knowledge, including but not limited to this
25 lawsuit, other access lawsuits, communications with operators of other stores and other property
26
27
28

1 owners regarding denial access, communications with Plaintiff and other persons with
2 disabilities, communications with other patrons who regularly visit there, communications with
3 owners of other businesses, notices and advisories they obtained from governmental agencies
4 through the mails, at seminars, posted bulletins, television, radio, public service
5 announcements, or upon modification, improvement, alteration or substantial repair of the
6 subject premises and other properties owned by these Defendants, newspaper articles and
7 trade publications regarding the **Americans with Disabilities Act of 1990** and other access
8 law, and other similar information. The scope and means of the knowledge of each defendant is
9 within each defendant's exclusive control and cannot be ascertained except through discovery.
10

11 55. As a result of Defendants' acts and omissions in this regard, Plaintiff has been
12 required to incur legal expenses and hire attorneys in order to enforce his civil rights and
13 enforce provisions of the law protecting access for persons with physical disabilities and
14 prohibiting discrimination against persons with physical disabilities, and to take such action both
15 in his own interests and in order to enforce an important right affecting the public interest.
16 Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable attorneys' fees
17 incurred, pursuant to the provisions of the **California Code of Civil Procedure** § 1021.5.
18 Plaintiff additionally seeks attorneys' fees pursuant to **California Health & Safety Code** §
19 19953 and **California Civil Code** §§ 54.3 and 55.
20

21 56. Defendants, and each of them, at times prior to and including October 17, 2001,
22 and continuing to the present time, knew that persons with physical disabilities were denied their
23 rights of equal access to all portions of this public facility. Despite such knowledge, Defendants
24 failed and refused to take steps to comply with the applicable access statutes; and despite
25 knowledge of the resulting problems and denial of civil rights thereby suffered by Plaintiff
26 **JAMES COLLINS** and other similarly situated persons with disabilities, including the specific
27 notices referred to in paragraph 54 of this Complaint. Defendants have failed and refused to
28

1 take action to grant full and equal access to persons with physical disabilities in the respects
2 complained of hereinabove. Defendants and each of them have carried out a course of conduct
3 of refusing to respond to, or correct complaints about, denial of handicap access. Such actions
4 and continuing course of conduct by Defendants, evidence despicable conduct in conscious
5 disregard for the rights or safety of Plaintiff and of other similarly situated persons, justifying an
6 award of exemplary and punitive damages pursuant to **California Civil Code** § 3294.

7
8 57. Defendants' actions have also been oppressive to persons with physical
9 disabilities and of other members of the public, and have evidenced actual or implied malicious
10 intent toward those members of the public, such as Plaintiff and other persons with physical
11 disabilities who have been denied the proper access they are entitled to by law. Further,
12 Defendants' refusals on a day-to-day basis to correct these problems evidence despicable
13 conduct in conscious disregard for the rights of Plaintiff and other members of the public with
14 physical disabilities.
15

16 58. Plaintiff prays for an award of punitive damages against each named Defendant,
17 except Defendant **CITY OF INDIO**, pursuant to **California Civil Code** § 3294 in an amount
18 sufficient to make a more profound example of Defendants and discourage owners, operators,
19 franchisers and franchisees of other public facilities from willful disregard of the rights of persons
20 with physical disabilities. Plaintiff does not know the financial worth of Defendants, or the
21 amount of punitive damages sufficient to accomplish the public purposes of **California Civil**
22 **Code** § 3294 and seeks leave to amend this Complaint when such facts are known.
23

24 59. As a result of the actions and failure of Defendants, and each of them, and as a
25 result of the failure to provide proper accessible public facilities, Plaintiff **JAMES COLLINS** was
26 denied his civil rights, including his right to full and equal access to public facilities, was
27 embarrassed and humiliated, suffered physical, psychological and mental injuries and emotional
28 distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation,

1 embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated
2 with a person with a physical disability being denied access to a public accommodation.

3 WHEREFORE, Plaintiff prays for damages as hereinafter stated; however, Plaintiff does
4 not seek punitive damages under this cause of action against **CITY OF INDIO**, a public entity.

5
6 **V. FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS:**
7 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**
8 **(California Civil Code §§ 54, 54.1 and 54.3)**

9 60. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
10 the allegations contained in paragraphs 1 through 59 of this Complaint and incorporates them
11 herein as if separately repled.

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

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

22
23 Individuals with disabilities shall have the same right as the...general public
24 to full and free use of the streets, highways, sidewalks, walkways, public buildings,
25 public facilities, and other public places. **California Civil Code** § 54(a).

26
27 Individuals with disabilities shall be entitled to full and equal access, as
28 other members of the general public, to accommodations, advantages, facilities,
and privileges of all common carriers, airplanes, motor vehicles, railroad trains,

1 motor buses, streetcars, boats, or any other public conveyances or modes of
2 transportation (whether private, public, franchised, licensed, contracted, or
3 otherwise provided), telephone facilities, adoption agencies, private schools,
4 hotels, lodging places, places of public accommodation, amusement or resort, and
5 other places to which the general public is invited, subject only to the conditions
6 and limitations established by law, or state or federal regulation, and applicable
7 alike to all persons. **California Civil Code** § 54.1(a).
8

9 63. On or about October 17, 2001, Plaintiff **JAMES COLLINS** suffered violations of
10 **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of the
11 goods, services, facilities and privileges of said **Indio Fashion Mall**, as set forth in paragraph 3
12 above. Plaintiff was also denied full and equal access to other particulars, including but not
13 limited to those described hereinabove. Plaintiff was also denied use of facilities that he was
14 entitled to under Title III of the **Americans with Disabilities Act of 1990**.
15

16 64. As a result of the denial of full and equal enjoyment of the goods, services,
17 facilities and privileges of defendants' **Indio Fashion Mall** due to the acts and omissions of
18 defendants, and each of them, in owning, operating and maintaining this subject public facility,
19 Plaintiff suffered violations of his civil rights, including but not limited to rights under **California**
20 **Civil Code** §§ 54, 54.1, and 54.3, and has and will suffer physical injury, emotional distress,
21 mental distress, mental suffering, mental anguish, which includes shame, humiliation,
22 embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated
23 with a disabled person's denial of full and equal enjoyment of goods, services, privileges, etc. all
24 to his damages as prayed hereinafter in an amount within the jurisdiction of the court.
25 Defendants' actions and omissions to act constituted discrimination against Plaintiff on the sole
26 basis that Plaintiff was physically disabled.
27
28

65. Plaintiff seeks damages for the violation of his rights as a disabled person on or

1 about October 17, 2001, according to proof, pursuant to **California Civil Code** § 54.3, including
2 a trebling of all statutory and actual damages, general and special, available pursuant to
3 **California Civil Code** § 54.3(a).

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

17 67. The acts and omissions of defendants in failing to provide the required accessible
18 facilities subsequent to the enactment date and compliance date of the **Americans with**
19 **Disabilities Act of 1990**, and refusal to make remedial modifications and alterations to its
20 handicapped parking, handicapped signage, pathways, and other elements as hereinabove
21 stated, after being notified by patrons before and after the time of Plaintiff's visit and injuries, on
22 or about October 17, 2001, and all times prior thereto with the knowledge that persons with
23 disabilities would enter defendants' premises, the reason given therefor, was an established
24 policy, practice and procedure of refusing and denying entry, thereby denying lodging and other
25 services to a person with disabilities and the companions thereof, evidence malice and
26 oppression toward Plaintiff and other disabled persons.

28 68. Such despicable conduct, as that incorporated herein by reference and specifically

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

8 69. Defendants have failed to establish a nondiscriminatory criteria, policy, practice
9 and procedure for entry into said "**Indio Fashion Mall**" as hereinabove described.

10 70. As a result of defendants' continuing failure to provide for the full and equal
11 enjoyment of goods, services, facilities and privileges of said "**Indio Fashion Mall**" as
12 hereinabove described, Plaintiff has continually been denied his rights to full and equal
13 enjoyment of the subject mall, as it would be a "futile gesture" to attempt to patronize said "**Indio**
14 **Fashion Mall**" with the discriminatory policy in place as hereinabove described.

16 71. The acts and omissions of defendants as complained of herein in failing to provide
17 the required accessible facilities subsequent to the enactment date and compliance date of the
18 **Americans with Disabilities Act of 1990** and refusal to make remedial modifications and
19 alternations to the architectural barriers as stated herein and in failing to establish practices,
20 policies and procedures to allow safe access by persons who are disabled are continuing on a
21 day-to-day basis to have the effect of wrongfully and willfully excluding Plaintiff and other
22 members of the public who are physically disabled, from full and equal enjoyment of the subject
23 "**Indio Fashion Mall**" as hereinabove described. Such acts and omissions are the continuing
24 cause of humiliation and mental and emotional suffering of Plaintiff in that these actions
25 continue to treat Plaintiff as an inferior and second class citizen and serve to discriminate
26 against him on the sole basis that he is a physically disabled. Plaintiff is unable, so long as such
27 acts and omissions of defendants continue, to achieve full and equal enjoyment of the goods
28

1 and services of said "**Indio Fashion Mall**" as described hereinabove. The acts of defendants
2 have legally caused and will continue to cause irreparable injury to Plaintiff if not enjoined by this
3 court.

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

13 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
14 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
15 damages; however, Plaintiff does not seek punitive damages under this cause of action against
16 **CITY OF INDIO**, a public entity.
17

18 **IV. SIXTH CAUSE OF ACTION AGAINST**
19 **ALL DEFENDANTS EXCEPT CITY OF INDIO:**
20 **VIOLATIONS OF *UNRUH CIVIL RIGHTS ACT***
(*California Civil Code* §§ 51 and 51.5)

21 73. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
22 the allegations contained in paragraphs 1 through 72 of this Complaint and incorporates them
23 herein as if separately repled.

24 74. Defendants' acts and omissions as specified with regard to the discriminatory
25 treatment of Plaintiff **JAMES COLLINS** on the basis of his physical disabilities, have been in
26 violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have denied
27 to Plaintiff his rights to "full and equal accommodations, advantages, facilities, privileges or
28

1 services in all business establishments of every kind whatsoever.”

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

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

11
12 77. As a result of the violation of Plaintiff’s civil rights protected by **California Civil**
13 **Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of **California Civil Code** §
14 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h) to mean
15 “special and general damages”), as well as reasonable attorneys’ fees and costs, as allowed by
16 statute, according to proof. Further, pursuant to paragraphs 11, 12, 13, 35 and 43, Plaintiff
17 seeks appropriate exemplary damages under **California Civil Code** § 3294.
18

19 WHEREFORE, Plaintiff prays that this court award damages and provide relief as
20 follows:
21

22 PRAYER FOR RELIEF

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

24 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
25 criteria policy, practice and procedure permitting entry into the **Indio Fashion Mall** in Indio,
26 California, for the purpose of services according to **California Civil Code** §§ 51, 51.5, 52, 54,
27 54.1, 54.3, *et seq.*, and Title II and Title III of the **Americans with Disabilities Act of 1990**, and
28 grant injunctive relief requiring that Defendants repair and render safe to handicapped persons,

1 and otherwise make handicapped-accessible, all public areas of the mall, and make such
2 facilities "readily accessible to and usable by individuals with disabilities," according to the
3 standards of Title 24 of the *California Administrative Code*, *California Health & Safety Code*
4 § 19955 *et seq.*, and Title III of the *Americans with Disabilities Act of 1990* and the standards
5 of *ADAAG*; and prohibiting operation of the **Indio Fashion Mall**, located in Indio, California, as
6 a public facility until Defendants provide full and equal enjoyment of goods and services as
7 described hereinabove to physically disabled persons, including Plaintiff;

8
9 2. General damages according to proof against each named Defendant except
10 Defendant **CITY OF INDIO**;

11 3. Statutory and "actual" damages, including general damages and special damages,
12 according to proof, pursuant to *California Civil Code* §§ 52, and 54.3, and that these damages
13 be trebled, except that no damages are claimed against Defendant **CITY OF INDIO** other than
14 those fees and costs allowed by law;

15 4. Prejudgment interest on all compensatory damages;

16 5. Punitive and exemplary damages pursuant to the standards and purposes of
17 *California Civil Code* § 3294, except that no punitive and exemplary damages are claimed
18 against Defendant **CITY OF INDIO**;

19 6. Remedies and Procedures available under *Americans with Disabilities Act of*
20 **1990** §§ 107, 203 and 308;

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

25
26
27
28
///

