

ORIGINAL

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CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION BY DEPUTY

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 JAMES COLLINS,  
11 Plaintiff,  
12 v.

EDCV 02- 1329 RT(SGLX)  
) Case No.  
)  
) Civil Rights

13 VONS COMPANIES, INC., a Michigan  
14 corporation, dba VONS #58;  
15 CALIFORNIA VALLEY  
16 ASSOCIATES, a New York Limited  
17 Partnership; UNIONBANCAL  
18 CORPORATION, a California  
19 corporation, dba UNION BANK OF  
20 CALIFORNIA, N.A., DOWNEY  
21 SAVINGS AND LOAN ASSOCIATION,  
22 a California corporation; and DOES  
23 ONE TO TEN, inclusive,

) 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

22 Defendants.

ENTER ON IOMS  
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23 Plaintiff JAMES COLLINS complains of defendants VONS COMPANIES,  
24 INC., a Michigan corporation, dba VONS #58; CALIFORNIA VALLEY  
25 ASSOCIATES, a New York Limited Partnership; UNIONBANCAL  
26 CORPORATION, a California corporation, dba UNION BANK OF CALIFORNIA,  
27 N.A. DOWNEY SAVINGS AND LOAN ASSOCIATION, a California corporation;

1 **and DOES ONE TO TEN, inclusive, and alleges as follows:**

2  
3 **JURISDICTION AND VENUE**

4 1. The Court has jurisdiction of this action pursuant to 28 *USC* § 1331 for  
5 violations of the *Americans with Disabilities Act of 1990*, (42 *USC* § 12101, *et seq.*)  
6 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the  
7 same facts, are also brought under California law, including but not limited to violations  
8 of *California Health & Safety Code* § 19955, *et seq.*, including *California Code of*  
9 *Regulations*, Title 24, § 19959, *California Civil Code* §§ 51, 51.5, 52(a), 52.1, 54, 54.1,  
10 54.3 and 55.

11  
12  
13 2. Venue is proper in this court pursuant to 28 *USC* § 1391(b) and is founded  
14 on the fact that the real property which is the subject of this action is located in this  
15 district, at Yucca Valley, California, and that Plaintiff's causes of action arose in this  
16 district.  
17

18 **INTRODUCTION**

19  
20 3. **VONS #58** is located at 57590 29 Palms Highway, Yucca Valley,  
21 California. Said retail store is owned and operated by defendants **VONS COMPANIES,**  
22 **INC., a Michigan corporation, and DOES ONE to TEN, inclusive.**

23  
24 **UNION BANK OF CALIFORNIA, N.A.**, is located at 57500 29 Palms Highway,  
25 Yucca Valley, California. Said financial institution is owned and operated by  
26 **UNIONBANCAL CORPORATION, a California corporation, and DOES ONE to**  
27 **TEN, inclusive.**  
28



1 2) Designated Parking Space. Front of bank.

2 a. A parallel parking space without a complying access aisle in violation  
3 of California Title 24 § 1129B.4.1. Fig 11B-18B

4 b. Noncomplying signage in violation of California Title 24 § 1129B.5.  
5 Fig 11B-18A, B, & C

6  
7  
8 3) Curb cut.

9 a. Slope in direction of travel is from 7% to 9.6% in violation of  
10 California Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2

11 b. Slope of left side flare is 19%; right side flare is 20% in violation of  
12 California Title 24 § 1127B.5.3

13 c. No 12" wide grooved surface in violation of California Title 24 §  
14 1127B.5.7

15 d. No complying 1/2" lip at bottom in violation of California Title 24 §  
16 1127B.5.5

17 e. Less than 48" wide in violation of California Title 24 § 1127B.5.2

18  
19  
20  
21 4) No curb cut on the West side of building in violation of California Title 24 §  
22 1127B.5.1. Fig 11B-19 thru 11B-23

23  
24 5) Designated parking space on North side of building:

25 a. Access aisle slopes at 5% to 9% in violation of California Title 24 §  
26 1129B.4.4, ADAAG 4.6.3\*,

27 b. Curb ramp extends into access aisle in violation of California Title 24 §  
28

1 1129B.4.3. Fig 11B-18A, B, & C

- 2 6) Entry door does not have an international accessibility symbol in violation of  
3 California Title 24 § 1117B.5.1, ADAAG 4.30

4  
5 **DOWNEY SAVINGS**  
6 **55550 29 Palms Highway**

- 7 1) There is no complying path of travel from the public sidewalk to the entrance  
8 of Downey Savings in violation of California Title 24 § 1127B.1, §  
9 1127B.1.2, ADAAG § 4.3, § 4.1.2.
- 10  
11 2) Sidewalk on North/East side ends at a curb with no curb cuts in violation of  
12 California Title 24 § 1127B.5.1. Fig 11B-19 thru 11B-23.
- 13  
14 3) There are no curb cuts on the East and South/East side of building in violation  
15 of California Title 24 § 1127B.5.1. Fig 11B-19 thru 11B-23
- 16  
17 4) Designated parking space, South/West side.
- 18 a. No access aisle in violation of California Title 24 § 1129B.4.1. Fig  
19 11B-18B
- 20  
21 b. Faded stripping in violation of California Title 24 § 1129B.5
- 22 5) Curb cut, South/West side.
- 23 a. Slope in direction of travel is 9% to 10% in violation of California Title  
24 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2
- 25  
26 b. Slope of left side flare is 36%; right side flare is 32% in violation of  
27 California Title 24 § 1127B.5.3
- 28  
c. No 12" wide grooved surface in violation of California Title 24 §

1 1127B.5.7

2 d. There is a 1 ¼" elevation change at bottom in violation of California  
3 Title 24 § 1127B.5.5

4 e. Less than 48" wide in violation of California Title 24 § 1127B.5.2

5  
6 6) No curb cut on West side of building in violation of California Title 24 §  
7 1127B.5.1. Fig 11B-19 thru 11B-23  
8

9 **Shopping Center**  
10 **29 Palms Highway**

11 **EXTERIOR SURVEY.**

12 1) Except for Vons Market, none of the entry doors to the stores have an  
13 international accessibility symbol on complying entry doors in violation of  
14 California Title 24 § 1117B.5.1, ADAAG 4.30

15  
16 2) There are no tow away signs at each entrance to parking lot or adjacent to  
17 each parking space in violation of California Title 24 § 1129B.5

18  
19 3) Most entry doors to stores have a 4" high kick plate in violation of California  
20 Title 24 § 1133B.2.6. Fig 11B-29

21 4) Curb ramp, Little Caesars Pizza (57554).

22 a. Slope in direction of travel is 10% in violation of California Title 24 §  
23 1127B.5.3, ADAAG 4.7.2 & 4.8.2

24 b. Slope of left side flare is 18%; right side flare is 15% in violation of  
25 California Title 24 § 1127B.5.3

26  
27 c. No 12" wide grooved surface in violation of California Title 24 §  
28

1 1127B.5.7

2 d. No complying 1/2" lip at bottom in violation of California Title 24 §

3 1127B.5.5

4 e. The ramp is less than 48" wide in violation of California Title 24 §

5 1127B.5.2

6  
7  
8 5) No curb cut on the South/West corner behind Little Caesars Pizza (57554) in  
9 violation of California Title 24 § 1127B.5.1.

10 6) A 10' long section of sidewalk between (57554) and (57556) slopes from 10%  
11 to 11% in violation of California Title 24 § 1133B.5.3

12  
13 7) A 10' long section of sidewalk between (57558) and (57562) slopes from 9%  
14 to 10% in violation of California Title 24 § 1133B.5.3

15  
16 8) A 10' long section of sidewalk between (57566) and (57568) slopes from 8%  
17 to 9% in violation of California Title 24 § 1133B.5.3

18  
19 9) Two designated parking spaces. (Front of 57570 29 Palm Highway)

20 a. One space requires a person to travel behind a parked car other than  
21 their own to get to curb ramp in front of 57582 29 in violation of  
22 California Title 24 § 1118A.4.1-3 §1129B.1 &1129B.4

23  
24 b. No van accessible signage in violation of California Title 24 § 1129B.5

25 c. Parking spaces are fading in violation of California Title 24 §  
26 1129B.4.1. Fig 11B-18A & C

27  
28 10) Curb ramp, Front of 57582 29 Palms Highway.

- a. Slope in direction of travel is 10.5% in violation of California Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2.
- b. Slope of left side flare is 19%; right side flare is 20% in violation of California Title 24 § 1127B.5.3
- c. No 12" wide grooved surface in violation of California Title 24 § 1127B.5.7
- d. No complying 1/2" lip at bottom in violation of California Title 24 § 1127B.5.5
- e. The ramp is less than 48" wide in violation of California Title 24 § 1127B.5.2

11) Curb ramp. West side of shopping center, behind buildings (57580)

- a. Slope in direction of travel is from 9% to 21% in violation of California Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2
- b. No 12" wide grooved surface in violation of California Title 24 § 1127B.5.7
- c. No complying 1/2" lip at bottom in violation of California Title 24 § 1127B.5.5
- d. The ramp is less than 48" wide in violation of California Title 24 § 1127B.5.2

12) Ten designated parking spaces, (Vons)

- a. All designated parking spaces have faded striping in violation of

1 California Title 24 § 1129B.4.1. Fig 11B-18A, B & C

2 b. Six designated spaces do not have access aisles in violation of  
3 California Title 24 § 1129B.4.1. Fig 11B-18A & C

4 c. Six spaces require a person to travel behind a parked car other than their  
5 own in violation of California Title 24 § 1118A.4.1-3, §1129B.1  
6 &1129B.4

7 d. Spaces do not have proper signage in violation of California Title 24 §  
8 1129B.5. Fig 11B-18A, B, & C

9 e. Parking spaces slope from 3% to 4% in violation of California Title 24  
10 § 1129B.4.4, 4.6.3\*

11 13) Asphalt ramp extending into designated parking. (Vons)

12 a. Slope in direction of travel is from 8% to 11% in violation of California  
13 Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2

14 b. Slope of left side flare is 20%; right side flare is 22% in violation of  
15 California Title 24 § 1127B.5.3

16 c. No 12" wide grooved surface in violation of California Title 24 §  
17 1127B.5.7

18 d. No complying 1/2" lip at bottom in violation of California Title 24 §  
19 1127B.5.5

20 e. Does not have a contrasting finish to the background in violation of  
21 California Title 24 § 1127B.5.6  
22  
23  
24  
25  
26  
27  
28

- 1 14) Curb ramp, Three feet long in front of Angel View Thrift Store (57594)
- 2
- 3 a. Slope in direction of travel is 9% to 13% in violation of California Title
- 4 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2
- 5 b. Slope of side flares exceeds 25% in violation of California Title 24 §
- 6 1127B.5.3
- 7
- 8 c. No 12" wide grooved surface in violation of California Title 24 §
- 9 1127B.5.7
- 10
- 11 d. No complying 1/2" lip at bottom in violation of California Title 24 §
- 12 1127B.5.5
- 13
- 14 e. The ramp is less than 48" wide in violation of California Title 24 §
- 15 1127B.5.2
- 16 15) Curb ramp, CIT Computers (57602).
- 17
- 18 a. Slope in direction of travel is from 10% to 13% in violation of
- 19 California Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2
- 20
- 21 b. Slope of left side flare exceeds 20%, right side flare is 20% in violation
- 22 of California Title 24 § 1127B.5.3
- 23
- 24 c. No 12" wide grooved surface in violation of California Title 24 §
- 25 1127B.5.7
- 26
- 27 d. No complying 1/2" lip at bottom in violation of California Title 24 §
- 28 1127B.5.5
- e. The ramp is less than 48" wide in violation of California Title 24 §

1 1127B.5.2

2 16) Two designated parking spaces, (Rite Aid).

- 3
- 4 a. Stripping is faded in violation of California Title 24 § 1129B.
- 5 b. Non-complying signage in front of designated parking space in
- 6 violation of California Title 24 § 1129B.5. Fig 11B-18A, B, & C
- 7

8 17) Curb ramp, (Rite Aid).

- 9 a. Slope in direction of travel is from 5% to 7.5% in violation of
- 10 California Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2
- 11
- 12 b. Slope of left side flare is 12%; right side flare is 13% in violation of
- 13 California Title 24 § 1127B.5.3
- 14
- 15 c. No 12" wide grooved surface in violation of California Title 24 §
- 16 1127B.5.7
- 17
- 18 d. No complying 1/2" lip at bottom in violation of California Title 24 §
- 19 1127B.5.5
- 20
- 21 e. The ramp is less than 48" wide in violation of California Title 24 §
- 22 1127B.5.2

23 18) Curb ramp, Big O Tires (57672)

- 24 a. Slope in direction of travel is 10% to 14% in violation of California
- 25 Title 24 § 1127B.5.3, ADAAG 4.7.2 & 4.8.2
- 26
- 27 b. Slope of side flares are more than 20% in violation of California Title
- 28 24 § 1127B.5.3

- 1 c. No 12" wide grooved surface in violation of California Title 24 §  
2 1127B.5.7  
3  
4 d. No complying 1/2" lip at bottom in violation of California Title 24 §  
5 1127B.5.5  
6  
7 e. The ramp is less than 48" wide in violation of California Title 24 §  
8 1127B.5.2

9 19) Two designated parking spaces, east side Big O Tires.

- 10 a. There is a swale running through parking spaces in violation of  
11 California Title 24 § 1129B.4.4, 4.6.3\*  
12  
13 b. Stripping is faded in violation of California Title 24 § 1129B.4.1. Fig  
14 11B-18A & C  
15  
16 c. Noncomplying signage in violation of California Title 24 § 1129B.5.  
17 Fig 11B-18A, B, & C  
18

19 **VONS MARKET**  
20 **57590 29 Palms Highway**

21 **INTERIOR SURVEY:**

- 22 1) Pharmacy counter is 42" high in violation of California Title 24 § 1122B.4  
23 2) Deli counter is 36" high in violation of California Title 24 § 1122B.4  
24 3) There is no signage identifying checkout stands for people with disabilities in  
25 violation of California Title 24 § 1110B.1.3  
26  
27 4) Restroom.  
28 a. The entry door signage is noncomplying in violation of California Title



1 visiting said facilities, and as a legal result, Plaintiff **JAMES COLLINS** suffers violation  
2 of his civil rights to full and equal enjoyment of goods, services, facilities and privileges,  
3 and has and will suffer embarrassment and humiliation.  
4

#### 5 FACTUAL ALLEGATIONS

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

17 5. Defendants **VONS COMPANIES, INC.**, a Michigan corporation, dba  
18 **VONS #58; CALIFORNIA VALLEY ASSOCIATES**, a New York Limited  
19 **Partnership; UNIONBANCAL CORPORATION**, a California corporation, dba  
20 **UNION BANK OF CALIFORNIA, N.A. DOWNEY SAVINGS AND LOAN**  
21 **ASSOCIATION**, a California corporation; and **DOES ONE TO TEN, inclusive**, at  
22 all times relevant herein were and are the owners and operators; lessors and/or lessees,  
23 franchisers and/or franchisees, of public facilities known as the "**SHOPPING**  
24 **CENTER**", located at Yucca Valley, California, subject to the requirements of California  
25 state law requiring full and equal access to public facilities pursuant to *California Health*  
26  
27  
28

1 *& Safety Code § 19955, et seq., California Civil Code §§ 51, 51.5, 52(a), 52.1, 54, 54.1,*  
2 *54.3 and 55, and subject to Title III of the Americans with Disabilities Act of 1990, and*  
3 *to all other legal requirements referred to in this Complaint. Plaintiff does not know the*  
4 *relative responsibilities of defendants in the operation of the facilities herein complained*  
5 *of, and alleges a joint venture and common enterprise by all such defendants.*

6  
7  
8 6. ~~Defendants VONS COMPANIES, INC., a Michigan corporation, dba~~  
9 ~~VONS #58; CALIFORNIA VALLEY ASSOCIATES, a New York Limited~~  
10 ~~Partnership; UNIONBANCAL CORPORATION, a California corporation, dba~~  
11 ~~UNION BANK OF CALIFORNIA, N.A. DOWNEY SAVINGS AND LOAN~~  
12 ~~ASSOCIATION, a California corporation; and DOES ONE TO TEN, inclusive~~  
13 ~~(hereinafter alternatively referred to collectively as "defendants"), at all times relevant~~  
14 ~~herein were and are owners, possessors, builders and keepers of the "SHOPPING~~  
15 ~~CENTER " in Yucca Valley, California.~~

16  
17  
18 7. Defendants VONS COMPANIES, INC., a Michigan corporation, dba  
19 VONS #58; CALIFORNIA VALLEY ASSOCIATES, a New York Limited  
20 Partnership; UNIONBANCAL CORPORATION, a California corporation, dba  
21 UNION BANK OF CALIFORNIA, N.A. DOWNEY SAVINGS AND LOAN  
22 ASSOCIATION, a California corporation; and DOES ONE TO TEN, inclusive are  
23 the owners and operators of the subject "SHOPPING CENTER," at all times relevant to  
24 this Complaint. Plaintiff is informed and believes that each of the defendants herein is  
25 the agent, employee or representative of each of the other defendants, and performed all  
26  
27  
28

1 acts and omissions stated herein within the scope of such agency or employment or  
2 representative capacity and is responsible in some manner for the acts and omissions of  
3 the other defendants in legally causing the damages complained of herein, and have  
4 approved or ratified each of the acts or omissions of each other defendant, as herein  
5 described.  
6

7  
8 8. Plaintiff **JAMES COLLINS** does not know the true names and capacities of  
9 defendants **VONS COMPANIES, INC., a Michigan corporation, dba VONS #58;**  
10 **CALIFORNIA VALLEY ASSOCIATES, a New York Limited Partnership;**  
11 **UNIONBANCAL CORPORATION, a California corporation, dba UNION BANK**  
12 **OF CALIFORNIA, N.A. DOWNEY SAVINGS AND LOAN ASSOCIATION, a**  
13 **California corporation; and DOES ONE TO TEN, inclusive,** their business capacities,  
14 their ownership connection to the property and business, nor their relative responsibilities  
15 in causing the access violations herein complained of, and alleges a joint venture and  
16 common enterprise by all such defendants. Plaintiff is informed and believes that each of  
17 the defendants herein, including **DOES ONE TO TEN, inclusive,** is the agent, ostensible  
18 agent, master, servant, employer, employee, representative, franchiser, franchisee, joint  
19 venturer, partner, and associate, or such similar capacity, of each of the other defendants,  
20 and was at all times acting and performing, or failing to act or perform, with the  
21 authorization, consent, permission or ratification of each of the other defendants, and is  
22 responsible in some manner for the acts and omissions of the other defendants in legally  
23 causing the violations and damages complained of herein, and have approved or ratified  
24  
25  
26  
27  
28

1 each of the acts or omissions of each other defendant, as herein described. Plaintiff will  
2 seek leave to amend this Complaint when the true names, capacities, connections and  
3 responsibilities of defendants **VONS COMPANIES, INC., a Michigan corporation,**  
4 **dba VONS #58; CALIFORNIA VALLEY ASSOCIATES, a New York Limited**  
5 **Partnership; UNIONBANCAL CORPORATION, a California corporation, dba**  
6 **UNION BANK OF CALIFORNIA, N.A. DOWNEY SAVINGS AND LOAN**  
7 **ASSOCIATION, a California corporation; and DOES ONE TO TEN, inclusive, are**  
8 ascertained.

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

16  
17 10. Defendants **VONS COMPANIES, INC., a Michigan corporation, dba**  
18 **VONS #58; CALIFORNIA VALLEY ASSOCIATES, a New York Limited**  
19 **Partnership; UNIONBANCAL CORPORATION, a California corporation, dba**  
20 **UNION BANK OF CALIFORNIA, N.A. DOWNEY SAVINGS AND LOAN**  
21 **ASSOCIATION, a California corporation; and DOES ONE TO TEN, inclusive, are**  
22 the owners and operators of “**SHOPPING CENTER,**” located at Yucca Valley,  
23 California. This establishment, including, but not limited to, parking spaces and access  
24 aisles and access routes, are each a part of a “public accommodation or facility” subject  
25 to the requirements of *California Health & Safety Code* § 19955, *et seq.*, and of  
26  
27  
28

1 *California Civil Code* §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this  
2 "SHOPPING CENTER" was constructed after 1990, which subjects it to handicapped  
3 access requirements per *California Health & Safety Code* § 19959, and applicable  
4 portions of *California Code of Regulations*, Title 24, (the State Building Code).  
5

6  
7 11. On or about September 28, 2002, Plaintiff **JAMES COLLINS**, visited the  
8 "SHOPPING CENTER" in Yucca Valley, California, for the purpose of obtaining cash  
9 from an ATM machine, among other things, in order to attend a function in the city.  
10 Defendants **VONS COMPANIES, INC.**, a Michigan corporation, dba **VONS #58**;  
11 **CALIFORNIA VALLEY ASSOCIATES**, a New York Limited Partnership;  
12 **UNIONBANCAL CORPORATION**, a California corporation, dba **UNION BANK**  
13 **OF CALIFORNIA**, N.A. **DOWNEY SAVINGS AND LOAN ASSOCIATION**, a  
14 California corporation; and **DOES ONE TO TEN**, inclusive, interfered with  
15 Plaintiff's access to the "SHOPPING CENTER" establishment as set forth in Paragraph  
16 3 above.  
17  
18

19  
20 Said acts and omissions denied Plaintiff legal handicapped access to the  
21 "SHOPPING CENTER" according to federal and state law.  
22

23 12. Plaintiff encountered and/or is informed and believes that the following  
24 architectural barriers, which violate the requirements of the *California Code of*  
25 *Regulations* Title 24 and *ADAAG*, existed and continue to exist thereby denying Plaintiff  
26 and those similarly situated full and equal access to the subject public facilities as set  
27 forth in Paragraph 3 above.  
28

1 13. Defendants, and each of them, discriminated against Plaintiff **JAMES**  
2 **COLLINS** on the basis of his physical disability, and interfered with his access to the  
3 "**SHOPPING CENTER**" establishments, in violation of both California law including,  
4 but not limited to, *California Civil Code* §§ 51, 51.5, 54, 54.1, and a violation of Title III,  
5 §302, the "Prohibition of Discrimination" provision and §503, the "Prohibition Against  
6 Retaliation or Coercion" provision of the *Americans with Disabilities Act of 1990*.  
7

8  
9 14. As a result of the actions and failure to act of defendants, and each of them,  
10 and as a result of the failure to provide appropriate handicapped parking, proper  
11 handicapped signage, proper handicapped accessible entryways, and handicapped  
12 accommodations to their ATM machines, Plaintiff **JAMES COLLINS** suffered and will  
13 suffer a loss of his civil rights to full and equal access to public facilities, and further  
14 suffered and will suffer emotional distress, mental distress, mental suffering, mental  
15 anguish, which includes shame, humiliation, embarrassment, anger, chagrin,  
16 disappointment and worry, expectedly and naturally associated with a person with a  
17 physical disability being denied access to a public accommodation, all to his damages as  
18 prayed hereinafter in an amount within the jurisdiction of this court.  
19  
20  
21

22 **I. FIRST CAUSE OF ACTION:**  
23 **VIOLATION OF *THE AMERICANS WITH DISABILITIES ACT OF 1990***  
24 **(42 USC §12101 *et seq.*)**

25 15. Plaintiff repleads and incorporates by reference, as if fully set forth again  
26 herein, the allegations contained in paragraphs 1 through 14 of this Complaint and  
27 incorporates them herein as if separately repled.  
28

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

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

14           It is the purpose of this act (1) to provide a clear and comprehensive  
15 national mandate for the elimination of discrimination against individuals  
16 with disabilities; (2) to provide clear, strong, consistent, enforceable  
17 standards addressing discrimination against individuals with disabilities; (3)  
18 to ensure that the Federal government plays a central role in enforcing the  
19 standards established in this act on behalf of individuals with disabilities;  
20 and (4) to invoke the sweep of Congressional authority, including the power  
21 to enforce the 14th Amendment and to regulate commerce, in order to

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

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

10  
11  
12 19. Pursuant to 42 *USC* § 12182,

13 "No individual shall be discriminated against on the basis of disability  
14 in the full and equal enjoyment of the goods, services, facilities, privileges,  
15 advantages, or accommodations of any place of public accommodation by  
16 any person who owns, leases (or leases to), or operates a place of public  
17 accommodation."  
18  
19

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

22  
23 **Denial of participation.** It shall be discriminatory to subject an  
24 individual or class of individuals on the basis of a disability or disabilities of  
25 such individual or class, directly, or through contractual, licensing, or other  
26 arrangements, to a denial of the opportunity of the individual or class to  
27 participate in or benefit from the goods, services, facilities, privileges,  
28

1 advantages, or accommodations of an entity.

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

3  
4 **USC §12182(b)(1)(E):**

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

11  
12 The acts of defendants set forth herein were a violation of Plaintiff's rights under the  
13 ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 *CFR* Part 36  
14 et seq.

15  
16 22. Among the general prohibitions against discrimination were included in 42

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

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

20  
21 (i) the imposition or application of eligibility criteria that screen out or  
22 tend to screen out an individual with a disability or any class of individuals  
23 with disabilities from fully and equally enjoying any goods, services,  
24 facilities, privileges, advantages, or accommodations, unless such criteria  
25 can be shown to be necessary for the provision of the goods, services,  
26 facilities, privileges, advantages, or accommodations being offered;  
27  
28

1 (ii) a failure to make reasonable modifications in policies, practices, or  
2 procedures, when such modifications are necessary to afford such goods,  
3 services, facilities, privileges, advantages, or accommodations to individuals  
4 with disabilities, unless the entity can demonstrate that making such  
5 modifications would fundamentally alter the nature of such goods, services,  
6 facilities, privileges, advantages, or accommodations.  
7

8  
9 23. Plaintiff alleges that constructing the eligibility requirements, policies,  
10 practices and procedure for entry to the "**SHOPPING CENTER**" facility by persons  
11 with disabilities and their companions as established by the defendants can be simply  
12 modified to eliminate disparate and discriminatory treatment of persons with disabilities  
13 by properly constructing barrier free handicapped access for safe and full and equal  
14 enjoyment of the "**SHOPPING CENTER**" as that enjoyed by other people.  
15  
16

17 24. The specific prohibition against retaliation and coercion is included in the  
18 *Americans With Disabilities Act of 1990* § 503(b) and the *Remedies and Procedures* in §  
19 503(c):  
20

21 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to  
22 coerce, intimidate, threaten, or interfere with any individual in the exercise  
23 or enjoyment of, or on account of his or her having exercised or enjoyed, or  
24 on account of his or her having aided or encouraged any other individual in  
25 the exercise or enjoyment of, any right granted or protected by this Act.  
26  
27

28 (c) Remedies and Procedure. - The remedies and procedures available

1 under sections 107, 203, and 308 of this Act shall be available to aggrieved  
2 persons for violations of subsections (a) and (b), with respect to Title I, Title  
3 II and Title III, respectively.  
4

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

17 26. The removal of the barriers complained of by Plaintiff as hereinabove  
18 alleged were at all times after 1990 “readily achievable.” On information and belief, if  
19 the removal of all the barriers complained of here together were not “readily achievable,”  
20 the removal of each individual barrier complained of herein was “readily achievable.”  
21

22 27. Per 42 *USC* § 12181(9), “The term ‘readily achievable’ means easily  
23 accomplishable and able to be carried out without much difficulty or expense.” The  
24 statute and attendant regulations define relative “expense” in relation to the total financial  
25 resources of the entities involved, including any “parent” companies. Plaintiff alleges  
26 that properly repairing each of the items that Plaintiff complains of herein is readily  
27  
28

1 achievable, including, but not limited to, correcting and repairing the items set forth in  
2 Paragraph 3 above.

3  
4 The changes needed to remove barriers to access for the disabled were and are  
5 “readily achievable” by the defendants under standards set forth under 42 *USC* § 12181  
6 of the *Americans with Disabilities Act of 1990*. (Further, if it was not “readily  
7 achievable” for defendants to remove all such barriers, defendants have failed to make  
8 the required services available through alternative methods, although such methods are  
9 achievable as required by 42 *USC* §12181(b)(2)(a)(iv), (v).)

10  
11  
12 28. Pursuant to the *Americans with Disabilities Act of 1990*, §308 (42 *USC* §  
13 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the *Civil*  
14 *Rights Act of 1964* §204(a), (42 *USC* § 2000a-3(a)), as Plaintiff is being subjected to  
15 discrimination on the basis of disability in violation of this title and/or Plaintiff has  
16 reasonable grounds for believing that he is about to be subjected to discrimination in  
17 violation of *Americans With Disabilities Act of 1990* §302. Plaintiff cannot return to or  
18 make use of the public facilities complained of herein for the purpose of entry and  
19 provision of goods and service so long as defendants continue to apply eligibility criteria,  
20 policies, practices and procedures to screen out and refuse to allow entry and service to  
21 persons with disabilities such as Plaintiff’s.

22  
23  
24  
25 29. Defendants, and each of their acts and omissions of failing to provide barrier  
26 free handicapped access for Plaintiff, were tantamount to interference, coercion or  
27 intimidation pursuant to *Americans With Disabilities Act of 1990* §503(b) (now 42 *USC*  
28

1 § 12203):

2 It shall be unlawful to coerce, intimidate, threaten, or interfere with  
3 any individual in the exercise or enjoyment of, or on account of his or her  
4 having encouraged any other individual in the exercise or enjoyment of, any  
5 right granted or protected by this Act.  
6

7  
8 30. Per *Americans With Disabilities Act of 1990* § 308(a)(1) (now 42 *USC* §  
9 12188), “Nothing in this section shall require a person with a disability to engage in a  
10 futile gesture if such person has actual notice that a person or organization covered by  
11 this title does not intend to comply with its provisions.” Pursuant to this last section,  
12 Plaintiff, on information and belief, alleges that defendants have continued to violate the  
13 law and deny the rights of Plaintiff and other disabled persons to access this public  
14 accommodation for the purpose of lodging. Therefore, Plaintiff seeks injunctive relief  
15 pursuant to §308(a)(2),  
16  
17

18 “...Where appropriate, injunctive relief shall also include requiring  
19 the provision of an auxiliary aid or service, modifications of a policy, or  
20 provision of alternative methods, to the extent required by this title.”  
21

22  
23 31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the *Civil*  
24 *Rights Act of 1964* (42 *USC* § 2000a-3(a), and pursuant to federal regulations adopted to  
25 implement the *Americans with Disabilities Act of 1990*, including but not limited to an  
26 order granting injunctive relief and attorneys’ fees. Such attorneys’ fees, “including  
27 litigation expenses and costs,” are further specifically provided for by §505 of Title III.  
28

1 **II. SECOND CAUSE OF ACTION**  
2 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH**  
3 **PHYSICAL DISABILITIES (*California Health & Safety Code* § 19955, *et seq.*)**

4 32. Plaintiff repleads and incorporates by reference, as if fully set forth again  
5 herein, the allegations contained in paragraphs 1 through 31 of this Complaint and  
6 incorporate them herein as if separately repled.  
7

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

9 The purpose of this part is to insure that public accommodations or  
10 facilities constructed in this state with private funds adhere to the provisions  
11 of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the  
12 *Government Code*. For the purposes of this part “public accommodation or  
13 facilities” means a building, structure, facility, complex, or improved area  
14 which is used by the general public and shall include auditoriums, hospitals,  
15 theaters, restaurants, hotels, motels, stadiums, and convention centers.  
16 When sanitary facilities are made available for the public, clients or  
17 employees in such accommodations or facilities, they shall be made  
18 available for the handicapped.  
19

20 34. *California Health & Safety Code* § 19956, which appears in the same  
21 chapter as §19955, provides in pertinent part, “accommodations constructed in this state  
22 shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5  
23 of Title 1 of the *Government Code*...” *California Health & Safety Code* § 19956 was  
24 operative July 1, 1970, and is applicable to all public accommodations constructed or  
25  
26  
27  
28

1 altered after that date. On information and belief, portions of “**SHOPPING CENTER**”  
2 and/or of its buildings, were constructed and/or altered after July 1, 1970, and substantial  
3 portions of said building had alterations, structural repairs, and/or additions made to such  
4 public accommodations after July 1, 1970, thereby requiring said public accommodations  
5 and/or buildings to be subject to the requirements of Part 5.5, *California Health & Safety*  
6 *Code* § 19955, *et seq.*, upon such alteration, structural repairs or additions per *California*  
7 *Health & Safety Code* § 19959.

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

23  
24  
25  
26  
27  
28 36. Public facilities, such as “**SHOPPING CENTER**” are public

1 accommodations or facilities within the meaning of *California Health & Safety Code* §  
2 19955, *et seq.*

3  
4 37. It is difficult or impossible for persons with physical disabilities who use  
5 wheelchairs, canes, walkers and service animals to travel about in public to use an ATM  
6 machine, traverse shopping malls, and utilize retail store with the defects set forth in  
7 Paragraph 3 above as required by Title 24 of the *California Code of Regulations* and the  
8 *Americans with Disabilities Act Access Guidelines (ADAAG)*. Thus, when public  
9 accommodations fail to provide handicap accessible public facilities, persons with  
10 physical disabilities are unable to enter and use said facilities, and are denied full and  
11 equal access to and use of that facility that is enjoyed by other members of the general  
12 public.  
13  
14

15  
16 38. Plaintiff **JAMES COLLINS** and other similarly situated persons with  
17 physical disabilities whose physical conditions require the use of wheelchairs, canes,  
18 walkers and service animals are unable to use public facilities on a “full and equal” basis  
19 unless each such facility is in compliance with the provisions of the *California Health &*  
20 *Safety Code* § 19955, *et seq.* Plaintiff is a member of that portion of the public whose  
21 rights are protected by the provisions of *California Health & Safety Code* § 19955, *et*  
22 *seq.*  
23  
24

25 39. The *California Health & Safety Code* was enacted “[t]o ensure that public  
26 accommodations or facilities constructed in this state with private funds adhere to the  
27 provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the  
28

1 *Government Code.*” Such public accommodations are defined to include retail stores.

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

6 41. Plaintiff **JAMES COLLINS** is informed and believes, and therefore alleges,  
7  
8 that Defendants **VONS COMPANIES, INC., a Michigan corporation, dba VONS**  
9 **#58; CALIFORNIA VALLEY ASSOCIATES, a New York Limited Partnership;**  
10 **UNIONBANCAL CORPORATION, a California corporation, dba UNION BANK**  
11 **OF CALIFORNIA, N.A. DOWNEY SAVINGS AND LOAN ASSOCIATION, a**  
12 **California corporation; and DOES ONE TO TEN, inclusive,** and each of them,  
13 caused the subject buildings constituting “UNION BANK, DOWNEY SAVINGS AND  
14 LOAN, VON'S MARKET and all common areas of the SHOPPING CENTER” to be  
15  
16 constructed, altered and maintained in such a manner that persons with physical  
17 disabilities were denied full and equal access to, within and throughout said buildings and  
18  
19 were denied full and equal use of said public facilities, and despite knowledge and actual  
20 and constructive notice to such Defendants that the configuration of the store and/or  
21  
22 buildings was in violation of the civil rights of persons with physical disabilities, such as  
23 Plaintiff. Such construction, modification, ownership, operation, maintenance and  
24 practices of such public facilities are in violation of law as stated in Part 5.5, *California*  
25 *Health & Safety Code* § 19955, *et seq.*, and elsewhere in the laws of California.

26  
27  
28 42. On information and belief, the subject buildings constituting the public

1 facilities of "SHOPPING CENTER" denied full and equal access to Plaintiff and other  
2 persons with physical disabilities in other respects due to non-compliance with  
3 requirement of Title 24 of the *California Code of Regulations* and *California Health &*  
4 *Safety Code* § 19955, *et seq.*

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

24 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has  
25 been required to incur legal expenses and hire attorneys in order to enforce his civil rights  
26 and enforce provisions of the law protecting access for persons with physical disabilities  
27 and prohibiting discrimination against persons with physical disabilities, and to take such  
28

1 action both in his own interests and in order to enforce an important right affecting the  
2 public interest. Plaintiff, therefore, seeks damages in this lawsuit for recovery of all  
3 reasonable attorneys' fees incurred, pursuant to the provisions of the *California Code of*  
4 *Civil Procedure* § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to  
5 *California Health & Safety Code* § 19953 and *California Civil Code* §§ 54.3 and 55.  
6  
7

8 45. Defendants, and each of them, at times prior to and including September 28,  
9 2002, and continuing to the present time, knew that persons with physical disabilities  
10 were denied their rights of equal access to all portions of this public facility. Despite  
11 such knowledge, Defendants failed and refused to take steps to comply with the  
12 applicable access statutes; and despite knowledge of the resulting problems and denial of  
13 civil rights thereby suffered by Plaintiff **JAMES COLLINS** and other similarly situated  
14 persons with disabilities, including the specific notices referred to in paragraph 43 of this  
15 Complaint. Defendants have failed and refused to take action to grant full and equal  
16 access to persons with physical disabilities in the respects complained of hereinabove.  
17 Defendants and each of them have carried out a course of conduct of refusing to respond  
18 to, or correct complaints about, denial of handicap access. Such actions and continuing  
19 course of conduct by Defendants, evidence despicable conduct in conscious disregard for  
20 the rights or safety of Plaintiff and of other similarly situated persons, justifying an award  
21 of exemplary and punitive damages pursuant to *California Civil Code* § 3294.  
22  
23  
24  
25  
26

27 46. Defendants' actions have also been oppressive to persons with physical  
28 disabilities and of other members of the public, and have evidenced actual or implied

1 malicious intent toward those members of the public, such as Plaintiff and other persons  
2 with physical disabilities who have been denied the proper access they are entitled to by  
3 law. Further, Defendants' refusals on a day-to-day basis to correct these problems  
4 evidence despicable conduct in conscious disregard for the rights of Plaintiff and other  
5 members of the public with physical disabilities.  
6

7  
8 47. Plaintiff prays for an award of punitive damages against Defendants, and  
9 each of them, pursuant to *California Civil Code* § 3294 in an amount sufficient to make a  
10 more profound example of Defendants and discourage owners, operators, franchisers and  
11 franchisees of other public facilities from willful disregard of the rights of persons with  
12 physical disabilities. Plaintiff does not know the financial worth of Defendants, or the  
13 amount of punitive damages sufficient to accomplish the public purposes of *California*  
14 *Civil Code* § 3294 and seeks leave to amend this Complaint when such facts are known.  
15  
16

17 48. As a result of the actions and failure of Defendants, and each of them, and as  
18 a result of the failure to provide proper accessible public facilities, Plaintiff **JAMES**  
19 **COLLINS** was denied his civil rights, including his right to full and equal access to  
20 public facilities, was embarrassed and humiliated, suffered physical, psychological and  
21 mental injuries and emotional distress, mental distress, mental suffering, mental anguish,  
22 which includes shame, humiliation, embarrassment, anger, chagrin, disappointment and  
23 worry, expectedly and naturally associated with a person with a physical disability being  
24 denied access to a public accommodation.  
25  
26  
27

28 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

1 **III. THIRD CAUSE OF ACTION**  
2 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**  
3 **(California Civil Code §§ 54, 54.1 and 54.3)**

4 49. Plaintiff repleads and incorporates by reference as if fully set forth again  
5 herein, the allegations contained in paragraphs 1 through 48 of this Complaint and  
6 incorporates them herein as if separately repled.  
7

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

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

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

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

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

9  
10  
11  
12 *California Civil Code* § 54.1(a).

13 52. On or about September 28, 2002, Plaintiff **JAMES COLLINS** suffered  
14 violations of *California Civil Code* §§ 54 and 54.1 in that he was denied full and equal  
15 enjoyment of the goods, services, facilities and privileges of said "**SHOPPING**  
16 **CENTER**", as set forth in paragraph 3 above. Plaintiff was also denied full and equal  
17 access to other particulars, including, but not limited to, those described hereinabove.  
18 Plaintiff was also denied use of facilities that he was entitled to under Title III of the  
19 *Americans with Disabilities Act of 1990*.

20  
21  
22 53. As a result of the denial of full and equal enjoyment of the goods, services,  
23 facilities and privileges of defendants' **SHOPPING CENTER** facility due to the acts and  
24 omissions of defendants, and each of them, in owning, operating and maintaining this  
25 subject public facility, Plaintiff suffered violations of his civil rights, including, but not  
26 limited to, rights under *California Civil Code* §§ 54, 54.1, and 54.3, and has and will  
27  
28

1 suffer physical injury, emotional distress, mental distress, mental suffering, mental  
2 anguish, which includes shame, humiliation, embarrassment, anger, chagrin,  
3 disappointment and worry, expectedly and naturally associated with a disabled person's  
4 denial of full and equal enjoyment of goods, services, privileges, etc. all to his damages  
5 as prayed hereinafter in an amount within the jurisdiction of the court. Defendants'  
6 actions and omissions to act constituted discrimination against Plaintiff on the sole basis  
7 that Plaintiff was physically disabled.

10 54. Plaintiff seeks damages for the violation of his rights as a disabled person on  
11 or about September 28, 2002, according to proof, pursuant to *California Civil Code* §  
12 54.3, including a trebling of all statutory and actual damages, general and special,  
13 available pursuant to *California Civil Code* § 54.3(a).

16 55. As a result of defendants' acts and omissions in this regard, Plaintiff  
17 **JAMES COLLINS** has been required to incur legal expenses and hire attorneys in order  
18 to enforce his rights and enforce provisions of the law protecting the full and equal  
19 enjoyment of goods, services, facilities, privileges of public facilities by the disabled, and  
20 those individuals associated with or accompanied by a person with disabilities, and  
21 prohibiting discrimination against the disabled. Plaintiff, therefore, seeks recovery in this  
22 lawsuit for all reasonable attorneys' fees incurred pursuant to the provisions of *California*  
23 *Civil Code* § 54.3. Additionally, Plaintiff's lawsuit is intended not only to obtain  
24 compensation for damages to Plaintiff, but also to compel the defendants to make their  
25 goods, services, facilities and privileges available and accessible to all members of the  
26  
27  
28

1 public with physical disabilities, justifying public interest attorneys' fees pursuant to the  
2 provisions of *California Code of Civil Procedure* § 1021.5.  
3

4 56. The acts and omissions of defendants in failing to provide the required  
5 accessible facilities subsequent to the enactment date and compliance date of the  
6 *Americans with Disabilities Act of 1990*, and refusal to make remedial modifications and  
7 alterations to its handicapped parking, handicapped signage, pathways, and other  
8 elements as hereinabove stated, after being notified by patrons before and after the time  
9 of Plaintiff's visit and injuries, on or about September 28, 2002, and all times prior  
10 thereto with the knowledge that persons with disabilities would enter defendants'  
11 premises, the reason given therefor, was an established policy, practice and procedure of  
12 refusing and denying entry, thereby denying access and other services to a person with  
13 disabilities and the companions thereof, evidence malice and oppression toward Plaintiff  
14 and other disabled persons.  
15

16 57. Such despicable conduct, as that incorporated herein by reference and  
17 specifically set forth in Paragraph 11, was carried out by defendants with a willful and  
18 conscious disregard for the law and the rights of Plaintiff and of other disabled persons,  
19 and was oppressive in that such conduct subjected Plaintiff "to cruel and unjust hardship  
20 in conscious disregard" for the law and Plaintiff's rights, and justifies exemplary and  
21 punitive damages pursuant to *California Civil Code* § 3294, in amounts sufficient to  
22 make an example of defendants and to punish defendants and to carry out the purposes of  
23 *California Civil Code* § 3294.  
24  
25  
26  
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28

1           58. Defendants have failed to establish a nondiscriminatory criteria, policy,  
2 practice and procedure for entry into said "**SHOPPING CENTER**" as hereinabove  
3 described.  
4

5           59. As a result of defendants' continuing failure to provide for the full and equal  
6 enjoyment of goods, services, facilities and privileges of said "**SHOPPING CENTER**"  
7 as hereinabove described, Plaintiff has continually been denied his rights to full and equal  
8 enjoyment of the subject banks and retail store, as it would be a "futile gesture" to  
9 attempt to patronize said "**SHOPPING CENTER**" with the discriminatory policy in  
10 place as hereinabove described.  
11  
12

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

6           61. Wherefore, Plaintiff asks this court to preliminarily and permanently enjoin  
7 any continuing refusal by defendants to permit entry to said "**SHOPPING CENTER**"  
8 and to serve Plaintiff or others similarly situated, and to require defendants to comply  
9 forthwith with the applicable statutory requirements relating to the full and equal  
10 enjoyment of goods and services as described hereinabove for disabled persons. Such  
11 injunctive relief is provided by *California Civil Code* § 55. Plaintiff further requests that  
12 the court award statutory costs and attorneys' fees to Plaintiff pursuant to *California*  
13 *Civil Code* § 55 and *California Code of Civil Procedure* § 1021.5, all as hereinafter  
14 prayed for.  
15  
16  
17

18           WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys'  
19 fees and costs of suit, as allowed by statute and according to proof, and appropriate  
20 exemplary damages.  
21

22 **IV. FOURTH CAUSE OF ACTION**  
23 **VIOLATIONS OF *UNRUH CIVIL RIGHTS ACT***  
24 **(*California Civil Code* §§ 51 and 51.5)**

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

1           63. Defendants' acts and omissions as specified with regard to the  
2 discriminatory treatment of Plaintiff **JAMES COLLINS** on the basis of his physical  
3 disabilities, have been in violation of *California Civil Code* §§ 51 and 51.5, the *Unruh*  
4 *Civil Rights Act*, and have denied to Plaintiff his rights to "full and equal  
5 accommodations, advantages, facilities, privileges or services in all business  
6 establishments of every kind whatsoever."  
7  
8

9           64. *California Civil Code* § 51 also provides that "[a] violation of the right of  
10 any individual under the *Americans with Disabilities Act of 1990* (Public Law 101-336)  
11 shall also constitute a violation of this section."  
12

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

21           66. As a result of the violation of Plaintiff's civil rights protected by *California*  
22 *Civil Code* §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of *California*  
23 *Civil Code* § 52, including a trebling of actual damages (defined by *California Civil*  
24 *Code* § 52(h) to mean "special and general damages"), as well as reasonable attorneys'  
25 fees and costs, as allowed by statute, according to proof. Further, pursuant to paragraphs  
26 11, 12, 13, 35 and 43, Plaintiff seeks appropriate exemplary damages under *California*  
27  
28

1 *Civil Code* § 3294.

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

5 **PRAYER FOR RELIEF**

6 Plaintiff prays that this court award damages and provide relief as follows:  
7

8 1. Grant injunctive relief requiring that defendants establish a non-  
9 discriminatory criteria policy, practice and procedure permitting entry into the  
10 **SHOPPING CENTER** in Yucca Valley, California, for the purpose of services  
11 according to *California Civil Code* §§ 51, 51.5, 52, 54, 54.1, 54.3, *et seq.*, and Title III of  
12 the *Americans with Disabilities Act of 1990*, and grant injunctive relief requiring that  
13 Defendants repair and render safe to handicapped persons, and otherwise make  
14 handicapped-accessible, all public areas of the public facilities, including, but not limited  
15 to, removal of all barriers to access identified in Paragraph 3, above, and make such  
16 facilities “readily accessible to and usable by individuals with disabilities,” according to  
17 the standards of Title 24 of the *California Administrative Code, California Health &*  
18 *Safety Code* § 19955 *et seq.*, and Title III of the *Americans with Disabilities Act of 1990*  
19 and the standards of *ADAAG*; and prohibiting operation of the **SHOPPING CENTER**,  
20 including, but not limited to VON'S MARKET, UNION BANK and DOWNEY  
21 SAVINGS AND LOAN located in Yucca Valley, California, as public facilities until  
22 Defendants provide full and equal enjoyment of goods and services as described  
23 hereinabove to physically disabled persons, including Plaintiff;  
24  
25  
26  
27  
28

1 2. General damages according to proof;

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

5 4. Prejudgment interest on all compensatory damages;

6 5. Punitive and exemplary damages pursuant to the standards and purposes of  
7  
8 *California Civil Code* § 3294;

9 6. Remedies and Procedures available under *Americans with Disabilities Act*  
10  
11 *of 1990* §§ 107, 203 and 308;

12 7. Award Plaintiff all litigation expenses, all costs of this proceeding and all  
13 reasonable attorneys' fees as provided by law, including but not limited to those  
14 recoverable pursuant to the provisions of *California Civil Code* §§ 52, 54.3, and 55,  
15  
16 *California Code of Civil Procedure* § 1021.5, and *Americans with Disabilities Act of*  
17  
18 *1990* §308 of Title III; and

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

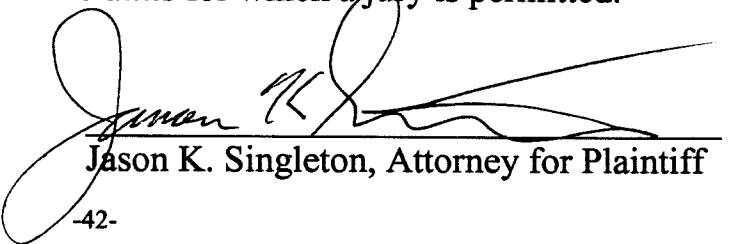
20 Dated: November 26, 2002

21  
22   
23 Jason K. Singleton, Attorney for  
24 Plaintiff, JAMES COLLINS

25 **REQUEST FOR JURY TRIAL**

26 Plaintiff hereby requests a jury for all claims for which a jury is permitted.

27  
28 Dated: November 26, 2002

29   
30 Jason K. Singleton, Attorney for Plaintiff