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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY: \_\_\_\_\_  


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ORIGINAL

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARCY DARBY-KEY,  
  
Plaintiff,  
  
v.  
  
CONCAL ASSOCIATES, INC., a  
California Corporation, and DOES  
ONE TO TEN, inclusive,  
  
Defendants.

) Case No. SACV 02-372 AHS (MLG)  
)  
) Civil Rights  
)  
) COMPLAINT FOR INJUNCTIVE  
) RELIEF AND DAMAGES: DENIAL  
) OF CIVIL RIGHTS OF A DISABLED  
) PERSON IN VIOLATION OF THE  
) AMERICANS WITH DISABILITIES  
) ACT OF 1990; VIOLATION OF  
) CALIFORNIA'S CIVIL RIGHTS  
) STATUTES  
)  
) JURY TRIAL REQUESTED

Plaintiff MARCY DARBY-KEY complains of defendants CONCAL ASSOCIATES, INC., and DOES ONE TO TEN, inclusive, and alleges as follows:

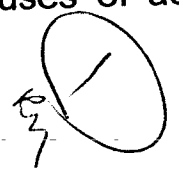
JURISDICTION AND VENUE

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,

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

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

### 11 INTRODUCTION

12  
13 3. Upon information and belief, Defendant **CONCAL ASSOCIATES, INC.**  
14 owns a shopping center (hereinafter referred to as the "Temple Shopping Center"  
15 for convenience) located at or near the intersection of Temple, Diamond Bar, and  
16 Mission Boulevards in Pomona, California. Said shopping center is owned and  
17 operated by defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO TEN,**  
18 **inclusive.**

19  
20  
21 Defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO TEN,**  
22 **inclusive,** operate an establishment for services to the public and at which  
23 Defendants failed to provide barrier free access to said establishment in  
24 conformity with both Federal and California legal requirements. Further,  
25 Defendants failed to provide compliance as follows:  
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- 1) There are no sidewalk / walks from either Temple or Mission to the shopping center and the slopes of the driveways off Mission and Temple exceed 8.33%.
- 2) Curbramp. Front of 3096 Temple.
  - a. The running slope of the ramp varies from 9.6 %to 10.2%.
  - b. Curbramp extends into access aisle and 9' wide parking space.
  - c. Slope of right side flare 23% and left sideflare is 27%.
  - d. No 12" wide grooved surface across top of curbramp.
  - e. The curbramp is about 6' long.
- 3) Parking space. Front of 3096 Temple.
  - a. The parking space is about 16 ½' long.
  - b. Slope of parking space is 3.2%.
  - c. A swale runs directly behind the paring space.
- 4) The cross slope of the sidewalk on the southeast side of Caesars is up to 8%.
- 5) Curbcut. Serving designated parking space at Little Caesars.
  - a. The running slope of the ramp varies from 9.2 %to 11.7%.
  - b. Curbramp extends into access aisle and 9' wide parking space.
  - c. Slope of right side flare 51% and left sideflare is vertical upwards.
  - d. No 12" wide grooved surface across top of curbramp.
  - e. The curbramp is about 6' long.
- 6) Parking Space. Front of Little Caesars
  - a. The slope of the designated parking space in front of Little Caesars 4.7% where the wheelchair unloads from a vehicle into the access aisle.
  - b. Access aisle is on drivers' side of the single parking space.
  - c. There is a swale directly behind the parking space.
  - d. The parking space is about 16 ½' long.

- 1 7) Curbramp at 3064 Temple. Access Designated parking space.
- 2 a. The running slope of the ramp varies from 10.2 %to 9.2%.
- 3 b. Curbramp extends into access aisle and 9' wide parking space.
- 4 c. Slope of right side flare 35% and 23% on left.
- 5 d. No 12" wide grooved surface across top of curbramp.
- 6 e. The curbramp is about 6' long.
- 7 8) The slope of the designated parking space in front of 3064 Temple is 4.5%
- 8 where the wheelchair unloads from a vehicle into the access aisle.
- 9 9) The vertical support posts on the handrails serving the ramp in front of 3060
- 10 Temple do not have a wheel guide.
- 11 10) Vertical support posts on handrails serving the ramp in front of 3034 Temple
- 12 do not have a wheel guide.
- 13 11) Curbramp at 3030 Temple. Access Designated parking space.
- 14 a. The running slope of the ramp varies from 9%- %to 9.9%.
- 15 b. Curbramp extends into access aisle and 9' wide parking space.
- 16 c. Slope of right side flare 30% and 28% on left.
- 17 d. No 12" wide grooved surface across top of curbramp.
- 18 e. The curbramp is about 6' long.
- 19 12) The slope of the designated parking space in front of 3030 Temple is 4%
- 20 where the wheelchair unloads from a vehicle into the access aisle.
- 21 13) There is no curbcut near Country Kwik Market / Deli to provide an accessible
- 22 path of travel to the parking lot or Dennys' Restaurant. The nearest curbcut
- 23 is adjacent to 3056 Temple.
- 24 14) Curbramp. Front of Dennys Restaurant.
- 25 a. The running slope of the ramp varies from 10.4 %to 10.2%.
- 26 b. Curbramp extends into access aisle and 9' wide parking space.
- 27 c. Slope of right side flare 34% and left sideflare is 32%.
- 28 d. No 12" wide grooved surface across top of curbramp.

1 e. The curbramp is about 6' long.

2 15) Parking space. Front of Dennys Restaurant.

3 a. The parking space is about 16' long.

4 b. Slope of parking space is 4.2%.

5 The above barriers interfered with Plaintiff's access and continue to deter Plaintiff  
6 from visiting said facilities, and as a legal result, Plaintiff **MARCY DARBY-KEY**  
7 suffers violation of her civil rights to full and equal enjoyment of goods, services,  
8 facilities and privileges, and has and will suffer embarrassment and humiliation.

10 **FACTUAL ALLEGATIONS**

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

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24 5. Defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO TEN,**  
25 **inclusive,** at all times relevant herein were and are the owners and operators;  
26 lessors and/or lessees, franchisers and/or franchisees, of public facilities  
27 described herein, located at Pomona, California, and subject to the requirements  
28

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

10 6. Defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO TEN,**  
11 **inclusive** (hereinafter alternatively referred to collectively as "defendants"), at all  
12 times relevant herein were and are owners, possessors, builders and keepers of  
13 the "**Temple Shopping Center**" in Pomona, California.

15 7. Defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO TEN,**  
16 **inclusive** are the owners and operators of the subject "**Temple Shopping**  
17 **Center,**" at all times relevant to this Complaint. Plaintiff is informed and believes  
18 that each of the defendants herein is the agent, employee or representative of  
19 each of the other defendants, and performed all acts and omissions stated herein  
20 within the scope of such agency or employment or representative capacity and is  
21 responsible in some manner for the acts and omissions of the other defendants in  
22 legally causing the damages complained of herein, and have approved or ratified  
23 each of the acts or omissions of each other defendant, as herein described.

25 8. Plaintiff **MARCY DARBY-KEY** does not know the true names and  
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1 capacities of defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO**  
2 **TEN, inclusive**, their business capacities, their ownership connection to the  
3 property and business, nor their relative responsibilities in causing the access  
4 violations herein complained of, and alleges a joint venture and common  
5 enterprise by all such defendants. Plaintiff is informed and believes that each of  
6 the defendants herein, including DOES ONE TO TEN, inclusive, is the agent,  
7 ostensible agent, master, servant, employer, employee, representative, franchiser,  
8 franchisee, joint venturer, partner, and associate, or such similar capacity, of each  
9 of the other defendants, and was at all times acting and performing, or failing to  
10 act or perform, with the authorization, consent, permission or ratification of each of  
11 the other defendants, and is responsible in some manner for the acts and  
12 omissions of the other defendants in legally causing the violations and damages  
13 complained of herein, and have approved or ratified each of the acts or omissions  
14 of each other defendant, as herein described. Plaintiff will seek leave to amend  
15 this Complaint when the true names, capacities, connections and responsibilities  
16 of defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO TEN,**  
17 **inclusive**, are ascertained.

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24 9. Plaintiff is informed and believes that all named defendants, including  
25 DOES ONE TO TEN, inclusive, conspired to commit the acts described herein, or  
26 alternatively, aided and abetted one another in the performance of the wrongful  
27 acts hereinafter alleged.  
28

1           10. Defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO TEN,**  
2 **inclusive,** are the owners and operators of "**Temple Shopping Center,**" located  
3 at Pomona, California. This establishment, including, but not limited to, parking  
4 spaces and access aisles and access routes, are each a part of a "public  
5 accommodation or facility" subject to the requirements of **California Health &**  
6 **Safety Code § 19955, et seq.,** and of **California Civil Code §§ 51, 52(a), 54,**  
7 **54.1, et seq.** On information and belief, this "**Temple Shopping Center**" was  
8 constructed after 1990, which subjects it to handicapped access requirements per  
9 **California Health & Safety Code § 19959,** and applicable portions of **California**  
10 **Code of Regulations, Title 24,** (the State Building Code).  
11

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14           11. On or about February 9, 2002, Plaintiff **MARCY DARBY-KEY,** visited  
15 the "**Temple Shopping Center**" in Pomona, California for the purpose of making a  
16 purchase. Defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO TEN,**  
17 **inclusive,** interfered with Plaintiff's access to the "**Temple Shopping Center**"  
18 establishment as set forth in Paragraph 3 above.  
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21           Said acts and omissions denied Plaintiff legal handicapped access to the  
22 "**Temple Shopping Center**" according to federal and state law.  
23

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

1 facility as set forth in Paragraph 3 above.

2 13. Defendants, and each of them, discriminated against Plaintiff **MARCY**  
3 **DARBY-KEY** on the basis of her physical disability, and interfered with her access  
4 to the "**Temple Shopping Center**" establishment, in violation of both California  
5 law including, but not limited to, **California Civil Code** §§ 51, 51.5, 54, 54.1, and a  
6 violation of Title III, §302, the "Prohibition of Discrimination" provision and §503,  
7 the "Prohibition Against Retaliation or Coercion" provision of the **Americans with**  
8 **Disabilities Act of 1990**.

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

1 **I. FIRST CAUSE OF ACTION:**  
2 **VIOLATION OF *THE AMERICANS WITH DISABILITIES ACT OF 1990***  
3 **(On Behalf of Plaintiff **MARCY DARBY-KEY** and Against Defendants**  
4 ****CONCAL ASSOCIATES, INC., and DOES ONE TO TEN, inclusive)****  
5 **(42 *USC* §12101 *et seq.*)**

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

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

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

27  
28 It is the purpose of this act (1) to provide a clear and

1 comprehensive national mandate for the elimination of discrimination  
2 against individuals with disabilities; (2) to provide clear, strong,  
3 consistent, enforceable standards addressing discrimination against  
4 individuals with disabilities; (3) to ensure that the Federal government  
5 plays a central role in enforcing the standards established in this act on  
6 behalf of individuals with disabilities; and (4) to invoke the sweep of  
7 Congressional authority, including the power to enforce the 14th  
8 Amendment and to regulate commerce, in order to address the major  
9 areas of discrimination faced day to day by people with disabilities.  
10  
11

12  
13 18. As part of the ***Americans with Disabilities Act of 1990***, Public Law  
14 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public  
15 Accommodations and Services Operated by Private Entities" (42 ***USC*** § 12181 *et*  
16 *seq.*). Among the public accommodations identified for purposes of this title were  
17 "a bakery, restaurant, bar or other establishment serving food or drink, grocery  
18 store, clothing store, hardware store, shopping center or other sales or rental  
19 establishment."  
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21

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

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

20. Among the general prohibitions against discrimination were included in

1 42 **USC** §12182(b)(1)(A)(i):

2           **Denial of participation.** It shall be discriminatory to subject an  
3 individual or class of individuals on the basis of a disability or  
4 disabilities of such individual or class, directly, or through contractual,  
5 licensing, or other arrangements, to a denial of the opportunity of the  
6 individual or class to participate in or benefit from the goods, services,  
7 facilities, privileges, advantages, or accommodations of an entity.

8 21. Among the general prohibitions against discrimination were included in

9  
10 42 **USC** §12182(b)(1)(E):

11           **Association** -- It shall be discriminatory to exclude or otherwise  
12 deny equal goods, services, facilities, privileges, advantages,  
13 accommodations, or other opportunities to an individual or entity  
14 because of the known disability of an individual with whom the  
15 individual or entity is known to have a relationship or association.

16 The acts of defendants set forth herein were a violation of Plaintiff's rights under  
17 the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28

18 **CFR** Part 36 et seq.

19  
20 22. Among the general prohibitions against discrimination were included  
21 in 42 **USC** § 12182(b)(2)(A)(i) and 42 **USC** § 12182(b)(2)(A)(ii):

22  
23           **Discrimination.** For purposes of subsection (a), discrimination  
24 includes -

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

1 goods, services, facilities, privileges, advantages, or accommodations  
2 being offered;

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

10 23. Plaintiff alleges that constructing the eligibility requirements, policies,  
11 practices and procedure for entry to the **"Temple Shopping Center"** facility by  
12 persons with disabilities and their companions as established by the defendants  
13 can be simply modified to eliminate disparate and discriminatory treatment of  
14 persons with disabilities by properly constructing barrier free handicapped access  
15 for safe and full and equal enjoyment of the **"Temple Shopping Center"** as that  
16 enjoyed by other people.  
17  
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19 24. The specific prohibition against retaliation and coercion is included in  
20 the ***Americans With Disabilities Act of 1990*** § 503(b) and the *Remedies and*  
21 *Procedures* in § 503(c):  
22

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

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

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

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

20 27. Per 42 **USC** § 12181(9), "The term 'readily achievable' means easily  
21 accomplishable and able to be carried out without much difficulty or expense."  
22 The statute and attendant regulations define relative "expense" in relation to the  
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1 total financial resources of the entities involved, including any "parent" companies.  
2 Plaintiff alleges that properly repairing each of the items that Plaintiff complains of  
3 herein is readily achievable, including but not limited to correcting and repairing  
4 the items set forth in Paragraph 3 above.  
5

6 The changes needed to remove barriers to access for the disabled were and  
7 are "readily achievable" by the defendants under standards set forth under 42  
8 **USC § 12181** of the **Americans with Disabilities Act of 1990**. (Further, if it was  
9 not "readily achievable" for defendants to remove all such barriers, defendants  
10 have failed to make the required services available through alternative methods,  
11 although such methods are achievable as required by 42 **USC §12181(b)(2)(a)(iv)**,  
12 (v).)  
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15

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

2 29. Defendants', and each of their acts and omissions of failing to provide  
3 barrier free handicapped access for Plaintiff, were tantamount to interference,  
4 coercion or intimidation pursuant to **Americans With Disabilities Act of 1990**  
5 §503(b) (now 42 **USC** § 12203):  
6

7 It shall be unlawful to coerce, intimidate, threaten, or interfere  
8 with any individual in the exercise or enjoyment of, or on account of his  
9 or her having encouraged any other individual in the exercise or  
10 enjoyment of, any right granted or protected by this Act.  
11

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

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

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

7  
8 **II. SECOND CAUSE OF ACTION**  
9 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH**  
10 **PHYSICAL DISABILITIES (On Behalf of Plaintiff MARCY DARBY-**  
11 **KEY and Against Defendants CONCAL ASSOCIATES, INC., and**  
12 **DOES ONE TO TEN, inclusive) (California Health & Safety Code §**  
13 **19955, et seq.)**

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

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

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

34. **California Health & Safety Code § 19956**, which appears in the same

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

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17 35. Pursuant to the authority delegated by **California Government Code**  
18 § 4450, *et seq.*, the State Architect promulgated regulations for the enforcement of  
19 these provisions. Effective January 1, 1982, Title 24 of the **California**  
20 **Administrative Code** adopted the California State Architect's Regulations and  
21 these regulations must be complied with as to any alterations and/or modifications  
22 of the "**Temple Shopping Center**" occurring after that date. Construction  
23 changes occurring prior to this date but after July 1, 1970 triggered access  
24 requirements pursuant to the "ASA" requirements, the **American Standards**  
25 **Association Specifications**, A117.1-1961. On information and belief, at the time  
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28

1 of the construction and modification of said building, all buildings and facilities  
2 covered were required to conform to each of the standards and specifications  
3 described in the **American Standards Association Specifications** and/or those  
4 contained in Title 24 of the **California Administrative Code**, (now known as Title  
5 **24, California Code of Regulations**.)  
6

7  
8 36. Public facilities, such as "**Temple Shopping Center**" are public  
9 accommodations or facilities within the meaning of **California Health & Safety**  
10 **Code § 19955, et seq.**  
11

12 37. It is difficult or impossible for persons with physical disabilities who use  
13 wheelchairs, canes, walkers and service animals to travel about in public to use a  
14 retail store with the defects set forth in Paragraph 3 above as required by Title 24  
15 of the **California Code of Regulations** and the **Americans with Disabilities Act**  
16 **Access Guidelines (ADAAG)**. Thus, when public accommodations fail to provide  
17 handicap accessible public facilities, persons with physical disabilities are unable  
18 to enter and use said facilities, and are denied full and equal access to and use of  
19 that facility that is enjoyed by other members of the general public.  
20  
21

22 38. Plaintiff **MARCY DARBY-KEY** and other similarly situated persons  
23 with physical disabilities whose physical conditions require the use of wheelchairs,  
24 canes, walkers and service animals are unable to use public facilities on a "full  
25 and equal" basis unless each such facility is in compliance with the provisions of  
26 the **California Health & Safety Code § 19955, et seq.** Plaintiff is a member of  
27  
28

1 that portion of the public whose rights are protected by the provisions of  
2 **California Health & Safety Code § 19955, et seq.**

3  
4 39. The **California Health & Safety Code** was enacted “[t]o ensure that  
5 public accommodations or facilities constructed in this state with private funds  
6 adhere to the provisions of Chapter 7 (commencing with §4450) of Division 5 of  
7 Title 1 of the *Government Code*.” Such public accommodations are defined to  
8 include retail stores.  
9

10 40. Plaintiff is further informed and believes that as of the date of filing this  
11 Complaint, Defendants have not made accessible the facilities at the subject store  
12 as set forth in Paragraph 3 above.  
13

14 41. Plaintiff **MARCY DARBY-KEY** is informed and believes, and therefore  
15 alleges, that Defendants **CONCAL ASSOCIATES, INC., and DOES ONE TO**  
16 **TEN, inclusive**, and each of them, caused the subject buildings constituting  
17 **“Temple Shopping Center”** to be constructed, altered and maintained in such a  
18 manner that persons with physical disabilities were denied full and equal access  
19 to, within and throughout said buildings and were denied full and equal use of said  
20 public facilities, and despite knowledge and actual and constructive notice to such  
21 Defendants that the configuration of the store and/or buildings was in violation of  
22 the civil rights of persons with physical disabilities, such as Plaintiff. Such  
23 construction, modification, ownership, operation, maintenance and practices of  
24 such public facilities are in violation of law as stated in Part 5.5, **California Health**  
25  
26  
27  
28

1 **& Safety Code § 19955, et seq.**, and elsewhere in the laws of California.

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

9 43. The basis of Plaintiff's aforementioned information and belief is the  
10 various means upon which Defendants must have acquired such knowledge,  
11 including but not limited to this lawsuit, other access lawsuits, communications  
12 with operators of other stores and other property owners regarding denial access,  
13 communications with Plaintiff and other persons with disabilities, communications  
14 with other patrons who regularly visit there, communications with owners of other  
15 businesses, notices and advisories they obtained from governmental agencies  
16 through the mails, at seminars, posted bulletins, television, radio, public service  
17 announcements, or upon modification, improvement, alteration or substantial  
18 repair of the subject premises and other properties owned by these Defendants,  
19 newspaper articles and trade publications regarding the **Americans with**  
20 **Disabilities Act of 1990** and other access law, and other similar information.  
21 The scope and means of the knowledge of each defendant is within each  
22 defendant's exclusive control and cannot be ascertained except through  
23  
24  
25  
26  
27  
28 discovery.

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

12           45. Defendants, and each of them, at times prior to and including February  
13 9, 2002, and continuing to the present time, knew that persons with physical  
14 disabilities were denied their rights of equal access to all portions of this public  
15 facility. Despite such knowledge, Defendants failed and refused to take steps to  
16 comply with the applicable access statutes; and despite knowledge of the resulting  
17 problems and denial of civil rights thereby suffered by Plaintiff **MARCY DARBY-**  
18 **KEY** and other similarly situated persons with disabilities, including the specific  
19 notices referred to in paragraph 43 of this Complaint. Defendants have failed and  
20 refused to take action to grant full and equal access to persons with physical  
21 disabilities in the respects complained of hereinabove. Defendants and each of  
22 them have carried out a course of conduct of refusing to respond to, or correct  
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1 complaints about, denial of handicap access. Such actions and continuing course  
2 of conduct by Defendants, evidence despicable conduct in conscious disregard for  
3 the rights or safety of Plaintiff and of other similarly situated persons, justifying an  
4 award of exemplary and punitive damages pursuant to **California Civil Code §**  
5 **3294.**  
6

7  
8 46. Defendants' actions have also been oppressive to persons with  
9 physical disabilities and of other members of the public, and have evidenced  
10 actual or implied malicious intent toward those members of the public, such as  
11 Plaintiff and other persons with physical disabilities who have been denied the  
12 proper access they are entitled to by law. Further, Defendants' refusals on a day-  
13 to-day basis to correct these problems evidence despicable conduct in conscious  
14 disregard for the rights of Plaintiff and other members of the public with physical  
15 disabilities.  
16  
17

18 47. Plaintiff prays for an award of punitive damages against Defendants,  
19 and each of them, pursuant to **California Civil Code § 3294** in an amount  
20 sufficient to make a more profound example of Defendants and discourage  
21 owners, operators, franchisers and franchisees of other public facilities from willful  
22 disregard of the rights of persons with physical disabilities. Plaintiff does not know  
23 the financial worth of Defendants, or the amount of punitive damages sufficient to  
24 accomplish the public purposes of **California Civil Code § 3294** and seeks leave  
25 to amend this Complaint when such facts are known.  
26  
27  
28

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

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

14           **III. THIRD CAUSE OF ACTION**

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

16           (On Behalf of Plaintiff **MARCY DARBY-KEY** and Against Defendants  
17           **CONCAL ASSOCIATES, INC., and DOES ONE TO TEN, inclusive**)  
18           (*California Civil Code* §§ 54, 54.1 and 54.3)

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

23           50. The public facilities above-described constitute public facilities and  
24 public accommodations within the meaning of *California Health & Safety Code* §  
25 19955 *et seq.* and were facilities to which members of the public are invited. The  
26 aforementioned acts and omissions of defendants, and each of them, constitute a  
27 denial of equal access to and use and enjoyment of these facilities by persons  
28

1 with disabilities, including Plaintiff **MARCY DARBY-KEY**. Said acts and omissions  
2 are also in violation of provisions of Title 24 of the **California Code of**  
3  
4 **Regulations**.

5 51. The rights of Plaintiff, the entitlement of Plaintiff to full and equal  
6 access and the denial by defendants of such rights and entitlements are set forth  
7  
8 in **California Civil Code** §§ 54, 54.1 and 54.3, to wit:

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

13 Individuals with disabilities shall be entitled to full and equal  
14 access, as other members of the general public, to accommodations,  
15 advantages, facilities, and privileges of all common carriers, airplanes,  
16 motor vehicles, railroad trains, motor buses, streetcars, boats, or any  
17 other public conveyances or modes of transportation (whether private,  
18 public, franchised, licensed, contracted, or otherwise provided),  
19 telephone facilities, adoption agencies, private schools, hotels, lodging  
20 places, places of public accommodation, amusement or resort, and  
21 other places to which the general public is invited, subject only to the  
22 conditions and limitations established by law, or state or federal  
23 regulation, and applicable alike to all persons. **California Civil Code**  
24 § 54.1(a).

25 52. On or about February 9, 2002, Plaintiff **MARCY DARBY-KEY** suffered  
26 violations of **California Civil Code** §§ 54 and 54.1 in that she was denied full and  
27 equal enjoyment of the goods, services, facilities and privileges of said Temple  
28

1 **Shopping Center**, as set forth in paragraph 3 above. Plaintiff was also denied full  
2 and equal access to other particulars, including but not limited to those described  
3 hereinabove. Plaintiff was also denied use of facilities that she was entitled to  
4 under Title III of the **Americans with Disabilities Act of 1990**.

5  
6 53. As a result of the denial of full and equal enjoyment of the goods,  
7 services, facilities and privileges of defendants' **Temple Shopping Center** facility  
8 due to the acts and omissions of defendants, and each of them, in owning,  
9 operating and maintaining this subject public facility, Plaintiff suffered violations of  
10 her civil rights, including but not limited to rights under **California Civil Code §§**  
11 **54, 54.1, and 54.3**, and has and will suffer physical injury, emotional distress,  
12 mental distress, mental suffering, mental anguish, which includes shame,  
13 humiliation, embarrassment, anger, chagrin, disappointment and worry,  
14 expectedly and naturally associated with a disabled person's denial of full and  
15 equal enjoyment of goods, services, privileges, etc. all to her damages as prayed  
16 hereinafter in an amount within the jurisdiction of the court. Defendants' actions  
17 and omissions to act constituted discrimination against Plaintiff on the sole basis  
18 that Plaintiff was physically disabled.

19  
20  
21  
22  
23  
24 54. Plaintiff seeks damages for the violation of her rights as a disabled  
25 person on or about February 9, 2002, according to proof, pursuant to **California**  
26 **Civil Code § 54.3**, including a trebling of all statutory and actual damages,  
27 general and special, available pursuant to **California Civil Code § 54.3(a)**.  
28

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

14  
15  
16  
17  
18 56. The acts and omissions of defendants in failing to provide the required  
19 accessible facilities subsequent to the enactment date and compliance date of the  
20 **Americans with Disabilities Act of 1990**, and refusal to make remedial  
21 modifications and alterations to its handicapped parking, handicapped signage,  
22 pathways, and other elements as hereinabove stated, after being notified by  
23 patrons before and after the time of Plaintiff's visit and injuries, on or about  
24 February 9, 2002, and all times prior thereto with the knowledge that persons with  
25 disabilities would enter defendants' premises, the reason given therefor, was an  
26  
27  
28

1 established policy, practice and procedure of refusing and denying entry, thereby  
2 denying lodging and other services to a person with disabilities and the  
3 companions thereof, evidence malice and oppression toward Plaintiff and other  
4 disabled persons.  
5

6 57. Such despicable conduct, as that incorporated herein by reference and  
7 specifically set forth in Paragraph 11, was carried out by defendants with a willful  
8 and conscious disregard for the law and the rights of Plaintiff and of other disabled  
9 persons, and was oppressive in that such conduct subjected Plaintiff "to cruel and  
10 unjust hardship in conscious disregard" for the law and Plaintiff's rights, and  
11 justifies exemplary and punitive damages pursuant to *California Civil Code* §  
12 3294, in amounts sufficient to make an example of defendants and to punish  
13 defendants and to carry out the purposes of *California Civil Code* § 3294.  
14  
15

16 58. Defendants have failed to establish a nondiscriminatory criteria, policy,  
17 practice and procedure for entry into said "**Temple Shopping Center**" as  
18 hereinabove described.  
19  
20

21 59. As a result of defendants' continuing failure to provide for the full and  
22 equal enjoyment of goods, services, facilities and privileges of said "**Temple**  
23 **Shopping Center**" as hereinabove described, Plaintiff has continually been  
24 denied her rights to full and equal enjoyment of the subject retail store, as it would  
25 be a "futile gesture" to attempt to patronize said "**Temple Shopping Center**" with  
26 the discriminatory policy in place as hereinabove described.  
27  
28

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

24           61. Wherefore, Plaintiff asks this court to preliminarily and permanently  
25 enjoin any continuing refusal by defendants to permit entry to said "**Temple**  
26 **Shopping Center**" and to serve Plaintiff or others similarly situated, and to require  
27 defendants to comply forthwith with the applicable statutory requirements relating  
28

1 to the full and equal enjoyment of goods and services as described hereinabove  
2 for disabled persons. Such injunctive relief is provided by **California Civil Code §**  
3  
4 55. Plaintiff further requests that the court award statutory costs and attorneys'  
5 fees to Plaintiff pursuant to **California Civil Code § 55** and **California Code of**  
6 **Civil Procedure § 1021.5**, all as hereinafter prayed for.

7  
8 WHEREFORE, Plaintiff prays for compensatory damages, reasonable  
9 attorneys' fees and costs of suit, as allowed by statute and according to proof, and  
10 appropriate exemplary damages.

11  
12 **IV. FOURTH CAUSE OF ACTION**  
13 **VIOLATIONS OF UNRUH CIVIL RIGHTS ACT** (On Behalf of Plaintiff  
14 **MARCY DARBY-KEY** and Against Defendants **CONCAL**  
15 **ASSOCIATES, INC., and DOES ONE TO TEN, inclusive)** (**California**  
16 **Civil Code §§ 51 and 51.5)**

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

20 63. Defendants' acts and omissions as specified with regard to the  
21 discriminatory treatment of Plaintiff **MARCY DARBY-KEY** on the basis of her  
22 physical disabilities, have been in violation of **California Civil Code §§ 51** and  
23 **51.5**, the **Unruh Civil Rights Act**, and have denied to Plaintiff her rights to "full  
24 and equal accommodations, advantages, facilities, privileges or services in all  
25 business establishments of every kind whatsoever."  
26

27  
28 64. **California Civil Code § 51** also provides that "[a] violation of the right

1 of any individual under the **Americans with Disabilities Act of 1990** (Public Law  
2 101-336) shall also constitute a violation of this section.”

3  
4 65. **California Civil Code** § 51.5 also provides that “[n]o business  
5 establishment of any kind whatsoever shall discriminate against, boycott, or  
6 blacklist, refuse to buy from, sell to, or trade with any person in this state because  
7 of the race, creed, religion, color, national origin, sex, disability of the person or of  
8 the person’s partners, members, stockholders, directors, officers, managers,  
9 superintendents, agents, employees, business associates, suppliers, or  
10 customers.”

11  
12  
13 66. As a result of the violation of Plaintiff’s civil rights protected by  
14 **California Civil Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and  
15 remedies of **California Civil Code** § 52, including a trebling of actual damages  
16 (defined by **California Civil Code** § 52(h) to mean “special and general  
17 damages”), as well as reasonable attorneys’ fees and costs, as allowed by statute,  
18 according to proof. Further, pursuant to paragraphs 11, 12, 13, 35 and 43,  
19 Plaintiff seeks appropriate exemplary damages under **California Civil Code** §  
20 3294.  
21  
22

23  
24 WHEREFORE, Plaintiff prays that this court award damages and provide  
25 relief as follows:

26  
27 **PRAYER FOR RELIEF**

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

1           1. Grant injunctive relief requiring that defendants establish a non-  
2 discriminatory criteria policy, practice and procedure permitting entry into the  
3 **Temple Shopping Center** in Pomona, California, for the purpose of services  
4 according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, *et seq.*, and  
5 Title III of the **Americans with Disabilities Act of 1990**, and grant injunctive relief  
6 requiring that Defendants repair and render safe to handicapped persons, and  
7 otherwise make handicapped-accessible, all public areas of the store, including,  
8 but not limited to, removal of all barriers to access identified in Paragraph Three,  
9 above, and make such facilities “readily accessible to and usable by individuals  
10 with disabilities,” according to the standards of Title 24 of the **California**  
11 **Administrative Code, California Health & Safety Code** § 19955 *et seq.*, and  
12 Title III of the **Americans with Disabilities Act of 1990** and the standards of  
13 **ADAAG**; and prohibiting operation of the **Temple Shopping Center**, located in  
14 Pomona, California, as a public facility until Defendants provide full and equal  
15 enjoyment of goods and services as described hereinabove to physically disabled  
16 persons, including Plaintiff;

22           2. General damages according to proof;

23           3. Statutory and “actual” damages, including general damages and  
24 special damages, according to proof, pursuant to **California Civil Code** §§ 52,  
25 and 54.3, and that these damages be trebled;

26           4. Prejudgment interest on all compensatory damages;

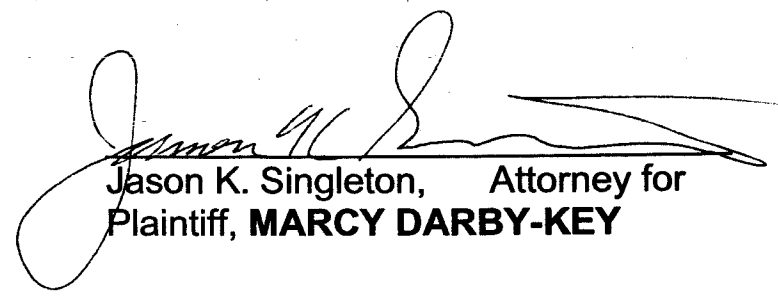
1 5. Punitive and exemplary damages pursuant to the standards and  
2 purposes of **California Civil Code** § 3294;

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

6  
7 7. Award Plaintiff all litigation expenses, all costs of this proceeding and  
8 all reasonable attorneys' fees as provided by law, including but not limited to those  
9 recoverable pursuant to the provisions of **California Civil Code** §§ 52, 54.3, and  
10 55, **California Code of Civil Procedure** § 1021.5, and **Americans with**  
11 **Disabilities Act of 1990** §308 of Title III; and

12  
13 8. Grant such other and further relief as the court may deem just and  
14 proper.

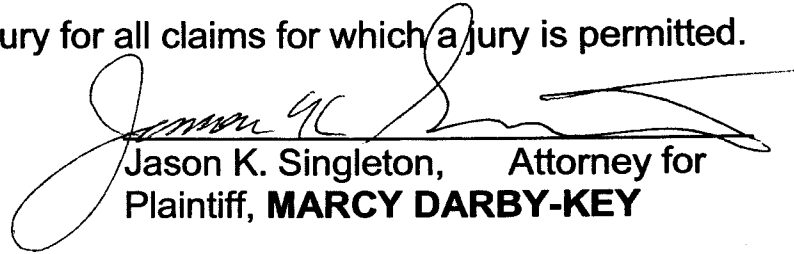
15  
16  
17 Dated: March 26, 2002

  
Jason K. Singleton, Attorney for  
Plaintiff, **MARCY DARBY-KEY**

18  
19  
20 **REQUEST FOR JURY TRIAL**

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

23 Dated: March 26, 2002

  
Jason K. Singleton, Attorney for  
Plaintiff, **MARCY DARBY-KEY**