

ORIGINAL

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CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

**Attorney for Plaintiff,
JAMES COLLINS**

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JAMES COLLINS,

Plaintiff,

v.

Case No. **EDCV 02-442 VAP SGLx**

Civil Rights

**LA QUINTA PLAZA, a California
Limited Partnership; DANRAY, INC.,
which will do business in California
as THE BEER HUNTER, a South
Dakota corporation; BOBRAY
RESTAURANTS, INC., a California
corporation, dba BEER HUNTER
SPORTS PUBLIC & GRILLE, M & H
REALTY PARTNERS II, a Limited
Partnership; SAFEWAY, INC., a
Delaware corporation, dba VONS;
and DOES 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

Defendants.

ENTER ON INDEX
[Signature]

Plaintiff **JAMES COLLINS** complains of defendants **LA QUINTA PLAZA, a
California Limited Partnership; DANRAY, INC., which will do business in
California as THE BEER HUNTER, a South Dakota corporation; BOBRAY
RESTAURANTS, INC., a California corporation, dba BEER HUNTER**

[Handwritten mark]

1 **SPORTS PUBLIC & GRILLE, M & H REALTY PARTNERS II, a Limited**
2 **Partnership; SAFEWAY, INC., a Delaware corporation, dba VONS; and**
3 **DOES ONE TO TEN, inclusive, and alleges as follows:**

4
5 **JURISDICTION AND VENUE**

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

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

20
21 **INTRODUCTION**

22 3. Upon information and belief, Defendants **LA QUINTA PLAZA, a**
23 **California Limited Partnership, and M&H REALTY PARTNERS, II, a Limited**
24 **Partnership**, own a shopping center (hereinafter referred to as the "**LA QUINTA**
25 **PLAZA**" for convenience) located at or near the intersections of Washington and
26 Highway 111 in La Quinta, California. Said shopping center is owned and
27
28

1 operated by defendants **LA QUINTA PLAZA**, a California Limited Partnership,
2 and **M&H REALTY PARTNERS, II**, a Limited Partnership, and **DOES ONE** to
3 **FOUR**, inclusive.

4
5 Upon information and belief, **DANRAY, INC.** a South Dakota corporation
6 **BOBRAY RESTAURANTS**, a California corporation, and **DOES FIVE** to
7 **SEVEN**, inclusive, own and operate a store in **LA QUINTA PLAZA**, known as
8 **BEER HUNTER SPORTS PUBLIC & GRILLE**, located at 78-483 Highway 111,
9 La Quinta, California.

10
11 Upon information and belief, **SAFEWAY, INC.**, a Delaware corporation
12 and **DOES EIGHT** to **TEN**, inclusive, own and operate a store in **LA QUINTA**
13 **PLAZA**, known as **VONS**, located at 78-271 Highway 111, La Quinta, California.

14
15 **LA QUINTA PLAZA**, a California Limited Partnership; **DANRAY, INC.**,
16 which will do business in California as **THE BEER HUNTER**, a South Dakota
17 corporation; **BOBRAY RESTAURANTS, INC.**, a California corporation, dba
18 **BEER HUNTER SPORTS PUBLIC & GRILLE**, **M & H REALTY PARTNERS II**, a
19 Limited Partnership; **SAFEWAY, INC.**, a Delaware corporation, dba **VONS**;
20 and **DOES ONE** to **TEN**, inclusive, operate an establishment for services to the
21 public and at which Defendants failed to provide barrier free access to said
22 establishment in conformity with both Federal and California legal requirements.
23
24 Further, Defendants failed to provide compliance as follows:

25
26
27
28 ///

1 THE BEER HUNTER PUB.

- 2 1. No international access symbol on accessible entry doors in violation of
3 California Title 24 § 1117B.5.1 and ADAAG 4.30
- 4
- 5 2. Has a sunken area with two pool tables at least 36" deep without a ramp or
6 lift for access in violation of California Title 24 § 1120B.1
- 7
- 8 3. Stairs Accessing sunken area.
- 9 a. No tread markings in violation of California Title 24 § 1133B.4.4. Fig
10 11B-35
- 11
- 12 b. Noncomplying handrails in violation of California Title 24 §
13 1133B.4.2.2, Fig 11B-35 & 37, § 1003.3.3.6.1a, and § 1133B.4.2.1.

14 VON'S MARKET 78-271 HIGHWAY 111

- 15
- 16 1. No international access symbol on accessible entry doors in violation of
17 California Title 24 § 1117B.5.1, ADAAG 4.30
- 18
- 19 2. None of the checkout stands have a 36" minimum wide aisle on customer
20 side. There are fixed or portable counters or displays blocking access for a
21 person using a wheelchair in violation of California Title 24 § 1110B.1.3. Table
22 11B-2
- 23
- 24 3. The pay points at service counter on each side of the store exceed 36" in
25 height in violation of California Title 24 § 1122B.4
- 26
- 27 4. The pharmacy counter is 42" high in violation of California Title 24 § 1122B.4
- 28 5. Most fruit and vegetable counters exceed 34" in height in violation of

1 California Title 24 § 1122B.4

2 6. A number of aisles through out the store have displays restricting path of
3 travel to less than 44" in violation of California Title 24 § 1133B.3.1
4

5 EXTERIOR SURVEY:

6 1) The path of travel for people with disabilities throughout this retail center is
7 extremely hazardous, if a person with a disability can actually complete the trip.
8 The sidewalks have slopes of up to 12% in direction of travel, there's a four riser
9 stair case without an alternate path of travel around it, curbs without curbcuts and
10 there are no pedestrian paths of travel to the Plaza from the public sidewalk, the
11 public transportation drop off point or either Washington or Highway 111 in
12 violation of California Title 24 § 1127B.1, §1127B.1.2, ADAAG §4.3, §4.1.2
13
14

15 2) There are about five hundred and thirty-two parking spaces on the north side
16 of the mall including the nine spaces identified for people with disabilities and over
17 twenty-five parking spaces in the parking lot on the south side of the stores. An
18 additional minimum of two complying parking spaces including one van accessible
19 parking space is required per Table 11B-6 to comply with California Title 24 §
20 1129B.1.
21
22

23 4) All entry doors have a 6" to 10" clear space at the strike edge on the pull
24 side of the door in violation of California Title 24 § 1133B.2.4.3. Fig 11B-26A,
25 ADAAG 4.13.6
26

27 5) There is a curb in front of Lumpy's Golf shop without a curbcut/ramp in
28

1 violation of California Title 24 § 1127B.5.1. Fig 11B-19 thru 11B-23

2 6) The cross slope of the sidewalk in front of Lump's is up to 4.2% in violation
3 of California Title 24 § 1133B.7.1.3
4

5 7) The surface slope of the designated parking space South of Lumpy's varies
6 from 2% to 9% in violation of California Title 24 § 1129B.4.4, ADAAG 4.6.3*,
7

8 8) Curbramp. Serving parking space South of Lumpy's.

9 a. Does not have a 12" wide grooved surface across top of curbramp in
10 violation of California Title 24 § 1127B.5.7
11

12 b. The slope is up to 9.1% in violation of California Title 24 § 1127B.5.3
13 (ADAAG 4.7.2 & 4.8.2 require curbramps to be least slope possible, but not
14 to exceed 8.33% slope.)
15

16 9) The cross slope of the sidewalk from the curbramp South of Lump's is up to
17 7.6% for about 8' in violation of California Title 24 § 1133B.7.1.3
18

19 10) Curbcut. West of Vons Market.

20 a. Does not have a 12" wide grooved surface across top of curbramp in
21 violation of California Title 24 § 1127B.5.7
22

23 b. Slope of left side flare is 20% and slope of right side flare is 16% in
24 violation of California Title 24 § 1127B.5.3
25

26 c. Bottom gutter slopes upward at 14% in violation of California Title 24 §
27 1127B.5.3
28

d. There is a ½" vertical high lip at the bottom in violation of California

1 Title 24 § 1127B.5.5

2 11) There are vending machines in front of Vons Market that do not fully comply
3 with State and Federal Accessibility Codes. California Title 24 § 1117.6/4.27
4 §1117B.7, ADAAG 4.34

5
6 12) The sidewalk in front of Von's Market is 40" wide to outside curbface and 34"
7 to inside curb face in violation of California Title 24 § 1133B.7.1. Fig 11B-27(a)

8
9 13) The entry door to 78-279 Highway 111 has a door stop on the bottom 10" on
10 the push side of the door in violation of California Title 24 § 1133B.2.6, Fig 11B-29

11
12 14) Curbramp. Front of Fred Sands, 78-297 Highway 111.

13 a. Slope varies from 6.8% to 40% in violation of California Title 24 §
14 1127B.5.3 (ADAAG 4.7.2 & 4.8.2 require curbramps to be least slope
15 possible, but not to exceed 8.33% slope.)

16
17 b. A curbramp extends into access aisle in violation of California Title 24
18 § 1129B.4.3. Fig 11B-18A, B, & C (NOTE: ADAAG 4.6.3* prohibits
19 constructing a curb ramp into the 9' wide parking space or into the access
20 aisle.)

21
22 c. Does not have a 12" wide grooved surface across level surface at top
23 of curbramp in violation of California Title 24 § 1127B.5.7

24
25 d. Slope of right side flare is 26% and right side flare is vertical curb in
26 violation of California Title 24 § 1127B.5.3

27
28 15) Slope of 12' long ramp in sidewalk between 78-315 and 78-305 Highway

1 111 varies from 8% to 13% in violation of California Title 24 § 1133B.5.3

2 16) Four Riser Stairs. Front of 78-353 Highway 111.

3
4 a. There are no complying handrails in violation of California Title 24 §
5 1003.3.3.6.1a

6
7 b. There are no tread markings in violation of California Title 24 §
8 1133B.4.4. Fig 11B-35

9 17) There is no curbcut above and / or below the four riser stair case to allow a
10 person to go around the stairs. A person is required to reverse there path of travel
11 and travel a considerable distance to a curbcut and go out into the busy driveway
12 and travel down to another curbcut to access the sidewalk. This is dangerous!

14 18) Designated Parking Space. Front of Good Stuff Pizza. 78-383 Highway 111.

15
16 a. A curbramp extends into access aisle in violation of California Title 24
17 § 1129B.4.3. Fig 11B-18A, B, & C (NOTE: ADAAG 4.6.3* prohibits
18 constructing a curb ramp into the 9' wide parking space or into the access
19 aisle.)
20

21 19) Curbramp. Serving designated parking space in Front of Good Stuff Pizza.

22
23 a. Slope of side flare is 19% in violation of California Title 24 § 1127B.5.3

24
25 b. Does not have a 12" wide grooved surface across level surface at top
26 of curbramp in violation of California Title 24 § 1127B.5.7

27 20) Designated Parking Space. Front of REMAX Realty, facing East. 78-383
28 Highway 111.

1 a. A curbramp extends into access aisle in violation of California Title 24
2 § 1129B.4.3, Fig 11B-18A, B, & C. (NOTE: ADAAG 4.6.3* prohibits
3 constructing a curb ramp into the 9' wide parking space or into the access
4 aisle.)
5

6 b. Access aisle is on the drivers side in violation of California Title 24 §
7 1129B.4.1. Fig 11B-18B
8

9 21) Curbramp. Front of REMAX Realty serving East facing parking space.

10 a. Does not have 12" wide grooved surface in violation of California Title
11 24 § 1127B.5.7
12

13 b Slope of side flair is about 18% in violation of California Title 24 §
14 1127B.5.3
15

16 c. Top landing has a 5% slope in violation of California Title 24 §
17 1127B.5.4
18

19 d. Slope of ramp is up to 8.9% in violation of California Title 24 §
20 1127B.5.3 (ADAAG 4.7.2 & 4.8.2 require curbramps to be least slope
21 possible, but not to exceed 8.33% slope.)
22

23 22) Designated Parking Space. Front of REMAX Realty, facing South.

24 a. A curbramp extends into access aisle in violation of California Title 24
25 § ADAAG 4.6.3* prohibits constructing a curb ramp into the 9' wide parking
26 space or into the access aisle.. California Title 24 § 1129B.4.3. Fig 11B-18A,
27 B, & C.
28

1 b. Access aisle is on the drivers side in violation of California Title 24 §
2 1129B.4.1. Fig 11B-18B

3
4 23) Curbramp. Front of REMAX Realty serving South facing parking space.

5 a. Slope of side flair is about 26% in violation of California Title 24 §
6 1127B.5.3

7
8 b. There is no 12" wide grooved border across the top of the ramp in
9 violation of California Title 24 § 1127B.5.7

10 24) The cross slope of the sidewalk in front of REMAX Real Estate on south side
11 varies from 2% to 4% in violation of California Title 24 § 1133B.7.1.3

12
13 25) Slope of 12' long ramp in sidewalk between 78-437 Highway 111 varies from
14 8% to 10.4% in violation of California Title 24 § 1133B.5.3

15
16 26) The cross slope of the sidewalk in front of 78-451 varies from 2% to 4.5% in
17 violation of California Title 24 § 1133B.7.1.3

18
19 27) The plaza Dental sign is 67" high and extends 18" off the wall. (78-467
20 Highway 111) in violation of California Title 24 § 1121B.1. Fig 11B-7A /4.4

21 28) Designated Parking Space. Front of 78-467 Highway 111.

22 a. A curbramp extends into access aisle in violation of California Title 24
23 § 1129B.4.3. Fig 11B-18A, B, & C

24
25 b. Access aisle is on the drivers side in violation of California Title 24 §
26 1129B.4.1. Fig 11B-18B

27
28 c. Slope of parking space is 3% in violation of California Title 24 §

1 1129B.4.4, ADAAG 4.6.3*

2 29) Curbramp. Front of 78-467 Highway 111.

3
4 a. Slope of side flair is about 20% in violation of California Title 24 §
5 1127B.5.3

6
7 b. There is no 12" wide grooved border across the top of the ramp in
8 violation of California Title 24 § 1127B.5.7

9 30) Designated Parking Space. ~~West side of Beach Side Café front of 78-467~~
10 Highway 111.

11
12 a. Access aisle is on the drivers side in violation of California Title 24 §
13 1129B.4.1. Fig 11B-18B

14 31) Curbramp. West side of Beach Side Café.

15
16 a. Slope of side flair is about 18% in violation of California Title 24 §
17 1127B.5.3

18
19 b. There is no 12" wide grooved border across the top of the ramp in
20 violation of California Title 24 § 1127B.5.7

21 32) The sidewalk is 4'4" to outside curb face in front of Beach Side Café and
22 3'10" to inside curb face in violation of California Title 24 § 1133B.7.1, Fig 11B-
23 27(a)

24 33) Curbramp. East side of Beach Side Café facing West.

25
26 a. Running slope is up to 14% in violation of California Title 24 §
27 1127B.5.3 (ADAAG 4.7.2 & 4.8.2 require curbramps to be least slope
28

1 possible, but not to exceed 8.33% slope.)

2 b. Slope of side flair is about 20% and 34% in violation of California Title
3 24 § 1127B.5.3

4
5 c. There is no 12" wide grooved border across the top of the ramp in
6 violation of California Title 24 § 1127B.5.7

7
8 d. This is a dangerous curbramp.

9 34) Slope of designated parking space on East side of Beach Side Café varies
10 from 1.5% to 3.9% in violation of California Title 24 § 1129B.4.4, ADAAG 4.6.3*,

11
12 35) Designated Parking Spaces. One of three spaces serving the Beer Hunter.

13 a. Slope of parking space is up to 3% in violation of California Title 24 §
14 1129B.4.4, ADAAG 4.6.3*,

15
16 b. Access aisle is on the driver's side in violation of California Title 24 §
17 1129B.4.1. Fig 11B-18B

18
19 36) Curbramp. Southwest side of Beer Hunter Pub & Grill serving parking space
20 west side.

21 a. Running slope is up to 12% in violation of California Title 24 §
22 1127B.5.3 (ADAAG 4.7.2 & 4.8.2 require curbramps to be least slope
23 possible, but not to exceed 8.33% slope.)

24
25 b. Slope of side flair is about 15% with vertical curb on the other side in
26 violation of California Title 24 § 1127B.5.3

27
28 c. There is no 12" wide grooved border across the top of the ramp in

1 violation of California Title 24 § 1127B.5.7

2 37) Designated Parking Spaces. Two spaces serving the Beer Hunter,
3 southwest side.
4

5 a. Slope of parking spaces is up to 3.6% in violation of California Title 24
6 § 1129B.4.4, ADAAG 4.6.3*,
7

8 38) Curbramp. Southwest side of Beer Hunter Pub & Grill serving two parking
9 spaces.

10 a. Running slope is up to 8.5% in violation of California Title 24 §
11 1127B.5.3 (ADAAG 4.7.2 & 4.8.2 require curbramps to be least slope
12 possible, but not to exceed 8.33% slope.)
13

14 b. Slope of side flair is about 20% and 22% in violation of California Title
15 24 § 1127B.5.3
16

17 c. There is no 12" wide grooved border across the top of the ramp in
18 violation of California Title 24 § 1127B.5.7
19

20 39) The path of travel (Sidewalk) ends at a curb on Northeast side of Express
21 Frame in California Title 24 § 1127B.5.1. Fig 11B-19 thru 11B-23
22

23 40) The path of travel (Sidewalk) ends at a curb on east side of Express Frame
24 in violation of California Title 24 § 1127B.5.1. Fig 11B-19 thru 11B-23

25 41) There are two designated parking in front of NAILS N requiring some or all
26 of the following:
27

28 a. The surface of each accessible parking space or stall shall have

1 surface identification duplicating either of the following schemes. California
2 Title 24 § 1129B.5. Fig 11B-18A, B, & C
3

4 b. Outlining or painting the stall or space in blue and outlining on the
5 surface of the stall or space in white or suitable contrasting color a profile
6 view of a wheelchair with occupant; or
7

8 c. Outlining a profile view of a wheelchair with occupant in white on blue
9 background. Locate the profile view so that it is visible to a traffic
10 enforcement officer when a vehicle is properly parked in the space and shall
11 be 36" by 36".
12

13 42) There is no curbcut on the opposite side of the driveway from the curbcut on
14 the Southeast side of Downey's Savings in violation of California Title 24 §
15 1127B.5.1. Fig 11B-19 thru 11B-23
16

17 43) Designated Parking Spaces. ~~Two spaces serving Downey Savings.~~

18 a. Slope of parking spaces is up to 2.8% in violation of California Title 24
19 § 1129B.4.4, ADAAG 4.6.3*,
20

21 44) Curbcut. Serving Downey Savings.

22 a. Running slope is up to 13% in violation of California Title 24 §
23 1127B.5.3 (ADAAG 4.7.2 & 4.8.2 require curbramps to be least slope
24 possible, but not to exceed 8.33% slope.)
25

26 b. Slope of left side flare is 22% and right side flare slope is 16% in
27 violation of California Title 24 § 1127B.5.3
28

1 c. Slope of top landing is 4% in violation of California Title 24 §
2 1127B.5.4
3

4 45) The exterior entry door landing to Downey Savings has up to a 3.5% slope
5 in violation of California Title 24 § 1115B.4.2, 1133B.2.4, & 1003.3.1.6a. Fig 11B-
6 26A &B
7

8 46) The front entry doors to Downey Savings have a 5" high smooth surface on
9 bottom of the push side in violation of California Title 24 § 1133B.2.6. Fig 11B-29
10

11 The above barriers interfered with Plaintiff's access and continue to deter
12 Plaintiff from visiting said facilities, and as a legal result, Plaintiff **JAMES**
13 **COLLINS** suffers violation of his civil rights to full and equal enjoyment of goods,
14 services, facilities and privileges, and has and will suffer embarrassment and
15 humiliation.
16

17 FACTUAL ALLEGATIONS

18 4. Plaintiff **JAMES COLLINS** is, and at all times relevant to this
19 Complaint is, a "physically handicapped person, "physically disabled person,"
20 and a "person with a disability," as these terms are used under California law and
21 under federal laws including, but not limited to, Title III of the **Americans with**
22 **Disabilities Act of 1990**. (The terms "physically handicapped person,"
23 "physically disabled person," and a "person with a disability" will be used
24 interchangeably throughout this Complaint.) Plaintiff is a "person with a
25 disability," as defined by all applicable California and United State's laws.
26
27
28

1 Plaintiff **JAMES COLLINS** is severely limited in the use of his legs. He is
2 wheelchair-mobile.
3

4 5. Defendants **LA QUINTA PLAZA**, a California Limited Partnership;
5 **DANRAY, INC.**, which will do business in California as **THE BEER HUNTER**,
6 a South Dakota corporation; **BOBRAY RESTAURANTS, INC.**, a California
7 corporation, dba **BEER HUNTER SPORTS PUBLIC & GRILLE**, **M & H REALTY**
8 **PARTNERS II**, a Limited Partnership; **SAFEWAY, INC.**, a Delaware
9 corporation, dba **VONS**; and **DOES ONE to TEN**, inclusive, at all times relevant
10 herein were and are the owners and operators; lessors and/or lessees, franchisers
11 and/or franchisees, of public facilities described herein, located at La Quinta,
12 California, and subject to the requirements of California state law requiring full and
13 equal access to public facilities pursuant to *California Health & Safety Code* §
14 19955, *et seq.*, *California Civil Code* §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and
15 55, and subject to Title III of the *Americans with Disabilities Act of 1990*, and to
16 all other legal requirements referred to in this Complaint. Plaintiff does not know
17 the relative responsibilities of defendants in the operation of the facilities herein
18 complained of, and alleges a joint venture and common enterprise by all such
19 defendants.
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25 6. Defendants **LA QUINTA PLAZA**, a California Limited Partnership;
26 **DANRAY, INC.**, which will do business in California as **THE BEER HUNTER**,
27 a South Dakota corporation; **BOBRAY RESTAURANTS, INC.**, a California
28

1 corporation, dba BEER HUNTER SPORTS PUBLIC & GRILLE, M & H
2 REALTY PARTNERS II, a Limited Partnership; SAFEWAY, INC., a Delaware
3 corporation, dba VONS; and DOES ONE to TEN, inclusive (hereinafter
4 alternatively referred to collectively as "defendants"), at all times relevant herein
5 were and are owners, possessors, builders and keepers of the "LA QUINTA
6 PLAZA and BEER HUNTER and VONS" in La Quinta, California.
7

8
9 7. Defendants LA QUINTA PLAZA, a California Limited Partnership;
10 DANRAY, INC., which will do business in California as THE BEER HUNTER,
11 a South Dakota corporation; BOBRAY RESTAURANTS, INC., a California
12 corporation, dba BEER HUNTER SPORTS PUBLIC & GRILLE, M & H
13 REALTY PARTNERS II, a Limited Partnership; SAFEWAY, INC., a Delaware
14 corporation, dba VONS; and DOES ONE to TEN, inclusive, are the owners
15 and operators of the subject "LA QUINTA PLAZA, BEER HUNTER, and VONS"
16 (hereinafter collectively referred to as "LA QUINTA PLAZA") at all times relevant
17 to this Complaint. Plaintiff is informed and believes that each of the defendants
18 herein is the agent, employee or representative of each of the other defendants,
19 and performed all acts and omissions stated herein within the scope of such
20 agency or employment or representative capacity and is responsible in some
21 manner for the acts and omissions of the other defendants in legally causing the
22 damages complained of herein, and have approved or ratified each of the acts or
23 omissions of each other defendant, as herein described.
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1 8. Plaintiff **JAMES COLLINS** does not know the true names and
2 capacities of defendants **LA QUINTA PLAZA**, a California Limited
3 Partnership; **DANRAY, INC.**, which will do business in California as **THE**
4 **BEER HUNTER**, a South Dakota corporation; **BOBRAY RESTAURANTS,**
5 **INC.**, a California corporation, dba **BEER HUNTER SPORTS PUBLIC &**
6 **GRILLE**, **M & H REALTY PARTNERS II**, a Limited Partnership; **SAFEWAY,**
7 **INC.**, a Delaware corporation, dba **VONS**; and **DOES ONE TO TEN,**
8 **inclusive**, their business capacities, their ownership connection to the property
9 and business, nor their relative responsibilities in causing the access violations
10 herein complained of, and alleges a joint venture and common enterprise by all
11 such defendants. Plaintiff is informed and believes that each of the defendants
12 herein, including **DOES ONE TO TEN**, inclusive, is the agent, ostensible agent,
13 master, servant, employer, employee, representative, franchiser, franchisee, joint
14 venturer, partner, and associate, or such similar capacity, of each of the other
15 defendants, and was at all times acting and performing, or failing to act or
16 perform, with the authorization, consent, permission or ratification of each of the
17 other defendants, and is responsible in some manner for the acts and omissions
18 of the other defendants in legally causing the violations and damages
19 complained of herein, and have approved or ratified each of the acts or
20 omissions of each other defendant, as herein described. Plaintiff will seek leave
21 to amend this Complaint when the true names, capacities, connections and
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1 responsibilities of defendants **LA QUINTA PLAZA**, a California Limited
2 **Partnership; DANRAY, INC.**, which will do business in California as **THE**
3 **BEER HUNTER**, a South Dakota corporation; **BOBRAY RESTAURANTS,**
4 **INC.**, a California corporation, dba **BEER HUNTER SPORTS PUBLIC &**
5 **GRILLE, M & H REALTY PARTNERS II**, a Limited Partnership; **SAFEWAY,**
6 **INC.**, a Delaware corporation, dba **VONS**; and **DOES ONE TO TEN,**
7 **inclusive**, are ascertained.

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

16 10. Defendants **LA QUINTA PLAZA**, a California Limited Partnership;
17 **DANRAY, INC.**, which will do business in California as **THE BEER HUNTER,**
18 a South Dakota corporation; **BOBRAY RESTAURANTS, INC.**, a California
19 corporation, dba **BEER HUNTER SPORTS PUBLIC & GRILLE, M & H**
20 **REALTY PARTNERS II**, a Limited Partnership; **SAFEWAY, INC.**, a Delaware
21 corporation, dba **VONS**; and **DOES ONE TO TEN**, inclusive, are the owners
22 and operators of "**LA QUINTA PLAZA**" located at La Quinta, California. This
23 establishment, including, but not limited to, parking spaces and access aisles and
24 access routes, are each a part of a "public accommodation or facility" subject to
25 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,
2 this "**LA QUINTA PLAZA**" was constructed after 1990, which subjects it to
3 handicapped access requirements per **California Health & Safety Code** §
4 19959, and applicable portions of **California Code of Regulations**, Title 24, (the
5 State Building Code).
6

7
8 11. On or about February 9, 2002, Plaintiff **JAMES COLLINS**, visited the
9 "**LA QUINTA PLAZA**" in La Quinta, California for the purpose of making a
10 purchase. Defendants **LA QUINTA PLAZA**, a California Limited Partnership;
11 **DANRAY, INC.**, which will do business in California as **THE BEER HUNTER**,
12 a South Dakota corporation; **BOBRAY RESTAURANTS, INC.**, a California
13 corporation, dba **BEER HUNTER SPORTS PUBLIC & GRILLE, M & H**
14 **REALTY PARTNERS II**, a Limited Partnership; **SAFEWAY, INC.**, a Delaware
15 corporation, dba **VONS**; and **DOES ONE TO TEN, inclusive**, interfered with
16 Plaintiff's access to the "**LA QUINTA PLAZA**" establishment as set forth in
17 Paragraph 3 above.
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20

21 Said acts and omissions denied Plaintiff legal handicapped access to the
22 "**LA QUINTA PLAZA**" including all of its places of business according to federal
23 and state law.
24

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

1 denying Plaintiff and those similarly situated full and equal access to the subject
2 public facilities as set forth in Paragraph 3 above.

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

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

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1 **I. FIRST CAUSE OF ACTION:**
2 **VIOLATION OF *THE AMERICANS WITH DISABILITIES ACT OF 1990***
3 **(42 *USC* §12101 *et seq.*)**

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

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

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

27 It is the purpose of this act (1) to provide a clear and
28 comprehensive national mandate for the elimination of discrimination

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

10
11
12 18. As part of the ***Americans with Disabilities Act of 1990***, Public Law
13 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public
14 Accommodations and Services Operated by Private Entities" (42 ***USC*** § 12181 *et*
15 *seq.*). Among the public accommodations identified for purposes of this title were
16 "a bakery, restaurant, bar or other establishment serving food or drink, grocery
17 store, clothing store, hardware store, shopping center or other sales or rental
18 establishment."
19
20

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

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

1 20. Among the general prohibitions against discrimination were included
2 in 42 **USC** §12182(b)(1)(A)(i):
3

4 **Denial of participation.** It shall be discriminatory to subject an
5 individual or class of individuals on the basis of a disability or
6 disabilities of such individual or class, directly, or through contractual,
7 licensing, or other arrangements, to a denial of the opportunity of the
8 individual or class to participate in or benefit from the goods, services,
9 facilities, privileges, advantages, or accommodations of an entity.
10

11
12 21. Among the general prohibitions against discrimination were included
13 in 42 **USC** §12182(b)(1)(E):
14

15 **Association** -- It shall be discriminatory to exclude or otherwise
16 deny equal goods, services, facilities, privileges, advantages,
17 accommodations, or other opportunities to an individual or entity
18 because of the known disability of an individual with whom the
19 individual or entity is known to have a relationship or association.
20

21 The acts of defendants set forth herein were a violation of Plaintiff's rights under
22 the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28
23 **CFR** Part 36 et seq.
24

25 22. Among the general prohibitions against discrimination were included
26 in 42 **USC** § 12182(b)(2)(A)(i) and 42 **USC** § 12182(b)(2)(A)(ii):
27

28 **Discrimination.** For purposes of subsection (a), discrimination

1 includes -

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

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

18 23. Plaintiff alleges that constructing the eligibility requirements, policies,
19 practices and procedure for entry to the **"LA QUINTA PLAZA"** facilities by
20 persons with disabilities and their companions as established by the defendants
21 can be simply modified to eliminate disparate and discriminatory treatment of
22 persons with disabilities by properly constructing barrier free handicapped access
23 for safe and full and equal enjoyment of the **"LA QUINTA PLAZA"** as that
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1 enjoyed by other people.

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

6 (b) Interference, Coercion, or Intimidation. - It shall be unlawful
7
8 to coerce, intimidate, threaten, or interfere with any individual in the
9
10 exercise or enjoyment of, or on account of his or her having exercised
11
12 or enjoyed, or on account of his or her having aided or encouraged
13
14 any other individual in the exercise or enjoyment of, any right granted
15
16 or protected by this Act.

17 (c) Remedies and Procedure. - The remedies and procedures
18
19 available under sections 107, 203, and 308 of this Act shall be
20
21 available to aggrieved persons for violations of subsections (a) and
22
23 (b), with respect to Title I, Title II and Title III, respectively.

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

1 readily achievable.” The acts of Defendants set forth herein were a violations of
2 Plaintiff’s rights under the “ADA,” Public Law 101-336, and the regulations
3 promulgated thereunder, 28 **CFR** Part 36, *et seq.*

4
5 26. The removal of the barriers complained of by Plaintiff as hereinabove
6 alleged were at all times after 1990 “readily achievable.” On information and
7 belief, if the removal of all the barriers complained of here together were not
8 “readily achievable,” the removal of each individual barrier complained of herein
9 was “readily achievable.”
10

11
12 27. Per 42 **USC** § 12181(9), “The term ‘readily achievable’ means easily
13 accomplishable and able to be carried out without much difficulty or expense.”
14 The statute and attendant regulations define relative “expense” in relation to the
15 total financial resources of the entities involved, including any “parent”
16 companies. Plaintiff alleges that properly repairing each of the items that Plaintiff
17 complains of herein is readily achievable, including but not limited to correcting
18 and repairing the items set forth in Paragraph 3 above.
19
20

21 The changes needed to remove barriers to access for the disabled were
22 and are “readily achievable” by the defendants under standards set forth under
23 42 **USC** § 12181 of the ***Americans with Disabilities Act of 1990***. (Further, if it
24 was not “readily achievable” for defendants to remove all such barriers,
25 defendants have failed to make the required services available through
26 alternative methods, although such methods are achievable as required by 42
27
28

1 **USC** §12181(b)(2)(a)(iv), (v).)

2
3 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42
4 **USC** § 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set
5 forth in the **Civil Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff
6 is being subjected to discrimination on the basis of disability in violation of this
7 title and/or Plaintiff has reasonable grounds for believing that he is about to be
8 subjected to discrimination in violation of **Americans With Disabilities Act of**
9 **1990** §302. Plaintiff cannot return to or make use of the public facilities
10 complained of herein for the purpose of entry and provision of goods and service
11 so long as defendants continue to apply eligibility criteria, policies, practices and
12 procedures to screen out and refuse to allow entry and service to persons with
13 disabilities such as Plaintiff's.

14
15
16
17 29. Defendants', and each of their acts and omissions of failing to provide
18 barrier free handicapped access for Plaintiff, were tantamount to interference,
19 coercion or intimidation pursuant to **Americans With Disabilities Act of 1990**
20 §503(b) (now 42 **USC** § 12203):

21
22 It shall be unlawful to coerce, intimidate, threaten, or interfere
23 with any individual in the exercise or enjoyment of, or on account of
24 his or her having encouraged any other individual in the exercise or
25 enjoyment of, any right granted or protected by this Act.

26
27
28 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42

1 **USC** § 12188), “Nothing in this section shall require a person with a disability to
2 engage in a futile gesture if such person has actual notice that a person or
3 organization covered by this title does not intend to comply with its provisions.”

4 Pursuant to this last section, Plaintiff, on information and belief, alleges that
5 defendants have continued to violate the law and deny the rights of Plaintiff and
6 other disabled persons to access this public accommodation for the purpose of
7 lodging. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),

8
9
10 “...Where appropriate, injunctive relief shall also include
11 requiring the provision of an auxiliary aid or service, modifications of a
12 policy, or provision of alternative methods, to the extent required by
13 this title.”
14

15
16 31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the
17 **Civil Rights Act of 1964** (42 **USC** § 2000a-3(a), and pursuant to federal
18 regulations adopted to implement the **Americans with Disabilities Act of 1990**,
19 including but not limited to an order granting injunctive relief and attorneys’ fees.
20 Such attorneys’ fees, “including litigation expenses and costs,” are further
21 specifically provided for by §505 of Title III.
22
23

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

27 32. Plaintiff repleads and incorporates by reference, as if fully set forth
28 again herein, the allegations contained in paragraphs 1 through 31 of this

1 Complaint and incorporate them herein as if separately repled.

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

3
4 The purpose of this part is to insure that public
5 accommodations or facilities constructed in this state with private
6 funds adhere to the provisions of Chapter 7 (commencing with Sec.
7 4450) of Division 5 of Title 1 of the *Government Code*. For the
8 purposes of this part "public accommodation or facilities" means a
9 building, structure, facility, complex, or improved area which is used
10 by the general public and shall include auditoriums, hospitals,
11 theaters, restaurants, hotels, motels, stadiums, and convention
12 centers. When sanitary facilities are made available for the public,
13 clients or employees in such accommodations or facilities, they shall
14 be made available for the handicapped.
15
16
17

18 34. **California Health & Safety Code** § 19956, which appears in the
19 same chapter as §19955, provides in pertinent part, "accommodations
20 constructed in this state shall conform to the provisions of Chapter 7
21 (commencing with Sec. 4450) of Division 5 of Title 1 of the *Government Code*..."
22

23
24 **California Health & Safety Code** § 19956 was operative July 1, 1970, and is
25 applicable to all public accommodations constructed or altered after that date.

26 On information and belief, portions of "**LA QUINTA PLAZA**" and/or of its
27 buildings, were constructed and/or altered after July 1, 1970, and substantial
28

1 portions of said building had alterations, structural repairs, and/or additions made
2 to such public accommodations after July 1, 1970, thereby requiring said public
3 accommodations and/or buildings to be subject to the requirements of Part 5.5,
4 **California Health & Safety Code** § 19955, *et seq.*, upon such alteration,
5 structural repairs or additions per **California Health & Safety Code** § 19959.
6
7

8 35. Pursuant to the authority delegated by **California Government Code**
9 § 4450, *et seq.*, the State Architect promulgated regulations for the enforcement
10 of these provisions. Effective January 1, 1982, Title 24 of the **California**
11 **Administrative Code** adopted the California State Architect's Regulations and
12 these regulations must be complied with as to any alterations and/or
13 modifications of the "LA QUINTA PLAZA" occurring after that date. Construction
14 changes occurring prior to this date but after July 1, 1970 triggered access
15 requirements pursuant to the "ASA" requirements, the **American Standards**
16 **Association Specifications**, A117.1-1961. On information and belief, at the
17 time of the construction and modification of said building, all buildings and
18 facilities covered were required to conform to each of the standards and
19 specifications described in the **American Standards Association**
20 **Specifications** and/or those contained in Title 24 of the **California**
21 **Administrative Code**, (now known as Title 24, **California Code of**
22 **Regulations**.)
23
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28 36. Public facilities, such as "LA QUINTA PLAZA" are public

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

3
4 37. It is difficult or impossible for persons with physical disabilities who
5 use wheelchairs, canes, walkers and service animals to travel about in public to
6 use a retail store with the defects set forth in Paragraph 3 above as required by
7 Title 24 of the **California Code of Regulations** and the **Americans with**
8 **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
11 and equal access to and use of that facility that is enjoyed by other members of
12 the general 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,
18 canes, walkers and service animals are unable to use public facilities on a “full
19 and equal” basis unless each such facility is in compliance with the provisions of
20 the **California Health & Safety Code § 19955, et seq.** Plaintiff is a member of
21 that portion of the public whose rights are protected by the provisions of
22 **California Health & Safety Code § 19955, et seq.**

23
24
25 39. The **California Health & Safety Code** was enacted “[t]o ensure that
26 public accommodations or facilities constructed in this state with private funds
27 adhere to the provisions of Chapter 7 (commencing with §4450) of Division 5 of
28

1 Title 1 of the *Government Code*.” Such public accommodations are defined to
2 include retail stores.

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

7
8 41. Plaintiff **JAMES COLLINS** is informed and believes, and therefore
9 alleges, that Defendants **LA QUINTA PLAZA**, a California Limited
10 Partnership; **DANRAY, INC.**, which will do business in California as **THE**
11 **BEER HUNTER**, a South Dakota corporation; **BOBRAY RESTAURANTS,**
12 **INC.**, a California corporation, dba **BEER HUNTER SPORTS PUBLIC &**
13 **GRILLE**, **M & H REALTY PARTNERS II**, a Limited Partnership; **SAFEWAY,**
14 **INC.**, a Delaware corporation, dba **VONS**; and **DOES ONE TO TEN,**
15 **inclusive**, and each of them, caused the subject buildings constituting “**LA**
16 **QUINTA PLAZA**” to be constructed, altered and maintained in such a manner
17 that persons with physical disabilities were denied full and equal access to, within
18 and throughout said buildings and were denied full and equal use of said public
19 facilities, and despite knowledge and actual and constructive notice to such
20 Defendants that the configuration of the store and/or buildings was in violation of
21 the civil rights of persons with physical disabilities, such as Plaintiff. Such
22 construction, modification, ownership, operation, maintenance and practices of
23 such public facilities are in violation of law as stated in Part 5.5, **California**

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

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

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
13 access, communications with Plaintiff and other persons with disabilities,
14 communications with other patrons who regularly visit there, communications
15 with owners of other businesses, notices and advisories they obtained from
16 governmental agencies through the mails, at seminars, posted bulletins,
17 television, radio, public service announcements, or upon modification,
18 improvement, alteration or substantial repair of the subject premises and other
19 properties owned by these Defendants, newspaper articles and trade
20 publications regarding the **Americans with Disabilities Act of 1990** and other
21 access law, and other similar information. The scope and means of the
22 knowledge of each defendant is within each defendant's exclusive control and
23 cannot be ascertained except through discovery.

1 44. As a result of Defendants' acts and omissions in this regard, Plaintiff
2
3 has been required to incur legal expenses and hire attorneys in order to enforce
4 his civil rights and enforce provisions of the law protecting access for persons
5 with physical disabilities and prohibiting discrimination against persons with
6 physical disabilities, and to take such action both in his own interests and in order
7 to enforce an important right affecting the public interest. Plaintiff, therefore,
8 seeks damages in this lawsuit for recovery of all reasonable attorneys' fees
9 incurred, pursuant to the provisions of the **California Code of Civil Procedure** §
10 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to **California Health**
11 **& Safety Code** § 19953 and **California Civil Code** §§ 54.3 and 55.
12
13

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

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

1 48. As a result of the actions and failure of Defendants, and each of
2 them, and as a result of the failure to provide proper accessible public facilities,
3 Plaintiff **JAMES COLLINS** was denied his civil rights, including his right to full
4 and 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
9 to 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 **(California Civil Code §§ 54, 54.1 and 54.3)**

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

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

1 omissions are also in violation of provisions of Title 24 of the **California Code of**
2 **Regulations.**

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

7
8 Individuals with disabilities shall have the same right as
9 the...general public to full and free use of the streets, highways,
10 sidewalks, walkways, public buildings, public facilities, and other
11 public places. **California Civil Code** § 54(a).

12
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,
16 airplanes, motor vehicles, railroad trains, motor buses, streetcars,
17 boats, or any other public conveyances or modes of transportation
18 (whether private, public, franchised, licensed, contracted, or
19 otherwise provided), telephone facilities, adoption agencies, private
20 schools, hotels, lodging places, places of public accommodation,
21 amusement or resort, and other places to which the general public is
22 invited, subject only to the conditions and limitations established by
23 law, or state or federal regulation, and applicable alike to all persons.
24
25 **California Civil Code** § 54.1(a).

1 52. On or about February 9, 2002, Plaintiff **JAMES COLLINS** suffered
2 violations of *California Civil Code* §§ 54 and 54.1 in that he was denied full and
3 equal enjoyment of the goods, services, facilities and privileges of said "**LA**
4 **QUINTA PLAZA**", as set forth in paragraph 3 above. Plaintiff was also denied
5 full and equal access to other particulars, including but not limited to those
6 described hereinabove. Plaintiff was also denied use of facilities that he was
7 entitled to under Title III of the *Americans with Disabilities Act of 1990*.
8
9

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

1 person on or about February 9, 2002, according to proof, pursuant to **California**
2 **Civil Code** § 54.3, including a trebling of all statutory and actual damages,
3 general and special, available pursuant to **California Civil Code** § 54.3(a).
4

5 55. As a result of defendants' acts and omissions in this regard, Plaintiff
6 **JAMES COLLINS** has been required to incur legal expenses and hire attorneys
7 in order to enforce his rights and enforce provisions of the law protecting the full
8 and equal enjoyment of goods, services, facilities, privileges of public facilities by
9 the disabled, and those individuals associated with or accompanied by a person
10 with disabilities, and prohibiting discrimination against the disabled. Plaintiff,
11 therefore, seeks recovery in this lawsuit for all reasonable attorneys' fees
12 incurred pursuant to the provisions of **California Civil Code** § 54.3. Additionally,
13 Plaintiff's lawsuit is intended not only to obtain compensation for damages to
14 Plaintiff, but also to compel the defendants to make their goods, services,
15 facilities and privileges available and accessible to all members of the public with
16 physical disabilities, justifying public interest attorneys' fees pursuant to the
17 provisions of **California Code of Civil Procedure** § 1021.5.
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22 56. The acts and omissions of defendants in failing to provide the
23 required accessible facilities subsequent to the enactment date and compliance
24 date of the **Americans with Disabilities Act of 1990**, and refusal to make
25 remedial modifications and alterations to its handicapped parking, handicapped
26 signage, pathways, and other elements as hereinabove stated, after being
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1 notified by patrons before and after the time of Plaintiff's visit and injuries, on or
2 about February 9, 2002, and all times prior thereto with the knowledge that
3 persons with disabilities would enter defendants' premises, the reason given
4 therefor, was an established policy, practice and procedure of refusing and
5 denying entry, thereby denying lodging and other services to a person with
6 disabilities and the companions thereof, evidence malice and oppression toward
7 Plaintiff and other disabled persons.
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10 57. Such despicable conduct, as that incorporated herein by reference
11 and specifically set forth in Paragraph 11, was carried out by defendants with a
12 willful and conscious disregard for the law and the rights of Plaintiff and of other
13 disabled persons, and was oppressive in that such conduct subjected Plaintiff "to
14 cruel and unjust hardship in conscious disregard" for the law and Plaintiff's rights,
15 and justifies exemplary and punitive damages pursuant to **California Civil Code**
16 § 3294, in amounts sufficient to make an example of defendants and to punish
17 defendants and to carry out the purposes of **California Civil Code** § 3294.
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20 58. Defendants have failed to establish a nondiscriminatory criteria,
21 policy, practice and procedure for entry into said "**LA QUINTA PLAZA**" as
22 hereinabove described.
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25 59. As a result of defendants' continuing failure to provide for the full and
26 equal enjoyment of goods, services, facilities and privileges of said "**LA QUINTA**
27 **PLAZA**" as hereinabove described, Plaintiff has continually been denied his
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1 rights to full and equal enjoyment of the subject retail store, as it would be a
2 "futile gesture" to attempt to patronize said **"LA QUINTA PLAZA"** with the
3 discriminatory policy in place as hereinabove described.
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5 60. The acts and omissions of defendants as complained of herein in
6 failing to provide the required accessible facilities subsequent to the enactment
7 date and compliance date of the *Americans with Disabilities Act of 1990* and
8 refusal to make remedial modifications and alternations to the architectural
9 barriers as stated herein and in failing to establish practices, policies and
10 procedures to allow safe access by persons who are disabled are continuing on
11 a day-to-day basis to have the effect of wrongfully and willfully excluding Plaintiff
12 and other members of the public who are physically disabled, from full and equal
13 enjoyment of the subject **"LA QUINTA PLAZA"** as hereinabove described. Such
14 acts and omissions are the continuing cause of humiliation and mental and
15 emotional suffering of Plaintiff in that these actions continue to treat Plaintiff as
16 an inferior and second class citizen and serve to discriminate against him on the
17 sole basis that he is physically disabled. Plaintiff is unable, so long as such acts
18 and omissions of defendants continue, to achieve full and equal enjoyment of the
19 goods and services of said **"LA QUINTA PLAZA"** as described hereinabove.
20 The acts of defendants have legally caused and will continue to cause
21 irreparable injury to Plaintiff if not enjoined by this court.
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28 61. Wherefore, Plaintiff asks this court to preliminarily and permanently

1 enjoin any continuing refusal by defendants to permit entry to said "LA QUINTA
2 **PLAZA**" and to serve Plaintiff or others similarly situated, and to require
3 defendants to comply forthwith with the applicable statutory requirements relating
4 to the full and equal enjoyment of goods and services as described hereinabove
5 for disabled persons. Such injunctive relief is provided by **California Civil Code**
6 § 55. Plaintiff further requests that the court award statutory costs and attorneys'
7 fees to Plaintiff pursuant to **California Civil Code** § 55 and **California Code of**
8 **Civil Procedure** § 1021.5, all as hereinafter prayed for.

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

16 **IV. FOURTH CAUSE OF ACTION**
17 **VIOLATIONS OF UNRUH CIVIL RIGHTS ACT**
18 **(California Civil Code §§ 51 and 51.5)**

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

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

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

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

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16 66. As a result of the violation of Plaintiff’s civil rights protected by
17 **California Civil Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and
18 remedies of **California Civil Code** § 52, including a trebling of actual damages
19 (defined by **California Civil Code** § 52(h) to mean “special and general
20 damages”), as well as reasonable attorneys’ fees and costs, as allowed by
21 statute, according to proof. Further, pursuant to paragraphs 11, 12, 13, 35 and
22 43, Plaintiff seeks appropriate exemplary damages under **California Civil Code**
23 § 3294.
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27 WHEREFORE, Plaintiff prays that this court award damages and provide
28 relief as follows:

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PRAYER FOR RELIEF

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

1. Grant injunctive relief requiring that defendants establish a non-discriminatory criteria policy, practice and procedure permitting entry into the "**LA QUINTA PLAZA**" in La Quinta, California, for the purpose of services according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, *et seq.*, and Title III of the **Americans with Disabilities Act of 1990**, and grant injunctive relief requiring that Defendants repair and render safe to handicapped persons, and otherwise make handicapped-accessible, all public areas of the store, including, but not limited to, removal of all barriers to access identified in Paragraph Three, above, and make such facilities "readily accessible to and usable by individuals with disabilities," according to the standards of Title 24 of the **California Administrative Code, California Health & Safety Code** § 19955 *et seq.*, and Title III of the **Americans with Disabilities Act of 1990** and the standards of **ADAAG**; and prohibiting operation of the "**LA QUINTA PLAZA**", located in La Quinta, California, as a public facility until Defendants provide full and equal enjoyment of goods and services as described hereinabove to physically disabled persons, including Plaintiff;

2. General damages according to proof;

3. Statutory and "actual" damages, including general damages and special damages, according to proof, pursuant to **California Civil Code** §§ 52,

1 and 54.3, and that these damages be trebled;

2 4. Prejudgment interest on all compensatory damages;

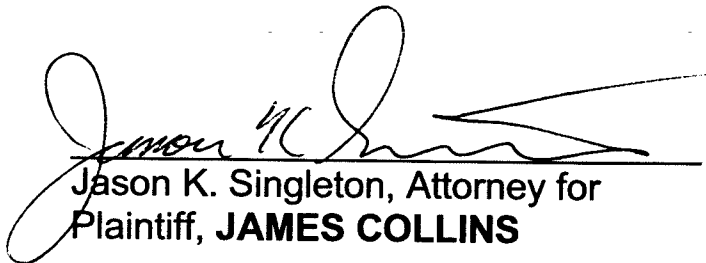
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4 5. Punitive and exemplary damages pursuant to the standards and
5 purposes of **California Civil Code** § 3294;

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

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

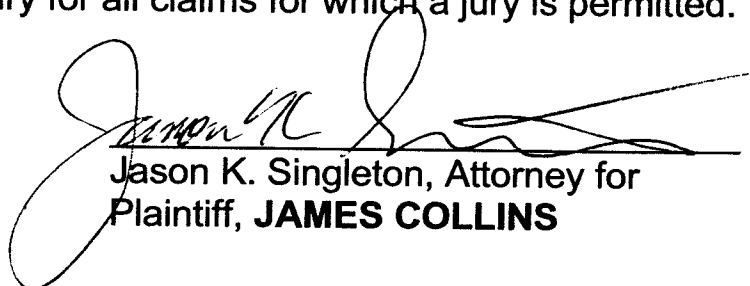
18 Dated: April 25, 2002

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

REQUEST FOR JURY TRIAL

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

Dated: April 25, 2002


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