

ORIGINAL

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES COLLINS,

Plaintiff,

v.

ALBERTSON'S INC., a Delaware corporation, dba SAV-ON DRUGS; AMERICAN DRUG STORES, INC., a corporation, dba SAV-ON PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware corporation; and DOES ONE TO TEN, inclusive,

Defendants.

) **Case No.**

) **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**

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CVO2-4942 PA (EX)

Plaintiff **JAMES COLLINS** complains of defendants **ALBERTSON'S INC., a Delaware corporation, dba SAV-ON DRUGS; AMERICAN DRUG STORES, INC., a corporation, dba SAV-ON PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware corporation; and DOES ONE TO TEN, inclusive,** and alleges as follows:

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1 services to the public and at which Defendants failed to provide barrier free access to said
2 establishment in conformity with both Federal and California legal requirements.

3
4 Further, Defendants failed to provide compliance as follows:

5 Exterior Survey.

6 1) The striped path of travel through the parking lot for people with disabilities is in
7 blue. Neither Title 24 or the ADA specify blue paint to be used when delineating a
8 path of travel across or through a vehicular way. Blue paint is dangerous when used
9 on asphalt because it is difficult or impossible to be seen by a driver of a vehicle in
10 bright sunlight, in the evening or when it is raining. The local Traffic Engineer
11 typically requires a highly visible paint such as white or yellow.

12 2) The parking spaces are fading, should be restriped to improve identification to
13 comply with California Title 24 § 1129B.5. Fig 11B-18A, B, & C as follows:

14 (a) identifying each complying parking space with a minimum 70 square inch
15 reflectorized sign permanently posted adjacent to and visible from each stall
16 or space, with a profile view of a wheelchair and occupant in white on dark
17 blue background. Post the sign 80" minimum above finished grade if in a
18 path of travel OR install sign 36" minimum high on a wall at end of the
19 parking space.

20 (b) The surface of each accessible parking space or stall shall have surface
21 identification duplicating either of the following schemes:

22 1. Outlining or painting the stall or space in blue and outlining on the
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1 surface of the stall or space in white or suitable contrasting color a
2 profile view of a wheelchair with occupant; or

- 3
4 2. Outlining a profile view of a wheelchair with occupant in white on blue
5 background. Locate the profile view so that it is visible to a traffic
6 enforcement officer when a vehicle is properly parked in the space and
7 shall be 36" by 36".
8

9 Interior Survey.

- 10 1) The accessible entry doors are not identified with the International Accessibility
11 Symbol as required by California Title 24 § 1117B.5.1 and ADAAG 4.30
12
13 2) The primary entrance / exit turns 90 degrees and narrows to less than 36" in width.
14 It is difficult for a person using a large power chair to enter or exit the store. This
15 would be dangerous in an emergency such as a fire or earthquake or terrorist attack.
16
17 3) The pharmacy counter does not have a 28" - 34" high by 36" minimum wide space
18 to accommodate people with disabilities in violation of ADAAG 4.32.4, California
19 Title 24 § 1122B.4,
20
21 4) Three Checkout Stands.
22
23 a. Swinging doors were installed in the path of travel on the customer side of the
24 checkout stands that reduced the width of the aisle to less than 36", about 31-
25 1/2" wide in violation of California Title 24 § 1110B.1.3. Table 11B-2
26
27 b. None of the checkout stands are identified for people with disabilities in
28 violation of California Title 24 § 1110B.1.3

1 5) Many of the aisles in the store have displays and merchandise stacked in them that
2 reduces the width to less than the required width in violation of California Title 24 §
3 1133B.3.1
4

5 6) Some of the signage does not comply with California Title 24 § 1117.5B or
6 ADAAG § 4.30 as follows:
7

8 1. The International Symbol of Accessibility shall consist of a white figure on a
9 blue background. The blue shall be equal to Color No. 15090 in Federal
10 Standard 595B. California Title 24 § 1117B.5.1.2
11

12 2. Letters and numbers on signs shall have a width-to-height ratio of between
13 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10.
14 California Title 24 § 1117B.5.3
15

16 3. Characters and numbers on signs shall be sized according to the viewing
17 distance from which they are to be read. The minimum height is measured
18 using an upper case X. Lower case characters are permitted. For signs
19 suspended or projected above the finished floor in compliance with California
20 Title 24 § 1121B, the minimum character height shall be 3". California Title
21 24 § 1117B.5.4
22

23 4. Characters and symbols shall contrast with their matte finished background,
24 either light characters on a dark background or dark characters on a light
25 background. California Title 24 § 1117B.5.5
26
27

28 5. Signage identifying rooms/spaces shall be raised and comply with the

1 following: California Title 24 § 1117B.5.6

- 2 a. Letters and numbers on signs shall be raised 1/32" minimum and be sans-serif
3 uppercase characters accompanied by Grade 2 Braille. California Title 24 §
4 1117B.5.6.1
- 5
6 b. Raised characters or symbols shall be a minimum of 5/8" high. California
7 Title 24 § 1117B.5.6.2
- 8
9 c. Pictorial symbol signs (pictograms) shall be accompanied by the equivalent
10 verbal description placed directly below the pictogram. The border dimension
11 of the pictogram shall be 6" minimum in height. California Title 24 §
12 1117B.5.6.3
- 13
14 6. Use contracted Grade 2 Braille wherever Braille symbols are required in other
15 portions of these regulations. Dots shall be 1/10" on centers in each cell with
16 2/10" space between cells. Dots shall be raised a minimum of 1/40" above the
17 background. California Title 24 § 1117B.5.2
- 18
19
20 7. All building entrances accessible to persons with disabilities and at every
21 major junction along or leading to an accessible route of travel shall be
22 identified with a sign displaying the International Symbol of Accessibility and
23 with additional directional signs, as required, to be visible to persons along
24 approaching pedestrian ways. California Title 24 § 1117B.5.7 & 1127B.3
- 25
26 8. Characters and symbols shall contrast with a matte finished background, light
27 characters on a dark background or dark characters on a light background.
28

1 California Title 24 § 1117B.5.5 If there is permanent signage identifying
2 rooms and spaces, provide raised letters with Braille symbols per California
3 Title 24 § 1117B.5.6. Install signs on the wall at latch side of the door. If
4 there is no wall at latch side, including double leaf doors, locate signs on
5 nearest wall, preferably on right. Mount sign 60" above floor to centerline of
6 sign. Locate sign so that a person may approach within 3" of signage without
7 encountering an object or standing within the swing of a door. California Title
8 24 § 1117B.5.9

9
10
11
12 The above barriers interfered with Plaintiff's access and continue to deter Plaintiff from
13 visiting said facilities, and as a legal result, Plaintiff **JAMES COLLINS** suffers violation
14 of his civil rights to full and equal enjoyment of goods, services, facilities and privileges,
15 and has and will suffer embarrassment and humiliation.

16
17 **FACTUAL ALLEGATIONS**

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

1 5. Defendants **ALBERTSON'S INC., a Delaware corporation, dba SAV-**
2 **ON DRUGS; AMERICAN DRUG STORES, INC., a corporation, dba SAV-ON**
3 **PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware**
4 **corporation; and DOES ONE TO TEN, inclusive**, at all times relevant herein were
5 and are the owners and operators; lessors and/or lessees, franchisers and/or franchisees,
6 of public facilities known as the "SAV-ON DRUGS" store, located at Indio, California,
7 subject to the requirements of California state law requiring full and equal access to
8 public facilities pursuant to *California Health & Safety Code* § 19955, *et seq.*,
9 *California Civil Code* §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to Title
10 III of the *Americans with Disabilities Act of 1990*, and to all other legal requirements
11 referred to in this Complaint. Plaintiff does not know the relative responsibilities of
12 defendants in the operation of the facilities herein complained of, and alleges a joint
13 venture and common enterprise by all such defendants.
14

15 6. Defendants **ALBERTSON'S INC., a Delaware corporation, dba SAV-**
16 **ON DRUGS; AMERICAN DRUG STORES, INC., a corporation, dba SAV-ON**
17 **PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware**
18 **corporation; and DOES ONE TO TEN, inclusive** (hereinafter alternatively referred to
19 collectively as "defendants"), at all times relevant herein were and are owners,
20 possessors, builders and keepers of the "SAV-ON DRUGS " in Indio, California.
21

22 7. Defendants **ALBERTSON'S INC., a Delaware corporation, dba SAV-**
23 **ON DRUGS; AMERICAN DRUG STORES, INC., a corporation, dba SAV-ON**
24

1 **PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware**
2 **corporation; and DOES ONE TO TEN, inclusive** are the owners and operators of the
3
4 subject "**SAV-ON DRUGS,**" at all times relevant to this Complaint. Plaintiff is informed
5 and believes that each of the defendants herein is the agent, employee or representative of
6 each of the other defendants, and performed all acts and omissions stated herein within
7
8 the scope of such agency or employment or representative capacity and is responsible in
9
10 some manner for the acts and omissions of the other defendants in legally causing the
11
12 damages complained of herein, and have approved or ratified each of the acts or
omissions of each other defendant, as herein described.

13 8. Plaintiff **JAMES COLLINS** does not know the true names and capacities of
14
15 defendants **ALBERTSON'S INC., a Delaware corporation, dba SAV-ON DRUGS;**
16 **AMERICAN DRUG STORES, INC., a corporation, dba SAV-ON**
17 **PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware**
18 **corporation; and DOES ONE TO TEN, inclusive,** their business capacities, their
19
20 ownership connection to the property and business, nor their relative responsibilities in
21
22 causing the access violations herein complained of, and alleges a joint venture and
23
24 common enterprise by all such defendants. Plaintiff is informed and believes that each of
25
26 the defendants herein, including **DOES ONE TO TEN, inclusive,** is the agent, ostensible
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28 agent, master, servant, employer, employee, representative, franchiser, franchisee, joint
venturer, partner, and associate, or such similar capacity, of each of the other defendants,
and was at all times acting and performing, or failing to act or perform, with the

1 authorization, consent, permission or ratification of each of the other defendants, and is
2 responsible in some manner for the acts and omissions of the other defendants in legally
3 causing the violations and damages complained of herein, and have approved or ratified
4 each of the acts or omissions of each other defendant, as herein described. Plaintiff will
5 seek leave to amend this Complaint when the true names, capacities, connections and
6 responsibilities of defendants **ALBERTSON'S INC., a Delaware corporation, dba**
7 **SAV-ON DRUGS; AMERICAN DRUG STORES, INC., a corporation, dba SAV-**
8 **ON PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware**
9 **corporation; and DOES ONE TO TEN, inclusive**, are ascertained.

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

18 10. Defendants **ALBERTSON'S INC., a Delaware corporation, dba SAV-**
19 **ON DRUGS; AMERICAN DRUG STORES, INC., a corporation, dba SAV-ON**
20 **PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware**
21 **corporation; and DOES ONE TO TEN, inclusive**, are the owners and operators of
22 "SAV-ON DRUGS," located at Indio, California. This establishment, including, but not
23 limited to, parking spaces and access aisles and access routes, are each a part of a "public
24 accommodation or facility" subject to the requirements of *California Health & Safety*
25 *Code* § 19955, *et seq.*, and of *California Civil Code* §§ 51, 52(a), 54, 54.1, *et seq.* On
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27
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1 information and belief, this "SAV-ON DRUGS" was constructed after 1990, which
2 subjects it to handicapped access requirements per *California Health & Safety Code* §
3 19959, and applicable portions of *California Code of Regulations*, Title 24, (the State
4 Building Code).

6 11. On or about January 15, 2002, Plaintiff **JAMES COLLINS**, visited the
7 "SAV-ON DRUGS" in Indio, California for the purpose of making a purchase.
8 Defendants **ALBERTSON'S INC., a Delaware corporation, dba SAV-ON DRUGS;**
9 **AMERICAN DRUG STORES, INC., a corporation, dba SAV-ON**
10 **PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware**
11 **corporation; and DOES ONE TO TEN, inclusive,** interfered with Plaintiff's access to
12 the "SAV-ON DRUGS" establishment as set forth in Paragraph 3 above.
13
14

15
16 Said acts and omissions denied Plaintiff legal handicapped access to the "SAV-ON
17 **DRUGS**" according to federal and state law.

18
19 12. Plaintiff encountered and/or is informed and believes that the following
20 architectural barriers, which violate the requirements of the *California Code of*
21 *Regulations* Title 24 and *ADAAG*, existed and continue to exist thereby denying Plaintiff
22 and those similarly situated full and equal access to the subject public facility as set forth
23 in Paragraph 3 above.
24

25 13. Defendants, and each of them, discriminated against Plaintiff **JAMES**
26 **COLLINS** on the basis of his physical disability, and interfered with his access to the
27 "SAV-ON DRUGS" establishment, in violation of both California law including, but not
28

1 limited to, *California Civil Code* §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302,
2 the “Prohibition of Discrimination” provision and §503, the “Prohibition Against
3 Retaliation or Coercion” provision of the *Americans with Disabilities Act of 1990*.

4
5 14. As a result of the actions and failure to act of defendants, and each of them,
6 and as a result of the failure to provide appropriate handicapped parking, proper
7 handicapped signage, proper handicapped accessible entryways, and handicapped
8 accommodations for dressing rooms, Plaintiff **JAMES COLLINS** suffered and will
9 suffer a loss of his civil rights to full and equal access to public facilities, and further
10 suffered and will suffer emotional distress, mental distress, mental suffering, mental
11 anguish, which includes shame, humiliation, embarrassment, anger, chagrin,
12 disappointment and worry, expectedly and naturally associated with a person with a
13 physical disability being denied access to a public accommodation, all to his damages as
14 prayed hereinafter in an amount within the jurisdiction of this court.
15
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17

18 **I. FIRST CAUSE OF ACTION:**
19 **VIOLATION OF *THE AMERICANS WITH DISABILITIES ACT OF 1990* (42**
20 ***USC* §12101 *et seq.*)**

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

24
25 16. Pursuant to law, in 1990 the United States Congress made findings per 42
26 *USC* § 12101 regarding persons with physical disabilities, finding that laws were needed
27 to more fully protect 43 million Americans with one or more physical or mental
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1 disabilities; [that] historically society has tended to isolate and segregate individuals with
2 disabilities; [that] such forms of discrimination against individuals with disabilities
3
4 continue to be a serious and pervasive social problem; [that] the nation's proper goals
5 regarding individuals with disabilities are to assure equality of opportunity, full
6 participation, independent living and economic self-sufficiency for such individuals; [and
7
8 that] the continuing existence of unfair and unnecessary discrimination and prejudice
9 denies people with disabilities the opportunity to compete on an equal basis and to pursue
10 those opportunities for which our free society is justifiably famous.
11

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

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

26 18. As part of the *Americans with Disabilities Act of 1990*, Public Law 101-336
27 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and
28

1 Services Operated by Private Entities” (42 *USC* § 12181 *et seq.*). Among the public
2 accommodations identified for purposes of this title were “a bakery, restaurant, bar or
3
4 other establishment serving food or drink, grocery store, clothing store, hardware store,
5 shopping center or other sales or rental establishment.”

6 19. Pursuant to 42 *USC* § 12182,

7
8 “No individual shall be discriminated against on the basis of disability in the
9 full and equal enjoyment of the goods, services, facilities, privileges, advantages,
10 or accommodations of any place of public accommodation by any person who
11 owns, leases (or leases to), or operates a place of public accommodation.”

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

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

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

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

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

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

7
8 22. Among the general prohibitions against discrimination were included in 42
9 *USC* § 12182(b)(2)(A)(i) and 42 *USC* § 12182(b)(2)(A)(ii):

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

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

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

26
27
28 23. Plaintiff alleges that constructing the eligibility requirements, policies,

1 practices and procedure for entry to the "SAV-ON DRUGS" facility by persons with
2 disabilities and their companions as established by the defendants can be simply modified
3
4 to eliminate disparate and discriminatory treatment of persons with disabilities by
5 properly constructing barrier free handicapped access for safe and full and equal
6 enjoyment of the "SAV-ON DRUGS" as that enjoyed by other people.
7

8 24. The specific prohibition against retaliation and coercion is included in the
9 *Americans With Disabilities Act of 1990* § 503(b) and the *Remedies and Procedures* in §
10 503(c):
11

12 (b) Interference, Coercion, or Intimidation. - It shall be unlawful to coerce,
13 intimidate, threaten, or interfere with any individual in the exercise or enjoyment
14 of, or on account of his or her having exercised or enjoyed, or on account of his or
15 her having aided or encouraged any other individual in the exercise or enjoyment
16 of, any right granted or protected by this Act.
17

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

23
24 25. Among the specific prohibitions against discrimination were included, in 42
25 *USC* § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and
26 communications barriers that are structural in nature, in existing facilities...where such
27 removal is readily achievable;" and (v) "where and entity can demonstrate that the
28

1 removal of a barrier under clause (iv) is not readily achievable, a failure to make such
2 goods, services, facilities, privileges, advantages, or accommodations available through
3 alternative methods if such methods are readily achievable.” The acts of Defendants set
4 forth herein were a violations of Plaintiff’s rights under the “ADA,” Public Law 101-336,
5 and the regulations promulgated thereunder, 28 *CFR* Part 36, *et seq.*
6

7
8 26. The removal of the barriers complained of by Plaintiff as hereinabove
9 alleged were at all times after 1990 “readily achievable.” On information and belief, if
10 the removal of all the barriers complained of here together were not “readily achievable,”
11 the removal of each individual barrier complained of herein was “readily achievable.”
12

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

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

1 achievable as required by 42 *USC* §12181(b)(2)(a)(iv), (v).)

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

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

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

20 30. Per *Americans With Disabilities Act of 1990* § 308(a)(1) (now 42 *USC* §
21 12188), "Nothing in this section shall require a person with a disability to engage in a
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1 futile gesture if such person has actual notice that a person or organization covered by
2 this title does not intend to comply with its provisions.” Pursuant to this last section,
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4 Plaintiff, on information and belief, alleges that defendants have continued to violate the
5 law and deny the rights of Plaintiff and other disabled persons to access this public
6 accommodation for the purpose of lodging. Therefore, Plaintiff seeks injunctive relief
7
8 pursuant to §308(a)(2),

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

12
13 31. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the *Civil*
14 *Rights Act of 1964* (42 USC § 2000a-3(a), and pursuant to federal regulations adopted to
15 implement the *Americans with Disabilities Act of 1990*, including but not limited to an
16 order granting injunctive relief and attorneys’ fees. Such attorneys’ fees, “including
17 litigation expenses and costs,” are further specifically provided for by §505 of Title III.

18
19
20 **II. SECOND CAUSE OF ACTION**
21 **BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH**
22 **PHYSICAL DISABILITIES (*California Health & Safety Code* § 19955, *et seq.*)**

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

26
27 33. *California Health & Safety Code* § 19955 provides in pertinent part:

28 The purpose of this part is to insure that public accommodations or facilities

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

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

1 *et seq.*, the State Architect promulgated regulations for the enforcement of these
2 provisions. Effective January 1, 1982, Title 24 of the *California Administrative Code*
3 adopted the California State Architect's Regulations and these regulations must be
4 complied with as to any alterations and/or modifications of the "SAV-ON DRUGS"
5 occurring after that date. Construction changes occurring prior to this date but after July
6 1, 1970 triggered access requirements pursuant to the "ASA" requirements, the *American*
7 *Standards Association Specifications*, A117.1-1961. On information and belief, at the
8 time of the construction and modification of said building, all buildings and facilities
9 covered were required to conform to each of the standards and specifications described in
10 the *American Standards Association Specifications* and/or those contained in Title 24 of
11 the *California Administrative Code*, (now known as Title 24, *California Code of*
12 *Regulations*.)

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17 36. Public facilities, such as "SAV-ON DRUGS" are public accommodations or
18 facilities within the meaning of *California Health & Safety Code* § 19955, *et seq.*

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

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

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

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

16 41. Plaintiff **JAMES COLLINS** is informed and believes, and therefore alleges,
17 that Defendants **ALBERTSON'S INC., a Delaware corporation, dba SAV-ON**
18 **DRUGS; AMERICAN DRUG STORES, INC., a corporation, dba SAV-ON**
19 **PRESCRIPTIONS; AMERICAN STORES PROPERTIES, INC., a Delaware**
20 **corporation; and DOES ONE TO TEN, inclusive,** and each of them, caused the subject
21 buildings constituting “**SAV-ON DRUGS**” to be constructed, altered and maintained in
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1 such a manner that persons with physical disabilities were denied full and equal access to,
2 within and throughout said buildings and were denied full and equal use of said public
3 facilities, and despite knowledge and actual and constructive notice to such Defendants
4 that the configuration of the store and/or buildings was in violation of the civil rights of
5 persons with physical disabilities, such as Plaintiff. Such construction, modification,
6 ownership, operation, maintenance and practices of such public facilities are in violation
7 of law as stated in Part 5.5, *California Health & Safety Code* § 19955, *et seq.*, and
8 elsewhere in the laws of California.
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12 42. On information and belief, the subject building constituting the public
13 facilities of “**SAV-ON DRUGS**” denied full and equal access to Plaintiff and other
14 persons with physical disabilities in other respects due to non-compliance with
15 requirement of Title 24 of the *California Code of Regulations* and *California Health &*
16 *Safety Code* § 19955, *et seq.*
17

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

7
8 44. As a result of Defendants' acts and omissions in this regard, Plaintiff has
9 been required to incur legal expenses and hire attorneys in order to enforce his civil rights
10 and enforce provisions of the law protecting access for persons with physical disabilities
11 and prohibiting discrimination against persons with physical disabilities, and to take such
12 action both in his own interests and in order to enforce an important right affecting the
13 public interest. Plaintiff, therefore, seeks damages in this lawsuit for recovery of all
14 reasonable attorneys' fees incurred, pursuant to the provisions of the *California Code of*
15 *Civil Procedure* § 1021.5. Plaintiff additionally seeks attorneys' fees pursuant to
16 *California Health & Safety Code* § 19953 and *California Civil Code* §§ 54.3 and 55.
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20 45. Defendants, and each of them, at times prior to and including January 15,
21 2002, and continuing to the present time, knew that persons with physical disabilities
22 were denied their rights of equal access to all portions of this public facility. Despite
23 such knowledge, Defendants failed and refused to take steps to comply with the
24 applicable access statutes; and despite knowledge of the resulting problems and denial of
25 civil rights thereby suffered by Plaintiff **JAMES COLLINS** and other similarly situated
26 persons with disabilities, including the specific notices referred to in paragraph 43 of this
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1 Complaint. Defendants have failed and refused to take action to grant full and equal
2 access to persons with physical disabilities in the respects complained of hereinabove.
3
4 Defendants and each of them have carried out a course of conduct of refusing to respond
5 to, or correct complaints about, denial of handicap access. Such actions and continuing
6 course of conduct by Defendants, evidence despicable conduct in conscious disregard for
7 the rights or safety of Plaintiff and of other similarly situated persons, justifying an award
8 of exemplary and punitive damages pursuant to *California Civil Code* § 3294.
9

10 46. Defendants' actions have also been oppressive to persons with physical
11 disabilities and of other members of the public, and have evidenced actual or implied
12 malicious intent toward those members of the public, such as Plaintiff and other persons
13 with physical disabilities who have been denied the proper access they are entitled to by
14 law. Further, Defendants' refusals on a day-to-day basis to correct these problems
15 evidence despicable conduct in conscious disregard for the rights of Plaintiff and other
16 members of the public with physical disabilities.
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19 47. Plaintiff prays for an award of punitive damages against Defendants, and
20 each of them, pursuant to *California Civil Code* § 3294 in an amount sufficient to make a
21 more profound example of Defendants and discourage owners, operators, franchisers and
22 franchisees of other public facilities from willful disregard of the rights of persons with
23 physical disabilities. Plaintiff does not know the financial worth of Defendants, or the
24 amount of punitive damages sufficient to accomplish the public purposes of *California*
25 *Civil Code* § 3294 and seeks leave to amend this Complaint when such facts are known.
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1 48. As a result of the actions and failure of Defendants, and each of them, and as
2 a result of the failure to provide proper accessible public facilities, Plaintiff **JAMES**
3 **COLLINS** was denied his civil rights, including his right to full and equal access to
4 public facilities, was embarrassed and humiliated, suffered physical, psychological and
5 mental injuries and emotional distress, mental distress, mental suffering, mental anguish,
6 which includes shame, humiliation, embarrassment, anger, chagrin, disappointment and
7 worry, expectedly and naturally associated with a person with a physical disability being
8 denied access to a public accommodation.
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11 WHEREFORE, Plaintiff prays for damages as hereinafter stated.
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13 **III. THIRD CAUSE OF ACTION**
14 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**
15 **(California Civil Code §§ 54, 54.1 and 54.3)**

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

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

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

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

9 Individuals with disabilities shall be entitled to full and equal access, as
10 other members of the general public, to accommodations, advantages, facilities,
11 and privileges of all common carriers, airplanes, motor vehicles, railroad trains,
12 motor buses, streetcars, boats, or any other public conveyances or modes of
13 transportation (whether private, public, franchised, licensed, contracted, or
14 otherwise provided), telephone facilities, adoption agencies, private schools,
15 hotels, lodging places, places of public accommodation, amusement or resort, and
16 other places to which the general public is invited, subject only to the conditions
17 and limitations established by law, or state or federal regulation, and applicable
18 alike to all persons. *California Civil Code* § 54.1(a).
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22 52. On or about January 15, 2002, Plaintiff **JAMES COLLINS** suffered
23 violations of *California Civil Code* §§ 54 and 54.1 in that he was denied full and equal
24 enjoyment of the goods, services, facilities and privileges of said **SAV-ON DRUGS**, as
25 set forth in paragraph 3 above. Plaintiff was also denied full and equal access to other
26 particulars, including but not limited to those described hereinabove. Plaintiff was also
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1 denied use of facilities that he was entitled to under Title III of the *Americans with*
2 *Disabilities Act of 1990*.

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

16
17 54. Plaintiff seeks damages for the violation of his rights as a disabled person on
18 or about January 15, 2002, according to proof, pursuant to *California Civil Code* § 54.3,
19 including a trebling of all statutory and actual damages, general and special, available
20 pursuant to *California Civil Code* § 54.3(a).

21
22 55. As a result of defendants' acts and omissions in this regard, Plaintiff
23 **JAMES COLLINS** has been required to incur legal expenses and hire attorneys in order
24 to enforce his rights and enforce provisions of the law protecting the full and equal
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1 enjoyment of goods, services, facilities, privileges of public facilities by the disabled, and
2 those individuals associated with or accompanied by a person with disabilities, and
3 prohibiting discrimination against the disabled. Plaintiff, therefore, seeks recovery in this
4 lawsuit for all reasonable attorneys' fees incurred pursuant to the provisions of *California*
5 *Civil Code* § 54.3. Additionally, Plaintiff's lawsuit is intended not only to obtain
6 compensation for damages to Plaintiff, but also to compel the defendants to make their
7 goods, services, facilities and privileges available and accessible to all members of the
8 public with physical disabilities, justifying public interest attorneys' fees pursuant to the
9 provisions of *California Code of Civil Procedure* § 1021.5.

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

24 57. Such despicable conduct, as that incorporated herein by reference and
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1 specifically set forth in Paragraph 11, was carried out by defendants with a willful and
2 conscious disregard for the law and the rights of Plaintiff and of other disabled persons,
3 and was oppressive in that such conduct subjected Plaintiff "to cruel and unjust hardship
4 in conscious disregard" for the law and Plaintiff's rights, and justifies exemplary and
5 punitive damages pursuant to *California Civil Code* § 3294, in amounts sufficient to
6 make an example of defendants and to punish defendants and to carry out the purposes of
7 *California Civil Code* § 3294.
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9
10 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
11 practice and procedure for entry into said "SAV-ON DRUGS" as hereinabove described.
12

13 59. As a result of defendants' continuing failure to provide for the full and equal
14 enjoyment of goods, services, facilities and privileges of said "SAV-ON DRUGS" as
15 hereinabove described, Plaintiff has continually been denied his rights to full and equal
16 enjoyment of the subject retail store, as it would be a "futile gesture" to attempt to
17 patronize said "SAV-ON DRUGS" with the discriminatory policy in place as
18 hereinabove described.
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21 60. The acts and omissions of defendants as complained of herein in failing to
22 provide the required accessible facilities subsequent to the enactment date and
23 compliance date of the *Americans with Disabilities Act of 1990* and refusal to make
24 remedial modifications and alternations to the architectural barriers as stated herein and
25 in failing to establish practices, policies and procedures to allow safe access by persons
26 who are disabled are continuing on a day-to-day basis to have the effect of wrongfully
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1 and willfully excluding Plaintiff and other members of the public who are physically
2 disabled, from full and equal enjoyment of the subject "SAV-ON DRUGS" as
3 hereinabove described. Such acts and omissions are the continuing cause of humiliation
4 and mental and emotional suffering of Plaintiff in that these actions continue to treat
5 Plaintiff as an inferior and second class citizen and serve to discriminate against him on
6 the sole basis that he is physically disabled. Plaintiff is unable, so long as such acts and
7 omissions of defendants continue, to achieve full and equal enjoyment of the goods and
8 services of said "SAV-ON DRUGS" as described hereinabove. The acts of defendants
9 have legally caused and will continue to cause irreparable injury to Plaintiff if not
10 enjoined by this court.

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

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24 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys'
25 fees and costs of suit, as allowed by statute and according to proof, and appropriate
26 exemplary damages.
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1 **IV. FOURTH CAUSE OF ACTION**
2 **VIOLATIONS OF *UNRUH CIVIL RIGHTS ACT***
3 **(*California Civil Code* §§ 51 and 51.5)**

4 62. Plaintiff replays and incorporates by reference, as if fully set forth again
5 herein, the allegations contained in paragraphs 1 through 61 of this Complaint and
6 incorporates them herein as if separately repled.

7
8 63. Defendants' acts and omissions as specified with regard to the
9 discriminatory treatment of Plaintiff **JAMES COLLINS** on the basis of his physical
10 disabilities, have been in violation of *California Civil Code* §§ 51 and 51.5, the *Unruh*
11 *Civil Rights Act*, and have denied to Plaintiff his rights to "full and equal
12 accommodations, advantages, facilities, privileges or services in all business
13 establishments of every kind whatsoever."
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16 64. *California Civil Code* § 51 also provides that "[a] violation of the right of
17 any individual under the *Americans with Disabilities Act of 1990* (Public Law 101-336)
18 shall also constitute a violation of this section."
19

20 65. *California Civil Code* § 51.5 also provides that "[n]o business establishment
21 of any kind whatsoever shall discriminate against, boycott, or blacklist, refuse to buy
22 from, sell to, or trade with any person in this state because of the race, creed, religion,
23 color, national origin, sex, disability of the person or of the person's partners, members,
24 stockholders, directors, officers, managers, superintendents, agents, employees, business
25 associates, suppliers, or customers."
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28 66. As a result of the violation of Plaintiff's civil rights protected by *California*

1 *Civil Code* §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of *California*
2 *Civil Code* § 52, including a trebling of actual damages (defined by *California Civil*
3 *Code* § 52(h) to mean “special and general damages”), as well as reasonable attorneys’
4 fees and costs, as allowed by statute, according to proof. Further, pursuant to paragraphs
5 11, 12, 13, 35 and 43, Plaintiff seeks appropriate exemplary damages under *California*
6 *Civil Code* § 3294.
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9 WHEREFORE, Plaintiff prays that this court award damages and provide relief as
10 follows:
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12 **PRAYER FOR RELIEF**

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

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

6 3. Statutory and "actual" damages, including general damages and special
7 damages, according to proof, pursuant to *California Civil Code* §§ 52, and 54.3, and that
8 these damages be trebled;
9

10 4. Prejudgment interest on all compensatory damages;

11 5. Punitive and exemplary damages pursuant to the standards and purposes of
12 *California Civil Code* § 3294;
13

14 6. Remedies and Procedures available under *Americans with Disabilities Act*
15 *of 1990* §§ 107, 203 and 308;
16

17 7. Award Plaintiff all litigation expenses, all costs of this proceeding and all
18 reasonable attorneys' fees as provided by law, including but not limited to those
19 recoverable pursuant to the provisions of *California Civil Code* §§ 52, 54.3, and 55,
20 *California Code of Civil Procedure* § 1021.5, and *Americans with Disabilities Act of*
21 *1990* §308 of Title III; and
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23 8. Grant such other and further relief as the court may deem just and proper.
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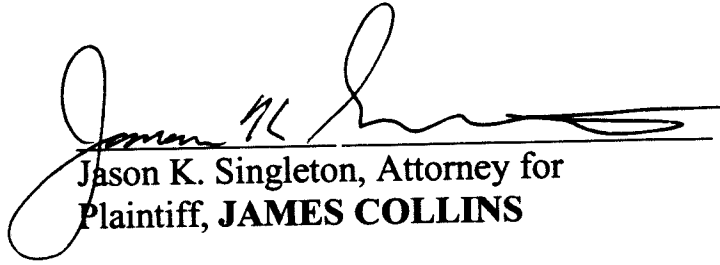
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26 Dated: April 24, 2002

27 
28 Jason K. Singleton, Attorney for
Plaintiff, JAMES COLLINS

REQUEST FOR JURY TRIAL

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

Dated: April 24, 2002



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

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