

ORIGINAL

JASON K. SINGLETON, State Bar # 166170
SINGLETON LAW GROUP
611 "L" Street, Suite "A"
Eureka, CA 95501
(707) 441-1177
FAX: 441-1533

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Attorney for Plaintiff, WARREN J. DUCKSTEIN

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WARREN J. DUCKSTEIN,

Plaintiff,

v.

HUOYEN INTERNATIONAL, INC.,
dba FOUR POINTS SHERATON,
and DOES ONE TO TEN, inclusive,

Defendants.

Case No. SACV 02-993 AHS
(ANx)

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

1/5

S-20

Plaintiff WARREN J. DUCKSTEIN complains of defendants HUOYEN
INTERNATIONAL, INC., dba FOUR POINTS SHERATON, and DOES ONE TO
TEN, inclusive, and alleges as follows:

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JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 28 USC § 1331 for
violations of the *Americans with Disabilities Act of 1990*, (42 USC § 12101, et

①

1 seq.) Pursuant to pendant jurisdiction, attendant and related causes of action,
2 arising from the same facts, are also brought under California law, including but
3 not limited to violations of **California Health & Safety Code** § 19955, *et seq.*,
4 including **California Code of Regulations**, Title 24, § 19959, **California Civil**
5 **Code** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55.
6

7
8 2. Venue is proper in this court pursuant to 28 **USC** § 1391(b) and is
9 founded on the fact that the real property which is the subject of this action is
10 located in this district, at Fullerton, California, and that Plaintiff's causes of action
11 arose in this district.
12

13 INTRODUCTION

14 3. **FOUR POINTS SHERATON** is located at 1500 S. Raymond Avenue,
15 Fullerton, California. Said hotel is owned and operated by defendants **HUOYEN**
16 **INTERNATIONAL, INC.**, and **DOES ONE TO TEN, inclusive**.
17

18 Defendants **HUOYEN INTERNATIONAL, INC.**, dba **FOUR POINTS**
19 **SHERATON**, and **DOES ONE TO TEN, inclusive**, operate an establishment for
20 services to the public and at which Defendants failed to provide barrier free
21 access to said establishment in conformity with both Federal and California legal
22 requirements. Further, Defendants failed to provide compliance as follows:
23
24

25 **A. South Side -- Exterior Survey.**

- 26 1) No pedestrian path of travel from the public sidewalk to the hotel
27 entry other than the driveway and parking lot. The slopes of the
28

1 transition from the public sidewalk to the parking lot are in excess
2 of 7% cross slope and 8.33% in direction of travel in violation of
3 California Title 24 § 1127B.1, §1127B.1.2, ADAAG §4.3, §4.1.2.

4
5 2) There is no curbcut in front of the entry door to the Hotel in
6 violation of California Title 24 § 1127B.5.1. Fig 11B-19 thru 11B-
7 23.

8
9 3) Curbcut. Between designated parking spaces and hotel
10 entrance.

11 a. It is about 38" wide in violation of California Title 24 §
12 1127B.5.2.

13
14 b. There is no 12" wide grooved surface at top and sides of
15 curbcut in violation of California Title 24 § 1127B.5.7.

16
17 c. The slope of the side flares exceed 20% in violation of
18 California Title 24 § 1127B.5.3.

19
20 4) Designated Parking Space On East Side.

21 a. The tree planter extends about 6' into the access aisle in
22 violation of California Title 24 § 1129B.4.1. Fig 11B-18A &
23 C ADAAG 4.6.3.

24
25 5) Curbramp. Serving Two Designated Parking Spaces.

26 a. Extends into access aisle of the designated parking spaces
27 in violation of California Title 24 § 1129B.4.3. Fig 11B-18A,
28

1 B, & C permits a 5' maximum long ramp, 48" minimum
2 wide, with a 1:12 maximum slope to extend into the access
3 aisle, but not into the 9' wide parking space. ADAAG 4.6.3*
4 prohibits constructing a curb ramp into the 9' wide parking
5 space or the access aisle.
6

7 b. Does not have a 12" wide grooved surface across the top
8 in violation of California Title 24 § 1127B.5.7
9

10 c. It exceeds 60" in length in violation of California Title 24 §
11 1129B.4.3. Fig 11B-18A, B, & C. ADAAG 4.6.3* prohibits
12 constructing a curb ramp into the 9' wide parking space or
13 the access aisle.
14

15
16 **B. North Side -- Exterior Survey.**

17 1) Four Designated Parking Spaces.

18 a. The slope exceeds 3% in violation of California Title 24 §
19 1129B.4.4, ADAAG 4.6.3*,
20

21 b. Pedestrian path of travel to Hotel entrance crosses a swale
22 with slopes exceeding 8.33% in violation of California Title
23 24 § 1133B.5.3
24

25 **C. West Side -- Exterior Survey.**

26 1) There is no curbcut serving the entrance to the Crown Ballroom in violation
27 of California Title 24 § 1127B.5.1. Fig 11B-19 thru 11B-23
28

2) Curbcut. Serving restaurant.

- 1 a. Side flares exceed 12% slope in violation of California Title
2 24 § 1127B.5.3
3
4 b. No 12" wide grooved surface across the top and sides in
5 violation of California Title 24 § 1127B.5.7

6 **D. Interior Survey.**

- 7
8 1) The registration desk is 42" high and I was not offered a
9 clipboard to write on in violation of California Title 24 § 1122B.4
10
11 2) The floor does not have a nonskid walking surface in violation of
12 California Title 24 § 1124B.1 & 1120B.2 ADAAG § 4.5.1*
13
14 3) Stairs. To second floor.
15 a. Noncomplying tread markings in violation of California Title
16 24 § 1133B.4.4. Fig 11B-35
17 b. Handrails are about 3" in diameter in violation of California
18 Title 24 § 1133B.4.2.6.1. Fig 11B-36
19 c. Noncomplying handrail extensions in violation of California
20 Title 24 § 1133B.4.2.2. Fig 11B-35 & 37
21
22 4) The Men's and Women's restrooms adjacent to the Front Lobby
23 are noncomplying in violation of California Title 24 § 1115B.1
24

25 **E. Tower Building.**

- 26 1) Fire Exit Stairs. Both West and East Ends.
27 a. Entry door has round knob requiring the ability to grasp and
28

twist in violation of California Title 24 § 1133B.2.5.1

ADAAG 4.13.9

- b. Has open risers in violation of California Title 24 § 1133B.4, § 1133B.4.5.3. Fig 11B-35
- c. Noncomplying tread markings in violation of California Title 24 § 1133B.4.4. Fig 11B-35
- d. Noncomplying handrail extensions in violation of California Title 24 § 1133B.4.2.2. Fig 11B-35 & 37
- e. Does not have complying signage in violation of California Title 24 § 1117.5.

2) Elevator.

- a. The floor buttons are 55" to 59" high and there is insufficient space for a side approach in violation of California Title 24 § 3003.4.7b. Fig 30-B
- b. No audible sounds when the elevator is in operation in violation of California Title 24 § 3003.4
- c. Telephone on opposite side of elevator entrance as control panel and is about 56" high in violation of California Title 24 § 3003.4.7b
- d. Telephone compartment entry door has a noncomplying grasp and pull opening handle in violation of California Title 24 § 1004.3.
- e. Does not have both audible and visual communications

capabilities in violation of California Title 24 § 3003.4.7b

f. The call and floor buttons are not raised and there are no raised letters and Braille symbols identifying the buttons in violation of California Title 24 § 3003.4.8a.

3) Entry door to vending machine room has a round knob in violation of California Title 24 § 1133B.2.5.1, ADAAG 4.13.9

4) Vending Machines are noncomplying.

5) Men's Restroom. Adjacent to Conference / Banquet Rooms.
Entry Door.

a. There is 39 1/2" in direction of entry door swing in violation of California Title 24 § 1115B.4.2, 1133B.2.4, 1003.3.1.6a, and Fig 11B-26A & B.

b. There is not a complying opening handle on both sides of the accessible watercloset stall door in violation of California Title 24 § 1115B.7.1.4.

F. Room 569.

1) Entry Door.

a. The signage was noncomplying contrast and no raised letters and Braille symbols in violation of California Title 24 § 1117.5B, ADAAG §4.30.

b. There is about a 3" clear space at the latch edge of the pull

1 side of the door in violation of California Title 24 §
2 1133B.2.4.3. Fig 11B-26A, ADAAG 4.13.6

3 c. The night lock is about 60" high in violation of California
4 Title 24 § 1133B.2.5.1

- 5
- 6 2) Closet doors do not have accessible opening hardware, it
7 requires grasping and pulling to open in violation of California
8 Title 24 § 1133B.2.5.1/4.13.9
- 9
- 10 3) The clothes rod and shelf in closet exceed 48" in height in
11 violation of California Title 24 § 1118B.5 & 1118B.6.
- 12
- 13 4) There is about 28" between the two beds in violation of California
14 Title 24 § 1111B.4.3
- 15
- 16 5) The bed is set on a solid wooden platform. 1997 Title 24:
17 Recommend placing mattress on a 5" minimum high metal frame
18 that is on rollers.
- 19
- 20 6) The table has a 23 ½" high knee space in violation of California
21 Title 24 § 1122B.3. Fig 11B-13, ADAAG 4.32
- 22
- 23 7) The environmental controls (Heating & Air Conditioning) are 15"
24 high, has a grasp and pull opening lid, and the bed limits access
25 (22" wide) to the controls for a person using a wheelchair in
26 violation of California Title 24 § 1117B.6. §1117B.6.1
- 27
- 28 8) The lettering on the telephone is small and has very little contrast

1 between the lettering and the background in violation of
2 California Title 24 § 1117.5B

3
4 9) The lamps have grasp and twist type switches in violation of
5 California Title 24 § 1117B.6, §1117B.6.1.

6 **G. Bathroom.** Totally nonaccessible to a person using a wheelchair.

7
8 1. There is about a 2" clear space at the latch edge of the door, pull
9 side in violation of California Title 24 § 1133B.2.4.3. Fig 11B-26A,
10 ADAAG 4.13.6

11
12 2. There is not a 60" diameter space in the bathroom, there is a 37"
13 by 54" space which is insufficient space for a person using a
14 wheelchair to enter the bathroom and shut the door in violation of
15 California Title 24 § 1111B.4.6

16
17 3. Lavatory.

18 a. There is a 23 ½" high knee space under the lavatory and
19 30 ½" to top of counter in violation of California Title 24 §
20 1504.1, ADAAG 4.19.1

21
22 b. The hot water and drain line are not covered in violation of
23 California Title 24 § 1504.2, ADAAG 4.19.4

24
25 4. Watercloset.

26 a. There are no grab bars at the water closet in violation of
27 California Title 24 § 1115B.8.1. Fig 11B-1A, B, & C
28

1 b. There is about 22" to centerline of the water closet. There
2 is 15" on one side of the water closet and about 24" on the
3 other side or bathtub side. There is 37 ½" in front of the
4 water closet in violation of California Title 24 § 1115B.7.1.3,
5 Fig 11B-1B
6

7
8 5. Bathtub.

- 9 a. The bathtub does not have complying grab bars in violation
10 of California Title 24 § 1115B.8.2 through 1115B.8.4,
11 §1115B.6.1.3, Fig 11B-9A & 9B
12
13 b. The water valves are round and noncomplying in violation
14 of California Title 24 § 1115B.6.1.4. Fig 11B-9B
15
16 c. The towel rack is about 46" high and blocked by the water
17 closet in violation of California Title 24 § 1117B.6,
18 §1111B.4.6.5
19
20 d. There is about a 24" by 59" long space beside the bathtub
21 in violation of California Title 24 § 1115B.6.1.1. Fig 11B-8
22
23 e. The water controls are not offset to the outside edge in
24 violation of California Title 24 § 1115B.6.1.4. Fig 11B-9B.

25 The above barriers interfered with Plaintiff's access and continue to deter
26 Plaintiff from visiting said facilities, and as a legal result, Plaintiff **WARREN J.**
27 **DUCKSTEIN** suffers violation of his civil rights to full and equal enjoyment of
28

1 goods, services, facilities and privileges, and has and will suffer embarrassment
2 and humiliation.

3 FACTUAL ALLEGATIONS

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

16
17 5. Defendants **HUOYEN INTERNATIONAL, INC., dba FOUR POINTS**
18 **SHERATON, and DOES ONE TO TEN, inclusive**, at all times relevant herein
19 were and are the owners and operators; lessors and/or lessees, franchisers
20 and/or franchisees, of public facilities known as the "**FOUR POINTS SHERATON,**"
21 located at San Bernardino, California, subject to the requirements of California
22 state law requiring full and equal access to public facilities pursuant to **California**
23 **Health & Safety Code § 19955, et seq., California Civil Code §§ 51, 51.5, 52(a),**
24 **52.1, 54, 54.1, 54.3 and 55,** and subject to Title III of the **Americans with**
25 **Disabilities Act of 1990**, and to all other legal requirements referred to in this
26
27
28

1 Complaint. Plaintiff does not know the relative responsibilities of defendants in the
2 operation of the facilities herein complained of, and alleges a joint venture and
3 common enterprise by all such defendants.
4

5 6. Defendants **HUOYEN INTERNATIONAL, INC., and DOES ONE TO**
6 **TEN, inclusive** (hereinafter alternatively referred to collectively as "defendants"),
7 at all times relevant herein were and are owners, possessors, builders and
8 keepers of the "**FOUR POINTS SHERATON**" in San Bernardino, California.
9

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

24 8. Plaintiff **WARREN J. DUCKSTEIN** does not know the true names and
25 capacities of defendants **HUOYEN INTERNATIONAL, INC., dba FOUR POINTS**
26 **SHERATON, and DOES ONE TO TEN, inclusive**, their business capacities, their
27 ownership connection to the property and business, nor their relative
28

1 responsibilities in causing the access violations herein complained of, and alleges
2 a joint venture and common enterprise by all such defendants. Plaintiff is
3 informed and believes that each of the defendants herein, including DOES ONE
4 TO TEN, inclusive, is the agent, ostensible agent, master, servant, employer,
5 employee, representative, franchiser, franchisee, joint venturer, partner, and
6 associate, or such similar capacity, of each of the other defendants, and was at all
7 times acting and performing, or failing to act or perform, with the authorization,
8 consent, permission or ratification of each of the other defendants, and is
9 responsible in some manner for the acts and omissions of the other defendants in
10 legally causing the violations and damages complained of herein, and have
11 approved or ratified each of the acts or omissions of each other defendant, as
12 herein described. Plaintiff will seek leave to amend this Complaint when the true
13 names, capacities, connections and responsibilities of defendants **HUOYEN**
14 **INTERNATIONAL, INC., dba FOUR POINTS SHERATON, and DOES ONE TO**
15 **TEN, inclusive**, are ascertained.

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

26 10. Defendants **HUOYEN INTERNATIONAL, INC., and DOES ONE TO**
27 **TEN, inclusive**, are the owners and operators of "FOUR POINTS SHERATON,"
28

1 located at Fullerton, California. This establishment, including, but not limited to,
2 parking spaces and access aisles and access routes, are each a part of a "public
3 accommodation or facility" subject to the requirements of **California Health &**
4 **Safety Code** § 19955, *et seq.*, and of **California Civil Code** §§ 51, 52(a), 54,
5 54.1, *et seq.* On information and belief, this "FOUR POINTS SHERATON" was
6 constructed after 1990, which subjects it to handicapped access requirements per
7 **California Health & Safety Code** § 19959, and applicable portions of **California**
8 **Code of Regulations**, Title 24, (the State Building Code).
9
10

11
12 11. On or about September 13, 2002, Plaintiff **WARREN J. DUCKSTEIN**,
13 visited the "FOUR POINTS SHERATON" in Fullerton, California, for the purpose
14 of obtaining accommodations. Defendants **HUOYEN INTERNATIONAL, INC.,**
15 **dba FOUR POINTS SHERATON**, and **DOES ONE TO TEN, inclusive**, interfered
16 with Plaintiff's access to the "FOUR POINTS SHERATON" establishment as set
17 forth in Paragraph 3 above.
18
19

20 Said acts and omissions denied Plaintiff legal handicapped access to the
21 "FOUR POINTS SHERATON" according to federal and state law.
22

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

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

8
9
10 14. As a result of the actions and failure to act of defendants, and each of
11 them, and as a result of the failure to provide appropriate handicapped parking,
12 proper handicapped signage, proper handicapped accessible entryways, and
13 handicapped accommodations for dressing rooms, Plaintiff **WARREN J.**
14 **DUCKSTEIN** suffered and will suffer a loss of his civil rights to full and equal
15 access to public facilities, and further suffered and will suffer 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 person with a physical disability being
19 denied access to a public accommodation, all to his damages as prayed
20 hereinafter in an amount within the jurisdiction of this court.

21
22
23
24
25 **I. FIRST CAUSE OF ACTION:**
26 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**
27 **(42 USC §12101 et seq.)**

28 15. Plaintiff repleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in paragraphs 1 through 14 of this
2 Complaint and incorporates them herein as if separately replied.

3
4 16. Pursuant to law, in 1990 the United States Congress made findings
5 per 42 **USC** § 12101 regarding persons with physical disabilities, finding that laws
6 were needed to more fully protect 43 million Americans with one or more physical
7 or mental disabilities; [that] historically society has tended to isolate and segregate
8 individuals with disabilities; [that] such forms of discrimination against individuals
9 with disabilities continue to be a serious and pervasive social problem; [that] the
10 nation's proper goals regarding individuals with disabilities are to assure equality
11 of opportunity, full participation, independent living and economic self-sufficiency
12 for such individuals; [and that] the continuing existence of unfair and unnecessary
13 discrimination and prejudice denies people with disabilities the opportunity to
14 compete on an equal basis and to pursue those opportunities for which our free
15 society is justifiably famous.
16
17
18

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

22 It is the purpose of this act (1) to provide a clear and
23 comprehensive national mandate for the elimination of discrimination
24 against individuals with disabilities; (2) to provide clear, strong,
25 consistent, enforceable standards addressing discrimination against
26 individuals with disabilities; (3) to ensure that the Federal government
27
28

1 plays a central role in enforcing the standards established in this act on
2 behalf of individuals with disabilities; and (4) to invoke the sweep of
3 Congressional authority, including the power to enforce the 14th
4 Amendment and to regulate commerce, in order to address the major
5 areas of discrimination faced day to day by people with disabilities.
6

7
8 18. As part of the **Americans with Disabilities Act of 1990**, Public Law
9 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public
10 Accommodations and Services Operated by Private Entities" (42 **USC** § 12181 *et*
11 *seq.*). Among the public accommodations identified for purposes of this title were
12 "an inn, hotel, motel, or other place of lodging."
13

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

15
16 "No individual shall be discriminated against on the basis of
17 disability in the full and equal enjoyment of the goods, services,
18 facilities, privileges, advantages, or accommodations of any place of
19 public accommodation by any person who owns, leases (or leases to),
20 or operates a place of public accommodation."
21

22 20. Among the general prohibitions against discrimination were included in
23
24 42 **USC** §12182(b)(1)(A)(i):

25 **Denial of participation.** It shall be discriminatory to subject an
26 individual or class of individuals on the basis of a disability or
27 disabilities of such individual or class, directly, or through contractual,
28

1 licensing, or other arrangements, to a denial of the opportunity of the
2 individual or class to participate in or benefit from the goods, services,
3 facilities, privileges, advantages, or accommodations of an entity.

4
5 21. Among the general prohibitions against discrimination were included in

6 **42 USC §12182(b)(1)(E):**

7
8 **Association** -- It shall be discriminatory to exclude or otherwise
9 deny equal goods, services, facilities, privileges, advantages,
10 accommodations, or other opportunities to an individual or entity
11 because of the known disability of an individual with whom the
12 individual or entity is known to have a relationship or association.
13

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

16
17 **CFR Part 36 et seq.**

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

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

23
24 (i) the imposition or application of eligibility criteria that screen
25 out or tend to screen out an individual with a disability or any class of
26 individuals with disabilities from fully and equally enjoying any goods,
27 services, facilities, privileges, advantages, or accommodations, unless
28

1 such criteria can be shown to be necessary for the provision of the
2 goods, services, facilities, privileges, advantages, or accommodations
3 being offered;
4

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

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

23
24 24. The specific prohibition against retaliation and coercion is included in
25 the *Americans With Disabilities Act of 1990* § 503(b) and the *Remedies and*
26 *Procedures* in § 503(c):
27

28 (b) Interference, Coercion, or Intimidation. - It shall be unlawful

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

7
8 (c) Remedies and Procedure. - The remedies and procedures
9 available under sections 107, 203, and 308 of this Act shall be
10 available to aggrieved persons for violations of subsections (a) and (b),
11 with respect to Title I, Title II and Title III, respectively.
12

13 25. Among the specific prohibitions against discrimination were included,
14 in 42 **USC** § 12182(b)(2)(a)(iv), "A failure to remove architectural barriers, and
15 communications barriers that are structural in nature, in existing facilities...where
16 such removal is readily achievable;" and (v) "where and entity can demonstrate
17 that the removal of a barrier under clause (iv) is not readily achievable, a failure to
18 make such goods, services, facilities, privileges, advantages, or accommodations
19 available through alternative methods if such methods are readily achievable."
20 The acts of Defendants set forth herein were a violations of Plaintiff's rights under
21 the "ADA," Public Law 101-336, and the regulations promulgated thereunder, 28
22 **CFR** Part 36, *et seq.*
23

24
25
26 26. The removal of the barriers complained of by Plaintiff as hereinabove
27 alleged were at all times after 1990 "readily achievable." On information and
28

1 belief, if the removal of all the barriers complained of here together were not
2 "readily achievable," the removal of each individual barrier complained of herein
3 was "readily achievable."
4

5 27. Per 42 **USC** § 12181(9), "The term 'readily achievable' means easily
6 accomplishable and able to be carried out without much difficulty or expense."
7 The statute and attendant regulations define relative "expense" in relation to the
8 total financial resources of the entities involved, including any "parent" companies.
9 Plaintiff alleges that properly repairing each of the items that Plaintiff complains of
10 herein is readily achievable, including but not limited to correcting and repairing
11 the items set forth in Paragraph 3 above.
12
13

14 The changes needed to remove barriers to access for the disabled were and
15 are "readily achievable" by the defendants under standards set forth under 42
16 **USC** § 12181 of the **Americans with Disabilities Act of 1990**. (Further, if it was
17 not "readily achievable" for defendants to remove all such barriers, defendants
18 have failed to make the required services available through alternative methods,
19 although such methods are achievable as required by 42 **USC** §12181(b)(2)(a)(iv),
20 (v).)
21
22
23

24 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42
25 **USC** § 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth
26 in the **Civil Rights Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is
27 being subjected to discrimination on the basis of disability in violation of this title
28

1 and/or Plaintiff has reasonable grounds for believing that he is about to be
2 subjected to discrimination in violation of **Americans With Disabilities Act of**
3 **1990** §302. Plaintiff cannot return to or make use of the public facilities
4 complained of herein for the purpose of entry and provision of goods and service
5 so long as defendants continue to apply eligibility criteria, policies, practices and
6 procedures to screen out and refuse to allow entry and service to persons with
7 disabilities such as Plaintiff's.

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

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

21 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42
22 **USC** § 12188), "Nothing in this section shall require a person with a disability to
23 engage in a futile gesture if such person has actual notice that a person or
24 organization covered by this title does not intend to comply with its provisions."
25 Pursuant to this last section, Plaintiff, on information and belief, alleges that
26 defendants have continued to violate the law and deny the rights of Plaintiff and
27
28

1 other disabled persons to access this public accommodation for the purpose of
2 lodging. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),

3
4 “...Where appropriate, injunctive relief shall also include
5 requiring the provision of an auxiliary aid or service, modifications of a
6 policy, or provision of alternative methods, to the extent required by
7 this title.”
8

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

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

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

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

25
26 The purpose of this part is to insure that public accommodations
27 or facilities constructed in this state with private funds adhere to the
28 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of

1 Title 1 of the *Government Code*. For the purposes of this part "public
2 accommodation or facilities" means a building, structure, facility,
3 complex, or improved area which is used by the general public and
4 shall include auditoriums, hospitals, theaters, restaurants, hotels,
5 motels, stadiums, and convention centers. When sanitary facilities are
6 made available for the public, clients or employees in such
7 accommodations or facilities, they shall be made available for the
8 handicapped.
9
10

11 34. **California Health & Safety Code** § 19956, which appears in the same
12 chapter as §19955, provides in pertinent part, "accommodations constructed in
13 this state shall conform to the provisions of Chapter 7 (commencing with Sec.
14 4450) of Division 5 of Title 1 of the *Government Code*..." **California Health &**
15 **Safety Code** § 19956 was operative July 1, 1970, and is applicable to all public
16 accommodations constructed or altered after that date. On information and belief,
17 portions of "**FOUR POINTS SHERATON**" and/or of its buildings, were constructed
18 and/or altered after July 1, 1970, and substantial portions of said building had
19 alterations, structural repairs, and/or additions made to such public
20 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 &**
22 **Safety Code** § 19955, *et seq.*, upon such alteration, structural repairs or additions
23 per **California Health & Safety Code** § 19959.
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1 35. Pursuant to the authority delegated by **California Government Code**
2 § 4450, *et seq.*, the State Architect promulgated regulations for the enforcement of
3 these provisions. Effective January 1, 1982, Title 24 of the **California**
4 **Administrative Code** adopted the California State Architect's Regulations and
5 these regulations must be complied with as to any alterations and/or modifications
6 of the "**FOUR POINTS SHERATON**" occurring after that date. Construction
7 changes occurring prior to this date but after July 1, 1970 triggered access
8 requirements pursuant to the "ASA" requirements, the **American Standards**
9 **Association Specifications**, A117.1-1961. On information and belief, at the time
10 of the construction and modification of said building, all buildings and facilities
11 covered were required to conform to each of the standards and specifications
12 described in the **American Standards Association Specifications** and/or those
13 contained in Title 24 of the **California Administrative Code**, (now known as Title
14 **24, California Code of Regulations.**)

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20 36. Public facilities, such as "**FOUR POINTS SHERATON**" are public
21 accommodations or facilities within the meaning of **California Health & Safety**
22 **Code § 19955, et seq.**

23
24 37. It is difficult or impossible for persons with physical disabilities who use
25 wheelchairs, canes, walkers and service animals to travel about in public to use a
26 hotel with the defects set forth in Paragraph 3 above as required by Title 24 of the
27 **California Code of Regulations** and the **Americans with Disabilities Act**
28

1 **Access Guidelines (ADAAG)**. Thus, when public accommodations fail to provide
2 handicap accessible public facilities, persons with physical disabilities are unable
3 to enter and use said facilities, and are denied full and equal access to and use of
4 that facility that is enjoyed by other members of the general public.
5

6 38. Plaintiff **WARREN J. DUCKSTEIN** and other similarly situated persons
7 with physical disabilities whose physical conditions require the use of wheelchairs,
8 canes, walkers and service animals are unable to use public facilities on a "full
9 and equal" basis unless each such facility is in compliance with the provisions of
10 the **California Health & Safety Code** § 19955, *et seq.* Plaintiff is a member of
11 that portion of the public whose rights are protected by the provisions of
12 **California Health & Safety Code** § 19955, *et seq.*
13
14

15 39. The **California Health & Safety Code** was enacted "[t]o ensure that
16 public accommodations or facilities constructed in this state with private funds
17 adhere to the provisions of Chapter 7 (commencing with §4450) of Division 5 of
18 Title 1 of the *Government Code*." Such public accommodations are defined to
19 include hotels.
20
21

22 40. Plaintiff is further informed and believes that as of the date of filing this
23 Complaint, Defendants have not made accessible the facilities at the subject hotel
24 as set forth in Paragraph 3 above.
25

26 41. Plaintiff **WARREN J. DUCKSTEIN** is informed and believes, and
27 therefore alleges, that Defendants **HUOYEN INTERNATIONAL, INC., dba FOUR**
28

1 **POINTS SHERATON, and DOES ONE TO TEN, inclusive,** and each of them,
2 caused the subject buildings constituting "**FOUR POINTS SHERATON**" to be
3 constructed, altered and maintained in such a manner that persons with physical
4 disabilities were denied full and equal access to, within and throughout said
5 buildings and were denied full and equal use of said public facilities, and despite
6 knowledge and actual and constructive notice to such Defendants that the
7 configuration of the hotel and/or buildings was in violation of the civil rights of
8 persons with physical disabilities, such as Plaintiff. Such construction,
9 modification, ownership, operation, maintenance and practices of such public
10 facilities are in violation of law as stated in Part 5.5, **California Health & Safety**
11 **Code § 19955, et seq.**, and elsewhere in the laws of California.

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16 42. On information and belief, the subject building constituting the public
17 facilities of "**FOUR POINTS SHERATON**" denied full and equal access to Plaintiff
18 and other persons with physical disabilities in other respects due to non-
19 compliance with requirement of Title 24 of the **California Code of Regulations**
20 and **California Health & Safety Code § 19955, et seq.**

21
22 43. The basis of Plaintiff's aforementioned information and belief is the
23 various means upon which Defendants must have acquired such knowledge,
24 including but not limited to this lawsuit, other access lawsuits, communications
25 with operators of other hotels and other property owners regarding denial access,
26 communications with Plaintiff and other persons with disabilities, communications
27
28

1 with other patrons who regularly visit there, communications with owners of other
2 businesses, notices and advisories they obtained from governmental agencies
3 through the mails, at seminars, posted bulletins, television, radio, public service
4 announcements, or upon modification, improvement, alteration or substantial
5 repair of the subject premises and other properties owned by these Defendants,
6 newspaper articles and trade publications regarding the **Americans with**
7 **Disabilities Act of 1990** and other access law, and other similar information.
8 The scope and means of the knowledge of each defendant is within each
9 defendant's exclusive control and cannot be ascertained except through
10 discovery.
11

12
13
14 44. As a result of Defendants' acts and omissions in this regard, Plaintiff
15 has been required to incur legal expenses and hire attorneys in order to enforce
16 his civil rights and enforce provisions of the law protecting access for persons with
17 physical disabilities and prohibiting discrimination against persons with physical
18 disabilities, and to take such action both in his own interests and in order to
19 enforce an important right affecting the public interest. Plaintiff, therefore, seeks
20 damages in this lawsuit for recovery of all reasonable attorneys' fees incurred,
21 pursuant to the provisions of the **California Code of Civil Procedure** § 1021.5.
22 Plaintiff additionally seeks attorneys' fees pursuant to **California Health & Safety**
23 **Code** § 19953 and **California Civil Code** §§ 54.3 and 55.
24
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28 45. Defendants, and each of them, at times prior to and including

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

21 46. Defendants' actions have also been oppressive to persons with
22 physical disabilities and of other members of the public, and have evidenced
23 actual or implied malicious intent toward those members of the public, such as
24 Plaintiff and other persons with physical disabilities who have been denied the
25 proper access they are entitled to by law. Further, Defendants' refusals on a day-
26 to-day basis to correct these problems evidence despicable conduct in conscious
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1 disregard for the rights of Plaintiff and other members of the public with physical
2 disabilities.

3
4 47. Plaintiff prays for an award of punitive damages against Defendants,
5 and each of them, pursuant to **California Civil Code** § 3294 in an amount
6 sufficient to make a more profound example of Defendants and discourage
7 owners, operators, franchisers and franchisees of other public facilities from willful
8 disregard of the rights of persons with physical disabilities. Plaintiff does not know
9 the financial worth of Defendants, or the amount of punitive damages sufficient to
10 accomplish the public purposes of **California Civil Code** § 3294 and seeks leave
11 to amend this Complaint when such facts are known.
12
13

14 48. As a result of the actions and failure of Defendants, and each of them,
15 and as a result of the failure to provide proper accessible public facilities, Plaintiff
16 **WARREN J. DUCKSTEIN** was denied his civil rights, including his right to full and
17 equal access to public facilities, was embarrassed and humiliated, suffered
18 physical, psychological and mental injuries and emotional distress, mental
19 distress, 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 to
22 a public accommodation.
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26 WHEREFORE, Plaintiff prays for damages as hereinafter stated.

27
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1 **III. THIRD CAUSE OF ACTION**
2 **VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS**
3 **(California Civil Code §§ 54, 54.1 and 54.3)**

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

7
8 50. The public facilities above-described constitute public facilities and
9 public accommodations within the meaning of **California Health & Safety Code §**
10 **19955 et seq.** and were facilities to which members of the public are invited. The
11 aforementioned acts and omissions of defendants, and each of them, constitute a
12 denial of equal access to and use and enjoyment of these facilities by persons
13 with disabilities, including Plaintiff **WARREN J. DUCKSTEIN**. Said acts and
14 omissions are also in violation of provisions of Title 24 of the **California Code of**
15 **Regulations.**

16
17
18 51. The rights of Plaintiff, the entitlement of Plaintiff to full and equal
19 access and the denial by defendants of such rights and entitlements are set forth
20 in **California Civil Code §§ 54, 54.1 and 54.3**, to wit:

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

26
27
28 Individuals with disabilities shall be entitled to full and equal

1 access, as other members of the general public, to accommodations,
2 advantages, facilities, and privileges of all common carriers, airplanes,
3 motor vehicles, railroad trains, motor buses, streetcars, boats, or any
4 other public conveyances or modes of transportation (whether private,
5 public, franchised, licensed, contracted, or otherwise provided),
6 telephone facilities, adoption agencies, private schools, hotels, lodging
7 places, places of public accommodation, amusement or resort, and
8 other places to which the general public is invited, subject only to the
9 conditions and limitations established by law, or state or federal
10 regulation, and applicable alike to all persons. **California Civil Code**
11 § 54.1(a).
12

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16 52. On or about September 13, 2002, Plaintiff **WARREN J. DUCKSTEIN**
17 suffered violations of **California Civil Code** §§ 54 and 54.1 in that he was denied
18 full and equal enjoyment of the goods, services, facilities and privileges of said
19 **FOUR POINTS SHERATON**, as set forth in paragraph 3 above. Plaintiff was also
20 denied full and equal access to other particulars, including but not limited to those
21 described hereinabove. Plaintiff was also denied use of facilities that he was
22 entitled to under Title III of the **Americans with Disabilities Act of 1990**.
23
24

25 53. As a result of the denial of full and equal enjoyment of the goods,
26 services, facilities and privileges of defendants' **FOUR POINTS SHERATON**
27 facility due to the acts and omissions of defendants, and each of them, in owning,
28

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

12
13
14 54. Plaintiff seeks damages for the violation of his rights as a disabled
15 person on or about September 13, 2002, according to proof, pursuant to
16 *California Civil Code* § 54.3, including a trebling of all statutory and actual
17 damages, general and special, available pursuant to *California Civil Code* §
18 54.3(a).
19

20
21 55. As a result of defendants' acts and omissions in this regard, Plaintiff
22 **WARREN J. DUCKSTEIN** has been required to incur legal expenses and hire
23 attorneys in order to enforce his rights and enforce provisions of the law protecting
24 the full and equal enjoyment of goods, services, facilities, privileges of public
25 facilities by the disabled, and those individuals associated with or accompanied by
26 a person with disabilities, and prohibiting discrimination against the disabled.
27
28

1 Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable attorneys' fees
2 incurred pursuant to the provisions of **California Civil Code § 54.3**. Additionally,
3 Plaintiff's lawsuit is intended not only to obtain compensation for damages to
4 Plaintiff, but also to compel the defendants to make their goods, services, facilities
5 and privileges available and accessible to all members of the public with physical
6 disabilities, justifying public interest attorneys' fees pursuant to the provisions of
7
8 **California Code of Civil Procedure § 1021.5**.

9
10 56. The acts and omissions of defendants in failing to provide the required
11 accessible facilities subsequent to the enactment date and compliance date of the
12 **Americans with Disabilities Act of 1990**, and refusal to make remedial
13 modifications and alterations to its handicapped parking, handicapped signage,
14 pathways, and other elements as hereinabove stated, after being notified by
15 patrons before and after the time of Plaintiff's visit and injuries, on or about
16 September 13, 2002, and all times prior thereto with the knowledge that persons
17 with disabilities would enter defendants' premises, the reason given therefor, was
18 an established policy, practice and procedure of refusing and denying entry,
19 thereby denying lodging and other services to a person with disabilities and the
20 companions thereof, evidence malice and oppression toward Plaintiff and other
21 disabled persons.
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26 57. Such despicable conduct, as that incorporated herein by reference and
27 specifically set forth in Paragraph 11, was carried out by defendants with a willful
28

1 and conscious disregard for the law and the rights of Plaintiff and of other disabled
2 persons, and was oppressive in that such conduct subjected Plaintiff "to cruel and
3 unjust hardship in conscious disregard" for the law and Plaintiff's rights, and
4 justifies exemplary and punitive damages pursuant to *California Civil Code* §
5 3294, in amounts sufficient to make an example of defendants and to punish
6 defendants and to carry out the purposes of *California Civil Code* § 3294.
7

8
9 58. Defendants have failed to establish a nondiscriminatory criteria, policy,
10 practice and procedure for entry into said "**FOUR POINTS SHERATON**" as
11 hereinabove described.
12

13 59. As a result of defendants' continuing failure to provide for the full and
14 equal enjoyment of goods, services, facilities and privileges of said "**FOUR**
15 **POINTS SHERATON**" as hereinabove described, Plaintiff has continually been
16 denied his rights to full and equal enjoyment of the subject hotel, as it would be a
17 "futile gesture" to attempt to patronize said "**FOUR POINTS SHERATON**" with the
18 discriminatory policy in place as hereinabove described.
19
20

21 60. The acts and omissions of defendants as complained of herein in
22 failing to provide the required accessible facilities subsequent to the enactment
23 date and compliance date of the *Americans with Disabilities Act of 1990* and
24 refusal to make remedial modifications and alternations to the architectural
25 barriers as stated herein and in failing to establish practices, policies and
26 procedures to allow safe access by persons who are disabled are continuing on a
27
28

1 day-to-day basis to have the effect of wrongfully and willfully excluding Plaintiff
2 and other members of the public who are physically disabled, from full and equal
3 enjoyment of the subject "**FOUR POINTS SHERATON**" as hereinabove
4 described. Such acts and omissions are the continuing cause of humiliation and
5 mental and emotional suffering of Plaintiff in that these actions continue to treat
6 Plaintiff as an inferior and second class citizen and serve to discriminate against
7 him on the sole basis that he is physically disabled. Plaintiff is unable, so long as
8 such acts and omissions of defendants continue, to achieve full and equal
9 enjoyment of the goods and services of said "**FOUR POINTS SHERATON**" as
10 described hereinabove. The acts of defendants have legally caused and will
11 continue to cause irreparable injury to Plaintiff if not enjoined by this court.
12
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16 61. Wherefore, Plaintiff asks this court to preliminarily and permanently
17 enjoin any continuing refusal by defendants to permit entry to said "**FOUR**
18 **POINTS SHERATON**" and to serve Plaintiff or others similarly situated, and to
19 require defendants to comply forthwith with the applicable statutory requirements
20 relating to the full and equal enjoyment of goods and services as described
21 hereinabove for disabled persons. Such injunctive relief is provided by **California**
22 **Civil Code** § 55. Plaintiff further requests that the court award statutory costs and
23 attorneys' fees to Plaintiff pursuant to **California Civil Code** § 55 and **California**
24 **Code of Civil Procedure** § 1021.5, all as hereinafter prayed for.
25
26
27

28 WHEREFORE, Plaintiff prays for compensatory damages, reasonable

1 attorneys' fees and costs of suit, as allowed by statute and according to proof, and
2 appropriate exemplary damages.

3
4 **IV. FOURTH CAUSE OF ACTION**
5 **VIOLATIONS OF *UNRUH CIVIL RIGHTS ACT***
6 **(*California Civil Code* §§ 51 and 51.5)**

7
8 62. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in paragraphs 1 through 61 of this
10 Complaint and incorporates them herein as if separately repled.

11
12 63. Defendants' acts and omissions as specified with regard to the
13 discriminatory treatment of Plaintiff **WARREN J. DUCKSTEIN** on the basis of his
14 physical disabilities, have been in violation of *California Civil Code* §§ 51 and
15 51.5, the *Unruh Civil Rights Act*, and have denied to Plaintiff his rights to "full
16 and equal accommodations, advantages, facilities, privileges or services in all
17 business establishments of every kind whatsoever."

18
19 64. *California Civil Code* § 51 also provides that "[a] violation of the right
20 of any individual under the *Americans with Disabilities Act of 1990* (Public Law
21 101-336) shall also constitute a violation of this section."

22
23 65. *California Civil Code* § 51.5 also provides that "[n]o business
24 establishment of any kind whatsoever shall discriminate against, boycott, or
25 blacklist, refuse to buy from, sell to, or trade with any person in this state because
26 of the race, creed, religion, color, national origin, sex, disability of the person or of
27 the person's partners, members, stockholders, directors, officers, managers,
28

1 superintendents, agents, employees, business associates, suppliers, or
2 customers.”

3
4 66. As a result of the violation of Plaintiff's civil rights protected by
5 **California Civil Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and
6 remedies of **California Civil Code** § 52, including a trebling of actual damages
7 (defined by **California Civil Code** § 52(h) to mean “special and general
8 damages”), as well as reasonable attorneys' fees and costs, as allowed by statute,
9 according to proof. Further, pursuant to paragraphs 11, 12, 13, 35 and 43,
10 Plaintiff seeks appropriate exemplary damages under **California Civil Code** §
11
12 3294.
13

14 WHEREFORE, Plaintiff prays that this court award damages and provide
15 relief as follows:
16

17 PRAYER FOR RELIEF

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

19
20 1. Grant injunctive relief requiring that defendants establish a non-
21 discriminatory criteria policy, practice and procedure permitting entry into the
22 **FOUR POINTS SHERATON** in Fullerton, California, for the purpose of services
23 according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3, *et seq.*, and
24 Title III of the **Americans with Disabilities Act of 1990**, and grant injunctive relief
25 requiring that Defendants repair and render safe to handicapped persons, and
26 otherwise make handicapped-accessible, all public areas of the hotel, including,
27
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1 but not limited to, removal of all barriers to access identified in Paragraph 3 above,
2 and make such facilities "readily accessible to and usable by individuals with
3 disabilities," according to the standards of Title 24 of the **California**
4 **Administrative Code, California Health & Safety Code § 19955 et seq.**, and
5 Title III of the **Americans with Disabilities Act of 1990** and the standards of
6 **ADAAG**; and prohibiting operation of **FOUR POINTS SHERATON**, located in
7 Fullerton, California, as a public facility until Defendants provide full and equal
8 enjoyment of goods and services as described hereinabove to physically disabled
9 persons, including Plaintiff;

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11
12
13 2. General damages according to proof;

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

17
18 4. Prejudgment interest on all compensatory damages;

19
20 5. Punitive and exemplary damages pursuant to the standards and
21 purposes of **California Civil Code § 3294**;

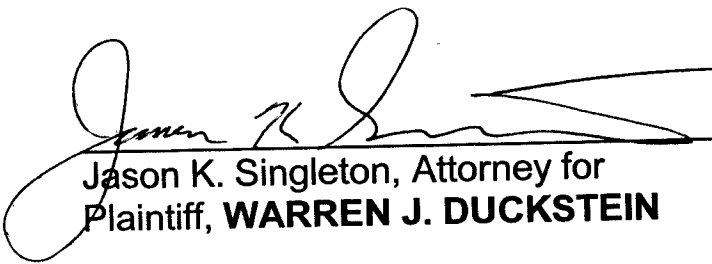
22 6. Remedies and Procedures available under **Americans with**
23 **Disabilities Act of 1990 §§ 107, 203 and 308**;

24
25 7. Award Plaintiff all litigation expenses, all costs of this proceeding and
26 all reasonable attorneys' fees as provided by law, including but not limited to those
27 recoverable pursuant to the provisions of **California Civil Code §§ 52, 54.3,** and
28

1 55, **California Code of Civil Procedure** § 1021.5, and **Americans with**
2 **Disabilities Act of 1990** §308 of Title III; and

3
4 8. Grant such other and further relief as the court may deem just and
5 proper.

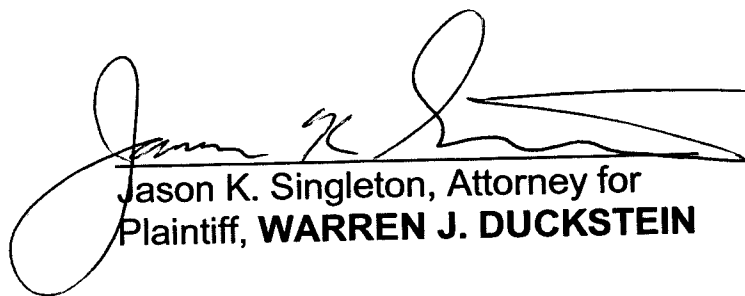
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8 Dated: October 24, 2002


Jason K. Singleton, Attorney for
Plaintiff, **WARREN J. DUCKSTEIN**

9
10
11 **REQUEST FOR JURY TRIAL**

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

13
14
15 Dated: October 24, 2002


Jason K. Singleton, Attorney for
Plaintiff, **WARREN J. DUCKSTEIN**

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