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3:03-CV-00176 JONES V. OIL CHANGERS

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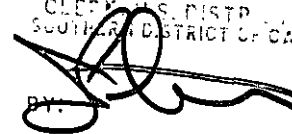
1 ROY L. LANDERS (BAR #64920)  
2 **LAW OFFICES OF ROY L. LANDERS**  
3 7840 MISSION CENTER COURT, SUITE 101  
4 SAN DIEGO, CALIFORNIA 92108  
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7 Attorney for Plaintiff: DAN JONES

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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 DAN JONES

11 Plaintiff,

12 vs.

13 OIL CHANGERS, OIL CHANGE; GERSON I.  
14 FOX, AND DOES 1-10, Inclusive,

15 Defendants.  
16  
17  
18

Case No. **'03 CV 00176 J- (JFS)**

**COMPLAINT FOR DAMAGES RE:  
VIOLATION OF CIVIL RIGHTS ON  
BASIS OF DISCRIMINATION IN PUBLIC  
ACCOMMODATIONS; UNFAIR,  
UNLAWFUL AND FRAUDULENT  
BUSINESS PRACTICES; NEGLIGENT  
INFLECTION OF EMOTIONAL  
DISTRESS; INTENTIONAL INFLECTION  
OF EMOTIONAL DISTRESS: DEMAND  
FOR JURY TRIAL**

19 I

20 **JURISDICTION AND VENUE**

21 1. (a) Jurisdiction of this action is invoked on the basis of 28 USC 1331 and 1343, 42 USC 12101-  
22 12102, 12181-12183 and 12201, et. seq. Jurisdiction is also invoked pursuant to 42 USC 1981  
23 [Civil Rights Act of 1991], et seq, which is applicable to causes of action where persons with  
24 disabilities have been denied their civil rights and Title II, section 201, et. seq. of the 1964 Civil  
25 Rights Act. Venue in the Southern Judicial District of California in the United States District Court  
26 is in accord with 28. U.S.C. section 1391(b) because a substantial part of plaintiff's claims arose  
27 within the Judicial District of the United States District Court of the Southern District of California.  
28

1 (b) Supplemental Jurisdiction. The Judicial District of the United States District Court of the  
2 Southern District of California has supplemental jurisdiction over the state claims alleged in this  
3 Complaint pursuant to 28 U.S.C. Section 1367(a). Supplemental jurisdiction is appropriate in this  
4 action on the basis that all the causes of action or claims derived from federal law and those arising  
5 under state law, as herein alleged, arose from a common nucleus of operative facts. The common  
6 nucleus of operative facts, include, but are not limited to, the incidents whereby plaintiff was denied  
7 full and equal access to Defendant's facilities, goods, and/or services in violation of both federal and  
8 state laws when plaintiff attempted to enter, use, and/or exit Defendant's facilities as described  
9 within this Complaint. Further, due to this denial of full and equal access Plaintiff and other person's  
10 with disabilities were injured. Based upon such allegations the state actions, as stated herein, are so  
11 related to the federal actions that they form part of the same case or controversy, and the actions  
12 would ordinarily be expected to be tried in one judicial proceeding.

13 II  
14 PARTIES

15 2. Defendant(s), **OIL CHANGERS, OIL CHANGE** are and at all times herein mentioned were a  
16 duly organized business, association, or corporation duly authorized to exist and operate within the  
17 State of California and County of San Diego and the owner, operator or lessee of the premises  
18 located at **906 FLETCHER PYWY, EL CAJON, CALIFORNIA.**

19 3. Plaintiff is informed and believes and thereon alleges that defendants **OIL CHANGERS, OIL**  
20 **CHANGE, GERSON I. FOX** were at all times herein was and are the owners, lessors, tenants and  
21 controlling parties of the property, which is the subject of this action and in some manner  
22 responsible for the violations of law as alleged herein.

23 4. Plaintiff is informed and believes and thereon alleges that each of the named defendants herein  
24 operates a business and or/facility of public accommodation as defined and described within **42**  
25 **USC 12181(7)(F)** of the American with Disabilities Act [ADA] and as such must comply with the  
26 ADA under provisions of Title III therein.

27 5. Plaintiff is ignorant of the defendants sued as Does 1-10 herein, and therefore sues them in their  
28 fictitious names as Doe defendants. Plaintiff is informed and believes and thereon alleges that Does

1 1-10 are the owners, operators, lessees or tenants of the subject property and each of the Doe  
2 defendants at all times herein was acting as the agent and or representative of each other and  
3 thereby are responsible in some manner for the injuries and damages complained of herein. Plaintiff  
4 will seek leave of court to amend this complaint to name Doe defendants when the same is  
5 ascertained.

### 6 III

#### 7 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

8 6. Plaintiff is disabled and confined to a wheelchair. He has no control over his lower  
9 extremities and must use a wheelchair to transport himself and to effect the basic necessities of his  
10 everyday existence. Plaintiff's disability substantially limits one or more of life's major activities  
11 and therefore he is disabled as defined under 42 USC 12102(2)(A)(B)(C).

12 7. On or about **DECEMBER 16, 2002** plaintiff attempted to enter the subject premises of the  
13 defendants herein to utilize goods and/or services offered by defendants. When Plaintiff attempted  
14 to enter said facility, plaintiff had difficulty entering and using the facility because it failed to  
15 comply with Federal ADA Access Guidelines For Building and Facilities [hereinafter "ADAAG"]  
16 and/or the State of California's Title 24 Building Code Requirements.

17 8. The specific difficulty Plaintiff had in entering and utilizing Defendants' facility and which  
18 amount to a violation of ADAAG and Title 24 of the California Building Code are:

- 19 1. No Site Entrance Signage (Does Not Exist), (CA Title 24 1129B.5);
- 20 2. No Site Entrance Signage (Not Filled Out - Reclaim at:), (CA Title 24 1129B.5);
- 21 3. No Site Entrance Signage (Not Filled Out – Telephone number:), (CA Title 24  
22 1129B.5);
- 23 4. No Site Entrance Signage (Size not less than 17" x 22" ), (CA Title 24 1129B.5);
- 24 5. No Site Entrance Signage (Lettering not less than 1" in Height), (CA Title 24  
25 1129B.5);
- 26 6. No Site Entrance Signage (Warning Information), (CA Title 24 1129B.5);
- 27 7. No Correct Number of Designated Disabled "VAN ACCESSIBLE" Parking Spaces,  
28 (ADAAG 4.1.2(5)(b) & CA Title 24 1129.B.4.2);

- 1 8. No Designated Disabled "VAN ACCESSIBLE" Parking Space; (ADAAG  
2 4.1.2(5)(b) & CA Title 24 1129.B.4.2);
- 3 9. No Designated Disabled "VAN ACCESSIBLE" Parking Space Width, (ADAAG  
4 4.1.2(5)(b) & CA Title 24 1129.B.4.2);
- 5 10. No Designated Disabled "VAN ACCESSIBLE" Parking Space Length, (ADAAG  
6 4.1.2(5)(b) & CA Title 24 1129.B.4.2);
- 7 11. No Designated Disabled "VAN ACCESSIBLE" Parking Space Signage, (ADAAG  
8 4.1.2(5)(b) & CA Title 24 1129.B.4.2);
- 9 12. No Correct Number of Designated Disabled Parking Stalls , (ADAAG 4.1.2(5)(a) &  
10 CA Title 24 1129B.1);
- 11 13. No Regular Access Aisle , (CA Title 24 1129B.4.1);
- 12 14. No Regular Access Aisle Width, (CA Title 24 1129B.4.1);
- 13 15. No Regular Access Aisle Length, (CA Title 24 1129B.4.1);
- 14 16. No Van Accessible Aisle, (ADAAG 4.6.3 & CA Title 24 1129B.4.2);
- 15 17. No Van Accessible Aisle Width, (ADAAG 4.6.3 & CA Title 24 1129B.4.2);
- 16 18. No Van Accessible Aisle Length, (ADAAG 4.6.3 & CA Title 24 1129B.4.2);
- 17 19. No Van Accessible Aisle (Passenger Side), (ADAAG 4.6.3 & CA Title 24  
18 1129B.4.2);
- 19 20. Not Correct Number of Signage Installed (Each Space), (ADAAG 4.6.4 & CA Title  
20 24 1129B.5);
- 21 21. No Additional Signage (Van Accessible), (ADAAG 4.6.4 & CA Title 24 1129B.5);
- 22 22. No Access Route - A Route of Travel, (ADAAG 4.1.3(2), 4.3.2(2) & CA Title 24  
23 1114B.1.2);
- 24 23. No Shortest Route of Travel, (ADAAG 4.6.2);
- 25 24. No Designated Disabled Parking Space Signage – Proper Height, (ADAAG 4.6.4 &  
26 CA Title 24 1129B.5);
- 27 25. No Parking Space Emblem, (ADAAG 4.6.4 & CA Title 24 1129B.5.1 &.2);  
28

1 9. Plaintiff is informed and believes and thereon alleges that defendants' facility has in excess of  
2 **Twenty-Five (25) violations** of ADAAG and/or Title 24 at their facility.

3 10. These violations are believed to have existed for a significant period of time and with  
4 defendant's specific knowledge.

5 11. Based upon the above facts, Plaintiff as been discriminated against and will continue to be  
6 discriminated against unless and until Defendants are enjoined and forced to cease and desist from  
7 continuing to discriminate against Plaintiff and others similarly situated.

8 12. Pursuant to federal {ADA} and state law [California Title 24], Defendants are required to  
9 remove barriers to their existing facilities. Defendants have been put on notice pursuant to the ADA  
10 and the California Civil Code prior to the statutory effect of the ADA on January 26, 1992 that  
11 Defendants and each of them had a duty to remove barriers to persons with disabilities such as  
12 plaintiff. Defendants also knew or should have known that individuals such as plaintiff with a  
13 disability are not required to give notice to a governmental agency prior to filing suit alleging  
14 Defendants' failure to remove architectural barriers.

15 13. Plaintiff believes and thereon allege that Defendants' facility, as described herein, have other  
16 access violations not directly experienced by Plaintiff, which preclude or limit access by others with  
17 disabilities, including, but not limited to, Space Allowances, Reach Ranges, Accessible Routes,  
18 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb  
19 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,  
20 Drinking Fountains, and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
21 Mirrors, Sinks, Storage, Handrails, Grab Bars, Telephones, Controls and Operating Mechanisms,  
22 Alarms, Detectable Warnings and Signage. Accordingly, Plaintiff alleges Defendants are required  
23 to remove all architectural barriers, known or unknown. Also, Plaintiff alleges Defendants are  
24 required to utilize the ADA checklist for Readily Achievable Barrier Removal approved by the  
25 United States Department of Justice and created by Adaptive Environments.

26 14. Plaintiff desires to return to Defendants' places of business and utilize their facilities without  
27 being discriminated against in the immediate future.

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IV

**FIRST CAUSE OF ACTION**

**(Violation of Civil Rights-American With Disabilities Act)**

15. Plaintiff re-alleges the allegations in paragraphs 1 through 14 as though set forth fully herein.

**Claim 1: Denial of Full and Equal Access**

16. Based on the facts asserted above Plaintiff has been denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations. Defendant **OIL CHANGERS, OIL CHANGE** is a public accommodation owned, leased and/or operated by Defendants and each of them. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. Section 12182(a). Thus, Plaintiff was subjected to discrimination in violation of 42 U.S.C. 12182(b)(2)(A)(ii)(iv); 42 USC 1981 and 42 U.S.C. section 12188 because Plaintiff was denied equal access to Defendants' existing facilities.

17. Plaintiff has a physical impairment as alleged herein because his condition affects one or more of the following body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, his physical impairments substantially limits one or more of the following major life activities: walking. In addition, Plaintiff cannot perform one or more of the said major life activities in the manner speed, and duration when compared to the average person. Moreover, Plaintiff has a history of or has been classified as having a physical impairment as required by 42 U.S.C. section 12102(2)(A).

**Claim 2: Failure To Remove Architectural Barriers**

18. Based upon the facts alleged herein, Plaintiff was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned leased, and/or operated by the named Defendants. Defendants individually and collectively failed to remove barriers as required by 42 U.S.C. 12182(a). Plaintiff is informed and believes, and thus alleges that architectural barriers which are structural in nature exist at the following physical elements of Defendants' facilities:  
Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform

1 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers,  
2 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars,  
3 and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
4 Pursuant to 42 USC section 12182(b)(2)(iv), Title III requires places of public accommodation to  
5 remove architectural barriers that are structural in nature within existing facilities. Failure to remove  
6 such barriers and disparate treatment against a person who has a known association with a person  
7 with a disability are forms of prohibited discrimination. Accordingly, Plaintiff was subjected to  
8 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42 USC 12182 (b)(2)(A)(iv); 42 USC  
9 1981 and 42 USC 12188.

10 **Claim 3: Failure To Modify Practices, Policies And Procedures**

11 19. Based on the facts alleged in this Complaint Defendants failed and refused to provide a  
12 reasonable alternative by modifying its practices, policies and procedures in that they failed to have  
13 a scheme, plan, or design to assist Plaintiff and/or others similarly situated in entering and utilizing  
14 Defendants' services, as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was subjected to  
15 discrimination in violation of 42 U.S.C. section 12182(b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C.  
16 section 12188 because Plaintiff was denied equal access to Defendants' existing facilities.

17 20. As a result of the wrongful and discriminatory practices of defendants, plaintiff has suffered  
18 actual damages consisting of special damages and general damages in an amount to be determined  
19 at time of trial herein.

20 21. Pursuant to the provisions of 42 USC 12188 plaintiff seeks injunctive relief and an order  
21 directing defendants to cease and desist from discriminating against plaintiff and others similarly  
22 situated and for an order that defendants comply with the Americans With Disabilities Act  
23 forthwith.

24 22. Under the provisions of 42 USC 12205 Plaintiff is entitled to an award of reasonable attorneys  
25 fees and requests that the court grant such fees as are appropriate.

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V

**SECOND CAUSE OF ACTION**

**(Violation of Civil Rights 42 U.S.C. 1991)**

23. Plaintiff re-alleges the allegations of the First Cause of Action as though set forth fully herein.

24. The provisions of 42 U.S.C. 1981 (As amended by the Civil Rights Act of 1991) provide that Plaintiff as a person with disabilities cannot be discriminated against with regard to the ability to enter into, to make or to enforce contracts. In enacting the Civil Rights Act of 1991 congress established a three tier system of remedies for a broad range of discretionary conduct, including violations of the Americans With Disabilities Act, wherein disabled individuals such as plaintiff are denied equal access to facilities they wish to conduct business in and therefore are precluded from making, entering into and enforcing contracts that plaintiff and others similarly situated may desire to effect.

25. Defendants, because they have individually and/or collectively denied plaintiff access to their premises, goods and services, have denied him the right to make, enter into or enforce a contract and therefore have violated the provisions of 42 U.S.C. 1991 all to Plaintiff's damage in an amount to be determined at time of trial herein.

26. As a result of Defendants' actions Plaintiff was humiliated, embarrassed and discouraged and upset emotionally and physically and suffered damages according to proof.

27. The actions of the Defendants were intentional, outrageous and done with reckless disregard of Plaintiff's rights and therefore entitle him to an award of punitive damages.

28. By reason of Defendants' actions Plaintiff was caused to incur costs and expenses of litigation, including attorney's fees, to seek and redress his civil rights. Plaintiff therefore seeks an award of costs and attorney's fees associated with the necessity of bringing this lawsuit.

VI

**THIRD CAUSE OF ACTION**

**(Violation Of Civil Rights Under California Accessibility Laws)**

29. Plaintiff re-alleges the allegations of the Second Cause of Action as though set forth fully herein.

1                   **(a) Denial Of Full And Equal Access**

2 30. Plaintiff has been denied full and equal access to Defendants' goods services, facilities,  
3 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or  
4 operated by Defendants in violation of California Civil Code Sections 54 and 54.1; California  
5 Health and Safety Code Section 19955 and California Government Code Section 12948. The  
6 actions of Defendants also violate the provisions of Title 24 of the State of California Building  
7 Codes with regard to accessibility for persons with disabilities by failing to provide access to  
8 Defendants facilities due to violations pertaining to accessible routes, ground and floor surfaces,  
9 parking and passenger loading zones, curb ramps, ramps, stairs, elevators, platform lifts (wheelchair  
10 lifts), windows, doors, toilet stalls, urinals, lavatories and mirrors, sinks, storage, handrails, grab  
11 bars, controls and operating mechanisms, alarms, detectable warnings, signage and telephones.

12 31. On the above basis Plaintiff has been wrongfully discriminated against.

13                   **(b) Failure To Modify Practices, Policies And Procedures**

14 32. Defendants have failed and refused and continue to fail and refuse to provide a reasonable  
15 alternative to allow plaintiff equal access to their facility by modifying their practices, policies, and  
16 procedures in that that they failed to have a scheme, plan, or design to assist Plaintiff and others  
17 similarly situated in entering and utilizing Defendants' goods or services as required by California  
18 Civil Code section 54 and 54.1. Accordingly Defendants have wrongfully discriminated against  
19 Plaintiff.

20                                   **VII**

21                               **FOURTH CAUSE OF ACTION**

22                           **(Violation of The Unruh Civil Rights Act)**

23 33. Plaintiff re-alleges the allegations of the Third Cause of Action as though set forth fully herein.

24 34. Section 51(b) of the Cal. Civ. Code [The Unruh Civil Rights Act], provides in pertinent part:

25                                    "All persons within the jurisdiction of this state are  
26                                    free and equal, and no matter what their sex, race, color,  
27                                    religion, ancestry, national origin, disability, or medical  
28                                    condition is entitled to the full and equal accommodations,  
                                  advantages, facilities, privileges, or services in all  
                                  business establishments of every kind whatsoever."

1 35. Defendants have violated the provisions of Civ. Code 51 (b) by  
2 failing and refusing to provide free and equal access to Plaintiff to their facility on the same basis as  
3 other persons not disabled. By their failure to provide equal access to Plaintiff as herein alleged,  
4 Defendants have also violated 42 U.S.C. section 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes  
5 section 51(f).  
6

7 36. By reason of their acts and denial of Plaintiff's civil rights Defendants also violated the  
8 provisions of Cal. Civ. Code section 52, which makes a person or entity in violation of Cal. Civ.  
9 Code 51 liable in the amount of \$4,000 per violation of said statute.  
10

11 37. Defendants and each of them, at all times prior to and including **DECEMBER 16, 2002**  
12 respectively and continuing to the present time, knew that persons with physical disabilities were  
13 denied their rights of equal access to all portions of this public facility. Despite such knowledge,  
14 Defendants, and each of them, failed and refused to take steps to comply with the applicable access  
15 statutes and despite knowledge of the resulting problems and denial of civil rights suffered by  
16 Plaintiff and other similarly situated persons with disabilities.  
17

18 38. Defendants and each of them have failed and refused to take action to grant full and equal  
19 access to persons with physical disabilities. Defendants have carried out a course of conduct of  
20 refusing to respond to, or correct complaints about unequal access and have refused to comply with  
21 their legal obligations to make the subject facility accessible pursuant the ADAAG and the  
22 California Building Code [Title 24 of the California Code of Regulations]. Such actions and  
23 continuing course of conduct by Defendants, and each of them, evidence despicable conduct in  
24 conscious disregard of the rights and/or safety of Plaintiff and those similarly situated and thus  
25 justify an award of treble damages pursuant to section 52(a) and 54.3(a) of the Cal. Civ. Code or  
26 alternatively an award of punitive damages in an appropriate amount.  
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1 39. Plaintiff has suffered emotional and physical damage and continues to suffer such damages all  
2 in an amount to be determined at time of trial.

3 40. Under the provisions of Cal. Civ. Code section 55 Plaintiff seeks an award of reasonable  
4 attorney's fees and costs as a result of having to bring this action. Plaintiff requests the court to  
5 award such fees in an appropriate amount.  
6

7 **VIII**

8 **FIFTH CAUSE OF ACTION**

9 **(Unfair And Unlawful Business Practice)**

10 41. Plaintiff re-alleges the allegations of the Fourth Cause of Action as though set forth fully herein.

11 42. California Business and Professions Code Section 17200 states in pertinent part:

12 "As used in this chapter, unfair competition shall mean and  
13 include any unlawful, unfair or fraudulent business act..."

14 43. Defendants, as alleged herein, are in violation of the Americans With Disabilities Act and Title  
15 24 of the California Building Code, in that they have denied equal access to their places of public  
16 accommodation to Plaintiff and others similarly situated to Plaintiff. Defendants have failed and  
17 refused and continue to refuse to comply with equal access laws all in violation of 42 USC 12181-  
18 12183; 42 USC 1981; and 42 USC 12188. In addition the complained of acts are in violation of  
19 California Civil Code Sections 51, 52, 54, and 54.1, California Health and Safety Code section 19955  
20 and California Government Code section 12948 all of which require Defendants to provide equal  
21 access to their facility to disabled persons such as plaintiff. Defendants are also in violation of the  
22 indicated statutes because of their failure to remove architectural barriers, which prevent equal  
23 access to their facility by disabled persons and because of their failure to modify their practices,  
24 policies and procedures to have a scheme, plan, or design to assist Plaintiff and others similarly  
25 situated to enter and utilize Defendants' services as required by the Unruh Act.  
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1 44. Defendants' acts are unlawful and unfair and are therefore in violation of California Business  
2 and Professions Code section 17200.

3  
4 45. Pursuant to the provisions of California Business and Professions Code section 17201 Plaintiff  
5 is a person as identified within said section and therefore allowed to bring this action on behalf of  
6 himself and the general public to effectuate California Business and Professions Code 17200 as  
7 provided for within Business and Professions Code section 17204.

8  
9 46. Thus, Plaintiff, under Bus & Prof. Code section 17200 seeks injunctive relief, on behalf of  
10 himself and the general public, requiring Defendants to remedy the disabled access violations  
11 present within Defendants' facility and that Defendants be ordered to cease and desist from  
12 continuing in noncompliance with disabled access statutes and regulations.

13  
14 **IX**

15 **SIXTH CAUSE OF ACTION**

16 **(Negligent Infliction of Emotional Distress)**

17 47. Plaintiff re-alleges the allegations of the Fourth Cause of Action as though set forth fully herein.

18 48. Defendants and each of them owed a duty to Plaintiff to make their facility accessible and to  
19 keep Plaintiff reasonably safe from known dangers and risks of harm. This duty arises by virtue of  
20 the legal duties proscribed by various federal and state statutes including, but not limited to, ADA,  
21 ADAAG, California Civil Code sections 51, 52, 54, 54.1 and Title 24 of the California Code of  
22 Regulations. Defendants had a duty of due care not to do or cause anything to happen that would  
23 subject Plaintiff to undue stress, embarrassment, chagrin, and discouragement.  
24

25 49. Defendants breached their duty of care to Plaintiff by the actions and inaction complained of  
26 herein and as a result thereof Plaintiff was shocked, discouraged, embarrassed and outraged at the  
27 callousness and disregard of Defendants. Defendants knew or had reason to know that by denying  
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1 Plaintiff equal access to their facility and failing and refusing to remove architectural barriers,  
2 Plaintiff would suffer emotional and/or mental distress because of such discrimination and disparate  
3 treatment. Defendants breached their duty of care to plaintiff by the perpetration of the acts outlined  
4 herein.

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6 50. As a proximate result of the actions of Defendants Plaintiff did suffer emotional and mental  
7 stress and pain and suffering all in an amount to be determined at time of trial.

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**SEVENTH CAUSE OF ACTION**

**(Intentional Infliction of Emotional Distress)**

51. Plaintiff re-alleges the allegations of the Fourth Cause of Action as though set forth fully herein.

52. The actions of Defendants and each of them are despicable, intentional and done with conscious  
disregard of the rights and safety of Plaintiff and as such should be regarded as outrageous.

53. As a proximate result of Defendants' actions Plaintiff has suffered severe emotional and mental  
distress all to his damage in an amount to be determined at time of trial.

54. Plaintiff seeks an award of punitive damages for this claim as the actions of Defendants are  
tantamount to outrageous conduct and subject them to exemplary damages.

**DEMAND FOR JURY**

55. Plaintiff respectfully requests that the claims made herein be heard and determined by a jury.

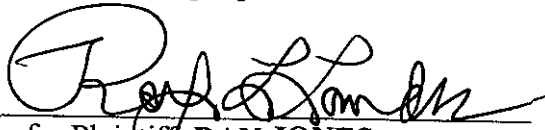
**WHEREFORE PLAINTIFF PRAYS:**

- 1. For general damages according to proof;**
- 2. For special damages according to proof;**
- 3. For damages pursuant to Cal. Civil Code section 52, in the amount of \$4,000 for each and every offense of California Civil Code section 51, Title 24 of the California Building Code and the Americans With Disabilities Act.**
- 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and California Business and Professions Code section 17200**

- 1 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42 U.S.C. 1981, 42 U.S.C. 12205
- 2 and Cal. Civ. Code section 55;
- 3 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
- 4 7. For punitive damages according to proof;
- 5 8. For a Jury Trial;
- 6 9. For costs of suit incurred herein and;
- 7 10. For such other and further relief as the court deems proper.

8 Respectfully submitted.

9 DATED: 1-23-03

  
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Attorney for Plaintiff, DAN JONES

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# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS  
DAN JONES

DEFENDANTS  
2-012 CHANGERS, OIL CHANGE, GERSON I. FOX, AND DOES 1-10, Inclusive.

03 JAN 27 PM 2:012

(b) County of Residence of First Listed Plaintiff San Diego, U.S. DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed San Diego  
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
Roy L. Landers (619) 296-7898  
7840 Mission Center CT, Suite 101  
San Diego, CA 92108

Attorneys (If Known)  
**'03CV00176J' (JFS)**

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)  
 1 U.S. Government Plaintiff  
 3 Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant  
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
Citizen of This State  1 DEF  1 Incorporated or Principal Place of Business In This State  
Citizen of Another State  2 DEF  2 Incorporated and Principal Place of Business In Another State  
Citizen or Subject of a Foreign Country  3 DEF  3 Foreign Nation  4 DEF  4

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 1609
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ACC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)  
 1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from another district (specify)  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
42 USC 12101-12102, 12181-12183 and 12201, et seq.  
Discrimination on basis of disability (Public Accommodations)

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

VIII. RELATED CASE(S) (See instructions): ANY JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

SIGNATURE OF ATTORNEY OF RECORD: Roy L. Landers

OR OFFICE USE ONLY  
RECEIPT # 90778 AMOUNT 150.00 APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_  
1/27/03 VB