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3:02-CV-00995 CARLOCK V. MCDONALDS RESTAURANT

1

CMP.

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3 7840 MISSION CENTER COURT, SUITE 101
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FILED

02 MAY 21 PM 3:45

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY 

DEPUTY

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 GAYNOR CARLOCK

12 Plaintiff,

13 vs.

14 McDONALD'S RESTAURANT, PHILIP
15 PALUMBO, BPP RETAIL, LLC, AND
16 DOES 1-10, Inclusive,

17 Defendants.

Case No.:

'02 CV 0995 J (JAH)

) 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
)
)
)

18
19
20 I

21 JURISDICTION AND VENUE

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

1 section 1391(b) because a substantial part of plaintiff's claims
2 arose within the Judicial District of the United States District
3 Court of the Southern District of California.

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

23 **II**

24 **PARTIES**

25 2. Defendant(s), **McDonald's Restaurant** is and at all times herein
26 mentioned were duly organized business, association, or
27 corporation duly authorized to exist and operate within the State
28 of California and County of San Diego and the owner, operator or

1 lessee of the premises located at 3781 Avocado Boulevard, San
2 Diego, California.

3 3. Plaintiff is informed and believes and thereon alleges that
4 defendants Philip Palumbo and BPP Retail, LLC, were at all times
5 herein was and are the owners, leasors, tenants and controlling
6 parties of the property, which is the subject of this action and
7 in some manner responsible for the violations of law as alleged
8 herein.

9 4. Plaintiff is informed and believes and thereon alleges that
10 each of the named defendants herein operates a business and
11 or/facility of public accommodation as defined and described
12 within 42 USC 12181(7)(B) of the American with Disabilities Act
13 [ADA] and as such must comply with the ADA under provisions of
14 Title III therein.

15 5. Plaintiff is ignorant of the defendants sued as Does 1-10
16 herein, and therefore sues them in their fictitious names as Doe
17 defendants. Plaintiff is informed and believes and thereon alleges
18 that Does 1-10 are the owners, operators, lessees or tenants of
19 the subject property and each of the Doe defendants at all times
20 herein was acting as the agent and or representative of each other
21 and thereby are responsible in some manner for the injuries and
22 damages complained of herein. Plaintiff will seek leave of court
23 to amend this complaint to name Doe defendants when the same is
24 ascertained.

25 **III**

26 **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS**

27 6. Plaintiff is disabled and confined to a wheelchair. He has no
28 control over his lower extremities and must use a wheelchair to

1 transport himself and to effect the basic necessities of his
2 everyday existence. Plaintiff's disability substantially limits
3 one or more of life's major activities and therefore he is
4 disabled as defined under 42 USC 12102(2) (A) (B) (C).

5 7. On or about **April 1, 2002** plaintiff attempted to enter the
6 subject premises of the defendants herein to utilize goods and/or
7 services offered by defendants. When Plaintiff attempted to enter
8 said facility, plaintiff had difficulty entering and using the
9 facility because it failed to comply with Federal ADA Access
10 Guidelines For Building and Facilities [hereinafter "ADAAG"]
11 and/or the State of California's Title 24 Building Code
12 Requirements.

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

16 (a) Site entrance signage is not filled out as required by Title
17 24 1129B.5.

18 (b) Bathroom lacks international symbol of accessibility as
19 required by ADAAG 4.30.6 and Title 24 1117B.5.9.

20 (c) Bathroom grab bars are at improper extensions and is in
21 violation of ADAAG 4.17.6 and Title 24 1115B.8.1.

22 (d) Bathroom accessories and fixtures are at improper height and
23 in violation of ADAAG 4.23.7 and Title 24 1115B.9.2.

24 (e) Toilet stall size is improper and in violation of ADAAG 4.17.3
25 and Title 24 1115B.1.

26 (f) Restroom lacks proper raised Braille characters as required by
27 ADAAG 4.30.4. and title 24 1117B.5.6.1.&2.

1 (g) Wall mount signage does not comply with ADAAG 4.1.2(7) and
2 Title 24 1117B.5.1.1. & 5.6.3.

3 (h) Wall mount signage distance from floor is in violation of
4 ADAAG 4.30.6 and Title 24 1117B.5.9.

5 (i) The toilet stall doors lack handles on both sides of the door
6 which is a violation of ADAAG 4.13.9 and Title

7 (j) The drain and hot water pipes lack insulation or is not
8 configured to prevent contact and is in violation of ADAAG 4.24.6.

9 (k) The top of the urinal rim is higher than the required 17"
10 maximum and is in violation of ADAAG 4.18.2 and CA Title 24
11 1503.2.1.

12 (l) The top of the toilet seat is lacking the proper height and is
13 in violation of ADAAG 4.16.3 and Title 24 1502.0

14 9. Plaintiff is informed and believes and thereon alleges that
15 defendants' facility has in excess of Thirty (30) violations of
16 ADAAG and/or Title 24 at their facility.

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

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

25 12. Pursuant to federal [ADA] and state law [California Title 24],
26 Defendants are required to remove barriers to their existing
27 facilities. Defendants have been put on notice pursuant to the ADA
28 and the California Civil Code prior to the statutory effect of the

1 ADA on January 26, 1992 that Defendants and each of them had a
2 duty to remove barriers to persons with disabilities such as
3 plaintiff. Defendants also knew or should have known that
4 individuals such as plaintiff with a disability are not required
5 to give notice to a governmental agency prior to filing suit
6 alleging Defendants' failure to remove architectural barriers.
7 13. Plaintiff believes and thereon allege that Defendants'
8 facility, as described herein, have other access violations not
9 directly experienced by Plaintiff, which preclude or limit access
10 by others with disabilities, including, but not limited to, Space
11 Allowances, Reach Ranges, Accessible Routes, Protruding Objects,
12 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
13 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
14 Lifts), Windows, Doors, Entrances, Drinking Fountains, and Water
15 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
16 Mirrors, Sinks, Storage, Handrails, Grab Bars, Telephones,
17 Controls and Operating Mechanisms, Alarms, Detectable Warnings and
18 Signage. Accordingly, Plaintiff alleges Defendants are required to
19 remove all architectural barriers, known or unknown. Also,
20 Plaintiff alleges Defendants are required to utilize the ADA
21 checklist for Readily Achievable Barrier Removal approved by the
22 United States Department of Justice and created by Adaptive
23 Environments.
24 14. Plaintiff desires to return to Defendants' places of business
25 and utilize their facilities without being discriminated against
26 in the immediate future.

27 **IV**

28 **FIRST CAUSE OF ACTION**

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

2 15. Plaintiff realleges the allegations in paragraphs 1 through 14
3 as though set forth fully herein.

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

5 16. Based on the facts asserted above Plaintiff has been denied
6 full and equal access to Defendants' goods, services, facilities,
7 privileges, advantages, or accommodations. Defendant **McDonald's**
8 **Restaurant** is a public accommodation owned, leased and/or operated
9 by Defendants and each of them. Defendants' existing facilities
10 and/or services failed to provide full and equal access to
11 Defendants' facility as required by 42 U.S.C. section 12182(a).
12 Thus, Plaintiff was subjected to discrimination in violation of 42
13 U.S.C. 12182(b)(2)(A)(ii)(iv); 42 USC 1981 and 42 U.S.C. section
14 12188 because Plaintiff was denied equal access to Defendants'
15 existing facilities.

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

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

27 18. Based upon the facts alleged herein, Plaintiff was denied
28 full and equal access to Defendants' goods, services, facilities,

1 privileges, advantages, or accommodations within a public
2 accommodation owned leased, and/or operated by the named
3 Defendants. Defendants individually and collectively failed to
4 remove barriers as required by 42 U.S.C. 12182(a). Plaintiff is
5 informed and believes, and thus alleges that architectural
6 barriers which are structural in nature exist at the following
7 physical elements of Defendants' facilities:
8 Space Allowance and Reach Ranges, Accessible Route, Protruding
9 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
10 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts
11 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains
12 and Water Coolers, Water Closets, Toilet Stalls, Urinals,
13 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
14 Controls and Operating Mechanisms, Alarms, Detectable Warnings,
15 Signage, and Telephones. Pursuant to 42 USC section
16 12182(b)(2)(iv), Title III requires places of public accommodation
17 to remove architectural barriers that are structural in nature
18 within existing facilities. Failure to remove such barriers and
19 disparate treatment against a person who has a known association
20 with a person with a disability are forms of prohibited
21 discrimination. Accordingly, Plaintiff was subjected to
22 discrimination in violation of 42 USC 12182(b)(2)(A)(iv) and 42
23 USC 12182 (b)(2)(A)(iv); 42 USC 1981 and 42 USC 12188.

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

25 19. Based on the facts alleged in this Complaint Defendants failed
26 and refused to provide a reasonable alternative by modifying its
27 practices, policies and procedures in that they failed to have a
28 scheme, plan, or design to assist Plaintiff and/or others

1 similarly situated in entering and utilizing Defendants' services,
2 as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was
3 subjected to discrimination in violation of 42 U.S.C. section
4 12182(b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C. section 12188
5 because Plaintiff was denied equal access to Defendants' existing
6 facilities.

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

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

16 22. Under the provisions of 42 USC 12205 plaintiff is entitled to
17 an award of reasonable attorneys fees and requests that the court
18 grant such fees as are appropriate.

19 **V**

20 **SECOND CAUSE OF ACTION**

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

22 23. Plaintiff realleges the allegations of the First Cause of
23 Action as though set forth fully herein.

24 24. The provisions of 42 U.S.C. 1981 (As amended by the Civil
25 Rights Act of 1991) provide that Plaintiff as a person with
26 disabilities cannot be discriminated against with regard to the
27 ability to enter into, to make or to enforce contracts. In
28 enacting the Civil Rights Act of 1991 congress established a three

1 tier system of remedies for a broad range of discretionary
2 conduct, including violations of the Americans With Disabilities
3 Act, wherein disabled individuals such as plaintiff are denied
4 equal access to facilities they wish to conduct business in and
5 therefore are precluded from making, entering into and enforcing
6 contracts that plaintiff and others similarly situated may desire
7 to effect.

8 25. Defendants, because they have individually and/or collectively
9 denied plaintiff access to their premises, goods and services,
10 have denied him the right to make, enter into or enforce a
11 contract and therefor have violated the provisions of 42 U.S.C.
12 1991 all to Plaintiff's damage in an amount to be determined at
13 time of trial herein.

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

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

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

25 **VI**

26 **THIRD CAUSE OF ACTION**

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

1 29. Plaintiff realleges the allegations of the Second Cause of
2 Action as though set forth fully herein.

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

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

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

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

23 32. Defendants have failed and refused and continue to fail and
24 refuse to provide a reasonable alternative to allow plaintiff
25 equal access to their facility by modifying their practices,
26 policies, and procedures in that that they failed to have a
27 scheme, plan, or design to assist Plaintiff and others similarly
28 situated in entering and utilizing Defendants' goods or services

1 as required by California Civil Code section 54 and 54.1.
2 Accordingly Defendants have wrongfully discriminated against
3 Plaintiff.

4 **VII**

5 **FOURTH CAUSE OF ACTION**

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

7 33. Plaintiff realleges the allegations of the Third Cause of
8 Action as though set forth fully herein.

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

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

15 35. Defendants have violated the provisions of Civ. Code 51 (b) by
16 failing and refusing to provide free and equal access to Plaintiff
17 to their facility on the same basis as other persons not disabled.
18 By their failure to provide equal access to Plaintiff as herein
19 alleged, Defendants have also violated 42 U.S.C. section
20 12182(b)(2)(A)(iv) as provided in Cal. Civ. Codes section 51(f).
21

22 36. By reason of their acts and denial of Plaintiff's civil rights
23 Defendants also violated the provisions of Cal. Civ. Code section
24 52, which makes a person or entity in violation of Cal.Civ. Code
25 51 liable in the amount of \$4,000 per violation of said statute.
26

27 37. Defendants and each of them, at all times prior to and
28 including **April 1, 2002** respectively and continuing to the present

1 time, knew that persons with physical disabilities were denied
2 their rights of equal access to all portions of this public
3 facility. Despite such knowledge, Defendants, and each of them,
4 failed and refused to take steps to comply with the applicable
5 access statutes and despite knowledge of the resulting problems
6 and denial of civil rights suffered by Plaintiff and other
7 similarly situated persons with disabilities.
8

9
10 38. Defendants and each of them have failed and refused to take
11 action to grant full and equal access to persons with physical
12 disabilities. Defendants have carried out a course of conduct of
13 refusing to respond to, or correct complaints about unequal access
14 and have refused to comply with their legal obligations to make
15 the subject facility accessible pursuant the ADAAG and the
16 California Building Code [Title 24 of the California Code of
17 Regulations]. Such actions and continuing course of conduct by
18 Defendants, and each of them, evidence despicable conduct in
19 conscious disregard of the rights and/or safety of Plaintiff and
20 those similarly situated and thus justify an award of treble
21 damages pursuant to section 52(a) and 54.3(a) of the Cal.Civ. Code
22 or alternatively an award of punitive damages in an appropriate
23 amount.
24
25

26 39. Plaintiff has suffered emotional and physical damage and
27 continues to suffer such damages all in an amount to be determined
28 at time of trial.

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

6 **VIII**

7 **FIFTH CAUSE OF ACTION**

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

9 41. Plaintiff realleges the allegations of the Fourth Cause of
10 Action as though set forth fully herein.

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

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

15 43. Defendants, as alleged herein, are in violation of the
16 Americans With Disabilities Act and Title 24 of the California
17 Building Code, in that they have denied equal access to their
18 places of public accommodation to Plaintiff and others similarly
19 situated to Plaintiff. Defendants have failed and refused and
20 continue to refuse to comply with equal access laws all in
21 violation of 42 USC 12181-12183; 42 USC 1981; and 42 USC 12188. In
22 addition the complained of acts are in violation of California
23 Civil Code Sections 51, 52, 54, and 54.1, California Health and
24 Safety Code section 19955 and California Government Code section
25 12948 all of which require Defendants to provide equal access to
26 their facility to disabled persons such as plaintiff. Defendants
27
28

1 are also in violation of the indicated statutes because of their
2 failure to remove architectural barriers, which prevent equal
3 access to their facility by disabled persons and because of their
4 failure to modify their practices, policies and procedures to have
5 a scheme, plan, or design to assist Plaintiff and others similarly
6 situated to enter and utilize Defendants' services as required by
7 the Unruh Act.
8

9 44. Defendants' acts are unlawful and unfair and are therefore in
10 violation of California Business and Professions Code section
11 17200.
12

13 45. Pursuant to the provisions of California Business and
14 Professions Code section 17201 Plaintiff is a person as identified
15 within said section and therefore allowed to bring this action on
16 behalf of himself and the general public to effectuate California
17 Business and Professions Code 17200 as provided for within
18 Business and Professions Code section 17204.
19

20 46. Thus, Plaintiff, under Bus & Prof. Code section 17200 seeks
21 injunctive relief, on behalf of himself and the general public,
22 requiring Defendants to remedy the disabled access violations
23 present within Defendants' facility and that Defendants be ordered
24 to cease and desist from continuing in noncompliance with disabled
25 access statutes and regulations.
26

27 **IX**

28 **SIXTH CAUSE OF ACTION**

(Negligent Infliction of Emotional Distress)

1
2 47. Plaintiff relleges the allegations of the Fourth Cause of
3 Action as though set forth fully herein.
4

5 48. Defendants and each of them owed a duty to Plaintiff to make
6 their facility accessible and to keep Plaintiff reasonably safe
7 from known dangers and risks of harm. This duty arises by virtue
8 of the legal duties proscribed by various federal and state
9 statutes including, but not limited to, ADA, ADAAG, California
10 Civil Code sections 51, 52, 54, 54.1 and Title 24 of the
11 California Code of Regulations. Defendants had a duty of due care
12 not to do or cause anything to happen that would subject Plaintiff
13 to undue stress, embarrassment, chagrin, and discouragement.
14

15 49. Defendants breached their duty of care to Plaintiff by the
16 actions and inaction complained of herein and as a result thereof
17 Plaintiff was shocked, discouraged, embarrassed and outraged at
18 the callousness and disregard of Defendants. Defendants knew or
19 had reason to know that by denying Plaintiff equal access to their
20 facility and failing and refusing to remove architectural
21 barriers, Plaintiff would suffer emotional and/or mental distress
22 because of such discrimination and disparate treatment. Defendants
23 breached their duty of care to plaintiff by the perpetration of
24 the acts outlined herein.
25
26
27
28

1 50. As a proximate result of the actions of Defendants Plaintiff
2 did suffer emotional and mental stress and pain and suffering all
3 in an amount to be determined at time of trial.
4

5 X

6 **SEVENTH CAUSE OF ACTION**

7 **(Intentional Infliction of Emotional Distress)**

8 51. Plaintiff realleges the allegations of the Fourth Cause of
9 Action as though set forth fully herein.

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

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

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

19 **DEMAND FOR JURY**

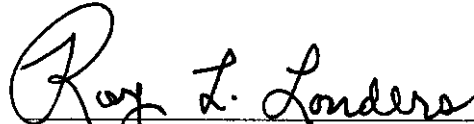
20 55. Plaintiff respectfully requests that the claims made herein be
21 heard and determined by a jury.

22 WHEREFORE PLAINTIFF PRAYS:

- 23 1. For general damages according to proof;
24 2. For special damages according to proof;
25 3. For damages pursuant to Cal. Civil Code section 52, in the
26 amount of \$4,000 for each and every offense of California Civil
27 Code section 51, Title 24 of the California Building Code and the
28 Americans With Disabilities Act.

- 1 4. For Injunctive relief pursuant to 42 U.S.C. 12188(a) and
- 2 California Business and Professions Code section 17200
- 3 5. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42
- 4 U.S.C. 1981, 42 U.S.C. 12205 and Cal. Civ. Code section 55;
- 5 6. For treble damages pursuant to Cal. Civ. Code 52 (a);
- 6 7. For punitive damages according to proof;
- 7 8. For a Jury Trial;
- 8 9. For costs of suit incurred herein and;
- 9 10. For such other and further relief as the court deems proper.

10 Respectfully submitted,

11 
12 Attorney for Plaintiff, GAYNOR CARLOCK

The JS-44 civil cover sheet and the information obtained 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

GAYNOR CARLOCK

San Diego

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS McDONALD'S RESTAURANT, PHILIP PALUMBO, BPP RETAIL, LLC, AND DOES 1-10,

Inclusive San Diego County of Residence of Plaintiff (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED IN DISTRICT OF CALIFORNIA

(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)

BY: '02 CV 0995 J (JAH) DEPUTY

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 1 DEF
- Citizen of Another State 2 2 DEF
- Citizen or Subject of a Foreign Country 3 3 DEF
- Incorporated or Principal Place of Business In This State 4 4 DEF
- Incorporated and Principal Place of Business In Another State 5 5 DEF
- Foreign Nation 6 6 DEF

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	PERSONAL INJURY <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	<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 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC 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
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <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	LABOR <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	SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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: DEMAND \$ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE: _____ DOCKET NUMBER: _____

DATE: 5/20/02 SIGNATURE OF ATTORNEY OF RECORD: Roy L. Landers

FOR OFFICE USE ONLY: RECEIPT # 82791 AMOUNT 150000 APPLYING IFP: _____ JUDGE: _____ MAG. JUDGE: _____

5/21/02 VB