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3:03-CV-01609 ORGANIZATION FOR V. CARLS JR RESTAURANTS

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FILED

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**ORGANIZATION FOR ACCESSIBLE
RIGHTS IN THE NEW MILLENIUM
SUING ON BEHALF OF THE ESTATE
OF WALTER LEE DEGROOTE,
DOROTHY DEGROOTE AND ITS
MEMBERS; THE ESTATE OF WALTER
LEE DEGROOTE; and DOROTHY
DEGROOTE, An Individual,**

Plaintiffs,

v.

**CARL'S JR. RESTAURANTS; CARL
KARCHER ENTERPRISES, INC.;
STODDARD SUSAN J TR
(Trustee/Conservator); SUSAN
J STODDARD;**

And

DOES 1 THROUGH 10, Inclusive.

Defendants.

Case No. **03 CV 1609K** **AJB**

CIVIL COMPLAINT:

**DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS**

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE 19995;
BUSINESS & PROFESSIONS CODE
17200 et. seq.]

NEGLIGENCE

[CIVIL CODE 1714(a), 2338,
3333, 3294; EVIDENCE CODE
669(a)]

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b); L.R.
38.1

INTRODUCTION

Plaintiffs ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE NEW

ca

1 MILLENIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE DEGROOTE,
2 DOROTHY DEGROOTE AND ITS MEMBERS; THE ESTATE OF WALTER LEE
3 DEGROOTE; and DOROTHY DEGROOTE, An Individual, herein complain, by
4 filing this Civil Complaint in accordance with rule 8 of the
5 Federal Rules of Civil Procedure in the Judicial District of the
6 United States District Court of the Southern District of
7 California, that Defendants have in the past, and presently are,
8 engaging in discriminatory practices against individuals with
9 disabilities, specifically including minorities with disabilities.
10 Plaintiffs allege this civil action and others substantial similar
11 thereto are necessary to compel access compliance because
12 empirical research on the effectiveness of Title III of the
13 Americans with Disabilities Act indicates the Title has failed to
14 achieve full and equal access simply by the executive branch of
15 the Federal Government funding and promoting voluntary compliance
16 efforts. Further, empirical research shows when individuals with
17 disabilities give actual notice of potential access problems to
18 places of public accommodation without a federal civil rights
19 civil action, the public accommodations do not remove the access
20 barriers. Therefore, Plaintiffs make the following allegations in
21 this federal civil rights action:
22

23 **JURISDICTION AND VENUE**

24 1. The federal jurisdiction of this action is based on the
25 Americans with Disabilities Act, 42 United States Code 12101-
26 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
27 District of the United States District Court of the Southern
28 District of California is in accordance with 28 U.S.C. § 1391(b)

1 because a substantial part of Plaintiffs' claims arose within the
2 Judicial District of the United States District Court of the
3 Southern District of California.
4

5 **SUPPLEMENTAL JURISDICTION**

6 2. The Judicial District of the United States District Court of
7 the Southern District of California has supplemental jurisdiction
8 over the state claims as alleged in this Complaint pursuant to 28
9 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
10 in this action is because all the causes of action or claims
11 derived from federal law and those arising under state law, as
12 herein alleged, arose from common nucleus of operative facts. The
13 common nucleus of operative facts, include, but are not limited
14 to, the incidents where deceased Plaintiff's Member WALTER LEE
15 DEGROOTE; and Plaintiff's Member and Plaintiff DOROTHY DEGROOTE
16 were denied full and equal access to Defendants' facilities,
17 goods, and/or services in violation of both federal Defendants'
18 facilities as described within paragraphs 7 through 18 of this
19 Complaint. Defendant CARL'S JR. RESTAURANTS is located at 624
20 Fletcher Parkway, El Cajon, California, 92020. Plaintiffs are
21 informed and believe and thereon allege that CARL KARCHER
22 ENTERPRISES, INC. is the owner, operator, franchiser, franchisee,
23 and/or lessor of the CARL'S JR. RESTAURANTS. Defendant CARL
24 KARCHER ENTERPRISES, INC. is located at P.O. Box 4349, Anaheim,
25 California, 92803. Plaintiffs are further informed and believe
26 and thereon allege that Defendants STODDARD SUSAN J TR
27 (Trustee/Conservator); and SUSAN J STODDARD are the owners,
28

1 operators and or lessors of the property located at 624 Fletcher
2 Parkway, El Cajon, California 92020-2515, Assessor's Parcel Number
3 482.170.69. Defendants STODDARD SUSAN J TR (Trustee/Conservator);
4 and SUSAN J STODDARD are located at 14102 Peaceful Valley Ranch
5 Road, Jamul, California 91935.

6 4. The words "Plaintiffs" and "Plaintiff" as used herein
7 specifically include the ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE
8 NEW MILLENNIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE
9 DEGROOTE, DOROTHY DEGROOTE AND ITS MEMBERS; THE ESTATE OF WALTER
10 LEE DEGROOTE; and DOROTHY DEGROOTE, An Individual, and persons
11 associated with its Members who accompanied Members to Defendants'
12 facilities.

13 5. Defendants Does 1 through 10, were at all times relevant
14 herein subsidiaries, employers, employees, and/or agents of CARL'S
15 JR. RESTAURANTS; CARL KARCHER ENTERPRISES, INC.; STODDARD SUSAN J
16 TR (Trustee/Conservator); and SUSAN J STODDARD. Plaintiffs are
17 ignorant of the true names and capacities of Defendants sued
18 herein as Does 1 through 10, inclusive, and therefore sues these
19 Defendants by such fictitious names. Plaintiffs will pray leave
20 of the court to amend this complaint to allege the true names and
21 capacities of the Does when ascertained.

22 6. Plaintiffs are informed and believe, and thereon allege,
23 that Defendants and each of them herein were, at all times
24 relevant to the action, the owner, franchisee, lessee, general
25 partner, limited partner, agent, employee, representing partner,
26 or joint venturer of the remaining Defendants and were acting
27 within the course and scope of that relationship. Plaintiffs are
28

1 further informed and believe, and thereon allege, that each of the
2 Defendants herein gave consent to, ratified, and/or authorized the
3 acts alleged herein to each of the remaining Defendants.

4 **CONCISE SET OF FACTS**

5 7. Deceased Plaintiff's Member WALTER LEE DEGROOTE had a physical
6 impairment and due to this impairment he has learned to
7 successfully operate a wheelchair.

8 8. On August 11, 2002, deceased Plaintiff's Member WALTER LEE
9 DEGROOTE; Plaintiff's Member and Plaintiff DOROTHY DEGROOTE went
10 to Defendants' CARL'S JR. RESTAURANTS establishment to utilize
11 their goods and/or services.

12 9. When deceased Plaintiff's Member WALTER LEE DEGROOTE;
13 Plaintiff's Member and Plaintiff DOROTHY DEGROOTE patronized
14 Defendants' CARL'S JR. RESTAURANT establishment, they had
15 difficulty using the entrance, customer service counter, seating
16 and restroom facilities at Defendants' establishment because they
17 failed to comply with ADA Access Guidelines For Buildings and
18 Facilities (hereafter referred to as "ADAAG") and/or California's
19 Title 24 Building Code Requirements. Defendants failed to remove
20 obstructions in the entrance, customer service counter, seating,
21 restroom and payphone facilities at Defendants' establishment.

22 10. Deceased Plaintiff's Member WALTER LEE DEGROOTE; Plaintiff's
23 Member and Plaintiff DOROTHY DEGROOTE personally experienced
24 difficulty with said access barriers in Defendants' CARL'S JR.
25 RESTAURANTS establishment. For example, the front entrance to
26 Defendant's facilities fails to be accessible, as there is a loose
27 mat placed in front of the entrance door posing a hazard; the
28

1 requirement is for mats to securely fastened at all four edges or
2 be removed.

3 11. The customer service counter is too high to be accessible, as
4 it is thirty-six inches (36"); the requirement for counters in
5 which food is provided, is for a maximum height of thirty-four
6 inches (34").

7 12. The seating located within this facility fails to be
8 accessible. For example, there are eighty (80) seats, all of
9 which provide a knee clearance depth of only eleven inches; the
10 requirement for a restaurant of this size is to provide a minimum
11 of four (4) seats that have a knee clearance of no more than
12 nineteen inches (19").

13 13. The restroom located within the facility fails to be
14 accessible. For example, the distance between the commode and the
15 toilet paper dispenser is twenty-five inches (25"); the
16 requirement is for a maximum distance of twelve inches (12"). The
17 soap dispenser is mounted too high at forty-two inches (42") high
18 and is blocked by a trash can; the requirement to mount dispensers
19 no higher than forty inches (40") and to maintain clear floor
20 space so as to not prevent disabled patrons from accessing it.

21 Lastly, the pressure of the entrance door leading to the restroom
22 is too heavy at seven pounds; the requirement is for doors to not
23 require more than five pounds of pressure to operate

24 14. In addition to the violations personally experienced by
25 Plaintiffs, the public payphone also fails to be accessible, as it
26 lacks the required signage indicating volume control is installed;
27 this is required.
28

1 15. Based on these facts, Plaintiffs allege they were
2 discriminated against each time they patronized Defendants'
3 establishment.

4 16. Pursuant to federal and state law, Defendants are required
5 to remove barriers to their existing facilities. Further,
6 Defendants had actual knowledge of their barrier removal duties
7 under the Americans with Disabilities Act and the Civil Code
8 before January 26, 1992. Also, Defendants should have known that
9 individuals with disabilities are not required to give notice to a
10 governmental agency before filing suit alleging Defendants failed
11 to remove architectural barriers. Plaintiffs believes and herein
12 allege Defendants' facilities have access violations not directly
13 experienced by Plaintiffs which preclude or limit access by others
14 with disabilities, including, but not limited to, Space Allowance
15 and Reach Ranges, Accessible Route, Protruding Objects, Ground and
16 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
17 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
18 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
19 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
20 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
21 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
22 Accordingly, Plaintiffs allege Defendants are required to remove
23 all architectural barriers, known or unknown. Also, Plaintiffs
24 allege Defendants are required to utilize the ADA checklist for
25 Readily Achievable Barrier Removal approved by the United States
26 Department of Justice and created by Adaptive Environments.

27 17. Plaintiffs desire to return to Defendants' place of business
28

1 in the immediate future.

2 18. Plaintiffs were extremely upset due to Defendants' conduct.

3 Further, deceased Plaintiff's Member WALTER LEE DEGROOTE
4 experienced pain in his legs, back, arms, shoulders and wrists
5 when he attempted to enter, use, and exit Defendants'
6 establishment.

7 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

8 19. CARL'S JR. RESTAURANTS; and CARL KARCHER ENTERPRISES, INC.
9 are the commercial tenants of the subject property. STODDARD
10 SUSAN J TR (Trustee/Conservator); and SUSAN J STODDARD are the
11 commercial landlord of the subject property.

12 20. Plaintiffs aver that the Defendants are liable for the
13 following claims as alleged below:
14

15 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

16 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The**
17 **Americans With Disabilities Act Of 1990**

18 CLAIM I: **Denial Of Full And Equal Access**

19 21. Based on the facts plead at ¶¶ 7-18 above and elsewhere
20 in this complaint, Plaintiffs were denied full and equal access to
21 Defendants' goods, services, facilities, privileges, advantages,
22 or accommodations. Plaintiffs allege Defendants are a public
23 accommodation owned, leased and/or operated by Defendants.
24 Defendants' existing facilities and/or services failed to provide
25 full and equal access to Defendants' facility as required by 42
26 U.S.C. § 12182(a). Thus, Plaintiffs were subjected to
27 discrimination in violation of 42 United States Code
28

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiffs were
2 denied equal access to Defendants' existing facilities.

3 22. Deceased Plaintiff's Member WALTER LEE DEGROOTE had physical
4 impairments as alleged in ¶ 7 above because his conditions
5 affected one or more of the following body systems: neurological,
6 musculoskeletal, special sense organs, and/or cardiovascular.

7 Further, his said physical impairment substantially limited one or
8 more of the following major life activities: walking. In
9 addition, deceased Plaintiff's Member WALTER LEE DEGROOTE could
10 not perform one or more of the said major life activities in the
11 manner, speed, and duration when compared to the average person.
12 Moreover, deceased Plaintiff's Member WALTER LEE DEGROOTE had a
13 history of or has been classified as having a physical impairment
14 as required by 42 U.S.C. § 12102(2)(A).

15 CLAIM II: Failure To Make Alterations In Such A Manner That The
16 Altered Portions Of The Facility Are Readily Accessible And Usable
17 By Individuals With Disabilities

18 23. Based on the facts plead at ¶¶ 7-18 above and elsewhere in
19 this complaint, Plaintiffs were denied full and equal access to
20 Defendants' goods, services, facilities, privileges, advantages,
21 or accommodations within a public accommodation owned, leased,
22 and/or operated by Defendants. Defendants altered their facility
23 in a manner that affects or could affect the usability of the
24 facility or a part of the facility after January 26, 1992. In
25 performing the alteration, Defendants failed to make the
26 alteration in such a manner that, to the maximum extent feasible,
27 the altered portions of the facility are readily accessible to and
28

1 usable by individuals with disabilities, including individuals who
2 use wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

3 24. Additionally, the Defendants undertook an alteration that
4 affects or could affect the usability of or access to an area of
5 the facility containing a primary function after January 26, 1992.
6 Defendants further failed to make the alterations in such a manner
7 that, to the maximum extent feasible, the path of travel to the
8 altered area and the bathrooms serving the altered area, are
9 readily accessible to and usable by individuals with disabilities
10 in violation 42 U.S.C. §12183(a)(2).

11 25. Pursuant to 42 U.S.C. §12183(a), this failure to make the
12 alterations in a manner that, to the maximum extent feasible, are
13 readily accessible to and usable by individuals with disabilities
14 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
15 Therefore, Defendants discriminated against Plaintiffs in
16 violation of 42 U.S.C. § 12182(a).

17 26. Thus, Plaintiffs were subjected to discrimination in
18 violation of 42 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42
19 U.S.C. §12188 because said Members and deceased Plaintiff's Member
20 WALTER LEE DEGROOTE were denied equal access to Defendants'
21 existing facilities.

22
23 CLAIM III: **Failure To Remove Architectural Barriers**

24 27. Based on the facts plead at ¶¶ 7-18 above and elsewhere in
25 this complaint, Plaintiffs were denied full and equal access to
26 Defendants' goods, services, facilities, privileges, advantages,
27 or accommodations within a public accommodation owned, leased,
28 and/or operated by Defendants. Defendants failed to remove

1 barriers as required by 42 U.S.C. § 12182(a). Plaintiffs are
2 informed and believe, and thus allege that architectural barriers
3 which are structural in nature exist at the following physical
4 elements of Defendants' facilities: Space Allowance and Reach
5 Ranges, Accessible Route, Protruding Objects, Ground and Floor
6 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
7 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
8 Doors, Entrances, Drinking Fountains and Water Coolers, Water
9 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
10 Storage, Handrails, Grab Bars, and Controls and Operating
11 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

12 Title III requires places of public accommodation to remove
13 architectural barriers that are structural in nature to existing
14 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
15 Failure to remove such barriers and disparate treatment against a
16 person who has a known association with a person with a disability
17 are forms of discrimination. [See 42 United States Code
18 12182(b)(2)(A)(iv).] Thus, Plaintiffs were subjected to
19 discrimination in violation of 42 United States Code
20 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Members and
21 deceased Plaintiff's Member WALTER LEE DEGROOTE were denied equal
22 access to Defendants' existing facilities.

23
24 CLAIM IV: **Failure To Modify Practices, Policies And Procedures**

25 28. Based on the facts plead at ¶¶ 7-18 above and elsewhere in
26 this complaint, Defendants failed and refused to provide a
27 reasonable alternative by modifying its practices, policies and
28 procedures in that they failed to have a scheme, plan, or design

1 to assist Plaintiffs and/or others similarly situated in entering
2 and utilizing Defendants' services, as required by 42 U.S.C. §
3 12188(a). Thus, said Members and deceased Plaintiff's Member were
4 subjected to discrimination in violation of 42 United States Code
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Members and
6 deceased Plaintiff's Member WALTER LEE DEGROOTE were denied equal
7 access to Defendants' existing facilities.

8 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
9 CALIFORNIA ACCESSIBILITY LAWS

10 CLAIM I: Denial Of Full And Equal Access

11 29. Based on the facts plead at ¶¶ 7-18 above and elsewhere in
12 this complaint, Plaintiffs were denied full and equal access to
13 Defendants' goods, services, facilities, privileges, advantages,
14 or accommodations within a public accommodation owned, leased,
15 and/or operated by Defendants as required by Civil Code Sections
16 54 and 54.1. Defendants' facility violated California's Title 24
17 Accessible Building Code by failing to provide access to
18 Defendants' facilities due to violations pertaining to the Space
19 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
20 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
21 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
22 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
23 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
24 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
25 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
26 Telephones.

27
28 30. These violations denied Plaintiffs full and equal access to

1 Defendants' facility. Thus, said Members and deceased Plaintiff's
2 Member WALTER LEE DEGROOTE were subjected to discrimination
3 pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiffs were
4 denied full, equal and safe access to Defendants' facility,
5 causing severe emotional distress.

6 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

7 31. Based on the facts plead at ¶¶ 7-18 above and elsewhere
8 herein this complaint, Defendants failed and refused to provide a
9 reasonable alternative by modifying its practices, policies, and
10 procedures in that they failed to have a scheme, plan, or design
11 to assist Plaintiffs and/or others similarly situated in entering
12 and utilizing Defendants' services as required by Civil Code §
13 54.1. Thus, said Members and deceased Plaintiff's Member WALTER
14 LEE DEGROOTE were subjected to discrimination in violation of
15 Civil Code § 54.1.

16 **CLAIM III: Violation Of The Unruh Act**

17 32. Based on the facts plead at ¶¶ 7-18 above and elsewhere
18 herein this complaint and because Defendants violated the Civil
19 Code § 51 by failing to comply with 42 United States Code
20 12182(b)(2)(A)(iv), Defendants did and continue to discriminate
21 against Plaintiffs and persons similarly situated in violation of
22 Civil Code §§ 51, 52, and 54.1.

23 **Treble Damages Pursuant To Claims I, II, III Under The California**
24 **Accessibility Laws**

25 33. Defendants, each of them, at times prior to and including
26 during the month of August, 2002, respectively, and continuing to
27 the present time, knew that persons with physical disabilities
28

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

7 Defendants, and each of them, have failed and refused to take
8 action to grant full and equal access to persons with physical
9 disabilities in the respects complained of hereinabove.

10 Defendants, and each of them, have carried out a course of conduct
11 of refusing to respond to, or correct complaints about, denial of
12 disabled access and have refused to comply with their legal
13 obligations to make the subject TOYS ETC facility accessible
14 pursuant to the Americans With Disability Act Access Guidelines
15 (ADAAG) and Title 24 of the California Code of Regulations (also
16 known as the California Building Code). Such actions and
17 continuing course of conduct by Defendants, and each of them,
18 evidence despicable conduct in conscious disregard of the rights
19 and/or safety of Plaintiffs and of other similarly situated
20 persons, justifying an award of treble damages pursuant to
21 sections 52(a) and 54.3(a) of the California Civil Code.

22
23 34. Defendants', and each of their, actions have also been
24 oppressive to persons with physical disabilities and of other
25 members of the public, and have evidenced actual or implied
26 malicious intent toward those members of the public, such as
27 Plaintiffs and other persons with physical disabilities who have
28 been denied the proper access to which they are entitled by law.

1 Further, Defendants', and each of their, refusals on a day-to-day
2 basis to correct these problems evidence despicable conduct in
3 conscious disregard for the rights of Plaintiffs and other members
4 of the public with physical disabilities.

5 35. Plaintiffs pray for an award of treble damages against
6 Defendants, and each of them, pursuant to California Civil Code
7 sections 52(a) and 54.3(a), in an amount sufficient to make a more
8 profound example of Defendants and encourage owners and operators
9 of other public facilities from willful disregard of the rights of
10 persons with disabilities. Plaintiffs do not know the financial
11 worth of Defendants, or the amount of treble damages sufficient to
12 accomplish the public purposes of section 52(a) of the California
13 Civil Code and section 54.3 of the California Civil Code.

14 36. Wherefore, Plaintiffs pray for damages and relief as
15 hereinafter stated.
16

17
18 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS - Violation of**
19 **Business and Professions Code section 17200 et seq.**

20 37. Plaintiffs incorporate by reference herein the facts plead
21 at ¶¶ 7-18 above and elsewhere in this complaint.

22 38. Defendants failed to remove obstructions in the entrance,
23 customer service counter, restroom and payphone facilities in
24 Defendants' CARL'S JR. RESTAURANTS establishment. Pursuant to
25 federal law, Defendants are required to remove barriers to their
26 existing facilities. Title III of the Americans With Disabilities
27 Act requires places of public accommodation to remove
28 architectural barriers that are structural in nature to existing

1 facilities. [42 United States Code 12182(b)(2)(A)(iv).] Failure
2 to remove such barriers and disparate treatment against a person
3 who has a known association with a person with a disability are
4 forms of discrimination. [See 42 United States Code
5 12182(b)(2)(A)(iv).] Thus, Plaintiffs were subjected to
6 discrimination in violation of 42 United States Code
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Members and
8 deceased Plaintiff's Member WALTER LEE DEGROOTE were denied equal
9 access to Defendants' existing facilities. Also, Defendants'
10 facilities failed to provide full and equal access to Defendants'
11 facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiffs
12 were subjected to discrimination in violation of 42 United States
13 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiffs
14 were denied equal access to Defendants' existing facilities.
15 Additionally, as a result of said access barriers, Defendants
16 failed and refused to provide a reasonable alternative by
17 modifying its practices, policies and procedures in that they
18 failed to have a scheme, plan, or design to assist Plaintiffs
19 and/or others similarly situated in entering and utilizing
20 Defendants' services, as required by 42 U.S.C. § 12188(a). Thus,
21 said Members and deceased Plaintiff's Member WALTER LEE DEGROOTE
22 were subjected to discrimination in violation of 42 United States
23 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Members
24 and deceased Plaintiff's Member WALTER LEE DEGROOTE were denied
25 equal access to Defendants' existing facilities.
26

27 39. Pursuant to state law, Defendants are also required to remove
28 barriers to their existing facilities. These violations denied

1 Plaintiffs full and equal access to Defendants' facilities. Thus,
2 said Members and deceased Plaintiff's Member WALTER LEE DEGROOTE
3 were subjected to discrimination pursuant to Civil Code §§ 51, 52,
4 and 54.1 because Plaintiffs were denied full, equal and safe
5 access to Defendants' facility. Further, Defendants' facility,
6 and other goods, services, and/or facilities provided to the
7 public by Defendants are not accessible to and usable by persons
8 with disabilities as required by Health and Safety Code § 19955
9 which requires private entities to make their facility accessible
10 before and after remodeling, and to remove architectural barriers
11 on and after AB 1077 went into effect. Additionally, Defendants
12 failed and refused to provide a reasonable alternative by
13 modifying its practices, policies, and procedures in that they
14 failed to have a scheme, plan, or design to assist Plaintiffs
15 and/or others similarly situated in entering and utilizing
16 Defendants' services as required by Civil Code § 54.1. Thus, said
17 Members and deceased Plaintiff's Member WALTER LEE DEGROOTE were
18 subjected to discrimination in violation of Civil Code § 54.1.
19 Also, under the Unruh Act, Defendants violated the Civil Code § 51
20 by failing to comply with 42 United States Code
21 12182(b)(2)(A)(iv), Defendants did and continue to discriminate
22 against Plaintiffs and persons similarly situated in violation of
23 Civil Code §§ 51, 52, and 54.1. Further, Defendants had actual
24 knowledge of their barrier removal duties under the Americans with
25 Disabilities Act, the California Civil Code, and the California
26 Health & Safety Code before January 26, 1992.

27
28 40. Business and Professions Code section 17200 defines "unfair

1 competition" and prohibited activities as, ". . . **any unlawful,**
2 **unfair or fraudulent business act or practice** and unfair,
3 deceptive, untrue or misleading advertising and any act prohibited
4 by Chapter 1 (commencing with Section 17500) of Part 3 of Division
5 7 of the Business and Professions Code." (emphasis added).

6 Defendants' acts and omissions alleged herein are violations of
7 the above-enumerated federal and state statutory requirements and
8 public policy and therefore constitute unfair competition and/or
9 prohibited activities as such violations are *unlawful, unfair or*
10 *fraudulent business acts or practices*. Defendants' alleged
11 unlawful, unfair, or fraudulent business acts or practices are
12 specifically prohibited by the specific introductory language of
13 B&P section 17200 that is stated in the conjunctive.

14 Consequently, Plaintiffs allege that Defendants' acts and
15 omissions constitute a violation specifically of this section
16 17200 of the Business and Professions Code.

17
18 41. Plaintiffs seek injunctive relief requiring Defendants to
19 remedy the disabled access violations present at the Defendants'
20 facilities. Ancillary to this injunctive relief, Plaintiffs also
21 request restitution for amounts paid by Plaintiffs who attempted
22 to visit and patronize Defendants' facilities during the time
23 period that the subject premises have been in violation of the
24 disabled access laws of the State of California.

25 42. Plaintiffs seek, on behalf of the general public, injunctive
26 relief requiring Defendants to comply with the disabled access
27 laws of the State of California at facilities throughout the State
28 of California built, owned, operated, and/or controlled by

1 Defendants.

2 43. WHEREFORE, Plaintiffs pray for judgment as hereinafter set
3 forth.

4 FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS- Negligence

5 44. Based on the facts plead at ¶¶ 7-18 above and elsewhere in
6 this complaint, Defendants owed Plaintiffs a statutory duty to
7 make their facility accessible and owed Plaintiffs a duty to keep
8 Plaintiffs reasonably safe from known dangers and risks of harm.
9 This said duty arises by virtue of legal duties proscribed by
10 various federal and state statutes including, but not limited to,
11 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
12 California Administrative Code and applicable 1982 Uniform
13 Building Code standards as amended.

14 45. Title III of the ADA mandates removal of architectural
15 barriers and prohibits disability discrimination. As well,
16 Defendants' facility, and other goods, services, and/or facilities
17 provided to the public by Defendants are not accessible to and
18 usable by persons with disabilities as required by Health and
19 Safety Code § 19955 which requires private entities to make their
20 facility accessible before and after remodeling, and to remove
21 architectural barriers on and after AB 1077 went into effect.

22 46. Therefore, Defendants engaged in discriminatory conduct in
23 that they failed to comply with known duties under the ADA, ADAAG,
24 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
25 should have known that their acts of nonfeasance would cause
26 Plaintiffs emotional, bodily and personal injury. Plaintiffs
27 allege that there was bodily injury in this matter because when
28

1 Plaintiffs attempted to enter, use, and exit Defendants'
2 establishment, deceased Plaintiff's Member WALTER LEE DEGROOTE
3 experienced pain in his legs, back, arms, shoulders, and wrists.
4 Plaintiffs further allege that such conduct was done in reckless
5 disregard of the probability of said conduct causing Plaintiffs to
6 suffer bodily or personal injury, anger, embarrassment,
7 depression, anxiety, mortification, humiliation and distress.
8 Plaintiffs allege that such conduct caused Plaintiffs to suffer
9 the injuries of mental and emotional distress, including, but not
10 limited to, anger, embarrassment, depression, anxiety,
11 mortification, humiliation, distress, and fear of physical injury.
12 Plaintiffs additionally allege that such conduct caused
13 Plaintiffs to suffer damages as a result of these injuries.
14

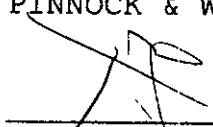
15 DEMAND FOR JUDGMENT FOR RELIEF:

- 16 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
17 3281, and 3333;
18
19 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
20 each and every offense of Civil Code § 51, Title 24 of the
21 California Building Code, ADA, and ADA Accessibility Guidelines;
22
23 C. In the alternative to the damages pursuant to Cal. Civil
24 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
25 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
26 54.1, Title 24 of the California Building Code, ADA, and ADA
27 Accessibility Guidelines;
28
29 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and

- 1 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
- 2 Defendants to remove all architectural barriers in, at, or on
- 3 their facilities related to the following: Space Allowance and
- 4 Reach Ranges, Accessible Route, Protruding Objects, Ground and
- 5 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
- 6 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
- 7 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
- 8 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
- 9 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
- 10 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
- 11
- 12 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
- 13 § 12205, and Cal. Civil Code § 55;
- 14 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
- 15 and 54.3(a);
- 16 G. For Restitution pursuant to Business and Professions section
- 17 17200;
- 18 H. A Jury Trial and;
- 19 I. For such other further relief as the court deems proper.
- 20
- 21

22 Respectfully submitted:

23
24 Dated: August 11, 2003

PINNOCK & WAKEFIELD, A.P.C.

By: _____
THEODORE A. PINNOCK, ESQ.
MICHELLE L. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

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 SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS ORGANIZATION FOR ACCESSIBLE RIGHTS IN THE NEW MILLENNIUM SUING ON BEHALF OF THE ESTATE OF WALTER LEE DEGROOTE, DOROTHY DEGROOTE, AND ITS MEMBERS; THE ESTATE OF WALTER LEE DEGROOTE; and DOROTHY DEGROOTE, An Individual

DEFENDANTS CARL'S JR. RESTAURANTS; CARL KÄRCHER ENTERPRISES, INC.; STODDARD SUSAN J TR (Trustee/Conservator); SUSAN J STODDARD; And DOES 1 Through 10, Inclusive.

03 AUG 11 PM 4:21

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego (IN U.S. PLAINTIFF CASES ONLY) U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Theodore A. Pinnock, Esq. SBN: 153434 Michelle L. Wakefield, Esq. SBN 200424 Pinnock & Wakefield, A.P.C. 3033 Fifth Avenue, Suite 410 San Diego, California 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN) 03 CV 1609K AJB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases 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)

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

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 302 Personal Injury, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY) 1 Original Proceeding 2 Removal 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

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND \$ TO BE DETERMINED AT TRIAL Check YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE August 8, 2003

SIGNATURE OF ATTORNEY OF RECORD

Handwritten notes: CB \$150 08/11/03 96300