

Jason K. Singleton, State Bar #166170
Richard E. Grabowski, State Bar # 236207
SINGLETON LAW GROUP
611 "L" Street, Suite A
Eureka, CA 95501
lawgroup@sbcglobal.net

(707) 441-1177
FAX 441-1533

Attorney for Plaintiff, GYPSIE JONES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GYPSIE JONES,

Plaintiff,

v.

WW LODGING INC., a Delaware
corporation, dba RADISSON
FISHERMAN'S WHARF HOTEL, BLOCK 14
ASSOCIATES, and DOES ONE to FIFTY,
inclusive,

Defendants.

Case No. C-06-4224 SI

Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES: DENIAL OF CIVIL
RIGHTS OF A DISABLED PERSON IN
VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990; VIOLATION
OF CALIFORNIA'S CIVIL RIGHTS
STATUTES

JURY TRIAL REQUESTED

Plaintiff **GYPSIE JONES** complains of defendants **WW LODGING INC., a Delaware corporation, dba RADISSON FISHERMAN'S WHARF HOTEL, BLOCK 14 ASSOCIATES, and DOES ONE to FIFTY, inclusive,** and alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction of this action pursuant to 28 **USC** § 1331 for violations of the ***Americans with Disabilities Act of 1990***, (42 **USC** § 12101, *et seq.*) Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same facts, are also brought under California law, including, but not limited to, violations of ***California Health & Safety Code*** § 19955, *et seq.*, including ***California Code of Regulations***, Title 24, § 19959, ***California Civil Code*** §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55.

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

INTRODUCTION

3. **RADISSON FISHERMAN'S WHARF HOTEL** is located at 250 Beach Street, San Francisco, California. Said hotel is owned and operated by defendants **WW LODGING INC., a Delaware corporation, BLOCK 14 ASSOCIATES, and DOES ONE to FIFTY, inclusive.**

Defendants **WW LODGING INC., a Delaware corporation, BLOCK 14 ASSOCIATES, and DOES ONE to FIFTY, inclusive**, operate an establishment for services to the public and at which Defendants failed to provide barrier free access to said establishment in conformity with both Federal and California legal requirements. Further, Defendants failed to provide compliance as follows:

Parking and Access Path:

- 1) There are no van-accessible parking spaces in violation of California Title 24 § 1129B.4(2.), ADAAG 4.6.3.
- 2) The presented non-compliant accessible parking space lacks the appropriate signage in violation of California Title 24 § 1129B.5 and ADAAG 4.6.4.
- 3) The non-compliant accessible parking spaces loading an unloading aisle is not marked "No Parking" in violation of California Title 24 § 1129B.4 (1).
- 4) The non-compliant accessible parking spaces loading an unloading aisle is less than 5 feet wide in violation of California Title 24 § 1129B.4(1).

Room: Plaintiff requested a wheelchair accessible room with a roll in shower, in the room let to Plaintiff (Suite 4000):

- 5) The sign on the entrance to the room is a non-compliant International Symbol of Accessibility in violation of California Title 24 § 1117B.5 and ADAAG 4.1 and 4.13.
- 6) The curtain rods are too high to reach to close the curtains in violation of California Title 24 § 1117B.6

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- 7) The air conditioning/heating controls are obstructed by furniture and fixtures in violation of California Title 24 § 1117B.6
- 8) The window controls are obstructed by furniture and fixtures and are too high in violation of California Title 24 § 1117B.6
- 9) The room safe is too low and obstructed in violation of California Title 24 § 1117B.6
- 10) The closet in the bedroom is not compliant in violation (cannot enter in a wheelchair) of California Title 24 § 1125B.1 and ADAAG 4.1.3(12).
- 11) The toilet paper dispenser in the bathroom is more than 12 inches in front of the toilet in violation of California Title 24 § 1115B.9.3 and ADAAG 4.16.6.
- 12) The blow dryer is too high in violation of California Title 24 § 1117B.6
- 13) Upon arrival Plaintiff was placed in room 4024 an accessible room without a roll in shower. After complaining Plaintiff was moved to room 4000 with a roll in shower. A hotel with 51 or more rooms is required to have at least one accessible room with a roll in shower and then an additional room with a roll in shower for every 50 rooms thereafter. A hotel is required to have procedures in place to properly let accessible rooms. California Title 24 § 1111B.4.2 and ADAAG 9.1.2
- 14) There is no back toilet grab bars in the non-compliant bathroom in violation of California Title 24 § 1115B.8.1 and ADAAG 4.17.6.

The above barriers interfered with Plaintiff's access of the facilities and continue to deter Plaintiff from visiting said facilities, and as a legal result, Plaintiff **GYPSIE JONES** suffers violations of her civil rights to full and equal enjoyment of goods, services, facilities and privileges, and has and will suffer embarrassment and humiliation.

FACTUAL ALLEGATIONS

4. Plaintiff **GYPSIE JONES** is, and at all times relevant to this Complaint is, a "physically handicapped person, "physically disabled person," and a "person with a disability," as these terms are used under California law and under federal laws including, but not limited to, Title III of the ***Americans with Disabilities Act of 1990***. (The terms "physically handicapped person," "physically disabled person," and a "person with a disability" will be used interchangeably throughout this Complaint.) Plaintiff is a "person with a disability," as defined

1 by all applicable California and United State's laws. Plaintiff **GYPSIE JONES** is severely
 2 limited in the use of her legs.

3 5. Defendants **WW LODGING INC., a Delaware corporation, BLOCK 14**
 4 **ASSOCIATES, and DOES ONE to FIFTY, inclusive**, at all times relevant herein were and are
 5 the owners and operators; lessors and/or lessees, franchisers and/or franchisees, of public
 6 facilities known as the "**RADISSON FISHERMAN'S WHARF HOTEL**," located at San
 7 Francisco, California, subject to the requirements of California state law requiring full and equal
 8 access to public facilities pursuant to *California Health & Safety Code* § 19955, *et seq.*,
 9 *California Civil Code* §§ 51, 51.5, 52(a), 52.1, 54, 54.1, 54.3 and 55, and subject to Title III of
 10 the *Americans with Disabilities Act of 1990*, and to all other legal requirements referred to in
 11 this Complaint. Plaintiff does not know the relative responsibilities of defendants in the
 12 operation of the facilities herein complained of, and alleges a joint venture and common
 13 enterprise by all such defendants.

14 6. Defendants **WW LODGING INC., a Delaware corporation, BLOCK 14**
 15 **ASSOCIATES, and DOES ONE to FIFTY, inclusive** (hereinafter alternatively referred to
 16 collectively as "defendants"), at all times relevant herein were and are owners, possessors,
 17 builders and keepers of the "**RADISSON FISHERMAN'S WHARF HOTEL**" in San Francisco,
 18 California.

19 7. Defendants **WW LODGING INC., a Delaware corporation, BLOCK 14**
 20 **ASSOCIATES, and DOES ONE to FIFTY, inclusive** are the owners and operators of the
 21 subject "**RADISSON FISHERMAN'S WHARF HOTEL**" at all times relevant to this Complaint.
 22 Plaintiff is informed and believes that each of the defendants herein is the agent, employee or
 23 representative of each of the other defendants, and performed all acts and omissions stated
 24 herein within the scope of such agency or employment or representative capacity and is
 25 responsible in some manner for the acts and omissions of the other defendants in legally
 26 causing the damages complained of herein, and have approved or ratified each of the acts or
 27 omissions of each other defendant, as herein described.

28 8. Plaintiff **GYPSIE JONES** does not know the true names and capacities of

defendants **WW LODGING INC., a Delaware corporation, BLOCK 14 ASSOCIATES, and DOES ONE to FIFTY, inclusive**, their business capacities, their ownership connection to the property and business, nor their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such defendants. Plaintiff is informed and believes that each of the defendants herein, including DOES ONE to FIFTY, inclusive, is the agent, ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee, joint venturer, partner, and associate, or such similar capacity, of each of the other defendants, and was at all times acting and performing, or failing to act or perform, with the authorization, consent, permission or ratification of each of the other defendants, and is responsible in some manner for the acts and omissions of the other defendants in legally causing the violations and damages complained of herein, and have approved or ratified each of the acts or omissions of each other defendant, as herein described. Plaintiff will seek leave to amend this Complaint when the true names, capacities, connections and responsibilities of defendants **WW LODGING INC., a Delaware corporation, BLOCK 14 ASSOCIATES, and DOES ONE to FIFTY, inclusive**, are ascertained.

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

10. Defendants **WW LODGING INC., a Delaware corporation, BLOCK 14 ASSOCIATES, and DOES ONE to FIFTY, inclusive**, are the owners and operators of the "**RADISSON FISHERMAN'S WHARF HOTEL**," located at San Francisco, California. This hotel, including, but not limited to, parking spaces and access aisles and access routes, are each a part of a "public accommodation or facility" subject to the requirements of **California Health & Safety Code** § 19955, *et seq.*, and of **California Civil Code** §§ 51, 52(a), 54, 54.1, *et seq.* On information and belief, this "**RADISSON FISHERMAN'S WHARF HOTEL**" hotel was constructed after 1990, which has subjected the "**RADISSON FISHERMAN'S WHARF HOTEL**" hotel to handicapped access requirements per **California Health & Safety Code** § 19959, and applicable portions of **California Code of Regulations**, Title 24, (the State

Building Code).

11. On or about March 16, 2006, Plaintiff **GYPSIE JONES**, visited the "**RADISSON FISHERMAN'S WHARF HOTEL**" in San Francisco, California for the purpose of obtaining a hotel room. Defendants **WW LODGING INC., a Delaware corporation, dba RADISSON FISHERMAN'S WHARF HOTEL, BLOCK 14 ASSOCIATES, and DOES ONE to FIFTY, inclusive**, interfered with Plaintiff's access to the "**RADISSON FISHERMAN'S WHARF HOTEL**" as set forth in Paragraph 3 above.

Said acts and omissions denied Plaintiff legal handicapped access to the "**RADISSON FISHERMAN'S WHARF HOTEL**" according to federal and state law.

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

13. Defendants, and each of them, discriminated against Plaintiff **GYPSIE JONES** on the basis of her physical disability, and interfered with her access to the "**RADISSON FISHERMAN'S WHARF HOTEL**" establishment, in violation of both California law including, but not limited to, **California Civil Code** §§ 51, 51.5, 54, 54.1, and a violation of Title III, §302, the "Prohibition of Discrimination" provision and §503, the "Prohibition Against Retaliation or Coercion" provision of the **Americans with Disabilities Act of 1990**.

14. As a result of the actions and failure to act of defendants, and each of them, and as a result of the failure to provide appropriate handicapped parking, proper handicapped signage, proper handicapped accessible entryways, and handicapped accommodations for a hotel, Plaintiff **GYPSIE JONES** suffered and will suffer a loss of her civil rights to full and equal access to public facilities, and further suffered and will suffer emotional distress, mental distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated with a person with a physical disability being denied access to a public accommodation, all to her damages as prayed hereinafter in an amount within the jurisdiction of this court.

1 **I. FIRST CAUSE OF ACTION:**

2 VIOLATION OF ***THE AMERICANS WITH DISABILITIES ACT OF 1990***
 3 (42 **USC** §12101 *et seq.*)

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

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

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

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

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

19. Pursuant to 42 **USC** § 12182,

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

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

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

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

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

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

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

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

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

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

23. Plaintiff alleges that constructing the eligibility requirements, policies, practices

1 and procedure for entry to the "**RADISSON FISHERMAN'S WHARF HOTEL**" facility by
 2 persons with disabilities and their companions as established by the defendants can be simply
 3 modified to eliminate disparate and discriminatory treatment of persons with disabilities by
 4 properly constructing barrier free handicapped access for safe and full and equal enjoyment of
 5 the "**RADISSON FISHERMAN'S WHARF HOTEL**" as that enjoyed by other people.

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

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

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

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

27 26. The removal of the barriers complained of by Plaintiff as hereinabove alleged
 28 were at all times after 1990 "readily achievable." On information and belief, if the removal of all
 the barriers complained of here together were not "readily achievable," the removal of each
 individual barrier complained of herein was "readily achievable."

27 27. Per 42 **USC** § 12181(9), "The term 'readily achievable' means easily

1 accomplishable and able to be carried out without much difficulty or expense.” The statute and
 2 attendant regulations define relative “expense” in relation to the total financial resources of the
 3 entities involved, including any “parent” companies. Plaintiff alleges that properly repairing
 4 each of the items that Plaintiff complains of herein is readily achievable, including, but not
 5 limited to, correcting and repairing the items set forth in Paragraph 3 above.

6 The changes needed to remove barriers to access for the disabled were and are
 7 “readily achievable” by the defendants under standards set forth under 42 **USC** § 12181 of the
 8 **Americans with Disabilities Act of 1990**. (Further, if it was not “readily achievable” for
 9 defendants to remove all such barriers, defendants have failed to make the required services
 10 available through alternative methods, although such methods are achievable as required by
 11 42 **USC** §12181(b)(2)(a)(iv), (v).)

12 28. Pursuant to the **Americans with Disabilities Act of 1990**, §308 (42 **USC** §
 13 12188 *et seq.*), Plaintiff is entitled to the remedies and procedures set forth in the **Civil Rights**
 14 **Act of 1964** §204(a), (42 **USC** § 2000a-3(a)), as Plaintiff is being subjected to discrimination
 15 on the basis of disability in violation of this title and/or Plaintiff has reasonable grounds for
 16 believing that she is about to be subjected to discrimination in violation of **Americans With**
 17 **Disabilities Act of 1990** §302. Plaintiff cannot return to or make use of the public facilities
 18 complained of herein for the purpose of entry and provision of goods and service so long as
 19 defendants continue to apply eligibility criteria, policies, practices and procedures to screen out
 20 and refuse to allow entry and service to persons with disabilities such as Plaintiff’s.

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

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

27 30. Per **Americans With Disabilities Act of 1990** § 308(a)(1) (now 42 **USC** §
 28 12188), “Nothing in this section shall require a person with a disability to engage in a futile

gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.” Pursuant to this last section, Plaintiff, on information and belief, alleges that defendants have continued to violate the law and deny the rights of Plaintiff and other disabled persons to access this public accommodation for the purpose of obtaining lodging. Therefore, Plaintiff seeks injunctive relief pursuant to §308(a)(2),

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

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

WHEREFORE, Plaintiff prays for damages as hereinafter stated.

II. SECOND CAUSE OF ACTION

BREACH OF STATUTORY PROTECTIONS FOR PERSONS WITH PHYSICAL DISABILITIES (**California Health & Safety Code** § 19955, *et seq.*)

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

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

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

34. **California Health & Safety Code** § 19956, which appears in the same chapter as §19955, provides in pertinent part, “accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the

1 *Government Code...* **California Health & Safety Code** § 19956 was operative July 1, 1970,
 2 and is applicable to all public accommodations constructed or altered after that date. On
 3 information and belief, portions of “**RADISSON FISHERMAN’S WHARF HOTEL**” and/or of its
 4 buildings, were constructed and/or altered after July 1, 1970, and substantial portions of said
 5 building had alterations, structural repairs, and/or additions made to such public
 6 accommodations after July 1, 1970, thereby requiring said public accommodations and/or
 7 buildings to be subject to the requirements of Part 5.5, **California Health & Safety Code** §
 8 19955, *et seq.*, upon such alteration, structural repairs or additions per **California Health &**
 9 **Safety Code** § 19959.

10 35. Pursuant to the authority delegated by **California Government Code** § 4450, *et*
 11 *seq.*, the State Architect promulgated regulations for the enforcement of these provisions.
 12 Effective January 1, 1982, Title 24 of the **California Administrative Code** adopted the
 13 California State Architect’s Regulations and these regulations must be complied with as to any
 14 alterations and/or modifications of the “**RADISSON FISHERMAN’S WHARF HOTEL**”
 15 occurring after that date. Construction changes occurring prior to this date but after July 1,
 16 1970 triggered access requirements pursuant to the “ASA” requirements, the **American**
 17 **Standards Association Specifications**, A117.1-1961. On information and belief, at the time
 18 of the construction and modification of said building, all buildings and facilities covered were
 19 required to conform to each of the standards and specifications described in the **American**
 20 **Standards Association Specifications** and/or those contained in Title 24 of the **California**
 21 **Administrative Code**, (now known as Title 24, **California Code of Regulations**.)

22 36. Public facilities, such as “**RADISSON FISHERMAN’S WHARF HOTEL**” are
 23 public accommodations or facilities within the meaning of **California Health & Safety Code** §
 24 19955, *et seq.*

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

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

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

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

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

17 41. Plaintiff **GYPSIE JONES** is informed and believes, and therefore alleges, that
18 Defendants **WW LODGING INC., a Delaware corporation, BLOCK 14 ASSOCIATES,, and**
19 **DOES ONE to FIFTY, inclusive**, and each of them, caused the subject buildings constituting
20 **“RADISSON FISHERMAN’S WHARF HOTEL”** to be constructed, altered and maintained in
21 such a manner that persons with physical disabilities were denied full and equal access to,
22 within and throughout said buildings and were denied full and equal use of said public facilities,
23 and despite knowledge and actual and constructive notice to such Defendants that the
24 configuration of the hotel and/or buildings was in violation of the civil rights of persons with
25 physical disabilities, such as Plaintiff. Such construction, modification, ownership, operation,
26 maintenance and practices of such public facilities are in violation of law as stated in Part 5.5,
27 **California Health & Safety Code** § 19955, *et seq.*, and elsewhere in the laws of California.

28 42. On information and belief, the subject building constituting the public facilities of

1 “RADISSON FISHERMAN’S WHARF HOTEL” denied full and equal access to Plaintiff and
 2 other persons with physical disabilities in other respects due to non-compliance with
 3 requirement of Title 24 of the **California Code of Regulations** and **California Health &**
 4 **Safety Code** § 19955, *et seq.*

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

18 44. As a result of Defendants’ acts and omissions in this regard, Plaintiff has been
 19 required to incur legal expenses and hire attorneys in order to enforce her civil rights and
 20 enforce provisions of the law protecting access for persons with physical disabilities and
 21 prohibiting discrimination against persons with physical disabilities, and to take such action
 22 both in her own interests and in order to enforce an important right affecting the public interest.
 23 Plaintiff, therefore, seeks damages in this lawsuit for recovery of all reasonable attorneys’ fees
 24 incurred, pursuant to the provisions of the **California Code of Civil Procedure** § 1021.5.
 25 Plaintiff additionally seeks attorneys’ fees pursuant to **California Health & Safety Code** §
 26 19953 and **California Civil Code** §§ 54.3 and 55.

27 45. Defendants, and each of them, at times prior to and including March 16, 2006,
 28 and continuing to the present time, knew that persons with physical disabilities were denied

1 their rights of equal access to all portions of this public facility. Despite such knowledge,
 2 Defendants failed and refused to take steps to comply with the applicable access statutes; and
 3 despite knowledge of the resulting problems and denial of civil rights thereby suffered by
 4 Plaintiff **GYPSIE JONES** and other similarly situated persons with disabilities, including the
 5 specific notices referred to in paragraph 43 of this Complaint. Defendants have failed and
 6 refused to take action to grant full and equal access to persons with physical disabilities in the
 7 respects complained of hereinabove. Defendants and each of them have carried out a course
 8 of conduct of refusing to respond to, or correct complaints about, denial of handicap access.
 9 Such actions and continuing course of conduct by Defendants, evidence despicable conduct in
 10 conscious disregard for the rights or safety of Plaintiff and of other similarly situated persons,
 11 justifying an award of treble damages pursuant to **California Civil Code** § 54.3.

12 46. Defendants' actions have also been oppressive to persons with physical
 13 disabilities and of other members of the public, and have evidenced actual or implied malicious
 14 intent toward those members of the public, such as Plaintiff and other persons with physical
 15 disabilities who have been denied the proper access they are entitled to by law. Further,
 16 Defendants' refusals on a day-to-day basis to correct these problems evidence despicable
 17 conduct in conscious disregard for the rights of Plaintiff and other members of the public with
 18 physical disabilities.

19 47. Plaintiff prays for an award of treble damages against Defendants, and each of
 20 them, pursuant to **California Civil Code** § 54.3 in an amount sufficient to make a more
 21 profound example of Defendants and discourage owners, operators, franchisers and
 22 franchisees of other public facilities from willful disregard of the rights of persons with physical
 23 disabilities.

24 48. As a result of the actions and failure of Defendants, and each of them, and as a
 25 result of the failure to provide proper accessible public facilities, Plaintiff **GYPSIE JONES** was
 26 denied her civil rights, including her right to full and equal access to public facilities, was
 27 embarrassed and humiliated, suffered physical, psychological and mental injuries and
 28 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,

humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated with a person with a physical disability being denied access to a public accommodation.

WHEREFORE, Plaintiff prays for damages as hereinafter stated.

III. THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S CIVIL RIGHTS ACTS
(**California Civil Code** §§ 54, 54.1 and 54.3)

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

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

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

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

Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons. **California Civil Code** § 54.1(a).

1 52. On or about March 16, 2006, Plaintiff **GYPSIE JONES** suffered violations of
2 **California Civil Code** §§ 54 and 54.1 in that he was denied full and equal enjoyment of the
3 goods, services, facilities and privileges of said **RADISSON FISHERMAN'S WHARF HOTEL**,
4 as set forth in paragraph 3 above.

5 Plaintiff was also denied full and equal access to other particulars, including, but not
6 limited to, those described hereinabove. Plaintiff was also denied use of facilities that she was
7 entitled to under Title III of the **Americans with Disabilities Act of 1990**.

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

19 54. Plaintiff seeks damages for the violation of her rights as a disabled person on or
20 about March 16, 2006, according to proof, pursuant to **California Civil Code** § 54.3, including
21 a trebling of all statutory and actual damages, general and special, available pursuant to
22 **California Civil Code** § 54.3(a).

23 55. As a result of defendants' acts and omissions in this regard, Plaintiff **GYPSIE**
24 **JONES** has been required to incur legal expenses and hire attorneys in order to enforce her
25 rights and enforce provisions of the law protecting the full and equal enjoyment of goods,
26 services, facilities, privileges of public facilities by the disabled, and those individuals
27 associated with or accompanied by a person with disabilities, and prohibiting discrimination
28 against the disabled. Plaintiff, therefore, seeks recovery in this lawsuit for all reasonable

1 attorneys' fees incurred pursuant to the provisions of **California Civil Code** § 55. Additionally,
2 Plaintiff's lawsuit is intended not only to obtain compensation for damages to Plaintiff, but also
3 to compel the defendants to make their goods, services, facilities and privileges available and
4 accessible to all members of the public with physical disabilities, justifying public interest
5 attorneys' fees pursuant to the provisions of **California Code of Civil Procedure** § 1021.5.

6 56. The acts and omissions of defendants in failing to provide the required
7 accessible facilities subsequent to the enactment date and compliance date of the **Americans**
8 **with Disabilities Act of 1990**, and refusal to make remedial modifications and alterations to its
9 handicapped parking, handicapped signage, pathways, and other elements as hereinabove
10 stated, after being notified by patrons before and after the time of Plaintiff's visit and injuries,
11 on or about March 16, 2006, and all times prior thereto with the knowledge that persons with
12 disabilities would enter defendants' premises, the reason given therefor, was an established
13 policy, practice and procedure of refusing and denying entry, thereby denying services to a
14 person with disabilities and the companions thereof, evidence malice and oppression toward
15 Plaintiff and other disabled persons.

16 57. Plaintiff seeks injunctive relief pursuant to **California Civil Code** § 55 to require
17 Defendants to comply with federal and state access regulations.

18 58. Defendants have failed to establish a nondiscriminatory criteria, policy, practice
19 and procedure for entry into said "**RADISSON FISHERMAN'S WHARF HOTEL**" as
20 hereinabove described.

21 59. As a result of defendants' continuing failure to provide for the full and equal
22 enjoyment of goods, services, facilities and privileges of said "**RADISSON FISHERMAN'S**
23 **WHARF HOTEL**" as hereinabove described, Plaintiff has continually been denied her rights to
24 full and equal enjoyment of the subject hotel, as it would be a "futile gesture" to attempt to
25 patronize said "**RADISSON FISHERMAN'S WHARF HOTEL**" with the discriminatory policy in
26 place as hereinabove described.

27 60. The acts and omissions of defendants as complained of herein in failing to
28 provide the required accessible facilities subsequent to the enactment date and compliance

1 date of the ***Americans with Disabilities Act of 1990*** and refusal to make remedial
 2 modifications and alternations to the architectural barriers as stated herein and in failing to
 3 establish practices, policies and procedures to allow safe access by persons who are disabled
 4 are continuing on a day-to-day basis to have the effect of wrongfully and willfully excluding
 5 Plaintiff and other members of the public who are physically disabled, from full and equal
 6 enjoyment of the subject "**RADISSON FISHERMAN'S WHARF HOTEL**" as hereinabove
 7 described. Such acts and omissions are the continuing cause of humiliation and mental and
 8 emotional suffering of Plaintiff in that these actions continue to treat Plaintiff as an inferior and
 9 second class citizen and serve to discriminate against her on the sole basis that she is
 10 physically disabled. Plaintiff is unable, so long as such acts and omissions of defendants
 11 continue, to achieve full and equal enjoyment of the goods and services of said "**RADISSON**
 12 **FISHERMAN'S WHARF HOTEL**" as described hereinabove. The acts of defendants have
 13 legally caused and will continue to cause irreparable injury to Plaintiff if not enjoined by this
 14 court.

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

23 WHEREFORE, Plaintiff prays for compensatory damages, reasonable attorneys' fees
 24 and costs of suit, as allowed by statute and according to proof, and appropriate exemplary
 25 damages.

26 **IV. FOURTH CAUSE OF ACTION**
 27 VIOLATIONS OF ***UNRUH CIVIL RIGHTS ACT***
 28 (***California Civil Code*** §§ 51 and 51.5)

62. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,

1 the allegations contained in paragraphs 1 through 61 of this Complaint and incorporates them
2 herein as if separately replied.

3 63. Defendants' acts and omissions as specified with regard to the discriminatory
4 treatment of Plaintiff **GYPsie JONES** on the basis of her physical disabilities, have been in
5 violation of **California Civil Code** §§ 51 and 51.5, the **Unruh Civil Rights Act**, and have
6 denied to Plaintiff her rights to "full and equal accommodations, advantages, facilities,
7 privileges or services in all business establishments of every kind whatsoever."

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

11 65. **California Civil Code** § 51.5 also provides that

12 "[n]o business establishment of any kind whatsoever shall discriminate against,
13 boycott, or blacklist, refuse to buy from, sell to, or trade with any person in this
14 state because of the race, creed, religion, color, national origin, sex, disability of
15 the person or of the person's partners, members, stockholders, directors,
officers, managers, superintendents, agents, employees, business associates,
suppliers, or customers."

16 66. As a result of the violation of Plaintiff's civil rights protected by **California Civil**
17 **Code** §§ 51 and, 51.5, Plaintiff is entitled to the rights and remedies of **California Civil Code** §
18 52, including a trebling of actual damages (defined by **California Civil Code** § 52(h) to mean
19 "special and general damages"), as well as reasonable attorneys' fees and costs, as allowed
20 by statute, according to proof.

21 WHEREFORE, Plaintiff prays that this court award damages and provide relief as
22 follows:

23 PRAYER FOR RELIEF

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

25 1. Grant injunctive relief requiring that defendants establish a non-discriminatory
26 criteria policy, practice and procedure permitting entry into the **RADISSON FISHERMAN'S**
27 **WHARF HOTEL** in San Francisco, California, for the purpose of obtaining the goods and
28 services accorded therein according to **California Civil Code** §§ 51, 51.5, 52, 54, 54.1, 54.3,

and 55, *et seq.*, and Title III of the ***Americans with Disabilities Act of 1990***, and grant injunctive relief requiring that Defendants repair and render safe to handicapped persons, and otherwise make handicapped-accessible, all public areas of the hotel, including, but not limited to, each of the barriers to access identified in Paragraph 3, above, and make such facilities “readily accessible to and usable by individuals with disabilities,” according to the standards of Title 24 of the ***California Administrative Code, California Health & Safety Code*** § 19955 *et seq.*, and Title III of the ***Americans with Disabilities Act of 1990*** and the standards of ***ADAAG***; and prohibiting operation of the **RADISSON FISHERMAN’S WHARF HOTEL**, located in San Francisco, California, as a public facility until Defendants provide full and equal enjoyment of goods and services as described hereinabove to physically disabled persons, including Plaintiff;

2. General damages according to proof;

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

4. Prejudgment interest on all compensatory damages;

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

6. Award Plaintiff all litigation expenses, all costs of this proceeding and all reasonable attorneys’ fees as provided by law, including, but not limited to, those recoverable pursuant to the provisions of ***California Civil Code*** §§ 52, 54.3, and 55, ***California Code of Civil Procedure*** § 1021.5, and ***Americans with Disabilities Act of 1990*** §308 of Title III; and

7. Grant such other and further relief as the court may deem just and proper.

SINGLETON LAW GROUP

Dated: July 5, 2006

/s/ Jason K. Singleton
Jason K. Singleton, Attorney for
Plaintiff, **GYPSIE JONES**

REQUEST FOR JURY TRIAL

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

SINGLETON LAW GROUP

Dated: July 5, 2006

/s/ Jason K. Singleton
Jason K. Singleton, Attorney for
Plaintiff, **GYPSIE JONES**