

1 THOMAS E. FRANKOVICH (State Bar No. 074414)  
 THOMAS E. FRANKOVICH,  
 2 ***A Professional Law Corporation***  
 4328 Redwood Hwy, Suite 300  
 3 San Rafael, CA 94903  
 Telephone: 415/674-8600  
 4 Facsimile: 415/674-9900

5 Attorney for Plaintiffs

6 UNITED STATES DISTRICT COURT  
 7 NORTHERN DISTRICT OF CALIFORNIA

10 IRMA RAMIREZ and DAREN  
 HEATHERLY,

11 Plaintiffs,

12 v.

14 SAM’S FOR PLAY CAFE; DARLEEN  
 15 SAM ANKER, TRUSTEE, THE D. SAM  
 ANKER TRUST, dated March 14, 2008;  
 16 and DARLEEN SAM ANKER, an  
 17 individual dba SAM’S FOR PLAY CAFÉ,

18 Defendants.

) **CASE NO. CV-11-1370-JSW**

) **STIPULATION AND ~~PROPOSED~~**  
 ) **ORDER RE PLAINTIFFS’ LEAVE TO**  
 ) **FILE FIRST AMENDED COMPLAINT**

23 **IT IS HEREBY STIPULATED** by and through the parties respective counsel in the  
 24 above-mentioned case that plaintiffs IRMA RAMIREZ and DAREN HEATHERLY may file the  
 25 [Proposed] First Amended Complaint hereto as exhibit “A.”

26 1. **WHEREAS**, the parties have agreed to allow plaintiffs leave to file the  
 27 [Proposed] First Amended Complaint attached as Exhibit “A” to comport with current case law.  
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1 **IT'S SO STIPULATE** that plaintiff s IRMA RAMIREZ and DAREN HEATHERLY be  
2 permitted to file the First Amend Complaint to comport with current case law and that the  
3 Answer that was filed on May 26, 2011, by defendants DARLEEN SAM ANKER, TRUSTEE,  
4 THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an  
5 individual dba SAM'S FOR PLAY CAFÉ be deemed defendants DARLEEN SAM ANKER,  
6 TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM  
7 ANKER, an individual dba SAM'S FOR PLAY CAFÉ's Answer to the First Amended  
8 Complaint.

9  
10 Dated: August 17, 2012

Respectfully Submitted,  
THOMAS E. FRANKOVICH,  
**A PROFESSIONAL LAW CORPORATION**

11  
12 By: /s/Thomas E. Frankovich

13 Thomas E. Frankovich  
14 Attorney for Plaintiff IRMA RAMIREZ; and  
15 DAREN HEATHERLY  
16

17  
18 Dated: Aug. 17, 2012

**PERRY, JOHNSON, ANDERSON, MILLER &  
MOSKOWITZ LLP,**

19  
20  
21 By:   
22 Scott A. Lewis

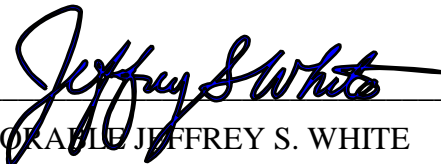
23 Attorneys for Defendants DARLEEN SAM  
24 ANKER, TRUSTEE, THE D. SAM ANKER  
25 TRUST, dated March 14, 2008; and DARLEEN  
26 SAM ANKER, an individual dba SAM'S FOR  
PLAY CAFÉ

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**ORDER**

Pursuant to the parties' stipulation, **IT IS ORDERED** that plaintiffs IRMA RAMIREZ and DAREN HEATHERLY may file a First Amended Complaint to comport with current case law and that the initial Answer filed on May 26, 2011, by defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba SAM'S FOR PLAY CAFÉ may serve as defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba SAM'S FOR PLAY CAFÉ's Answer to the First Amended Complaint.

Dated: August 21, 2012

  
\_\_\_\_\_  
HONORABLE JEFFREY S. WHITE  
United States District Judge

**EXHIBIT “A”**

1 THOMAS E. FRANKOVICH,  
2 *A Professional Law Corporation*  
3 THOMAS E. FRANKOVICH (State Bar No. 074414)  
4 4328 Redwood Hwy., Suite 300  
5 San Rafael, CA 94903  
6 Telephone: 415/674-8600  
7 Facsimile: 415/674-9900

8 Attorney for Plaintiffs

9 IRMA RAMIREZ and DAREN HEATHERLY

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 IRMA RAMIREZ and DAREN  
13 HEATHERLY,

14 Plaintiffs,

15 v.

16 SAM'S FOR PLAY CAFE; DARLEEN  
17 SAM ANKER, TRUSTEE, THE D. SAM  
18 ANKER TRUST, dated March 14, 2008;  
19 and DARLEEN SAM ANKER, an  
20 individual dba SAM'S FOR PLAY CAFÉ,

21 Defendants.

) **CASE NO. CV-11-1370-JSW**

) **Civil Rights**

) **[PROPOSED] FIRST AMENDED**  
) **COMPLAINT FOR INJUNCTIVE RELIEF**  
) **AND DAMAGES:**

) **1<sup>st</sup> CAUSE OF ACTION:** For Denial of Access  
) by a Public Accommodation in Violation of the  
) Americans with Disabilities Act of 1990 (42  
) U.S.C. §12101, *et seq.*)

) **2<sup>nd</sup> CAUSE OF ACTION:** For Denial of Full  
) and Equal Access in Violation of California  
) Civil Code §§54, 54.1 and 54.3

) **3<sup>rd</sup> CAUSE OF ACTION:** For Denial of  
) Accessible Sanitary Facilities in Violation of  
) California Health & Safety Code §19955, *et seq.*

) **4<sup>th</sup> CAUSE OF ACTION:** For Denial of  
) Access to Full and Equal Accommodations,  
) Advantages, Facilities, Privileges and/or  
) Services in Violation of California Civil Code  
) §51, *et seq.* (The Unruh Civil Rights Act)

22 **DEMAND FOR JURY**

1 Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY, complain of defendants  
2 DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008;  
3 and DARLEEN SAM ANKER, an individual dba SAM'S FOR PLAY CAFÉ and allege as  
4 follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical  
7 disabilities, of which class plaintiff IRMA RAMIREZ, plaintiff DAREN HEATHERLY and the  
8 disability community are members, for failure to remove architectural barriers structural in nature  
9 at defendants' SAM'S FOR PLAY CAFE, a place of public accommodation, thereby  
10 discriminatorily denying each plaintiff and the class of other similarly situated persons with  
11 physical disabilities access to, the full and equal enjoyment of, opportunity to participate in, and  
12 benefit from, the goods, facilities, services, and accommodations thereof. Each plaintiff seeks  
13 injunctive relief and damages pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C.  
14 §12101, *et seq.*; California Civil Code §§51, 51.5 and 54, *et seq.*; and California Health & Safety  
15 Code §19955, *et seq.*

16 2. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a person  
17 with physical disabilities who, on or about June 19, 2008, June 23, 2008, July 22, 2008, October  
18 30, 2010, November 3, 2010, November 26, 2010 and February 3, 2011, was an invitee, guest,  
19 patron, customer at defendants' SAM'S FOR PLAY CAFE, in the City of Santa Rosa,  
20 California. At said times and place, defendants failed to provide proper legal access to the cafe,  
21 which is a "public accommodation" and/or a "public facility" including, but not limited to  
22 signage, parking, entrances, men's restroom and women's restroom. The denial of access was in  
23 violation of both federal and California legal requirements, and plaintiff IRMA RAMIREZ and  
24 plaintiff DAREN HEATHERLY each suffered violation of his/her civil rights to full and equal  
25 access, and was embarrassed and humiliated.

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1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.  
3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*  
4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same  
5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel  
6 California law, whose goals are closely tied with the ADA, including but not limited to violations  
7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*  
8 *seq.*, including §19959; California Building Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is  
10 founded on the facts that the real property which is the subject of this action is located at/near  
11 1024 Sebastopol Road, in the City of Santa Rosa, County of Sonoma, State of California, and  
12 that plaintiffs' causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a  
15 “physically handicapped person”, a “physically disabled person”, and a “person with physical  
16 disabilities” (hereinafter the terms “physically disabled”, “physically handicapped” and “person  
17 with physical disabilities” are used interchangeably, as these words have similar or identical  
18 common usage and legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety  
19 Code uses the term “physically handicapped persons” and the Unruh Civil Rights Act, §§51,  
20 51.5, 54 and 54.1, and other statutory measures refer to protection of the rights of “physically  
21 disabled persons”). Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a  
22 “person with physical disabilities”, as defined by all applicable California and United States  
23 laws. Plaintiff IRMA RAMIREZ suffers from Post-Polio syndrome. Plaintiff IRMA RAMIREZ  
24 relies primarily on a wheelchair as her ambulance to travel about in public. Plaintiff DAREN  
25 HEATHERLY is afflicted with Multiple Sclerosis and a left hip replacement.

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1 Plaintiff DAREN HEATHERLY relies primarily on a wheelchair as his ambulance to travel  
2 about in public. Consequently, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY  
3 each is a member of that portion of the public whose rights are protected by the provisions of  
4 Health & Safety Code §19955, *et seq.* (entitled “Access to Public Accommodations by  
5 Physically Handicapped Persons”) and the protections of the Unruh Civil Rights Act, Civil Code  
6 §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities  
7 Act, 42 U.S.C. §12101, *et seq.*

8           6.       **DEFINITIONS:**

9           a.       **ADAAG** - The Americans with Disabilities Act Accessibility Guidelines  
10                   of 1990; and The Americans with Disabilities Act Accessibility Guidelines  
11                   2010 revision. (Used where applicable).

12           b.       **ARCHITECTURAL BARRIERS** - Architectural barriers are physical  
13                   features that limit or prevent people with disabilities from obtaining the  
14                   goods or services that are offered. They can include but are not limited to  
15                   the following examples: parking spaces that are too narrow to  
16                   accommodate people who use wheelchairs; a step or steps at the entrance  
17                   or to part of the selling space of a store; round doorknobs or door hardware  
18                   that is difficult to grasp; aisles that are too narrow for a person using a  
19                   wheelchair; electric scooter, or a walker; a high counter or narrow  
20                   checkout aisles at a cash register, and fixed tables in eating areas that are  
21                   too low to accommodate a person using a wheelchair or that have fixed  
22                   seats that prevent a person using a wheelchair from pulling under the table.  
23                   Excerpted from the “*ADA Guide for Small Businesses*” with an  
24                   interlineation modification. <http://www.ada.gov/smbustxt.htm>.

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- 1 c. **ELEMENTS** - An architectural or mechanical component of a building,  
2 facility, space, or site (e.g., telephone, curb ramp, door, flush valve,  
3 drinking fountain, seating, or water closet, toilet seat, dispensers) and/or  
4 placement or lack thereof.
- 5 d. **CATEGORICAL ARCHITECTURAL BARRIERS** - Are elements and  
6 facilities which are, or can be architectural barriers standing alone or in  
7 combination with one another where the element(s)/facility(s) is/are  
8 noncomplying or where the combination thereof creates a category. For  
9 example: such as a parking lot, entrance, restroom, lobby, guest room,  
10 dining area.
- 11 e. **PHYSICAL FEATURES** - Are synonymous with “Elements.”
- 12 f. **FACILITY** - All or any portion of buildings, structures, site  
13 improvements, complexes, equipment, roads, walks, passageways, parking  
14 lots, or other real or personal property located on a site.
- 15 g. **ENTRANCE** - Any access point to a building or portion of a building or  
16 facility used for the purpose of entering. An entrance includes the  
17 approach walk, the vertical access leading to the entrance platform, the  
18 entrance platform itself, vestibules if provided, the entry door(s) or  
19 gate(s) , and the hardware of the entry door(s) or gate(s).
- 20 h. **CLEAR FLOOR SPACE** - The minimum unobstructed floor or ground  
21 space required to accommodate a single, stationary wheelchair and  
22 occupant.
- 23 i. **ACCESSIBLE ROUTE** - A continuous unobstructed path connecting all  
24 accessible elements and spaces of a building or facility. Interior accessible  
25 routes may include corridors, floors, ramps, elevators, lifts, and clear floor  
26 space at fixtures. Exterior accessible routes may include parking access  
27 aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

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1 j. **ACCESSIBLE SPACE/PATH OF TRAVEL** - Space that complies with  
2 ADAAG guidelines.

3 k. **NON COMPLYING** - Not complying with ADAAG and/or the “Readily  
4 Achievable Standard” of CFR 34.306.

5 7. Defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER  
6 TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba SAM’S FOR  
7 PLAY CAFÉ (hereinafter alternatively collectively referred to as “defendants”) are the owners  
8 and operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public  
9 accommodation known as SAM’S FOR PLAY CAFE, located at/near 1024 Sebastopol Road,  
10 Santa Rosa, California, or of the building and/or buildings which constitute said public  
11 accommodation.

12 8. At all times relevant to this complaint, defendants DARLEEN SAM ANKER,  
13 TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM  
14 ANKER, an individual dba SAM’S FOR PLAY CAFÉ, own and operate in joint venture the  
15 subject SAM’S FOR PLAY CAFE as a public accommodation. This business is open to the  
16 general public and conducts business therein. The business is a “public accommodation” or  
17 “public facility” subject to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*,  
18 Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

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1           9.       At all times relevant to this complaint, defendants DARLEEN SAM ANKER,  
2 TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM  
3 ANKER, an individual dba SAM'S FOR PLAY CAFÉ are jointly and severally responsible to  
4 identify and remove architectural barriers at the subject SAM'S FOR PLAY pursuant to Code of  
5 Federal Regulations title 28, section 36.201(b), which states in pertinent part:

6                   **§ 36.201       General**

7                               (b) *Landlord and tenant responsibilities.* Both the landlord  
8 who owns the building that houses a place of public  
9 accommodation and the tenant who owns or operates the place of  
10 public accommodation are public accommodations subject to the  
11 requirements of this part. As between the parties, allocation of  
12 responsibility for complying with the obligations of this part may  
13 be determined by lease or other contract.

14                   28 CFR §36.201(b)

15           **PRELIMINARY FACTUAL ALLEGATIONS:**

16           10.       The SAM'S FOR PLAY CAFE, is a restaurant, located at/near 1024 Sebastopol  
17 Road, Santa Rosa, California 95407. The SAM'S FOR PLAY CAFE, its signage, parking,  
18 entrances, men's restroom and women's restroom, and its other facilities are each a "place of  
19 public accommodation or facility" subject to the barrier removal requirements of the Americans  
20 with Disabilities Act. On information and belief, each such facility has, since July 1, 1970,  
21 undergone "alterations, structural repairs and additions," each of which has subjected the SAM'S  
22 FOR PLAY CAFE and each of its facilities, its signage, parking, entrances, men's restroom and  
23 women's restroom to disability access requirements per the Americans with Disabilities Act  
24 Accessibility Guidelines (ADAAG), and the California Building Code.

25           11.       On or about the year of 2001, defendants' and each of them purchased and/or  
26 took possessory control of the premises now known as SAM'S FOR PLAY CAFE. At all times  
27 prior thereto, defendants' and each of them were aware of their obligation prior to the close of  
28 escrow, or upon taking possessory interest that public accommodations had a duty to identify and  
remove architectural barriers and were aware that SAM'S FOR PLAY CAFE was not accessible  
to the disabled. Nevertheless, defendants' and each of them, operated the café as though it was  
accessible.

1           12.     At all times stated herein, defendants' and each of them with the knowledge that  
2 each of them had a continuing obligation to identify and remove architectural barriers where it  
3 was readily achievable to do so, failed to adopt a transition plan to provide better and/or  
4 compliant access to the subject accommodation.

5           13.     At all times referred to herein and continuing to the present time, defendants, and  
6 each of them, advertised, publicized and held out the SAM'S FOR PLAY CAFÉ as being  
7 handicapped accessible and handicapped usable.

8           14.     On or about June 19, 2008, June 23, 2008, July 22, 2008, October 30, 2010,  
9 November 3, 2010, November 26, 2010 and February 3, 2011, plaintiff IRMA RAMIREZ and  
10 plaintiff DAREN HEATHERLY each was an invitee and guest at the subject SAM'S FOR  
11 PLAY CAFÉ, for purposes of having food and beverage. Plaintiff IRMA RAMIREZ and  
12 Plaintiff DAREN HEATHERLY are married to one another.

13           15.     On or about June 19, 2008, June 23, 2008, July 22, 2008, plaintiff IRMA  
14 RAMIREZ and plaintiff DAREN HEATHERLY patronized SAM'S FOR PLAY. On each date,  
15 each plaintiff encountered a parking lot without proper signage nor parking stalls for the  
16 disabled.

17           16.     At said times and place, plaintiff IRMA RAMIREZ and plaintiff DAREN  
18 HEATHERLY needed to use the women's and men's restrooms. Plaintiff IRMA RAMIREZ  
19 while being able to squeeze through the narrow doorway, encountered many inaccessible  
20 elements within the restroom. Plaintiff DAREN HEATHERLY struggled to get through the  
21 narrow doorway and banged parts of his body attempting to enter and exit the men's restroom.  
22 Plaintiff DAREN HEATHERLY also encountered many elements of the men's restroom which  
23 constituted architectural barriers.

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1           17.     On or about September 5, 2008, plaintiff IRMA RAMIREZ wrote both the  
2 landlord and tenant about the access issues. Plaintiff IRMA RAMIREZ wrote:

3           “My husband and I have been to Sam’s For Play. We both use  
4 wheelchairs. We both have problems at the restaurant. Daren has  
5 more problems. The tables are so close together that you can’t roll  
6 between them. You don’t have van accessible parking so we have  
7 a real problem putting down our ramp and not being trapped by a  
8 car pulling alongside. The restrooms also need to be more  
9 accessible. For example, the men’s restroom door is so narrow that  
10 Daren gets banged up trying to get in out in his power chair. I  
11 would really appreciate it if you would give me written assurance  
12 within the next two weeks that you will take care of these problems  
13 within the next three months. I’d like a written agreement. If you  
14 cannot do this would you forward my letter to whomever is in  
15 charge. We’d like to come back to Sam’s For Play once it’s  
16 accessible to us. If there is some problem doing this please let me  
17 know. Would you please reply to my letter by FedEx to make sure  
18 I get your response? I found out who might be able to help you. If  
19 you need information on exactly what you need to do, you can  
20 contact Pacific ADA and IT Center. You can write to them at  
21 Pacific Disability and Business Technical Assistance Center, 555  
22 12<sup>th</sup> Street, Suite 1030, Oakland, CA 94607-4046. You can also  
23 get a hold of them at 1-800-949-4232 (V/TTY) or (510) 285-5600  
24 (V/TTY). Their website is [www.pacdbtac.org](http://www.pacdbtac.org). You can also get  
25 ADA Regulations and Technical Assistance Materials by calling 1-  
26 800-514-0301 or go to [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm).  
27 Either of them can send you a copy of the ADA and ADAAG  
28 codes, specifications, diagrams and manuals so that you can do the  
work yourself or have someone do it for you. You could also get a  
list of barriers common to places like yours and do your own  
inspection for barriers and remove them. I was told that, if you  
make less than a million dollars per year and have a few employees,  
that you can get a \$10,000 tax credit to make your place accessible.  
That’s a great deal. You can get information on this from the two  
places I mentioned above. You should talk to your accountant  
about it. Maybe your account already has this information or knows  
about it. Thank you for considering my request.”

Plaintiff IRMA RAMIREZ did not receive a response.

1           18.     On or about October 30, 2010, November 3, 2010, November 26, 2010 and  
2 February 3, 2011, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY returned to  
3 SAM'S FOR PLAY. On each of said occasion, plaintiff IRMA RAMIREZ and plaintiff DAREN  
4 HEATHERLY drove into the parking lot of SAM'S FOR PLAY. Plaintiffs encountered the  
5 following architectural barriers and as a result had the following adverse experiences:

- 6           •       Lack of van accessible parking and signage.

7 As a legal result, each plaintiff experienced anxiety and worry because once their lift was  
8 deployed and each exited the van as they did, it would be difficult/not possible to return to their  
9 van and enter it if a vehicle parking alongside of it on the right side. No remedial work had been  
10 done.

11           19.     In the interim, between November 26, 2010 and February 3, 2011, and on or about  
12 December 15, 2010, plaintiff IRMA RAMIREZ again wrote the landlord and tenant concerning  
13 access issues. She wrote:

14           “You probably don't remember us. I wrote you about two years ago about  
15 wheelchair access. Recently my husband and I have been back at Sam's to  
16 eat. The food is good. There is a lot of it. The prices are fair. But, big but  
17 there are still some problems. They don't make the experience as good as  
18 could be. There is still a parking problem. The parking stall in the corner  
19 does not have cross striping and no parking written on the ground. A  
20 motorcycle could block you in. Also it is uneven. So when you deploy the  
21 ramp it does not lay flat. That creates a problem. Next, 2 years ago I didn't  
22 have a power chair. I could get into the women's restroom. Now, it's really  
23 hard because the door is too narrow. Two years ago, I explained how it was  
24 a problem for my husband, Daren. He also uses a power chair and gets  
25 banged up trying to get in the men's restroom. Anyway, I told you about these  
26 kind of problems two years ago. So I think you need to really look into this  
27 and solve the problems. I don't think any are really difficult to do. Don't  
28 think they would be costly. You get a lot of seniors and doing this would be  
good for everyone. I thought the landlord and the tenant should know about  
this. That's why I wrote this identical letter to both of you. It's like letting  
the right hand know what the left hand is doing! If you both put your heads  
and hands together, I know the two of you can fix this problem.

You need to learn what needs to be done and do it now. So to help you,  
please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, and  
ask them to send you all the information they have on access then you will  
know what to look at and what needs to be done.

1 Much of the work can be done by a handyman. Also, look into the \$10,000  
2 tax credit for providing access. Remember, wheelchair users have an old  
3 saying: "Access delayed is Access denied!" You understand, right? Anyway,  
4 please write me when you get this letter, tell me exactly what will be done  
5 and make me a promise that you will take care of this right away. Give me  
6 a date. If you are not the one in charge or don't have the responsibility to do  
7 it, would you make sure this letter goes to the person in charge or who can  
8 make decisions on what to do. Thanks!"

9 20. On or about February 3, 2011, plaintiff IRMA RAMIREZ and plaintiff DAREN  
10 HEATHERLY again returned to SAM'S FOR PLAY. Plaintiff IRMA RAMIREZ and plaintiff  
11 DAREN HEATHERLY placed a take-out order. Plaintiff IRMA RAMIREZ and plaintiff  
12 DAREN HEATHERLY encountered the same noncompliant parking stall(s). Plaintiff DAREN  
13 HEATHERLY picked up the food order and upon returning to plaintiffs' van, he went to the  
14 restroom. No remedial changes had been made to the men's restroom.

15 21. On or about October 30, 2010, November 3, 2010, November 26, 2010 and  
16 February 3, 2011, plaintiff IRMA RAMIREZ returned to SAM'S FOR PLAY. On each of said  
17 occasion, plaintiff IRMA RAMIREZ encountered the following architectural barriers and as a  
18 result had the following adverse experiences:

- 19 • Plaintiff IRMA RAMIREZ encountered a noncompliant women's  
20 restroom, to wit:
  - 21 i. narrow door;
  - 22 ii. short rear grab bar;
  - 23 iii. too highly placed toilet seat cover; and
  - 24 iv. lack of a lavatory with mounting to allow wheelchair(s) to go  
25 underneath and other inaccessible elements.

26 As a legal result, it was difficult for plaintiff IRMA RAMIREZ to pass through the narrow doors,  
27 transfer to the toilet, reach the dispenser(s) and wash her hands.

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1           22.     On or about October 30, 2010, November 3, 2010, November 26, 2010 and  
2 February 3, 2011, plaintiff DAREN HEATHERLY returned to SAM'S FOR PLAY. On each of  
3 said occasion, plaintiff DAREN HEATHERLY encountered the following architectural barriers  
4 and as a result had the following adverse experiences:

5           •       Plaintiff DAREN HEATHERLY encountered a noncompliant men's  
6 restroom, to wit:

- 7           i.       narrow door;
- 8           ii.      short rear grab bar;
- 9           iii.     too highly placed toilet seat cover; and
- 10          iv.     lack of a lavatory with mounting to allow wheelchair(s) to go  
11              underneath and other inaccessible elements.

12 As a legal result, it was difficult for plaintiff DAREN HEATHERLY to pass through the narrow  
13 doors, transfer to the toilet, reach the dispenser(s) and wash her hands.

14           23.     Therefore, at said time(s) and place, plaintiff IRMA RAMIREZ and plaintiff  
15 DAREN HEATHERLY, each a person with a disability, encountered the following inaccessible  
16 elements of the subject SAM'S FOR PLAY, which constituted architectural barriers and a denial  
17 of the proper and legally-required access to a public accommodation to persons with physical  
18 disabilities including, but not limited to:

- 19          a.       lack of directional signage to show accessible routes of travel, i.e.  
20              entrance(s)
- 21          b.       lack of disabled van accessible parking stall(s);
- 22          c.       lack of (proper) disabled parking signage;
- 23          d.       lack of tow-a-way signage;
- 24          e.       lack of an accessible entrance(s);
- 25          f.       lack of a handicapped-accessible women's public restroom;
- 26          g.       lack of a handicapped-accessible men's public restroom; and
- 27          h.       On personal knowledge, information and belief, other public facilities and  
28              elements too numerous to list were improperly inaccessible for use by  
              persons with physical disabilities.



1           24.    Specific architectural barriers encountered by plaintiff IRMA RAMIREZ  
2 and plaintiff DAREN HEATHERLY at said time(s) and place herein in addition to categorical  
3 architectural barriers stated herein and the respective difficulties experienced by plaintiff as  
4 stated herein, the barriers include but are not limited to:

5                   **PARKING**

- 6                   •       no disabled parking signage;
- 7                   •       no van accessible parking stall(s) and access aisle(s);

8                   **DINING**

- 9                   •       lack of accessible outside dining;

10                  **RESTROOMS**

- 11                  •       noncomplying men's and women's restrooms;
- 12                  •       no International Symbol of Accessibility (ISA) signage;
- 13                  •       narrow door(s);
- 14                  •       toilet that is not usable as whole or in part;
- 15                  •       noncomplying grab bar(s); and
- 16                  •       insufficient clear space under lavatories.

17                Therefore, as a legal result of encountering each of said elements, plaintiff(s)  
18 experienced, stress, strain, difficulty, and discomfort to his/her upper extremities in attempting to  
19 and/or using said elements also causing anxiety, disappointment, and embarrassment.

20                25.    At all time(s) as stated herein, plaintiff IRMA RAMIREZ and  
21 plaintiff DAREN HEATHERLY encountered architectural barrier(s) as stated herein and/or had  
22 personal knowledge of said barrier(s) and knew it would be a futile gesture to attempt to  
23 overcome it/them because of his/her disability.

24                26.    At all time(s) and place, each architectural element as stated herein that did  
25 not strictly comply with or substantially comply with the ADAAG minimum requirements  
26 constituted an architectural barrier which precluded plaintiff IRMA RAMIREZ and plaintiff  
27 DAREN HEATHERLY from full and equal opportunities afforded to non disabled persons to the  
28 goods and services of SAM'S FOR PLAY.

1           27. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY were and are  
2 deterred from returning to SAM'S FOR PLAY so long as architectural barrier(s) complained of  
3 that he/she encountered, as stated herein are not ADAAG compliant.

4           28. At said time(s) and place, when plaintiff IRMA RAMIREZ and plaintiff DAREN  
5 HEATHERLY encountered the architectural barriers as stated herein, plaintiff IRMA  
6 RAMIREZ and plaintiff DAREN HEATHERLY in attempting to overcome the barriers to gain  
7 access experienced any one or combination of physical difficulty, discomfort, embarrassment,  
8 stress, strain, fatigue, anger, annoyance and disappointment. This arose from plaintiffs' physical  
9 inability to effectively use his/her upper extremities to easily overcome the architectural barriers  
10 as stated herein. This constitutes a denial of full and equal access to the subject public  
11 accommodation and a denial of the opportunity to independently enjoy and participate in the  
12 opportunities, goods and services offered to non disabled persons and patrons, invitees and  
13 guests.

14           29. Said architectural barrier(s) as stated herein deprived and deterred plaintiff  
15 IRMA RAMIREZ and plaintiff DAREN HEATHERLY the same full and equal access that a non  
16 wheelchair user/non disabled person would enjoy while engaging in the goods, service and  
17 opportunities offered at the subject SAM'S FOR PLAY.

18           30. At all times stated herein, the existence of architectural barriers at defendants'  
19 place of public accommodation evidenced "actual notice" of defendants' intent not to comply  
20 with the Americans with Disabilities Act of 1990 either then, now or in the future.

21           31. On or about September 5, 2008 and December 15, 2010, defendant(s) were  
22 sent four (4) letters by or on behalf of plaintiff IRMA RAMIREZ and plaintiff DAREN  
23 HEATHERLY advising of their need to take immediate action to remove architectural barriers  
24 and requesting a written response upon receipt of his/her letter, promising to immediately remove  
25 the barriers and providing a date when that would be accomplished. Said letters are attached  
26 hereto collectively as exhibit "A" and incorporated by reference as though fully set forth herein.  
27 Defendants' failure to respond evidenced an intent not to seek or engage in an early and  
28 reasonable resolution of the matter.

1           32.     At all times stated herein, defendants, and each of them, did not act as reasonable  
2 and prudent landlord/tenant and were “negligent per se” or at a minimum negligent for not  
3 removing architectural barriers that would foreseeably prevent plaintiff IRMA RAMIREZ from  
4 receiving the same goods and services as able bodied people and some of which may and did pose  
5 a threat of harm and/or personal injury to people with disabilities.

6           33.     At all times stated herein, defendants, and each of them, did not act as reasonable  
7 and prudent landlord/tenant and were “negligent per se” or at a minimum negligent for not  
8 removing architectural barriers that would foreseeably prevent plaintiff DAREN HEATHERLY  
9 from receiving the same goods and services as able bodied people and some of which may and did  
10 pose a threat of harm and/or personal injury to people with disabilities.

11           34.     As a legal result of defendants DARLEEN SAM ANKER, TRUSTEE, THE D.  
12 SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba  
13 SAM’S FOR PLAY CAFÉ’s failure to act as a reasonable and prudent public accommodation in  
14 identifying, removing or creating architectural barriers, policies, practices and procedures that  
15 denied access to each plaintiff and other persons with disabilities, each plaintiff suffered the  
16 damages as alleged herein.

17           35.     As a result of the denial of equal access to defendants’ facilities due to the acts and  
18 omissions of defendants, and each of them, in owning, operating and maintaining these subject  
19 public facilities, plaintiff IRMA RAMIREZ suffered violations of plaintiff’s civil rights, including  
20 but not limited to rights under Civil Code §§51, 52, 54, 54.1, 54.3, *et seq.*

21           36.     As a result of the denial of equal access to defendants’ facilities due to the acts and  
22 omissions of defendants, and each of them, in owning, operating and maintaining these subject  
23 public facilities, plaintiff DAREN HEATHERLY suffered violations of plaintiff’s civil rights,  
24 including but not limited to rights under Civil Code §§51, 52, 54, 54.1, 54.3, *et seq.*

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1           37. Further, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY suffered  
2 emotional distress, mental distress, mental suffering, mental anguish, which includes, but is not  
3 limited to, shame, humiliation, embarrassment, upset, anger, frustration, disappointment and  
4 worry, expectedly and naturally associated with a person with physical disabilities encountering  
5 architectural barrier(s) as stated herein and being denied access, all to his/her damages as prayed  
6 hereinafter in an amount within the jurisdiction of this court. No claim is being made for mental  
7 and emotional distress over and above that usually associated with the discrimination and physical  
8 injuries claimed, and no expert testimony regarding this usual mental and emotional distress will  
9 be presented at trial in support of the claim for damages.

10           38. Defendants', and each of their, failure to remove the architectural barriers  
11 complained of herein created, at the time of plaintiff IRMA RAMIREZ and plaintiff DAREN  
12 HEATHERLY's first visit to said public accommodation, and continues to create continuous and  
13 repeated exposure to substantially the same general harmful conditions which caused plaintiff  
14 IRMA RAMIREZ and plaintiff DAREN HEATHERLY harm as stated herein.

15           39. Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each was denied  
16 his/her rights to equal access to a public facility by defendants DARLEEN SAM ANKER,  
17 TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM  
18 ANKER, an individual dba SAM'S FOR PLAY CAFÉ, because defendants DARLEEN SAM  
19 ANKER, TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN  
20 SAM ANKER, an individual dba SAM'S FOR PLAY CAFÉ maintained a restaurant without  
21 access for persons with physical disabilities to its facilities, including but not limited to signage,  
22 parking, entrances, men's restroom and women's restroom, and other public areas as stated herein,  
23 and continue to the date of filing this complaint to deny equal access to each plaintiff and other  
24 persons with physical disabilities in these and other ways.

25           40. On information and belief, construction alterations carried out by defendants have  
26 also triggered access requirements under both California law and the Americans with Disabilities  
27 Act of 1990.

1 41. On information and belief, defendants have intentionally undertaken to modify and  
2 alter existing building(s), and have failed to make them comply with accessibility requirements  
3 under the requirements of ADAAG and California Building Code.

4 42. On information and belief, defendants have been negligent in their affirmative duty  
5 to identify the architectural barriers complained of herein and negligent in the removal of some or  
6 all of said barriers.

7 43. Because of defendants' violations, plaintiffs and other persons with physical  
8 disabilities are unable to use public facilities such as those owned and operated by defendants on a  
9 "full and equal" basis unless such facility is in compliance with the provisions of the Americans  
10 with Disabilities Act of 1990, Civil Code §51, Civil Code §54.1 and Health & Safety Code  
11 §19955, *et seq.* and other accessibility law as pled herein. Plaintiffs seek an order from this court  
12 compelling defendants to make the SAM'S FOR PLAY accessible to persons with disabilities.

13 44. Each plaintiff, as described hereinbelow, seeks injunctive relief to require the  
14 SAM'S FOR PLAY to be made accessible to meet the requirements of both California law and  
15 the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendants  
16 operate the SAM'S FOR PLAY as a public facility.

17 45. Plaintiff(s) believes that even with service of the summons and complaint on  
18 defendant(s) and each of them, that defendant(s) will not , under their "continuing obligation"  
19 immediately undertake remedial action to identify and remove architectural barriers.

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1           46. Each plaintiff seeks damages for violation of his/her civil rights for each of  
2 their respective visits on June 19, 2008, June 23, 2008, July 22, 2008, October 30, 2010,  
3 November 3, 2010, November 26, 2010 and February 3, 2011 and seeks statutory damages of not  
4 less than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code  
5 §54.3, for each day after his/her visit that the trier of fact (court/jury) determines was the date that  
6 some or all remedial work should have been completed under the standard that the landlord and  
7 tenant had an ongoing duty to identify and remove architectural barriers where it was readily  
8 achievable to do so, which deterred plaintiff IRMA RAMIREZ and plaintiff DAREN  
9 HEATHERLY from returning to the subject public accommodation because of his/her knowledge  
10 and/or belief that neither some or all architectural barriers had been removed and that said  
11 premises remains inaccessible to persons with disabilities whether a wheelchair user or otherwise.

12           47. On information and belief, defendants have been negligent in their affirmative  
13 duty to identify the architectural barriers complained of herein and negligent in the removal  
14 of some or all of said barriers.

15           48. Because of defendants' violations, each plaintiff and other persons with  
16 physical disabilities are unable to use public facilities such as those owned and operated by  
17 defendants on a "full and equal" basis unless such facility is in compliance with the  
18 provisions of the Americans with Disabilities Act of 1990, Civil Code §54.1 and Health &  
19 Safety Code §19955, *et seq.* and other accessibility law as plead herein. Each plaintiff seeks  
20 an order from this court compelling defendants to make the SAM'S FOR PLAY CAFÉ  
21 accessible to persons with disabilities.

22           49. On information and belief, defendants have intentionally undertaken to modify  
23 and alter existing building(s), and have failed to make them comply with accessibility  
24 requirements under the requirements of ADAAG and California Building Code.

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1 The acts and omission of defendants, and each of them, in failing to provide the required  
2 accessible public facilities at the time of each plaintiff's visit and injuries, indicate actual and  
3 implied malice toward each plaintiff, and despicable conduct carried out by defendants, and  
4 each of them, with a willful and conscious disregard for the rights and safety of each plaintiff  
5 and other similarly situated persons, and justify a trebling of damages as provided by Civil  
6 Code §§52(a) and 54.3, in order to make a more profound example of defendants, and each of  
7 them, to other operators and landlords of other cafes and other public facilities, and to punish  
8 defendants and to carry out the purposes of the Civil Code §§ 51, 51.5 and 54.

9         50. Each plaintiff is informed and believes and therefore alleges that defendants  
10 DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER TRUST, dated March 14,  
11 2008; and DARLEEN SAM ANKER, an individual dba SAM'S FOR PLAY CAFÉ, and  
12 each of them, caused the subject building(s) which constitute the SAM'S FOR PLAY CAFÉ  
13 to be constructed, altered and maintained in such a manner that persons with physical  
14 disabilities were denied full and equal access to, within and throughout said building(s) of the  
15 SAM'S FOR PLAY and were denied full and equal use of said public facilities.  
16 Furthermore, on information and belief, defendants have continued to maintain and operate  
17 said café and/or its building(s) in such conditions up to the present time, despite actual and  
18 constructive notice to such defendants that the configuration of SAM'S FOR PLAY and/or  
19 its building(s) is in violation of the civil rights of persons with physical disabilities, such as  
20 plaintiff IRMA RAMIREZ, plaintiff DAREN HEATHERLY and other members of the  
21 disability community. Such construction, modification, ownership, operation, maintenance  
22 and practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health  
23 and Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

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1           51.     On personal knowledge, information and belief, the basis of defendants' actual  
2 and constructive notice that the physical configuration of the facilities including, but not  
3 limited to, architectural barriers constituting the SAM'S FOR PLAY CAFÉ and/or  
4 building(s) was in violation of the civil rights of persons with physical disabilities, such as  
5 each plaintiff, includes, but is not limited to, communications with invitees and guests,  
6 plaintiff IRMA RAMIREZ herself, sponsors of conferences owners of other restaurants,  
7 hotels, motels and businesses, notices they obtained from governmental agencies upon  
8 modification, improvement, or substantial repair of the subject premises and other properties  
9 owned by these defendants, newspaper articles and trade publications regarding the  
10 Americans with Disabilities Act of 1990 and other access laws, public service  
11 announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and  
12 other similar information. Defendants' failure, under state and federal law, to make the  
13 SAM'S FOR PLAY accessible is further evidence of defendants' conscious disregard for the  
14 rights of plaintiffs and other similarly situated persons with disabilities. Despite being  
15 informed of such effect on each plaintiff and other persons with physical disabilities due to  
16 the lack of accessible facilities, defendants, and each of them, knowingly and willfully  
17 refused to take any steps to rectify the situation and to provide full and equal access for each  
18 plaintiff and other persons with physical disabilities to the SAM'S PLAY CAFE. Said  
19 defendants, and each of them, have continued such practices, in conscious disregard for the  
20 rights of each plaintiff and other persons with physical disabilities, up to the date of filing of  
21 this complaint, and continuing thereon. Defendants had further actual knowledge of the  
22 architectural barriers referred to herein by virtue of the demand letter addressed to the  
23 defendants and served concurrently with the summons and complaint. Said conduct, with  
24 knowledge of the effect it was and is having on plaintiffs and other persons with physical  
25 disabilities, constitutes despicable conduct in conscious disregard of the rights and safety of  
26 each plaintiff and of other similarly situated persons, justifying the imposition of treble  
27 damages per Civil Code §§52 and 54.3.

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1 52. Plaintiff IRMA RAMIREZ, plaintiff DAREN HEATHERLY and the  
 2 disability community, consisting of persons with disabilities, would, could and will return to  
 3 the subject public accommodation when it is made accessible to persons with disabilities.

4 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**  
 5 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
 6 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**  
 7 (On behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, and  
 8 Against Defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER  
 9 TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba  
 10 SAM'S FOR PLAY CAFÉ, inclusive)  
 11 (42 U.S.C. §12101, *et seq.*)

12 53. Plaintiffs plead and incorporate by reference, as if fully set forth again  
 13 herein, the allegations contained in paragraphs 1 through 52 of this complaint.

14 54. Pursuant to law, in 1990, the United States Congress made findings per  
 15 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed  
 16 to more fully protect:

17 some 43 million Americans with one or more physical or  
 18 mental disabilities; [that] historically society has tended to  
 19 isolate and segregate individuals with disabilities; [that] such  
 20 forms of discrimination against individuals with disabilities  
 21 continue to be a serious and pervasive social problem; [that]  
 22 the nation's proper goals regarding individuals with disabilities  
 23 are to assure equality of opportunity, full participation,  
 24 independent living and economic self-sufficiency for such  
 25 individuals; [and that] the continuing existence of unfair and  
 26 unnecessary discrimination and prejudice denies people with  
 27 disabilities the opportunity to compete on an equal basis and to  
 28 pursue those opportunities for which our free society is  
 justifiably famous.

55. Congress stated as its purpose in passing the Americans with Disabilities Act  
 of 1990 (42 U.S.C. §12102):

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

1 56. As part of the Americans with Disabilities Act of 1990, Public Law 101-336  
2 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services  
3 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public  
4 accommodations identified for purposes of this title was:

5 (7) PUBLIC ACCOMMODATION - The following private  
6 entities are considered public accommodations for purposes of  
7 this title, if the operations of such entities affect commerce -

8 ---

9 (B) a restaurant, bar or other establishment serving food  
10 or drink.

42 U.S.C. §12181(7)(B)

11 57. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated  
12 against on the basis of disability in the full and equal enjoyment of the goods, services,  
13 facilities, privileges, advantages, or accommodations of any place of public accommodation  
14 by any person who owns, leases, or leases to, or operates a place of public accommodation."

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1           58.     The specific prohibitions against discrimination set forth in §302(b)(2)(a),  
2 42 U.S.C. §12182(b)(2)(a) are:

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

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

19                   (iii)   a failure to take such steps as may be necessary  
20 to ensure that no individual with a disability is excluded,  
21 denied services, segregated or otherwise treated differently than  
22 other individuals because of the absence of auxiliary aids and  
23 services, unless the entity can demonstrate that taking such  
24 steps would fundamentally alter the nature of the good, service,  
25 facility, privilege, advantage, or accommodation being offered  
26 or would result in an undue burden;

27                   (iv)   a failure to remove architectural barriers, and  
28 communication barriers that are structural in nature, in existing  
facilities . . . where such removal is readily achievable; and

(v)     where an entity can demonstrate that the  
removal of a barrier under clause (iv) is not readily achievable,  
a failure to make such goods, services, facilities, privileges,  
advantages or accommodations available through alternative  
methods if such methods are readily achievable.

22 The acts of defendants set forth herein were a violation of each plaintiff's rights under the  
23 ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et*  
24 *seq.* - Effective January 31, 1993, the standards of the ADA were also incorporated into  
25 California Civil Code §51, making available the damage remedies incorporated into Civil  
26 Code §51 and 52(a) and 54.3.

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1           59.     The removal of the barriers complained of by plaintiffs as hereinabove alleged  
2 were at all times after January 26, 1992 “readily achievable” as to the subject building(s) of  
3 SAM’S FOR PLAY pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and  
4 belief, if the removal of all the barriers complained of herein together was not “readily  
5 achievable,” the removal of each individual barrier complained of herein was “readily  
6 achievable.” On information and belief, defendants’ failure to remove said barriers was  
7 likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42  
8 U.S.C. §12182 (b)(2)(A)(i)and (ii).

9           60.     Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily  
10 accomplishable and able to be carried out without much difficulty or expense.” The statute  
11 defines relative “expense” in part in relation to the total financial resources of the entities  
12 involved. Each plaintiff alleges that properly repairing, modifying, or altering each of the  
13 items that plaintiffs complains of herein were and are “readily achievable” by the defendants  
14 under the standards set forth under §301(9) of the Americans with Disabilities Act.  
15 Furthermore, if it was not “readily achievable” for defendants to remove each of such  
16 barriers, defendants have failed to make the required services available through alternative  
17 methods which were readily achievable.

18           61.     On information and belief, construction work on, and modifications of, the  
19 subject building(s) of SAM’S FOR PLAY CAFÉ occurred after the compliance date for the  
20 Americans with Disabilities Act, January 26, 1992, independently triggering access  
21 requirements under Title III of the ADA.

22           62.     Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
23 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil  
24 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as each plaintiff is being subjected to  
25 discrimination on the basis of disability in violation of this title or have reasonable grounds  
26 for believing that plaintiff is about to be subjected to discrimination in violation of §302.

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1 Each plaintiff is deterred from returning to or making use of the public facilities complained  
 2 of herein so long as the premises and defendants' policies bar full and equal use by persons  
 3 with physical disabilities.

4 63. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person  
 5 with a disability to engage in a futile gesture if such person has actual notice that a person or  
 6 organization covered by this title does not intend to comply with its provisions." Pursuant to  
 7 this section, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each has not  
 8 returned to defendants' premises since on or about February 3, 2011, but on information and  
 9 belief, alleges that defendants have continued to violate the law and deny the rights of each  
 10 plaintiff and of other persons with physical disabilities to access this public accommodation.  
 11 Pursuant to 42 USC §12188(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive  
 12 relief shall include an order to alter facilities to make such facilities readily accessible to and  
 13 usable by individuals with disabilities to the extent required by this title."

14 64. Each plaintiff seeks relief pursuant to remedies set forth in §204(a) of the  
 15 Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations  
 16 adopted to implement the Americans with Disabilities Act of 1990, including but not limited  
 17 to an order granting injunctive relief and attorneys' fees. Each plaintiff will seek attorneys'  
 18 fees conditioned upon being deemed to be the prevailing party.

19 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL**  
 20 **ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND**  
 21 **54.3, ET SEQ.**

22 (On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, and  
 23 Against Defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER  
 24 TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba  
 25 SAM'S FOR PLAY CAFÉ, inclusive)  
 26 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

27 65. Plaintiffs replead and incorporate by reference as if fully set forth again herein,  
 28 the allegations contained in paragraphs 1 through 64 of this complaint.

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1           66.     At all times relevant to this action, California Civil Code §54 has provided  
2 that persons with physical disabilities are not to be discriminated against because of physical  
3 handicap or disability. This section provides that:

4                   (a) Individuals with disabilities . . . have the same rights  
5 as the general public to full and free use of the streets,  
6 highways, sidewalks, walkways, public buildings, medical  
7 facilities, including hospitals, clinics, and physicians' offices,  
8 and other public places.

9           67.     California Civil Code §54.1 provides that persons with disabilities shall not be  
10 denied full and equal access to places of public accommodation or facilities:

11                   (a)(1) Individuals with disabilities shall be entitled to  
12 full and equal access, as other members of the general public,  
13 to accommodations, advantages, facilities, medical facilities,  
14 including hospitals, clinics, and physicians' offices, and  
15 privileges of all common carriers, airplanes, motor vehicles,  
16 railroad trains, motorbuses, streetcars, boats, or any other  
17 public conveyances or modes of transportation (whether  
18 private, public, franchised, licensed, contracted, or otherwise  
19 provided), telephone facilities, adoption agencies, private  
20 schools, hotels, lodging places, places of public  
21 accommodation, amusement or resort, and other places to  
22 which the general public is invited, subject only to the  
23 conditions and limitations established by law, or state or federal  
24 regulation, and applicable alike to all persons.

25                   Civil Code §54.1(a)(1)

26           68.     California Civil Code §54.1 further provides that a violation of the Americans  
27 with Disabilities Act of 1990 constitutes a violation of section 54.1:

28                   (d) A violation of the right of an individual under the  
Americans with Disabilities Act of 1990 (Public Law 101-336)  
also constitutes a violation of this section, and nothing in this  
section shall be construed to limit the access of any person in  
violation of that act.

                  Civil Code §54.1(d)

          69.     Plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each is a  
person within the meaning of Civil Code §54.1 whose rights have been infringed upon and  
violated by the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1.  
Each specific architectural barrier which defendants knowingly and willfully fail and refuse  
to remove constitutes a separate act in violation of Civil Code §§54 and 54.1.

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1 Each plaintiff has been and continue to be denied full and equal access to defendants' SAM'S  
2 FOR PLAY CAFE. As a legal result, each plaintiff is entitled to seek damages pursuant to a  
3 court or jury determination, in accordance with California Civil Code §54.3(a) for each day  
4 on which he/she visited or have been deterred from visiting the cafe because of his/her  
5 knowledge and belief that the subject cafe is inaccessible to persons with disabilities.

6 California Civil Code §54.3(a) provides:

7 Any person or persons, firm or corporation, who denies or  
8 interferes with admittance to or enjoyment of the public  
9 facilities as specified in Sections 54 and 54.1 or otherwise  
10 interferes with the rights of an individual with a disability  
11 under Sections 54, 54.1 and 54.2 is liable for each offense for  
12 the actual damages and any amount as may be determined by a  
13 jury, or the court sitting without a jury, up to a maximum of  
14 three times the amount of actual damages but in no case less  
15 than . . .one thousand dollars (\$1,000) and . . . attorney's fees as  
16 may be determined by the court in addition thereto, suffered by  
17 any person denied any of the rights provided in Sections 54,  
18 54.1 and 54.2.

19 Civil Code §54.3(a)

20 70. On or about October 30, 2010, November 3, 2010, November 26, 2010 and  
21 February 3, 2011, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY on each  
22 of their respective visits as stated herein suffered violations of Civil Code §§54 and 54.1 in  
23 that plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each was denied access  
24 to signage, parking, entrances, men's restroom and women's restroom and other public  
25 facilities as stated herein at the SAM'S FOR PLAY CAFÉ and on the basis that plaintiff  
26 IRMA RAMIREZ and plaintiff DAREN HEATHERLY each was a person with physical  
27 disabilities.

28 71. As a result of the denial of equal access to defendants' facilities due to the acts  
and omissions of defendants, and each of them, in owning, operating and maintaining these  
subject public facilities, plaintiff IRMA RAMIREZ suffered violations of plaintiff's civil  
rights, including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

1           72.     As a result of the denial of equal access to defendants' facilities due to the acts  
2 and omissions of defendants, and each of them, in owning, operating and maintaining these  
3 subject public facilities, plaintiff DAREN HEATHERLY suffered violations of plaintiff's  
4 civil rights, including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

5           73.     Further, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each  
6 suffered mental distress, mental suffering, mental anguish, which includes shame,  
7 humiliation, embarrassment, frustration, anger, disappointment and worry, all of which are  
8 expectedly and naturally associated with a denial of access to a person with physical  
9 disabilities, all to each plaintiff's damages as hereinafter stated. Defendants' actions and  
10 omissions to act constituted discrimination against each plaintiff on the sole basis that each  
11 plaintiff is a person or an entity that represents persons with physical disabilities and unable,  
12 because of the architectural barriers created and maintained by the defendants in violation of  
13 the subject laws, to use the public facilities hereinabove described on a full and equal basis as  
14 other persons.

15           74.     Each plaintiff has been damaged by defendants', and each of their, wrongful  
16 conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation  
17 of each plaintiff's rights as a person or an entity that represents persons with physical  
18 disabilities on or about October 30, 2010, November 3, 2010, November 26, 2010 and  
19 February 3, 2011, and on a continuing basis since then, including statutory damages, a  
20 trebling of all of actual damages, general and special damages available pursuant to §54.3 of  
21 the Civil Code according to proof.

22           75.     As a result of defendants', and each of their, acts and omissions in this regard,  
23 each plaintiff has been required to incur legal expenses and hire attorneys in order to enforce  
24 each plaintiff's rights and enforce the provisions of the law protecting access for persons with  
25 physical disabilities and prohibiting discrimination against persons with physical disabilities.  
26 Pursuant to the provisions of Civil Code §54.3, each plaintiff therefore will seek recovery in  
27 this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing  
28 party.



1 Additionally, plaintiffs’ lawsuit is intended not only to obtain compensation for damages to  
2 plaintiffs, but also to compel the defendants to make their facilities accessible to all members  
3 of the public with disabilities, justifying public interest attorneys’ fees, if deemed the  
4 prevailing party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

5 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY  
6 FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET  
7 SEQ.**

(On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, and  
8 Against Defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER  
9 TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba  
10 SAM’S FOR PLAY CAFÉ, inclusive)  
11 (Health & Safety Code §19955, *et seq.*)

12 76. Plaintiffs plead and incorporate by reference, as if fully set forth again  
13 herein, the allegations contained in paragraphs 1 through 75 of this complaint.

14 77. Health & Safety Code §19955 provides in pertinent part:

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

26 78. Health & Safety Code §19956, which appears in the same chapter as §19955,  
27 provides in pertinent part, “accommodations constructed in this state shall conform to the  
28 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the  
Government Code . . . .” Health & Safety Code §19956 was operative July 1, 1970, and is  
applicable to all public accommodations constructed or altered after that date.

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1 On information and belief, portions of the SAM'S FOR PLAY CAFÉ and/or of the  
2 building(s) were constructed and/or altered after July 1, 1970, and substantial portions of the  
3 subject café and/or the building(s) had alterations, structural repairs, and/or additions made to  
4 such public accommodations after July 1, 1970, thereby requiring said cafe and/or building to  
5 be subject to the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon  
6 such alteration, structural repairs or additions per Health & Safety Code §19959.

7 79. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the  
8 State Architect promulgated regulations for the enforcement of these provisions. Effective  
9 July 1, 1982, Title 24 of the California Building Standards Code adopted the California State  
10 Architect's Regulations and these regulations must be complied with as to any alterations  
11 and/or modifications of SAM'S FOR PLAY and/or the building(s) occurring after that date.  
12 Construction changes occurring prior to this date but after July 1, 1970 triggered access  
13 requirements pursuant to the "ASA" requirements, the American Standards Association  
14 Specifications, A117.1-1961. On information and belief, at the time of the construction and  
15 modification of said building, all buildings and facilities covered were required to conform to  
16 each of the standards and specifications described in the American Standards Association  
17 Specifications and/or those contained in the California Building Code.

18 80. Cafes such as the SAM'S FOR PLAY are "public accommodations or  
19 facilities" within the meaning of Health & Safety Code §19955, *et seq.*

20 81. As a result of the actions and failure to act of defendants, and as a result of the  
21 failure to provide proper and legally handicapped-accessible public facilities, each plaintiff  
22 was denied plaintiff's rights to full and equal access to public facilities and suffered a loss of  
23 each plaintiff's civil rights and each plaintiff's rights as a person with physical disabilities to  
24 full and equal access to public facilities.

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1           82.     Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,  
 2 each plaintiff has been required to incur legal expenses and hire attorneys in order to enforce  
 3 each plaintiff's civil rights and enforce provisions of the law protecting access for the persons  
 4 with physical disabilities and prohibiting discrimination against the persons with physical  
 5 disabilities, and to take such action both in each plaintiff's own interests and in order to  
 6 enforce an important right affecting the public interest. Each plaintiff, therefore, seeks in this  
 7 lawsuit the recovery of all reasonable attorneys' fees incurred, pursuant to the provisions of  
 8 the Code of Civil Procedure §1021.5. Each plaintiff additionally seeks attorneys' fees  
 9 pursuant to Health & Safety Code §19953 and Civil Code §§54.3 and/or in the alternative,  
 10 each plaintiff will seek attorneys' fees, costs and litigation expenses pursuant to §204(a) of  
 11 the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)). Each plaintiff will seek attorneys' fees  
 12 conditioned upon being deemed to be the prevailing party.

13           83.     Each plaintiff seeks injunctive relief for an order compelling defendants, and  
 14 each of them, to make the subject place of public accommodation readily accessible to and  
 15 usable by persons with disabilities.

16 **IV.     FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**  
 17 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**  
 18 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51,**  
 19 ***ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)**

18 (On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, and  
 19 Against Defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER  
 20 TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba  
 21 SAM'S FOR PLAY CAFÉ, inclusive)  
 22 (Civil Code §51, 51.5)

22           84.     Plaintiffs replead and incorporate by reference, as if fully set forth again  
 23 herein, the allegations contained in paragraphs 1 through 83 of this complaint.

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1 85. Defendants’ actions and omissions and failure to act as a reasonable and  
2 prudent public accommodation in identifying, removing and/or creating architectural barriers,  
3 policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights  
4 Act. The Unruh Act provides:

5 This section shall be known, and may be cited, as the  
6 Unruh Civil Rights Act.

7 All persons within the jurisdiction of this state are free  
8 and equal, and no matter what their sex, race, color, religion,  
9 ancestry, national origin, or **disability** are entitled to the full  
and equal accommodations, advantages, facilities, privileges, or  
services in all business establishments of every kind  
whatsoever.

10 This section shall not be construed to confer any right  
11 or privilege on a person that is conditioned or limited by law or  
12 that is applicable alike to persons of every sex, color, race,  
religion, ancestry, national origin, or **disability**.

13 Nothing in this section shall be construed to require any  
14 construction, alteration, repair, structural or otherwise, or  
15 modification of any sort whatsoever, beyond that construction,  
16 alteration, repair, or modification that is otherwise required by  
17 other provisions of law, to any new or existing establishment,  
facility, building, improvement, or any other structure . . . nor  
shall anything in this section be construed to augment, restrict,  
or alter in any way the authority of the State Architect to  
require construction, alteration, repair, or modifications that the  
State Architect otherwise possesses pursuant to other . . . laws.

18 A violation of the right of any individual under the  
19 Americans with Disabilities Act of 1990 (Public Law 101-336)  
shall also constitute a violation of this section.

20 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the  
21 “intent” of the defendants in not complying with barrier removal is not an issue.  
22 Hence, the failure on the parts of defendants, as reasonable and prudent public  
23 accommodations, in acting or failing to act to identify and remove barriers can be construed  
24 as a “negligent per se” act of defendants, and each of them.

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1           86.     The acts and omissions of defendants stated herein are discriminatory in  
2 nature and in violation of Civil Code §51.5:

3                     No business establishment of any kind whatsoever shall  
4 discriminate against, boycott or blacklist, refuse to buy from,  
5 sell to, or trade with any person in this state because of the race,  
6 creed, religion, color, national origin, sex, or **disability** of the  
7 person or of the person's partners, members, stockholders,  
8 directors, officers, managers, superintendents, agents,  
9 employees, business associates, suppliers, or customers.

10                    As used in this section, "person" includes any person,  
11 firm association, organization, partnership, business trust,  
12 corporation, limited liability company, or company.

13                    Nothing in this section shall be construed to require any  
14 construction, alteration, repair, structural or otherwise, or  
15 modification of any sort whatsoever, beyond that construction,  
16 alteration, repair or modification that is otherwise required by  
17 other provisions of law, to any new or existing establishment,  
18 facility, building, improvement, or any other structure . . . nor  
19 shall anything in this section be construed to augment, restrict  
20 or alter in any way the authority of the State Architect to  
21 require construction, alteration, repair, or modifications that the  
22 State Architect otherwise possesses pursuant to other laws.

23           87.     Defendants' acts and omissions as specified have denied each plaintiff full and  
24 equal accommodations, advantages, facilities, privileges and services in a business  
25 establishment, on the basis of physical disability, in violation of Civil Code §§51 and 51.5,  
26 the Unruh Civil Rights Act. Furthermore, pursuant to the 1992 amendment to California  
27 Civil Code §51, "A violation of the right of any individual under the Americans with  
28 Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this  
section." Each plaintiff accordingly incorporates the entirety of his/her above cause of action  
for violation of the Americans with Disabilities Act at ¶53, *et seq.*, as if repled herein.

88.     As a result of the denial of equal access to defendants' facilities due to the acts  
and omissions of defendants, and each of them, in owning, operating and maintaining these  
subject public facilities, plaintiff IRMA RAMIREZ suffered violations of plaintiff's civil  
rights, including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

1           89.     As a result of the denial of equal access to defendants’ facilities due to the acts  
2 and omissions of defendants, and each of them, in owning, operating and maintaining these  
3 subject public facilities, plaintiff DAREN HEATHERLY suffered violations of plaintiff’s  
4 civil rights, including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

5           90.     Further, plaintiff IRMA RAMIREZ and plaintiff DAREN HEATHERLY each  
6 suffered mental distress, mental suffering, mental anguish, which includes shame,  
7 humiliation, embarrassment, frustration, anger, disappointment and worry, all of which are  
8 expectedly and naturally associated with a denial of access to a person with physical  
9 disabilities, all to each plaintiff’s damages as hereinafter stated. Defendants’ actions and  
10 omissions to act constituted discrimination against each plaintiff on the sole basis that each  
11 plaintiff is a person or an entity that represents persons with physical disabilities and unable,  
12 because of the architectural barriers created and maintained by the defendants in violation of  
13 the subject laws, to use the public facilities hereinabove described on a full and equal basis as  
14 other persons.

15           91.     Plaintiff IRMA RAMIREZ and plaintiff IRMA RAMIREZ are entitled  
16 to the rights and remedies of §52(a) of the Civil Code, including trebling of actual damages  
17 (defined by §52(h) of the Civil Code to mean “special and general damages”), as well as to  
18 reasonable attorneys’ fees and costs, as is allowed by statute, according to proof if deemed to  
19 be the prevailing party.

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1 **PRAYER:**

2 Plaintiffs pray that this court award damages and provide relief as follows:

3 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**  
4 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS**  
5 **WITH DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**

6 (On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff IRMA RAMIREZ, and  
7 Against Defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER  
8 TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba  
9 SAM'S FOR PLAY CAFÉ, inclusive)  
10 (42 U.S.C. §12101, et seq.)

11 1. For injunctive relief, compelling defendants DARLEEN SAM ANKER,  
12 TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM  
13 ANKER, an individual dba SAM'S FOR PLAY CAFÉ, inclusive, to make the SAM'S FOR  
14 PLAY CAFE, located at 1024 Sebastopol Road, Santa Rosa, California, readily accessible to  
15 and usable by individuals with disabilities, per 42 U.S.C §12181, et seq., and to make  
16 reasonable modifications in policies, practice, eligibility criteria and procedures so as to  
17 afford full access to the goods, services, facilities, privileges, advantages and  
18 accommodations being offered.

19 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are  
20 deemed the prevailing party; and

21 3. For such other and further relief as the court may deem proper.

22 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**  
23 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**  
24 **AND 54.3, ET SEQ.**

25 (On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, and  
26 Against Defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER  
27 TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba  
28 SAM'S FOR PLAY CAFÉ, inclusive)  
(California Civil Code §§54, 54.1, 54.3, et seq.)

1. For injunctive relief, compelling defendants DARLEEN SAM ANKER,  
TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM  
ANKER, an individual dba SAM'S FOR PLAY CAFÉ, inclusive, to make the SAM'S FOR  
PLAY CAFE, located at 1024 Sebastopol Road, Santa Rosa, California, readily accessible to  
and usable by individuals with disabilities, per state law.

1           2.       Statutory damages as afforded by Civil Code §54.3 for the date of incident and  
2 for each occasion on which plaintiffs were deterred from returning to the subject public  
3 accommodation.

4           3.       Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure  
5 §1021.5, if plaintiffs are deemed the prevailing party;

6           4.       Treble damages pursuant to Civil Code §54.3;

7           5.       General damages according to proof;

8           6.       For all costs of suit;

9           7.       Prejudgment interest pursuant to Civil Code §3291; and

10          8.       Such other and further relief as the court may deem just and proper.

11 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE**  
12 **SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE**  
13 **§19955, ET. SEQ.**

14 (On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, and  
15 Against Defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER  
16 TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba  
17 SAM'S FOR PLAY CAFÉ, inclusive)  
18 (Health & Safety code §19955, *et seq.*)

19           1.       For injunctive relief, compelling defendants DARLEEN SAM ANKER,  
20 TRUSTEE, THE D. SAM ANKER TRUST, dated March 14, 2008; and DARLEEN SAM  
21 ANKER, an individual dba SAM'S FOR PLAY CAFÉ, inclusive, to make the SAM'S FOR  
22 PLAY CAFE, located at 1024 Sebastopol Road, Santa Rosa, California, readily accessible to  
23 and usable by individuals with disabilities, per state law.

24           2.       For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,  
25 alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

26           3.       For all costs of suit;

27           4.       For prejudgment interest pursuant to Civil Code §3291;

28           5.       Such other and further relief as the court may deem just and proper.

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1 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS**  
2 **TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES,**  
3 **FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF**  
4 **CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS**  
5 **ACT)**

(On Behalf of Plaintiff IRMA RAMIREZ and Plaintiff DAREN HEATHERLY, and  
Against Defendants DARLEEN SAM ANKER, TRUSTEE, THE D. SAM ANKER  
TRUST, dated March 14, 2008; and DARLEEN SAM ANKER, an individual dba  
SAM'S FOR PLAY CAFÉ, inclusive)  
(California Civil Code §§51, 51.5, et seq.)

7  
8 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident  
9 and for each occasion on which plaintiffs were deterred from returning to the subject public  
10 accommodation;

11 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the  
12 prevailing party;

13 3. General damages according to proof;

14 4. Treble damages pursuant to Civil Code §52(a);

15 5. For all costs of suit;

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- 6. Prejudgment interest pursuant to Civil Code §3291; and
- 7. Such other and further relief as the court may deem just and proper.

Dated: July 26, 2012

THOMAS E. FRANKOVICH,  
*A PROFESSIONAL LAW CORPORATION*

By: \_\_\_/s/Thomas E. Frankovich\_\_\_\_\_

THOMAS E. FRANKOVICH  
Attorney for Plaintiff IRMA RAMIREZ and Plaintiff  
DAREN HEATHERLY,

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: July 26, 2012

THOMAS E. FRANKOVICH,  
*A PROFESSIONAL LAW CORPORATION*

By: \_\_\_/s/Thomas E. Frankovich\_\_\_\_\_

THOMAS E. FRANKOVICH  
Attorney for Plaintiff IRMA RAMIREZ and Plaintiff  
DAREN HEATHERLY

**EXHIBIT "A"**

Irma Ramirez  
734 Morton Way  
Santa Rosa, CA 95404

September 5, 2008

Manager  
Sam's For Play  
1024 Sebastopol Rd.  
Santa Rosa, CA 95407

Dear Manager of Sam's For Play:

My husband and I have been to Sam's For Play. We both use wheelchairs. We both have problems at the restaurant. Daren has more problems. The tables are so close together that you can't roll between them. You don't have van accessible parking so we have a real problem putting down our ramp and not being trapped by a car pulling alongside. The restrooms also need to be more accessible. For example, the men's restroom door is so narrow that Daren gets banged up trying to get in out in his power chair.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. We'd like to come back to Sam's For Play once it's accessible to us. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

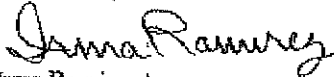
I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center. You can write to them at Pacific Disability and Business Technical Assistance Center, 555 12<sup>th</sup> Street, Suite 1030, Oakland, CA 94607-4046. You can also get a hold of them at 1-800-949-4232 (V/TTY) or (510) 285-5600 (V/TTY). Their website is [www.pacdbtac.org](http://www.pacdbtac.org). You can also get ADA Regulations and Technical Assistance Materials by calling 1-800-514-0301 or go to [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm). Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you.

You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you for considering my request.

Thank You,

  
Irma Ramirez

Irma Ramirez  
734 Morton Way  
Santa Rosa, CA 95404

September 5, 2008

Owner of Building  
Sam's For Play  
1024 Sebastopol Rd.  
Santa Rosa, CA 95407

Dear Owner of Building for Sam's For Play:

My husband and I have been to Sam's For Play. We both use wheelchairs. We both have problems at the restaurant. Daren has more problems. The tables are so close together that you can't roll between them. You don't have van accessible parking so we have a real problem putting down our ramp and not being trapped by a car pulling alongside. The restrooms also need to be more accessible. For example, the men's restroom door is so narrow that Daren gets banged up trying to get in out in his power chair.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. We'd like to come back to Sam's For Play once it's accessible to us. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?


I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center. You can write to them at Pacific Disability and Business Technical Assistance Center, 555 12<sup>th</sup> Street, Suite 1030, Oakland, CA 94607-4046. You can also get a hold of them at 1-800-949-4232 (V/TTY) or (510) 285-5600 (V/TTY). Their website is [www.pacdbtac.org](http://www.pacdbtac.org). You can also get ADA Regulations and Technical Assistance Materials by calling 1-800-514-0301 or go to [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm). Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you.

You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your account already has this information or knows about it.

Thank you for considering my request.

Thank You,

  
Irma Ramirez

Irma Ramirez  
734 Morton Way  
Santa Rosa, CA 95404

December 15, 2010

Manager  
Sam's For Play  
1024 Sebastopol Rd.  
Santa Rosa, CA 95407

Dear Manager of Sam's For Play:

You probably don't remember us. I wrote you about two years ago about wheelchair access.

Recently my husband and I have been back at Sam's to eat. The food is good. There is a lot of it. The prices are fair. But, big but there are still some problems. They don't make the experience as good as could be. There is still a parking problem. The parking stall in the corner does not have cross striping and no parking written on the ground. A motorcycle could block you in. Also it is uneven. So when you deploy the ramp it does not lay flat. That creates a problem.

Next, 2 years ago I didn't have a power chair. I could get into the women's restroom. Now, it's really hard because the door is too narrow. Two years ago, I explained how it was a problem for my husband, Daren. He also uses a power chair and gets banged up trying to get in the men's restroom.


Anyway, I told you about these kind of problems two years ago. So I think you need to really look into this and solve the problems. I don't think any are really difficult to do. Don't think they would be costly. You get a lot of seniors and doing this would be good for everyone.

I thought the landlord and the tenant should know about this. That's why I wrote this identical letter to both of you. It's like letting the right hand know what the left hand is doing! If you both put your heads and hands together, I know the two of you can fix this problem.

You need to learn what needs to be done and do it now. So to help you, please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, and ask them to send you all the information they have on access then you will know what to look at and what needs to be done. Much of the work can be done by a handyman. Also, look into the \$10,000 tax credit for providing access. Remember, wheelchair users have an old saying: "Access delayed is Access denied!" You understand, right? Anyway, please write me when you get this letter, tell me exactly what will be done and make me a promise that you will take care of this right away. Give

me a date. If you are not the one in charge or don't have the responsibility to do it, would you make sure this letter goes to the person in charge or who can make decisions on what to do.  
Thanks!

Sincerely,

A handwritten signature in cursive script that reads "Irma Ramirez". The signature is written in black ink and is positioned to the right of the typed name.

Irma Ramirez

Irma Ramirez  
734 Morton Way  
Santa Rosa, CA 95404

December 15, 2010

Owner of Building  
Sam's For Play  
1024 Sebastopol Rd.  
Santa Rosa, CA 95407

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Irma Ramirez