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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AMERICAN PATRIOTS ADVOCATING
FOR DISABLED RIGHTS, INC., MICHELE
JOSEPH, and MARK ALLISON,

Plaintiffs,

CASE NO.: 2:09-cv-1528

vs.

BUDGET SUITES OF AMERICA LLC, NV - 704,
SUN HARBOR BUDGET SUITES LIMITED
LIABILITY COMPANY OF NEVADA II,
BUDGET SUITES OF AMERICA LLC, NV - 480,
and BIGELOW HOLDING – NEVADA LIMITED
LIABILITY COMPANY,

Defendants.

INJUNCTIVE RELIEF SOUGHT

FIRST AMENDED COMPLAINT

Plaintiffs, AMERICAN PATRIOTS ADVOCATING FOR DISABLED RIGHTS,
INC., MICHELE JOSEPH and MARK ALLISON, by and through the undersigned
counsel, hereby sue the Defendants, BUDGET SUITES OF AMERICA, LLC, NV

1 - 704, SUN HARBOR BUDGET SUITES LIMITED LIABILITY COMPANY OF NEVADA II,
2 BUDGET SUITES OF AMERICA LLC, NV - 480, and BIGELOW HOLDING – NEVADA
3 LIMITED LIABILITY COMPANY, for injunctive relief pursuant to the Americans with
4 Disabilities Act, 42 U.S.C. §12181, *et seq.* (hereinafter, the “ADA”) and the ADA’s Accessibility
5 Guidelines, 28 C.F.R. Part 36 (hereinafter, the “ADAAG”), and allege as follows:

6 **JURISDICTION**

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8 1. This Court has original jurisdiction over the action pursuant to 28 U.S.C. §§1331 and
9 1343 for Plaintiffs’ claims arising under 42 U.S.C. §12181, *et seq.*, based upon Defendants’
10 failure to properly construct, alter and/or remove physical barriers to access and violations of
11 Title III of the ADA (see also, 28 U.S.C. §§2201 and 2202).

12 **PARTIES**

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14 2. Plaintiffs, MICHELE JOSEPH and MARK ALLISON, are *sui juris*, and are disabled
15 as defined by the ADA and substantially limited in performing one or more major life activities,
16 including but not limited to walking and standing. Plaintiffs use a wheelchair and other
17 accommodations for mobility purposes. Plaintiffs’ access to the Facilities and/or full and equal
18 enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations
19 offered therein was denied and/or limited because of these disabilities, and will be denied and/or
20 limited in the future unless and until Defendants are compelled to remove the physical barriers to
21 access and/or ADA violations which exist at the Facilities, including those set forth in this
22 Complaint.
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1 3. Completely independent of their personal desire to have access to places of public
2 accommodation free of illegal barriers to access and ADA violation, Plaintiffs also act as
3 “testers” for the purpose of discovering, encountering, and engaging discrimination against the
4 disabled in public accommodations. When acting as “testers,” Plaintiffs employ a routine
5 practice. They personally visit the public accommodations; they engage all of the barriers to
6 access, or at least all of those that they are able to access; and they test all of those barriers to
7 access to determine whether and the extent to which they are illegal barriers to access; they
8 proceed with legal action to enjoin such discrimination; and they subsequently return to the
9 premises to verify its compliance or non-compliance with the ADA and to otherwise use the
10 public accommodation as members of the able-bodied community are able to do. Independent of
11 their other subsequent visits, Plaintiffs also intend to visit the premises annually to verify its
12 compliance or non-compliance with the ADA, and its maintenance of the accessible features of
13 the premises. In this instance, Plaintiffs, in their individual capacities and as “testers,” visited the
14 Facilities, encountered barriers to access at the Facilities, and engaged and tested those barriers,
15 suffered legal harm and legal injury, and will continue to suffer such harm and injury as a result
16 of the illegal barriers to access and Defendants’ ADA violations set forth herein.
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19 4. AMERICAN PATRIOTS ADVOCATING FOR DISABLED RIGHTS, INC., is a
20 non-profit corporation. MICHELE JOSEPH and MARK ALLISON are members of this
21 organization. This organization’s purpose is to represent the interests of its member(s) and other
22 persons with disabilities by assuring that places of public accommodation are accessible to and
23 usable by individuals with disabilities. Plaintiffs, MICHELE JOSEPH and MARK ALLISION,
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1 and other persons with disabilities have suffered and/or will suffer direct and indirect injury as a
2 result of Defendants' discrimination until Defendants are compelled to remove the physical
3 barriers to access and comply with the requirements of the ADA.

4 5. Plaintiffs have suffered and continue to suffer direct and indirect injury as a result of
5 Defendants' actions or inaction described herein.

6
7 6. Defendants transact business in the State of Nevada and within this judicial district.
8 Defendants are the owners, lessees, lessors and/or operators of the real property and
9 improvements which are the subject of this action, commonly referred to as Budget Suites of
10 America, located at or about: (1) 8440 Las Vegas Boulevard South, Las Vegas, Nevada
11 (BIGELOW HOLDING – NEVADA LIMITED LIABILITY COMPANY); (2) 3655 West
12 Tropicana Avenue, Las Vegas, Nevada (BUDGET SUITES OF AMERICA LLC, NV - 480); (3)
13 4205 West Tropicana Avenue, Las Vegas, Nevada (SUN HARBOR BUDGET SUITES
14 LIMITED LIABILITY COMPANY OF NEVADA II); and (4) 2219 North Rancho Drive, Las
15 Vegas, Nevada (BUDGET SUITES OF AMERICA LLC, NV - 704) (hereinafter, the
16 "Facilities").
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18 7. Plaintiff, MICHELLE JOSEPH, visited 2219 North Rancho Drive, Las Vegas,
19 Nevada from October 7, 2008 through October 14, 2008 (Exhibit 1) and 8440 Las Vegas
20 Boulevard South, Las Vegas, Nevada from August 20, 2008 through August 27, 2008 (Exhibit
21 2).
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1 8. Plaintiff, MARK ALLISON, visited 3655 West Tropicana Avenue, Las Vegas,
2 Nevada from October 8, 2009 through October 15, 2008 (Exhibit 3) and 4205 West Tropicana
3 Avenue, Las Vegas, Nevada from November 1, 2008 through November 8, 2008 (Exhibit 4).

4 9. The Facility located at 8440 Las Vegas Boulevard South, Las Vegas, Nevada holds a
5 Clark County Business License as “Transient Lodging – Miscellaneous Non Resort.” See
6 Exhibit 5.

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8 10. The Facility located at 8440 Las Vegas Boulevard South, Las Vegas, Nevada is
9 registered with the Clark County Assessor as a “Commercial Motel.” See Exhibit 6.

10 11. The Facility located at 3655 West Tropicana Avenue, Las Vegas, Nevada holds a
11 Clerk County Business License as “Transient Lodging – Miscellaneous Non Resort.” See
12 Exhibit 7.

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14 12. The Facility located at 3655 West Tropicana Avenue, Las Vegas, Nevada is registered
15 with the Clark County Assessor as a “Commercial Motel.” See Exhibit 8.

16 13. The Facility located at 4205 West Tropicana Avenue, Las Vegas, Nevada holds a
17 Clerk County Business License as “Transient Lodging Establishment.” See Exhibit 9.

18 14. The Facility located at 4205 West Tropicana Avenue, Las Vegas, Nevada is registered
19 with the Clark County Assessor as a “Commercial Motel.” See Exhibit 10.

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21 15. The Facility located at 2219 North Rancho Drive, Las Vegas, Nevada is registered
22 with the Clark County Assessor as a “Commercial Motel.” See Exhibit 11.

23 16. Each of the Facilities offer stays of as short as one (1) week.
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1 17. Each of the Defendants have the same Managing Member; that is, the BIGELOW
2 FAMILY TRUST.

3 **COUNT I – VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

4 18. The individual Plaintiffs repeat the allegations contained in paragraphs 1- 17 as if they
5 were expressly stated herein.

6 19. On July 26, 1990, Congress enacted the Americans with Disabilities Act (hereinafter,
7 the “ADA”), 42 U.S.C. §12101, *et seq.*

8 20. Congress found, among other things, that:

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- 10 (i) some 43,000,000 Americans have one or more physical or mental
11 disabilities, and this number is increasing as the population as a whole is
12 growing older;
 - 13 (ii) historically, society has tended to isolate and segregate individuals with
14 disabilities, and, despite some improvements, such forms of discrimination
15 against individuals with disabilities continue to be a serious and pervasive
16 social problem;
 - 17 (iii) discrimination against individuals with disabilities persists in such critical
18 areas as employment, housing public accommodations, education,
19 transportation, communication, recreation, institutionalization, health
20 services, voting, and access to public services;
 - 21 (iv) individuals with disabilities continually encounter various forms of
22 discrimination, including outright intentional exclusion, the discriminatory
23 effects of architectural, transportation, and communication barriers,
24 overprotective rules and policies, failure to make modifications to existing
25 facilities and practices, exclusionary qualification standards and criteria,
26 segregation, and relegation to lesser service, programs, activities, benefits,
27 jobs, or other opportunities; and,
 - 28 (v) the continuing existence of unfair and unnecessary discrimination and
prejudice denies people with disabilities the opportunity to compete on an
equal basis and to pursue those opportunities for which our free society is
justifiably famous, and costs the United States billions of dollars in
unnecessary expenses resulting from dependency and nonproductivity.

42 U.S.C. §12101(a)(1) - (3), (5) and (9).

21. Congress explicitly stated that the purpose of the ADA was to:

- (i) provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (ii) provide a clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; and,
- (iii) invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. §12101(b)(1)(2) and (4).

22. The congressional legislation provided places of public accommodation one and a half years from the enactment of the ADA to implement the requirements imposed by the ADA. The effective date of Title III of the ADA was January 26, 1992, or January 26, 1993 if defendant has 10 or fewer employees and gross receipts of \$500,000 or less. 42 U.S.C. §12181; 28 C.F.R. §36.508(a).

23. The Facilities are a public accommodation and service establishment.

24. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991, the Department of Justice, Office of Attorney General, promulgated federal regulations to implement the requirements of the ADA. 29 C.F.R. Part 36. Public accommodations were required to conform to these regulations by January 26, 1992 (or January 26, 1993 if defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. §12181, *et seq.*, and 28 C.F.R. § 36.508(a).

25. The Facilities must be, but are not, in compliance with the ADA and ADAAG.

26. Plaintiffs have attempted to and has, to the extent possible, accessed the Facilities, but could not do so because of their disability due to the physical barriers to access, dangerous conditions and ADA violations that exist at the Facilities that preclude and/or limit their access to

1 the Facilities and/or the goods, services, facilities, privileges, advantages and/or accommodations
2 offered therein, including those barriers, conditions and ADA violations more specifically set forth
3 in this Complaint.

4 27. Plaintiffs intend to visit the Facilities again in the near future in order to utilize all of
5 the goods, services, facilities, privileges, advantages and/or accommodations commonly offered at
6 these Facilities, including utilizing parking and restroom facilities, but will be unable to do so
7 because of their disability due to the physical barriers to access, dangerous conditions and ADA
8 violations that exist at the property that preclude and/or limit their access to the Facilities and/or
9 the goods, services, facilities, privileges, advantages and/or accommodations offered therein,
10 including those barriers, conditions and ADA violations more specifically set forth in this
11 Complaint.
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13 28. Defendants have discriminated against Plaintiffs and others with disabilities, by
14 denying access to, and full and equal enjoyment of the goods, services, facilities, privileges,
15 advantages and/or accommodations of the Facilities, as prohibited by 42 U.S.C. § 12182, *et seq.*,
16 and by failing to remove architectural barriers as required by 42 U.S.C. §12182(b)(2)(A)(iv), and
17 will continue to discriminate against Plaintiffs and others with disabilities unless and until
18 Defendants are compelled to remove all physical barriers that exist at the Facilities, including those
19 specifically set forth herein, and make the Facilities accessible to and usable by persons with
20 disabilities, including Plaintiffs.
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22 29. Defendants have discriminated against Plaintiffs by failing to comply with the above
23 requirements. A specific, although not exclusive, list of unlawful physical barriers, dangerous
24 conditions and ADA violations which preclude and/or limit Plaintiffs' abilities (because of their
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disability) to access the Facilities and/or full and equal enjoyment of the goods, services, facilities, advantages and/or accommodations of the Facilities, include:

8440 Vegas Boulevard South, Las Vegas, Nevada

Parking

- a) One in eight accessible parking spaces (but not less than one) is not designated as “Van Accessible.”
- b) The disabled use spaces provided do not do not have clear and level access aisles violating 4.1.2 and 4.6.3 of the ADAAG. (No slope greater than 1:50 in all directions.)
- c) There are no curb cuts extending from the parking area access aisles violating 4.7 of the ADAAG.
- d) There is no accessible route from the parking areas to the facility in violation of 4.3.2 and 4.7 of the ADAAG.
- e) There are no signs designating the disabled use spaces violating 4.6.4 of the ADAAG.
- f) The ramps provided from the parking areas to the facility contain slopes, side slopes, and/or cross slopes in excess of the limits prescribed in 4.8 of the ADAAG.
- g) There are no proper handrails provided for the ramps from the parking areas to the facility in violation of 4.8.5 of the ADAAG.
- h) The accessible parking spaces are improperly dispersed and marked in violation of 4.6.6 of the ADAAG.
- i) The disabled use spaces and/or unloading areas are located on slopes greater than 1:50 in all directions in violation of 4.6.3 and 4.6.6 of the ADAAG.

Accessible Route

- j) There are ramps at the facility that do not have level landings and/or contain excessive slopes, side slopes or cross slopes in violation of 4.8.2, 4.8.4 and 4.8.6 of the ADAAG.
- k) There are curb ramps at the facility that project into the vehicular areas and/or contain excessive slopes, side slopes or cross slopes in violation of 4.7.2, 4.7.5, 4.7.6, and 4.7.9 of the ADAAG.
- l) The clear width and/or maneuvering clearances at doors to the facility are less than the minimums prescribed in 4.13.5 and 4.13.6 and Figure 25 of the ADAAG.
- m) There are stairs provided at the facility that do not comply with the standards prescribed in 4.9 of the ADAAG.
- n) There is not a continuous path of travel connecting the essential elements of the facility violating 4.3.1 and 4.3.2 of the ADAAG.
- o) There are no elevators at the facility violating 4.1.3 of the ADAAG.

Access to Goods and Services

- p) There are protruding objects throughout the facility in violation of 4.4 of the ADAAG.
- q) There are permanently designated interior spaces at the facility without the proper signage violating 4.30.6 of the ADAAG.
- r) There are vending machines for public use at the facility without the required disabled use elements violating several Sections of the ADAAG.
- s) There are self-service areas with dispensers whose controls are outside the reach ranges prescribed in 4.2 of the ADAAG.
- t) There are recreational areas for public use at the facility without the required disabled use elements violating several Sections of the ADAAG.
- u) There is insufficient clear floor space to access goods and/or services at the facility violating several Sections of the ADAAG.
- v) There is fixed or built in seating provided at the facility that does not comply with the standards prescribed in 4.32 of the ADAAG.

Guest Rooms and Restrooms

- w) There are an inadequate number of accessible rooms or the rooms currently designated for disabled use are not compliant with the provisions of the ADAAG.
- x) There are an insufficient number of compliant disabled rooms in violation 9 of the ADAAG.
- y) The rooms designated for disabled use do not provide 36 inch clear floor space on both sides of the bed in violation of 9 of the ADAAG.
- z) There are areas for storage without the clear floor space prescribed in 4.2 and 9 of the ADAAG.
- aa) The rooms for disabled use provide elements not equipped for use by the hearing/visual impaired violating 9 of the ADAAG.
- bb) The rooms for disabled use provide elements with controls/dispensers outside of the required reach ranges prescribed in 4.2 of the ADAAG.
- cc) The rooms for disabled use have doors which do not provide the latch side clearances prescribed in 4.13.6 of the ADAAG.
- dd) The water closets provided in the disabled use rooms violate the provisions of 4.13 of the ADAAG.

- 1 ee) The clear floor space provided in the bathroom of the room designated for disabled use
2 violates the provisions of 4.18.3 and 4.22 of the ADAAG.
- 3 ff) The grab bars provided in the bathroom of the room designated for disabled use do not
4 comply with the requirements of 4.17.6 and 4.26 of the ADAAG.
- 5 gg) The mirrors and dispensers provided in the bathroom of the room designated for
6 disabled use violates the provisions of 4.19 and 4.27 of the ADAAG.
- 7 hh) There is no clear path of travel connecting the essential elements in the room designated
8 for disabled use violating 4.3 of the ADAAG.
- 9 ii) The fixtures in the disabled use rooms have controls that are not easily operated with a
10 closed fist in violation of the ADAAG.
- 11 jj) There are an insufficient number of guest rooms for persons with hearing impairments
12 in violation of 9.4.1 of the ADAAG.
- 13 kk) The rooms designated for disabled use are not dispersed among the various classes of
14 sleeping accommodations at the facility violating 9.4.1 of the ADAAG.
- 15 ll) The bath tubs in the disabled use rooms lack securely fastened tub seats in violation of
16 4.20.3 of the ADAAG.

3665 Tropicana Avenue, Las Vegas, Nevada

Parking

- 17 a) One in eight accessible parking spaces (but not less than one) is not designated as "Van
18 Accessible".
- 19 b) The disabled use spaces provided do not do not have clear and level access aisles violating
20 4.1.2 and 4.6.3 of the ADAAG. (No slope greater than 1:50 in all directions.)
- 21 c) There are no curb cuts extending from the parking area access aisles violating 4.7 of the
22 ADAAG.
- 23 d) There is no accessible route from the parking areas to the facility in violation of 4.3.2 and
24 4.7 of the ADAAG.
- 25 e) The signs designating the disabled use parking spaces are not posted at sufficient height
26 violating 4.6.4 of the ADAAG.
- 27 f) The ramps provided from the parking areas to the facility contain slopes, side slopes, and/or
28 cross slopes in excess of the limits prescribed in section 4.8 of the ADAAG.
- g) There are no proper handrails provided for the ramps from the parking areas to the facility
in violation of 4.8.5 of the ADAAG.

Accessible Route

- i) There are no accessible routes from the street, sidewalk and parking areas violating the requirements of 4.3.2, 4.5.2, 4.7.1 and 4.8.2 of the ADAAG.
- j) The doors at several of the building entrances are fitted with inaccessible hardware violating 4.13.9 of the ADAAG.
- k) There are ramps at the facility that do not have level landings and contain excessive slopes, side slopes or cross slopes in violation of 4.8.2, 4.8.4 and 4.8.6 of the ADAAG.
- l) There are curb ramps at the facility that contain excessive slopes, side slopes or cross slopes in violation of 4.7.2, 4.7.5, 4.7.6, and 4.7.9 of the ADAAG.
- m) The clear width and maneuvering clearances at doors to the facility are less than the minimums prescribed in 4.13.5 and 4.13.6 and Figure 25 of the ADAAG.
- n) There are rises at the thresholds of entrances at the facility in excess of ¾" violating 4.5.2 and 4.13.8 of the ADAAG.
- o) There are stairs provided at the facility that do not comply with the standards prescribed in 4.4.2 and 4.9 of the ADAAG.
- p) There is not a continuous path of travel connecting the essential elements of the facility violating 4.3.1 and 4.3.2 of the ADAAG.
- q) There are no elevators provided at this facility violating 4.1.3 of the ADAAG.

Access to Goods and Services

- r) Several public telephones throughout the facility do not provide the prescribed volume control device or clear floor space required for use by disabled patrons violating 4.31.1 and 4.31.2 of the ADAAG.
- s) There are permanently designated interior spaces at the facility without the proper signage violating 4.30.6 of the ADAAG.
- t) There are recreational areas for public use at the facility without the required disabled use elements violating several Sections of the ADAAG.
- u) There is no accessible route connecting the recreational areas of the facility, such as the pool, in violation of 4.3.2(2) of the ADAAG.

Guest Rooms and Restrooms

- v) There are an inadequate number of accessible rooms or the rooms currently designated for disabled use are not compliant with the provisions of the ADAAG.
- w) There are an insufficient number of compliant disabled rooms in violation of 9 of the ADAAG.

- x) The rooms designated for disabled use do not provide 36 inch clear floor space on both sides of the bed in violation of 9 of the ADAAG.
- y) The rooms for disabled use provide elements not equipped for use by the hearing/visual impaired violating 9 of the ADAAG.
- z) The rooms for disabled use have doors which do not provide the latch side clearances prescribed in 4.13.6 of the ADAAG.
- aa) There are exposed pipes in the disabled use bathroom violating 4.19.4 of the ADAAG.
- bb) The mirrors provided in the disabled use bathroom do not comply with the requirements prescribed in 4.19.6 of the ADAAG.
- cc) There is no seat in the roll in shower that is provided in the disabled use room violating 4.21.3 of the ADAAG.
- dd) The bath tubs in the disabled use rooms lack securely fastened tub seats in violation of 4.20.3 of the ADAAG.
- ee) The controls in the disabled use bath tub that is provided are not located in accordance with the requirements of ADAAG figure 34.
- ff) There is no clear path of travel connecting the essential elements in the room designated for disabled use violating 4.3 of the ADAAG.
- gg) The fixtures in the disabled use rooms have controls that are not easily operated with a closed fist in violation of the ADAAG.
- hh) There are an insufficient number of guest rooms for persons with hearing impairments in violation of 9.4.1 of the ADAAG.
- ii) The rooms designated for disabled use are not dispersed among the various classes of sleeping accommodations at the facility violating 9.4.1 of the ADAAG.
- jj) All of the bathroom doors except those in the disabled use rooms are 24" wide violating 4.13.5 and 9.4 of the ADAAG.

4205 West Tropicana Avenue, Las Vegas, Nevada

Parking

- a) In this parking area there are an insufficient number of parking spaces designated for disabled use violating 4.1.2 and 4.6.1 of the ADAAG.
- b) One in eight accessible parking spaces (but not less than one) is not designated as "Van Accessible".

- c) The disabled use spaces provided do not do not have clear and level access aisles violating 4.1.2 and 4.6.3 of the ADAAG. (No slope greater than 1:50 in all directions.).
- d) There is no accessible route from the parking areas to the facility in violation of 4.3.2 and 4.7 of the ADAAG.
- e) There are no signs designating some of the disabled use spaces in violation of 4.6.4 of the ADAAG.
- e) The signs designating the disabled use parking spaces are not posted at sufficient height violating 4.6.4 of the ADAAG.
- f) The ramps provided from the parking areas to the facility contain slopes, side slopes, and/or cross slopes in excess of the limits prescribed in section 4.8 of the ADAAG.
- g) There are no proper handrails provided for the ramps from the parking areas to the facility in violation of 4.8.5 of the ADAAG.
- h) The accessible parking spaces are improperly dispersed and marked in violation of 4.6.2 of the ADAAG.
- i) The disabled use spaces and unloading areas are located on a slope violating 4.6.3 and 4.6.6 of the ADAAG.

Accessible Route

- j) The doors at several of the building entrances are fitted with inaccessible hardware violating 4.13.9 of the ADAAG.
- k) There are ramps at the facility that do not have level landings and contain excessive slopes, side slopes or cross slopes in violation of 4.8.2, 4.8.4 and 4.8.6 of the ADAAG.
- l) There are curb ramps at the facility that contain excessive slopes, side slopes or cross slopes in violation of 4.7.2, 4.7.5, 4.7.6, and 4.7.9 of the ADAAG.
- m) The clear width and maneuvering clearances at doors to the facility are less than the minimums prescribed in 4.13.5 and 4.13.6 and Figure 25 of the ADAAG.
- n) There are rises at the thresholds of entrances at the facility in excess of ¾" violating 4.5.2 and 4.13.8 of the ADAAG.
- o) There are stairs provided at the facility that do not comply with the standards prescribed in 4.4.2 and 4.9 of the ADAAG.
- p) There is not a continuous path of travel connecting the essential elements of the facility violating 4.3.1 and 4.3.2 of the ADAAG.
- q) There are no elevators provided at this facility violating 4.1.3(5) of the ADAAG.
- r) There are stairs provided at the facility that do not comply with the standards prescribed in 4.9 of the ADAAG.
- s) There are doors throughout the facility that are less than the 32' width prescribed in 4.13.5 of the ADAAG.

Access to Goods and Services

- t) There are protruding objects present throughout the facility violating 4.4 of the ADAAG.
- u) There are counters throughout the facility in excess of 36" violating 7.2(1) of the ADAAG.
- v) There are vending machines for public use at the facility without the required disabled use elements violating several Sections of the ADAAG.
- w) There are recreational areas for public use at the facility without the required disabled use elements violating several Sections of the ADAAG.
- x) There is insufficient clear floor space to access goods or services at the facility violating several Sections of the ADAAG.
- y) There is no accessible route connecting the recreational areas of the facility, such as the pool, in violation of 4.3.2(2) of the ADAAG.

Guest Rooms and Restrooms

- z) There are an insufficient number of compliant disabled rooms in violation of 9 of the ADAAG.
- aa) The rooms designated for disabled use do not provide 36 inch clear floor space on both sides of the bed in violation of 9 of the ADAAG.
- bb) The rooms provided for disabled use do not provide a roll in shower for use by the disabled in violation of 9 of the ADAAG.
- cc) The rooms for disabled use are not equipped with proper hardware violating 4.13.9 and 9 of the ADAAG.
- dd) There is no clear path of travel between all of the elements in the room designated for disabled use violating 4.3 and 9 of the ADAAG.
- ee) The disabled use rooms are not dispersed among the various classes of sleeping accommodations in violation of 9.1.4 of the ADAAG.

Outdoor Pool

- ff) There is no water access provided for wheelchair users violating 36.202(b) of the ADAAG.

2219 North Rancho Drive, Las Vegas, Nevada

Parking

- a) In this parking area there are an insufficient number of spaces designated for disabled use violating Sections 4.1.2 and 4.6.1 of the ADAAG.
- b) One in eight accessible parking spaces (but not less than one) is not designated as "Van Accessible".
- c) The disabled use spaces provided and unloading areas do not do not have clear and level access aisles violating Sections 4.1.2 and 4.6.3 of the ADAAG. (No slope greater than 1:50 in all directions.)
- d) There are no curb cuts extending from the parking area access aisles violating section 4.7 of the ADAAG.
- e) There is no accessible route from the parking areas to the facility in violation of Sections 4.3.2 and 4.7 of the ADAAG.
- f) There are no signs designating the disabled use spaces violating Section 4.6.4 of the ADAAG.
- g) The signs designating the disabled use parking spaces are not posted at sufficient height violating Section 4.6.4 of the ADAAG.
- h) The ramps provided from the parking areas to the facility contain slopes, side slopes and cross slopes in excess of the limits prescribed in Section 4.8 of the ADAAG.
- i) There are no proper handrails provided for the ramps from the parking areas to the facility in violation of Section 4.8.5 of the ADAAG.
- j) The accessible parking spaces are improperly dispersed and marked in violation of Section 4.6.2 of the ADAAG.

Accessible Route

- k) There are no accessible routes from the street, sidewalk and parking areas violating the requirements of Sections 4.3.2, 4.5.2, 4.7.1 and 4.8.2 of the ADAAG.
- l) The doors at several of the building entrances are fitted with inaccessible hardware violating Section 4.13.9 of the ADAAG.
- m) There are ramps at the facility that do not have level landings and contain excessive slopes, side slopes or cross slopes in violation of Sections 4.8.2, 4.8.4 and 4.8.6 of the ADAAG.
- n) There are curb ramps at the facility that project into vehicular areas and contain excessive slopes, side slopes or cross slopes in violation of Sections 4.7.2, 4.7.5, 4.7.6, and 4.7.9 of the ADAAG.
- o) The clear width and maneuvering clearances at doors to the facility are less than the minimums prescribed in Sections 4.13.5 and 4.13.6 and Figure 25 of the ADAAG.
- p) There are stairs provided at the facility that do not comply with the standards prescribed in Sections 4.4.2 and 4.9 of the ADAAG.

- q) There is not a continuous path of travel connecting the essential elements of the facility violating Sections 4.3.1 and 4.3.2 of the ADAAG.
- r) There are no elevators provided at this facility violating Section 4.1.3 of the ADAAG.
- s) There is not a continuous path of travel connecting all of the essential elements of the facility violating Sections 4.3.1 and 4.3.2 of the ADAAG.

Access to Goods and Services

- t) There are counters throughout the facility in excess of 36" in violation of Section 7.2(1) of the ADAAG.
- u) There is no accessible route connecting the recreational areas of the facility, such as the pool, in violation of Section 4.3.2(2) of the ADAAG.

Guest Rooms and Restrooms

- v) There are an inadequate number of accessible rooms or the rooms currently designated for disabled use are not compliant with the provisions of the ADAAG.
- w) There are an insufficient number of compliant disabled rooms in violation of ADAAG Section 9.
- x) The rooms designated for disabled use do not provide 36 inch clear floor space on both sides of the bed in violation of Section 9 of the ADAAG.
- y) The rooms designated for disabled use do not provide a roll in shower for use by the disabled violating Section 9.1.2 of the ADAAG.
- z) The rooms for disabled use have doors which do not provide the latch side clearances prescribed in Section 4.13.6 of the ADAAG.
- aa) All of the bathroom doors except those in the disabled use rooms are less than 32" wide violating Sections 4.13.5 and 9.4 of the ADAAG.
- bb) The water closets that are provided violate the provisions of Section 4.16 of the ADAAG.
- cc) The mirrors provided in the disabled use bathroom do not comply with the requirements prescribed in Section 4.19.6 of the ADAAG.

1 dd) The bath tubs in the disabled use rooms lack securely fastened tub seats in violation of
2 Section 4.20.3 of the ADAAG.

3 ee) The controls in the tub are not located in accordance with the requirements of ADAAG
4 Figure 34.

5 ff) The fixtures in the disabled use rooms have controls that are not easily operated with a
6 closed fist in violation of the ADAAG.

7 gg) The rooms designated for disabled use are not dispersed among the various classes of s
8 sleeping accommodations at the facility violating Section 9.4.1 of the ADAAG.

9 **Outdoor Pool**

10 hh) There is no water access for a wheelchair user in violation of Section 36.202(b) of the
11 ADAAG.

12 30. The above listing is not to be considered all-inclusive of the barriers, conditions or
13 violations encountered by Plaintiffs and/or which exist at the Facilities. Plaintiffs require an
14 inspection of the Facilities in order to determine all of the discriminatory acts violating the ADA.

15 31. Plaintiffs have attempted to gain access to the Facilities, but because of their disability
16 have been denied access to, and have been denied the benefits of services, programs and activities
17 of the Facilities, and have otherwise been discriminated against and damaged by Defendants,
18 because of the physical barriers, dangerous conditions and ADA violations set forth above, and
19 expects to be discriminated against in the future by Defendants because of Plaintiffs' disabilities,
20 unless and until Defendants are compelled to remove the unlawful barriers and conditions and
21 comply with the ADA.

22 32. The removal of the physical barriers, dangerous conditions and ADA violations set
23 forth herein is readily achievable and can be accomplished and carried out without much difficulty
24 or expense. 42 U.S.C. §12182(b)(2)(A)(iv); 42 U.S.C. §12181(9); 28 C.F.R. § 36.304.

25 33. Plaintiffs are without adequate remedy at law and are suffering irreparable harm, and
26 reasonably anticipate that they will continue to suffer irreparable harm unless and until Defendants
27
28

1 are required to remove the physical barriers, dangerous conditions and ADA violations that exist at
2 the Facilities, including those set forth herein.

3 34. Plaintiffs have been obligated to retain the undersigned counsel for the filing and
4 prosecution of this action, and have agreed to pay the undersigned counsel reasonable attorneys'
5 fees, costs and expenses from Defendants pursuant to 42 U.S.C. §§ 12205 and 12117.

6 35. Pursuant to 42 U.S.C. §12188(a), this Court is provided authority to grant injunctive
7 relief to Plaintiffs, including an order to alter the subject Facilities to make it readily accessible to
8 and useable by individuals with disabilities to the extent required by the ADA, and closing the
9 subject Facilities until the requisite modifications are completed.

11 **COUNT II - VIOLATION OF THE**
12 **NEVADA LAW AGAINST DISCRIMINATION – Nevada ADA**
13 **(Violation of Nevada Revised Statutes 651.070 et seq.)**

14 36. The individual Plaintiffs repeat the allegations contained in paragraphs 1- 35 as if they were
15 expressly stated herein.

16 37. The doctrine of pendent and supplemental jurisdiction is proper under 28 U.S.C. § 1367.

17 38. Defendants withheld, denied, deprived and/or attempted to withhold, deny or deprive the
18 Plaintiffs the rights and privileges secured to them by NRS 651.070, et seq.

19 39. Pursuant to NRS 651.070 the Plaintiffs were and are entitled to the full and equal
20 enjoyment of the facilities and accommodations of any place of public accommodation, including
21 the premises, goods and services of the Defendants, without discrimination or segregation based on
22 their disability.

23 40. Defendants' actions were in violation of a legal duty owed to the individual Plaintiffs.
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1 41. Defendants are and were required to comply with the dictates of the federal and state laws
2 which forbid discriminatory policies, practices and facilities, including but not limited to
3 architectural barriers.

4 42. The individual Plaintiffs suffered injury to their dignity and have experienced pain,
5 suffering and humiliation which was proximately caused by the Defendants' acts and failures to
6 act.

7
8 43. The individual Plaintiffs have been damaged in their person and dignity, have endured
9 humiliation, pain and suffering as a result of the actions of the Defendants alleged herein in an
10 amount to be proven at trial greater than \$10,000.

11 44. Defendants are liable to the individual Plaintiffs for their actual damages to compensate
12 them for injury to personal dignity, for humiliation, and for the pain and suffering as a result of the
13 unlawful discriminatory actions of the Defendants as alleged herein.

14
15 **WHEREFORE**, Plaintiffs respectfully request that the Court issue a permanent injunction
16 enjoining Defendants from continuing its discriminatory practices, ordering Defendants to remove
17 the physical barriers to access and alter the subject Facilities to make it readily accessible to and
18 useable by individuals with disabilities to the extent required by the ADA, closing the subject
19 Facilities until the barriers are removed and requisite alterations are completed, and awarding
20 Plaintiffs their reasonable damages, attorneys' fees, expert fees, costs and expenses incurred in this
21 action.
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2 DATED: May 3, 2010

3 Respectfully submitted,

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