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SUPERIOR COURT

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 **JON CARPENTER,**

13 **Plaintiff,**

14 v.

15 **BEVERLY WILSHIRE MEDICAL**
16 **CENTER, LLC; REFOUA L.L.C.;**
17 **SHORT STOP PHARMACY; And**
18 **DOES 1 THROUGH 10, Inclusive**

19 **Defendants.**

20 Case No. **06021630**

21 **CIVIL COMPLAINT:**
22 **DISCRIMINATORY PRACTICES IN**
23 **PUBLIC ACCOMMODATIONS**
24 **[42 U.S.C. 12182(a) ET. SEQ; CIVIL**
25 **CODE 51, 52, 54, 54.1, 54.3]**

26 **UNLIMITED CIVIL CASE -**
27 **PERMANENT INJUNCTIVE RELIEF**

28 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

1. Plaintiff is informed, believes and thereon alleges that Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Plaintiff is informed and believes and thereon alleges that Defendants BEVERLY WILSHIRE MEDICAL CENTER, LLC; REFOUA L.L.C.; SHORT STOP PHARMACY are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 655 E CARSON ST, CARSON, CA 90745; Assessor's Parcel Number: 7337-011-038. Defendant BEVERLY WILSHIRE MEDICAL CENTER, LLC c/o Registered Agent: JERRY ILLOULIAN, located at 8786 MELROSE AVENUE B130, LOS ANGELES, CA 90069. Defendant REFOUA L.L.C. c/o

1 Registered Agent: MAURICE REFOUA, located at 410 S. BEVERLY DRIVE, BEVERLY
2 HILLS, CA 90212. Defendant SHORT STOP PHARMACY is located at 645 E CARSON ST,
3 CARSON, CA 90745-2720.

4 2. The words Plaintiff and Plaintiffs as used herein specifically include JON CARPENTER.

5 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
6 employees, agents, of Defendants BEVERLY WILSHIRE MEDICAL CENTER, LLC; REFOUA
7 L.L.C.; SHORT STOP PHARMACY. Plaintiff is ignorant of the true names and capacities of
8 Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by
9 such fictitious names. Plaintiff will pray leave of the court to amend this complaint to allege the
10 true names and capacities of the Does when ascertained.

11 4. Plaintiff is informed and believes, and thereon alleges, that Defendants and each of them
12 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
13 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
14 remaining Defendants and were acting within the course and scope of that relationship. Plaintiff
15 is further informed and believe, and thereon allege, that each of the Defendants herein gave
16 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

17 CONCISE SET OF FACTS

18 5. Plaintiff JON CARPENTER (hereinafter "Plaintiff") has physical impairments and due to
19 these impairments he has learned to successfully operate a wheelchair for mobility. Plaintiff said
20 physical impairments substantially limit one or more of the following major life activities
21 including but not limited to: walking.

22 6. Plaintiff has physical impairments because their conditions affect one or more of the
23 following body systems: neurological, musculoskeletal, special sense organs, and/or
24 cardiovascular. Further, Plaintiff said physical impairments substantially limits one or more of
25 the following major life activities. In addition, Plaintiff cannot perform one or more of the said
26 major life activities in the manner, speed, and duration when compared to the average person.
27 Moreover, Plaintiff has a history of or has been classified as having a physical impairment as
28 required by 42 U.S.C. § 12102(2)(A).

1 7. On January 31, 2008, Plaintiff JON CARPENTER wanted to visit Defendants' public
2 accommodation facilities located at Property Address: 655 E CARSON ST, CARSON, CA 90745
3 Assessor's Parcel Number: 7337-011-038 to utilize their goods and/or services. When Plaintiff
4 JON CARPENTER patronized Defendants' public accommodation facilities, he was unable to
5 use and/or had difficulty using the public accommodations' facilities including but not limited to
6 the barriers to access listed herein and said facilities were not accessible because they failed to
7 comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as
8 "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or California's Title 24 Building Code
9 Requirements. Defendants failed to remove barriers to equal access within their public
10 accommodation facilities as required.

11 8. Plaintiff JON CARPENTER was deterred from visiting the property due to said access
12 barriers as listed herein to the present Complaint at Defendants' public accommodation facilities
13 located on the Property and/or has knowledge of said access barriers and is presently deterred
14 from accessing the public accommodation. Plaintiff alleges that these known barriers to access
15 are not an exhaustive list of the barriers to access that exist at Defendants' facilities.

16 9. Defendants failed to provide auxiliary aids and services that are necessary to ensure equal
17 access to the goods, services, privileges, or accommodations that it offers. Title 28, part 36.303
18 of Code of Federal Regulations states:

19 (a) General. A public accommodation shall take those steps that may be necessary to ensure that
20 no individual with a disability is excluded, denied services, segregated or otherwise treated
21 differently than other individuals because of the absence of auxiliary aids and services, unless the
22 public accommodation can demonstrate that taking those steps would fundamentally alter the
23 nature of the goods, services, facilities, privileges, advantages, or accommodations being offered
24 or would result in an undue burden, i.e., significant difficulty or expense.

25 (b) Examples. The term "auxiliary aids and services" includes:

26 (1) Qualified interpreters, notetakers, computer-aided transcription services, written
27 materials, telephone handset amplifiers, assistive listening devices, assistive listening
28 systems, telephones compatible with hearing aids, closed caption decoders, open and

1 closed captioning, telecommunications devices for deaf persons (TDD's), videotext
2 displays, or other effective methods of making aurally delivered materials available to
3 individuals with hearing impairments;

4 (2) Qualified readers, taped texts, audio recordings, Brailled materials, large print
5 materials, or other effective methods of making visually delivered materials available to
6 individuals with visual impairments;

7 (3) Acquisition or modification of equipment or devices; and

8 (4) Other similar services and actions.

9 (c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids
10 and services where necessary to ensure effective communication with individuals with
11 disabilities.

12 10. Plaintiff can prove these barriers as Plaintiff conducted a preliminary survey of
13 Defendants' facility. Plaintiff specifically alleges that Defendants knew, to a substantial
14 certainty, that the architectural barriers precluded equal access. First, Plaintiff will prove that
15 Defendants had actual knowledge that the architectural barriers precluded equal access and that
16 the noncompliance with ADAAG as to accessible entrances was intentional. Second, due to the
17 abundance of ADA information and constant news covers of ADA lawsuits, Defendants had
18 actual knowledge of the ADA and decided deliberately not to remove architectural barriers.
19 Third, Defendants have no plans to remodel. Fourth, Defendants had actual knowledge of ADA
20 given all the ADA public awareness campaigns, the abundance of free ADA information and the
21 media's constant ADA coverage. Fifth, a human being acting for the defendants made a
22 conscious decision as to how to proceed given the presence of the architectural barriers. Plaintiff
23 alleges any alternative methods preclude integration of disabled patrons, as it requires them to use
24 second-class facilities. Also, expert testimony will show the facility contained inaccessible
25 features. Plaintiff alleges businesses often state that they have few customers with disabilities.
26 Plaintiff alleges such customers avoid patronizing inaccessible businesses and are deterred from
27 patronizing such businesses.
28

1 11. ^X For example, the accessible parking ratio is 1:30+, there is no van accessible parking and
2 no van sign. These violations deterred the Plaintiff's access to the pharmacy. In addition, the
3 property failed to have disability tow away signs at the parking lot entrance and the property has
4 very faded International Symbol of Accessibility signage at the entrance.

5 12. Plaintiff intends to return to Defendants' public accommodation facilities in the immediate
6 future. Plaintiff was deterred and is presently deterred from returning due to his knowledge of the
7 barriers to access that exist at Defendants' facilities.

8 13. Pursuant to federal and state law, Defendants are required to remove barriers to their
9 existing facilities. Further, Defendants had actual knowledge of their barrier removal duties
10 under the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also,
11 Defendants should have known that individuals with disabilities are not required to give notice to
12 a governmental agency before filing suit alleging Defendants failed to remove architectural
13 barriers.

14 14. Plaintiff believes and herein alleges Defendants' facilities have access violations not
15 directly experienced by Plaintiff which would preclude or limit access by Plaintiff potentially
16 including but not limited to violations of the ADA, ADA Accessibility Guidelines (Codified in 28
17 C.F.R. Part 36, App. A) and Title 24 of the California Building Code. Plaintiff alleges
18 Defendants are required to utilize the ADA checklist for Readily Achievable Barrier Removal
19 approved by the United States Department of Justice and created by Adaptive Environments.
20 Plaintiff is entitled to injunctive relief to remove all barriers to access that are related to his
21 disability even those barriers that are only known to exist but are not directly experienced by
22 plaintiff. *Doran v 7-Eleven Inc*, 2007 U.S.App.Lexis 26143 (9th Cir 2007).

23 15. Based on these facts, Plaintiff alleges he was discriminated against each time he
24 patronized and/or was deterred from patronizing Defendants' facilities. Plaintiff was extremely
25 upset due to Defendants' conduct.

26 16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint
27 and/or to recover attorney fees and costs: *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832
28

1 (9th Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9th Cir 2007).

2 **WHAT CLAIMS ARE PLAINTIFF ALLEGING AGAINST EACH NAMED**
3 **DEFENDANT**

4 17. Defendants BEVERLY WILSHIRE MEDICAL CENTER, LLC; REFOUA L.L.C.;
5 SHORT STOP PHARMACY and Does 1 through 10 will be referred to collectively hereinafter as
6 "Defendants."

7 18. Plaintiff avers that the Defendants are liable for the following claims as alleged below:

8 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

9 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The American**
10 **With Disabilities Act Of 1990**

11 **Claim I**

12 19. Based on the facts stated above, Defendants discriminated against Plaintiff on the basis of
13 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages,
14 or accommodations of any place of public accommodation as Defendants own, lease (or lease
15 to), or operate a place of public accommodation in violation of 42 U.S.C. §12182.

16 **Claim II**

17 20. Based on the facts stated above, Defendants discriminated against Plaintiff directly, or
18 through contractual, licensing, or other arrangements, to a denial of the opportunity of the
19 individual or class to participate in or benefit from the goods, services, facilities, privileges,
20 advantages, or accommodations of an entity in violation of 42 U.S.C. §12182.

21 **Claim III**

22 21. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
23 discriminatory to afford an individual or class of individuals, on the basis of a disability or
24 disabilities of such individual or class, directly, or through contractual, licensing, or other
25 arrangements with the opportunity to participate in or benefit from a good, service, facility,
26 privilege, advantage, or accommodation that is not equal to that afforded to other individuals in
27 violation of 42 U.S.C. §12182.
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1 Claim IV

2 22. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
3 discriminatory to provide an individual or class of individuals, on the basis of a disability or
4 disabilities of such individual or class, directly, or through contractual, licensing, or other
5 arrangements with a good, service, facility, privilege, advantage, or accommodation that is
6 different or separate from that provided to other individuals.

7 Claim V

8 23. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
9 failed to afforded to an individual with a disability in the most integrated setting appropriate to
10 the needs of the individual in violation of 42 U.S.C. §12182.

11 Claim VI

12 24. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
13 utilized standards or criteria or methods of administration that have the effect of discriminating or
14 the basis of disability; or that perpetuate the discrimination of others who are subject to common
15 administrative control in violation of 42 U.S.C. §12182.

16 Claim VII

17 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
18 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,
19 advantages, accommodations, or other opportunities to an individual or entity because of the
20 known disability of an individual with whom the individual or entity is known to have a
21 relationship or association in violation of 42 U.S.C. §12182. See Niece v. Fitzner 922 F. Supp.
22 1208 (1996)

23 Claim VIII

24 26. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
25 engaged in the specific prohibitions as stated in 42 U.S.C. §12182.

26 Claim IX

27 27. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendant.
28

1 failed to demonstrate that the removal of a barrier is not readily achievable, and made such goods,
2 services, facilities, privileges, advantages, or accommodations available through alternative
3 methods in a segregated manner in violation of 42 U.S.C. §12182. Plaintiff is entitled to
4 injunctive relief to remove all barriers to access that are related to his disability even those
5 barriers that are only known to exist but are not directly experienced by plaintiff. *Doran v 7-*
6 *Eleven Inc*, 2007 U.S.App.Lexis 26143 (9th Cir 2007).

7 Claim X

8 28. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
9 altered the use of their establishment in a manner that affected or could have affected the usability
10 of the facility or part thereof and failed to make alterations in such a manner that, to the maximum
11 extent feasible, the altered portions of the facility are readily accessible to and usable by
12 individuals with disabilities in violation of 42 U.S.C. §12183.

13 29. WHEREFORE, Plaintiff pray for judgment and relief as hereinafter set forth.
14

15 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
16 **CALIFORNIA ACCESSIBILITY LAWS**

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

18 30. Based on the facts plead above and elsewhere in this complaint, Plaintiff was denied full
19 and equal access to Defendants' goods, services, facilities, privileges, advantages, or
20 accommodations within a public accommodation owned, leased, and/or operated by Defendants
21 as required by Civil Code Sections 54 and 54.1.

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

23 31. Based on the facts plead above and elsewhere herein this complaint, Defendants failed and
24 refused to provide a reasonable alternative by modifying its practices, policies, and procedures in
25 that they failed to have a scheme, plan, or design to assist Plaintiff and/or others similarly situated
26 in entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff
27 was subjected to discrimination in violation of Civil Code § 54.1.

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

1 32. Based on the facts plead above and elsewhere herein this complaint and because
2 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
3 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly
4 discriminate against Plaintiff and persons similarly situated in violation of Civil Code §§ 51, 52,
5 and 54.1. Plaintiff alleges the access violations alleged here are so obvious as to implicate at least
6 a prima facie case of discriminatory intent.

7 33. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause Of
8 Action above, and the facts elsewhere herein this complaint, Plaintiff will suffer irreparable harm
9 unless Defendants are ordered to remove architectural, non-architectural, and communication
10 barriers at Defendants' public accommodation. Plaintiff alleges that Defendants' discriminatory
11 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiff and
12 a substantial segment of the disability community. Plaintiff alleges there is a state and national
13 public interest in requiring accessibility in places of public accommodation. Plaintiff has no
14 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff desires to
15 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiff
16 alleges that a structural or mandatory injunction is necessary to enjoin compliance with state civil
17 rights laws enacted for the benefit of individuals with disabilities.

18 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.
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27 **DEMAND FOR JUDGMENT FOR RELIEF:**

28 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).

- 1 B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
- 2 C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
- 3 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
- 4 Guidelines (Codified in 28 C.F.R. Part 36, App. A);
- 5 D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C above,
- 6 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil
- 7 Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
- 8 E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
- 9
- 10 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
- 11 § 52; 54.3;
- 12 G. A Jury Trial and;
- 13 H. For such other further relief as the court deems proper.

14 Respectfully submitted:

15 Dated: May 2, 2008

PINNOCK & WAKEFIELD, A.P.C.

By: _____

THEODORE A. PINNOCK, ESQ.

DAVID C. WAKEFIELD, ESQ.

Attorneys for Plaintiff