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PINNOCK & WAKEFIELD

A Professional Corporation

Theodore A. Pinnock, Esq.

David C. Wakefield, Esq.

Michelle L. Wakefield, Esq.

3033 Fifth Avenue, Suite 410

San Diego, CA 92103

Telephone: 619.858.3671

Facsimile: 619.858.3646

Bar #: 153434

Bar #: 185736

Bar #: 200424

FILED

LOS ANGELES SUPERIOR COURT

OCT 05 2007

JOHN A. CLARKE, CLERK

BY N. TERRAZA, DEPUTY

Attorneys for Plaintiff

LC079381

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
Northwest District
Van Nuys Courthouse East - Civil and Small Claims**

JAMES F. COHAN;

Plaintiff,

v.

**CVS Pharmacy; AMERICAN STORES
PROPERTIES INC; And DOES 1
THROUGH 10, Inclusive**

Defendants.

Case No.

LC079381

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

NAMED DEFENDANTS AND NAMED PLAINTIFF

1. 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. Property Owner: AMERICAN STORES PROPERTIES INC (Company/Corporation)
Mailing Address: C/O ALBERTSONS INC PROP TAX-9630, PO BOX 20, BOISE, ID 83726
Property Address: 6201 SEPULVEDA BLVD, LOS ANGELES, CA 91411 Company

1 Name: AMERICAN STORES PROPERTIES, INC.

2 Registered Agent: C T CORPORATION SYSTEM

3 Registered Office: 818 WEST SEVENTH ST LOS ANGELES, CA 90017

4 2. Plaintiffs are further informed and believe and thereon allege that Defendants,
5 CVS Pharmacy; AMERICAN STORES PROPERTIES INC, are the owners, operators,
6 and/or lessors of the real property, as well as the business operated thereon.

7 3. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically
8 include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN AND
9 ADULTS WITH DEVELOPMENTAL DISABILITIES, SUING ON BEHALF OF ITS
10 MEMBERS, JAMES H. COHAN; and persons associated with its Members who
11 accompanied Members to Defendants' facilities.

12 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries,
13 employers, employees, agents, of Defendants CVS Pharmacy; AMERICAN STORES
14 PROPERTIES INC. Plaintiffs are ignorant of the true names and capacities of
15 Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these
16 Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this
17 complaint to allege the true names and capacities of the Does when ascertained.

18 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each
19 of them herein were, at all times relevant to the action, the owner, lessor, lessee,
20 franchiser, franchisee, general partner, limited partner, agent, employee, representing
21 partner, or joint venturer of the remaining Defendants and were acting within the course
22 and scope of that relationship. Plaintiffs are further informed and believe, and thereon
23 allege, that each of the Defendants herein gave consent to, ratified, and/or authorized the
24 acts alleged herein to each of the remaining Defendants.
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CONCISE SET OF FACTS

6. Plaintiff has an impairment.

7. Defendants failed to provide auxiliary aids and services that are necessary to ensure equal access to the goods, services, privileges, or accommodations that it offers.

Title 28, part 36.303 of Code of Federal Regulations states:

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

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

(1) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

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

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

(4) Other similar services and actions.

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

4 Defendants failed to comply with Title 28, part 36.303 of Code of Federal Regulations as
5 it failed to provide Qualified readers, taped texts, audio recordings, Brailled materials, or
6 large print materials. Further, Defendants failed to remove architectural barriers.

7 8. Plaintiff's Member and Plaintiff(s) have physical impairments because their
8 conditions affect one or more of the following body systems: neurological,
9 musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's
10 Member and Plaintiff(s) said physical impairments substantially limits one or more of the
11 following major life activities. In addition, Plaintiff's Member and Plaintiff(s) cannot
12 perform one or more of the said major life activities in the manner, speed, and duration
13 when compared to the average person. Moreover, Plaintiff's Member and Plaintiff(s) has
14 a history of or has been classified as having a physical impairment as required by 42
15 U.S.C. § 12102(2)(A).

16 9. Plaintiff's Members expressly intend to patronize the establishment and the
17 property that is the subject of this Complaint in the immediate future.

18 10. Plaintiff's Member was deterred from patronizing the facility.
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21 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
22 **DEFENDANT**

23 11. Defendants CVS Pharmacy; AMERICAN STORES PROPERTIES INC; and
24 Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

25 12. Plaintiffs aver that the Defendants are liable for the following claims as alleged
26 below:

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1 licensing, or other arrangements with a good, service, facility, privilege, advantage, or
2 accommodation that is different or separate from that provided to other individuals.

3 Claim V

4 17. Based on the facts stated above, Defendants discriminated against Plaintiffs as
5 Defendants failed to afford to an individual with a disability in the most integrated
6 setting appropriate to the needs of the individual in violation of 42 U.S.C. §12182.

7 Claim VI

8 18. Based on the facts stated above, Defendants discriminated against Plaintiffs as
9 Defendants utilized standards or criteria or methods of administration that have the effect
10 of discriminating on the basis of disability; or that perpetuate the discrimination of others
11 who are subject to common administrative control in violation of 42 U.S.C. §12182.

12 Claim VII

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

19 Claim VIII

20 20. Based on the facts stated above, Defendants discriminated against Plaintiffs as
21 Defendants engaged in the specific prohibitions as stated in 42 U.S.C. §12182.

22 Claim IX

23 21. Based on the facts stated above, Defendants discriminated against Plaintiffs as
24 Defendant failed to demonstrate that the removal of a barrier is not readily achievable,
25 and made such goods, services, facilities, privileges, advantages, or accommodations
26 available through alternative methods in a segregated manner in violation of 42 U.S.C.
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1 §12182.

2 Claim X

3 22. Based on the facts stated above, Defendants discriminated against Plaintiffs as
4 Defendants altered the use of their establishment in a manner that affected or could have
5 affected the usability of the facility or part thereof and failed to make alterations in such a
6 manner that, to the maximum extent feasible, the altered portions of the facility are
7 readily accessible to and usable by individuals with disabilities, including individuals
8 who use wheelchairs in violation of 42 U.S.C. §12183.

9 23. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

10
11 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
12 **CALIFORNIA ACCESSIBILITY LAWS**

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

14 24. Based on the facts plead above and elsewhere in this complaint, Plaintiff's
15 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services,
16 facilities, privileges, advantages, or accommodations within a public accommodation
17 owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and
18 54.1.

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

20 25. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint,
21 Defendants failed and refused to provide a reasonable alternative by modifying its
22 practices, policies, and procedures in that they failed to have a scheme, plan, or design to
23 assist Plaintiffs and/or others similarly situated in entering and utilizing Defendants'
24 services as required by Civil Code § 54.1. Thus, Plaintiff's Member and Plaintiff(s) were
25 subjected to discrimination in violation of Civil Code § 54.1.

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

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

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

19 28. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
20

21 DEMAND FOR JUDGMENT FOR RELIEF:

- 22
- 23 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
 - 24 B. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal.
Civil Code § 51, 52; 54.3:
 - 25 C. A Jury Trial and;
 - 26 D. For such other further relief as the court deems proper.

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1 Respectfully submitted:

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PINNOCK & WAKEFIELD, A.P.C.

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Dated: September 4, 2007

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By:  _____

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

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
 Theodore A. Pinnock, Esq. SBN: 153434
 PINNOCK & WAKEFIELD, A.P.C.
 3033 Fifth Avenue, Suite 410
 San Diego, CA 92103
 TELEPHONE NO.: (619) 858-3671 FAX NO.: (619) 858-3646
 E-MAIL ADDRESS (Optional): Pinnock99@aol.com
 ATTORNEY FOR (Name): Plaintiff

FOR COURT USE ONLY

FILED

OCT 05 2007

JOHN A. CLARKE, CLERK
 BY: N. TERRAZAS, DEPUTY

CASE NUMBER: 079381

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

STREET ADDRESS: 6230 Sylmar Avenue
 MAILING ADDRESS: 6230 Sylmar Avenue
 CITY AND ZIP CODE: Van Nuys, CA 91401
 BRANCH NAME: Van Nuys Courthouse East

PLAINTIFF/ PETITIONER: JAMES F. COHAN
 DEFENDANT/ RESPONDENT: CVS Pharmacy, AMERICAN STORES PRODUCTS, Inc. And DSI, THROUGH ITS AFFILIATES

ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS

1. The application was filed on (date): A previous order was issued on (date):

2. The application was filed by (name): James F. Cohan

3. IT IS ORDERED that the application is granted in whole in part (complete item 4 below).

- a. No payments. Payment of all the fees and costs listed in California Rules of Court, rule 3.61, is waived.
- b. The applicant shall pay all the fees and costs listed in California Rules of Court, rule 3.61, EXCEPT the following:
 - (1) Filing papers.
 - (2) Certification and copying.
 - (3) Issuing process and certification.
 - (4) Transmittal of papers.
 - (5) Court-appointed interpreter.
 - (6) Sheriff and marshal fees.
 - (7) Reporter's fees* (valid for 60 days).
 - (8) Telephone appearance (Gov. Code, § 68070.1 (c))
 - (9) Other (specify code section):

Reporter's fees are per diem pursuant to Code Civ. Proc., §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195.

c. Method of payment. The applicant shall pay all the fees and costs when charged, EXCEPT as follows:

- (1) Pay (specify): _____ percent.
 - (2) Pay: \$ _____ per month or more until the balance is paid.
- d. The clerk of the court, county financial officer, or appropriate county officer is authorized to require the applicant to appear before and be examined by the court no sooner than four months from the date of this order, and not more than once in any four-month period. The applicant is ordered to appear in this court as follows for review of his or her financial status:

Date:	Time:	Dept.:	Div.:	Room:
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- e. The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
- f. All unpaid fees and costs shall be deemed to be taxable costs if the applicant is entitled to costs and shall be a lien on any judgment recovered by the applicant and shall be paid directly to the clerk by the judgment debtor upon such recovery.

4. IT IS ORDERED that the application is denied in whole in part for the following reasons (see Cal. Rules of Court, rules 3.50-3.63):

- a. Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form FW-001-INFO).
- b. Other (Complete line 4b on page 2).
- c. The applicant shall pay any fees and costs due in this action within 10 days from the date of service of this order or any paper filed by the applicant with the clerk will be of no effect.
- d. The clerk is directed to mail a copy of this order to all parties who have appeared in this action.

5. IT IS ORDERED that a hearing be held.

- a. The substantial evidentiary conflict to be resolved by the hearing is (specify):
- b. The applicant should appear in this court at the following hearing to help resolve the conflict:

Date:	Time:	Dept.:	Div.:	Room:
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- c. The address of the court is (specify):
 Same as above
- d. The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.

NOTICE: If item 3d or item 5b is filled in and the applicant does not attend the hearing, the court may revoke or change the order or deny the application without considering information the applicant wants the court to consider.

WARNING: The applicant must immediately tell the court if he or she becomes able to pay court fees or costs during this action. The applicant may be ordered to appear in court and answer questions about his or her ability to pay fees or costs.

Date: OCT 13 2007

Michael R. Hoff, JUDICIAL OFFICER
 Clerk, by _____, Deputy

PLAINTIFF/PETITIONER (Name): JAMES F. COHAN	CASE NUMBER:
DEFENDANT/RESPONDENT (Name): CVS Pharmacy, AMERICA'S STORES DEPARTMENTS FOR ANIMALS, ILLUSTRATED	

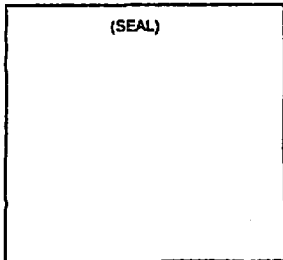
4b Application is denied in whole or in part (specify reasons):

Inclusive

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the foregoing was mailed first class, postage prepaid, in a sealed envelope addressed as shown below, and that the mailing of the foregoing and execution of this certificate occurred at (place): , California, on (date):

Clerk, by _____, Deputy



CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date:

Clerk, by _____, Deputy