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FEE WAIVED

FILED
LOS ANGELES SUPERIOR COURT
OCT 0 5 2007
JOHN A. CLARKE, CLERK
BY N. TERRAZAS, DEPUTY

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.** **Ralphs Pharmacy; HOROWITZ WOOD VICTORY AND FALLBROOK; And DOES 1 THROUGH 10, Inclusive** **Defendants.**	Case No. LC079377 **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: HOROWITZ WOOD VICTORY AND FALLBROOK

Mailing Address: P O BOX 54143, LOS ANGELES, CA 90054

Property Address: 22915 VICTORY BLVD, LOS ANGELES, CA 91307 Company Name: HOROWITZ/WOOD - VICTORY & FALLBROOK, L.P.

Registered Agent: JAMES T. WOOD

Registered Office: 580 BROADWAY, #117 LAGUNA BEACH, CA 92651

2. Plaintiffs are further informed and believe and thereon allege that Defendants, Ralphs Pharmacy; HOROWITZ WOOD VICTORY AND FALLBROOK , are the owners, operators, and/or lessors of the real property, as well as the business operated thereon.

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

4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of Defendants Ralphs Pharmacy; HOROWITZ WOOD VICTORY AND FALLBROOK. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint to allege the true names and capacities of the Does when ascertained.

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

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.
>
> (c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective

communication with individuals with disabilities.

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

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

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

10. Plaintiff's Member was deterred from patronizing the facility.

WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

11. Defendants Ralphs Pharmacy; HOROWITZ WOOD VICTORY AND FALLBROOK; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

Claim I

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

Claim II

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

Claim III

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

Claim IV

16. Based on the facts stated above, Defendants discriminated against Plaintiffs as it is discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or

accommodation that is different or separate from that provided to other individuals.

Claim V

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

Claim VI

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

Claim VII

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

Claim VIII

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

Claim IX

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

Claim X

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

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

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

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

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

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

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

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

26. Based on the facts plead above and elsewhere herein this complaint and because Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code

§ 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly discriminate against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1. Plaintiffs allege the access violations alleged here are so obvious as to implicate at least a prima facie case of discriminatory intent.

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

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

DEMAND FOR JUDGMENT FOR RELIEF:

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

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Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: September 4, 2007

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
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ATTORNEY FOR (Name): Plaintiff

FOR COURT USE ONLY

FILED
LOS ANGELES SUPERIOR COURT
OCT 0 5 2007
JOHN A. CLARKE, CLERK
BY N. TERRAZAS, DEPUTY

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: Ralphs Pharmacy; HOROWITZ WOOD VICTORY FALBRAK; And DOES 1 THROUGH 10, Inclusive

CASE NUMBER: LC079377

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)*:
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:

   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:

   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 1 2 2007

☐ Michael R. Hoff, JUDICIAL OFFICER ☐ Clerk, by N. Terrazas, Deputy
(Clerk may GRANT in full a nondiscretionary fee waiver; see Cal. Rule of Court, rules 3.56.)

Form Adopted for Mandatory Use
Judicial Council of California
FW-003 [Rev. January 1, 2007]

ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS (Fee Waiver)

Government Code, § 68511.3;
Cal. Rules of Court, rules 3.50–3.63
www.courtinfo.ca.gov

PLAINTIFF/PETITIONER (Name): JAMES F. COHAN;	CASE NUMBER:
DEFENDANT/RESPONDENT (Name): Ralphs Pharmacy; HORWITZ WOOD VICTORY FALLBROOK; And DOES THROUGH 10, Inclusive	

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

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

(SEAL)

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