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**FILED**  
LOS ANGELES SUPERIOR COURT

MAY 28 2008

JOHN A. CLARKE, CLERK  
*John A. Clarke*  
EZONIA C. PEDRAZA, DEPUTY

**PINNOCK & WAKEFIELD**

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Attorneys for Plaintiff

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

**JON CARPENTER,**  
  
**Plaintiff,**

v.

**TARZANA INVESTMENT, LLC;  
JAMES VENTURES, LLC; S.M.  
PHARMACEUTICAL, INC. DBA  
TAMPA PLAZA PHARMACY; And  
DOES 1 THROUGH 10, Inclusive**

**Defendants.**

Case No. **LC081551**

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

**UNLIMITED CIVIL CASE -  
PERMANENT INJUNCTIVE RELIEF**

**FEE WAIVED**

**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 TARZANA INVESTMENT, LLC; JAMES VENTURES, LLC; S.M. PHARMACEUTICAL, INC. DBA TAMPA PLAZA PHARMACY are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 19100 VENTURA BLVD, LOS ANGELES, CA 91356; Assessor's Parcel Number: 2163-021-008. Defendant TARZANA INVESTMENT, LLC c/o Registered Agent: BRUCE ABRAMS, located at 16200 VENTURA BLVD STE 4141, ENCINO, CA 91436.

1 Defendant JAMES VENTURES, LLC is located at 4151 FALLING LEAF DRIVE, ENCINO,  
2 CA 91316 or c/o Registered Agent: ALAN K. ABRAMS, located at 315 SOUTH BEVERLY  
3 HILLS DRIVE, SUITE 404, BEVERLY HILLS, CA 90212. Defendant S.M.

4 PHARMACEUTICAL, INC. DBA TAMPA PLAZA PHARMACY c/o Registered Agent:  
5 MANIGE ZOGHI, located at 19100 VENTURA BLVD STE L, TARZANA, CA 91356.

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

7 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
8 employees, agents, of Defendants TARZANA INVESTMENT, LLC; JAMES VENTURES,  
9 LLC; S.M. PHARMACEUTICAL, INC. DBA TAMPA PLAZA PHARMACY. Plaintiff is  
10 ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10,  
11 inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will pray leave  
12 of the court to amend this complaint to allege the true names and capacities of the Does when  
13 ascertained.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants and each of them  
15 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,  
16 general partner, limited partner, agent, employee, representing partner, or joint venturer of the  
17 remaining Defendants and were acting within the course and scope of that relationship. Plaintiff  
18 is further informed and believe, and thereon allege, that each of the Defendants herein gave  
19 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.  
20

### 21 CONCISE SET OF FACTS

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

26 6. Plaintiff has physical impairments because their conditions affect one or more of the  
27 following body systems: neurological, musculoskeletal, special sense organs, and/or  
28 cardiovascular. Further, Plaintiff said physical impairments substantially limits one or more of  
the following major life activities. In addition, Plaintiff cannot perform one or more of the said

1 major life activities in the manner, speed, and duration when compared to the average person.  
2 Moreover, Plaintiff has a history of or has been classified as having a physical impairment as  
3 required by 42 U.S.C. § 12102(2)(A).

4 7. On March 11, 2008, Plaintiff JON CARPENTER wanted to visit Defendants' public  
5 accommodation facilities located at Property Address: 19100 VENTURA BLVD, LOS  
6 ANGELES, CA 91356; Assessor's Parcel Number: 2163-021-008 to utilize their goods and/or  
7 services. When Plaintiff JON CARPENTER patronized Defendants' public accommodation  
8 facilities, he was unable to use and/or had difficulty using the public accommodations' facilities  
9 including but not limited to the barriers to access listed herein and said facilities were not  
10 accessible because they failed to comply with ADA Access Guidelines For Buildings and  
11 Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or  
12 California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal  
access within their public accommodation facilities as required.

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

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

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

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

28 (1) Qualified interpreters, notetakers, computer-aided transcription services, written

1 materials, telephone handset amplifiers, assistive listening devices, assistive listening  
2 systems, telephones compatible with hearing aids, closed caption decoders, open and  
3 closed captioning, telecommunications devices for deaf persons (TDD's), videotext  
4 displays, or other effective methods of making aurally delivered materials available to  
5 individuals with hearing impairments;

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

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

10 (4) Other similar services and actions.

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

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

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1 Plaintiff alleges such customers avoid patronizing inaccessible businesses and are deterred from  
2 patronizing such businesses.

3 11. For example, there is no van parking and no van sign. These violations deterred the  
4 Plaintiff's access to the pharmacy.

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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9<sup>th</sup> Cir 2007).

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

3 **DEFENDANT**

4 17. Defendants TARZANA INVESTMENT, LLC; JAMES VENTURES, LLC; S.M.  
5 PHARMACEUTICAL, INC. DBA TAMPA PLAZA PHARMACY and Does 1 through 10 will  
6 be referred to collectively hereinafter as "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 Americans**  
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.  
28

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 on  
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 (9<sup>th</sup> 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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26 **DEMAND FOR JUDGMENT FOR RELIEF:**  
27

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.**

16 By: \_\_\_\_\_  
17 THEODORE A. PINNOCK, ESQ.  
18 DAVID C. WAKEFIELD, ESQ.  
19 Attorneys for Plaintiff  
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, address)
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ATTORNEY FOR (Name) PLAINTIFF

FOR COURT USE ONLY
FILED
LOS ANGELES SUPERIOR COURT
MAY 29 2008
JOHNA CLARK, CLERK
BY: H. [Signature] DEPUTY
CASE NUMBER 0081551

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
STREET ADDRESS 6230 Sylmar Avenue
MAILING ADDRESS
CITY AND ZIP CODE Van Nuys, California 91401
BRANCH NAME Northwest District Van Nuys Courthouse East
PLAINTIFF/PETITIONER: JON CARPENTER
DEFENDANT/RESPONDENT: TARZANA INVESTMENT, LLC; ET AL
ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS

- 1. The application was filed on (date): 5/29/08
2. The application was filed by (name): JON CARPENTER
3. IT IS ORDERED that the application is granted in whole in part
a. No payments. Payment of all the fees and costs listed in California Rules of Court, rule 985(i), is waived.
b. applicant shall pay all the fees and costs listed in California Rules of Court, rule 985(i), 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) Other (specify code section):
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.
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, rule 985):
a. Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form 982(a)(17)(A)).
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 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: 5/29/08
[Signature] JUDICIAL OFFICER
[Signature] Clerk, by [Signature] Deputy

PLAINTIFF/PETITIONER (Name): JON CARPENTER	CLERK NUMBER
DEFENDANT/RESPONDENT (Name): TARZANA INVESTMENT, LLC; ET AL	

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

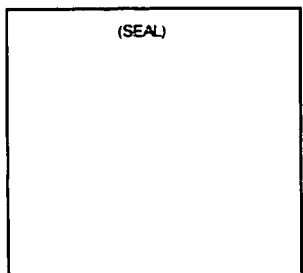
**CLERK'S CERTIFICATE OF MAILING**

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 \_\_\_\_\_, 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