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FILED

LOS ANGELES SUPERIOR COURT

SEP 28 2007

S

JOHN A. CLARKE, CLERK

Jennifer Young

BY JENNIFER YOUNG, DEPUTY

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

11 JAMES F. COHAN;

12 Plaintiff,

13 v.

14
15 Western Drug; And DOES 1
16 THROUGH 10, Inclusive

17 Defendants.

Case No.

EC 045728

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

18
19
20 1. Defendants are, and, at all times mentioned herein, were, a business or
21 corporation or franchise organized and existing and/or doing business under the laws of
22 the State of California. PROPERTY Owner: DUNDEE, VINCENT JR AND RITA TRS;
23 DUNDEE FAMILY TRUST (Trustee/Conservator)
24 Mailing Address: 5030 SCHUSTER ST, LAS VEGAS, NV 89118
25 Property Address: 412 W COLORADO ST, GLENDALE, CA 91204
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27
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1 2. Plaintiffs are further informed and believe and thereon allege that Defendants,
2 Western Drug are the owners, operators, and/or lessors of the real property, as well as the
3 business operated thereon.

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

9 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries,
10 employers, employees, agents, of Defendants Western Drug . Plaintiffs are ignorant of
11 the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive,
12 and therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave
13 of the court to amend this complaint to allege the true names and capacities of the Does
14 when ascertained.

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

22 **CONCISE SET OF FACTS**

23 6. Plaintiff has an impairment.

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

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

27 (a) General. A public accommodation shall take those steps that may be
28

1 necessary to ensure that no individual with a disability is excluded, denied
2 services, segregated or otherwise treated differently than other individuals
3 because of the absence of auxiliary aids and services, unless the public
4 accommodation can demonstrate that taking those steps would
5 fundamentally alter the nature of the goods, services, facilities, privileges,
6 advantages, or accommodations being offered or would result in an undue
7 burden, i.e., significant difficulty or expense.

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

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

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

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

20 (4) Other similar services and actions.

21 (c) Effective communication. A public accommodation shall furnish
22 appropriate auxiliary aids and services where necessary to ensure effective
23 communication with individuals with disabilities.
24

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

28 8. Plaintiff's Member and Plaintiff(s) have physical impairments because their

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

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

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

12
13 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
14 **DEFENDANT**

15 11. Defendants Western Drug; and Does 1 through 10 will be referred to collectively
16 hereinafter as "Defendants."

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

19
20 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

23 **Claim I**

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

2 **Claim II**

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

8 **Claim III**

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

15 **Claim IV**

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

21 **Claim V**

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

25 **Claim VI**

26 18. Based on the facts stated above, Defendants discriminated against Plaintiffs as
27 Defendants utilized standards or criteria or methods of administration that have the effect
28

1 of discriminating on the basis of disability; or that perpetuate the discrimination of others
2 who are subject to common administrative control in violation of 42 U.S.C. §12182.

3 **Claim VII**

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

10 **Claim VIII**

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

13 **Claim IX**

14 21. Based on the facts stated above, Defendants discriminated against Plaintiffs as
15 Defendant failed to demonstrate that the removal of a barrier is not readily achievable,
16 and made such goods, services, facilities, privileges, advantages, or accommodations
17 available through alternative methods in a segregated manner in violation of 42 U.S.C.
18 §12182.

19 **Claim X**

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

26 23. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.
27
28

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

3 CLAIM I: Denial Of Full And Equal Access

4 24. Based on the facts plead above and elsewhere in this complaint, Plaintiff's
5 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services,
6 facilities, privileges, advantages, or accommodations within a public accommodation
7 owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and
8 54.1.

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

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

16 CLAIM III: Violation Of The Unruh Act

17 26. Based on the facts plead above and elsewhere herein this complaint and because
18 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code
19 § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to
20 knowingly discriminate against Plaintiffs and persons similarly situated in violation of
21 Civil Code §§ 51, 52, and 54.1. Plaintiffs allege the access violations alleged here are so
22 obvious as to implicate at least a prima facie case of discriminatory intent.

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

9 28. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
10


11 **DEMAND FOR JUDGMENT FOR RELIEF:**
12

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

18 Respectfully submitted:

19 **PINNOCK & WAKEFIELD, A.P.C.**

20 Dated: September 4, 2007

21 By:  _____
22 THEODORE A. PINNOCK, ESQ.
23 MICHELLE L. WAKEFIELD, ESQ.
24 Attorneys for Plaintiffs
25
26
27
28

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
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 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

LOS ANGELES SUPERIOR COURT

SEP 28 2007

JOHN A. CLARKE, CLERK
Jennifer Young
 BY JENNIFER YOUNG, DEPUTY

CASE NUMBER:
EC 045728

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

STREET ADDRESS: 600 East Broadway
 MAILING ADDRESS: 600 East Broadway
 CITY AND ZIP CODE: Glendale, CA 91206
 BRANCH NAME: Glendale Courthouse

North Central District
 300 E. Olive Ave.
 Burbank, CA 91502

PLAINTIFF/PETITIONER: *JAMES F. COHAN*
 DEFENDANT/RESPONDENT: *Western Drug; And DOES 1 THROUGH 10, inclusive*

ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS

- The application was filed on (date): *9-28-07* A previous order was issued on (date):
- The application was filed by (name): *JAMES F. COHAN*
- IT IS ORDERED that the application is granted in whole in part (complete item 4 below).
 - No payments. Payment of all the fees and costs listed in California Rules of Court, rule 3.61, is waived.
 - The applicant shall pay all the fees and costs listed in California Rules of Court, rule 3.61, EXCEPT the following:

(1) <input type="checkbox"/> Filing papers.	(6) <input type="checkbox"/> Sheriff and marshal fees.
(2) <input type="checkbox"/> Certification and copying.	(7) <input type="checkbox"/> Reporter's fees* (valid for 60 days).
(3) <input type="checkbox"/> Issuing process and certification.	(8) <input type="checkbox"/> Telephone appearance (Gov. Code, § 68070.1 (c)).
(4) <input type="checkbox"/> Transmittal of papers.	(9) <input type="checkbox"/> Other (specify code section):
(5) <input type="checkbox"/> Court-appointed interpreter.	

Reporter's fees are per diem pursuant to Code Civ. Proc., §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195.
 - Method of payment. The applicant shall pay all the fees and costs when charged, EXCEPT as follows:

(1) <input type="checkbox"/> Pay (specify):	percent.	(2) <input type="checkbox"/> Pay: \$	per month or more until the balance is paid.
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 - 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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 - The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
 - 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.
- 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):
 - Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form FW-001-INFO).
 - Other (Complete line 4b on page 2).
 - 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.
 - The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
- IT IS ORDERED that a hearing be held.
 - The substantial evidentiary conflict to be resolved by the hearing is (specify):
 - The applicant should appear in this court at the following hearing to help resolve the conflict:

Date:	Time:	Dept.:	Div.:	Room:
-------	-------	--------	-------	-------
 - The address of the court is (specify):

Same as above
 - 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: **SEP 28 2007**

JOHN A. CLARKE, CLERK
 Clerk, by *JENNIFER YOUNG*, Deputy
 JUDICIAL OFFICER (Clerk may GRANT in full or in part if the applicant is unable to pay fees or costs.)

PLAINTIFF/PETITIONER (Name): <u>JAMES F. COHAN;</u>	CASE NUMBER:
DEFENDANT/RESPONDENT (Name): <u>Western Drug; And DOES 1 THROUGH 10, Inclusive</u>	

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): Glendale, California,
on (date): SEP 28 2007

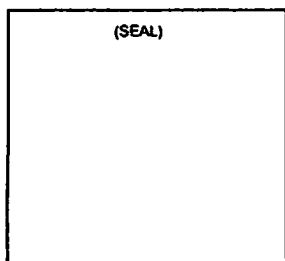
JOHN A. CLARKE, CLERK

Clerk, by

Jennifer Young

, Deputy

JENNIFER YOUNG DEPUTY CLERK



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