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2 La Mesa, Ca. 91942
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3 Plaintiff Pro Per
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SUPERIOR COURT
SAN DIEGO COUNTY, CA

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

9 **LISSA HAYES, an individual,**
10
11 **Plaintiff,**
12
13 **v.**
14 **BALBOA PHARMACY HOME MEDICAL
SUPPLY**
15 **; And DOES 1 THROUGH 10, Inclusive**
16
17 **Defendants.**

Case No.: 37-2007-00072408-CU-CR-CTL

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

18 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

- 19 1. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise
20 organized and existing and/or doing business under the laws of the State of California.
21 2. Plaintiff is further informed and believe and thereon allege that Defendants **BALBOA**
22 **PHARMACY HOME MEDICAL SUPPLY**
23 are the owners, operators, and/or lessors of the real property, as well as the business operated thereon. As
24 to Defendants and the property the public record reveals:
25 Balboa Pharmacy Home Medical Supply
26 5222 Balboa Ave.
27 San Diego, CA 92117
28 (858) 278-0111

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3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of BALBOA PHARMACY HOME MEDICAL SUPPLY

4. Plaintiff is 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. Plaintiff will pray leave of the court to amend this complaint to allege the true names and capacities of the Does when ascertained.

5. Plaintiff is 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.

6. Plaintiff is 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

7. In 2007 Plaintiff went to the BALBOA PHARMACY HOME MEDICAL SUPPLY . Plaintiff experienced architectural and auxiliary aid barriers at the place at which impeded.

8. Plaintiff has physical impairments because the condition affects one or more of the following body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's said physical impairments substantially limits one of the most major life activities. In addition, Plaintiff 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 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 was deterred from patronizing the facility due to the alleged ADA violations and/or alleged architectural barriers outlined in Paragraphs above.

10. While Plaintiff expressly wants to patronize Defendant's establishment and the property that is the subject of this Complaint in the immediate future, Plaintiff is expressly deterred from returning to the

1 establishment and the property that is the subject of this Complaint due to the existence of the architectural
2 barriers.

3 11. Based on these facts, Plaintiff was discriminated against each time he patronized Defendants'
4 establishment. Plaintiff was extremely upset due to Defendants' conduct.

5
6 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

7 12. BALBOA PHARMACY HOME MEDICAL SUPPLY

8 and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

9 13. Plaintiff avers that the Defendants are liable for the following claims as alleged below:

10
11 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

14 **Claim I**

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

19 15. WHEREFORE, Plaintiff pray for judgment and relief as hereinafter set forth.

20
21 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER CALIFORNIA**
22 **ACCESSIBILITY LAWS**

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

24 16. Based on the facts plead above and elsewhere in this complaint, Plaintiff was denied full and equal
25 access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public
26 accommodation owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and
27 54.1.

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

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

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

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

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

22 20. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.

23 **DEMAND FOR JUDGMENT FOR RELIEF:**

24 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a). Plaintiff requests this Court enjoin
25 Defendants to remove all architectural barriers in, at, or on their facilities related to the following: Space
26 Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking
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28

1 and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
2 Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals,
3 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms,
4 Alarms, Detectable Warnings, Signage, and Telephones.

5
6 B. For damages pursuant to Cal. Civil Code § 52 or 54.3

7 C. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 51, 52;
8 54.3;

9 D. A Jury Trial and;

10 E. For such other further relief as the court deems proper.

11 Respectfully submitted:

12 Dated: 07/30/07

13 By: Lissa Hayes
14 LISSA HAYES
15 PLAINTIFF PRO PER
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