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SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

LISSA HAYES

Plaintiff,

v.

KB PHARMACY

And DOES 1 THROUGH 10, Inclusive

Defendants.

Case No. 37-2007-00072372-cu-cr-ctl

**FIRST AMENDED 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.

2. Plaintiffs are further informed and believe and thereon allege that Defendants, KB PHARMACY

1 , are the owners, operators, and/or lessors of the real property, as well as the business
2 operated thereon. Property Owner: K B PHARMACY
3 Mailing Address: P O BOX 5487, SAN DIEGO, CA 92165-5487
4 Property Address: 5065 EL CAJON BLVD, SAN DIEGO, CA
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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, ; and persons associated with its Members who accompanied Members to
11 Defendants' facilities.

12 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries,
13 employers, employees, agents, of Defendants KB PHARMACY
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15 . Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
16 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious
17 names. Plaintiffs will pray leave of the court to amend this complaint to allege the true
18 names and capacities of the Does when ascertained.
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20 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each
21 of them herein were, at all times relevant to the action, the owner, lessor, lessee,
22 franchiser, franchisee, general partner, limited partner, agent, employee, representing
23 partner, or joint venturer of the remaining Defendants and were acting within the course
24 and scope of that relationship. Plaintiffs are further informed and believe, and thereon
25 allege, that each of the Defendants herein gave consent to, ratified, and/or authorized the
26 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 as
7 attached as Exhibit A.

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

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

19 10. Plaintiff's Member was deterred from patronizing the facility.
20

21 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
22 **DEFENDANT**

23 10. Defendants KB PHARMACY
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25 and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."
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27 11. Plaintiffs aver that the Defendants are liable for the following claims as alleged
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1 below:
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3 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

6 Claim I

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

12 Claim II

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

18 Claim III

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

25 Claim IV

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

5 Claim V

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

9 Claim VI

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

14 Claim VII

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

21 Claim VIII

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

24 Claim IX

25 20. Based on the facts stated above, Defendants discriminated against Plaintiffs as
26 Defendant failed to demonstrate that the removal of a barrier is not readily achievable,
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1 and made such goods, services, facilities, privileges, advantages, or accommodations
2 available through alternative methods in a segregated manner in violation of 42 U.S.C.
3 §12182.

4 Claim X

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

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

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

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

16 23. Based on the facts plead above and elsewhere in this complaint, Plaintiff's
17 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services,
18 facilities, privileges, advantages, or accommodations within a public accommodation
19 owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and
20 54.1.

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

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

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

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

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: August 20, 2007

By: 

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

**ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported August, 2007

KB PHARMACY

KB Pharmacy

5065 El Cajon Blvd

San Diego, CA 92115

(619) 501-8048

37-2007-00072372-cl-c-01

Report of Findings

I. IN GENERAL

This report focuses on architectural barriers and the provision of auxiliary aids which may challenge access to goods or services. This is only a preliminary report conducted to comply with Rule 11 of the Federal Rules of Civil Procedure.

- II. **AUXILIARY AIDS:** The pharmacy provides written information to customers without offering large print, Braille or taped text. Written information in the form of medicine instructions is given to customers to take home. A pharmacy must provide the Auxiliary Aids as

follows:

- a. **Purchase Braille Translation Software:** The industry leading multi-platform, multi-language Braille translator for anyone from the casual user to the power user. Approximate Cost Price: \$580.00. The purpose of the device is to translate current word documents to be printed as Braille.
- b. **Purchase or provide Digital Dictating Machine/Voice.** Approximate Cost Price: \$15.00. The purpose of this machine is to provide taped text to customers that are blind that do not read Braille.
- c. **Provide large Print by using Microsoft Word.**

Large Print is 16 point or greater upon customer request.

- d. **Provide Qualified Reader -** A trained employee who reads the prescriptions. Costs –none.
- e. **Provide signage as to the availability of auxiliary aids;**

Exhibit A

- f. Provide staff training as to how to provide auxiliary aids and to provide staff training to recognize customers with sight impairments to offer available auxiliary aids.

III. ARCHITECTURAL BARRIERS

A. VIOLATIONS

Paint on disabled parking space is badly faded, no disabled parking sign, no van-accessible parking (need to have at least one van-accessible parking space), no tow-away sign, counter is too high (should be no higher than 36 inches).

This report contains a number of serious violations to the accessibility Standards as outlined in the ADA Act of 1990 Title III, and the California Accessibility Standards Title 24. However, more violations could, and perhaps do exist. A more detailed study must be conducted to identify all violations. Such a study is beyond the scope of the violations noted in this survey.