

1 **PINNOCK & WAKEFIELD**

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**
13 **VISTA**

14 **LISSA HAYES**

15 **Plaintiff,**

16 **v.**

17 **MOGAVERO PAULA TRUST**

18 **And DOES 1 THROUGH 10, Inclusive**

19 **Defendants.**

20 **Case No.37-2007-00056036-CU-CR-NC**

21 **CIVIL COMPLAINT:**
22 **DISCRIMINATORY PRACTICES IN**
23 **PUBLIC ACCOMMODATIONS**
24 **[42 U.S.C. 12182(a) ET. SEQ; CIVIL**
25 **CODE 51, 52, 54, 54.1]**

26 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

27 1. Defendants are, and, at all times mentioned herein, were, a business or
28 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,
MOGAVERO PAULA TRUST, are the owners, operators, and/or lessors of the real
property, as well as the business operated thereon. PROPERTY OWNER: MOGAVERO
PAULA TRUST (01-25-89) (TRUSTEE/CONSERVATOR)

1 MAILING ADDRESS: 7481 COLLINS RANCH CT, SAN DIEGO, CA 92130

2 PROPERTY ADDRESS: 12759 POWAY RD, POWAY, CA 92064-4443

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

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

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

24 6. Plaintiff has an impairment.

25 7. Further, Defendants failed to remove architectural barriers as attached as Exhibit
26 A.

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

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 10. Defendants MOGAVERO PAULA TRUST and Does 1 through 10 will be
16 referred to collectively hereinafter as "Defendants."

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

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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 12. 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

1 Defendants own, lease (or lease to), or operate a place of public accommodation in
2 violation of 42 U.S.C. §12182.

3 Claim II

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

9 Claim III

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

16 Claim IV

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

22 Claim V

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

26 Claim VI

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

5 Claim VII

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

12 Claim VIII

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

15 Claim IX

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

21 Claim X

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

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

3
4 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
5 **CALIFORNIA ACCESSIBILITY LAWS**

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

7 23. Based on the facts plead above and elsewhere in this complaint, Plaintiff's
8 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services,
9 facilities, privileges, advantages, or accommodations within a public accommodation
10 owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and
11 54.1.

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

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

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

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

26 26. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause
27 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer

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1 irreparable harm unless Defendants are ordered to remove architectural, non-
2 architectural, and communication barriers at Defendants' public accommodation.
3 Plaintiffs allege that Defendants' discriminatory conduct is capable of repetition, and this
4 discriminatory repetition adversely impacts Plaintiffs and a substantial segment of the
5 disability community. Plaintiffs allege there is a state and national public interest in
6 requiring accessibility in places of public accommodation. Plaintiffs have no adequate
7 remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to
8 return to Defendants' places of business in the immediate future. Accordingly, the
9 Plaintiffs allege that a structural or mandatory injunction is necessary to enjoin
10 compliance with state civil rights laws enacted for the benefit of individuals with
11 disabilities.

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

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**ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported August, 2007

MCGAVEROPALM TRUST

12759 POWAY RD

POWAY CA

FAE

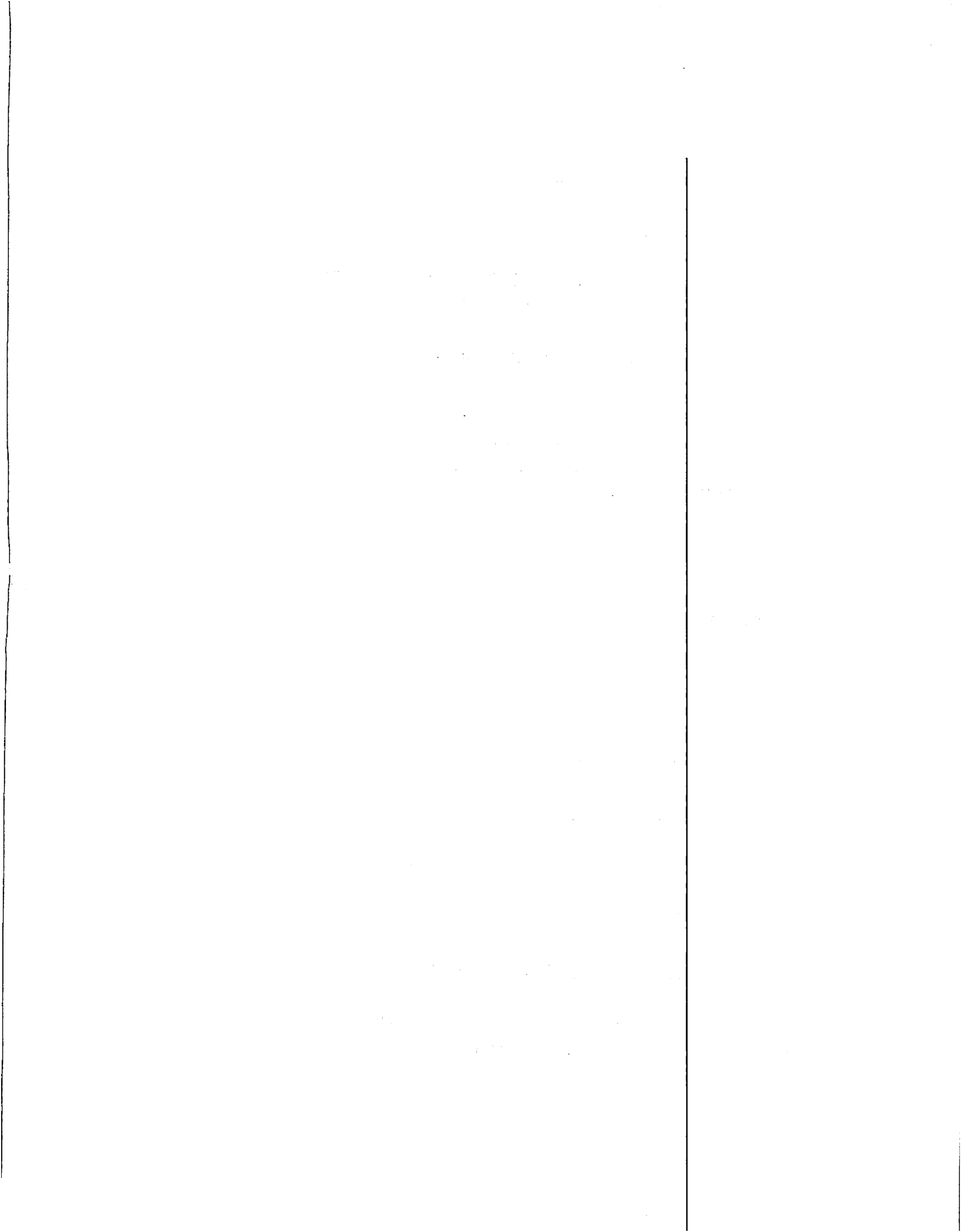
Report of Findings

I. IN GENERAL

II. ARCHITECTURAL BARRIERS

VIOLATIONS

- NO ENTRANCE DRIVEWAY SIGNAGE
- NO SIGNAGE
- NO COMPLIANT DISABLED PARKING
- NO VAN ACCESSIBLE PARKING



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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.