

1 LISSA HAYES
5435 Heidi Street, #3j
2 La Mesa, Ca. 91942
Phone: 619.674.7652

3 Plaintiff Pro Per
4

2007 AUG -3 PM 2:50

SAN DIEGO COUNTY, CA

5
6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

9 **LISSA HAYES, an individual,**
10
11 **Plaintiff,**

12 v.

13 **POINT LOMA SHELTER ISLAND DRUG
; And DOES 1 THROUGH 10, Inclusive**

14 **Defendants.**

Case No.: 37-2007-00072422-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]

15
16
17 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

18 1. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise
19 organized and existing and/or doing business under the laws of the State of California.

20 2. Plaintiff is further informed and believe and thereon allege that Defendants **POINT LOMA**
21 **SHELTER ISLAND DRUG**

22 are the owners, operators, and/or lessors of the real property, as well as the business operated thereon. As
23 to Defendants and the property the public record reveals:

24 Point Loma Shelter Island Drug

25 1105 Rosecrans St.

26 San Diego, CA 92106

27 (619) 223-8181

28 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,

1 employees, agents, of POINT LOMA SHELTER ISLAND DRUG
2

3 4. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1 through
4 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will pray leave of the
5 court to amend this complaint to allege the true names and capacities of the Does when ascertained.
6

7 5. Plaintiff is informed and believe, and thereon allege, that Defendants and each of them herein were,
8 at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee, general partner, limited
9 partner, agent, employee, representing partner, or joint venturer of the remaining Defendants and were
10 acting within the course and scope of that relationship.

11 6. Plaintiff is further informed and believe, and thereon allege, that each of the Defendants herein
12 gave consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.
13

14 CONCISE SET OF FACTS

15 7. In 2007 Plaintiff went to the POINT LOMA SHELTER ISLAND DRUG

16 . Plaintiff experienced architectural and auxiliary aid barriers at the place at which impeded.

17 8. Plaintiff has physical impairments because the condition affects one or more of the following body
18 systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's
19 said physical impairments substantially limits one of the most major life activities. In addition, Plaintiff
20 cannot perform one or more of the said major life activities in the manner, speed, and duration when
21 compared to the average person. Moreover, Plaintiff has a history of or has been classified as having a
22 physical impairment as required by 42 U.S.C. § 12102(2)(A).

23 9. Plaintiff was deterred from patronizing the facility due to the alleged ADA violations and/or
24 alleged architectural barriers outlined in Paragraphs above.

25 10. While Plaintiff expressly wants to patronize Defendant's establishment and the property that is the
26 subject of this Complaint in the immediate future, Plaintiff is expressly deterred from returning to the
27 establishment and the property that is the subject of this Complaint due to the existence of the architectural
28 barriers.

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

4 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

5 12. POINT LOMA SHELTER ISLAND DRUG

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

7 13. Plaintiff avers that the Defendants are liable for the following claims as alleged below:
8

9 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

12 **Claim I**

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

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

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

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

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

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

27 17. Based on the facts plead above and elsewhere herein this complaint, Defendants failed and refused
28 to provide a reasonable alternative by modifying its practices, policies, and procedures in that they failed to

1 have a scheme, plan, or design to assist Plaintiffs and/or others similarly situated in entering and utilizing
2 Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff was subjected to discrimination in
3 violation of Civil Code § 54.1.

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

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

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

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

21
22 **DEMAND FOR JUDGMENT FOR RELIEF:**

23
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
27 and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
28 Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms,
Alarms, Detectable Warnings, Signage, and Telephones.

- B. For damages pursuant to Cal. Civil Code § 52 or 54.3
- C. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 51, 52;
54.3;
- D. A Jury Trial and;
- E. For such other further relief as the court deems proper.

Respectfully submitted:

Dated: 07/30/07

By: Lissa Hayes
LISSA HAYES
PLAINTIFF PRO PER