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PROSECUTOR'S OFFICE 10
CIVIL DIVISION

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SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

11 **LISSA HAYES**

12 **Plaintiff,**

13 **v.**

14 **STATSCRIPT-FIFTH AVE.**
15 **PHARMACY**

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

17 **Defendants.**

Case No. 37-2007-00072425-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]

20 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

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

24 2. Plaintiffs are further informed and believe and thereon allege that Defendants,
25 STATSCRIPT-FIFTH AVE. PHARMACY
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1 , are the owners, operators, and/or lessors of the real property, as well as the business
2 operated thereon. STATSCRIPT-FIFTH AVE. PHARMACY

3 Property Owner: FIFTH & UNIVERSITY PARTNERS L P (Company/Corporation)

4 Mailing Address: 3900 5TH AVE #130, SAN DIEGO, CA 92103

5 Property Address: 3900 5TH AVE, SAN DIEGO, CA 92103

6
7 Company Name: FIFTH & UNIVERSITY PARTNERS, L.P.

8 Business Address:

9 7981 DORADO CT.

10 LA JOLLA, CA 92037

11 Registered Agent: ROBERT W. BLANCHARD, ESQ.

12 Registered Office:

13 7724 GIRARD AVE., 3RD FL.

14 LA JOLLA, CA 92037

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16
17 3. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically
18 include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN AND
19 ADULTS WITH DEVELOPMENTAL DISABILITIES , SUING ON BEHALF OF ITS
20 MEMBERS, ; and persons associated with its Members who accompanied Members to
21 Defendants' facilities.

22
23 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries,
24 employers, employees, agents, of Defendants

25 STATSCRIPT-FIFTH AVE. PHARMACY

26 . Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
27 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious
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1 names. Plaintiffs will pray leave of the court to amend this complaint to allege the true
2 names and capacities of the Does when ascertained.

3 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each
4 of them herein were, at all times relevant to the action, the owner, lessor, lessee,
5 franchiser, franchisee, general partner, limited partner, agent, employee, representing
6 partner, or joint venturer of the remaining Defendants and were acting within the course
7 and scope of that relationship. Plaintiffs are further informed and believe, and thereon
8 allege, that each of the Defendants herein gave consent to, ratified, and/or authorized the
9 acts alleged herein to each of the remaining Defendants.
10

11 **CONCISE SET OF FACTS**

12 6. Plaintiff has an impairment.

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

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

16 (a) General. A public accommodation shall take those steps that may be
17 necessary to ensure that no individual with a disability is excluded, denied
18 services, segregated or otherwise treated differently than other individuals
19 because of the absence of auxiliary aids and services, unless the public
20 accommodation can demonstrate that taking those steps would
21 fundamentally alter the nature of the goods, services, facilities, privileges,
22 advantages, or accommodations being offered or would result in an undue
23 burden, i.e., significant difficulty or expense.

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

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

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

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

10 (4) Other similar services and actions.

11 (c) Effective communication. A public accommodation shall furnish
12 appropriate auxiliary aids and services where necessary to ensure effective
13 communication with individuals with disabilities.

14 Defendants failed to comply with Title 28, part 36.303 of Code of Federal Regulations as
15 it failed to provide Qualified readers, taped texts, audio recordings, Brailled materials, or
16 large print materials. Further, Defendants failed to remove architectural barriers as
17 attached as Exhibit A.

18 8. Plaintiff's Member and Plaintiff(s) have physical impairments because their
19 conditions affect one or more of the following body systems: neurological,
20 musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's
21 Member and Plaintiff(s) said physical impairments substantially limits one or more of the
22 following major life activities. In addition, Plaintiff's Member and Plaintiff(s) cannot
23 perform one or more of the said major life activities in the manner, speed, and duration
24 when compared to the average person. Moreover, Plaintiff's Member and Plaintiff(s) has
25 a history of or has been classified as having a physical impairment as required by 42
26 U.S.C. § 12102(2)(A).
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1 9. Plaintiff's Members expressly intend to patronize the establishment and the
2 property that is the subject of this Complaint in the immediate future.

3 10. Plaintiff's Member was deterred from patronizing the facility.
4

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

7 10. Defendants

8 STATSCRIPT-FIFTH AVE. PHARMACY

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

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

13 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

16 **Claim I**

17 12. Based on the facts stated above, Defendants discriminated against Plaintiffs on the
18 basis of disability in the full and equal enjoyment of the goods, services, facilities,
19 privileges, advantages, or accommodations of any place of public accommodation as
20 Defendants own, lease (or lease to), or operate a place of public accommodation in
21 violation of 42 U.S.C. §12182.
22

23 **Claim II**

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

2 Claim III

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

9 Claim IV

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

15 Claim V

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

19 Claim VI

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

24 Claim VII

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

5 **Claim VIII**

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

8 **Claim IX**

9 20. Based on the facts stated above, Defendants discriminated against Plaintiffs as
10 Defendant failed to demonstrate that the removal of a barrier is not readily achievable,
11 and made such goods, services, facilities, privileges, advantages, or accommodations
12 available through alternative methods in a segregated manner in violation of 42 U.S.C.
13 §12182.

14 **Claim X**

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

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

22
23 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
24 **CALIFORNIA ACCESSIBILITY LAWS**

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

26 23. Based on the facts plead above and elsewhere in this complaint, Plaintiff's
27 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services,
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1 facilities, privileges, advantages, or accommodations within a public accommodation
2 owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and
3 54.1.

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

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

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

12 25. Based on the facts plead above and elsewhere herein this complaint and because
13 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code
14 § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to
15 knowingly discriminate against Plaintiffs and persons similarly situated in violation of
16 Civil Code §§ 51, 52, and 54.1. Plaintiffs allege the access violations alleged here are so
17 obvious as to implicate at least a prima facie case of discriminatory intent.

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

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

STATSCRIPT FIFTH AVE PHARMACY

Statscript Fifth Ave Pharmacy

3900 Fifth Ave

San Diego, CA 92103

(619) 291-5474

87-2007-0007-2425-cv-cr-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

None noted

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.