

**FILED**

**06 OCT -4 PM 3:27**

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

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

**PINNOCK & WAKEFIELD**

A Professional Corporation  
Theodore A. Pinnock, Esq. Bar #: 153434  
David C. Wakefield, Esq. Bar #: 185736  
Michelle L. Wakefield, Esq. Bar #: 200424  
3033 Fifth Avenue, Suite 410  
San Diego, CA 92103  
Telephone: 619.858.3671  
Facsimile: 619.858.3646

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**TRIPPLE AAA ASSOCIATION FOR  
CHILDREN WITH  
DEVELOPMENTAL DISABILITIES  
SUING ON BEHALF OF JOHN  
CARPENTER AND ITS MEMBERS;  
and JOHN CARPENTER, An  
Individual,**

Plaintiffs,

v.

**BEACHWOOD MOTEL; WANG,  
SHANG NI LIANG  
(Trustee/Conservator); WANG SHANG  
NI LIANG 1993 REVOCABLE TRUST;  
HWU, ANN YANG  
(Trustee/Conservator); THE 1993 ANN  
YANG HWU REVOCABLE TRUST;  
And DOES 1 THROUGH 10, Inclusive**

Defendants.

Case No. **06 CV 2198 L BLM**

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

**DEMAND FOR JURY TRIAL**  
[F.R.Civ.P. rule 38(b)]

**INTRODUCTION**

Plaintiffs herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial District of the United States District Court of the



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

Southern District of California, that Defendants have in the past, and presently are, engaging in discriminatory practices against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to compel access compliance because empirical research on the effectiveness of Title III of the Americans with Disabilities Act indicates this Title has failed to achieve full and equal access simply by the executive branch of the Federal Government funding and promoting voluntary compliance efforts. Further, empirical research shows when individuals with disabilities give actual notice of potential access problems to places of public accommodation without a federal civil rights action, the public accommodations do not remove the access barriers. Therefore, Plaintiffs make the following allegations in this federal civil rights action:

**JURISDICTION AND VENUE**

1. The federal jurisdiction of this action is based on the Americans with Disabilities Act, 42 United States Code 12101-12102, 12181-12183 and 12201, et seq. Venue in the Judicial District of the United States District Court of the Southern District of California is in accordance with 28 U.S.C. § 1391(b) because a substantial part of Plaintiffs' claims arose within the Judicial District of the United States District Court of the Southern District of California.

**SUPPLEMENTAL JURISDICTION**

2. The Judicial District of the United States District Court of the Southern District of California has supplemental jurisdiction over the state claims as alleged in this Complaint pursuant to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper in this action is because all the causes of action or claims derived from federal law and those arising under state law, as herein alleged, arose from common nucleus of operative facts. The common nucleus of operative facts, include, but are not limited to, the incidents where Plaintiffs were denied full and equal access to Defendants' facilities, goods, and/or services in violation of both federal and state laws when they attempted to enter, use, and/or exit Defendants' facilities as described below within this Complaint.

Further, due to this denial of full and equal access, TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES SUIING ON BEHALF OF JOHN

1 CARPENTER AND ITS MEMBERS; and JOHN CARPENTER, An Individual, and other persons  
2 with disabilities were injured. Based upon the said allegations, the state actions, as stated herein,  
3 are so related to the federal actions that they form part of the same case or controversy and the  
4 actions would ordinarily be expected to be tried in one judicial proceeding.

5 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

6 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
7 franchise organized and existing and/or doing business under the laws of the State of California.  
8 Defendant BEACHWOOD MOTEL is located at 210 Surfrider Way, Oceanside, CA 92054.  
9 Plaintiffs are informed and believe and thereon allege that Defendants WANG, SHANG NI LIANG  
10 (Trustee/Conservator); WANG SHANG NI LIANG 1993 REVOCABLE TRUST; HWU, ANN  
11 YANG (Trustee/Conservator); and THE 1993 ANN YANG HWU REVOCABLE TRUST are the  
12 owners, operators and/or lessors of the BEACHWOOD MOTEL, as well as the property located at  
13 210 Surfrider Way, Oceanside, CA 92054; Assessor's Parcel No.: 143-224-06. Defendants  
14 WANG, SHANG NI LIANG (Trustee/Conservator); and WANG SHANG NI LIANG 1993  
15 REVOCABLE TRUST is located at 3562 Sego Street, Irvine, CA 92606. Defendants HWU, ANN  
16 YANG (Trustee/Conservator); and THE 1993 ANN YANG HWU REVOCABLE TRUST are  
17 located at 56325 Hilltop Drive, Yucca Valley, CA 92284. The words "Plaintiffs" and "Plaintiff's  
18 Member" as used herein specifically include the organization and TRIPPLE AAA ASSOCIATION  
19 FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF JOHN  
20 CARPENTER AND ITS MEMBERS; and JOHN CARPENTER, An Individual and persons  
21 associated with its Members who accompanied Members to Defendants' facilities.

22 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
23 employees, agents, of BEACHWOOD MOTEL; WANG, SHANG NI LIANG  
24 (Trustee/Conservator); WANG SHANG NI LIANG 1993 REVOCABLE TRUST; HWU, ANN  
25 YANG (Trustee/Conservator); and THE 1993 ANN YANG HWU REVOCABLE TRUST.  
26 Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through  
27 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs will pray  
28

1 leave of the court to amend this complaint to allege the true names and capacities of the Does when  
2 ascertained.

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

10 **CONCISE SET OF FACTS**

11 6. Plaintiffs allege businesses often state that they have few customers with disabilities.  
12 Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from  
13 patronizing such businesses. The courts have recognized deterrence-based damage claims under  
14 Civil Code 54.3 and 52. Since California courts have held that the California disability access laws  
15 manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes  
16 incentives for compliance, (see Donald, 266 Cal. Rptr. at 808-11) the courts conclude that  
17 application of this canon of construction requires that 54.1 and 51, and their respective damages  
18 provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The  
19 courts therefore hold that where a plaintiff can prove that violations of applicable California  
20 disability access standards deterred her on a particular occasion from attempting to attend a place of  
21 public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and  
22 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still  
23 face systemic discrimination each and every day. One of the most debilitating forms of  
24 discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial  
25 or benefits, services, or other opportunities that are as effective and meaningful as those provided to  
26 others. Discrimination results from actions or inactions that discriminate by effect as well as by  
27 intent or design. Discrimination also includes harms resulting from the construction of  
28 transportation, architectural, and communication barriers and the adoption or application of

1 standards and criteria and practices and procedures based on thoughtlessness or indifference-of  
2 benign neglect. Discrimination also includes harms affecting individuals with a history of  
3 disability, and those regarded by others as having a disability as well as persons associated with  
4 such individuals that are based on false presumptions, generalizations, misperceptions, patronizing  
5 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the  
6 effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and  
7 comprehensive national mandate for the elimination of discrimination against individuals with  
8 disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing  
9 discrimination against individuals with disabilities. (42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990))  
10 Plaintiffs allege the legislative history of the Act, which reflects congressional concerns over the  
11 deleterious effects of discrimination against people with disabilities. As a result, Congress  
12 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation  
13 Act of 1973. (As amended 29 U.S.C. § 794a)(42 U.S.C. § 12133)(See *Smith v. Barton*, 914 F.2d  
14 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written recently  
15 about the ADA and its mechanisms of enforcement. (See e.g., *Doran v. Del Taco, Inc.*, ---  
16 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*  
17 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)) For purposes of this suit, it is sufficient to  
18 note that the statute creates a private right of action through which a litigant may seek injunctive  
19 relief as well as attorneys' fees and costs. (42 U.S.C. § 2188(a)) Plaintiffs allege that it cannot be  
20 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys  
21 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are  
22 just some of the examples where the legislature has made a determination that society will benefit  
23 from private attorneys general. The ADA is but another example.

24  
25 7. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL  
26 DISABILITIES is an organization that advocates on the behalf of children and others with  
27 disabilities when their civil rights and liberties have been violated.

28 8. Plaintiff JOHN CARPENTER has a physical impairment and due to this impairment he has

1 learned to successfully operate a wheelchair.

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

4 11. When Plaintiff's Member and Plaintiff JOHN CARPENTER researched Defendants'  
5 facilities, he discovered he would be unable to use the public accommodations' at Defendants'  
6 business establishments because they failed to comply with ADA Access Guidelines For Buildings  
7 and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code  
8 Requirements as specified in Attachment A. Defendants failed to remove access barriers within the  
9 parking public accommodations of Defendants' establishment. Plaintiff's Member was deterred  
10 from patronizing the facility because he experienced difficulty within the parking, entrance,  
11 guestroom and lobby counter access barriers at Defendants' facility as specified in Attachment A.

12 12. Plaintiff(s) was deterred from patronizing the facility due to the alleged ADA violations  
13 and/or alleged architectural barriers outlined in Paragraphs 10 through 11 above, as well as  
14 Attachment A.

15 13. While Plaintiff(s) expressly wants to patronize Defendant's establishment and the property  
16 that is the subject of this Complaint in the immediate future, Plaintiff and Plaintiff's Member is  
17 expressly deterred from returning to the establishment and the property that is the subject of this  
18 Complaint due to the existence of the architectural barriers outlined above in Paragraphs 10  
19 through 11, as well as Attachment A.

20 14. Pursuant to federal and state law, Defendants are required to remove barriers to their  
21 existing facilities. Further, Defendants had actual knowledge of their barrier removal duties under  
22 the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also, Defendants  
23 should have known that individuals with disabilities are not required to give notice to a  
24 governmental agency before filing suit alleging Defendants failed to remove architectural barriers.

25 15. Plaintiffs believe and herein allege Defendants' facilities have access violations not  
26 directly known by Plaintiff which preclude or limit access by other members of Plaintiff  
27 organization or other persons with disabilities, including but not limited to violations relating to  
28

1 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor  
2 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform  
3 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers,  
4 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars,  
5 and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
6 Accordingly, Plaintiffs allege Defendants are required to remove all architectural barriers, known or  
7 unknown. Also, Plaintiffs allege Defendants are required to utilize the ADA checklist for Readily  
8 Achievable Barrier Removal approved by the United States Department of Justice and created by  
9 Adaptive Environments.

10 16. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff(s) was discriminated  
11 against each time he patronized Defendants' establishment. Plaintiff's Member and Plaintiff(s) was  
12 extremely upset due to Defendants' conduct.

13 **NOTICE**

14 17. Plaintiffs are not required to provide notice to the defendants prior to filing a complaint.  
15 (See *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832 (9<sup>th</sup> Cir 2000))  
16

17 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**  
18 **DEFENDANT**

19 18. BEACHWOOD MOTEL; WANG, SHANG NI LIANG (Trustee/Conservator); WANG  
20 SHANG NI LIANG 1993 REVOCABLE TRUST; HWU, ANN YANG (Trustee/Conservator);  
21 THE 1993 ANN YANG HWU REVOCABLE TRUST; and Does 1 through 10 will be referred to  
22 collectively hereinafter as "Defendants."  
23

24 19. Plaintiffs aver that the Defendants are liable for the following claims as alleged below:

25 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

26 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The Americans**

27 **With Disabilities Act Of 1990**  
28

CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal Access

20. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and Plaintiff(s) was denied equal access to Defendants' existing facilities.

21. Plaintiff's Member and Plaintiff(s) has physical impairments as alleged in ¶ 7 above because his conditions affect one or more of the following body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's Member and Plaintiff(s) said physical impairments substantially limits one or more of the following major life activities: walking. In addition, Plaintiff's Member and Plaintiff(s) 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's Member and Plaintiff(s) has a history of or has been classified as having a physical impairment as required by 42 U.S.C. § 12102(2)(A).

CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such A Manner That The Altered Portions Of The Facility Are Readily Accessible And Usable By Individuals With Disabilities

22. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants. Defendants altered their facility in a manner that affects or could affect the usability of the facility or a part of the facility after January 26, 1992. In performing the alteration, Defendants failed to make the alteration in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities,

1 including individuals who use wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

2 23. Additionally, the Defendants undertook an alteration that affects or could affect the usability  
3 of or access to an area of the facility containing a primary function after January 26, 1992.

4 Defendants further failed to make the alterations in such a manner that, to the maximum extent  
5 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains  
6 serving the altered area, are readily accessible to and usable by individuals with disabilities in  
7 violation 42 U.S.C. §12183(a)(2).

8 24. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the  
9 maximum extent feasible, are readily accessible to and usable by individuals with disabilities  
10 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants  
11 discriminated against Plaintiffs in violation of 42 U.S.C. § 12182(a).

12 25. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42  
13 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's Member and  
14 Plaintiff(s) was denied equal access to Defendants' existing facilities.

15  
16 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural Barriers**

17 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's  
18 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,  
19 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or  
20 operated by Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a).

21 Plaintiffs are informed, believe, and thus allege that architectural barriers which are structural in  
22 nature exist within the following physical elements of Defendants' facilities: Space Allowance and  
23 Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and  
24 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair  
25 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet  
26 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
27 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III requires  
28

1 places of public accommodation to remove architectural barriers that are structural in nature to  
2 existing facilities. [See, 42 United States Code 12182(b)(2)(A)(iv)] Failure to remove such barriers  
3 and disparate treatment against a person who has a known association with a person with a  
4 disability are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv)] Thus,  
5 Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42 United States  
6 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because they were denied equal access to  
7 Defendants' existing facilities.  
8

9 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**  
10 **Procedures**

11 27. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Defendants  
12 failed and refused to provide a reasonable alternative by modifying its practices, policies and  
13 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others  
14 similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §  
15 12188(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of  
16 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and  
17 Plaintiff(s) was denied equal access to Defendants' existing facilities.

18 28. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiff's First Cause Of  
19 Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm  
20 unless Defendants are ordered to remove architectural, non-architectural, and communication  
21 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory  
22 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and  
23 a substantial segment of the disability community. Plaintiffs allege there is a national public  
24 interest in requiring accessibility in places of public accommodation. Plaintiffs have no adequate  
25 remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to return to  
26 Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege that a  
27 structural or mandatory injunction is necessary to enjoin compliance with federal civil rights laws  
28 enacted for the benefit of individuals with disabilities.

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

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

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

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

30. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

31. These violations denied Plaintiff's Member and Plaintiff(s) full and equal access to Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff(s) was denied full, equal and safe access to Defendants' facility, causing severe emotional distress.

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

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

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

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

33. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint and because Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

34. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiffs' Second Cause Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm unless Defendants are ordered to remove architectural, non-architectural, and communication barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and a substantial segment of the disability community. Plaintiffs allege there is a state and national public interest in requiring accessibility in places of public accommodation. Plaintiffs have no adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to 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.

35. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

**DEMAND FOR JUDGMENT FOR RELIEF:**

A. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable

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

Warnings, Signage, and Telephones.

B. For attorneys' fees and damages pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 51, 52, 54, 54.3. 55;

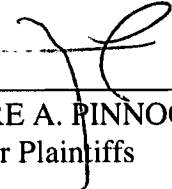
C. A Jury Trial and;

D. For such other further relief as the court deems proper.

Respectfully submitted:

**PINNOCK & WAKEFIELD, A.P.C.**

Dated: 10/03/06

By:   
THEODORE A. PINNOCK, ESQ.  
Attorney for Plaintiffs

---

**Rule 11  
ACCESSIBILITY SURVEY  
ADA TITLE III**

**Disability Compliance Documentation**

---

**Reported Tuesday, October 3, 2006**

**Business(es): BEACHWOOD MOTEL  
210 Surfrider Way  
Oceanside, CA 92054**

**Property Owner(s): WANG, SHANG NI LIANG  
(Trustee/Conservator); WANG SHANG NI LIANG  
1993 REVOCABLE TRUST; HWU, ANN YANG  
(Trustee/Conservator); THE 1993 ANN VANG  
HWU REVOCABLE TRUST**

**Assessor's Parcel #: 143-224-06**

# Report of Findings

## A. VIOLATIONS

### 1. Parking

- a. There fails to be any disabled parking provided for this property.
- b. There fails to be tow-away signage located at the driveway entrances.

### 2. Exterior Path of Travel

- a. There fails to be a safe and accessible pathway in the exterior path of travel leading from the parking to the lobby entrance.

### 3. Entrance

- a. The entrance to the registration/lobby, as well as all the guestrooms on the first floor have high curb-like thresholds.
- b. There fails to be an International Symbol of Accessibility posted on the lobby entrance/door, as required.

### 4. Counter

- a. The lobby/registration counter is too high to be accessible and fails to provide a lowered section, as required.

### 5. Guestrooms

- a. There fails to be any handicap accessible guestrooms provided at this facility, as required.
- b. The guestrooms on the first floor have restrooms that are not accessible, as the doorways are too narrow for a wheelchair to enter and use.

## B. REGULATIONS

### 1. Parking:

ADA Accessibility Guidelines ("ADAAG") require that Defendants' parking lot provide disabled parking and at least have 1 "Van Accessible" space. (ADAAG 4.6.1; 4.1.2(5) If parking is provided for visitors to the property, then accessible spaces are to be provided in a number in conformance with the specified table located in ADAAG 4.1.2 (5). The disabled parking space is to be located on the shortest accessible route to the public accommodation's nearest accessible entrance. (ADAAG 4.6.2) The "Van Accessible" space is required to be 108 inches (9 feet) wide (ADAAG 4.6.3) and served by an access aisle 96 inches (8 feet) wide (ADAAG 4.1.2(5)(b)). The van accessible access aisle is required to be positioned on the passenger side of the vehicle. Regular disabled parking is also required to have the same proper access aisles. The disabled parking space is required to have an access aisle that is part of an accessible route to the building entrance. (ADAAG 4.6.3) Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. (ADAAG 4.6.4) Spaces which are Van Accessible shall also have an additional sign stating the space is Van Accessible and these signs are to be mounted where they will not be obstructed by a parked vehicle (Id.) At each parking lot entrance, a tow away sign shall be posted to inform patrons they may be fined and/or have their vehicles towed if they are unlawfully parked in a disabled parking space. At parking structures, there shall be an 8' 2" minimum vertical clearance at the entrance to the parking structure and within the parking structure in areas leading to accessible parking spaces.

### 2. Exterior Path of Travel

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.7). An accessible route is required to be provided between public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the entrances of the facilities they serve. If the accessible route passes through a parking lot, Title 24 of the California Building Code requires that the route must be contained in a marked crosswalk so that the safety of the person in a wheelchair is not jeopardized when they pass behind banks of parked cars. Objects projecting from walls with their leading edges between 27" and 80" above the finished floor shall protrude no more than 4" into walks, halls, corridors, passageways or aisles. (ADAAG 4.4.1) Free standing objects mounted on posts or pylons may overhang at maximum 12" from 27" to 80" above the ground of finished floor. (Id.) Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80" minimum clear head room. (ADAAG

4.4.2) If carpet is used on a ground or floor surface, then it shall be securely attached. (ADAAG 4.5.3)

### **3. Entrance**

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.). Thresholds at doorways shall not exceed ½". (ADAAG 4.13.8) Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2. (Id.) Additionally, inaccessible entrances must have directional signage indicating the route to the nearest accessible entrance. (ADAAG 4.1.2(7)(c). Entrance doorways along an accessible route shall have a minimum clear opening of 32" with a door open 90 degrees, measured between the face of the door and the opposite stop. (ADAAG 4.3.9; ADAAG 4.13.5) If doorways have two independently operated door leaves, at least one need to comply with this minimum clear opening requirement (ADAAG 4.13.4) The minimum space between two hinged doors or pivoted doors in a series shall be 48" plus the width of any door swinging into the space. (ADAAG 4.13.7) Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. (ADAAG 4.13.9) Hardware on doors along an accessible route shall be mounted no higher than 48" above the finish floor. (ADAAG 4.3.9; ADAAG 4.13.9) The floor or ground area within the required clear floor space in and around a door shall be level and clear. (ADAAG 4.13.6)

### **4. Counter**

In retail stores where counters have cash registers and are provided for the sale or distribution of goods or services to the public, at least one (1) counter shall have a portion of the counter which is at least 36" in length with a maximum height of 36" above the finished floor. (ADAAG 7.2(1)) In alterations where it is technically infeasible to provide an accessible counter, an auxiliary counter meeting these requirements may be provided.

### **5. Guestrooms**

Doors and doorways designed to allow passage into and within sleeping rooms in transient lodging facilities shall be accessible. (ADAAG 9.2.2(3)) Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. (ADAAG 9.2.2(3); ADAAG 4.13.9) The minimum clear width of an accessible route within the interior of a guestroom must be a

minimum of 36" wide. (ADAAG 4.3.3) In hotels of 50 or more sleeping rooms or suites, additional accessible sleeping rooms or suites that include a roll-in shower shall be provided in conformance with the following requirements: If the hotel has between 1 to 25 guestrooms, the hotel shall provide 1 accessible guestroom; if the hotel has between 26 and 50 guestrooms, the hotel shall provide 2 accessible guestrooms; if the hotel has between 51 and 75 guestrooms, the hotel shall provide 3 accessible guestrooms and 1 additional accessible room having a roll-in shower; if the hotel has between 76 and 100 guestrooms, the hotel shall provide 4 accessible guestrooms and 1 additional accessible room having a roll-in shower; if the hotel has between 101 and 150 guestrooms, the hotel shall provide 5 accessible guestrooms and 2 additional accessible rooms having roll-in showers; if the hotel has between 151 and 200 guestrooms, the hotel shall provide 6 accessible guestrooms and 2 additional accessible rooms having roll-in showers; if the hotel has between 201 and 300 guestrooms, the hotel shall provide 7 accessible guestrooms and 3 additional accessible rooms having roll-in showers. (ADAAG 9.1.2) At least one (1) full bathroom (with a water closet, a lavatory, and a bathtub or shower) shall be accessible within an accessible unit, sleeping route, or suite. (ADAAG 9.2.2(6)(e)) Doorways must have a minimum clear opening of 32" (ADAAG 4.13.5). Handles on the door must have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist. (ADAAG 4.13.9). The maximum force for pushing or pulling open an interior hinged door is 5 Lbs. of pressure. (ADAAG 4.13.11(2)(b)) Guestroom bathrooms are required to have adequate clearance space to maneuver a wheelchair and provide side transfer space. (ADAAG 4.17). Also, an adequate clear floor space must be provided in front of a lavatory sink to allow a forward approach. (ADAAG 4.19.3). The height of water closets and/or commodes must be a minimum of 17" high. (ADAAG 4.16.3) Grab bars must be provided with specific measurement requirements. (ADAAG 4.17.6 and 4.26) Guestroom bathroom dispensers should not be located at a height beyond a specified maximum height to permit access (ADAAG 4.16.6 and 4.22.7; 4.27.3; CA Title 24 Sections 1501, 1502, 1503, 1504, 1505, 1506 & 3105A(a), (b) & (n)) The Guestroom bathroom drainage and supply piping are required to be insulated (ADAAG 4.19.4). Mirrors shall be mounted with the bottom edge of the reflective surface no higher than 40". (ADAAG 4.19.6) The lavatory operating knobs are required to be of a certain type. (ADAAG 4.17) Grab bars must be provided with specific measurement requirements. (ADAAG 4.21.4 and 4.26) The lavatory operating knobs are required to be of a certain type. (ADAAG 4.17). The highest operable part of controls and operable equipment within accessible units, sleeping rooms, and suites shall comply with the following reach allowances: If the clear floor space only allows a forward approach to an object, the maximum high forward reach allowed shall be 48" and if the clear floor space allows a parallel approach, the maximum high side reach

allowed shall be 54". (ADAAG 9.2.2(5), ADAAG 4.27.3, ADAAG 4.2.5, and ADAAG 4.2.6) Faucets shall be operable with one hand and must not require tight grasping or twisting of the wrist to operate. (CA Title 24 Section 3103A(h)) The maximum force required to operate a kitchen faucet shall be 5 lbs. of pressure. Id. Countertops shall be a minimum of 30" for the sink and 30" for the work surface, repositionable to a minimum of 28" in height. Id. The counters shall have removable base cabinets and finished flooring underneath. Id. The highest operable part of controls and operable equipment within accessible units, sleeping rooms, and suites shall comply with the following reach allowances: If the clear floor space only allows a forward approach to an object, the maximum high forward reach allowed shall be 48" and if the clear floor space allows a parallel approach, the maximum high side reach allowed shall be 54". (ADAAG 9.2.2(5), ADAAG 4.27.3, ADAAG 4.2.5, and ADAAG 4.2.6) The minimum low forward reach is 15". (ADAAG 4.2.5) The minimum low side reach shall not be less than 9". (ADAAG 4.2.6) Handles and control devices must have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist. (ADAAG 4.13.9). If fixed closet facilities are provided, clothing rods or shelves shall be a maximum of 48" above the finished floor for a forward approach and shall be a maximum of 54" above the finished floor for a side approach (ADAAG 9.2.2(4); ADAAG 4.25.3; and ADAAG 4.2.5) Handles on the door must have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist. (ADAAG 4.13.9). Hardware shall be mounted no higher than 48". (Id.) ). At the bottom of the push side of a door, there shall be mounted a smooth panel, or "kick plate," that is at minimum ten inches (10") high. (CA Title 24, Section 3304) The sweep period of a door closer shall be adjusted so that from an open position of 70°, the door will take at least 3 seconds to move to a point 3" from the latch measured to the leading edge of the door. (ADAAG 4.13.10) If carpet is used on a ground or floor surface, then it shall be securely attached. (ADAAG 4.5.3) Defendants' facility does not meet these guidelines.

This Rule 11 survey and report has been provided by Mantic Ashanti's Cause, Inc. 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.

CIVIL COVER SHEET

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

1 (a) PLAINTIFFS TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF JOHN CARPENTER AND ITS MEMBERS; and JOHN CARPENTER, An Individual

DEFENDANTS BEACHWOOD MOTEL; WANG, SHANG NI ETANG (Trustee/Conservator); WANG SHANG NI LIANG 1993 REVOCABLE TRUST; HWU, ANN YANG (Trustee/Conservator); THE 1991 NI-YANG REVOCABLE TRUST; and does 1 through 10, Inclusive.

FILED 06 OCT 14 PM 10:15 06 OCT 25 1981 BLM

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego, CA (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego, CA (IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Theodore A. Pinnock, Esq. SBN 153434 Michelle L. Wakefield, Esq. SBN 200424 David C. Wakefield, Esq. SBN:185736 Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410 San Diego, California 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN) BY: DEPUTY

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country PT DEF 1 Incorporated or Principal Place of Business in This State 2 Incorporated and Principal Place of Business in Another State 3 Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, LABOR, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 382 Personal Injury-Medical Malpractice, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY) 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND \$ TO BE DETERMINED AT TRIAL Check YES only if demanded in complaint: JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE October 3, 2006 SIGNATURE OF ATTORNEY OF RECORD 130234 Ser 10/4/06 \$350

(rev. 07/89)

Date and Attorney Signature. Date and sign the civil cover sheet.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.C.P.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

Title 28 U.S.C. Section 1407. When

for within district transfers or

date as the filing date.

the date of remand as the filing date.

28 U.S.C., Section 1441. When the

If action, in Section IV above, is

cause.

if was indicated above. Mark this

ly cases.)

When Box 4 is checked, the citizenship

United States, an amendment to the

United States are included here.

shown in pleadings. Place the "X" in

them on an attachment, noting in this

first listed plaintiff resides at the time

UNITED STATES  
DISTRICT COURT  
Southern District of California  
San Diego Division

# 130234 - A1  
October 4, 2006

Code	Case #	Qty	Amount
CV086980V3	006980V3-3-06-2198		CC 00.00
Judge	RENZ		
CV086980V3			CC 00.00
CV518815V3			CC 00.00
Total - >			350.00

FROM: CIVIL FILING AAA ASSOC. FOR  
CHILDREN W/ DISABILITIES ET AL  
V. BEACHWOOD HOTEL ET AL  
VISA AUTHR 15241 SH

Multidistrict Litigation. (6) Check this box when

Transferred from Another District. (5) For cases

Reinstated or Reopened. (4) Check this box for ca

Remanded from Appellate Court. (3) Check this b

Removed from State Court. (2) Proceedings initial

Original Proceedings. (1) Cases which originate in

VI. Origin. Place an "X" in one of the seven boxes

nature of suit, select the most definitive.

V. Nature of Suit. Place an "X" in the appropriate

IV. Cause of Action. Report the civil statute direct

section for each principal party.

III. Residence (citizenship) of Principal Parties. Th

of the different parties must be checked. (See Secti

Diversity of citizenship. (4) This refers to suits und

and box 1 or 2 should be marked.

Federal question. (3) This refers to suits under 28 U

United States defendant. (2) When the plaintiff is su

United States plaintiff. (1) Jurisdiction is based on

1. Jurisdiction. The basis of jurisdiction is set for

(c) Attorneys. Enter firm name, address, telephone

section ("see attachment").

cases, the county of residence of the "defendant" is

(b) County of Residence. For each civil case filed, e

required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is

Court for each civil complaint filed. The attorney filing a case should completed the form as follows:

1(a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use

only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the

official, giving both name and title.