

**PINNOCK & WAKEFIELD**

A Professional Corporation

Theodore A. Pinnock, Esq.

David C. Wakefield, Esq.

Michelle L. Wakefield, Esq.

3033 Fifth Avenue, Suite 410

San Diego, CA 92103

Telephone: 619.858.3671

Facsimile: 619.858.3646

Bar #: 153434

Bar #: 185736

Bar #: 200424

Attorneys for Plaintiffs

**FILED**  
**06 OCT -4 PM 3:39**

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

BY: 

DEPUTY

**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.

**MARINA DEL MAR MANAGEMENT  
INC. d.b.a. MARINA DEL MAR  
VACATION RENTALS; MARINA  
DEL MAR MANAGEMENT, INC.; And  
DOES 1 THROUGH 10, Inclusive**

Defendants.

Case No.

**06CV 2203BTM**

**JMA**

**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 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



1 disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to  
2 compel access compliance because empirical research on the effectiveness of Title III of the  
3 Americans with Disabilities Act indicates this Title has failed to achieve full and equal access  
4 simply by the executive branch of the Federal Government funding and promoting voluntary  
5 compliance efforts. Further, empirical research shows when individuals with disabilities give  
6 actual notice of potential access problems to places of public accommodation without a federal  
7 civil rights action, the public accommodations do not remove the access barriers. Therefore,  
8 Plaintiffs make the following allegations in this federal civil rights action:

9  
10 **JURISDICTION AND VENUE**

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

16 **SUPPLEMENTAL JURISDICTION**

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

25 Further, due to this denial of full and equal access, TRIPPLE AAA ASSOCIATION FOR  
26 CHILDREN WITH DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF JOHN  
27 CARPENTER AND ITS MEMBERS; and JOHN CARPENTER, An Individual, and other persons  
28 with disabilities were injured. Based upon the said allegations, the state actions, as stated herein,

1 are so related to the federal actions that they form part of the same case or controversy and the  
2 actions would ordinarily be expected to be tried in one judicial proceeding.

3 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

4 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
5 franchise organized and existing and/or doing business under the laws of the State of California.  
6 Defendant MARINA DEL MAR MANAGEMENT INC. d.b.a. MARINA DEL MAR VACATION  
7 RENTALS is located at 1202 N. Pacific Street, Oceanside, CA 92054. Defendant MARINA DEL  
8 MAR MANAGEMENT, INC. is located at c/o Registered Agent Jacob Deboer 1202, N. Pacific  
9 Street, Oceanside, CA 92054. The words "Plaintiffs" and "Plaintiff's Member" as used herein  
10 specifically include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH  
11 DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF JOHN CARPENTER AND ITS  
12 MEMBERS; and JOHN CARPENTER, An Individual and persons associated with its Members  
13 who accompanied Members to Defendants' facilities.

14 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
15 employees, agents, of MARINA DEL MAR MANAGEMENT INC. d.b.a. MARINA DEL MAR  
16 VACATION RENTALS; MARINA DEL MAR MANAGEMENT, INC. Plaintiffs are ignorant of  
17 the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and  
18 therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave of the court to  
19 amend this complaint to allege the true names and capacities of the Does when ascertained.  
20

21 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them  
22 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,  
23 general partner, limited partner, agent, employee, representing partner, or joint venturer of the  
24 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs  
25 are further informed and believe, and thereon allege, that each of the Defendants herein gave  
26 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.  
27  
28

**CONCISE SET OF FACTS**

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

6. Plaintiffs allege businesses often state that they have few customers with disabilities. Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from patronizing such businesses. The courts have recognized deterrence-based damage claims under Civil Code 54.3 and 52. Since California courts have held that the California disability access laws manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes incentives for compliance, (see Donald, 266 Cal. Rptr. at 808-11) the courts conclude that application of this canon of construction requires that 54.1 and 51, and their respective damages provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The courts therefore hold that where a plaintiff can prove that violations of applicable California disability access standards deterred her on a particular occasion from attempting to attend a place of public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still face systemic discrimination each and every day. One of the most debilitating forms of discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial or benefits, services, or other opportunities that are as effective and meaningful as those provided to others. Discrimination results from actions or inactions that discriminate by effect as well as by intent or design. Discrimination also includes harms resulting from the construction of transportation, architectural, and communication barriers and the adoption or application of standards and criteria and practices and procedures based on thoughtlessness or indifference-of benign neglect. Discrimination also includes harms affecting individuals with a history of disability, and those regarded by others as having a disability as well as persons associated with such individuals that are based on false presumptions, generalizations, misperceptions, patronizing attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing

1 discrimination against individuals with disabilities. (42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990))  
2 Plaintiffs allege the legislative history of the Act, which reflects congressional, concerns over the  
3 deleterious effects of discrimination against people with disabilities. As a result, Congress  
4 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation  
5 Act of 1973. (As amended 29 U.S.C. § 794a)(42 U.S.C. § 12133)(See *Smith v. Barton*, 914 F.2d  
6 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written recently  
7 about the ADA and its mechanisms of enforcement. (See e.g., *Doran v. Del Taco, Inc.*, ---  
8 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*  
9 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)) For purposes of this suit, it is sufficient to  
10 note that the statute creates a private right of action through which a litigant may seek injunctive  
11 relief as well as attorneys' fees and costs. (42 U.S.C. § 2188(a)) Plaintiffs allege that it cannot be  
12 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys  
13 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are  
14 just some of the examples where the legislature has made a determination that society will benefit  
15 from private attorneys general. The ADA is but another example.

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

20 8. Plaintiff JOHN CARPENTER has a physical impairment and due to this impairment he has  
21 learned to successfully operate a wheelchair.

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

24 11. When Plaintiff's Member and Plaintiff JOHN CARPENTER researched Defendants'  
25 facilities, he discovered he would be unable to use the public accommodations' at Defendants'  
26 business establishments because they failed to comply with ADA Access Guidelines For Buildings  
27 and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code  
28 Requirements as specified in Attachment A. Defendants failed to remove access barriers within the

1 parking, exterior path of travel, entrance and counter public accommodations of Defendants'  
2 establishment. Plaintiff's Member was deterred from patronizing the facility because he  
3 experienced difficulty within the parking, exterior path of travel, entrance and counter access  
4 barriers at Defendants' facility as specified in Attachment A.

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

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

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

18 15. Plaintiffs believe and herein allege Defendants' facilities have access violations not  
19 directly known by Plaintiff which preclude or limit access by other members of Plaintiff  
20 organization or other persons with disabilities, including but not limited to violations relating to  
21 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor  
22 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform  
23 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers,  
24 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars,  
25 and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
26 Accordingly, Plaintiffs allege Defendants are required to remove all architectural barriers, known or  
27 unknown. Also, Plaintiffs allege Defendants are required to utilize the ADA checklist for Readily  
28

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

Achievable Barrier Removal approved by the United States Department of Justice and created by Adaptive Environments.

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

**NOTICE**

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

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

18. MARINA DEL MAR MANAGEMENT INC. d.b.a. MARINA DEL MAR VACATION RENTALS; MARINA DEL MAR MANAGEMENT, INC.; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

**DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

**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

1 Plaintiff(s) was denied equal access to Defendants' existing facilities.

2 21. Plaintiff's Member and Plaintiff(s) has physical impairments as alleged in ¶ 7 above  
3 because his conditions affect one or more of the following body systems: neurological,  
4 musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's Member and  
5 Plaintiff(s) said physical impairments substantially limits one or more of the following major life  
6 activities: walking. In addition, Plaintiff's Member and Plaintiff(s) cannot perform one or more of  
7 the said major life activities in the manner, speed, and duration when compared to the average  
8 person. Moreover, Plaintiff's Member and Plaintiff(s) has a history of or has been classified as  
9 having a physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

14 22. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's  
15 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,  
16 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or  
17 operated by Defendants. Defendants altered their facility in a manner that affects or could affect the  
18 usability of the facility or a part of the facility after January 26, 1992. In performing the alteration,  
19 Defendants failed to make the alteration in such a manner that, to the maximum extent feasible, the  
20 altered portions of the facility are readily accessible to and usable by individuals with disabilities,  
21 including individuals who use wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

22 23. Additionally, the Defendants undertook an alteration that affects or could affect the usability  
23 of or access to an area of the facility containing a primary function after January 26, 1992.  
24 Defendants further failed to make the alterations in such a manner that, to the maximum extent  
25 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains  
26 serving the altered area, are readily accessible to and usable by individuals with disabilities in  
27 violation 42 U.S.C. §12183(a)(2).

28 24. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the

1 maximum extent feasible, are readily accessible to and usable by individuals with disabilities  
2 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants  
3 discriminated against Plaintiffs in violation of 42 U.S.C. § 12182(a).

4 25. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42  
5 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's Member and  
6 Plaintiff(s) was denied equal access to Defendants' existing facilities.  
7

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

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

13 Plaintiffs are informed, believe, and thus allege that architectural barriers which are structural in  
14 nature exist within the following physical elements of Defendants' facilities: Space Allowance and  
15 Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and  
16 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair  
17 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet  
18 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
19 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III requires  
20 places of public accommodation to remove architectural barriers that are structural in nature to  
21 existing facilities. [See, 42 United States Code 12182(b)(2)(A)(iv)] Failure to remove such barriers  
22 and disparate treatment against a person who has a known association with a person with a  
23 disability are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv)] Thus,  
24 Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42 United States  
25 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because they were denied equal access to  
26 Defendants' existing facilities.  
27

28 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**

**Procedures**

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

27. Based on the facts plead at ¶¶ 6-16 above and elsewhere in 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 42 U.S.C. § 12188(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.

28. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiff's First 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 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 federal civil rights laws enacted for the benefit of individuals with disabilities.

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'

1 facilities due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,  
2 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb  
3 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,  
4 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
5 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,  
6 Detectable Warnings, Signage, and Telephones.

7 31. These violations denied Plaintiff's Member and Plaintiff(s) full and equal access to  
8 Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination  
9 pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff(s) was denied  
10 full, equal and safe access to Defendants' facility, causing severe emotional distress.  
11

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

13 32. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint, Defendants  
14 failed and refused to provide a reasonable alternative by modifying its practices, policies, and  
15 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others  
16 similarly situated in entering and utilizing Defendants' services as required by Civil Code § 54.1.  
17 Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of Civil Code  
18 § 54.1.  
19

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

21 33. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint and because  
22 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §  
23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate  
24 against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.  
25

26 34. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiffs' Second Cause  
27 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable  
28 harm unless Defendants are ordered to remove architectural, non-architectural, and communication

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

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

10  
11 DEMAND FOR JUDGMENT FOR RELIEF:

12  
13 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs  
14 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities  
15 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding  
16 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
17 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking  
18 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,  
19 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable  
20 Warnings, Signage, and Telephones.

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

23  
24 C. A Jury Trial and;

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

26 ///

27 ///

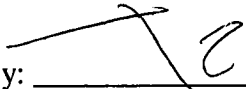
28

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

Respectfully submitted:

Dated: 10/03/06

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

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): MARINA DEL MAR VACATION RENTALS  
1202 N. Pacific Street  
Oceanside, CA 92054**

**Owner(s): MARINA DEL MAR MANAGEMENT CORPORATION, INC.**

**Assessor's Parcel #: 760-080-13**

# Report of Findings

**A. VIOLATIONS**

**1. Parking**

- a. There fails to be disabled parking provided at for the check in/lobby area, as required.
- b. There fails to be tow-away signage posted at the driveway entrances warning patrons that vehicles parking in a disabled parking space illegally may be fined, towed or both.

**2. Exterior Path of Travel**

- a. There fails to be a safe and accessible exterior path of travel leading from the parking to the lobby entrance, as required.
- b. There fails to be an safe and accessible path of travel from the street to the entrance of this facility, as required.

**3. Entrance**

- a. The entrance to the lobby area is not accessible, as it has a high threshold.
- b. There is a loose mat placed at the entrance door.

**4. Counters**

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

**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 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. Counters**

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.

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

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.)

I (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 MARINA DEL MAR MANAGEMENT, INC. d.b.a. MARINA DEL MAR VACATION RENTALS; MARINA DEL MAR MANAGEMENT, INC.; and does 1 through 10, Inclusive.

FILED

06 OCT 2 2006 PM 1:51 JMA

(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)

NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(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)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 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 (For Diversity Cases Only))

- Citizen of This State 1 Incorporated or Principal Place of Business in This State 2 Incorporated and Principal Place of Business in Another State 3 Citizen or Subject of a Foreign Country 4 5 6

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 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like Insurance, Personal Injury, Real Property, 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

Handwritten signature and notes: 1302291 sei @ 10/4/06 \$250

(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.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Transferred from Another District. (5) For cases

for within district transfers or

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

date as the filing date.

Remanded from Appellate Court. (3) Check this b

no date of remand as the filing date.

Removed from State Court. (2) Proceedings initial

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

Original Proceedings. (1) Cases which originate in

UNITED STATES  
DISTRICT COURT  
Southern District of California  
San Diego Division

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

action, in Section IV above, is

nature of suit, select the most definitive.

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

ause.

# 130229 - A1  
October 4, 2006

IV. Cause of Action. Report the civil statute directl

was indicated above. Mark this

section for each principal party.

III. Residence (citizenship) of Principal Parties. Thi

en Box 4 is checked, the citizenship

of the different parties must be checked. (See Sectio

ited States, an amendment to the

and box 1 or 2 should be marked.

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

ed States are included here.

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

United States plaintiff. (1) Jurisdiction is based on 28

own in pleadings. Place the "X" in

one of the boxes. If there is more than one basis of ju

section ("see attachment").

m on an attachment, noting in this

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

listed plaintiff resides at the time

of filing. In U.S. plaintiff cases, enter the name of the

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

ify first the agency and then the

official, giving both name and title.

(a) Plaintiffs - Defendants. Enter names (last, first, m

only the full name or standard abbreviations. If the pla

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

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

FROM: CIVIL FILING ARA ASSOC. FOR  
CHILDREN W/ DISABILITIES ET AL  
V. MARINA DEL MAR MANAGEMENT  
ET AL VISA AUTHN 142510 SH

| Code      | Case #       | Qty | Amount    |
|-----------|--------------|-----|-----------|
| CV0086900 | 3-06-CV-2203 |     | 60.00 CC  |
| Judge     | - HOSKOWITZ  |     |           |
| CV0086400 |              |     | 100.00 CC |
| V5:0000   |              |     | 65.00 191 |
| Total ->  |              |     | 350.00    |

if the plaintiff or defendant is a government agency, use

ing. (NOTE: In land condemnation

ed States are included here.

ited States, an amendment to the

en Box 4 is checked, the citizenship

was indicated above. Mark this

ause.

action, in Section IV above, is

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

no date of remand as the filing date.

date as the filing date.

for within district transfers or

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

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

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.

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

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

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.

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

(rev. 07/89)