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**FILED**

**06 OCT -5 AM 9:05**

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

BY: 

DEPUTY

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.

**NORMA ZUNIGA & JAVIER ZUNIGA  
d.b.a. NORMA'S BEAUTY SALON;  
NORMA ZUNIGA; JAVIER ZUNIGA;  
CHEN, CARL C F, a.k.a. CHEN, CARL  
CHING FENG (Trustee/Conservator);  
CHEN, SHIRLEY  
(Trustee/Conservator); And DOES 1  
THROUGH 10, Inclusive**

Defendants.

Case No. **06 CV 2212**

**BEN WMC**

**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 **JURISDICTION AND VENUE**

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

15 **SUPPLEMENTAL JURISDICTION**

16 2. The Judicial District of the United States District Court of the Southern District of  
17 California has supplemental jurisdiction over the state claims as alleged in this Complaint pursuant  
18 to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper in this action is because all  
19 the causes of action or claims derived from federal law and those arising under state law, as herein  
20 alleged, arose from common nucleus of operative facts. The common nucleus of operative facts,  
21 include, but are not limited to, the incidents where Plaintiffs were denied full and equal access to  
22 Defendants' facilities, goods, and/or services in violation of both federal and state laws when they  
23 attempted to enter, use, and/or exit Defendants' facilities as described below within this Complaint.  
24 Further, due to this denial of full and equal access, TRIPPLE AAA ASSOCIATION FOR  
25 CHILDREN WITH DEVELOPMENTAL DISABILITIES and other persons with disabilities were  
26 injured. Based upon the said allegations, the state actions, as stated herein, are so related to the  
27 federal actions that they form part of the same case or controversy and the actions would ordinarily  
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1 be expected to be tried in one judicial proceeding.

2 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

3 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
4 franchise organized and existing and/or doing business under the laws of the State of California.  
5 Plaintiffs are informed and believe and thereon allege that Defendant NORMA ZUNIGA &  
6 JAVIER ZUNIGA d.b.a. NORMA'S BEAUTY SALON is located at 1919 Mission Avenue,  
7 Oceanside, California 92054. Plaintiffs are informed and believe and thereon allege that  
8 Defendants CHEN, CARL C F, a.k.a. CHEN, CARL CHING FENG (Trustee/Conservator); and  
9 CHEN, SHIRLEY (Trustee/Conservator) are the owners, operators and/or lessors of the property  
10 located at 1919 Mission Avenue, Oceanside, California 92054; Assessor's Parcel Number 148-160-  
11 30. Defendants CHEN, CARL C F, a.k.a. CHEN, CARL CHING FENG (Trustee/Conservator);  
12 and CHEN, SHIRLEY (Trustee/Conservator) are located at 6280 Camino Largo, San Diego,  
13 California 92120. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically  
14 include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH  
15 DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF JOHN CARPENTER AND ITS  
16 MEMBERS; JOHN CARPENTER, An Individual and persons associated with its Members who  
17 accompanied Members to Defendants' facilities.

18 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
19 employees, agents, of NORMA ZUNIGA & JAVIER ZUNIGA d.b.a. NORMA'S BEAUTY  
20 SALON; NORMA ZUNIGA; JAVIER ZUNIGA; CHEN, CARL C F, a.k.a. CHEN, CARL CHING  
21 FENG (Trustee/Conservator); and CHEN, SHIRLEY (Trustee/Conservator). Plaintiffs are ignorant  
22 of the true names and capacities of Defendants sued herein as Does 1 through 10 inclusive and  
23 therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave of the court to  
24 amend this complaint to allege the true names and capacities of the Does when ascertained.

25 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them  
26 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,  
27 general partner, limited partner, agent, employee, representing partner, or joint venturer of the  
28

1 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs  
2 are further informed and believe, and thereon allege, that each of the Defendants herein gave  
3 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

4 **CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b)**

5 6. As a class Plaintiffs are members of a group composed of persons with a wide range of  
6 disabilities, limited to persons who use wheelchairs for mobility, who must be able to access  
7 establishments, like Defendants' establishments. Plaintiffs are precluded from equal access to  
8 Defendants' establishments so meaningfully because the establishments, and each of them, fail to  
9 provide access for members of the disability community who use a wheelchair for mobility  
10 throughout the facility. The Supreme Court of the United States has held as long as the class  
11 representative provides adequate representation for the class' interests, the court has the power to  
12 adjudicate the rights and obligations of all class members – even those who would otherwise be  
13 beyond the reach of its personal jurisdiction. [See *Phillips Petroleum Co. v. Shutts*, 472 US 797  
14 (1985)] This case stands for the proposition that minimum contacts are not required with  
15 nonresident members of a plaintiff class because, “the burdens placed by a State upon absent class  
16 action plaintiff are not of the same order or magnitude as those it places on an absent defendant.”  
17 Id. Plaintiffs allege they will insure class members shall receive adequate notice of the proceedings  
18 and the opportunity to “opt out.” The class to be represented by plaintiffs is so numerous that  
19 joinder of all members is impracticable. As determined by Congress in 1990 there were  
20 approximately 43,000,000 Americans with one or more physical or mental disabilities, and that  
21 number has increased since 1990 and continues to increase. A great many on those individuals,  
22 numbering in the millions, are exposed and potentially subjected to the lack of access. The  
23 individual plaintiffs and members of the plaintiff organizations represent a representative cross-  
24 section of all of the disabilities to be protected by the ADA and include individuals with mobility  
25 impairments, hearing impairments, visual impairments, and other physical and mental disabilities.  
26 The questions of law and fact relating to the representative plaintiffs, such as the alleged ADA  
27 violations existing in defendant's facility and the ADA requirements established by the ADA and  
28

1 the Department of Justice's accessibility guidelines, are similar and common to the law and fact  
2 questions which would be raised by other members of the class if they were individually named  
3 plaintiffs herein. Similarly, the claims and defenses to be raised by and against the parties herein  
4 are typical of the claims or defenses which would be raised by the members of the class if they were  
5 a party to this action. The plaintiffs in this cause seek injunctive relief for the implementation of  
6 the relief provided by the ADA, which is the same relief which would be sought by each class  
7 member if he/she brought a claim individually. Accordingly, the plaintiffs herein as the  
8 representative parties, will fairly and adequately protect the interest of the class. The relief sought  
9 herein is for the benefit of all members of the class and consistent injunctive relief should be  
10 provided for Defendants' facility in violation of the ADA. Prosecution of this matter by individual  
11 members of the class would only create a risk of inconsistent and varying adjudications and the  
12 establishment of the incompatible standards by defendant and adjudications which may be  
13 dispositive of the interests of the other class members. Further, plaintiffs allege that defendant's  
14 hotels do not comply with the ADA and the Department of Justice guidelines promulgated  
15 thereunder. Therefore, defendants has acted or failed to act in a manner and on grounds applicable  
16 to the class as a whole. Therefore, final injunctive relief for the class as a whole is appropriate. The  
17 questions of law and fact common to the members of the class, such as the degree of ADA non-  
18 compliance, specific determination of the non-compliance and the structural modifications  
19 necessary, which will raised and adjudicated herein predominate over any questions affecting only  
20 the individual plaintiffs or individual members of the class. As a result, this class action is the  
21 optimal method for reaching a fair and efficient adjudication of the controversy raised herein.  
22 Pursuant to the mandates of 42 USC § 12134(a), on July 26, 1991, the Department of Justice,  
23 Office of Attorney General, promulgated federal regulations to implement the requirements of the  
24 ADA. 28 CFR Part 36.

25  
26 **CONCISE SET OF FACTS**

27 7. TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL  
28 DISABILITIES was formed to advocate for the civil rights of minorities, children and others with

1 disabilities; a substantial population with neither an advocate nor voice in the disability movement.  
2 It is well documented by the federal government and others that the promises and opportunities  
3 afforded by the Americans with Disabilities Act are not reaching minorities with disabilities.  
4 Further, there is abundance of evidence to show, despite the federal government's unprecedented  
5 and aggressive ADA awareness and technical assistance drive, businesses in the minority  
6 communities are not complying with the ADA. For example, the National Council on Disability  
7 reported in 1993 that minorities with disabilities face double discrimination; they are poorer; they  
8 have fewer opportunities than others. Also, the fastest growing segment of the disability population  
9 is from minority communities because those communities are growing faster than the Anglo  
10 communities, and because persons from minority communities have a higher risk of disability. In  
11 fact, studies show the rate of disability for Whites is 7%, for African-American 13%, and for  
12 Hispanics 9%. Moreover, from 1983 to 1994 the disability non-White population increased by  
13 50.4% whereas the disability White population only increased 11.3%. Even more intriguing is the  
14 non-White 18 years older and under population rate of disability increased by 86.6%. Further,  
15 evidence suggests minorities with disabilities tend to live with their families in conditions of  
16 poverty (61%), and they tend not to advocate for their civil rights. Hence, Members of TRIPPLE  
17 AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES specifically  
18 intend to zealously advocate for minorities, children and others with disabilities and desire equal  
19 access to businesses within their community, as well as communities more populous of minorities  
20 with disabilities, and these are the reasons Plaintiffs filed this action.  
21

22 Plaintiffs allege businesses often state that they have few customers with disabilities.  
23 Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from  
24 patronizing such businesses. The courts have recognized deterrence-based damage claims under  
25 Civil Code 54.3 and 52. Since California courts have held that the California disability access laws  
26 manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes  
27 incentives for compliance, see Donald, 266 Cal. Rptr. at 808-11, the courts conclude that  
28 application of this canon of construction requires that 54.1 and 51, and their respective damages

1 provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The  
2 courts therefore hold that where a plaintiff can prove that violations of applicable California  
3 disability access standards deterred her on a particular occasion from attempting to attend a place of  
4 public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and  
5 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still  
6 face systemic discrimination each and every day. One of the most debilitating forms of  
7 discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial  
8 or benefits, services, or other opportunities that are as effective and meaningful as those provided to  
9 others. Discrimination results from actions or inactions that discriminate by effect as well as by  
10 intent or design. Discrimination also includes harms resulting from the construction of  
11 transportation, architectural, and communication barriers and the adoption or application of  
12 standards and criteria and practices and procedures based on thoughtlessness or indifference-of  
13 benign neglect. Discrimination also includes harms affecting individuals with a history of  
14 disability, and those regarded by others as having a disability as well as persons associated with  
15 such individuals that are based on false presumptions, generalizations, misperceptions, patronizing  
16 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the  
17 effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and  
18 comprehensive national mandate for the elimination of discrimination against individuals with  
19 disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing  
20 discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)  
21 Plaintiffs allege the legislative history of the Act, which reflects congressional, concerns over the  
22 deleterious effects of discrimination against people with disabilities. As a result, Congress  
23 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation  
24 Act of 1973. (As amended 29 U.S.C. § 794a) 42 U.S.C. § 12133 (See *Smith v Barton*, 914 F.2d  
25 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written recently  
26 about the ADA and its mechanisms of enforcement. [See e.g., *Doran v. Del Taco, Inc.*, ---  
27 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*  
28

1 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)] For purposes of this suit, it is sufficient to  
2 note that the statute creates a private right of action through which a litigant may seek injunctive  
3 relief as well as attorneys' fees and costs. (42 U.S.C. § 12188(a)) Plaintiffs allege that it cannot be  
4 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys  
5 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are  
6 just some of the examples where the legislature has made a determination that society will benefit  
7 from private attorneys general. The ADA is but another example.

8 8. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL  
9 DISABILITIES is an organization that advocates on the behalf of minorities, children and others  
10 with disabilities when their civil rights and liberties have been violated.

11 9. Plaintiff and Plaintiff's Member JOHN CARPENTER desired to patronize Defendants'  
12 facilities to utilize their goods and/or services.

13 10. Plaintiff and Plaintiff's Member JOHN CARPENTER expressly intends to patronize  
14 Defendants' establishment and the property that is the subject of this Complaint in the immediate  
15 future.

16 11. When Plaintiff and Plaintiff's Member JOHN CARPENTER attempted to visited  
17 Defendants' facilities, he discovered the parking, ramp and entrance public accommodations' at  
18 Defendants' business establishment fails to comply with ADA Access Guidelines For Buildings  
19 and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code  
20 Requirements as specified in Attachment A. Defendants failed to remove access barriers within the  
21 parking, ramp and entrance public accommodations of Defendants' establishment. Plaintiff's  
22 Members were deterred from patronizing the facility because they would have personally  
23 experienced difficulty with access barriers at Defendants' facility as specified in Attachment A.

24 12. While Plaintiff(s) and the Class expressly want to patronize Defendants' establishment and  
25 the property that is the subject of this Complaint in the immediate future, Plaintiff and Plaintiff's  
26 Member JOHN CARPENTER is expressly deterred from returning to the establishment and the  
27 property that is the subject of this Complaint due to the existence of the architectural barriers  
28

1 outlined above in Paragraphs 10 through 11, as well as Attachment A.

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

7 14. Plaintiffs believe and herein allege Defendants' facilities have access violations not  
8 directly known by Plaintiff which preclude or limit access by other members of Plaintiff  
9 organization or other persons with disabilities, including but not limited to violations relating to  
10 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor  
11 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform  
12 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers,  
13 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars,  
14 and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
15 Accordingly, Plaintiffs allege Defendants are required to remove all architectural barriers, known or  
16 unknown. Also, Plaintiffs allege Defendants are required to utilize the ADA checklist for Readily  
17 Achievable Barrier Removal approved by the United States Department of Justice and created by  
18 Adaptive Environments.

19 15. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff(s) were  
20 discriminated against each time they patronized Defendants' establishments. Plaintiff's Member  
21 and Plaintiff(s) were extremely upset due to Defendants' conduct.

22 **NOTICE**

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

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

27 17. NORMA ZUNIGA & JAVIER ZUNIGA d.b.a. NORMA'S BEAUTY SALON; NORMA  
28

1 ZUNIGA; JAVIER ZUNIGA; CHEN, CARL C F, a.k.a. CHEN, CARL CHING FENG  
2 (Trustee/Conservator); CHEN, SHIRLEY (Trustee/Conservator); and Does. 1 through 10 will be  
3 referred to collectively hereinafter as "Defendants."

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

5 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

7 **With Disabilities Act Of 1990**

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

9 19. 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. Plaintiffs allege Defendants are a public  
12 accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or  
13 services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. §  
14 12182(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of  
15 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and  
16 Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

25  
26 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such A Manner**  
27 **That The Altered Portions Of The Facility Are Readily Accessible And Usable By Individuals**  
28 **With Disabilities**

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

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

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

19 24. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42  
20 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's Member and  
21 Plaintiff(s) was denied equal access to Defendants' existing facilities.  
22

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

24 25. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's  
25 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,  
26 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or  
27 operated by Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a).  
28

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

15  
16 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**  
17 **Procedures**

18 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Defendants  
19 failed and refused to provide a reasonable alternative by modifying its practices, policies and  
20 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others  
21 similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §  
22 12188(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of  
23 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and  
24 Plaintiff(s) was denied equal access to Defendants' existing facilities.

25 27. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiff's First Cause Of  
26 Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm  
27 unless Defendants are ordered to remove architectural, non-architectural, and communication  
28 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory

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

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

9  
10 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**  
11 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

24 30. These violations denied Plaintiff's Member and Plaintiff(s) full and equal access to  
25 Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination  
26 pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff(s) was denied  
27 full, equal and safe access to Defendants' facility, causing severe emotional distress.  
28

CLAIM II: Failure To Modify Practices, Policies And Procedures

31. 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) were subjected to discrimination in violation of Civil Code § 54.1.

CLAIM III: Violation Of The Unruh Act

32. 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.

33. 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.

34. 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

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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 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: \_\_\_\_\_

10/05/06

By: \_\_\_\_\_

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

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**Rule 11  
ACCESSIBILITY SURVEY  
ADA TITLE III**

**Disability Compliance Documentation**

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**Reported Tuesday, October 3, 2006**

**Business(es):**           **NORMA'S BEAUTY SALON & SUPPLY**  
                                  **1919 Mission Avenue**  
                                  **Oceanside, CA 92054**

**Property Owner(s):**   **CHEN, CARL C F, A/K/A CHEN, CARL CHING FENG**  
                                  **(Trustee/Conservator); CHEN, SHIRLEY**  
                                  **(Trustee/Conservator)**

**Assessor's Parcel #: 148-160-30**

# Report of Findings

**A. VIOLATIONS**

**1. Parking**

- a. There are 2 parking space designated as accessible. These spaces fail to be compliant, as the access aisle is located in the middle of these 2 spaces and it fails to be compliant. For example, the access ramp encroaches through the middle of this access aisle.

**2. Exterior Path of Travel**

- a. There fails to be a safe and accessible path of travel from the street to the businesses entrances located in this strip center, as required.

**3. Entrance**

- a. The entrance to Norma's Beauty Salon & Supply is not accessible, as the threshold is located on a slant, making the threshold uneven and too high on the left side.
- b. There fails to be an International Symbol of Accessibility posted on the entrance to Norma's, 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)

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 NORMA ZUNIGA & JAVIER ZUNIGA d.b.a. NORMA'S BEAUTY SALON; NORMA ZUNIGA; JAVIER ZUNIGA; CHEN, CARL C F, a.k.a. CHEN, CARL CHING FENG (Trustee/Co-trustee); CHEN, SHIRLEY (Trustee/Conservator); and does I through 10, Inclusive.

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(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)

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) DEPUTY

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)

- PT DEF PT DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
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 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PERSONAL INJURY, PERSONAL PROPERTY, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 5, 2006

SIGNATURE OF ATTORNEY OF RECORD

Handwritten notes: 130249 Ser 10/5/06 \$350

