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SOUTHERN DISTRICT OF CALIFORNIA

PPL

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.

**QOZI BASILE & JAJO SAMIRA
FAMILY TRUST d.b.a. HARBOR
LIQUOR; QOZI BASILE & JAJO
SAMIRA FAMILY TRUST; QOZI
BASILE (Trustee/Conservator); JAJO
SAMIRA (Trustee/Conservator); THE
CUSENZA FAMILY TRUST;
CUSENZA, ANTOINETTE
(Trustee/Conservator); And DOES 1
THROUGH 10, Inclusive**

Defendants.

Case No. **06CV 2215** - BEN RBB

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

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

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 and other persons with disabilities were
27 injured. Based upon the said allegations, the state actions, as stated herein, are so related to the
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1 federal actions that they form part of the same case or controversy and the actions would ordinarily
2 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 Plaintiffs are informed and believe and thereon allege that Defendants QOZI BASILE & JAJO
7 SAMIRA FAMILY TRUST d.b.a. HARBOR LIQUOR is located at 707 Harbor Drive, Oceanside,
8 California 92054. Defendants QOZI BASILE & JAJO SAMIRA FAMILY TRUST; QOZI
9 BASILE (Trustee/Conservator); and JAJO SAMIRA (Trustee/Conservator) are located at 369
10 Camino Parque, Oceanside, California 92057. Plaintiffs are informed and believe and thereon
11 allege that Defendants THE CUSENZA FAMILY TRUST; and CUSENZA, ANTOINETTE
12 (Trustee/Conservator) are the owners, operators and/or lessors of the property located at 707
13 Harbor Drive, Oceanside, California 92054; Assessor's Parcel Number 143-204-01. Defendants
14 THE CUSENZA FAMILY TRUST; and CUSENZA, ANTOINETTE (Trustee/Conservator) are
15 located at 9090 Bedford Way, Suwanne, GA 30024. The words "Plaintiffs" and "Plaintiff's
16 Member" as used herein specifically include the organization and TRIPPLE AAA ASSOCIATION
17 FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF JOHN
18 CARPENTER AND ITS MEMBERS; JOHN CARPENTER, An Individual and persons associated
19 with its Members who accompanied Members to Defendants' facilities.

20
21 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
22 employees, agents, of QOZI BASILE & JAJO SAMIRA FAMILY TRUST d.b.a. HARBOR
23 LIQUOR; QOZI BASILE & JAJO SAMIRA FAMILY TRUST; QOZI BASILE
24 (Trustee/Conservator); JAJO SAMIRA (Trustee/Conservator); THE CUSENZA FAMILY TRUST;
25 and CUSENZA, ANTOINETTE (Trustee/Conservator). Plaintiffs are ignorant of the true names
26 and capacities of Defendants sued herein as Does 1 through 10 inclusive and therefore sues these
27 Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint
28 to allege the true names and capacities of the Does when ascertained.

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

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

8 6. As a class Plaintiffs are members of a group composed of persons with a wide range of
9 disabilities, limited to persons who use wheelchairs for mobility, who must be able to access
10 establishments, like Defendants' establishments. Plaintiffs are precluded from equal access to
11 Defendants' establishments so meaningfully because the establishments, and each of them, fail to
12 provide access for members of the disability community who use a wheelchair for mobility
13 throughout the facility. The Supreme Court of the United States has held as long as the class
14 representative provides adequate representation for the class' interests, the court has the power to
15 adjudicate the rights and obligations of all class members – even those who would otherwise be
16 beyond the reach of its personal jurisdiction. [See *Phillips Petroleum Co. v. Shutts*, 472 US 797
17 (1985)] This case stands for the proposition that minimum contacts are not required with
18 nonresident members of a plaintiff class because, “the burdens placed by a State upon absent class
19 action plaintiff are not of the same order or magnitude as those it places on an absent defendant.”
20 Id. Plaintiffs allege they will insure class members shall receive adequate notice of the proceedings
21 and the opportunity to “opt out.” The class to be represented by plaintiffs is so numerous that
22 joinder of all members is impracticable. As determined by Congress in 1990 there were
23 approximately 43,000,000 Americans with one or more physical or mental disabilities, and that
24 number has increased since 1990 and continues to increase. A great many on those individuals,
25 numbering in the millions, are exposed and potentially subjected to the lack of access. The
26 individual plaintiffs and members of the plaintiff organizations represent a representative cross-
27 section of all of the disabilities to be protected by the ADA and include individuals with mobility
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1 impairments, hearing impairments, visual impairments, and other physical and mental disabilities.
2 The questions of law and fact relating to the representative plaintiffs, such as the alleged ADA
3 violations existing in defendant's facility and the ADA requirements established by the ADA and
4 the Department of Justice's accessibility guidelines, are similar and common to the law and fact
5 questions which would be raised by other members of the class if they were individually named
6 plaintiffs herein. Similarly, the claims and defenses to be raised by and against the parties herein
7 are typical of the claims or defenses which would be raised by the members of the class if they were
8 a party to this action. The plaintiffs in this cause seek injunctive relief for the implementation of
9 the relief provided by the ADA, which is the same relief which would be sought by each class
10 member if he/she brought a claim individually. Accordingly, the plaintiffs herein as the
11 representative parties, will fairly and adequately protect the interest of the class. The relief sought
12 herein is for the benefit of all members of the class and consistent injunctive relief should be
13 provided for Defendants' facility in violation of the ADA. Prosecution of this matter by individual
14 members of the class would only create a risk of inconsistent and varying adjudications and the
15 establishment of the incompatible standards by defendant and adjudications which may be
16 dispositive of the interests of the other class members. Further, plaintiffs allege that defendant's
17 hotels do not comply with the ADA and the Department of Justice guidelines promulgated
18 thereunder. Therefore, defendants has acted or failed to act in a manner and on grounds applicable
19 to the class as a whole. Therefore, final injunctive relief for the class as a whole is appropriate. The
20 questions of law and fact common to the members of the class, such as the degree of ADA non-
21 compliance, specific determination of the non-compliance and the structural modifications
22 necessary, which will raised and adjudicated herein predominate over any questions affecting only
23 the individual plaintiffs or individual members of the class. As a result, this class action is the
24 optimal method for reaching a fair and efficient adjudication of the controversy raised herein.
25 Pursuant to the mandates of 42 USC § 12134(a), on July 26, 1991, the Department of Justice,
26 Office of Attorney General, promulgated federal regulations to implement the requirements of the
27 ADA. 28 CFR Part 36.
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CONCISE SET OF FACTS

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

25 Plaintiffs allege businesses often state that they have few customers with disabilities.
26 Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from
27 patronizing such businesses. The courts have recognized deterrence-based damage claims under
28 Civil Code 54.3 and 52. Since California courts have held that the California disability access laws

1 manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes
2 incentives for compliance, see Donald, 266 Cal. Rptr. at 808-11, the courts conclude that
3 application of this canon of construction requires that 54.1 and 51, and their respective damages
4 provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The
5 courts therefore hold that where a plaintiff can prove that violations of applicable California
6 disability access standards deterred her on a particular occasion from attempting to attend a place of
7 public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and
8 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still
9 face systemic discrimination each and every day. One of the most debilitating forms of
10 discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial
11 or benefits, services, or other opportunities that are as effective and meaningful as those provided to
12 others. Discrimination results from actions or inactions that discriminate by effect as well as by
13 intent or design. Discrimination also includes harms resulting from the construction of
14 transportation, architectural, and communication barriers and the adoption or application of
15 standards and criteria and practices and procedures based on thoughtlessness or indifference-of
16 benign neglect. Discrimination also includes harms affecting individuals with a history of
17 disability, and those regarded by others as having a disability as well as persons associated with
18 such individuals that are based on false presumptions, generalizations, misperceptions, patronizing
19 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the
20 effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and
21 comprehensive national mandate for the elimination of discrimination against individuals with
22 disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing
23 discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)
24 Plaintiffs allege the legislative history of the Act, which reflects congressional concerns over the
25 deleterious effects of discrimination against people with disabilities. As a result, Congress
26 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation
27 Act of 1973. (As amended 29 U.S.C. § 794a) 42 U.S.C. § 12133 (See *Smith v Barton*, 914 F.2d
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1 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written recently
2 about the ADA and its mechanisms of enforcement. [See e.g., *Doran v. Del Taco, Inc.*, ---
3 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*
4 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)] For purposes of this suit, it is sufficient to
5 note that the statute creates a private right of action through which a litigant may seek injunctive
6 relief as well as attorneys' fees and costs. (42 U.S.C. § 12188(a)) Plaintiffs allege that it cannot be
7 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys
8 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are
9 just some of the examples where the legislature has made a determination that society will benefit
10 from private attorneys general. The ADA is but another example.

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

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

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

19 11. When Plaintiff and Plaintiff's Member JOHN CARPENTER attempted to visited
20 Defendants' facilities, he discovered the parking, exterior path of travel, ramp, entrance and interior
21 path of travel public accommodations' at Defendants' business establishment fails to comply with
22 ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or
23 California's Title 24 Building Code Requirements as specified in Attachment A. Defendants failed
24 to remove access barriers within the parking, exterior path of travel, ramp and interior path of travel
25 public accommodations of Defendants' establishment. Plaintiff's Members were deterred from
26 patronizing the facility because they would have personally experienced difficulty with access
27 barriers at Defendants' facility as specified in Attachment A.
28

1 12. While Plaintiff(s) and the Class expressly want to patronize Defendants' establishment and
2 the property that is the subject of this Complaint in the immediate future, Plaintiff and Plaintiff's
3 Member JOHN CARPENTER is expressly deterred from returning to the establishment and the
4 property that is the subject of this Complaint due to the existence of the architectural barriers
5 outlined above in Paragraphs 10 through 11, as well as Attachment A.

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

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

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

26
27 **NOTICE**

28 16. Plaintiffs are not required to provide notice to the defendants prior to filing a complaint.

1 [See *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832 (9th Cir 2000)]

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

4 17. QOZI BASILE & JAJO SAMIRA FAMILY TRUST d.b.a. HARBOR LIQUOR; QOZI
5 BASILE & JAJO SAMIRA FAMILY TRUST; QOZI BASILE (Trustee/Conservator); JAJO
6 SAMIRA (Trustee/Conservator); THE CUSENZA FAMILY TRUST; CUSENZA, ANTOINETTE
7 (Trustee/Conservator); and Does 1 through 10 will be referred to collectively hereinafter as
8 "Defendants."

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

10 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

14 19. 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. Plaintiffs allege Defendants are a public
17 accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or
18 services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. §
19 12182(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of
20 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and
21 Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

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

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

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

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

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

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

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

20 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices, Policies And**
21 **Procedures**

22 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Defendants
23 failed and refused to provide a reasonable alternative by modifying its practices, policies and
24 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others
25 similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
26 12188(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of
27 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and
28 Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

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

13
 14 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
 15 **CALIFORNIA ACCESSIBILITY LAWS**

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

17 29. 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 as required by Civil Code Sections 54 and 54.1. Defendants' facility
 21 violated California's Title 24 Accessible Building Code by failing to provide access to Defendants'
 22 facilities due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
 23 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
 24 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
 25 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
 26 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
 27 Detectable Warnings, Signage, and Telephones.

28 30. These violations denied Plaintiff's Member and Plaintiff(s) full and equal access to

1 Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination
2 pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff(s) was denied
3 full, equal and safe access to Defendants' facility, causing severe emotional distress.
4

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

6 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint, Defendants
7 failed and refused to provide a reasonable alternative by modifying its practices, policies, and
8 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others
9 similarly situated in entering and utilizing Defendants' services as required by Civil Code § 54.1.
10 Thus, Plaintiff's Member and Plaintiff(s) were subjected to discrimination in violation of Civil
11 Code § 54.1.
12

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

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

18 33. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiffs' Second Cause
19 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable
20 harm 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 state and national
24 public interest in requiring accessibility in places of public accommodation. Plaintiffs have no
25 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to
26 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege
27 that a structural or mandatory injunction is necessary to enjoin compliance with state civil rights
28 laws enacted for the benefit of individuals with disabilities.

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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 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

**Rule 11
ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported Tuesday, October 3, 2006

**Business(es): HARBOR LIQUOR
797 Harbor Drive
Oceanside, CA 92054**

**Property Owner(s): THE CUSENZA FAMILY TRUST; CUSENZA,
ANTOINETTE (Trustee/Conservator)**

Assessor's Parcel #: 143-204-01

Report of Findings

A. VIOLATIONS

1. Parking

- a. The space designated as accessible fails to be striped correctly and the access aisle is too narrow.
- b. Both driveway entrances lack the required tow-away signage.

2. Exterior Path of Travel

- a. There fails to be a safe path of travel leading from the parking to the entrance of this facility, as there are poles blocking the pathway.
- b. There fails to be a safe and accessible path of travel from the street to the business entrance, as required.

3. Interior Path of Travel

- a. The interior path of travel is not 36 inches in each aisle, as required, as there is merchandise placed on the floor that blocks the pathway in some of these aisles.

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. Interior Path of Travel

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.7; CA Title 24 Section 3105A). At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility. (ADAAG 4.3.2(3)) The minimum clear width of an accessible route within the interior of a facility to another area within a facility must be a minimum of 36" wide. (ADAAG 4.3.3) The minimum clear floor space or ground space required to accommodate a single, stationary wheelchair and occupant is 30" by 48". ADAAG 4.2.4.1 The minimum clear floor space or ground space for wheelchairs may be positioned for forward or for parallel approach to an object. Id. If carpet is used on a ground or floor surface, then it shall be securely attached. (ADAAG 4.5.3) If carpet or carpet tile is used on a ground of floor surface, the maximum pile thickness shall be 1/2". (ADAAG 4.5.3)

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 QOZI BASILE & JAJO SAMIRA FAMILY TRUST d.b.a. HARBOR LIQUOR; QOZI BASILE & JAJO SAMIRA FAMILY TRUST; QOZI BASILE (Trustee/Conservator); JAJO SAMIRA (Trustee/Conservator); THE CUSENZA FAMILY TRUST; CUSENZA, ANTOINETTE (Trustee/Conservator); and does 1 through 10, Inclusive.

06 OCT -5 AM 8:55

(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) DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

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

(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) PR '06CV 2215 BEN RBB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) [X] 3 Federal Question (U.S. Government Not a Party) [] 1 U.S. Government Plaintiff [] 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) Citizen of This State [] 1 [] 1 Incorporated or Principal Place of Business in This State [] 4 [] 4 Citizen of Another State [] 2 [] 2 Incorporated and Principal Place of Business in Another State [] 5 [] 5 Citizen or Subject of a Foreign Country [] 3 [] 3 Foreign Nation [] 6 [] 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, PERSONAL INJURY, PERSONAL PROPERTY, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY) [X] 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 JURY DEMAND: [X] YES [] NO

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

DATE October 5, 2006

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature and notes: 130258 su 10/5/06 \$3500

(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 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

Appeal to District Judge from Magistrate Judgment

Multidistrict Litigation. (6) Check this box when a

Transferred from Another District. (5) For cases in

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

Removed from State Court. (2) Proceedings in

Original Proceedings. (1) Cases which originate

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

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

IV. Cause of Action. Report the civil statute

III. Residence (citizenship) of Principal Part

Diversity of citizenship. (4) This refers to s

Federal question. (3) This refers to suits u

United States defendant. (2) When the pla

United States plaintiff. (1) Jurisdiction is

one of the boxes. If there is more than on

(c) Attorneys. Enter firm name, address

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county in which the

cases, the county of residence of the "defendant"

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

section ("see attachment").

11. Jurisdiction. The basis of jurisdiction

United States plaintiff. (1) Jurisdiction is

United States defendant. (2) When the pla

Federal question. (3) This refers to suits u

of the different parties must be checked. (Se

III. Residence (citizenship) of Principal Part

IV. Cause of Action. Report the civil statute

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

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

Original Proceedings. (1) Cases which originate

Removed from State Court. (2) Proceedings in

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

Transferred from Another District. (5) For cases in

Multidistrict Litigation. (6) Check this box when a

Appeal to District Judge from Magistrate Judgment

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

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 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. Consequently a civil cover sheet is submitted to the Clerk of 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.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county in which the plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the county of residence of the plaintiff.)

(c) Attorneys. Enter firm name, address and box 1 or 2 should be marked.

11. Jurisdiction. The basis of jurisdiction is one of the boxes. If there is more than one United States plaintiff. (1) Jurisdiction is United States defendant. (2) When the plaintiff or defendant is a party to a Federal question, an act of Congress or a treaty and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits in which the plaintiff and the defendant are citizens of different states. (5) This refers to suits in which the plaintiff and the defendant are citizens of different countries. (6) This refers to suits in which the plaintiff and the defendant are citizens of different countries and one is a citizen of the United States and the other is a citizen of a foreign country.

III. Residence (citizenship) of Principal Party. Report the residence (citizenship) of each principal party.

IV. Cause of Action. Report the civil statute under which the cause of action is brought.

V. Nature of Suit. Place an "X" in the appropriate box to indicate the nature of the suit.

VI. Origin. Place an "X" in one of the seven boxes to indicate the court from which the case originates.

Original Proceedings. (1) Cases which originate in the United States District Court.

Removed from State Court. (2) Proceedings in state court which have been removed to this court.

Reinstated or Reopened. (4) Check this box for cases in which the case has been reinstated or reopened.

Transferred from Another District. (5) For cases in which the case has been transferred from another district.

Multidistrict Litigation. (6) Check this box when a case is filed in more than one district and the court has ordered coordinated proceedings.

Appeal to District Judge from Magistrate Judgment. (7) Check this box when a case is appealed from a magistrate judge's decision.

VII. Requested in Complaint. Class Action. Place an "X" in the appropriate box to indicate whether or not a class action 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.

VIII. Related Cases. This section of the JS-44 is used to reference 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.

UNITED STATES DISTRICT COURT Southern District of California San Diego Division

October 5, 2006 # 130258 - 01

Code	Case #	Amount
CV088400	3-06-CV-2215	00.00 CC
CV088400	BENETIZ	00.00 CC
CV088400		00.00 CC
CV088400		00.00 CC
Total		00.00

FROM: CIVIL FILING AAA ASSOC. FOR CHILDREN W/ DISABILITIES ET AL V. GOZI BASILE ET AL VISA AUTH# 00012 SR

the date of remand as the filing date. the date as the filing date. or within district transfers or Title 28 U.S.C. Section 1407. When use of action, in Section IV above, is of suit. If the cause fits more than one the cause. relationship was indicated above. Mark this relationship diversity cases.) When Box 4 is checked, the citizenship of the United States, an amendment to the plaintiff or defendant code takes precedence, in this box. of the United States are included here. actions be shown in pleadings. Place the "X" in orneys, list them on an attachment, noting in this section ("see attachment"). 11. Jurisdiction. The basis of jurisdiction one of the boxes. If there is more than on United States plaintiff. (1) Jurisdiction is United States defendant. (2) When the pla Federal question. (3) This refers to suits u Constitution, an act of Congress or a treaty and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to s III. Residence (citizenship) of Principal Part IV. Cause of Action. Report the civil statute V. Nature of Suit. Place an "X" in the appropr VI. Origin. Place an "X" in one of the seven b Original Proceedings. (1) Cases which originate Removed from State Court. (2) Proceedings in Reinstated or Reopened. (4) Check this box for c Transferred from Another District. (5) For cases in Multidistrict Litigation. (6) Check this box when a Appeal to District Judge from Magistrate Judgment VII. Requested in Complaint. Class Action. Place an 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 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)