

FILED

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07 MAY 23 AM 9:37

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

BY: *lp*

DEPUTY

Attorneys for Plaintiffs

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

**TRIPPLE AAA
ASSOCIATION FOR
CHILDREN AND ADULTS
WITH DEVELOPMENTAL
DISABILITIES, SUING ON
BEHALF OF ITS MEMBERS
AND LISSA DOE;**

Plaintiffs,

v.

**IMPERIAL BEACH
PHARMACY; SOLARA
MEDICAL SUPPLIES;
ROBINSON TOD; And DOES
1 THROUGH 10, Inclusive**

Defendants.

Case No.

'07 CV 932 W (LSP)

~~FIRST AMENDED 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)]

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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. Therefore, Plaintiffs make the following allegations in this federal civil rights action:

JURISDICTION AND VENUE

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

SUPPLEMENTAL JURISDICTION

2. The Judicial District of the United States District Court of the Southern District of California has supplemental jurisdiction over the state claims as alleged in this Complaint pursuant to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper in this action is because all the causes of action or claims derived from federal law and those arising under state law, as herein alleged, arose from common nucleus of operative facts. The common nucleus of operative facts, include, but are not limited to, the incidents where Plaintiffs were denied full and equal access to

1 Defendants' facilities, goods, and/or services in violation of both
2 federal and state laws when they attempted to enter, use, and/or
3 exit Defendants' facilities as described below within this
4 Complaint. Further, due to this denial of full and equal access,
5 **TRIPPLE AAA ASSOCIATION FOR CHILDREN AND**
6 **ADULTS WITH DEVELOPMENTAL DISABILITIES, SUING**
7 **ON BEHALF OF ITS MEMBERS** and other persons with
8 disabilities were injured. Based upon the said allegations, the state
9 actions, as stated herein, are so related to the federal actions that
10 they form part of the same case or controversy and the actions
11 would ordinarily be expected to be tried in one judicial proceeding.

12 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

13 3. Defendants are, and, at all times mentioned herein, were, a
14 business or corporation or franchise organized and existing and/or
15 doing business under the laws of the State of California. Plaintiffs
16 are further informed and believe and thereon allege that
17 Defendants, as attached as Exhibit A, are the owners, operators,
18 and/or lessors of the real property, as well as the business operated
19 thereon.

20 4. The words "Plaintiffs" and "Plaintiff's Member" as used
21 herein specifically include the organization and **TRIPPLE AAA**
22 **ASSOCIATION FOR CHILDREN AND ADULTS WITH**
23 **DEVELOPMENTAL DISABILITIES , SUING ON BEHALF OF**
24 **ITS MEMBERS, LISSA DOE;** and persons associated with its
25 Members who accompanied Members to Defendants' facilities.
26 Defendants Does 1 through 10, were at all times relevant herein
27 subsidiaries, employers, employees, agents, of Defendants in
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1 attached as Exhibit A. Plaintiffs are ignorant of the true names and
2 capacities of Defendants sued herein as Does 1 through 10,
3 inclusive, and therefore sues these Defendants by such fictitious
4 names. Plaintiffs will pray leave of the court to amend this
5 complaint to allege the true names and capacities of the Does when
6 ascertained.

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

19 6. Plaintiff's Members Lissa Doe contacted the Defendants.
20 Plaintiff Doe has cerebral palsy and a sight impairment. Plaintiff
21 Doe contacted Defendant with the intent of buying medicine if
22 auxiliary aids were provided and she was informed such aids were
23 not provided.

24 7. Defendants failed to provide auxiliary aids and services that
25 are necessary to ensure equal access to the goods, services,
26 privileges, or accommodations that it offers. Title 28, part 36.303
27 of Code of Federal Regulations states:

28 (a) General. A public accommodation shall take those

1 steps that may be necessary to ensure that no individual
2 with a disability is excluded, denied services,
3 segregated or otherwise treated differently than other
4 individuals because of the absence of auxiliary aids and
5 services, unless the public accommodation can
6 demonstrate that taking those steps would
7 fundamentally alter the nature of the goods, services,
8 facilities, privileges, advantages, or accommodations
9 being offered or would result in an undue burden, i.e.,
10 significant difficulty or expense.

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

13 (1) Qualified interpreters, notetakers, computer-aided
14 transcription services, written materials, telephone
15 handset amplifiers, assistive listening devices, assistive
16 listening systems, telephones compatible with hearing
17 aids, closed caption decoders, open and closed
18 captioning, telecommunications devices for deaf
19 persons (TDD's), videotext displays, or other effective
20 methods of making aurally delivered materials available
21 to individuals with hearing impairments;

22 (2) Qualified readers, taped texts, audio recordings,
23 Brailled materials, large print materials, or other
24 effective methods of making visually delivered
25 materials available to individuals with visual
26 impairments;

27 (3) Acquisition or modification of equipment or
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1 devices; and

2 (4) Other similar services and actions.

3 (c) Effective communication. A public
4 accommodation shall furnish appropriate auxiliary aids
5 and services where necessary to ensure effective
6 communication with individuals with disabilities.

7 Defendants failed to comply with Title 28, part 36.303 of Code of
8 Federal Regulations as it failed to provide Qualified readers, taped
9 texts, audio recordings, Brailled materials, or large print materials.
10 Further, Defendants failed to remove architectural barriers as
11 attached as attached as Exhibit B.

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

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

27 10. Plaintiff's Member was deterred from patronizing the
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1 facility.

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

5 10. Defendants as attached as Exhibit A and Does 1 through 10
6 will be referred to collectively hereinafter as "Defendants."

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

9
10 **DISCRIMINATORY PRACTICES IN PUBLIC**
11 **ACCOMMODATIONS**

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

14 **Claim I**

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

21 **Claim II**

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

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

10 Claim IV

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

18 Claim V

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

23 Claim VI

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

3 **Claim VII**

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

12 **Claim VIII**

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

16 **Claim IX**

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

23 **Claim X**

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

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

7
8 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**
9 **- CLAIMS UNDER CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

28 25. Based on the facts plead above and elsewhere herein this

1 complaint and because Defendants violated the Civil Code § 51 by
2 failing to comply with 42 United States Code § 12182(b)(2)(A)(iv)
3 and 42 U.S.C. § 12183(a)(2), Defendants did and continue to
4 knowingly discriminate against Plaintiffs and persons similarly
5 situated in violation of Civil Code §§ 51, 52, and 54.1. Plaintiffs
6 allege the access violations alleged here are so obvious as to
7 implicate at least a prima facie case of discriminatory intent.

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

24 27. Wherefore, Plaintiffs pray for damages and relief as
25 hereinafter stated.
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DEMAND FOR JUDGMENT FOR RELIEF:

- A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
- B. For damages pursuant to Cal. Civil Code § 52 or 54.3
- C. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 51, 52; 54.3;
- D. A Jury Trial and;
- E. For such other further relief as the court deems proper.

Respectfully submitted:

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



Dated: May 22, 2007

By: THEODORE A. PINNOCK,

ESQ.

MICHELLE L.

WAKEFIELD, ESQ.

Attorneys for Plaintiffs

A. BUSINESS

1. **IMPERIAL BEACH PHARMACY**
Business Address:
720 HIGHWAY 75
IMPERIAL BEACH, CA 91932-1313
2. **TO BE SERVED**
TOD ROBINSON
5594 WEATHERSTONE CT
SAN DIEGO, CA 92075

B. OWNER OF BUSINESS

1. **SOLARA MEDICAL SUPPLIES**
990 HIGHLAND DR STE 107
SOLANA BEACH, CA 92075
2. **TO BE SERVED**
Registered Agent: TOD ROBINSON
Registered Office:
5594 WEATHERSTONE CT
SAN DIEGO, CA 92075

C. LANDLORD OF BUSINESS

1. **ROBINSON TOD; DBA IMPERIAL BEACH
PHARMACY**
720 HWY 75
IMPERIAL BEACH, CA 91932
Assessor's Parcel Number: 6108170000
2. **TO BE SERVED**
TOD ROBINSON
5594 WEATHERSTONE CT
SAN DIEGO, CA 92075

**ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported May 16, 22, 2007

IMPERIAL BEACH PHARMACY

Business Address:

720 HIGHWAY 75

IMPERIAL BEACH, CA 91932-1313

Report of Findings

I. IN GENERAL

This report focuses on architectural barriers and the provision of auxiliary aids which may challenge access to goods or services. This is only a preliminary report conducted to comply with Rule 11 of the Federal Rules of Civil Procedure.

- II. AUXILIARY AIDS:** The pharmacy provides written information to customers without offering large print, Braille or taped text. Written information in the form of medicine instructions is given to customers to take home.

A pharmacy must provide the Auxiliary Aids as follows:

a. Purchase Braille Translation Software: The industry leading multi-platform, multi-language Braille translator for anyone from the casual user to the power user. Approximate Cost Price: \$580.00. The purpose of the device is to translate current word documents to be printed as Braille.

b. Purchase or provide Digital Dictating Machine/Voice. Approximate Cost Price: \$15.00. The purpose of this machine is to provide taped text to customers that are blind that do not read Braille.

c. Provide large Print by using Microsoft Word.

Large Print is 16 point or greater upon customer request.

d. Provide Qualified Reader - A trained employee who reads the prescriptions. Costs -none.

e. Provide signage as to the availability of auxiliary aids;

f. Provide staff training as to how to provide auxiliary aids and to provide staff training to recognize customers with sight impairments to offer available auxiliary aids.

III. ARCHITECTURAL BARRIERS

A. VIOLATIONS

a. Carpet/mat is not

302.2 Carpet. Carpet or carpet tile shall be securely attached and shall have a firm cushion, pad, or backing or no cushion or pad. Carpet or carpet tile shall have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. Pile height shall be ½ inch (13 mm) maximum. Exposed edges of carpet shall be fastened to floor surfaces and shall have trim on the entire length of the exposed edge. Carpet edge trim shall comply with 303.

303.3 Beveled. Changes in level between ¼ inch (6.4 mm) high minimum and ½ inch (13 mm) high maximum shall be beveled with a slope not steeper than 1:2.

b. No Clear floor space to the right displays for

304.3.1 Circular Space. The turning *space* shall be a *space* of 60 inches (1525 mm) diameter minimum. The *space* shall be permitted to include knee and toe clearance complying with 306.

305.3 Size. The clear floor or ground *space* shall be 30 inches (760 mm) minimum by 48 inches (1220mm) minimum.

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 AND ADULTS WITH DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF ITS MEMBERS AND LISSA DOE;

DEFENDANTS IMPERIAL BEACH PHARMACY; SOLARA MEDICAL SUPPLIES; ROBINSON TOD; and does I through J, 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 ONLY)

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

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

ATTORNEYS (IF KNOWN) '07 CV 932 W (LSP)

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

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF 1 Incorporated or Principal Place of Business in This State
PT DEF 2 Incorporated and Principal Place of Business in Another State
PT DEF 3 Foreign Nation

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

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

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

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

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

TO BE DETERMINED AT TRIAL

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

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

Docket Number

DATE May 23, 2006

SIGNATURE OF ATTORNEY OF RECORD

PAID \$350 5/23/07 BH RCP#138501

Handwritten signature of the attorney.

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

138501 - BH

**May 23, 2007
09:45:03**

Civ Fil Non-Pris

USAO #.: 07CV0932 CIV. FIL.

Judge.: THOMAS J WHELAN

Amount.: \$350.00 CC

Total -> \$350.00

**FROM: TRIPLE AAA ASSOC. V. IMPERIAL
BEACH PHARMACY ET AL
VISA AUTH# 009432
CIVIL FILING**