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2007 MAY 24 PM 2:52

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY DEPUTY

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**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.

**LA MESA PHARMACY INC.
And DOES 1 THROUGH 10,
Inclusive**

Defendants.

Case No.

'07 CV 0947 LAB BLM

**CIVIL COMPLAINT:
DISCRIMINATORY
PRACTICES IN PUBLIC
ACCOMMODATIONS**

**[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]**

**DEMAND FOR JURY
TRIAL**

[F.R.Civ.P. rule 38(b)]

INTRODUCTION

1 Plaintiffs herein complain, by filing this Civil Complaint in
2 accordance with rule 8 of the Federal Rules of Civil Procedure in
3 the Judicial District of the United States District Court of the
4 Southern District of California, that Defendants have in the past,
5 and presently are, engaging in discriminatory practices against
6 individuals with disabilities. Therefore, Plaintiffs make the
7 following allegations in this federal civil rights action:

8 **JURISDICTION AND VENUE**

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

17 **SUPPLEMENTAL JURISDICTION**

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

11 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

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

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

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

16 **CONCISE SET OF FACTS**

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

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

27 (a) General. A public accommodation shall take those
28 steps that may be necessary to ensure that no individual

1 with a disability is excluded, denied services,
2 segregated or otherwise treated differently than other
3 individuals because of the absence of auxiliary aids and
4 services, unless the public accommodation can
5 demonstrate that taking those steps would
6 fundamentally alter the nature of the goods, services,
7 facilities, privileges, advantages, or accommodations
8 being offered or would result in an undue burden, i.e.,
9 significant difficulty or expense.

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

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

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

26 (3) Acquisition or modification of equipment or
27 devices; and
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1 (4) Other similar services and actions.

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

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

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

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

26 10. Plaintiff's Member was deterred from patronizing the
27 facility.
28

1
2 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST**
3 **EACH NAMED DEFENDANT**

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

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

8
9 **DISCRIMINATORY PRACTICES IN PUBLIC**
10 **ACCOMMODATIONS**

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

13 **Claim I**

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

20 **Claim II**

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

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

9 Claim IV

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

17 Claim V

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

22 Claim VI

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

2 Claim VII

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

11 Claim VIII

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

15 Claim IX

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

22 Claim X

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

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

6
7 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**
8 **- CLAIMS UNDER CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

27 25. Based on the facts plead above and elsewhere herein this
28 complaint and because Defendants violated the Civil Code § 51 by

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

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

23 27. Wherefore, Plaintiffs pray for damages and relief as
24 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

EXHIBIT A

A. LA MESA PHARMACY INC.

8301 LA MESA BLVD
LA MESA, CA 91941

B. TO BE SERVED

Registered Agent: DEVIN FOREMAN

Registered Office:

3433 CALLE DEL SUR
CARLSBAD, CA 92009

Exhibit B

**ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported May 16, 22, 2007

BUSINESS LOCATIONS

La Mesa Pharmacy
8301 La Mesa Blvd.
La Mesa, CA
(619) 466-2552

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,

Exhibit B

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.

Exhibit B

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.

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

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*** * C O P Y * ***
May 24, 2007
14:54:52

Civ Fil Non-Pris
USAO #: CIVIL FILING 07-CV-0947-LAB
Amount.: \$350.00 CC

Total-> \$350.00

FROM: TRIPLE AAA V LA MESA PHARMACY
07CV0947-LAB