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CIVIL DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'06 CV 0735

DMS WMc

**TRIPPLE AAA ASSOCIATION FOR
CHILDREN WITH
DEVELOPMENTAL DISABILITIES
DUING ON BEHALF OF ROBERT
ARRON MCKISSICK, AIDA ESTETA
BARTOSH AND ANNA MARIE
WIGGINS; ROBERT ARRON
MCKISSICK, A MINOR; AIDA
ESTETA BARTOSH AND ANNA
MARIE WIGGINS**

Plaintiffs,

v.

**TONY WILSON AND VIRGEEN
ANTHWAN DBA SEVEN Q LIQUOR;
And DOES 1 THROUGH 10, Inclusive
Defendants.**

Case No.:

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ; CIVIL
CODE 51, 52, 54, 54.1]

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b)]

INTRODUCTION

Plaintiffs herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial District of the United States District Court of the Southern District of California, that Defendants have in the past, and presently are, engaging in discriminatory practices against individuals with disabilities, specifically including minorities with

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

9
10 **JURISDICTION AND VENUE**

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

16 **SUPPLEMENTAL JURISDICTION**

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

25 Further, due to this denial of full and equal access, TRIPPLE AAA ASSOCIATION FOR
26 CHILDREN WITH DEVELOPMENTAL DISABILITIES DUING ON BEHALF OF ROBERT
27 ARRON MCKISSICK, AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS; ROBERT
28 ARRON MCKISSICK, A MINOR; AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS

1 and other persons with disabilities were injured. Based upon the said allegations, the state actions,
2 as stated herein, are so related to the federal actions that they form part of the same case or
3 controversy and the actions would ordinarily be expected to be tried in one judicial proceeding.

4 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

5 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
6 franchise organized and existing and/or doing business under the laws of the State of California.
7 Defendants TONY WILSON AND VIRGEEN ANTHWAN DBA SEVEN Q LIQUOR are located
8 at 7401 EL CAJON BLVD, LA MESA, CA 91941, Assessor's Parcel Number: 469-152-11. The
9 words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization and
10 TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES
11 DUING ON BEHALF OF ROBERT ARRON MCKISSICK, AIDA ESTETA BARTOSH AND
12 ANNA MARIE WIGGINS; ROBERT ARRON MCKISSICK, A MINOR; AIDA ESTETA
13 BARTOSH AND ANNA MARIE WIGGINS and persons associated with its Members who
14 accompanied Members to Defendants' facilities.

15 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
16 employees, agents, of TONY WILSON AND VIRGEEN ANTHWAN DBA SEVEN Q LIQUOR.
17 Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through
18 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs will pray
19 leave of the court to amend this complaint to allege the true names and capacities of the Does when
20 ascertained.

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

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3 6. Plaintiffs allege businesses often state that they have few customers with disabilities.
4 Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from
5 patronizing such businesses. The courts have recognized deterrence-based damage claims under
6 Civil Code 54.3 and 52. Since California courts have held that the California disability access laws
7 manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes
8 incentives for compliance, see Donald, 266 Cal. Rptr. at 808-11, the courts conclude that
9 application of this canon of construction requires that 54.1 and 51, and their respective damages
10 provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The
11 courts therefore hold that where a plaintiff can prove that violations of applicable California
12 disability access standards deterred her on a particular occasion from attempting to attend a place of
13 public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and
14 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still
15 face systemic discrimination each and every day. One of the most debilitating forms of
16 discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial
17 or benefits, services, or other opportunities that are as effective and meaningful as those provided to
18 others. Discrimination results from actions or inactions that discriminate by effect as well as by
19 intent or design. Discrimination also includes harms resulting from the construction of
20 transportation, architectural, and communication barriers and the adoption or application of
21 standards and criteria and practices and procedures based on thoughtlessness or indifference-of
22 benign neglect. Discrimination also includes harms affecting individuals with a history of
23 disability, and those regarded by others as having a disability as well as persons associated with
24 such individuals that are based on false presumptions, generalizations, misperceptions, patronizing
25 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the
26 effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and
27 comprehensive national mandate for the elimination of discrimination against individuals with
28 disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing

1 discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)
2 Plaintiffs allege the legislative history of the Act, which reflects congressional, concerns over the
3 deleterious effects of discrimination against people with disabilities. As a result, Congress
4 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation
5 Act of 1973. (As amended 29 U.S.C. § 794a). 42 U.S.C. § 12133. See *Smith v Barton*, 914 F.2d
6 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991). Much has been written recently
7 about the ADA and its mechanisms of enforcement. See, e.g., *Doran v. Del Taco, Inc.*, ---
8 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*
9 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000). For purposes of this suit, it is sufficient to
10 note that the statute creates a private right of action through which a litigant may seek injunctive
11 relief as well as attorneys' fees and costs. 42 U.S.C. § 12188(a). Plaintiffs allege that it cannot be
12 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys
13 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are
14 just some of the examples where the legislature has made a determination that society will benefit
15 from private attorneys general. The ADA is but another example.

16
17 7. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
18 DISABILITIES is an organization that advocates on the behalf of children with disabilities when
19 their civil rights and liberties have been violated.

20 8. Robert Aaron Mckissick is a nine year old with a beautiful smile and severe cerebral palsy;
21 his mom is Aida Esteta Bartosh; his sister is ANNA MARIE WIGGINS. Robert uses a walker for
22 mobility.

23 9. Robert resides in the community and enjoys going out to places. Aida Esteta Bartosh
24 understands limited English; ANNA MARIE WIGGINS assists in planning family outings.
25 Plaintiff ANNA MARIE WIGGINS desires to know if a place is accessible before the family goes
26 to the place. Hence, Plaintiff ANNA MARIE WIGGINS researches if a place is accessible before
27 traveling there. Plaintiff's Members desired to patronize Defendants' facilities to utilize their
28 goods and/or services.

1 10. Plaintiff's Members expressly intend to patronize the establishment and the property that
2 is the subject of this Complaint in the immediate future.

3 11. When Plaintiff's Member and Plaintiff ANNA MARIE WIGGINS researched Defendants'
4 facilities, she discovered she would be unable to use the public accommodations' at Defendants'
5 business establishments because they failed to comply with ADA Access Guidelines For Buildings
6 and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code
7 Requirements as specified in attachment A. Defendants failed to remove access barriers within the
8 public accommodations of Defendants' establishment. Plaintiff's Members were deterred from
9 patronizing the facility because they would have personally experienced difficulty with access
10 barriers at Defendants' facility as specified in attachment A.

11 12. Plaintiff(s) was deterred from patronizing the facility due to the alleged ADA violations and/or
12 alleged architectural barriers outlined in Paragraphs 10 through 11 above.

13 13. While Plaintiff(s) expressly wants to patronize Defendant's establishment and the property
14 that is the subject of this Complaint in the immediate future, Plaintiff and Plaintiff's Member is
15 expressly deterred from returning to the establishment and the property that is the subject of this
16 Complaint due to the existence of the architectural barriers outlined above in Paragraphs 10
17 through 11.

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

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

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

11
 12 **NOTICE**

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

15
 16 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**

17 **DEFENDANT**

18 18. TONY WILSON AND VIRGEEN ANTHWAN DBA SEVEN Q LIQUOR and Does 1
 19 through 10 will be referred to collectively hereinafter as "Defendants."

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

21
 22 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

24 **With Disabilities Act Of 1990**

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

26 20. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's
 27 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,
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1 privileges, advantages, or accommodations. Plaintiffs allege Defendants are a public
2 accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or
3 services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. §
4 12182(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of
5 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and
6 Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

15
16 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such A Manner**
17 **That The Altered Portions Of The Facility Are Readily Accessible And Usable By Individuals**
18 **With Disabilities**

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

27 23. Additionally, the Defendants undertook an alteration that affects or could affect the usability
28 of or access to an area of the facility containing a primary function after January 26, 1992.

1 Defendants further failed to make the alterations in such a manner that, to the maximum extent
2 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains
3 serving the altered area, are readily accessible to and usable by individuals with disabilities in
4 violation 42 U.S.C. §12183(a)(2).

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

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

12
13 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural Barriers**

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

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

5
6 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**
7 **Procedures**

8 27. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Defendants
9 failed and refused to provide a reasonable alternative by modifying its practices, policies and
10 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others
11 similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
12 12188(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of
13 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and
14 Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

26 29. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

27 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
28 **CALIFORNIA ACCESSIBILITY LAWS**

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CLAIM I: Denial Of Full And Equal Access

30. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities due to violations pertaining to the 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.

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

CLAIM II: Failure To Modify Practices, Policies And Procedures

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

CLAIM III: Violation Of The Unruh Act

33. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint and because

1 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
3 against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

15 35. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
16

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

27 B. For attorneys' fees and damages pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and
28

1 Cal. Civil Code § 51, 52, 54, 54.3. 55;

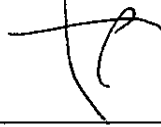
2 C. A Jury Trial and;

3 D. For such other further relief as the court deems proper.
4
5

6 Respectfully submitted:

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8 Dated: 04/04/06

PINNOCK & WAKEFIELD, A.P.C.


By: _____

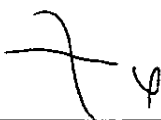
THEODORE A. PINNOCK, ESQ.
MICHELLE L. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

11
12 REQUEST FOR JURY TRIAL

13 Respectfully submitted:

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15 Dated: 04/04/06

PINNOCK & WAKEFIELD, A.P.C.


By: _____

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

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Attachment A

Accessibility Survey

**ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported Saturday, April 1, 2006

**Business: 7Q Liquor
7401 El Cajon Boulevard
San Diego, California**

7 1 5
— —

Report of Findings

A. VIOLATIONS

1. Parking

- a. The space designated as accessible fails to be compliant.
- b. There fails to be Van Accessible parking provided.
- c. There fails to be tow-away signage posted at the driveway entrance.

2. Exterior Path of Travel

- a. There fails to be an accessible path of travel leading from the parking to the entrance of this facility.
- b. There fails to be an accessible access from the public street to the entrances of this complex.

3. ADA Signage

- a. There fails to be International Symbols of Accessibility decals posted on these business entrances doors and/or windows.

4. Entrance

- a. The entrance door is too narrow to be accessible.

5. Interior Path of Travel

- a. There are loose mats within this facility.

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 accommodations 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. 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:

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)

3. ADA Signage

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility. (ADAAG 4.1(7); 4.30.7)

4. Entrance

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.). Thresholds at doorways shall not exceed 1/2". (ADAAG 4.13.8) Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than

1:2. (Id.) Additionally, inaccessible entrances must have directional signage indicating the route to the nearest accessible entrance. (ADAAG 4.1.2(7)(c). Entrance doorways along an accessible route shall have a minimum clear opening of 32" with a door open 90 degrees, measured between the face of the door and the opposite stop. (ADAAG 4.3.9; ADAAG 4.13.5) If doorways have two independently operated door leaves, at least one need to comply with this minimum clear opening requirement (ADAAG 4.13.4) The minimum space between two hinged doors or pivoted doors in a series shall be 48" plus the width of any door swinging into the space. (ADAAG 4.13.7) Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. (ADAAG 4.13.9) Hardware on doors along an accessible route shall be mounted no higher than 48" above the finish floor. (ADAAG 4.3.9; ADAAG 4.13.9) The floor or ground area within the required clear floor space in and around a door shall be level and clear. (ADAAG 4.13.6)

5. 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 or floor surface, the maximum pile thickness shall be 1/2". (ADAAG 4.5.3)

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.

JS44

(Rev. 07/89)

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.)

FILED

(a) PLAINTIFFS
 TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES DUING ON BEHALF OF ROBERT ARRON MCKISSICK, AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS; ROBERT ARRON MCKISSICK, A MINOR; AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS

DEFENDANTS

TONY WILSON AND VIRGIL ANTHONY AND PA SEVEN Q LIQUOR; and does 1 through 10, Inclusive, Defendants.

(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)
 '06 CV 0735 DMS WMC

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

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

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

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 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)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 406 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 620 Copyrights	<input type="checkbox"/> 450 Commerce/CC Rates/etc.
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 630 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 640 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 881 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 882 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 883 DMW/DWW (405(g))	<input type="checkbox"/> 881 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 884 SSID Title XVI	<input type="checkbox"/> 882 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 885 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 884 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prisoner Conditions			

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 April 3, 2006

SIGNATURE OF ATTORNEY OF RECORD



PAID \$250 4/15/06 BY NOT#123427