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

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

**TRIPPLE AAA ASSOCIATION FOR  
CHILDREN WITH  
DEVELOPMENTAL DISABILITIES,**

Plaintiffs,

v.

**AZTEC LANDSCAPING, INC. d.b.a.  
AZTEC LANDSCAPING; AZTEC  
LANDSCAPING, INC.; GREEN  
FAMILY TRUST (01-13-92); And DOES  
1 THROUGH 10, Inclusive**

Defendants.

Case No.: **06CV 1920**

**DMS LSP**

CLASS ACTION

**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 disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to compel access compliance because empirical research on the effectiveness of Title III of the Americans with Disabilities Act indicates this Title has failed to achieve full and equal access simply by the executive branch of the Federal Government funding and promoting voluntary

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1 compliance efforts. Further, empirical research shows when individuals with disabilities give  
2 actual notice of potential access problems to places of public accommodation without a federal  
3 civil rights action, the public accommodations do not remove the access barriers. Therefore,  
4 Plaintiffs make the following allegations in this federal civil rights action:

5 **JURISDICTION AND VENUE**

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

11 **SUPPLEMENTAL JURISDICTION**

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

20 Further, due to this denial of full and equal access, TRIPPLE AAA ASSOCIATION FOR  
21 CHILDREN WITH DEVELOPMENTAL DISABILITIES and other persons with disabilities were  
22 injured. Based upon the said allegations, the state actions, as stated herein, are so related to the  
23 federal actions that they form part of the same case or controversy and the actions would ordinarily  
24 be expected to be tried in one judicial proceeding.

25 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

26 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
27 franchise organized and existing and/or doing business under the laws of the State of California.  
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Plaintiffs are informed and believe and thereon allege that Defendants GREEN FAMILY TRUST (01-13-92) are the owners, operators and/or lessors of the property located at 7980 Lemon Grove Way, Lemon Grove, CA 91945; Assessor's Parcel No. 475-438-08. Defendants AZTEC LANDSCAPING, INC. d.b.a. AZTEC LANDSCAPING; and AZTEC LANDSCAPING, INC are the tenants of the property located at 7980 Lemon Grove Way, Lemon Grove, CA 91945. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES and persons associated with its Members who accompanied Members to Defendants' facilities.

4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of AZTEC LANDSCAPING, INC. d.b.a. AZTEC LANDSCAPING; AZTEC LANDSCAPING, INC.; and GREEN FAMILY TRUST (01-13-92). Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10 inclusive and therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint to allege the true names and capacities of the Does when ascertained.

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

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

6. As a class Plaintiffs are members of a group composed of persons with a wide range of disabilities, limited to persons who use wheelchairs for mobility, who must be able to access establishments, like Defendants' establishments. Plaintiffs are precluded from equal access to Defendants' establishments so meaningfully because the establishments, and each of them, fail to provide access for members of the disability community who use a wheelchair for mobility throughout the facility. The Supreme Court of the United States has held as long as the class

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

15  
16 **CONCISE SET OF FACTS**

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

Plaintiffs allege businesses often state that they have few customers with disabilities. Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from patronizing such businesses. The courts have recognized deterrence-based damage claims under Civil Code 54.3 and 52. Since California courts have held that the California disability access laws manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes incentives for compliance, see Donald, 266 Cal. Rptr. at 808-11, the courts conclude that application of this canon of construction requires that 54.1 and 51, and their respective damages provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The courts therefore hold that where a plaintiff can prove that violations of applicable California disability access standards deterred her on a particular occasion from attempting to attend a place of public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still face systemic discrimination each and every day. One of the most debilitating forms of discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial or benefits, services, or other opportunities that are as effective and meaningful as those provided to others. Discrimination results from actions or inactions that discriminate by effect as well as by

1 intent or design. Discrimination also includes harms resulting from the construction of  
2 transportation, architectural, and communication barriers and the adoption or application of  
3 standards and criteria and practices and procedures based on thoughtlessness or indifference-of  
4 benign neglect. Discrimination also includes harms affecting individuals with a history of  
5 disability, and those regarded by others as having a disability as well as persons associated with  
6 such individuals that are based on false presumptions, generalizations, misperceptions, patronizing  
7 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the  
8 effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and  
9 comprehensive national mandate for the elimination of discrimination against individuals with  
10 disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing  
11 discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)  
12 Plaintiffs allege the legislative history of the Act, which reflects congressional concerns over the  
13 deleterious effects of discrimination against people with disabilities. As a result, Congress  
14 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation  
15 Act of 1973. (As amended 29 U.S.C. § 794a) 42 U.S.C. § 12133 (See *Smith v Barton*, 914 F.2d  
16 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written recently  
17 about the ADA and its mechanisms of enforcement. [See e.g., *Doran v. Del Taco, Inc.*, ---  
18 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*  
19 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)] For purposes of this suit, it is sufficient to  
20 note that the statute creates a private right of action through which a litigant may seek injunctive  
21 relief as well as attorneys' fees and costs. (42 U.S.C. § 12188(a)) Plaintiffs allege that it cannot be  
22 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys  
23 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are  
24 just some of the examples where the legislature has made a determination that society will benefit  
25 from private attorneys general. The ADA is but another example.

26  
27 8. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL  
28 DISABILITIES is an organization that advocates on the behalf of minorities and children with

1 disabilities when their civil rights and liberties have been violated.

2 9. Plaintiff's Members desired to patronize Defendants' facilities to utilize their goods and/or  
3 services.

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

6 11. When Plaintiff's Member and Plaintiff attempted to visited Defendants' facilities, they  
7 discovered the public accommodations' at Defendants' business establishment fails to comply with  
8 ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or  
9 California's Title 24 Building Code Requirements as specified in Attachment A. Defendants failed  
10 to remove access barriers within the public accommodations of Defendants' establishment.

11 Plaintiff's Members were deterred from patronizing the facility because they would have personally  
12 experienced difficulty with access barriers at Defendants' facility as specified in Attachment A.

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

18 13. 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 14. 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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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. Accordingly, Plaintiffs allege Defendants are required to remove all architectural barriers, known or unknown. Also, Plaintiffs allege Defendants are required to utilize the ADA checklist for Readily Achievable Barrier Removal approved by the United States Department of Justice and created by Adaptive Environments.

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

**NOTICE**

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

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

17. AZTEC LANDSCAPING, INC. d.b.a. AZTEC LANDSCAPING; AZTEC LANDSCAPING, INC.; GREEN FAMILY TRUST (01-13-92); and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

**DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

19. 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. Plaintiffs allege Defendants are a public accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or

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services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

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

21. 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. Defendants altered their facility in a manner that affects or could affect the usability of the facility or a part of the facility after January 26, 1992. In performing the alteration, Defendants failed to make the alteration in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

22. Additionally, the Defendants undertook an alteration that affects or could affect the usability of or access to an area of the facility containing a primary function after January 26, 1992. Defendants further failed to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains

1 serving the altered area, are readily accessible to and usable by individuals with disabilities in  
2 violation 42 U.S.C. §12183(a)(2).

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

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

10  
11 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural Barriers**

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

3  
4 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices, Policies And**  
5 **Procedures**

6 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in 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 42 U.S.C. §  
10 12188(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of  
11 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and  
12 Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

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

25 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**  
26 **CALIFORNIA ACCESSIBILITY LAWS**

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

28 29. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's

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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.

30. 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**

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

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

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

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

34. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

DEMAND FOR JUDGMENT FOR RELIEF:

A. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities 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.

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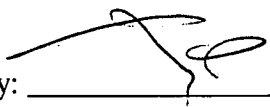
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Respectfully submitted:

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

Dated: 09-15-06

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

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

2010285

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**Rule 11  
ACCESSIBILITY SURVEY  
ADA TITLE III**

**Disability Compliance Documentation**

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**Reported by: MANTIC ASHANTI'S CAUSE INC.  
Tuesday September 12, 2006**

**Business:**

AZTEC LANDSCAPING, INC  
7980 Lemon Grove Way  
Lemon Grove, CA 91945

**Property Owner(s):**

GREEN FAMILY TRUST (01-13-92)  
7980 Lemon Grove Way  
Lemon Grove, CA 91945

**Assessor's Parcel No.:** 475-438-08

# Report of Findings

## A. VIOLATIONS

### 1. Parking

- a. There fails to be disabled parking provided.
- b. There fails to be tow-away signage posted at the driveway entrance.

## 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.

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.

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 ROBERT ARRON MCKISSICK, AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS; ROBERT ARRON MCKISSICK, A MINOR; AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS

DEFENDANTS AZTEC LANDSCAPING, INC. d.b.a. AZTEC LANDSCAPING; AZTEC LANDSCAPING, INC.; GREEN FAMILY TRUST (01-13-92); and does 1 through 10, Inclusive, Defendants.

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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)

06CV 1920 DMS 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  1 Incorporated or Principal Place of Business in This State  4 Citizen of Another State  2 Incorporated and Principal Place of Business in Another State  5 Citizen or Subject of a Foreign Country  3 Foreign Nation  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 <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization, Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Electmant <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <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 September 15, 2006

SIGNATURE OF ATTORNEY OF RECORD

129437 Sel \$350 9/18/06

(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 "X" in this box if you are filing a class action. (See Section 1407, when this box is checked, do not check (5) above.)

Appeal to District Judge from Magistrate

Multidistrict Litigation. (6) Check this box if this box is checked, do not check (5) above.

Transferred from Another District. (5) For multidistrict litigation transfers.

Reinstated or Reopened. (4) Check this box

Remanded from Appellate Court. (3) Check

Removed from State Court. (2) Proceedings

Original Proceedings. (1) Cases which origi

VI. Origin. Place an "X" in one of the sever

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

IV. Cause of Action. Report the civil statute

III. Residence (citizenship) of Principal Part

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Federal question. (3) This refers to suits und

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UNITED STATES  
DISTRICT COURT  
Southern District of California  
San Diego Division

# 129437 - A1  
September 18, 2006

Code	Case #	Qty	Amount
CV0869800	3-06-CV-1920	60.00	CC
Judge	SABRAU		
CV086400		100.00	CC
CV510000		191.00	CC
<b>Total</b>		<b>350.00</b>	

FROM: CIVIL FILING AAA ASSOC. FOR  
CHILDREN W/ DISABILITIES ET AL  
V. AZTEC LANDSCAPING ET AL  
VISA AUTH# 014251 SH

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 complete 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 where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defenda

(c) Attorneys. Enter firm name, address, telep

11. Jurisdiction. The basis of jurisdiction is

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