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

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

Plaintiffs,

v.

**BENNY'S FAMILY CORPORATION
d.b.a. PARKWAY MARKET;
BENNY'S FAMILY CORPORATION;
SCHWAB FAMILY TRUST (08-18-98);
And DOES 1 THROUGH 10, Inclusive**

Defendants.

Case No.:

06 CV 2100 H RBB

CIVIL COMPLAINT:

**DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS**

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

DEMAND FOR JURY TRIAL

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

INTRODUCTION

Plaintiffs herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial District of the United States District Court of the Southern District of California, that Defendants have in the past, and presently are, engaging in 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.
28

1 Defendant BENNY'S FAMILY CORPORATION d.b.a. PARKWAY MARKET is located 9085
2 Dallas Street, La Mesa, California 91942. Defendant BENNY'S FAMILY CORPORATION is
3 located at c/o Registered Agent Matthew W. Simone, 9019 Park Plaza Drive, Suite H, La Mesa,
4 California 91942. Plaintiffs are informed and believe and thereon allege that Defendant SCHWAB
5 FAMILY TRUST (08-18-98) is the owner, operator, and/or lessor of the property located at 9083-
6 85 Dallas Street, La Mesa, California 91942; Assessor's Parcel Number: 485-600-18. Defendant
7 SCHWAB FAMILY TRUST (08-18-98) is located at 3336 Windbreak Court, San Diego,
8 California 92130. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically
9 include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH
10 DEVELOPMENTAL DISABILITIES and persons associated with its Members who accompanied
11 Members to Defendants' facilities.

12 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
13 employees, agents, of BENNY'S FAMILY CORPORATION d.b.a. PARKWAY MARKET;
14 BENNY'S FAMILY CORPORATION; and SCHWAB FAMILY TRUST (08-18-98). Plaintiffs
15 are ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10,
16 inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave
17 of the court to amend this complaint to allege the true names and capacities of the Does when
18 ascertained.

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

26 **CONCISE SET OF FACTS**

27 6. Plaintiffs allege businesses often state that they have few customers with disabilities.
28 Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from

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

14 7. TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
15 DISABILITIES was formed to advocate for the civil rights of minorities and children with
16 disabilities; a substantial population with neither an advocate nor voice in the disability movement.
17 It is well documented by the federal government and others that the promises and opportunities
18 afforded by the Americans with Disabilities Act are not reaching minorities with disabilities.
19 Further, there is abundance of evidence to show, despite the federal government's unprecedented
20 and aggressive ADA awareness and technical assistance drive, businesses in the minority
21 communities are not complying with the ADA. For example, the National Council on Disability
22 reported in 1993 that minorities with disabilities face double discrimination; they are poorer; they
23 have fewer opportunities than others. Also, the fastest growing segment of the disability population
24 is from minority communities because those communities are growing faster than the Anglo
25 communities, and because persons from minority communities have a higher risk of disability. In
26 fact, studies show the rate of disability for Whites is 7%, for African-American 13%, and for
27 Hispanics 9%. Moreover, from 1983 to 1994 the disability non-White population increased by
28 50.4% whereas the disability White population only increased 11.3%. Even more intriguing is the

1 non-White 18 years older and under population rate of disability increased by 86.6%. Further,
2 evidence suggests minorities with disabilities tend to live with their families in conditions of
3 poverty (61%), and they tend not to advocate for their civil rights. Hence, Members of TRIPPLE
4 AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES specifically
5 intend to zealously advocate for minorities and children with disabilities and desire equal access to
6 businesses within their community, as well as communities more populous of minorities with
7 disabilities, and these are the reasons Plaintiffs filed this action.

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

12 9. ROBERT AARON MCKISSICK is a nine year old with a beautiful smile and severe
13 cerebral palsy; his mom is AIDA ESTETA BARTOSH; his sister is ANNA MARIE WIGGINS.
14 Robert uses a walker for mobility.

15 10. Robert resides in the community and enjoys going out to places. AIDA ESTETA
16 BARTOSH understands limited English; ANNA MARIE WIGGINS assists in planning family
17 outings. Plaintiff ANNA MARIE WIGGINS desires to know if a place is accessible before the
18 family goes to the place. Hence, Plaintiff ANNA MARIE WIGGINS researches if a place is
19 accessible before traveling there. Plaintiff's Members desired to patronize Defendants' facilities to
20 utilize their goods and/or services.

21 11. Plaintiff's Members intend to patronize Defendants' establishments and the property that is
22 the subject of this Complaint in the immediate future.

23 12. Plaintiffs and Plaintiff's Members were deterred from patronizing the facility due to the
24 alleged ADA violations and/or alleged architectural barriers outlined in Paragraphs 6 through 11
25 above, as well as Attachment A.

26 13. While Plaintiff(s) expressly wants to patronize Defendant's establishment and the property
27 that is the subject of this Complaint in the immediate future, Plaintiff and Plaintiff's Member is
28 expressly deterred from returning to the establishment and the property that is the subject of this

1 Complaint due to the existence of the architectural barriers outlined above in Paragraphs 6 through
2 11, as well as Attachment A.

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

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

21 16. Based on these facts, Plaintiffs allege Plaintiff's Members and Plaintiffs were discriminated
22 against each time they patronized Defendants' establishment. Plaintiff's Members and Plaintiffs
23 were extremely upset due to Defendants' conduct.

24 **NOTICE**

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

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

28 **DEFENDANT**

1 18. BENNY'S FAMILY CORPORATION d.b.a. PARKWAY MARKET; BENNY'S FAMILY
2 CORPORATION; SCHWAB FAMILY TRUST (08-18-98); and Does 1 through 10 will be
3 referred to collectively hereinafter as "Defendants."

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

5 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

7 **With Disabilities Act Of 1990**

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

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

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

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

With Disabilities

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

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

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

20 25. Thus, Plaintiff's Members and Plaintiff(s) were subjected to discrimination in violation of
21 42 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's Members and
22 Plaintiff(s) were denied equal access to Defendants' existing facilities.

23
24 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural Barriers**

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

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

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

25 28. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiff's First Cause Of
26 Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm
27 unless Defendants are ordered to remove architectural, non-architectural, and communication
28 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory

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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 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 federal civil rights laws enacted for the benefit of individuals with disabilities.

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

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

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.

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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 Members and Plaintiff(s) were 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 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.

34. 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.

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

DEMAND FOR JUDGMENT FOR RELIEF:

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

B. For attorneys' fees and damages pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 51, 52, 54, 54.3. 55;

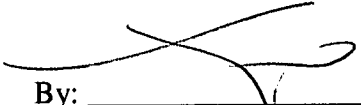
C. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: 09-27-06


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

**Rule 11
ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported Saturday, September 23, 2006

Business: Parkway Market

Property Owner:

SCHWAB FAMILY TRUST (08-18-91)

Assessor's Parcel #: 485-600-18

Report of Findings

A. VIOLATIONS

1. Parking

- a. There is 1 space designated as accessible, which fails to meet the measurement requirements to be a compliant Van Accessible parking space, as required.

2. Exterior Path of Travel

- a. There fails to be a safe and accessible path of travel leading from the public street to these businesses, as required.

- b. The exterior path of travel leading from the designated accessible space to the sidewalk leading to the business entrance fails to be accessible, as the access ramp is sloped and narrow at the top.

3. Entrance

- a. There are loose mats placed at the entrance door.
- b. There fails to be an International Symbol of Accessibility posted on the entrance, as required.

4. Interior Path of Travel

- a. Some of the aisles are too narrow due to merchandise placed on the floor, blocking the path of travel.

5. Counter

- a. The cashier counter is too high to be accessible.
- b. The deli counter is too high to be accessible.
- c. The counter with the fountain drink dispensers is too high and there fails to be knee clearance provided.

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 provided in a number in conformance with the specified table located in ADAAG 4.1.2 (5). The disabled parking space is to be located on the shortest accessible route to the public accommodation’s nearest accessible entrance. (ADAAG 4.6.2) The “Van Accessible” space is required to be 108 inches (9 feet) wide (ADAAG 4.6.3) and served by an access aisle 96 inches (8 feet) wide (ADAAG 4.1.2(5)(b)). The van accessible access aisle is required to be positioned on the passenger side of the vehicle. Regular disabled parking is also required to have the same proper access aisles. The disabled parking space is required to have an access aisle that is part of an accessible route to the building entrance. (ADAAG 4.6.3) Accessible

parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. (ADAAG 4.6.4) Spaces which are Van Accessible shall also have an additional sign stating the space is Van Accessible and these signs are to be mounted where they will not be obstructed by a parked vehicle (Id.) At each parking lot entrance, a tow away sign shall be posted to inform patrons they may be fined and/or have their vehicles towed if they are unlawfully parked in a disabled parking space At parking structures, there shall be an 8' 2" minimum vertical clearance at the entrance to the parking structure and within the parking structure in areas leading to accessible parking spaces.

2. Exterior Path of Travel

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.7). An accessible route is required to be provided between public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the entrances of the facilities they serve. If the accessible route passes through a parking lot, Title 24 of the California Building Code requires that the route must be contained in a marked crosswalk so that the safety of the person in a wheelchair is not jeopardized when they pass behind banks of parked cars. Objects projecting from walls with their leading edges between 27" and 80" above the finished floor shall protrude no more than 4" into walks, halls, corridors, passageways or aisles. (ADAAG 4.4.1) Free standing objects mounted on posts or pylons may overhang at maximum 12" from 27" to 80" above the ground of finished floor. (Id.) Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80" minimum clear head room. (ADAAG 4.4.2) If carpet is used on a ground or floor surface, then it shall be securely attached. (ADAAG 4.5.3)

3. 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 ½". (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)

4. 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)

5. Counter

In retail stores where counters have cash registers and are provided for the sale or distribution of goods or services to the public, at least one (1) counter shall have a portion of the counter which is at least 36" in length with a maximum height of 36" above the finished floor. (ADAAG 7.2(1)) In alterations where it is technically infeasible to provide an accessible counter, an auxiliary counter meeting these requirements may be provided.

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.

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should completed the form as follows:

(a) **Plaintiffs - Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county in which the first listed defendant 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 "defendant" is the location of the tract of land involved).

(c) **Attorneys.** Enter firm name, address, telephone number and section ("see attachment").

1. **Jurisdiction.** The basis of jurisdiction is set forth in one of the boxes. If there is more than one basis of jurisdiction, the basis of jurisdiction is based on 28 United States plaintiff. (1) Jurisdiction is based on 28 United States defendant. (2) When the plaintiff is suit Federal question. (3) This refers to suits under 28 U.S.C. § 1331, an act of Congress or a treaty of the United States and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. § 1332 of the different parties must be checked. (See Section III. Residence (citizenship) of Principal Parties. This section for each principal party.

IV. **Cause of Action.** Report the civil statute directly applicable to the nature of the suit. Place an "X" in the appropriate box. If the cause fits more than one nature of suit, select the most definitive.

VI. **Origin.** Place an "X" in one of the seven boxes of Original Proceedings. (1) Cases which originate in Removed from State Court. (2) Proceedings initiated by petition for removal is granted, check this box. (3) Check this box if Remanded from Appellate Court. (4) Check this box if Reinstated or Reopened. (5) For cases Transferred from Another District. (6) Check this box when Multidistrict Litigation. (7) Check this box when Appeal to District Judge from Magistrate Judge

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action. VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action. Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS-44 is used to reference pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature. Date and sign the civil cover sheet. (rev. 07/89)

UNITED STATES DISTRICT COURT
 Southern District of California
 San Diego Division

129926 - A1
 September 28, 2006

Code	Case #	Qty	Amount
CV086900	3-06-CV-2100	60.00	CH
CV086400	Judge - HUFF	100.00	CH
CV100000		191.00	CH
Total ->			351.00

FROM: CIVIL FILING RAA ASSOC. FOR CHILDREN W/ DISABILITIES V. BENNY'S FAMILY CORP ET AL
 VISIA AUTH# 11074 SH

in on an attachment, noting in this own in pleadings. Place the "X" in ad States are included here.

United States, an amendment to the defendant code takes precedence. ten Box 4 is checked, the citizenship cases.) was indicated above. Mark this cause.

action, in Section IV above, is If the cause fits more than one Code Case # Qty Amount

28 U.S.C., Section 1441. When the the date of remand as the filing date. for within district transfers or of Title 28 U.S.C. Section 1407. When

F.R.C.P.