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U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

CLERK OF COURT DEPUTY

Attorneys for Plaintiffs

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

'06 CV 2501 LAB LSP

**TRIPPLE AAA ASSOCIATION FOR
CHILDREN WITH
DEVELOPMENTAL DISABILITIES
SUING ON BEHALF OF MEMBER
DEMETRIO**

Case No.:

CLASS ACTION

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

Plaintiffs,

v.

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

**CHARLES BAKER, JR; PATRICIA
BAKER; RIVER BOTTOM BAR; And
DOES 1 THROUGH 10, Inclusive**

Defendants.

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

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

7 **JURISDICTION AND VENUE**

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

13 **SUPPLEMENTAL JURISDICTION**

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

22 Further, due to this denial of full and equal access, TRIPPLE AAA ASSOCIATION FOR
23 CHILDREN WITH DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF MEMBER
24 DEMETRIO and other persons with disabilities were injured. Based upon the said allegations, the
25 state actions, as stated herein, are so related to the federal actions that they form part of the same
26 case or controversy and the actions would ordinarily be expected to be tried in one judicial
27 proceeding.
28

NAMED DEFENDANTS AND NAMED PLAINTIFF

1
2 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
3 franchise organized and existing and/or doing business under the laws of the State of California.
4 Plaintiffs are further informed and believe and thereon allege that Defendants CHARLES BAKER,
5 JR; PATRICIA BAKER; RIVER BOTTOM BAR, are the owners, operators, and/or lessors of the
6 real property. As to Defendants and the property the public record reveals:

7 Owner: BAKER CHARLES JR & PATRICIA R; DBA RIVER BOTTOM

8
9 Mailing Address: PO BOX 159, SAN LUIS REY, CA 92068

10
11 Property Address: 473 N EL CAMINO REAL, OCEANSIDE, CA

12
13
14 Assessor's Parcel Number: 7360780000

15
16 4. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the
17 organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
18 DISABILITIES SUIING ON BEHALF OF MEMBER DEMETRIO and persons associated with its
19 Members who accompanied Members to Defendants' facilities. Defendants Does 1 through 10,
20 were at all times relevant herein subsidiaries, employers, employees, agents, of CHARLES
21 BAKER, JR; PATRICIA BAKER; RIVER BOTTOM BAR. Plaintiffs are ignorant of the true
22 names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues
23 these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this
24 complaint to allege the true names and capacities of the Does when ascertained.

25
26 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them
27 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
28 general partner, limited partner, agent, employee, representing partner, or joint venturer of the

1 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs
2 are further informed and believe, and thereon allege, that each of the Defendants herein gave
3 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

4 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO ALL**
5 **DEFENDANTS**

6 6. Plaintiffs are members of a group within the State of California composed of persons with a
7 wide range of disabilities, limited to persons who use wheelchairs for mobility, who must be able to
8 access retail merchandise establishments, like Defendants' establishments located within the
9 complex in which CHARLES BAKER, JR; PATRICIA BAKER; RIVER BOTTOM BAR is
10 located. Plaintiffs are precluded from equal access to Defendants' establishments so meaningfully
11 because the establishments, and each of them, fail to provide access for members of the disability
12 community who use a wheelchair for mobility to disabled parking facilities, exterior path of travel
13 facilities, entrance facilities, interior path of travel facilities, and display facilities. The Supreme
14 Court of the United States has held as long as the class representative provides adequate
15 representation for the class' interests, the court has the power to adjudicate the rights and
16 obligations of all class members – even those who would otherwise be beyond the reach of its
17 personal jurisdiction. Phillips Petroleum Co. v. Shutts, 472 US 797 (1985). This case stands for the
18 proposition that minimum contacts are not required with nonresident members of a plaintiff class
19 because, “the burdens placed by a State upon absent class action plaintiff are not of the same order
20 or magnitude as those it places on an absent defendant.” Id. Plaintiffs allege they will insure class
21 members shall receive adequate notice of the proceedings and the opportunity to “opt out,” if
22 required. Defendants have conducted themselves such as to establish a pattern and practice of
23 architectural discrimination. Plaintiffs allege that Defendants have control over each and every
24 facility, establishment, and/or business located within the Defendant Landlords' facilities in which
25 Defendant CHARLES BAKER, JR; PATRICIA BAKER; RIVER BOTTOM BAR is located.
26 Accordingly, Plaintiffs allege Defendants are responsible for removing architectural barriers at
27 Defendants' facilities and the establishment/business contained therein. For the aforementioned
28 reasons, Plaintiffs allege they are proper class representatives for members of the disability

1 community who use a wheelchair for mobility because the members of the disability community
2 who use a wheelchair for mobility are so numerous that joinder is impracticable due to the fact
3 more than one hundred (100) persons fall within the membership description. Also, the questions of
4 law or fact are so common because the members of the disability community who use a wheelchair
5 for mobility are being denied their civil rights under federal and state laws – that is, each member
6 of the disability community who use a wheelchair for mobility suffered substantially similar
7 violations relating to exterior path of travel facilities, entrance facilities, restrooms, interior path of
8 travel facilities, and display facilities. Further, the claims or defenses of the representative parties
9 are typical – Plaintiffs have the right to access facilities, establishments, and businesses like those
10 within the complex in which Defendant CHARLES BAKER, JR; PATRICIA BAKER; RIVER
11 BOTTOM BAR is located, and the businesses that are located in said complex for many reasons
12 such as the purchase of retail merchandise. Defendants’ facilities are open to the general public
13 and Plaintiffs have been denied access because of violations, as outlined above and specifically
14 addressed elsewhere within this Complaint. Additionally, Plaintiffs, as the named representatives,
15 will fairly and adequately represent the interests of the class because Plaintiffs and the members of
16 the disability community in the State of California who use a wheelchair for mobility have suffered
17 substantially similar violations. Finally, a pattern and practice exists on the part of Defendants, and
18 each of them, of architectural discrimination at their public facilities located within the State of
19 California. On information and good faith belief, Plaintiffs thereon allege that Defendants, prior to
20 the passing of the Americans With Disabilities Act in 1992, conceived, commissioned, designed,
21 and implemented among other things, a design for their public facilities, including, but not limited
22 to disabled parking facilities, exterior path of travel facilities, restroom, entrance facilities, interior
23 path of travel facilities, and display facilities, which do not meet the minimal standards outlined
24 under the federal regulations known as the Americans With Disabilities Act Accessibility
25 Guidelines (“ADAAG”) and state regulations, also known as Title 24 of the California Building
26 Code, and to which non-compliant plan they continue to utilize to the injury of the members of the
27 class. For these reasons and the facts as stated herein, Plaintiffs have the right to maintain this
28

1 statewide class action pursuant to Fed.R.Civ.P. Rule 23(b).

2 **CONCISE SET OF FACTS**

3 7. In 2006, Plaintiff's MEMBER DEMETRIO went to the CHARLES BAKER, JR;
4 PATRICIA BAKER; RIVER BOTTOM BAR. As PLAINTIFF'S MEMBER DEMETRIO is
5 unable to walk PLAINTIFF'S MEMBER DEMETRIO uses a wheelchair. PLAINTIFF'S
6 MEMBER DEMETRIO experienced architectural barriers at the place which impeded his access.
7 Plaintiff can prove these barriers as Plaintiff conducted a survey of Defendants' facility and
8 Plaintiff's counsel will provide it to competent defense counsel. Plaintiff alleges its visually and
9 hearing impaired members desire to go to Defendants' facility but cannot because of lack of
10 auxiliary aids.
11 Plaintiffs specifically allege that Defendants knew, to a substantial certainty, that the architectural
12 barriers precluded wheelchair access. First, Plaintiffs will prove that Defendants had actual
13 knowledge that the architectural barriers precluded wheelchair access - that it would be hard to
14 believe that noncompliance with ADAAG as to accessible entrances could be other than
15 intentional. Second, due to the abundance of ADA information and constant news covers of ADA
16 lawsuits, Defendants had actual knowledge of the ADA and decided deliberately not to remove
17 architectural barriers. Third, Defendants have no plans to remodel. Fourth, it would be hard to
18 believe that Defendants did not have actual knowledge of ADA given all the ADA public
19 awareness campaigns, the abundance of free ADA information and the media's constant ADA
20 coverage. Fifth, a human being acting for the defendants made a conscious decision as to how to
21 proceed given the presence of the architectural barriers. Plaintiffs allege any alternative methods
22 preclude integration of wheelchair patrons, as it requires them to use a second-class entrance. Also,
23 expert testimony will show the facility contained inaccessible features. Plaintiffs allege businesses
24 often state that they have few customers with disabilities. Plaintiffs allege such customers avoid
25 patronizing inaccessible business and are deterred from patronizing such businesses. The courts
26 have recognized deterrence-based damage claims under Civil Code 54.3 and 52. Since California
27 courts have held that the California disability access laws manifest an intent on the part of the
28

1 legislature that they be interpreted in a manner that maximizes incentives for compliance, (see
2 Donald, 266 Cal. Rptr. at 808-11) the courts conclude that application of this canon of construction
3 requires that 54.1 and 51, and their respective damages provisions, 54.3 and 52, be interpreted as
4 extending to claims based on incidents of deterrence. The courts therefore hold that where a
5 plaintiff can prove that violations of applicable California disability access standards deterred her
6 on a particular occasion from attempting to attend a place of public accommodation, that plaintiff
7 states a claim for relief under California Civil Code 54.1 and 51 and, in particular, for damages,
8 under 54.3 and 52. Plaintiffs allege people with disabilities still face systemic discrimination each
9 and every day. One of the most debilitating forms of discrimination is segregation imposed by
10 others. Discrimination also includes exclusion, or denial of benefits, services, or other
11 opportunities that are as effective and meaningful as those provided to others. Discrimination
12 results from actions or inactions that discriminate by effect as well as by intent or design.
13 Discrimination also includes harms resulting from the construction of transportation, architectural,
14 and communication barriers and the adoption or application of standards and criteria and practices
15 and procedures based on thoughtlessness or indifference-of benign neglect. Discrimination also
16 includes harms affecting individuals with a history of disability, and those regarded by others as
17 having a disability as well as persons associated with such individuals that are based on false
18 presumptions, generalizations, misperceptions, patronizing attitudes, ignorance, irrational fears, and
19 pernicious mythologies. Discrimination also includes the effects a person's disability may have on
20 others. The ADA aim is: (1) To provide a clear and comprehensive national mandate for the
21 elimination of discrimination against individuals with disabilities; [and] (2) to provide clear, strong,
22 consistent, enforceable standards addressing discrimination against individuals with disabilities.
23 (42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)) Plaintiffs allege the legislative history of the Act,
24 which reflects congressional, concerns over the deleterious effects of discrimination against people
25 with disabilities. As a result, Congress incorporated within Title II of the ADA the remedial
26 provision in Section 504 of the Rehabilitation Act of 1973. (As amended 29 U.S.C. § 794a)(42
27 U.S.C. § 12133)(See *Smith v. Barton*, 914 F.2d 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct.
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1 2825 (1991)) Much has been written recently about the ADA and its mechanisms of enforcement.
2 (See e.g., *Doran v. Del Taco, Inc.*, --- F.Supp.2d ---- (C.D. Cal. June 9, 2005); Molski, 347
3 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn Restaurant*, 96 F.Supp.2d 1065, 1070-71
4 (D.Haw.2000)) For purposes of this suit, it is sufficient to note that the statute creates a private
5 right of action through which a litigant may seek injunctive relief as well as attorneys' fees and
6 costs. (42 U.S.C. § 2188(a)) Plaintiffs allege that it cannot be said that because an attorney has
7 chosen to specialize in an area, which provides statutory attorneys fees his practice is necessarily
8 suspect. Class actions, antitrust, and consumer protection statutes are just some of the examples
9 where the legislature has made a determination that society will benefit from private attorneys
10 general. The ADA is but another example. Plaintiff TRIPPLE AAA ASSOCIATION FOR
11 CHILDREN WITH DEVELOPMENTAL DISABILITIES is an organization that advocates on the
12 behalf of children and others with disabilities specifically including adults who use wheelchairs
13 when their civil rights and liberties have been violated. MEMBER DEMETRIO visited the place in
14 2006 and plans on returning to the place and he encountered architectural barriers there.
15 Association standing requires that (1) its members would otherwise have standing to sue in their
16 own right, (2) the interests the association seeks to protect are germane to the organization's
17 purpose and (3) neither the claim asserted nor the relief requested requires the participation of
18 individual members. *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333, 343;
19 *Greater Los Angeles Council On Deafness, Inc. v. Baldrige*, 827 F.2d 1353, 1358 (9th Cir. 1987).
20 Plaintiffs have standing to bring this action. Plaintiff Association has at least four members who
21 use wheelchairs as they cannot walk at all. The purpose of the Association is to fight to remove
22 access and architectural barriers.

23
24 8. Plaintiff MEMBER DEMETRIO has a physical impairment and due to this impairment he
25 has learned to successfully operate a wheelchair. Plaintiff's Member and Plaintiff(s) has physical
26 impairments because her conditions affect one or more of the following body systems:
27 neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's
28 Member and Plaintiff(s) said physical impairments substantially limits one or more of the following

1 major life activities: walking. In addition, Plaintiff's Member and Plaintiff(s) cannot perform one
2 or more of the said major life activities in the manner, speed, and duration when compared to the
3 average person. Moreover, Plaintiff's Member and Plaintiff(s) has a history of or has been
4 classified as having a physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

7 10. When Plaintiff's Member and Plaintiff MEMBER DEMETRIO researched Defendants'
8 facilities, he discovered
9 he would be unable to use the public accommodations' at Defendants' business establishments
10 because they failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter
11 referred to as "ADAAG") and/or California's Title 24 Building Code Requirements as specified
12 herein. Defendants failed to remove access barriers within the parking public accommodations of
13 Defendants' establishment. Plaintiff's Member was deterred from patronizing the facility because
14 she experienced difficulty using the exterior path of travel access barriers at Defendants' facility.

15 11. The architectural regulations or "design standards" implemented by the federal ADA are
16 often referred to in the literature as "ADAAGs," which is an acronym for "ADA Architectural
17 Guidelines." (See *Independent Living I*, 982 F. Supp. at pp. 707-708 ["The guidelines issued by the
18 Access Board are denominated the 'ADA Accessibility Guidelines' ('ADAAG.'). The design
19 standards enacted by the Attorney General are identical to the ADAAGs, but are denominated as
20 'Standards.' Despite the technical distinction, the two terms are often used interchangeably."];
21 *Access Now, Inc. v. Ambulatory Surgery Center Group, Ltd.* (S.D. Fla. 2001) 146 F. Supp. 2d
22 1334, 1336 ["These guidelines are called ... ("ADAAG")"].) The "ADAAGs" are found in
23 Appendix A to Part 36 of title 28 of the Code of Federal Regulations. The ADAAG violations
24 alleged here are basically so intuitive that it would be hard to believe that noncompliance with them
25 could be other than intentional.

26 12. Plaintiff(s) was deterred from patronizing the facility due to the alleged ADA violations
27 and/or alleged architectural barriers outlined in Paragraphs 10 through 11 above.
28

1 13. While Plaintiff MEMBER DEMETRIO expressly wants to patronize Defendant's
2 establishment and the property that is the subject of this Complaint in the immediate future,
3 Plaintiff and Plaintiff's Member is expressly deterred from returning to the establishment and the
4 property that is the subject of this Complaint due to the existence of the architectural barriers
5 outlined above in Paragraphs 10 through 11.

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

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

23
24 16. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff(s) were
25 discriminated against each time he patronized Defendants' establishment. Plaintiff's Member and
26 Plaintiff(s) was extremely upset due to Defendants' conduct.

27 **NOTICE**

28 17. Plaintiffs are not required to provide notice to the defendants prior to filing a complaint.

1 (See *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832 (9th Cir 2000))

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

5 18. **CHARLES BAKER, JR; PATRICIA BAKER; RIVER BOTTOM BAR;** and Does 1
6 through 10 will be referred to collectively hereinafter as “Defendants.”

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

8
9 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

12 **Claim I**

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

17 **Claim II**

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

22 **Claim III**

23 21. Based on the facts stated above, Defendants discriminated against Plaintiffs as it is
24 discriminatory to afford an individual or class of individuals, on the basis of a disability or
25 disabilities of such individual or class, directly, or through contractual, licensing, or other
26 arrangements with the opportunity to participate in or benefit from a good, service, facility,
27 privilege, advantage, or accommodation that is not equal to that afforded to other individuals in
28

1 violation of 42 U.S.C. §12182.

2 Claim IV

3 22. Based on the facts stated above, Defendants discriminated against Plaintiffs as it is
4 discriminatory to provide an individual or class of individuals, on the basis of a disability or
5 disabilities of such individual or class, directly, or through contractual, licensing, or other
6 arrangements with a good, service, facility, privilege, advantage, or accommodation that is different
7 or separate from that provided to other individuals.

8 Claim V

9 23. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants
10 failed to afforded to an individual with a disability in the most integrated setting appropriate to the
11 needs of the individual in violation of 42 U.S.C. §12182.

12 Claim VI

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

17 Claim VII

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

23 Claim VIII

24 26. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants
25 engaged in the following specific prohibitions: (i) the imposition or application of eligibility criteria
26 that screen out or tend to screen out an individual with a disability or any class of individuals with
27 disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or
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1 accommodations, unless such criteria can be shown to be necessary for the provision of the goods,
2 services, facilities, privileges, advantages, or accommodations being offered; (ii) a failure to make
3 reasonable modifications in policies, practices, or procedures, when such modifications are
4 necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to
5 individuals with disabilities;

6 27. (iii) a failure to take such steps as may be necessary to ensure that no individual with a
7 disability is excluded, denied services, segregated or otherwise treated differently than other
8 individuals because of the absence of auxiliary aids and services; (iv) a failure to remove
9 architectural barriers, and communication barriers that are structural in nature, in existing facilities
10 in violation of 42 U.S.C. §12182.

11 Claim IX

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

16 Claim X

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

22
23
24 30. 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 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's

1 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,
2 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or
3 operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility
4 violated California's Title 24 Accessible Building Code by failing to provide access to Defendants'
5 facilities due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
6 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
7 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
8 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
9 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
10 Detectable Warnings, Signage, and Telephones. These violations denied Plaintiff's Member and
11 Plaintiff(s) full and equal access to Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s)
12 was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's
13 Member and Plaintiff(s) was denied full, equal and safe access to Defendants' facility, causing
14 severe emotional distress. The Disabled Persons Act is found in *sections 54* of the Civil Code, and
15 has been around in some form on the statute books since the late 1960's--more than 20 years before
16 the federal ADA. (See Stats. 1968, ch. 461.) The Disabled Persons Act begins with the statement in
17 *subdivision (a) of section 54* that "Individuals with disabilities or medical conditions have the same
18 right as the general public to the full and free use of ... public facilities, and other public places." (*β*
19 *54, subd. (a).*) *Section 54* is immediately followed by *section 54.1, subdivision (a)(3)* of which--in
20 contrast to the more spartan reference to the ADA in *section 51*--specifically incorporates ADA
21 *regulations*. The enforcement of *section 54* is to be found in *section 54.3. Subdivision (a)(3) of*
22 *section 54.1* provides: " 'Full and equal access,' for purposes of this section in its application to
23 transportation, means access that meets the standards of Titles II and III of the Americans with
24 Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto,
25 except that, if the laws of this state prescribe higher standards, it shall mean access that meets those
26 higher standards." *Subdivision (a) of section 54.3* provides in its entirety: "Any person or persons,
27 firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities
28

1 as specified in *Sections 54* and *54.1* or otherwise interferes with the rights of an individual with a
2 disability under *Section 54, 54.1, and 54.2* is liable for each offense for the actual damages and any
3 amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of
4 three times the amount of actual damages but in no case less than one thousand dollars (\$ 1,000),
5 and attorney's fees as may be determined by the court in addition thereto, suffered by any person
6 denied any of the rights provided in *Sections 54, 54.1, and 54.2*. 'Interfere' for purposes of this
7 section, includes, but is not limited to, preventing or causing the prevention of a guide dog, signal
8 dog, or service dog from carrying out its functions in assisting a disabled person." *Section 54.3* was
9 construed in the 1990 *Cafe Royale* decision as providing for strict liability--that is, liability without
10 any need for intentional conduct--prior to the 1992 legislation which added both *subdivision (f) to*
11 *section 51* and *subdivision (c) of section 54* (back then in the context of the minimum penalty under
12 *section 54.3* which was \$ 250; now it is \$ 1,000). *Cafe Royale* was a case decided prior to the
13 enactment of the ADA, and contains not a word about federal law. It was also decided exclusively
14 under *Civil Code section 54 et seq.*, and contains not one word on the Unruh Act. In *Cafe Royale*,
15 a wheelchair user (a former deputy Attorney General and member of the Attorney General's task
16 force on disability) discovered that he could not reach the main dining area of a tiered restaurant on
17 his own, though the restaurant offered to lift him up the stairs. He declined an offer of help because
18 it would attract attention and because he might be dropped in the process of being bodily picked up
19 and moved. He sued the restaurant under *section 54.3* because of the absence of ramps or elevators
20 to the second-tiered area. The restaurant thought that it had complied with the law because its
21 architect thought, based on an informal conversation with an employee of the San Francisco
22 building department, that a certain number of handicapped seating places was "all that was needed
23 for compliance." (See *id. at. p. 174.*) The building department employee, however, gave the
24 restaurant architect erroneous advice. In fact, the State Building Standards Code (required by
25 *Government Code section 4450 et seq*) provided that all floors of a restaurant be on a common level
26 or else accessible by either ramps or elevators. While a hardship exemption might be obtained, 75
27 percent of the main dinning area would still need to be handicap accessible, and the *Cafe Royale's*
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1 option of seating wheelchair patrons in the bar or having them carried to the common area was a
2 violation. On appeal, the fact of the violation was understood by all parties: "All parties agreed that
3 Cafe Royale's seating capacity was in violation of the handicap access requirements." (*Cafe Royale*,
4 *supra*, 218 Cal. App. 3d at p. 174.) Hence issue was joined as to whether the restaurant's "good
5 faith" belief that it was "in compliance" (*ibid.*) was sufficient to deny the patron recovery under
6 section 54.3. The trial court thought so, but the appellate court disagreed. The appellate court
7 reasoned thusly: the fact that section 54.3 said a person who "denies or interferes with admittance
8 to or enjoyment of the public facilities as specified in section 54 and 54.1 ... is liable for each
9 offense ... but in no case less than two hundred fifty dollars (\$ 250)" The court said: "The plain
10 meaning of this language is that ordinarily minimum statutory damages in the amount of \$ 250
11 must be awarded for a denial of equal access in violation of section 54 et seq., notwithstanding the
12 defendant's intent." (*Id.* at p. 177.) The *Cafe Royale* court reasoned that an interpretation of section
13 54.3 that included an element of intentional violation would, because the level of compliance
14 would diminish, yield "a result that is clearly repugnant to the statutory purpose." Further, the
15 Donald case held a Plaintiff need not visit the facility to sue for compliance. (*Id.* at pp. 179-180.) So
16 the trial court reversed the trial court judgment awarding the plaintiff nothing, and concluded that
17 he was entitled to the \$ 250 statutory minimum. (See *id.* at pp. 180-181.) Café Royale applies here.
18 Thus, Defendants' good faith efforts, if any, are irrelevant as is any reliance on a city building
19 inspector.
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21
22 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

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

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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 knowingly discriminate against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1. Plaintiffs allege the access violations alleged here are so obvious as to implicate at least a prima facie case of discriminatory intent.

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:

A. For injunctive relief pursuant to 42 U.S.C. § 12188(a). 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,

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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 damages pursuant to Cal. Civil Code § 52 or 54.3

C. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 51, 52

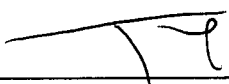
D. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: 11-15-06

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

J544

(Rev. 07/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES
SUIING ON BEHALF OF MEMBER DEMETRIO

DEFENDANTS

2006 NOV 15 PM 2:43
CHARLES BAKER, JR.; PATRICIA BAKER; RIVER BOTTOM BAR; 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 (IN U.S. PLAINTIFF CASES ONLY) San Diego, CA

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 2501 LAB 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)

- | | | |
|---|--|---|
| | PT DEF | PT DEF |
| Citizen of This State | <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 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 <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	PERSONAL INJURY <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 PERSONAL INJURY <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 PERSONAL PROPERTY <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 Rags <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <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 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <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/ICC 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 Foa Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <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	PRISONER PETITIONS <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 November 14, 2006

SIGNATURE OF ATTORNEY OF RECORD

131757 see 11/15/06 \$350

UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

131757 - A1
November 15, 2006

Code	Case #	Qty	Amount
CV006900	3-06-CV-2501		60.00 CC
Judge	- BURNS		
CV006400			100.00 CC
CV510000			190.00 CC

Total-> 350.00

FROM: CIVIL FILING AAA ASSOC. FOR
CHILDREN W/ DISABILITIES ET AL
V. CHARLES BAKER JR ET AL
VISA AUTH# 015052 SH