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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY RM DEPUTY

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

**TRIPPLE AAA ASSOCIATION FOR
CHILDREN AND ADULTS WITH
DEVELOPMENTAL DISABILITIES**

Plaintiffs,

v.

**GEORGIS OV EXPRESS SUBS; JOSE
SANCHEZ; ORAMS ENTERPRISES INC;
5001 NEWPORT AVE, SAN DIEGO, CA
92107-3009
; And DOES 1 THROUGH 10, Inclusive**

Defendants.

Case **06CV 2798** DMS WMc

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

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

JURISDICTION AND VENUE

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

SUPPLEMENTAL JURISDICTION

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

NAMED DEFENDANTS AND NAMED PLAINTIFF

3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Plaintiffs are further

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informed and believe and thereon allege that Defendants **GEORGIS OV EXPRESS SUBS; JOSE SANCHEZ; ORAMS ENTERPRISES INC;**
5001 NEWPORT AVE, SAN DIEGO, CA 92107-3009

are the owners, operators, and/or lessors of the real property, as well as the business operated thereon. As to Defendants and the property the public record reveals:

DBA NAME: GEORGI'S O V EXPRESS SUBS

BUSINESS ADDRESS:

5001 NEWPORT AVE
SAN DIEGO, CA 92107-3009

TELEPHONE: (619) 222-0293

TYPE: DBA

FILING DATE: 12/24/2004

COUNTY: SAN DIEGO

BUSINESS DESCRIPTION: RESTAURANTS

CONTACT NAME: JOSE SANCHEZ

OWNER: ORAMS ENTERPRISES INC (COMPANY/CORPORATION)

1 MAILING ADDRESS: 5548 FONTAINE ST, SAN DIEGO, CA 92120

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3 PROPERTY ADDRESS: 5001 NEWPORT AVE, SAN DIEGO, CA 92107-3009

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***** SALES INFORMATION *****

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RECORDED DATE: 09/30/1999

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DOCUMENT NUMBER: 1999-666306

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PRIOR SALES DATE: 07/31/1984

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DOCUMENT TYPE: REGULAR OWNER CHANGE

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***** ASSESSMENT INFORMATION *****

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ASSESSOR'S PARCEL NUMBER: 448-081-16

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COMPANY NAME: ORAMS ENTERPRISES, INC.

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MAILING ADDRESS:

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9189 VISTA ENTRADA

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LAKESIDE, CA 92040

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TYPE: ARTICLES OF INCORPORATION (DOMESTIC)

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STATUS: ACTIVE

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FTB STATUS:

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SUSPENSION CODE: NOT SUSPENDED (IN GOOD STANDING)

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DATE OF INCORPORATION/QUALIFICATION: 9/8/1999

REGISTERED AGENT: KHAIRI MANSOUR

REGISTERED OFFICE:

9189 VISTA ENTRADA

LAKESIDE, CA 92040

4. 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. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of **GEORGIS OV EXPRESS SUBS; JOSE SANCHEZ; ORAMS ENTERPRISES INC; 5001 NEWPORT AVE, SAN DIEGO, CA 92107-3009**

. 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.

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

6. Plaintiffs are members of a group within the State of California composed of persons with a wide

1 range of disabilities, limited to persons who use wheelchairs for mobility, who must be able to access retail
2 merchandise establishments, like Defendants' establishments located within the facility in which

3 **GEORGIS OV EXPRESS SUBS; JOSE SANCHEZ; ORAMS ENTERPRISES INC;**

4 **5001 NEWPORT AVE, SAN DIEGO, CA 92107-3009**

5 is located. Plaintiffs are precluded from equal access to Defendants' establishment so meaningfully
6 because the establishment fails to provide access for members of the disability community who use a
7 wheelchair for mobility to disabled parking facilities, exterior path of travel facilities, entrance facilities,
8 interior path of travel facilities, and display facilities. The Supreme Court of the United States has held as
9 long as the class representative provides adequate representation for the class' interests, the court has the
10 power to adjudicate the rights and obligations of all class members – even those who would otherwise be
11 beyond the reach of its personal jurisdiction. Phillips Petroleum Co. v. Shutts, 472 US 797 (1985). This
12 case stands for the proposition that minimum contacts are not required with nonresident members of a
13 plaintiff class because, “the burdens placed by a State upon absent class action plaintiff are not of the same
14 order or magnitude as those it places on an absent defendant.” Id. Plaintiffs allege they will insure class
15 members shall receive adequate notice of the proceedings and the opportunity to “opt out,” if required.

16 Defendants have conducted themselves such as to establish a pattern and practice of architectural
17 discrimination. Plaintiffs allege that Defendants have control over each and every facility, establishment,
18 and/or business located within the Defendant Landlords' facilities in which Defendant **GEORGIS OV**
19 **EXPRESS SUBS; JOSE SANCHEZ; ORAMS ENTERPRISES INC;**

20 **5001 NEWPORT AVE, SAN DIEGO, CA 92107-3009**

21 is located. Accordingly, Plaintiffs allege Defendants are responsible for removing architectural barriers at
22 Defendants' facilities and the establishment/business contained therein. For the aforementioned reasons,
23 Plaintiffs allege they are proper class representatives for members of the disability community who use a
24 wheelchair for mobility because the members of the disability community who use a wheelchair for
25 mobility are so numerous that joinder is impracticable due to the fact more than one hundred (100) persons
26 fall within the membership description. Also, the questions of law or fact are so common because the
27 members of the disability community who use a wheelchair for mobility are being denied their civil rights
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1 under federal and state laws – that is, each member of the disability community who use a wheelchair for
2 mobility suffered substantially similar violations relating to exterior path of travel facilities, entrance
3 facilities, restrooms, interior path of travel facilities, and display facilities. Further, the claims or defenses
4 of the representative parties are typical – Plaintiffs have the right to access facilities, establishments, and
5 businesses like those within the facility in which Defendant **GEORGIS OV EXPRESS SUBS; JOSE**
6 **SANCHEZ; ORAMS ENTERPRISES INC;**
7 **5001 NEWPORT AVE, SAN DIEGO, CA 92107-3009**

8 is located for many reasons such as the purchase of retail merchandise. Defendants’ facilities are open to
9 the general public and Plaintiffs have been denied access because of violations, as outlined above and
10 specifically addressed elsewhere within this Complaint. Additionally, Plaintiffs, as the named
11 representatives, will fairly and adequately represent the interests of the class because Plaintiffs and the
12 members of the disability community in the State of California who use a wheelchair for mobility have
13 suffered substantially similar violations. Finally, a pattern and practice exists on the part of Defendants,
14 and each of them, of architectural discrimination at their public facilities located within the State of
15 California. On information and good faith belief, Plaintiffs thereon allege that Defendants, prior to the
16 passing of the Americans With Disabilities Act in 1992, conceived, commissioned, designed, and
17 implemented among other things, a design for their public facilities, including, but not limited to disabled
18 parking facilities, exterior path of travel facilities, restroom, entrance facilities, interior path of travel
19 facilities, and display facilities, which do not meet the minimal standards outlined under the federal
20 regulations known as the Americans With Disabilities Act Accessibility Guidelines (“ADAAG”) and state
21 regulations, also known as Title 24 of the California Building Code, and to which non-compliant plan they
22 continue to utilize to the injury of the members of the class. For these reasons and the facts as stated
23 herein, Plaintiffs have the right to maintain this statewide class action pursuant to Fed.R.Civ.P. Rule 23(b).

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25 **CONCISE SET OF FACTS**

26 7. In 2006, Plaintiff’s Member went to the **GEORGIS OV EXPRESS SUBS; JOSE SANCHEZ;**
27 **ORAMS ENTERPRISES INC;**
28 **5001 NEWPORT AVE, SAN DIEGO, CA 92107-3009**

1 . As Said Member is unable to walk Plaintiff's Member uses a wheelchair. Plaintiff's Member experienced
2 architectural barriers at the place at which impeded his access. Plaintiff can prove these barriers as Plaintiff
3 conducted a survey of Defendants' facility and Plaintiff's counsel will provide it to competent defense
4 counsel. Plaintiff's Members allege its visually and hearing impaired members desire to go to Defendants'
5 facility but cannot because of lack of auxiliary aids. Plaintiffs specifically allege that Defendants knew, to a
6 substantial certainty, that the architectural barriers precluded wheelchair access. First, Plaintiffs will prove
7 that Defendants had actual knowledge that the architectural barriers precluded wheelchair access - that it
8 would be hard to believe that noncompliance with ADAAG as to accessible entrances could be other than
9 intentional. Second, due to the abundance of ADA information and constant news covers of ADA lawsuits,
10 Defendants had actual knowledge of the ADA and decided deliberately not to remove architectural barriers.
11 Third, Defendants have no plans to remodel. Fourth, it would be hard to believe that Defendants did not
12 have actual knowledge of ADA given all the ADA public awareness campaigns, the abundance of free
13 ADA information and the media's constant ADA coverage. Fifth, a human being acting for the defendants
14 made a conscious decision as to how to proceed given the presence of the architectural barriers. Plaintiffs
15 allege any alternative methods preclude integration of wheelchair patrons, as it requires them to use a
16 second-class entrance. Also, expert testimony will show the facility contained inaccessible features.
17 Plaintiffs allege businesses often state that they have few customers with disabilities. Plaintiffs allege such
18 customers avoid patronizing inaccessible business and are deterred from patronizing such businesses. The
19 courts have recognized deterrence-based damage claims under Civil Code 54.3 and 52. Since California
20 courts have held that the California disability access laws manifest an intent on the part of the legislature
21 that they be interpreted in a manner that maximizes incentives for compliance, (see Donald, 266 Cal. Rptr.
22 at 808-11) the courts conclude that application of this canon of construction requires that 54.1 and 51, and
23 their respective damages provisions, 54.3 and 52, be interpreted as extending to claims based on incidents
24 of deterrence. The courts therefore hold that where a plaintiff can prove that violations of applicable
25 California disability access standards deterred her on a particular occasion from attempting to attend a place
26 of public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and 51
27 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still face
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1 systemic discrimination each and every day. One of the most debilitating forms of discrimination is
2 segregation imposed by others. Discrimination also includes exclusion, or denial of benefits, services, or
3 other opportunities that are as effective and meaningful as those provided to others. Discrimination results
4 from actions or inactions that discriminate by effect as well as by intent or design. Discrimination also
5 includes harms resulting from the construction of transportation, architectural, and communication barriers
6 and the adoption or application of standards and criteria and practices and procedures based on
7 thoughtlessness or indifference-of benign neglect. Discrimination also includes harms affecting individuals
8 with a history of disability, and those regarded by others as having a disability as well as persons associated
9 with such individuals that are based on false presumptions, generalizations, misperceptions, patronizing
10 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the effects a
11 person's disability may have on others. The ADA aim is: (1) To provide a clear and comprehensive
12 national mandate for the elimination of discrimination against individuals with disabilities; [and] (2) to
13 provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with
14 disabilities. (42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)) Plaintiffs allege the legislative history of the Act,
15 which reflects congressional concerns over the deleterious effects of discrimination against people with
16 disabilities. As a result, Congress incorporated within Title II of the ADA the remedial provision in Section
17 504 of the Rehabilitation Act of 1973. (As amended 29 U.S.C. § 794a)(42 U.S.C. § 12133)(See *Smith v.*
18 *Barton*, 914 F.2d 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written
19 recently about the ADA and its mechanisms of enforcement. (See e.g., *Doran v. Del Taco, Inc.*, ---
20 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*
21 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)) For purposes of this suit, it is sufficient to note
22 that the statute creates a private right of action through which a litigant may seek injunctive relief as well as
23 attorneys' fees and costs. (42 U.S.C. § 2188(a)) Plaintiffs allege that it cannot be said that because an
24 attorney has chosen to specialize in an area, which provides statutory attorneys fees his practice is
25 necessarily suspect. Class actions, antitrust, and consumer protection statutes are just some of the examples
26 where the legislature has made a determination that society will benefit from private attorneys general. The
27 ADA is but another example. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH
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1 DEVELOPMENTAL DISABILITIES is an organization that advocates on the behalf of children and others
2 with disabilities specifically including adults who use wheelchairs when their civil rights and liberties have
3 been violated. Plaintiff's Member visited the place in 2006 and plans on returning to the place and he
4 encountered architectural barriers there. Association standing requires that (1) its members would otherwise
5 have standing to sue in their own right, (2) the interests the association seeks to protect are germane to the
6 organization's purpose and (3) neither the claim asserted nor the relief requested requires the participation
7 of individual members. *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333, 343; *Greater*
8 *Los Angeles Council On Deafness, Inc. v. Baldrige*, 827 F.2d 1353, 1358 (9th Cir. 1987). Plaintiffs have
9 standing to bring this action. Plaintiff Association has at least four members who use wheelchairs as they
10 cannot walk at all. The purpose of the Association is to fight to remove access and architectural barriers.

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

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

21 10. When Plaintiff's Member researched Defendants' facilities, he discovered he would be unable to
22 use the public accommodations' at Defendants' business establishment because they failed to comply with
23 ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or
24 California's Title 24 Building Code Requirements as specified herein. Defendants failed to remove access
25 barriers within the parking, exterior path of travel and entrance public accommodations of Defendants'
26 establishment. Plaintiff's Member was deterred from patronizing the facility because he experienced
27 difficulty using the parking, exterior path of travel and entrance access barriers at Defendants' facility.
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1 11. The architectural regulations or "design standards" implemented by the federal ADA are often
2 referred to in the literature as "ADAAGs," which is an acronym for "ADA Architectural Guidelines." (See
3 *Independent Living I*, 982 F. Supp. at pp. 707-708 ["The guidelines issued by the Access Board are
4 denominated the 'ADA Accessibility Guidelines' ('ADAAG.')] The design standards enacted by the Attorney
5 General are identical to the ADAAGs, but are denominated as 'Standards.' Despite the technical distinction,
6 the two terms are often used interchangeably."]; *Access Now, Inc. v. Ambulatory Surgery Center Group,*
7 *Ltd. (S.D. Fla. 2001) 146 F. Supp. 2d 1334, 1336* ["These guidelines are called ... ("ADAAG")"].) The
8 "ADAAGs" are found in Appendix A to Part 36 of title 28 of the Code of Federal Regulations. The
9 ADAAG violations alleged here are basically so intuitive that it would be hard to believe that
10 noncompliance with them could be other than intentional.

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

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

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

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

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

9 **NOTICE**

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

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

14 18. **GEORGIS OV EXPRESS SUBS; JOSE SANCHEZ; ORAMS ENTERPRISES INC;**
15 **5001 NEWPORT AVE, SAN DIEGO, CA 92107-3009**

16 ; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

17 19. Plaintiffs aver that the Defendants are liable for the following claims as alleged below:
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19 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

22 **Claim I**

23 19. Based on the facts stated above, Defendants discriminated against Plaintiffs on the basis of
24 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or
25 accommodations of any place of public accommodation as Defendants own, lease (or lease to), or operate
26 a place of public accommodation in violation of 42 U.S.C. §12182.
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28 **Claim II**

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

5 Claim III

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

11 Claim IV

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

16 Claim V

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

20 Claim VI

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

25 Claim VII

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

4 Claim VIII

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

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

17 Claim IX

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

22 Claim X

23 29. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants altered
24 the use of their establishment in a manner that affected or could have affected the usability of the facility or
25 part thereof and failed to make alterations in such a manner that, to the maximum extent feasible, the
26 altered portions of the facility are readily accessible to and usable by individuals with disabilities, including
27 individuals who use wheelchairs in violation of 42 U.S.C. §12183.
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30. 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

31. 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. 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. The Disabled Persons Act is found in *sections 54* of the Civil Code, and has been around in some form on the statute books since the late 1960's--more than 20 years before the federal ADA. (See Stats. 1968, ch. 461.) The Disabled Persons Act begins with the statement in *subdivision (a) of section 54* that "Individuals with disabilities or medical conditions have the same right as the general public to the full and free use of ... public facilities, and other public places." (*β 54, subd. (a).*) *Section 54* is immediately followed by *section 54.1, subdivision (a)(3)* of which--in contrast to the more spartan reference to the ADA in *section 51*--specifically incorporates ADA regulations. The enforcement of *section 54* is to be found in *section 54.3. Subdivision (a)(3) of section 54.1* provides: " 'Full and equal access,' for purposes of this section in its application to transportation, means access that meets the standards of Titles II and III of the

1 Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant
2 thereto, except that, if the laws of this state prescribe higher standards, it shall mean access that meets those
3 higher standards." *Subdivision (a) of section 54.3* provides in its entirety: "Any person or persons, firm or
4 corporation who denies or interferes with admittance to or enjoyment of the public facilities as specified in
5 *Sections 54 and 54.1* or otherwise interferes with the rights of an individual with a disability under *Section*
6 *54, 54.1, and 54.2* is liable for each offense for the actual damages and any amount as may be determined
7 by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages
8 but in no case less than one thousand dollars (\$ 1,000), and attorney's fees as may be determined by the
9 court in addition thereto, suffered by any person denied any of the rights provided in *Sections 54, 54.1, and*
10 *54.2*. 'Interfere' for purposes of this section, includes, but is not limited to, preventing or causing the
11 prevention of a guide dog, signal dog, or service dog from carrying out its functions in assisting a disabled
12 person." *Section 54.3* was construed in the 1990 *Cafe Royale* decision as providing for strict liability--that
13 is, liability without any need for intentional conduct--prior to the 1992 legislation which added both
14 *subdivision (f) to section 51* and *subdivision (c) of section 54* (back then in the context of the minimum
15 penalty under *section 54.3* which was \$ 250; now it is \$ 1,000). *Cafe Royale* was a case decided prior to the
16 enactment of the ADA, and contains not a word about federal law. It was also decided exclusively under
17 *Civil Code section 54 et seq.*, and contains not one word on the Unruh Act. In *Cafe Royale*, a wheelchair
18 user (a former deputy Attorney General and member of the Attorney General's task force on disability)
19 discovered that he could not reach the main dining area of a tiered restaurant on his own, though the
20 restaurant offered to lift him up the stairs. He declined an offer of help because it would attract attention
21 and because he might be dropped in the process of being bodily picked up and moved. He sued the
22 restaurant under *section 54.3* because of the absence of ramps or elevators to the second-tiered area. The
23 restaurant thought that it had complied with the law because its architect thought, based on an informal
24 conversation with an employee of the San Francisco building department, that a certain number of
25 handicapped seating places was "all that was needed for compliance." (See *id. at. p. 174.*) The building
26 department employee, however, gave the restaurant architect erroneous advice. In fact, the State Building
27 Standards Code (required by *Government Code section 4450 et seq*) provided that all floors of a restaurant
28

1 be on a common level or else accessible by either ramps or elevators. While a hardship exemption might be
 2 obtained, 75 percent of the main dinning area would still need to be handicap accessible, and the Cafe
 3 Royale's option of seating wheelchair patrons in the bar or having them carried to the common area was a
 4 violation. On appeal, the fact of the violation was understood by all parties: "All parties agreed that Cafe
 5 Royale's seating capacity was in violation of the handicap access requirements." (*Cafe Royale, supra*, 218
 6 *Cal. App. 3d at p. 174.*) Hence issue was joined as to whether the restaurant's "good faith" belief that it was
 7 "in compliance" (*ibid.*) was sufficient to deny the patron recovery under *section 54.3*. The trial court
 8 thought so, but the appellate court disagreed. The appellate court reasoned thusly: the fact that *section 54.3*
 9 said a person who "denies or interferes with admittance to or enjoyment of the public facilities as specified
 10 in *section 54* and *54.1* ... is liable for each offense ... but in no case less than two hundred fifty dollars (\$
 11 250)" The court said: "The plain meaning of this language is that ordinarily minimum statutory damages
 12 in the amount of \$ 250 must be awarded for a denial of equal access in violation of *section 54 et seq.*,
 13 *notwithstanding the defendant's intent.*" (*Id. at p. 177.*) The *Cafe Royale* court reasoned that an
 14 interpretation of *section 54.3* that included an element of intentional violation would, because the level of
 15 compliance would diminish, yield "a result that is clearly repugnant to the statutory purpose." Further, the
 16 Donald case held a Plaintiff need not visit the facility to sue for compliance. (*Id. at pp. 179-180.*) So the trial
 17 court reversed the trial court judgment awarding the plaintiff nothing, and concluded that he was entitled to
 18 the \$ 250 statutory minimum. (See *id. at pp. 180-181.*) Café Royale applies here. Thus, Defendants' good
 19 faith efforts, if any, are irrelevant as is any reliance on a city building inspector.

20
 21 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

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

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

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

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

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

16 35. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
17

18 DEMAND FOR JUDGMENT FOR RELIEF:

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

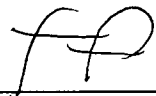
27 B. For damages pursuant to Cal. Civil Code § 52 or 54.3
28

- 1 C. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 51, 52;
- 2 54.3;
- 3 D. A Jury Trial and;
- 4 E. For such other further relief as the court deems proper.

5 Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

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7
8 Dated: DECEMBER 26, 2006

By: 

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

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UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

133240 - A3
December 27, 2006

Code	Case #	Qty	Amount
CV086980	3-06-CV-2798		60.00 CC
Judge	- SABRAW		
CV086400			100.00 CC
CVS10000			190.00 CC
Total ->			350.00

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