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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

'06CV 2589

DMS WMc

Case No.:

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

CLASS ACTION

Plaintiffs,

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

v.

**KHUDAIR IMAD M & CRUZ
TERESTA d.b.a. ARABIC MARKET;
IMAD M. KHUDAIR; TERESTA
CRUZ; And DOES 1 THROUGH 10,
Inclusive**

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

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

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

8 **JURISDICTION AND VENUE**

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

14 **SUPPLEMENTAL JURISDICTION**

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

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3 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
4 franchise organized and existing and/or doing business under the laws of the State of California.
5 Plaintiffs are further informed and believe and thereon allege that Defendants IMAD M.
6 KHUDAIR; and TERESTA CRUZ are the owners, operators, and/or lessors of the real property, as
7 well as the business operated thereon. As to Defendants and the property the public record reveals:

8 Buyer: KHUDAIR IMAD M & CRUZ TERESTA d.b.a. ARABIC MARKET

9 Buyer Mailing Address: 4869 University Avenue, San Diego, CA

10 Property Address: (same as mailing address above)

11 Assessor's Parcel Number: 471-610-45

12 DBA Name: KHUDAIR IMAD M & CRUZ TERESTA d.b.a. ARABIC MARKET

13 Business Address: 4869 University Avenue, San Diego, CA

14 Contact Name: IMAD M. KHUDAIR; and TERESTA CRUZ

15 4. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the
16 organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
17 DISABILITIES and persons associated with its Members who accompanied Members to
18 Defendants' facilities. Defendants Does 1 through 10, were at all times relevant herein
19 subsidiaries, employers, employees, agents, of KHUDAIR IMAD M & CRUZ TERESTA d.b.a.
20 ARABIC MARKET; IMAD M. KHUDAIR; and TERESTA CRUZ. Plaintiffs are ignorant of the
21 true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore
22 sue these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this
23 complaint to allege the true names and capacities of the Does when ascertained.

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

1 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

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

4 6. Plaintiffs are members of a group within the State of California composed of persons with a
5 wide range of disabilities, limited to persons who use wheelchairs for mobility, who must be able to
6 access retail merchandise establishments, like Defendants' establishments located within the
7 facility in which KHUDAIR IMAD M & CRUZ TERESTA d.b.a. ARABIC MARKET is located.
8 Plaintiffs are precluded from equal access to Defendants' establishment so meaningfully because
9 the establishment fails to provide access for members of the disability community who use a
10 wheelchair for mobility to disabled parking facilities, exterior path of travel facilities, entrance
11 facilities, interior path of travel facilities, and display facilities. The Supreme Court of the United
12 States has held as long as the class representative provides adequate representation for the class'
13 interests, the court has the power to adjudicate the rights and obligations of all class members –
14 even those who would otherwise be beyond the reach of its personal jurisdiction. Phillips
15 Petroleum Co. v. Shutts, 472 US 797 (1985). This case stands for the proposition that minimum
16 contacts are not required with nonresident members of a plaintiff class because, "the burdens
17 placed by a State upon absent class action plaintiff are not of the same order or magnitude as those
18 it places on an absent defendant." Id. Plaintiffs allege they will insure class members shall receive
19 adequate notice of the proceedings and the opportunity to "opt out," if required. Defendants have
20 conducted themselves such as to establish a pattern and practice of architectural discrimination.
21 Plaintiffs allege that Defendants have control over each and every facility, establishment, and/or
22 business located within the Defendant Landlords' facilities in which Defendant KHUDAIR IMAD
23 M & CRUZ TERESTA d.b.a. ARABIC MARKET is located. Accordingly, Plaintiffs allege
24 Defendants are responsible for removing architectural barriers at Defendants' facilities and the
25 establishment/business contained therein. For the aforementioned reasons; Plaintiffs allege they are
26 proper class representatives for members of the disability community who use a wheelchair for
27 mobility because the members of the disability community who use a wheelchair for mobility are
28 so numerous that joinder is impracticable due to the fact more than one hundred (100) persons fall

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

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2 7. In 2006, Plaintiff's Member went to the KHUDAIR IMAD M & CRUZ TERESTA d.b.a.
3 ARABIC MARKET. As Said Member is unable to walk Plaintiff's Member uses a wheelchair.
4 Plaintiff's Member experienced architectural barriers at the place at which impeded his access.
5 Plaintiff can prove these barriers as Plaintiff conducted a survey of Defendants' facility and
6 Plaintiff's counsel will provide it to competent defense counsel. Plaintiff's Members allege its
7 visually and hearing impaired members desire to go to Defendants' facility but cannot because of
8 lack of auxiliary aids.
9 Plaintiffs specifically allege that Defendants knew, to a substantial certainty, that the architectural
10 barriers precluded wheelchair access. First, Plaintiffs will prove that Defendants had actual
11 knowledge that the architectural barriers precluded wheelchair access - that it would be hard to
12 believe that noncompliance with ADAAG as to accessible entrances could be other than
13 intentional. Second, due to the abundance of ADA information and constant news covers of ADA
14 lawsuits, Defendants had actual knowledge of the ADA and decided deliberately not to remove
15 architectural barriers. Third, Defendants have no plans to remodel. Fourth, it would be hard to
16 believe that Defendants did not have actual knowledge of ADA given all the ADA public
17 awareness campaigns, the abundance of free ADA information and the media's constant ADA
18 coverage. Fifth, a human being acting for the defendants made a conscious decision as to how to
19 proceed given the presence of the architectural barriers. Plaintiffs allege any alternative methods
20 preclude integration of wheelchair patrons, as it requires them to use a second-class entrance. Also,
21 expert testimony will show the facility contained inaccessible features. Plaintiffs allege businesses
22 often state that they have few customers with disabilities. Plaintiffs allege such customers avoid
23 patronizing inaccessible business and are deterred from patronizing such businesses. The courts
24 have recognized deterrence-based damage claims under Civil Code 54.3 and 52. Since California
25 courts have held that the California disability access laws manifest an intent on the part of the
26 legislature that they be interpreted in a manner that maximizes incentives for compliance, (see
27 Donald, 266 Cal. Rptr. at 808-11) the courts conclude that application of this canon of construction
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1 requires that 54.1 and 51, and their respective damages provisions, 54.3 and 52, be interpreted as
2 extending to claims based on incidents of deterrence. The courts therefore hold that where a
3 plaintiff can prove that violations of applicable California disability access standards deterred her
4 on a particular occasion from attempting to attend a place of public accommodation, that plaintiff
5 states a claim for relief under California Civil Code 54.1 and 51 and, in particular, for damages,
6 under 54.3 and 52. Plaintiffs allege people with disabilities still face systemic discrimination each
7 and every day. One of the most debilitating forms of discrimination is segregation imposed by
8 others. Discrimination also includes exclusion, or denial of benefits, services, or other
9 opportunities that are as effective and meaningful as those provided to others. Discrimination
10 results from actions or inactions that discriminate by effect as well as by intent or design.

11 Discrimination also includes harms resulting from the construction of transportation, architectural,
12 and communication barriers and the adoption or application of standards and criteria and practices
13 and procedures based on thoughtlessness or indifference-of benign neglect. Discrimination also
14 includes harms affecting individuals with a history of disability, and those regarded by others as
15 having a disability as well as persons associated with such individuals that are based on false
16 presumptions, generalizations, misperceptions, patronizing attitudes, ignorance, irrational fears, and
17 pernicious mythologies. Discrimination also includes the effects a person's disability may have on
18 others. The ADA aim is: (1) To provide a clear and comprehensive national mandate for the
19 elimination of discrimination against individuals with disabilities; [and] (2) to provide clear, strong,
20 consistent, enforceable standards addressing discrimination against individuals with disabilities.

21 (42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)) Plaintiffs allege the legislative history of the Act,
22 which reflects congressional, concerns over the deleterious effects of discrimination against people
23 with disabilities. As a result, Congress incorporated within Title II of the ADA the remedial
24 provision in Section 504 of the Rehabilitation Act of 1973. (As amended 29 U.S.C. § 794a)(42
25 U.S.C. § 12133)(See *Smith v. Barton*, 914 F.2d 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct.
26 2825 (1991)) Much has been written recently about the ADA and its mechanisms of enforcement.
27 (See e.g., *Doran v. Del Taco, Inc.*, --- F.Supp.2d ---- (C.D. Cal. June 9, 2005); Molski, 347
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1 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn Restaurant*, 96 F.Supp.2d 1065, 1070-71
2 (D.Haw.2000)) For purposes of this suit, it is sufficient to note that the statute creates a private
3 right of action through which a litigant may seek injunctive relief as well as attorneys' fees and
4 costs. (42 U.S.C. § 2188(a)) Plaintiffs allege that it cannot be said that because an attorney has
5 chosen to specialize in an area, which provides statutory attorneys fees his practice is necessarily
6 suspect. Class actions, antitrust, and consumer protection statutes are just some of the examples
7 where the legislature has made a determination that society will benefit from private attorneys
8 general. The ADA is but another example. Plaintiff TRIPPLE AAA ASSOCIATION FOR
9 CHILDREN WITH DEVELOPMENTAL DISABILITIES is an organization that advocates on the
10 behalf of children and others with disabilities specifically including adults who use wheelchairs
11 when their civil rights and liberties have been violated. Plaintiff's Member visited the place in 2006
12 and plans on returning to the place and he encountered architectural barriers there. Association
13 standing requires that (1) its members would otherwise have standing to sue in their own right, (2)
14 the interests the association seeks to protect are germane to the organization's purpose and (3)
15 neither the claim asserted nor the relief requested requires the participation of individual members.
16 *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333, 343; *Greater Los Angeles*
17 *Council On Deafness, Inc. v. Baldrige*, 827 F.2d 1353, 1358 (9th Cir. 1987). Plaintiffs have
18 standing to bring this action. Plaintiff Association has at least four members who use wheelchairs
19 as they cannot walk at all. The purpose of the Association is to fight to remove access and
20 architectural barriers.

21
22 8. Plaintiff's Member has a physical impairment and due to this impairment he has learned to
23 successfully operate a wheelchair. Plaintiff's Member and Plaintiff(s) has physical impairments
24 because her conditions affect one or more of the following body systems: neurological,
25 musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's Member and
26 Plaintiff(s) said physical impairments substantially limits one or more of the following major life
27 activities: walking. In addition, Plaintiff's Member and Plaintiff(s) cannot perform one or more of
28 the said major life activities in the manner, speed, and duration when compared to the average

1 person. Moreover, Plaintiff's Member and Plaintiff(s) has a history of or has been classified as
2 having a physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

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

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

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

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

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

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

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

24
25 **NOTICE**

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

WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

18. KHUDAIR IMAD M & CRUZ TERESTA d.b.a. ARABIC MARKET; IMAD M. KHUDAIR; TERESTA CRUZ; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

Claim I

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

Claim II

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

Claim III

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

1 Claim IV

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

7 Claim V

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

11 Claim VI

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

16 Claim VII

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

22 Claim VIII

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

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

10 Claim IX

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

15 Claim X

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

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

22
23
24 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
25 **CALIFORNIA ACCESSIBILITY LAWS**

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

27 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's
28 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,

1 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or
2 operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility
3 violated California's Title 24 Accessible Building Code by failing to provide access to Defendants'
4 facilities due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
5 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
6 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
7 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
8 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
9 Detectable Warnings, Signage, and Telephones. These violations denied Plaintiff's Member and
10 Plaintiff(s) full and equal access to Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s)
11 was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's
12 Member and Plaintiff(s) was denied full, equal and safe access to Defendants' facility, causing
13 severe emotional distress. The Disabled Persons Act is found in *sections 54* of the Civil Code, and
14 has been around in some form on the statute books since the late 1960's--more than 20 years before
15 the federal ADA. (See Stats. 1968, ch. 461.) The Disabled Persons Act begins with the statement in
16 *subdivision (a) of section 54* that "Individuals with disabilities or medical conditions have the same
17 right as the general public to the full and free use of ... public facilities, and other public places." (*β*
18 *54, subd. (a).*) *Section 54* is immediately followed by *section 54.1, subdivision (a)(3)* of which--in
19 contrast to the more spartan reference to the ADA in *section 51*--specifically incorporates ADA
20 *regulations*. The enforcement of *section 54* is to be found in *section 54.3. Subdivision (a)(3) of*
21 *section 54.1* provides: " 'Full and equal access,' for purposes of this section in its application to
22 transportation, means access that meets the standards of Titles II and III of the Americans with
23 Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto,
24 except that, if the laws of this state prescribe higher standards, it shall mean access that meets those
25 higher standards." *Subdivision (a) of section 54.3* provides in its entirety: "Any person or persons,
26 firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities
27 as specified in *Sections 54* and *54.1* or otherwise interferes with the rights of an individual with a
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1 disability under *Section 54, 54.1, and 54.2* is liable for each offense for the actual damages and any
2 amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of
3 three times the amount of actual damages but in no case less than one thousand dollars (\$ 1,000),
4 and attorney's fees as may be determined by the court in addition thereto, suffered by any person
5 denied any of the rights provided in *Sections 54, 54.1, and 54.2*. 'Interfere' for purposes of this
6 section, includes, but is not limited to, preventing or causing the prevention of a guide dog, signal
7 dog, or service dog from carrying out its functions in assisting a disabled person." *Section 54.3* was
8 construed in the 1990 *Cafe Royale* decision as providing for strict liability--that is, liability without
9 any need for intentional conduct--prior to the 1992 legislation which added both *subdivision (f) to*
10 *section 51* and *subdivision (c) of section 54* (back then in the context of the minimum penalty under
11 *section 54.3* which was \$ 250; now it is \$ 1,000). *Cafe Royale* was a case decided prior to the
12 enactment of the ADA, and contains not a word about federal law. It was also decided exclusively
13 under *Civil Code section 54 et seq.*, and contains not one word on the Unruh Act. In *Cafe Royale*,
14 a wheelchair user (a former deputy Attorney General and member of the Attorney General's task
15 force on disability) discovered that he could not reach the main dining area of a tiered restaurant on
16 his own, though the restaurant offered to lift him up the stairs. He declined an offer of help because
17 it would attract attention and because he might be dropped in the process of being bodily picked up
18 and moved. He sued the restaurant under *section 54.3* because of the absence of ramps or elevators
19 to the second-tiered area. The restaurant thought that it had complied with the law because its
20 architect thought, based on an informal conversation with an employee of the San Francisco
21 building department, that a certain number of handicapped seating places was "all that was needed
22 for compliance." (See *id. at. p. 174.*) The building department employee, however, gave the
23 restaurant architect erroneous advice. In fact, the State Building Standards Code (required by
24 *Government Code section 4450 et seq*) provided that all floors of a restaurant be on a common level
25 or else accessible by either ramps or elevators. While a hardship exemption might be obtained, 75
26 percent of the main dinning area would still need to be handicap accessible, and the *Cafe Royale's*
27 option of seating wheelchair patrons in the bar or having them carried to the common area was a
28

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

19
 20 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

21 32. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint, Defendants
 22 failed and refused to provide a reasonable alternative by modifying its practices, policies, and
 23 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others
 24 similarly situated in entering and utilizing Defendants' services as required by Civil Code § 54.1.
 25 Thus, Plaintiff's Member and Plaintiff(s) were subjected to discrimination in violation of Civil
 26 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
3 discriminate against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52,
4 and 54.1. Plaintiffs allege the access violations alleged here are so obvious as to implicate at least a
5 prima facie case of discriminatory intent.

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

17 35. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
18

19 DEMAND FOR JUDGMENT FOR RELIEF:

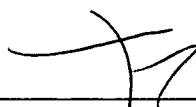
20
21 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a). Plaintiffs request this Court enjoin
22 Defendants to remove all architectural barriers in, at, or on their facilities related to the following:
23 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor
24 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform
25 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
26 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars,
27 and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
28

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

7 Respectfully submitted:

8
9 Dated: 11-22-06

PINNOCK & WAKEFIELD, A.P.C.

By: 

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

28

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

DEFENDANTS KHUDAIR IMAD M & CRUZ TERESTA W. FARABIC MARKET; IMAD M. KHUDAIR; TERESTA CRUZ; and does 1 through 10, Inclusive, Defendants.

2006 NOV 22 AM 10: 23

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego, CA (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, LIST THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER), Theodore A. Pinnock, Esq. SBN 153434 Michelle L. Wakefield, Esq. SBN 200424 David C. Wakefield, Esq. SBN:185736 Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410 San Diego, California 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'06CV 2589 DMS WMC

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

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

- PT DEF PT DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business in This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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 22, 2006

SIGNATURE OF ATTORNEY OF RECORD

Handwritten notes: 132037 ser 11/22/06 \$350

Handwritten signature

UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

132037 - A1
November 22, 2006

Code	Case #	Qty	Amount
CV086900	3-06-CV-2589		60.00 CC
Judge	= SABRAW		
CV086400			100.00 CC
CV510000			190.00 CC
Total->			350.00

FROM: CIVIL FILING AAA ASSOC. FOR
CHILDREN W/ DISABILITIES ET AL
V. KHUDAIR IMAD ET AL
VISA AUTH# 010005 SH