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Attorneys for Plaintiffs

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

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

Plaintiffs,

v.

**NEW ORIENT CAFÉ INC. d.b.a. NEW
ORIENT CAFÉ; NEW ORIENT CAFÉ,
INC.; And DOES 1 THROUGH 10,
Inclusive**

Defendants.

Case No.: **'06CV 2218 L RBB**

**CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS**

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

DEMAND FOR JURY TRIAL

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

INTRODUCTION

Plaintiffs herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial District of the United States District Court of the Southern District of California, that Defendants have in the past, and presently are, engaging in discriminatory practices against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to compel access compliance because empirical research on the effectiveness of Title III of the Americans with Disabilities Act indicates this Title has failed to achieve full and equal access simply by the executive branch of the Federal Government funding and promoting voluntary compliance efforts. Further, empirical research shows when individuals with disabilities give

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1 actual notice of potential access problems to places of public accommodation without a federal
2 civil rights action, the public accommodations do not remove the access barriers. Therefore,
3 Plaintiffs make the following allegations in this federal civil rights action:

4 **JURISDICTION AND VENUE**

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

10 **SUPPLEMENTAL JURISDICTION**

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

24 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

25 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
26 franchise organized and existing and/or doing business under the laws of the State of California.
27 Plaintiffs are informed and believe and thereon allege that Defendant NEW ORIENT CAFÉ INC.
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1 d.b.a. NEW ORIENT CAFÉ is located at 551 E. San Ysidro Blvd, San Ysidro, California 92173.
2 Plaintiffs are informed and believe and thereon allege that Defendant NEW ORIENT CAFÉ INC.
3 d.b.a. NEW ORIENT CAFÉ; NEW ORIENT CAFÉ, INC. is the owner, operator and/or lessor of
4 NEW ORIENT CAFÉ, as well as the property located at 551 E. San Ysidro Blvd., San Ysidro, CA,
5 92173; Assessor's Parcel Number 666-200-13. Defendant NEW ORIENT CAFÉ, INC. is located
6 at c/o Yeh Nan Liang, 551 E. San Ysidro Blvd., San Ysidro, California 92173. The words
7 "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization and
8 TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES
9 and persons associated with its Members who accompanied Members to Defendants' facilities.

10 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
11 employees, agents, of NEW ORIENT CAFÉ INC. d.b.a. NEW ORIENT CAFÉ; and NEW
12 ORIENT CAFÉ, INC. Plaintiffs are ignorant of the true names and capacities of Defendants sued
13 herein as Does 1 through 10 inclusive and therefore sues these Defendants by such fictitious names.

14 Plaintiffs will pray leave of the court to amend this complaint to allege the true names and
15 capacities of the Does when ascertained.

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

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

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

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17 **CONCISE SET OF FACTS**

18 7. **TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL**
19 **DISABILITIES** was formed to advocate for the civil rights of minorities and children with
20 disabilities; a substantial population with neither an advocate nor voice in the disability movement.
21 It is well documented by the federal government and others that the promises and opportunities
22 afforded by the Americans with Disabilities Act are not reaching minorities with disabilities.
23 Further, there is abundance of evidence to show, despite the federal government's unprecedented
24 and aggressive ADA awareness and technical assistance drive, businesses in the minority
25 communities are not complying with the ADA. For example, the National Council on Disability
26 reported in 1993 that minorities with disabilities face double discrimination; they are poorer; they
27 have fewer opportunities than others. Also, the fastest growing segment of the disability population
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1 is from minority communities because those communities are growing faster than the Anglo
2 communities, and because persons from minority communities have a higher risk of disability. In
3 fact, studies show the rate of disability for Whites is 7%, for African-American 13%, and for
4 Hispanics 9%. Moreover, from 1983 to 1994 the disability non-White population increased by
5 50.4% whereas the disability White population only increased 11.3%. Even more intriguing is the
6 non-White 18 years older and under population rate of disability increased by 86.6%. Further,
7 evidence suggests minorities with disabilities tend to live with their families in conditions of
8 poverty (61%), and they tend not to advocate for their civil rights. Hence, Members of TRIPPLE
9 AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES specifically
10 intend to zealously advocate for minorities and children with disabilities and desire equal access to
11 businesses within their community, as well as communities more populous of minorities with
12 disabilities, and these are the reasons Plaintiffs filed this action.

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14 Plaintiffs allege businesses often state that they have few customers with disabilities.
15 Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from
16 patronizing such businesses. The courts have recognized deterrence-based damage claims under
17 Civil Code 54.3 and 52. Since California courts have held that the California disability access laws
18 manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes
19 incentives for compliance, see Donald, 266 Cal. Rptr. at 808-11, the courts conclude that
20 application of this canon of construction requires that 54.1 and 51, and their respective damages
21 provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The
22 courts therefore hold that where a plaintiff can prove that violations of applicable California
23 disability access standards deterred her on a particular occasion from attempting to attend a place of
24 public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and
25 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still
26 face systemic discrimination each and every day. One of the most debilitating forms of
27 discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial
28 or benefits, services, or other opportunities that are as effective and meaningful as those provided to

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

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28 8. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL

1 DISABILITIES is an organization that advocates on the behalf of minorities and children with
2 disabilities when their civil rights and liberties have been violated.

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

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

7 11. When Plaintiff's Member and Plaintiff attempted to visited Defendants' facilities, they
8 discovered the parking, exterior path of travel, ramp and entrance public accommodations at
9 Defendants' business establishment fails to comply with ADA Access Guidelines For Buildings
10 and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code
11 Requirements as specified in Attachment A. Defendants failed to remove access barriers within the
12 parking, exterior path of travel, ramp and entrance public accommodations of Defendants'
13 establishment. Plaintiff's Members were deterred from patronizing the facility because they would
14 have personally experienced difficulty with access barriers at Defendants' facility as specified in
15 Attachment A.

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

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

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

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

14 **NOTICE**

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

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

19 17. NEW ORIENT CAFÉ INC. d.b.a. NEW ORIENT CAFÉ; NEW ORIENT CAFÉ, INC.; and
20 Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

22 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

24 **With Disabilities Act Of 1990**

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

26 19. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's
27 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,
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1 privileges, advantages, or accommodations. Plaintiffs allege Defendants are a public
2 accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or
3 services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. §
4 12182(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of
5 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and
6 Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

15
16 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such A Manner**
17 **That The Altered Portions Of The Facility Are Readily Accessible And Usable By Individuals**
18 **With Disabilities**

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

27 22. Additionally, the Defendants undertook an alteration that affects or could affect the usability
28 of or access to an area of the facility containing a primary function after January 26, 1992.

1 Defendants further failed to make the alterations in such a manner that, to the maximum extent
2 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains
3 serving the altered area, are readily accessible to and usable by individuals with disabilities in
4 violation 42 U.S.C. §12183(a)(2).

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

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

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

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

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6 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**
7 **Procedures**

8 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Defendants
9 failed and refused to provide a reasonable alternative by modifying its practices, policies and
10 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others
11 similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
12 12188(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of
13 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and
14 Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

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

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

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CLAIM I: Denial Of Full And Equal Access

29. 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.

30. These violations denied Plaintiff's Member and Plaintiff(s) full and equal access to Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff(s) was denied full, equal and safe access to Defendants' facility, causing severe emotional distress.

CLAIM II: Failure To Modify Practices, Policies And Procedures

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

CLAIM III: Violation Of The Unruh Act

32. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint and because Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §

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12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

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

DEMAND FOR JUDGMENT FOR RELIEF:

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

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

C. A Jury Trial and;


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

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Respectfully submitted:

Dated: 10/05/06

PINNOCK & WAKEFIELD, A.P.C.


By: _____

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Attorneys for Plaintiffs

**Rule 11
ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported Tuesday, October 3, 2006

Business(es): NEW ORIENT CAFE
551 E. San Ysidro Blvd.
San Ysidro, CA 92173

Owner(s): NEW ORIENT CAFÉ, INC.

Assessor's Parcel #: 666-200-13

Report of Findings

A. VIOLATIONS

1. Parking

- a. There fails to be a compliant Van Accessible disabled parking space provided for this business, as required.
- b. There fails to be tow-away signage posted at the driveway entrance, as required.

2. Exterior Path of Travel

- a. The exterior path of travel from the parking area to the entrance fails to be accessible, as required.
- b. There fails to be an accessible pathway leading from the public street to the facility entrance, as required.

3. Ramp

- a. The access ramp leading from the parking to the entrance is not accessible, as it is too narrow and steep to be accessible.

4. Entrance

- a. The entrance fails to be accessible, as there are 2 displays blocking the pathway to enter the facility.

B. REGULATIONS

1. Parking:

ADA Accessibility Guidelines (“ADAAG”) require that Defendants’ parking lot provide disabled parking and at least have 1 “Van Accessible” space. (ADAAG 4.6.1; 4.1.2(5)) If parking is provided for visitors to the property, then accessible spaces are to be provided in a number in conformance with the specified table located in ADAAG 4.1.2 (5). The disabled parking space is to be located on the shortest accessible route to the public accommodation’s nearest accessible entrance. (ADAAG 4.6.2) The “Van Accessible” space is required to be 108 inches (9 feet) wide (ADAAG 4.6.3) and served by an access aisle 96 inches (8 feet) wide (ADAAG 4.1.2(5)(b)). The van accessible access aisle is required to be positioned on the passenger side of the vehicle. Regular disabled parking is also required to have the same proper access aisles. The disabled parking space is required to have an access aisle that is part of an accessible route to the building entrance. (ADAAG 4.6.3) Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. (ADAAG 4.6.4) Spaces which are Van Accessible shall also have an additional sign stating the space is Van Accessible and these signs are to be mounted where they will not be obstructed by a parked vehicle (Id.) At each parking lot entrance, a tow away sign shall be posted to inform patrons they may be fined and/or have their vehicles towed if they are unlawfully parked in a disabled parking space. At parking structures, there shall be an 8’ 2” minimum vertical clearance at the entrance to the parking structure and within the parking structure in areas leading to accessible parking spaces.

2. Exterior Path of Travel

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.7). An accessible route is required to be provided between public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or

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

3. Ramp

Plaintiff needs a correct curb ramp. If there is a change in level on a surface to be traversed by the public beyond a maximum, a curb ramp is required. (ADAAG 4.1.6(3); 4.8). Ramps shall have level landings at the bottom and top of each ramp and each ramp run. (ADAAG 4.8.4) The least possible slope shall be used for any ramp. (ADAAG 4.8.2) The maximum slope of a ramp in new construction shall be 1:12. (Id.) The maximum rise for any run shall be 30". (Id.) Interior ramps to be constructed on sites or in existing buildings where space limitations prohibit the use of a 1:12 slope or less may have a slope of between 1:10 and 1:12 for a maximum rise of 6", or a slope of between 1:8 and 1:10 for a maximum rise of 3". (ADAAG 4.1.6(3)(a)(i & ii) A slope steeper than 1:8 is not allowed. (ADAAG 4.1.6(3)(a)(ii)) If a ramp run has a rise greater than 6" or a horizontal projection greater than 72", then it shall have handrails on both sides of the ramp. (ADAAG 4.8.5) If handrails are not continuous, they shall extend at least 12" beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground. (ADAAG 4.8.5(2)) Gripping surfaces of ramp handrails shall be continuous. (ADAAG 4.8.5(4) The diameter or width of the gripping surface of a handrail shall be 1 ¼" to 1 ½" or the shape shall provide an equivalent gripping surface. (ADAAG 4.26.2)

4. Entrance

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.). Thresholds at doorways shall not exceed ½". (ADAAG 4.13.8) Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2. (Id.) Additionally, inaccessible entrances must have directional signage indicating the route to the nearest accessible entrance. (ADAAG

4.1.2(7)(c). Entrance doorways along an accessible route shall have a minimum clear opening of 32" with a door open 90 degrees, measured between the face of the door and the opposite stop. (ADAAG 4.3.9; ADAAG 4.13.5) If doorways have two independently operated door leaves, at least one need to comply with this minimum clear opening requirement (ADAAG 4.13.4) The minimum space between two hinged doors or pivoted doors in a series shall be 48" plus the width of any door swinging into the space. (ADAAG 4.13.7) Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. (ADAAG 4.13.9) Hardware on doors along an accessible route shall be mounted no higher than 48" above the finish floor. (ADAAG 4.3.9; ADAAG 4.13.9) The floor or ground area within the required clear floor space in and around a door shall be level and clear. (ADAAG 4.13.6)

This Rule 11 survey and report has been provided by Mantic Ashanti's Cause, Inc. This report contains a number of serious violations to the accessibility Standards as outlined in the ADA Act of 1990 Title III, and the California Accessibility Standards Title 24. However, more violations could, and perhaps do exist. A more detailed study must be conducted to identify all violations. Such a study is beyond the scope of the violations noted in this survey.

(rev. 07/89)

Date and Attorney Signature. Date and sign the civil cover sheet.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

Multidistrict Litigation. (6) Check this box when a multidistrict litigation transfer is requested.

Transferred from Another District. (5) For cases transferred from another district.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened.

Remanded from Appellate Court. (3) Check this box for cases remanded from appellate court.

Removed from State Court. (2) Proceedings initiated in state court which are removed to federal court.

Original Proceedings. (1) Cases which originate in the United States District Court.

VI. Origin. Place an "X" in one of the seven boxes.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit, select the most definitive.

IV. Cause of Action. Report the civil statute directly relating to the cause of action.

III. Residence (Citizenship) of Principal Parties. This section for each principal party.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. § 1332. Diversity of citizenship must be checked. (See Section III of the different parties must be checked.)

Federal question. (3) This refers to suits under 28 U.S.C. § 1331. Federal question, an act of Congress or a treaty of the United States and box 1 or 2 should be marked.

United States defendant. (2) When the plaintiff is suing the United States defendant.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. § 1331. Jurisdiction is set forth in one of the boxes. If there is more than one basis of jurisdiction, the basis of jurisdiction is set forth in one of the boxes.

(c) Attorneys. Enter firm name, address, telephone number and box 1 or 2 should be marked.

(b) County of Residence. For each civil case filed, except in U.S. plaintiff cases, enter the name of the county of residence of the "defendant" is the

(a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is an official, giving both name and title.

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

(NOTE: In land condemnation cases, an amendment to the defendant code takes precedence, box 4 is checked, the citizenship indicated above. Mark this

in, in Section IV above, is the cause fits more than one

U.S.C., Section 1441. When the of remand as the filing date.

in district transfers or the filing date.

8 U.S.C. Section 1407. When

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

UNITED STATES DISTRICT COURT Southern District of California San Diego Division

130255 - A1 October 5, 2006

Code	Case #	Dty	Amount
000015A7	3-06-CV-2218		100.00 CC
004980A3	Judge - LORENZ		100.00 CC
004980A3			100.00 CC
Total ->			300.00

FROM: CIVIL FILING AAA ASSOC. FOR CHILDREN W/ DISABILITIES ET AL V. NEW ORIENT CAFE INC ET AL MS: 210680 09012