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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY RM DEPUTY

Attorneys for Plaintiffs

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

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

Plaintiffs,

v.

**TALIA LIQUOR; ALLEN'S SOUL
FOOD; GARY WATKINS, SR.;
MISTER "C'S" BARBER SHOP;
TALIA SALIM P; TALIA TONY S &
BERNADETE; And DOES 1
THROUGH 10, Inclusive**

Defendants.

Case No. **06CV 1933** **DMS BLM**

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 funding and promoting voluntary

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

5 **JURISDICTION AND VENUE**

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

11 **SUPPLEMENTAL JURISDICTION**

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

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

25 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

26 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
27 franchise organized and existing and/or doing business under the laws of the State of California.
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1 Plaintiffs are informed and believe and thereon allege that Defendants TALIA SALIM P; TALIA
2 TONY S & BERNADETE are the owners, operators and/or lessors of the property located at 5837-
3 43 Market Street, San Diego, CA, 92114; Assessor's Parcel Number 548-080-15. Defendants
4 TALIA LIQUOR; ALLEN'S SOUL FOOD; GARY WATKINS, SR.; MISTER "C'S" BARBER
5 SHOP are the tenants that operate businesses located at 5837, 5839 and 5841 Market Street, San
6 Diego, CA. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the
7 organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
8 DISABILITIES and persons associated with its Members who accompanied Members to
9 Defendants' facilities.

10 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
11 employees, agents, of TALIA LIQUOR; ALLEN'S SOUL FOOD; GARY WATKINS, SR.;
12 MISTER "C'S" BARBER SHOP; TALIA SALIM P; TALIA TONY S & BERNADETE.
13 Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through
14 10 inclusive and therefore sues these Defendants by such fictitious names. Plaintiffs will pray
15 leave of the court to amend this complaint to allege the true names and capacities of the Does when
16 ascertained.

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

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

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

CONCISE SET OF FACTS

7. TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES was formed to advocate for the civil rights of minorities and children with disabilities; a substantial population with neither an advocate nor voice in the disability movement. It is well documented by the federal government and others that the promises and opportunities afforded by the Americans with Disabilities Act are not reaching minorities with disabilities. Further, there is abundance of evidence to show, despite the federal government's unprecedented and aggressive ADA awareness and technical assistance drive, businesses in the minority communities are not complying with the ADA. For example, the National Council on Disability reported in 1993 that minorities with disabilities face double discrimination; they are poorer; they

1 have fewer opportunities than others. Also, the fastest growing segment of the disability population
2 is from minority communities because those communities are growing faster than the Anglo
3 communities, and because persons from minority communities have a higher risk of disability. In
4 fact, studies show the rate of disability for Whites is 7%, for African-American 13%, and for
5 Hispanics 9%. Moreover, from 1983 to 1994 the disability non-White population increased by
6 50.4% whereas the disability White population only increased 11.3%. Even more intriguing is the
7 non-White 18 years older and under population rate of disability increased by 86.6%. Further,
8 evidence suggests minorities with disabilities tend to live with their families in conditions of
9 poverty (61%), and they tend not to advocate for their civil rights. Hence, Members of TRIPPLE
10 AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES specifically
11 intend to zealously advocate for minorities and children with disabilities and desire equal access to
12 businesses within their community, as well as communities more populous of minorities with
13 disabilities, and these are the reasons Plaintiffs filed this action.

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

1 or benefits, services, or other opportunities that are as effective and meaningful as those provided to
2 others. Discrimination results from actions or inactions that discriminate by effect as well as by
3 intent or design. Discrimination also includes harms resulting from the construction of
4 transportation, architectural, and communication barriers and the adoption or application of
5 standards and criteria and practices and procedures based on thoughtlessness or indifference-of
6 benign neglect. Discrimination also includes harms affecting individuals with a history of
7 disability, and those regarded by others as having a disability as well as persons associated with
8 such individuals that are based on false presumptions, generalizations, misperceptions, patronizing
9 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the
10 effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and
11 comprehensive national mandate for the elimination of discrimination against individuals with
12 disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing
13 discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)
14 Plaintiffs allege the legislative history of the Act, which reflects congressional concerns over the
15 deleterious effects of discrimination against people with disabilities. As a result, Congress
16 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation
17 Act of 1973. (As amended 29 U.S.C. § 794a) 42 U.S.C. § 12133 (See *Smith v Barton*, 914 F.2d
18 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written recently
19 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
22 note that the statute creates a private right of action through which a litigant may seek injunctive
23 relief as well as attorneys' fees and costs. (42 U.S.C. § 12188(a)) Plaintiffs allege that it cannot be
24 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys
25 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are
26 just some of the examples where the legislature has made a determination that society will benefit
27 from private attorneys general. The ADA is but another example.
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1 8. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
2 DISABILITIES is an organization that advocates on the behalf of minorities and children with
3 disabilities when their civil rights and liberties have been violated.

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

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

8 11. When Plaintiff's Member and Plaintiff attempted to visited Defendants' facilities, they
9 discovered the public accommodations' at Defendants' business establishment fails to comply with
10 ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or
11 California's Title 24 Building Code Requirements as specified in Attachment A. Defendants failed
12 to remove access barriers within the public accommodations of Defendants' establishment.

13 Plaintiff's Members were deterred from patronizing the facility because they would have personally
14 experienced difficulty with access barriers at Defendants' facility as specified in Attachment A.

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

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

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

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

13 **NOTICE**

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

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

18 17. TALIA LIQUOR; ALLEN'S SOUL FOOD; GARY WATKINS, SR.; MISTER "C'S"
19 BARBER SHOP; TALIA SALIM P; TALIA TONY S & BERNADETE; and Does 1 through 10
20 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.

5
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 §

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
2 against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

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

15 DEMAND FOR JUDGMENT FOR RELIEF:

16
17 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs
18 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities
19 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding
20 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
21 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking
22 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
23 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable
24 Warnings, Signage, and Telephones.

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

27 C. A Jury Trial and;

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

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Respectfully submitted:

09-15-06

Dated: _____

PINNOCK & WAKEFIELD, A.P.C.



By: _____

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

**Rule 11
ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

**Reported by: MANTIC ASHANTI'S CAUSE INC.
Tuesday September 12, 2006**

Businesses:

TALIA LIQUOR
5837 Market Street
San Diego, CA 92114

ALLEN'S SOUL FOOD
5841 Market Street
San Diego, CA 92114

MISTER "C'S" BARBER SHOP
5839 Market Street
San Diego, CA 92114

Property Owner(s): TALIA SALIM P; TALIA TONY S & BERNADETE

Assessor's Parcel No.: 548-080-15

Report of Findings

A. VIOLATIONS

1. Parking

- a. There fails to be complaint disabled parking. There was a space designated but the striping is so faded it is not longer recognizable.
- b. There fails to be tow-away signage posted at the driveway entrance.

2. Entrance

- a. Allen's & Mister "C's" fail to be accessible, as there is not a curb cut or ramp provided in order to access the raised pathway leading to these entrances.
- b. There fails to be signage on any of these businesses.

3. Ramp

- a. The access ramp leading from the parking at the end (right side of Talia's) fails to be accessible, as it is too steep and uneven.

B. REGULATIONS

1. Parking

ADA Accessibility Guidelines ("ADAAG") require that Defendants' parking lot provide disabled parking and at least have 1 "Van Accessible" space. (ADAAG 4.6.1; 4.1.2(5) If parking is provided for visitors to the property, then accessible spaces are to provided in a number in conformance with the specified table located in ADAAG 4.1.2 (5). The disabled parking space is to be located on the shortest accessible route to the public accommodation's nearest accessible entrance. (ADAAG 4.6.2) The "Van Accessible" space is required to be 108 inches (9 feet) wide (ADAAG 4.6.3) and served by an access aisle 96 inches (8 feet) wide (ADAAG 4.1.2(5)(b)). The van accessible access aisle is required to be positioned on the passenger side of the vehicle. Regular disabled parking is also required to have the same proper access aisles. The disabled parking space is required to have an access aisle that is part of an

accessible route to the building entrance. (ADAAG 4.6.3) Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility. (ADAAG 4.6.4) Spaces which are Van Accessible shall also have an additional sign stating the space is Van Accessible and these signs are to be mounted where they will not be obstructed by a parked vehicle (Id.) At each parking lot entrance, a tow away sign shall be posted to inform patrons they may be fined and/or have their vehicles towed if they are unlawfully parked in a disabled parking space At parking structures, there shall be an 8' 2" minimum vertical clearance at the entrance to the parking structure and within the parking structure in areas leading to accessible parking spaces.

2. 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)

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 1/4" to 1 1/2" or the shape shall provide an equivalent gripping surface. (ADAAG 4.26.2)

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.

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 SUING ON BEHALF OF ROBERT ARRON MCKISSICK, AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS; ROBERT ARRON MCKISSICK, A MINOR; AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS

DEFENDANTS TALIA LIQUOR; ALLEN'S SOUL FOOD; GARY WATKINS, SR.; MISTER "C'S" BARBER SHOP; TAD... & BERNADETE and does I through 10, Inclusive, Defendants.

FILED

CLERK U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

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

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

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

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

ATTORNEYS (IF KNOWN)

06CV 1933 DMS BLM

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
1 Incorporated or Principal Place of Business in This State
2 Incorporated and Principal Place of Business in Another State
3 Foreign Nation

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. Includes various legal categories like Insurance, Land Condemnation, Personal Injury, etc.

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 September 15, 2006

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature and notes: CR 129422 sel \$350 9/18/06

1010102

UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

129422 - A1
September 18, 2006

| Code | Case # | Qty | Amount |
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| CV086900 | 3-06-CV-1933 | | 60.00 CC |
| | Judge - SABRAW | | |
| CV086400 | | | 100.00 CC |
| CV510000 | | | 190.00 CC |

Total -> 350.00

FROM: CIVIL FILING AAA ASSOC. FOR
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V. TALIA LIQUOR ET AL
VISA AUTH# 014251 SH