

FILED IN FORMA PAUPERIS (CRC 985)
PER ORDER DATED 1/28/01
AMOUNT RECOVERABLE PURSUANT
TO 68511.3 GC § 10.10
PLUS ADMINISTRATIVE FEE \$ 71.00

PINNOCK & WAKEFIELD

A Professional Corporation
Theodore A. Pinnock, Esq.
David C. Wakefield, Esq.
Michelle L. Wakefield, Esq.
3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: 619.858.3671
Facsimile: 619.858.3646

Bar #: 153434
Bar #: 185736
Bar #: 200424

Attorneys for Plaintiff

FILED
LOS ANGELES SUPERIOR COURT

SEP 28 2001

JOHN A. CLARKE, CLERK
Jennifer Young
BY JENNIFER YOUNG, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JIM COHAN;

Plaintiff,

v.

**HONOLULU PHARMACY INC.; And
DOES 1 THROUGH 10, Inclusive**

Defendants.

Case No.

EC 045620

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

NAMED DEFENDANTS AND NAMED PLAINTIFF

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

2. Plaintiffs are further informed and believe and thereon allege that Defendants HONOLULU PHARMACY INC. are the owners, operators, and/or lessors of the real property, as well as the business operated thereon. HONOLULU PHARMACY, INC.

MAILING ADDRESS:

450-452 SOUTH CENTRAL AVE

1 GLENDALE, CA 91204

2 REGISTERED AGENT: HAMLET HAROUTYOUNIAN

3 REGISTERED OFFICE:

4 450-452 SOUTH CENTRAL AVE

5 GLENDALE, CA 91204

6 3. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically
7 include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN AND
8 ADULTS WITH DEVELOPMENTAL DISABILITIES, SUING ON BEHALF OF ITS
9 MEMBERS, JIM COHAN; and persons associated with its Members who accompanied
10 Members to Defendants' facilities.

11 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries,
12 employers, employees, agents, of Defendants HONOLULU PHARMACY INC.
13 Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does
14 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.
15 Plaintiffs will pray leave of the court to amend this complaint to allege the true names
16 and capacities of the Does when ascertained.

17 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each
18 of them herein were, at all times relevant to the action, the owner, lessor, lessee,
19 franchiser, franchisee, general partner, limited partner, agent, employee, representing
20 partner, or joint venturer of the remaining Defendants and were acting within the course
21 and scope of that relationship. Plaintiffs are further informed and believe, and thereon
22 allege, that each of the Defendants herein gave consent to, ratified, and/or authorized the
23 acts alleged herein to each of the remaining Defendants.
24

25
26 **CONCISE SET OF FACTS**

27 6. Plaintiff's Members JIM COHAN visited the Defendants' facility. Plaintiff has an
28

1 impairment.

2 7. Defendants failed to provide auxiliary aids and services that are necessary to
3 ensure equal access to the goods, services, privileges, or accommodations that it offers.

4 Title 28, part 36.303 of Code of Federal Regulations states:

5 (a) General. A public accommodation shall take those steps that may be
6 necessary to ensure that no individual with a disability is excluded, denied
7 services, segregated or otherwise treated differently than other individuals
8 because of the absence of auxiliary aids and services, unless the public
9 accommodation can demonstrate that taking those steps would
10 fundamentally alter the nature of the goods, services, facilities, privileges,
11 advantages, or accommodations being offered or would result in an undue
12 burden, i.e., significant difficulty or expense.

13 (b) Examples. The term "auxiliary aids and services" includes:

14 (1) Qualified interpreters, notetakers, computer-aided transcription
15 services, written materials, telephone handset amplifiers, assistive
16 listening devices, assistive listening systems, telephones compatible with
17 hearing aids, closed caption decoders, open and closed captioning,
18 telecommunications devices for deaf persons (TDD's), videotext displays,
19 or other effective methods of making aurally delivered materials available
20 to individuals with hearing impairments;

21 (2) Qualified readers, taped texts, audio recordings, Brailled materials,
22 large print materials, or other effective methods of making visually
23 delivered materials available to individuals with visual impairments;

24 (3) Acquisition or modification of equipment or devices; and

25 (4) Other similar services and actions.

26 (c) Effective communication. A public accommodation shall furnish
27
28

1 appropriate auxiliary aids and services where necessary to ensure effective
2 communication with individuals with disabilities.

3 Defendants failed to comply with Title 28, part 36.303 of Code of Federal Regulations as
4 it failed to provide Qualified readers, taped texts, audio recordings, Brailled materials, or
5 large print materials. Further, Defendants failed to remove architectural barriers as
6 attached as Exhibit A.

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

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

18 10. Plaintiff's Member was deterred from patronizing the facility.

19 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
20 **DEFENDANT**

21 11. Defendants HONOLULU PHARMACY INC.; and Does 1 through 10 will be
22 referred to collectively hereinafter as "Defendants."

23 12. Plaintiffs aver that the Defendants are liable for the following claims as alleged
24 below:

25
26 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

3 Claim I

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

9 Claim II

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

15 Claim III

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

22 Claim IV

23 16. Based on the facts stated above, Defendants discriminated against Plaintiffs as it
24 is discriminatory to provide an individual or class of individuals, on the basis of a
25 disability or disabilities of such individual or class, directly, or through contractual,
26 licensing, or other arrangements with a good, service, facility, privilege, advantage, or
27

28

1 accommodation that is different or separate from that provided to other individuals.

2 Claim V

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

6 Claim VI

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

11 Claim VII

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

18 Claim VIII

19 20. Based on the facts stated above, Defendants discriminated against Plaintiffs as
20 Defendants engaged in the specific prohibitions as stated in 42 U.S.C. §12182.

21 Claim IX

22 21. Based on the facts stated above, Defendants discriminated against Plaintiffs as
23 Defendant failed to demonstrate that the removal of a barrier is not readily achievable,
24 and made such goods, services, facilities, privileges, advantages, or accommodations
25 available through alternative methods in a segregated manner in violation of 42 U.S.C.
26 §12182.
27

1 Claim X

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

8 23. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

9
10 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
11 **CALIFORNIA ACCESSIBILITY LAWS**

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

13 24. Based on the facts plead above and elsewhere in this complaint, Plaintiff's
14 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services,
15 facilities, privileges, advantages, or accommodations within a public accommodation
16 owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and
17 54.1.

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

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

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

26 26. Based on the facts plead above and elsewhere herein this complaint and because
27 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code
28

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

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

18 28. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
19

20 DEMAND FOR JUDGMENT FOR RELIEF:
21

- 22 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
23 B. For damages pursuant to Cal. Civil Code § 52 or 54.3
24 C. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal.
25 Civil Code § 51, 52; 54.3;
26 D. A Jury Trial and;
27 E. For such other further relief as the court deems proper.

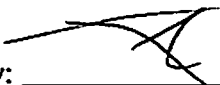
28 ///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted:

Dated: September 6, 2007

PINNOCK & WAKEFIELD, A.P.C.

By: 

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

FILED

LOS ANGELES SUPERIOR COURT

SEP 28 2007

JOHN A. CLARKE, CLERK

BY JENNIFER YOUNG, DEPUTY

CASE NUMBER: EC 045620

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Theodore A. Pinnock, Esq. SBN: 153434 PINNOCK & WAKEFIELD, A.P.C. 3033 Fifth Avenue, Suite 410 San Diego, CA 92103 TELEPHONE NO.: (619) 858-3671 FAX NO.: (619) 858-3646 E-MAIL ADDRESS (Optional): Pinnock99@aol.com ATTORNEY FOR (Name): Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 600 East Broadway North Central District MAILING ADDRESS: 600 East Broadway 300 E. Olive Ave. CITY AND ZIP CODE: Glendale, CA 91206 Burbank, CA 91502 BRANCH NAME: Glendale Courthouse

PLAINTIFF/ PETITIONER: JIM COHAN; DEFENDANT/ RESPONDENT: HONOLULU PHARMACY INC.; And DOES THROUGH 10, Inclusive

ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS

- 1. The application was filed on (date): 9-28-07 A previous order was issued on (date):
2. The application was filed by (name): JIM COHAN
3. IT IS ORDERED that the application is granted in whole in part (complete item 4 below).
a. No payments. Payment of all the fees and costs listed in California Rules of Court, rule 3.61, is waived.
b. The applicant shall pay all the fees and costs listed in California Rules of Court, rule 3.61, EXCEPT the following:
(1) Filing papers. (2) Certification and copying. (3) Issuing process and certification. (4) Transmittal of papers. (5) Court-appointed interpreter. (6) Sheriff and marshal fees. (7) Reporter's fees* (valid for 60 days). (8) Telephone appearance (Gov. Code, § 68070.1 (c)). (9) Other (specify code section).
c. Method of payment. The applicant shall pay all the fees and costs when charged, EXCEPT as follows:
(1) Pay (specify): percent. (2) Pay: \$ per month or more until the balance is paid.
d. The clerk of the court, county financial officer, or appropriate county officer is authorized to require the applicant to appear before and be examined by the court no sooner than four months from the date of this order, and not more than once in any four-month period. The applicant is ordered to appear in this court as follows for review of his or her financial status:
Date: Time: Dept.: Div.: Room:
e. The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
f. All unpaid fees and costs shall be deemed to be taxable costs if the applicant is entitled to costs and shall be a lien on any judgment recovered by the applicant and shall be paid directly to the clerk by the judgment debtor upon such recovery.
4. IT IS ORDERED that the application is denied in whole in part for the following reasons (see Cal. Rules of Court, rules 3.50-3.63):
a. Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form FW-001-INFO).
b. Other (Complete line 4b on page 2).
c. The applicant shall pay any fees and costs due in this action within 10 days from the date of service of this order or any paper filed by the applicant with the clerk will be of no effect.
d. The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
5. IT IS ORDERED that a hearing be held.
a. The substantial evidentiary conflict to be resolved by the hearing is (specify):
b. The applicant should appear in this court at the following hearing to help resolve the conflict:
Date: Time: Dept.: Div.: Room:
c. The address of the court is (specify):
Same as above
d. The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.

NOTICE: If item 3d or item 5b is filled in and the applicant does not attend the hearing, the court may revoke or change the order or deny the application without considering information the applicant wants the court to consider.

WARNING: The applicant must immediately tell the court if he or she becomes able to pay court fees or costs during this action. The applicant may be ordered to appear in court and answer questions about his or her ability to pay fees or costs.

Date: SEP 28 2007 JOHN A. CLARKE, CLERK Clerk, by Jennifer Young, Deputy JUDICIAL OFFICER (Clerk may GRANT in full a hearing requested by the applicant if the applicant is unable to appear.)

ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS (Fee Waiver)

PLAINTIFF/PETITIONER (Name): <u>JIM COHAN;</u>	CASE NUMBER:
DEFENDANT/RESPONDENT (Name): <u>HONOLULU PHARMACY INC.; And DOES / THROUGH 10, Inclusive.</u>	

4b Application is denied in whole or in part (specify reasons):

CLERK'S CERTIFICATE OF MAILING

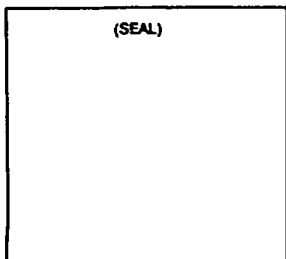
I certify that I am not a party to this cause and that a true copy of the foregoing was mailed first class, postage prepaid, in a sealed envelope addressed as shown below, and that the mailing of the foregoing and execution of this certificate occurred at

(place): Glendale, California,
on (date): SEP 28 2007

JOHN A. CLARKE, CLERK

Clerk, by Jennifer Young, Deputy

JENNIFER YOUNG DEPUTY CLERK



CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date:

Clerk, by _____, Deputy