

40

FILED
EAST COUNTY DIVISION

2007 SEP -7 PM 3:45

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
EAST**

LISSA HAYES

Plaintiff,

v.

**La Mesa Muffler & Brakes; PACK
RICHARD C**

And DOES 1 THROUGH 10, Inclusive

Defendants.

Case No.

37-2007-00061207-CU-CR-EC

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, La Mesa Muffler & Brakes; PACK RICHARD C, are the owners, operators, and/or lessors of the real property, as well as the business operated thereon. Property Owner: PACK RICHARD C; DBA LA MESA MUFFLER & BRAKE

1
2 Mailing Address: 6648 UNIVERSITY AVE, SAN DIEGO, CA 92115

3
4 Property Address: 6648 UNIVERSITY AVE, SAN DIEGO, CA 92115

5
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, ; and persons associated with its Members who accompanied Members to
10 Defendants' facilities.

11 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries,
12 employers, employees, agents, of Defendants La Mesa Muffler & Brakes; PACK
13 RICHARD C. Plaintiffs are ignorant of the true names and capacities of Defendants sued
14 herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such
15 fictitious names. Plaintiffs will pray leave of the court to amend this complaint to allege
16 the true names 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 has an impairment.

1 7. Further, Defendants failed to remove architectural barriers as attached as Exhibit

2 A.

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

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

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

15
16 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
17 **DEFENDANT**

18 10. Defendants La Mesa Muffler & Brakes; PACK RICHARD C and Does 1 through
19 10 will be referred to collectively hereinafter as "Defendants."

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

22
23 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

26 Claim I
27

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

6 Claim II

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

12 Claim III

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

19 Claim IV

20 21 15. Based on the facts stated above, Defendants discriminated against Plaintiffs as it
22 is discriminatory to provide an individual or class of individuals, on the basis of a
23 disability or disabilities of such individual or class, directly, or through contractual,
24 licensing, or other arrangements with a good, service, facility, privilege, advantage, or
25 accommodation that is different or separate from that provided to other individuals.

26 Claim V

27 16. Based on the facts stated above, Defendants discriminated against Plaintiffs as
28

1 Defendants failed to afford to an individual with a disability in the most integrated
2 setting appropriate to the needs of the individual in violation of 42 U.S.C. §12182.

3 Claim VI

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

8 Claim VII

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

15 Claim VIII

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

18 Claim IX

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

24 Claim X

25 21. Based on the facts stated above, Defendants discriminated against Plaintiffs as
26 Defendants altered the use of their establishment in a manner that affected or could have
27

1 affected the usability of the facility or part thereof and failed to make alterations in such a
2 manner that, to the maximum extent feasible, the altered portions of the facility are
3 readily accessible to and usable by individuals with disabilities, including individuals
4 who use wheelchairs in violation of 42 U.S.C. §12183.

5 22. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

6
7 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
8 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

23 25. Based on the facts plead above and elsewhere herein this complaint and because
24 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code
25 § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to
26 knowingly discriminate against Plaintiffs and persons similarly situated in violation of
27 Civil Code §§ 51, 52, and 54.1. Plaintiffs allege the access violations alleged here are so

1 obvious as to implicate at least a prima facie case of discriminatory intent.

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

15 27. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
16
17
18
19
20
21
22
23
24
25
26
27
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

DEMAND FOR JUDGMENT FOR RELIEF:

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: August 20, 2007

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

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

**ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported August, 2007

EMMA MULLER & DAVID RACK RICHARDSON

5540 University Ave. La Mesa, CA

FAH

Report of Findings

I. IN GENERAL

II. ARCHITECTURAL BARRIERS

VIOLATIONS

No disabled parking or tow-away signage

This report contains a number of serious

1 violations to the accessibility Standards as
2 outlined in the ADA Act of 1990 Title III,
3 and the California Accessibility Standards
4 Title 24. However, more violations could,
5 and perhaps do exist. A more detailed study
6 must be conducted to identify all
7 violations. Such a study is beyond the
8 scope of the violations noted in this
9 survey.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28