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CIVIL JUSTICE OFFICE 10
CIVIL DIVISION

JUN 21 12:04

SUPERIOR COURT
SAN DIEGO COUNTY, CA

NSI

Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
10 **CENTRAL**

11 **LISSA HAYES**

12 **Plaintiff,**

13 **v.**

14 **PHARMACARE SPECIALTY**
15 **PHARMACY**

16 **And DOES 1 THROUGH 10, Inclusive**

17 **Defendants.**

Case No. 37-2007-00072417-cu-cr-ctl

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

18 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

19
20
21 1. Defendants are, and, at all times mentioned herein, were, a business or
22 corporation or franchise organized and existing and/or doing business under the laws of
23 the State of California.

24 2. Plaintiffs are further informed and believe and thereon allege that Defendants,
25 PHARMACARE SPECIALTY PHARMACY

1 , are the owners, operators, and/or lessors of the real property, as well as the business
2 operated thereon. Company Name: PHARMACARE SPECIALTY PHARMACY #2855

3 Business Address:

4 1010 UNIVERSITY AVE
5 SAN DIEGO, CA 92103-3398

6 Mailing Address:

7 ONE CVS DRIVE
8 WOONSOCKET, RI 02895

9 Owner(s):

10 PROCARE PHARMACY OF S.D.,INC.

11
12 Buyer: MOORE, REENA M (Individual(s))

13 Buyer Mailing Address: 1010 UNIVERSITY AVE, SAN DIEGO, CA 92103

14 Seller: MOORE, JOAN H

15 Property Address: 1010 UNIVERSITY AVE, SAN DIEGO, CA 92103
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17
18 3. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically
19 include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN AND
20 ADULTS WITH DEVELOPMENTAL DISABILITIES , SUING ON BEHALF OF ITS
21 MEMBERS, ; and persons associated with its Members who accompanied Members to
22 Defendants' facilities.

23 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries,
24 employers, employees, agents, of Defendants PHARMACARE SPECIALTY
25 PHARMACY

26 . Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
27 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious
28

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

3 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each
4 of them herein were, at all times relevant to the action, the owner, lessor, lessee,
5 franchiser, franchisee, general partner, limited partner, agent, employee, representing
6 partner, or joint venturer of the remaining Defendants and were acting within the course
7 and scope of that relationship. Plaintiffs are further informed and believe, and thereon
8 allege, that each of the Defendants herein gave consent to, ratified, and/or authorized the
9 acts alleged herein to each of the remaining Defendants.
10

11 **CONCISE SET OF FACTS**

12 6. Plaintiff has an impairment.

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

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

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

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

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

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

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

10 (4) Other similar services and actions.

11 (c) Effective communication. A public accommodation shall furnish
12 appropriate auxiliary aids and services where necessary to ensure effective
13 communication with individuals with disabilities.
14

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

19 8. Plaintiff's Member and Plaintiff(s) have physical impairments because their
20 conditions affect one or more of the following body systems: neurological,
21 musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's
22 Member and Plaintiff(s) said physical impairments substantially limits one or more of the
23 following major life activities. In addition, Plaintiff's Member and Plaintiff(s) cannot
24 perform one or more of the said major life activities in the manner, speed, and duration
25 when compared to the average person. Moreover, Plaintiff's Member and Plaintiff(s) has
26 a history of or has been classified as having a physical impairment as required by 42
27 U.S.C. § 12102(2)(A).
28

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

3 10. Plaintiff's Member was deterred from patronizing the facility.
4

5 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
6 **DEFENDANT**

7 10. Defendants PHARMACARE SPECIALTY PHARMACY
8 and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

12 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

15 **Claim I**

16 12. Based on the facts stated above, Defendants discriminated against Plaintiffs on the
17 basis of disability in the full and equal enjoyment of the goods, services, facilities,
18 privileges, advantages, or accommodations of any place of public accommodation as
19 Defendants own, lease (or lease to), or operate a place of public accommodation in
20 violation of 42 U.S.C. §12182.
21

22 **Claim II**

23 13. Based on the facts stated above, Defendants discriminated against Plaintiffs
24 directly, or through contractual, licensing, or other arrangements, to a denial of the
25 opportunity of the individual or class to participate in or benefit from the goods, services,
26 facilities, privileges, advantages, or accommodations of an entity in violation of 42
27 U.S.C. §12182.
28

1 Claim III

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

8 Claim IV

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

14 Claim V

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

18 Claim VI

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

23 Claim VII

24 18. Based on the facts stated above, Defendants discriminated against Plaintiffs as it
25 is discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,
26 advantages, accommodations, or other opportunities to an individual or entity because of
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28

1 the known disability of an individual with whom the individual or entity is known to have
2 a relationship or association in violation of 42 U.S.C. §12182. See Niece v. Fitzner 922 F.
3 Supp. 1208 (1996)

4 **Claim VIII**

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

7 **Claim IX**

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

13 **Claim X**

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

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

21
22 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
23 **CALIFORNIA ACCESSIBILITY LAWS**

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

25 23. Based on the facts plead above and elsewhere in this complaint, Plaintiff's
26 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services,
27 facilities, privileges, advantages, or accommodations within a public accommodation
28

1 owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and
2 54.1.

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

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

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

11 25. Based on the facts plead above and elsewhere herein this complaint and because
12 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code
13 § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to
14 knowingly discriminate against Plaintiffs and persons similarly situated in violation of
15 Civil Code §§ 51, 52, and 54.1. Plaintiffs allege the access violations alleged here are so
16 obvious as to implicate at least a prima facie case of discriminatory intent.

17 26. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause
18 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer
19 irreparable harm unless Defendants are ordered to remove architectural, non-
20 architectural, and communication barriers at Defendants' public accommodation.
21 Plaintiffs allege that Defendants' discriminatory conduct is capable of repetition, and this
22 discriminatory repetition adversely impacts Plaintiffs and a substantial segment of the
23 disability community. Plaintiffs allege there is a state and national public interest in
24 requiring accessibility in places of public accommodation. Plaintiffs have no adequate
25 remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to
26 return to Defendants' places of business in the immediate future. Accordingly, the
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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.

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

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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: 

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

**ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported August, 2007

PHARMACARE SPECIALTY PHARMACY

Pharmacare Specialty Pharmacy

1010 University Ave

San Diego, CA 92103

(619) 291-7377

37-2007-00972417-21 for cd

Report of Findings

I. IN GENERAL

This report focuses on architectural barriers and the provision of auxiliary aids which may challenge access to goods or services. This is only a preliminary report conducted to comply with Rule 11 of the Federal Rules of Civil Procedure.

Exhibit A

- II. **AUXILIARY AIDS:** The pharmacy provides written information to customers without offering large print, Braille or taped text. Written information in the form of medicine instructions is given to customers to take home.

A pharmacy must provide the Auxiliary Aids as

follows:

- a. **Purchase Braille Translation Software:** The industry leading multi-platform, multi-language Braille translator for anyone from the casual user to the power user. Approximate Cost Price: \$580.00. The purpose of the device is to translate current word documents to be printed as Braille.
- b. **Purchase or provide Digital Dictating Machine/Voice.** Approximate Cost Price: \$15.00. The purpose of this machine is to provide taped text to customers that are blind that do not read Braille.
- c. **Provide large Print by using Microsoft Word.**

Large Print is 16 point or greater upon customer request.
- d. **Provide Qualified Reader -** A trained employee who reads the prescriptions. Costs –none.
- e. **Provide signage as to the availability of auxiliary aids;**

Exhibit A

- f. Provide staff training as to how to provide auxiliary aids and to provide staff training to recognize customers with sight impairments to offer available auxiliary aids.

III. ARCHITECTURAL BARRIERS

A. VIOLATIONS

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.

FOR COURT USE ONLY

CITIZEN OR PARTY WITHOUT ATTORNEY (Name, address, telephone number, and e-mail address)
 - Lissa Hayes
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 PLAINTIFF

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
 STREET ADDRESS: 330 W. Broadway, San Diego, CA 92101
 MAILING ADDRESS:
 CITY AND ZIP CODE:
 BRANCH NAME: Downtown

F I L E D
 Clerk of the Superior Court
 AUG 07 2007
 By: L. McALISTER, Deputy

DEFENDANT, RESPONDENT: Pharmacare Specialty Pharmacy, et al.
ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS

CASE NUMBER
 37-2007-00072417-CU-CR-CTL

- The application was filed on (date): 8/1/07 A previous order was issued on (date):
- The application was filed by (name): Lissa Hayes
- IT IS ORDERED that the application is granted in whole in part (complete item 4 below).
 - No payments.** Payment of all the fees and costs listed in California Rules of Court, rule 3.61, is waived.
 - The applicant shall pay** all the fees and costs listed in California Rules of Court, rule 3.61, EXCEPT the following:

(1) <input type="checkbox"/> Filing papers.	(6) <input type="checkbox"/> Sheriff and marshal fees.
(2) <input type="checkbox"/> Certification and copying.	(7) <input type="checkbox"/> Reporter's fees* (valid for 60 days).
(3) <input type="checkbox"/> Issuing process and certification.	(8) <input type="checkbox"/> Telephone appearance (Gov. Code, § 68070.1 (c))
(4) <input type="checkbox"/> Transmittal of papers.	(9) <input type="checkbox"/> Other (specify code section):
(5) <input type="checkbox"/> Court-appointed interpreter.	

Reporter's fees are per diem pursuant to Code Civ. Proc., §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195.
 - Method of payment.** The applicant shall pay all the fees and costs when charged, EXCEPT as follows:

(1) <input type="checkbox"/> Pay (specify):	percent.	(2) <input type="checkbox"/> Pay: \$	per month or more until the balance is paid.
---	----------	--------------------------------------	--
 - 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:
-------	-------	--------	-------	-------
 - The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
 - 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.**
- 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):
 - Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form FW-001-INFO).
 - Other (Complete line 4b on page 2).
 - 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.
 - The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
- IT IS ORDERED that a hearing be held
 - The substantial evidentiary conflict to be resolved by the hearing is (specify):
 - The applicant should appear in this court at the following hearing to help resolve the conflict:

Date:	Time:	Dept.:	Div.:	Room:
-------	-------	--------	-------	-------
 - The address of the court is (specify):
 Same as above
 - 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: **AUG 07 2007**

Clerk, by: *L. McAlister* Deputy

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

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 Government Code, § 68071.3
 California Rules of Court, rules 3.60-3.63
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