

**FILED**  
EAST COUNTY DIVISION

2007 SEP -7 PM 3: 54

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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

**LISSA HAYES**

**Plaintiff,**

**v.**

**SHAMOUN FAMILY TRUST**

**And DOES 1 THROUGH 10, Inclusive**

**Defendants.**

Case No. **37-2007-00061193-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, SHAMOUN FAMILY TRUST, are the owners, operators, and/or lessors of the real property, as well as the business operated thereon. Property Owner: SHAMOUN FAMILY TRUST (10-23-96) (Family Trust)

1 Mailing Address: 1411 FUERTE HEIGHTS LN, EL CAJON, CA 92019

2  
3 Property Address: 1259-65 BROADWAY, EL CAJON, CA 92021-4902

4  
5 1267-73 BROADWAY, EL CAJON, CA 92021-4902

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

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

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

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**CONCISE SET OF FACTS**

6. Plaintiff has an impairment.

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

A.

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

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

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

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

10. Defendants SHAMOUN FAMILY TRUST and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

**DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

**Americans With Disabilities Act Of 1990**

1  
2 **Claim I**

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

8 **Claim II**

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

14 **Claim III**

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

21 **Claim IV**

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

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

Claim VI

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

Claim VII

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

Claim VIII

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

Claim IX

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

Claim X

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

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

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

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

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

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

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

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

25 25. Based on the facts plead above and elsewhere herein this complaint and because  
26 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code  
27 § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to  
28

1 knowingly discriminate against Plaintiffs and persons similarly situated in violation of  
2 Civil Code §§ 51, 52, and 54.1. Plaintiffs allege the access violations alleged here are so  
3 obvious as to implicate at least a prima facie case of discriminatory intent.

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

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



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**ACCESSIBILITY SURVEY  
ADA TITLE III**

Disability Compliance Documentation

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**Reported August, 2007**

**SHAMOUN FAMILY TRUST**

**1259-1273 Broadway, El Cajon, CA**

**JAH**

Report of Findings

I. IN GENERAL

II. ARCHITECTURAL BARRIERS

**VIOLATIONS**

more than 25 spaces, only 1 dp space, not compliant van accessible in front of Dr. Kim J. Butler Optometrist office (access aisle is extremely narrow on passenger side) and there is no driveway signage and the parking entrance. There is also a tattoo place.

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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.



State of  
California

Benefits  
Identification  
Card

ID No. 96650913A35125

LISSA R HAYES

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Issue Date 05 05 05