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SOUTHERN DISTRICT OF CALIFORNIA

BY: 

DEPUTY

Attorneys for Plaintiffs

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

**TRIPPLE AAA ASSOCIATION FOR
CHILDREN WITH
DEVELOPMENTAL DISABILITIES
SUING ON BEHALF OF JOHN
CARPENTER AND ITS MEMBERS;
and JOHN CARPENTER, An
Individual,**

Plaintiffs,

v.

**DEL TACO INC., d.b.a. DEL TACO
#814; DEL TACO, INC.; KIRELIUK
WM O & ANNA E TRUST (08-23-89);
ANN E. KIRELIUK
(Trustee/Conservator); And DOES 1
THROUGH 10, Inclusive**

Defendants.

Case No.:

06 CV 2199

DMSWMC

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



1 discriminatory practices against individuals with disabilities, specifically including minorities with
2 disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to
3 compel access compliance because empirical research on the effectiveness of Title III of the
4 Americans with Disabilities Act indicates this Title has failed to achieve full and equal access
5 simply by the executive branch of the Federal Government funding and promoting voluntary
6 compliance efforts. Further, empirical research shows when individuals with disabilities give
7 actual notice of potential access problems to places of public accommodation without a federal
8 civil rights action, the public accommodations do not remove the access barriers. Therefore,
9 Plaintiffs make the following allegations in this federal civil rights action:

10 **JURISDICTION AND VENUE**

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

16 **SUPPLEMENTAL JURISDICTION**

17 2. The Judicial District of the United States District Court of the Southern District of
18 California has supplemental jurisdiction over the state claims as alleged in this Complaint pursuant
19 to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper in this action is because all
20 the causes of action or claims derived from federal law and those arising under state law, as herein
21 alleged, arose from common nucleus of operative facts. The common nucleus of operative facts,
22 include, but are not limited to, the incidents where Plaintiffs were denied full and equal access to
23 Defendants' facilities, goods, and/or services in violation of both federal and state laws when they
24 attempted to enter, use, and/or exit Defendants' facilities as described below within this Complaint.
25 Further, due to this denial of full and equal access, TRIPPLE AAA ASSOCIATION FOR
26 CHILDREN WITH DEVELOPMENTAL DISABILITIES SUIING ON BEHALF OF JOHN
27 CARPENTER AND ITS MEMBERS; and JOHN CARPENTER, An Individual, and other persons
28

1 with disabilities were injured. Based upon the said allegations, the state actions, as stated herein,
2 are so related to the federal actions that they form part of the same case or controversy and the
3 actions would ordinarily be expected to be tried in one judicial proceeding.

4 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

5 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
6 franchise organized and existing and/or doing business under the laws of the State of California.
7 Defendant DEL TACO INC., d.b.a. DEL TACO #814 is located at 1601 Carmelo Drive,
8 Oceanside, CA 92054. Defendant DEL TACO, INC. is located at c/o Corporate Accounting,
9 25521 Commercentre Drive, Suite 200, Lake Forest, CA 92630. Plaintiffs are informed and
10 believe and thereon allege that Defendants KIRELIUK WM O & ANNA E TRUST (08-23-89); and
11 ANN E. KIRELIUK (Trustee/Conservator) are the owners, operators, and/or lessors of the property
12 located at 1601 Carmelo Drive, Oceanside, California 92054; Assessor's Parcel No.: 143-060-36.
13 Defendants KIRELIUK WM O & ANNA E TRUST (08-23-89); and ANN E. KIRELIUK
14 (Trustee/Conservator) are located at 1181 E. Avacado Crest Road, La Habra Heights, CA 90631.
15 The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization
16 and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
17 DISABILITIES SUING ON BEHALF OF JOHN CARPENTER AND ITS MEMBERS; and JOHN
18 CARPENTER, An Individual and persons associated with its Members who accompanied
19 Members to Defendants' facilities.

20
21 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
22 employees, agents, of DEL TACO INC., d.b.a. DEL TACO #814; DEL TACO, INC.; KIRELIUK
23 WM O & ANNA E TRUST (08-23-89); and ANN E. KIRELIUK (Trustee/Conservator). Plaintiffs
24 are ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10,
25 inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave
26 of the court to amend this complaint to allege the true names and capacities of the Does when
27 ascertained.

28 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them

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

6
7 **CONCISE SET OF FACTS**

8 6. Plaintiffs allege businesses often state that they have few customers with disabilities.
9 Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from
10 patronizing such businesses. The courts have recognized deterrence-based damage claims under
11 Civil Code 54.3 and 52. Since California courts have held that the California disability access laws
12 manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes
13 incentives for compliance, (see Donald, 266 Cal. Rptr. at 808-11) the courts conclude that
14 application of this canon of construction requires that 54.1 and 51, and their respective damages
15 provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The
16 courts therefore hold that where a plaintiff can prove that violations of applicable California
17 disability access standards deterred her on a particular occasion from attempting to attend a place of
18 public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and
19 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still
20 face systemic discrimination each and every day. One of the most debilitating forms of
21 discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial
22 or benefits, services, or other opportunities that are as effective and meaningful as those provided to
23 others. Discrimination results from actions or inactions that discriminate by effect as well as by
24 intent or design. Discrimination also includes harms resulting from the construction of
25 transportation, architectural, and communication barriers and the adoption or application of
26 standards and criteria and practices and procedures based on thoughtlessness or indifference-of
27 benign neglect. Discrimination also includes harms affecting individuals with a history of
28 disability, and those regarded by others as having a disability as well as persons associated with

1 such individuals that are based on false presumptions, generalizations, misperceptions, patronizing
2 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the
3 effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and
4 comprehensive national mandate for the elimination of discrimination against individuals with
5 disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing
6 discrimination against individuals with disabilities. (42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990))
7 Plaintiffs allege the legislative history of the Act, which reflects congressional, concerns over the
8 deleterious effects of discrimination against people with disabilities. As a result, Congress
9 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation
10 Act of 1973. (As amended 29 U.S.C. § 794a)(42 U.S.C. § 12133)(See *Smith v. Barton*, 914 F.2d
11 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written recently
12 about the ADA and its mechanisms of enforcement. (See e.g., *Doran v. Del Taco, Inc.*, ---
13 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*
14 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)) For purposes of this suit, it is sufficient to
15 note that the statute creates a private right of action through which a litigant may seek injunctive
16 relief as well as attorneys' fees and costs. (42 U.S.C. § 2188(a)) Plaintiffs allege that it cannot be
17 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys
18 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are
19 just some of the examples where the legislature has made a determination that society will benefit
20 from private attorneys general. The ADA is but another example.

21
22 7. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
23 DISABILITIES is an organization that advocates on the behalf of children and others with
24 disabilities when their civil rights and liberties have been violated.

25 8. Plaintiff JOHN CARPENTER has a physical impairment and due to this impairment he has
26 learned to successfully operate a wheelchair.

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

1 11. When Plaintiff's Member and Plaintiff JOHN CARPENTER researched Defendants'
2 facilities, he discovered he would be unable to use the public accommodations' at Defendants'
3 business establishments because they failed to comply with ADA Access Guidelines For Buildings
4 and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code
5 Requirements as specified in Attachment A. Defendants failed to remove access barriers within the
6 parking public accommodations of Defendants' establishment. Plaintiff's Member was deterred
7 from patronizing the facility because he experienced difficulty within the parking access barriers at
8 Defendants' facility as specified in Attachment A.

9 12. Plaintiff(s) was deterred from patronizing the facility due to the alleged ADA violations
10 and/or alleged architectural barriers outlined in Paragraphs 10 through 11 above, as well as
11 Attachment A.

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

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

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

7 16. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff(s) was discriminated
8 against each time he patronized Defendants' establishment. Plaintiff's Member and Plaintiff(s) was
9 extremely upset due to Defendants' conduct.

10 **NOTICE**

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

13
14 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
15 **DEFENDANT**

16 18. ROGELIO HERNANDEZ d.b.a. TACO EL MICHOACANO; ROGELIO HERNANDEZ;
17 DONG YANG d.b.a. J S RANCHO MARKET; DONG YANG; H&R BLOCK ENTERPRISES,
18 INC.; KWON K & YIM T WONG; K T KWON; and Does 1 through 10 will be referred to
19 collectively hereinafter as "Defendants."

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

21
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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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.

12
13 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural Barriers**

14 26. 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 barriers
27 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.

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6 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**
7 **Procedures**

8 27. 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 28. 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 29. 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

30. 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.

31. 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

32. 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) was subjected to discrimination in violation of Civil Code § 54.1.

CLAIM III: Violation Of The Unruh Act

33. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint and because

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

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

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

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

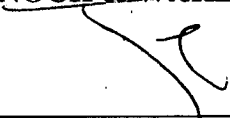
C. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: 10/03/04


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

**Rule 11
ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported Tuesday, October 3, 2006

**Business(es): DEL TACO #814
1601 Carmelo Drive
Oceanside, CA 92054**

**Owner(s): KIRELIUK WM O & ANNA E TRUST (08-23-89)
ANNA E. KIRELIUK (Trustee/Conservator)**

Assessor's Parcel #: 148-060-36

Report of Findings

A. VIOLATIONS

1. Parking

- a. The space designated as accessible has an access aisle that is too short and too narrow to be accessible.

2. Exterior Path of Travel

- a. The exterior path of travel from the space designated as accessible to the entrance of this facility fails to be compliant.
- b. There fails to be an safe and accessible path of travel from the street to the entrance of this facility, as required.

3. Seating

- a. There fails to be accessible seating in the outside seating area, as it is all fixed seating in this area.
- b. The seating located inside fails to be compliant as it does not provide the required space for knee clearance.

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 be 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. Exterior Path of Travel

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.7). An accessible route is required to be provided between public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the entrances of the facilities they serve. If the accessible route passes through a parking lot, Title 24 of the California Building Code requires that the route must be contained in a marked crosswalk so that the safety of the person in a wheelchair is not jeopardized when they

pass behind banks of parked cars. Objects projecting from walls with their leading edges between 27" and 80" above the finished floor shall protrude no more than 4" into walks, halls, corridors, passageways or aisles.

(ADAAG 4.4.1) Free standing objects mounted on posts or pylons may overhang at maximum 12" from 27" to 80" above the ground of finished floor. (Id.) Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80" minimum clear head room. (ADAAG 4.4.2) If carpet is used on a ground or floor surface, then it shall be securely attached. (ADAAG 4.5.3)

3. Seating

Where fixed tables or dining counters where food is consumed but there is no service are provided, at least 5%, but not less than 1, of the fixed tables, or a portion of the dining counter, shall be accessible. (ADAAG 5.1) At accessible fixed tables or counters, knee clearance spaces must be at least 27" high, 30" wide, and 19" deep. (ADAAG 4.32.3) The tops of accessible tables and counters shall be from 28" to 34" above the finish floor or ground. (ADAAG 4.32.4)

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.

(rev. 07/89)

Date and Attorney Signature. Date and sign the civil cover sheet.

VIII. Related Cases. This section of the JS-44 is used to reference pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.C.P.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

Multidistrict Litigation. (6) Check this box when a multidistrict litigation transfers.

Transferred from Another District. (5) For cases transferred from another district.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened.

Remanded from Appellate Court. (3) Check this box for cases remanded from appellate court.

Removed from State Court. (2) Proceedings initiated in state court.

Original Proceedings. (1) Cases which originate in the United States.

VI. Origin. Place an "X" in one of the seven boxes.

V. Nature of Suit. Place an "X" in the appropriate box. If sufficient to enable the deputy clerk or the statistical clerk to identify the case.

IV. Cause of Action. Report the civil statute directly relating to the cause of action.

III. Residence (Citizenship) of Principal Parties. This section for each principal party.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. § 1332.

Federal question. (3) This refers to suits under 28 U.S.C. § 1331.

United States defendant. (2) When the plaintiff is suing a United States defendant.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. § 1332.

I. Jurisdiction. The basis of jurisdiction is set forth in one of the boxes. If there is more than one basis of jurisdiction, check all that apply.

(c) Attorneys. Enter firm name, address, telephone number, and e-mail address.

(b) County of Residence. For each civil case filed, except in U.S. plaintiff cases, enter the name of the county of residence of the "defendant" in the case.

(a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is an official, giving both name and title.

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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 cover sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

Authority For Civil Cover Sheet

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

UNITED STATES DISTRICT COURT Southern District of California San Diego Division

130233 - A1
October 4, 2006

Code	Case #	Qty	Amount
CV0001543	06-06-00000000	1	350.00
CV0001543	06-06-00000000	1	00.00
CV0001543	06-06-00000000	1	00.00
Total ->			350.00

FROM: CIVIL FILING AAA ASSOC. FOR CHILDREN W/ DISABILITIES ET AL V. DEL TACD INC ET AL
NS 1251241@VISA

8 U.S.C. Section 1407. When district transfers or the filing date. of remand as the filing date. C. Section 1441. When the cause fits more than one in, in Section IV above, is indicated above. Mark this box 4 is checked, the citizenship defendant code takes precedence, ed States, an amendment to the States are included here. in pleadings. Place the "X" in on an attachment, noting in this listed plaintiff resides at the time (NOTE: In land condemnation

(rev. 07/89)

Date and Attorney Signature. Date and sign the civil cover sheet.

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Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

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Multidistrict Litigation. (6) Check this box when a multidistrict litigation transfers.

Transferred from Another District. (5) For cases transferred from another district.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened.

Remanded from Appellate Court. (3) Check this box for cases remanded from appellate court.

Removed from State Court. (2) Proceedings initiated in state court for removal is granted, check this box.

Original Proceedings. (1) Cases which originate in the United States.

VI. Origin. Place an "X" in one of the seven boxes.

V. Nature of Suit. Place an "X" in the appropriate box. If sufficient to enable the deputy clerk or the statistical clerk nature of suit, select the most definitive.

IV. Cause of Action. Report the civil statute directly relating to the cause of action.

III. Residence (citizenship) of Principal Parties. This section for each principal party.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. of the different parties must be checked. (See Section III)

Federal question. (3) This refers to suits under 28 U.S.C. Constitution, an act of Congress or a treaty of the United States.

United States defendant. (2) When the plaintiff is suing a United States defendant.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. of the plaintiff.

II. Jurisdiction. The basis of jurisdiction is set forth in one of the boxes. If there is more than one basis of jurisdiction, place an "X" in all applicable boxes.

(c) Attorneys. Enter firm name, address, telephone number and e-mail address (see attachment).

(b) County of Residence. For each civil case filed, except in U.S. plaintiff cases, enter the name of the county of residence of the "defendant" is the county of residence.

(a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should completed the form as follows:

Authority For Civil Cover Sheet

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

UNITED STATES DISTRICT COURT Southern District of California San Diego Division

130233 - A1
October 4, 2006

Code	Case #	Qty	Amount
CV000900	3-06-CV-2199		00.00 CC
Judge	SABRAM		
CV000900			100.00 CC
CV001500			00.00 CC
Total ->			350.00

FROM: CIVIL FILING AAA ASSOC. FOR CHILDREN W/ DISABILITIES ET AL. V. DEL TACD INC ET AL VISA AUTH# 0151241 SH

listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county of residence of the "defendant" is the county of residence. (b) County of Residence. For each civil case filed, except in U.S. plaintiff cases, enter the name of the county of residence of the "defendant" is the county of residence. (c) Attorneys. Enter firm name, address, telephone number and e-mail address (see attachment). II. Jurisdiction. The basis of jurisdiction is set forth in one of the boxes. If there is more than one basis of jurisdiction, place an "X" in all applicable boxes. United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. of the plaintiff. United States defendant. (2) When the plaintiff is suing a United States defendant. Federal question. (3) This refers to suits under 28 U.S.C. Constitution, an act of Congress or a treaty of the United States. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. of the different parties must be checked. (See Section III) III. Residence (citizenship) of Principal Parties. This section for each principal party. IV. Cause of Action. Report the civil statute directly relating to the cause of action. V. Nature of Suit. Place an "X" in the appropriate box. If sufficient to enable the deputy clerk or the statistical clerk nature of suit, select the most definitive. VI. Origin. Place an "X" in one of the seven boxes. Original Proceedings. (1) Cases which originate in the United States. Removed from State Court. (2) Proceedings initiated in state court for removal is granted, check this box. Remanded from Appellate Court. (3) Check this box for cases remanded from appellate court. Reinstated or Reopened. (4) Check this box for cases reinstated or reopened. Transferred from Another District. (5) For cases transferred from another district. Multidistrict Litigation. (6) Check this box when a multidistrict litigation transfers. Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision. VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded. VIII. Related Cases. This section of the JS-44 is used to reference pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature. Date and sign the civil cover sheet. (rev. 07/89)