

**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

**FILED**

**06 OCT -4 PM 3: 25**

CLERK U.S. DISTRICT COURT  
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.

**ROXY RABAN d.b.a. PAPPY'S  
MARKET & DELI; ROXY RABAN;  
HADSELL, SUSAN MARIE  
(Trustee/Conservator); THE SUSAN  
MARIE HADSELL TRUST  
(Company/Corporation); And DOES 1  
THROUGH 10, Inclusive**

Defendants.

Case No.:

**06 CV 2197 JM**

**JMA**

**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 ROXY RABAN d.b.a. PAPPY'S MARKET & DELI is located at 601 N. Cleveland  
8 Street, Oceanside, CA 92054. Defendant ROXY RABAN is located at 7210 Margerum Avenue,  
9 San Diego, CA 92120. Plaintiffs are informed and believe and thereon allege that Defendants  
10 HADSELL, SUSAN MARIE (Trustee/Conservator); and THE SUSAN MARIE HADSELL  
11 TRUST (Company/Corporation) are the owners, operators and/or lessors of the property located at  
12 601-607 N. Cleveland Street, Oceanside, CA 92054; Assessor's Parcel No.: 143-243-04.  
13 Defendants HADSELL, SUSAN MARIE (Trustee/Conservator); and THE SUSAN MARIE  
14 HADSELL TRUST (Company/Corporation) are located at 266 Diamante Way, Oceanside, CA  
15 92054. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the  
16 organization 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 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
21 employees, agents, of ROXY RABAN d.b.a. PAPPY'S MARKET & DELI; ROXY RABAN;  
22 HADSELL, SUSAN MARIE (Trustee/Conservator); and THE SUSAN MARIE HADSELL  
23 TRUST (Company/Corporation). Plaintiffs are ignorant of the true names and capacities of  
24 Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by  
25 such fictitious names. Plaintiffs will pray leave of the court to amend this complaint to allege the  
26 true names and capacities of the Does when ascertained.

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

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 CONCISE SET OF FACTS

7  
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 and exterior path  
8 of travel access barriers at 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,  
28

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

11 **NOTICE**

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

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

16 18. ROXY RABAN d.b.a. PAPPY'S MARKET & DELI; ROXY RABAN; HADSELL,  
17 SUSAN MARIE (Trustee/Conservator); THE SUSAN MARIE HADSELL TRUST  
18 (Company/Corporation); and Does 1 through 10 will be referred to collectively hereinafter as  
19 "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,  
28

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  
28

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.

5  
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**

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

**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.  
16

17 **DEMAND FOR JUDGMENT FOR RELIEF:**

18  
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  
28

1 Cal. Civil Code § 51, 52, 54, 54.3. 55;

2 C. A Jury Trial and;

3 D. For such other further relief as the court deems proper.  
4

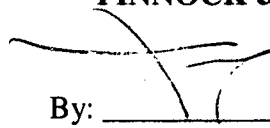
5

6 Respectfully submitted:

7

**PINNOCK & WAKEFIELD, A.P.C.**

8 Dated: 10/03/06



9

By: \_\_\_\_\_

THEODORE A. PINNOCK, ESQ.  
Attorney for Plaintiffs

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

---

---

**Rule 11  
ACCESSIBILITY SURVEY  
ADA TITLE III**

**Disability Compliance Documentation**

---

**Reported Tuesday, October 3, 2006**

**Business(es): PAPPY'S MARKET & DELI  
601 N. Cleveland Street  
Oceanside, CA 92054**

**Property Owner(s): HADSELL, SUSAN MARIE; THE SUSAN MARIE  
HADSELL TRUST (Company/Corporation)**

**Assessor's Parcel #: 143-243-04**

# Report of Findings

**A. VIOLATIONS**

**1. Parking**

- a. The space designated as accessible is located at the far right side of the parking. This space fails to be accessible, as the access aisle is too narrow and too short to be complaint.
- b. There fails to be tow-away signage posted at the driveway entrances warning patrons that vehicles parking in a disabled parking space illegally may be fined, towed or both.

**2. Exterior Path of Travel**

- a. The exterior path of travel leading from the space designated as accessible to the entrance has a steep dip, creating a possible hazard to a patron utilizing a wheelchair for mobility.

## 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 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)

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.



CIVIL COVER SHEET

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings 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. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF JOHN CARPENTER AND ITS MEMBERS; and JOHN CARPENTER, An Individual

DEFENDANTS ROXY RABAN, PAPPY'S MARKET & DELI; ROXY RABAN; HADSELL, SUSAN MARIE (Trusted Conservator); THE SUSAN MARIE HADSELL TRUST (Company/Corporation); and does 1 through 10, Inclusive.

FILED 00CV-2 10/04/06 JMA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego, CA (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego, CA (INSURETY CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED BY: DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Theodore A. Pinnock, Esq. SBN 153434 Michelle L. Wakefield, Esq. SBN 200424 David C. Wakefield, Esq. SBN:185736 Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410 San Diego, California 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

- Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country PT DEF 1 Incorporated or Principal Place of Business in This State 2 Incorporated and Principal Place of Business in Another State 3 Foreign Nation PT DEF 4 5 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 210 Land Condemnation, 362 Personal Injury-Medical Malpractice, 610 Agriculture, 820 Copyrights, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

TO BE DETERMINED AT TRIAL

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE October 3, 2006

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature and notes: 130235 su 10/4/06 \$350

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44**

Authority For Civil Cover Sheet

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 complete the form as follows:

1(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.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. In land condemnation cases, the county of residence of the "defendant"

(c) Attorneys. Enter firm name, address, telephone section ("see attachment").

1. Jurisdiction. The basis of jurisdiction is set one of the boxes. If there is more than one basis

United States plaintiff. (1) Jurisdiction is based United States defendant. (2) When the plaintiff is

Federal question. (3) This refers to suits under 2 Constitution, an act of Congress or a treaty of the and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits of the different parties must be checked. (See Se

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

IV. Cause of Action. Report the civil statute dire

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

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

Original Proceedings. (1) Cases which originate

Removed from State Court. (2) Proceedings initi

Remanded from Appellate Court. (3) Check this

Reinstated or Reopened. (4) Check this box for

Transferred from Another District. (5) For case

Multidistrict Litigation. (6) Check this box whe

Appeal to District Judge from Magistrate Judge

VII. Requested in Complaint. Class Action. Pla

Date and Attorney Signature. Date and sign the civil cover sheet. (rev. 07/89)

VIII. Related Cases. This section of the JS-44 is used to reference relating 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.

F.R.C.P.

of Title 28 U.S.C. Section 1407. When

s for within district transfers or

g date as the filing date.

e the date of remand as the filing date.

the 28 U.S.C., Section 1441. When the

e of action, in Section IV above, is

the cause.

ship was indicated above. Mark this

When Box 4 is checked, the citizenship

the United States, an amendment to the

box.

United States are included here.

be shown in pleadings. Place the "X" in

st them on an attachment, noting in this

**UNITED STATES DISTRICT COURT Southern District of California San Diego Division**

**# 130235 - A1 October 4, 2006**

Code	Case #	Qty	Amount
CV08600	3-98-CV-2197		00.00 CC
	Judge - HILLER		
CV08800			00.00 CC
CV10150			00.00 CC
<b>Total -&gt;</b>			<b>00.00</b>

**FROM: CIVIL FILING AAA ASSOC. FOR CHILDREN W/ DISABILITIES ET AL V. ROXY RABAN ET AL VISA AUTH# 1015241 SH**