

FILED

07 MAY 23 AM 9:40

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: LP

DEPUTY

PINNOCK & WAKEFIELD

A Professional Corporation
Theodore A. Pinnock, Esq.
David C. Wakefield, Esq.
Michelle L. Wakefield, Esq.
3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: 619.858.3671
Facsimile: 619.858.3646

Bar #: 153434
Bar #: 185736
Bar #: 200424

Attorneys for Plaintiffs

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

**TRIPPLE AAA ASSOCIATION FOR
CHILDREN AND ADULTS WITH
DEVELOPMENTAL DISABILITIES,
SUING ON BEHALF OF ITS
MEMBERS AND LISSA DOE;**

Plaintiffs,

v.

BONITA PHARMACY, INC.

And DOES 1 THROUGH 10, Inclusive

Defendants.

Case No **07 CV 933 JM (WMC)**

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 discriminatory practices against individuals with disabilities. Therefore, Plaintiffs make the following allegations in this federal civil rights action:

JURISDICTION AND VENUE

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

7 **SUPPLEMENTAL JURISDICTION**

8 2. The Judicial District of the United States District Court of the Southern District of
9 California has supplemental jurisdiction over the state claims as alleged in this Complaint
10 pursuant to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper in this
11 action is because all the causes of action or claims derived from federal law and those
12 arising under state law, as herein alleged, arose from common nucleus of operative facts.
13 The common nucleus of operative facts, include, but are not limited to, the incidents
14 where Plaintiffs were denied full and equal access to Defendants' facilities, goods, and/or
15 services in violation of both federal and state laws when they attempted to enter, use,
16 and/or exit Defendants' facilities as described below within this Complaint. Further, due
17 to this denial of full and equal access, TRIPPLE AAA ASSOCIATION FOR
18 CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES, SUING ON
19 BEHALF OF ITS MEMBERS and other persons with disabilities were injured. Based
20 upon the said allegations, the state actions, as stated herein, are so related to the federal
21 actions that they form part of the same case or controversy and the actions would
22 ordinarily be expected to be tried in one judicial proceeding.

23 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

24 3. Defendants are, and, at all times mentioned herein, were, a business or
25 corporation or franchise organized and existing and/or doing business under the laws of
26 the State of California. Plaintiffs are further informed and believe and thereon allege that
27
28

1 Defendants, as attached as Exhibit A, are the owners, operators, and/or lessors of the real
2 property, as well as the business operated thereon.

3 4. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically
4 include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN AND
5 ADULTS WITH DEVELOPMENTAL DISABILITIES , SUING ON BEHALF OF ITS
6 MEMBERS, LISSA DOE; and persons associated with its Members who accompanied
7 Members to Defendants' facilities. Defendants Does 1 through 10, were at all times
8 relevant herein subsidiaries, employers, employees, agents, of Defendants in attached as
9 Exhibit A. Plaintiffs are ignorant of the true names and capacities of Defendants sued
10 herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such
11 fictitious names. Plaintiffs will pray leave of the court to amend this complaint to allege
12 the true names and capacities of the Does when ascertained.

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

21
22 **CONCISE SET OF FACTS**

23 6. Plaintiff's Members Lissa Doe contacted the Defendants. Plaintiff Doe has
24 cerebral palsy and a sight impairment. Plaintiff Doe contacted Defendant with the intent
25 of buying medicine if auxiliary aids were provided and she was informed such aids were
26 not provided.

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

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

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

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

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

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

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

22 (4) Other similar services and actions.

23 (c) Effective communication. A public accommodation shall furnish
24 appropriate auxiliary aids and services where necessary to ensure effective
25 communication with individuals with disabilities.
26

27 Defendants failed to comply with Title 28, part 36.303 of Code of Federal Regulations as
28 it failed to provide Qualified readers, taped texts, audio recordings, Brailled materials, or

1 large print materials. Further, Defendants failed to remove architectural barriers as
2 attached as attached as Exhibit B.

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

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

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

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

18 10. Defendants as attached as Exhibit A and Does 1 through 10 will be referred to
19 collectively hereinafter as "Defendants."

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

22
23 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

26
27 Claim I

28 12. Based on the facts stated above, Defendants discriminated against Plaintiffs on the

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

5 Claim II

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

11 Claim III

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

18 Claim IV

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

24 Claim V

25 16. Based on the facts stated above, Defendants discriminated against Plaintiffs as
26 Defendants failed to afforded to an individual with a disability in the most integrated
27 setting appropriate to the needs of the individual in violation of 42 U.S.C. §12182.
28

1 Claim VI

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

6 Claim VII

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

13 Claim VIII

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

16 Claim IX

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

22 Claim X

23 21. Based on the facts stated above, Defendants discriminated against Plaintiffs as
24 Defendants altered the use of their establishment in a manner that affected or could have
25 affected the usability of the facility or part thereof and failed to make alterations in such a
26 manner that, to the maximum extent feasible, the altered portions of the facility are
27 readily accessible to and usable by individuals with disabilities, including individuals
28

1 who use wheelchairs in violation of 42 U.S.C. §12183.

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

3
4 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
5 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

20 25. Based on the facts plead above and elsewhere herein this complaint and because
21 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code
22 § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to
23 knowingly discriminate against Plaintiffs and persons similarly situated in violation of
24 Civil Code §§ 51, 52, and 54.1. Plaintiffs allege the access violations alleged here are so
25 obvious as to implicate at least a prima facie case of discriminatory intent.

26 26. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause
27 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer
28 irreparable harm unless Defendants are ordered to remove architectural, non-

1 architectural, and communication barriers at Defendants' public accommodation.
2 Plaintiffs allege that Defendants' discriminatory conduct is capable of repetition, and this
3 discriminatory repetition adversely impacts Plaintiffs and a substantial segment of the
4 disability community. Plaintiffs allege there is a state and national public interest in
5 requiring accessibility in places of public accommodation. Plaintiffs have no adequate
6 remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to
7 return to Defendants' places of business in the immediate future. Accordingly, the
8 Plaintiffs allege that a structural or mandatory injunction is necessary to enjoin
9 compliance with state civil rights laws enacted for the benefit of individuals with
10 disabilities.

11 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 damages pursuant to Cal. Civil Code § 52 or 54.3
- C. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 51, 52; 54.3;
- D. A Jury Trial and;
- E. For such other further relief as the court deems proper.

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.



Dated: May 22, 2007

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

Exhibit A

A. **BONITA PHARMACY, INC.**

Mailing Address:

4190 BONITA RD RM 101
BONITA, CA 91902

B. **To Be Serves**

Registered Agent: FRANK YEP

Registered Office:

4190 BONITA RD STE 101
BONITA, CA 92002

Exhibit B

**ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

Reported May 16, 22, 2007

Bonita Pharmac

4190 Bonita Rd

Bonita, CA 91902

(619) 475-4117

Report of Findings

I. IN GENERAL

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

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

A pharmacy must provide the Auxiliary Aids as follows:

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

Exhibit B

Large Print is 16 point or greater upon customer request.

- d. Provide Qualified Reader - A trained employee who reads the prescriptions. Costs –none.
- e. Provide signage as to the availability of auxiliary aids;
- f. Provide staff training as to how to provide auxiliary aids and to provide staff training to recognize customers with sight impairments to offer available auxiliary aids.

III. ARCHITECTURAL BARRIERS

A. VIOLATIONS

- a. Curb encroaching into aisle

406 Curb Ramps

406.1 General. *Curb ramps* on *accessible* routes shall comply with 406, 405.2 through 405.5, and 405.10.

406.2 Counter Slope. Counter slopes of adjoining gutters and road surfaces immediately adjacent to the *curb ramp* shall not be steeper than 1:20. The adjacent surfaces at transitions at *curb ramps* to *walks*, gutters, and streets shall be at the same level.

406.3 Sides of Curb Ramps. Where provided, *curb ramp* flares shall not be steeper than 1:10.

406.4 Landings. Landings shall be provided at the tops of *curb ramps*. The landing clear length shall be 36 inches (915 mm) minimum. The landing clear width shall be at least as wide as the *curb ramp*, excluding flared sides, leading to the landing.

406.5 Location. *Curb ramps* and the flared sides of *curb ramps* shall be located so that they do not project into vehicular traffic lanes, parking *spaces*, or parking access aisles. *Curb ramps* at *marked crossings* shall be wholly contained within the markings, excluding any flared sides.

- b. No Clear floor space to the right displays

304.3.1 Circular Space. The turning *space* shall be a *space* of 60 inches (1525 mm) diameter minimum. The *space* shall be permitted to include knee and toe clearance complying with 306.

305.3 Size. The clear floor or ground *space* shall be 30 inches (760 mm) minimum by 48 inches (1220mm) minimum.

Exhibit B

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

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 AND ADULTS WITH DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF ITS MEMBERS AND LISSA DOE;

DEFENDANTS
BONITA PHARMACY, INC.; and does 1 through 10, Inclusive.

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(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
(IN U.S. PLAINTIFF CASES ONLY)

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

(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)

'07 CV 933 JM (WMC)

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
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, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 310 Airplane, 362 Personal Injury-Medical Malpractice, 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 May 23, 2006

SIGNATURE OF ATTORNEY OF RECORD

PAID \$350 5/23/07 BHRCPT#138502 [Signature]

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 138502 - BH
* * C O P Y * *
May 23, 2007
09:46:20**

Civ Fil Non-Pris

USAD #: 07CV0933 CIV. FIL.
Judge.: JEFFREY T MILLER
Amount.: \$350.00 CC

Total-> \$350.00

FROM: TRIPLE AAA ASSOC. V. BONITA
PHARMACY INC.
VISA AUTH# 009432
CIVIL FILING