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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY \_\_\_\_\_ DEPUTY

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.**

**LA MESA PHARMACY INC.  
And DOES 1 THROUGH 10,  
Inclusive**

**Defendants.**

**Case No.**

**'07 CV 0973 IEG NLS**

**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**

1 Plaintiffs herein complain, by filing this Civil Complaint in  
2 accordance with rule 8 of the Federal Rules of Civil Procedure in  
3 the Judicial District of the United States District Court of the  
4 Southern District of California, that Defendants have in the past,  
5 and presently are, engaging in discriminatory practices against  
6 individuals with disabilities. Therefore, Plaintiffs make the  
7 following allegations in this federal civil rights action:

8 **JURISDICTION AND VENUE**

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

17 **SUPPLEMENTAL JURISDICTION**

18 2. The Judicial District of the United States District Court of the  
19 Southern District of California has supplemental jurisdiction over  
20 the state claims as alleged in this Complaint pursuant to 28 U.S.C.  
21 § 1367(a). The reason supplemental jurisdiction is proper in this  
22 action is because all the causes of action or claims derived from  
23 federal law and those arising under state law, as herein alleged,  
24 arose from common nucleus of operative facts. The common  
25 nucleus of operative facts, include, but are not limited to, the  
26 incidents where Plaintiffs were denied full and equal access to  
27 Defendants' facilities, goods, and/or services in violation of both  
28

1 federal and state laws when they attempted to enter, use, and/or  
2 exit Defendants' facilities as described below within this  
3 Complaint. Further, due to this denial of full and equal access,  
4 **TRIPPLE AAA ASSOCIATION FOR CHILDREN AND**  
5 **ADULTS WITH DEVELOPMENTAL DISABILITIES, SUING**  
6 **ON BEHALF OF ITS MEMBERS** and other persons with  
7 disabilities were injured. Based upon the said allegations, the state  
8 actions, as stated herein, are so related to the federal actions that  
9 they form part of the same case or controversy and the actions  
10 would ordinarily be expected to be tried in one judicial proceeding.

11 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

12 3. Defendants are, and, at all times mentioned herein, were, a  
13 business or corporation or franchise organized and existing and/or  
14 doing business under the laws of the State of California. Plaintiffs  
15 are further informed and believe and thereon allege that  
16 Defendants, as attached as Exhibit A, are the owners, operators,  
17 and/or lessors of the real property, as well as the business operated  
18 thereon.

19 4. The words "Plaintiffs" and "Plaintiff's Member" as used  
20 herein specifically include the organization and **TRIPPLE AAA**  
21 **ASSOCIATION FOR CHILDREN AND ADULTS WITH**  
22 **DEVELOPMENTAL DISABILITIES , SUING ON BEHALF OF**  
23 **ITS MEMBERS, LISSA DOE;** and persons associated with its  
24 Members who accompanied Members to Defendants' facilities.  
25 Defendants Does 1 through 10, were at all times relevant herein  
26 subsidiaries, employers, employees, agents, of Defendants in  
27 attached as Exhibit A. Plaintiffs are ignorant of the true names and  
28

1 capacities of Defendants sued herein as Does 1 through 10,  
2 inclusive, and therefore sues these Defendants by such fictitious  
3 names. Plaintiffs will pray leave of the court to amend this  
4 complaint to allege the true names and capacities of the Does when  
5 ascertained.

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

16 **CONCISE SET OF FACTS**

17 6. Plaintiff's Members Lissa Doe contacted the Defendants.  
18 Plaintiff Doe has cerebral palsy and a sight impairment. Plaintiff  
19 Doe contacted Defendant with the intent of buying medicine if  
20 auxiliary aids were provided and she was informed such aids were  
21 not provided.  
22

23 7. Defendants failed to provide auxiliary aids and services that  
24 are necessary to ensure equal access to the goods, services,  
25 privileges, or accommodations that it offers. Title 28, part 36.303  
26 of Code of Federal Regulations states:

27 (a) General. A public accommodation shall take those  
28 steps that may be necessary to ensure that no individual

1 with a disability is excluded, denied services,  
2 segregated or otherwise treated differently than other  
3 individuals because of the absence of auxiliary aids and  
4 services, unless the public accommodation can  
5 demonstrate that taking those steps would  
6 fundamentally alter the nature of the goods, services,  
7 facilities, privileges, advantages, or accommodations  
8 being offered or would result in an undue burden, i.e.,  
9 significant difficulty or expense.

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

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

21 (2) Qualified readers, taped texts, audio recordings,  
22 Brailled materials, large print materials, or other  
23 effective methods of making visually delivered  
24 materials available to individuals with visual  
25 impairments;

26 (3) Acquisition or modification of equipment or  
27 devices; and  
28

1 (4) Other similar services and actions.

2 (c) Effective communication. A public  
3 accommodation shall furnish appropriate auxiliary aids  
4 and services where necessary to ensure effective  
5 communication with individuals with disabilities.

6 Defendants failed to comply with Title 28, part 36.303 of Code of  
7 Federal Regulations as it failed to provide Qualified readers, taped  
8 texts, audio recordings, Brailled materials, or large print materials.  
9 Further, Defendants failed to remove architectural barriers as  
10 attached as attached as Exhibit B.

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

23  
24 9. Plaintiff's Members expressly intend to patronize the  
25 establishment and the property that is the subject of this Complaint  
26 in the immediate future.

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

1  
2 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST**  
3 **EACH NAMED DEFENDANT**

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

6 11. Plaintiffs aver that the Defendants are liable for the following  
7 claims as alleged below:  
8

9 **DISCRIMINATORY PRACTICES IN PUBLIC**  
10 **ACCOMMODATIONS**

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

13 **Claim I**

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

21 **Claim II**

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

28 **Claim III**



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

9 Claim IV

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

17 Claim V

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

22 Claim VI

23 17. Based on the facts stated above, Defendants discriminated  
24 against Plaintiffs as Defendants utilized standards or criteria or  
25 methods of administration that have the effect of discriminating on  
26 the basis of disability; or that perpetuate the discrimination of  
27 others who are subject to common administrative control in  
28



1 violation of 42 U.S.C. §12182.

2 Claim VII

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

11 Claim VIII

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

15 Claim IX

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

22 Claim X

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

1 the altered portions of the facility are readily accessible to and  
2 usable by individuals with disabilities, including individuals who  
3 use wheelchairs in violation of 42 U.S.C. §12183.

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

6  
7 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
8 **- CLAIMS UNDER CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

27 25. Based on the facts plead above and elsewhere herein this  
28 complaint and because Defendants violated the Civil Code § 51 by

1 failing to comply with 42 United States Code § 12182(b)(2)(A)(iv)  
2 and 42 U.S.C. § 12183(a)(2), Defendants did and continue to  
3 knowingly discriminate against Plaintiffs and persons similarly  
4 situated in violation of Civil Code §§ 51, 52, and 54.1. Plaintiffs  
5 allege the access violations alleged here are so obvious as to  
6 implicate at least a prima facie case of discriminatory intent.

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

23 27. Wherefore, Plaintiffs pray for damages and relief as  
24 hereinafter stated.  
25  
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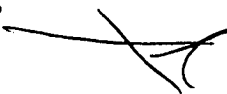
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**DEMAND FOR JUDGMENT FOR RELIEF:**

- 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. LA MESA PHARMACY INC.

8301 LA MESA BLVD  
LA MESA, CA 91941

B. TO BE SERVED

Registered Agent: DEVIN FOREMAN

Registered Office:

3433 CALLE DEL SUR  
CARLSBAD, CA 92009

Exhibit B

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**ACCESSIBILITY SURVEY  
ADA TITLE III**

**Disability Compliance Documentation**

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**Reported May 16, 22, 2007**

**BUSINESS LOCATIONS**

**La Mesa Pharmacy**

**8301 La Mesa Blvd.**

**La Mesa, CA**

**(619) 466-2552**

**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,

Exhibit B

Braille or taped text. Written information in the form of medicine instructions is given to customers to take home.

A pharmacy must provide the Auxiliary Aids as

follows:

a. Purchase Braille Translation Software: The industry leading multi-platform, multi-language Braille translator for anyone from the casual user to the power user. Approximate Cost Price: \$580.00. The purpose of the device is to translate current word documents to be printed as Braille.

b. Purchase or provide Digital Dictating Machine/Voice. Approximate Cost Price: \$15.00. The purpose of this machine is to provide taped text to customers that are blind that do not read Braille.

c. Provide large Print by using Microsoft Word.

Large Print is 16 point or greater upon customer request.

d. Provide Qualified Reader - A trained employee who reads the prescriptions. Costs –none.

e. Provide signage as to the availability of auxiliary aids;

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.



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

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

DEFENDANTS LA MESA PHARMACY INC. And DOES 1 THROUGH 10, Inclusive.

2007 MAY 29 PM 3: 21

(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, CALIFORNIA (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 0973 IEG NLS

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

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 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 1 Incorporated or Principal Place of Business in This State 2 Incorporated and Principal Place of Business in Another State 3 Foreign Nation Citizen of Another State Citizen or Subject of a Foreign Country

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, CIVIL RIGHTS, PERSONAL INJURY, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 29, 2007

SIGNATURE OF ATTORNEY OF RECORD

9A110 F350 5/29/07 BH RCP# 138646

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

**# 138646 - BH**  
**\* \* C O P Y \* \***  
**May 29, 2007**  
**15:23:26**

**Civ Fil Non-Pris**

USAO #: 07CV0973 CIV. FIL.  
Judge.: IRMA E GONZALEZ  
Amount.: \$350.00 CC

**Total-> \$350.00**

FROM: TRIPLE AAA V. LA MESA PHARMACY  
CIVIL FILING  
VISA AUTH# 015235