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SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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**TRIPPLE AAA ASSOCIATION FOR
CHILDREN WITH
DEVELOPMENTAL DISABILITIES
SUING ON BEHALF OF ROBERT
ARRON MCKISSICK, AIDA ESTETA
BARTOSH AND ANNA MARIE
WIGGINS; ROBERT ARRON
MCKISSICK, A MINOR; AIDA
ESTETA BARTOSH AND ANNA
MARIE WIGGINS**

Plaintiffs,

v.

**HIRMIZ NASIR d.b.a. NEW WAY
LIQUOR; NASIR HIRMIZ; TOM
SHENG 76 ENTERPRISES, L.P.
(Company/Corporation); And DOES 1
THROUGH 10, Inclusive**

Defendants.

Case No.:

CLASS ACTION

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, specifically including minorities with

1 way

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

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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 SUING ON BEHALF OF ROBERT
27 ARRON MCKISSICK, AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS; ROBERT
28 ARRON MCKISSICK, A MINOR; AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS

1 and other persons with disabilities were injured. Based upon the said allegations, the state actions,
2 as stated herein, are so related to the federal actions that they form part of the same case or
3 controversy and the 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 Plaintiffs are informed and believe and thereon allege that Defendant TOM SHENG 76
8 ENTERPRISES, L.P. (Company/Corporation) is the owner, operator and/or lessor of the property
9 located at 5991 University Avenue, San Diego, CA 92105; Assessor's Parcel Number 472-520-04.
10 Defendant TOM SHENG 76 ENTERPRISES, L.P. (Company/Corporation) is located at c/o Jung
11 Tom Co, 1524 Dorcus Street, San Diego, CA 92110. Defendants HIRMIZ NASIR d.b.a. NEW
12 WAY LIQUOR; and NASIR HIRMIZ are the tenants that operate business located at 5991
13 University Avenue, San Diego, CA 92105. Defendant NASIR HIRMIZ is located at 2530 S.
14 Granada, Spring Valley, CA 91977. The words "Plaintiffs" and "Plaintiff's Member" as used
15 herein specifically include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN
16 WITH DEVELOPMENTAL DISABILITIES SUING ON BEHALF OF ROBERT ARRON
17 MCKISSICK, AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS; ROBERT ARRON
18 MCKISSICK, A MINOR; AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS;
19 THEODORE PINNOCK and persons associated with its Members who accompanied Members to
20 Defendants' facilities.

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22 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
23 employees, agents, of HIRMIZ NASIR d.b.a. NEW WAY LIQUOR; NASIR HIRMIZ; and TOM
24 SHENG 76 ENTERPRISES, L.P. (Company/Corporation). Plaintiffs are ignorant of the true
25 names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues
26 these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this
27 complaint to allege the true names and capacities of the Does when 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 **CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b)**

7 6. As a class Plaintiffs are members of a group composed of persons with a wide range of
8 disabilities, limited to persons who use wheelchairs for mobility, who must be able to access
9 establishments, like Defendants' establishments. Plaintiffs are precluded from equal access to
10 Defendants' establishments so meaningfully because the establishments, and each of them, fail to
11 provide access for members of the disability community who use a wheelchair for mobility
12 throughout the facility. The Supreme Court of the United States has held as long as the class
13 representative provides adequate representation for the class' interests, the court has the power to
14 adjudicate the rights and obligations of all class members – even those who would otherwise be
15 beyond the reach of its personal jurisdiction. (See *Phillips Petroleum Co. v. Shutts*, 472 US 797
16 (1985)) This case stands for the proposition that minimum contacts are not required with
17 nonresident members of a plaintiff class because, “the burdens placed by a State upon absent class
18 action plaintiff are not of the same order or magnitude as those it places on an absent defendant.”
19 Plaintiffs allege they will insure class members shall receive adequate notice of the proceedings and
20 the opportunity to “opt out.” The class to be represented by plaintiffs is so numerous that joinder of
21 all members is impracticable. As determined by Congress in 1990 there were approximately
22 43,000,000 Americans with one or more physical or mental disabilities, and that number has
23 increased since 1990 and continues to increase. A great many on those individuals, numbering in
24 the millions, are exposed and potentially subjected to the lack of access. The individual plaintiffs
25 and members of the plaintiff organizations represent a representative cross-section of all of the
26 disabilities to be protected by the ADA and include individuals with mobility impairments, hearing
27 impairments, visual impairments, and other physical and mental disabilities. The questions of law
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1 and fact relating to the representative plaintiffs, such as the alleged ADA violations existing in
2 defendant's facility and the ADA requirements established by the ADA and the Department of
3 Justice's accessibility guidelines, are similar and common to the law and fact questions which
4 would be raised by other members of the class if they were individually named plaintiffs herein.
5 Similarly, the claims and defenses to be raised by and against the parties herein are typical of the
6 claims or defenses which would be raised by the members of the class if they were a party to this
7 action. The plaintiffs in this cause seek injunctive relief for the implementation of the relief
8 provided by the ADA, which is the same relief which would be sought by each class member if
9 he/she brought a claim individually. Accordingly, the plaintiffs herein as the representative parties,
10 will fairly and adequately protect the interest of the class. The relief sought herein is for the benefit
11 of all members of the class and consistent injunctive relief should be provided for Defendants'
12 facility in violation of the ADA. Prosecution of this matter by individual members of the class
13 would only create a risk of inconsistent and varying adjudications and the establishment of the
14 incompatible standards by defendant and adjudications which may be dispositive of the interests of
15 the other class members. Further, plaintiffs allege that defendant's hotels do not comply with the
16 ADA and the Department of Justice guidelines promulgated thereunder. Therefore, defendant has
17 acted or failed to act in a manner and on grounds applicable to the class as a whole. Therefore, final
18 injunctive relief for the class as a whole is appropriate. The questions of law and fact common to
19 the members of the class, such as the degree of ADA non-compliance, specific determination of the
20 non-compliance and the structural modifications necessary, which will be raised and adjudicated
21 herein predominate over any questions affecting only the individual plaintiffs or individual
22 members of the class. As a result, this class action is the optimal method for reaching a fair and
23 efficient adjudication of the controversy raised herein. Pursuant to the mandates of 42 USC §
24 12134(a), on July 26, 1991, the Department of Justice, Office of Attorney General, promulgated
25 federal regulations to implement the requirements of the ADA. 28 CFR Part 36.
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3 **CONCISE SET OF FACTS**

4 7. TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
5 DISABILITIES was formed to advocate for the civil rights of minorities and children with
6 disabilities; a substantial population with neither an advocate nor voice in the disability movement.
7 It is well documented by the federal government and others that the promises and opportunities
8 afforded by the Americans with Disabilities Act are not reaching minorities with disabilities.
9 Further, there is abundance of evidence to show, despite the federal government's unprecedented
10 and aggressive ADA awareness and technical assistance drive, businesses in the minority
11 communities are not complying with the ADA. For example, the National Council on Disability
12 reported in 1993 that minorities with disabilities face double discrimination; they are poorer; they
13 have fewer opportunities than others. Also, the fastest growing segment of the disability population
14 is from minority communities because those communities are growing faster than the Anglo
15 communities, and because persons from minority communities have a higher risk of disability. In
16 fact, studies show the rate of disability for Whites is 7%, for African-American 13%, and for
17 Hispanics 9%. Moreover, from 1983 to 1994 the disability non-White population increased by
18 50.4% whereas the disability White population only increased 11.3%. Even more intriguing is the
19 non-White 18 years older and under population rate of disability increased by 86.6%. Further,
20 evidence suggests minorities with disabilities tend to live with their families in conditions of
21 poverty (61%), and they tend not to advocate for their civil rights. Hence, Members of TRIPPLE
22 AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES specifically
23 intend to zealously advocate for minorities and children with disabilities and desire equal access to
24 businesses within their community, as well as communities more populous of minorities with
25 disabilities, and these are the reasons Plaintiffs filed this action.

26 Plaintiffs allege businesses often state that they have few customers with disabilities.
27 Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from
28 patronizing such businesses. The courts have recognized deterrence-based damage claims under
Civil Code 54.3 and 52. Since California courts have held that the California disability access laws

1 manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes
2 incentives for compliance, (see Donald, 266 Cal. Rptr. at 808-11) the courts conclude that
3 application of this canon of construction requires that 54.1 and 51, and their respective damages
4 provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The
5 courts therefore hold that where a plaintiff can prove that violations of applicable California
6 disability access standards deterred her on a particular occasion from attempting to attend a place of
7 public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and
8 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still
9 face systemic discrimination each and every day. One of the most debilitating forms of
10 discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial
11 or benefits, services, or other opportunities that are as effective and meaningful as those provided to
12 others. Discrimination results from actions or inactions that discriminate by effect as well as by
13 intent or design. Discrimination also includes harms resulting from the construction of
14 transportation, architectural, and communication barriers and the adoption or application of
15 standards and criteria and practices and procedures based on thoughtlessness or indifference-of
16 benign neglect. Discrimination also includes harms affecting individuals with a history of
17 disability, and those regarded by others as having a disability as well as persons associated with
18 such individuals that are based on false presumptions, generalizations, misperceptions, patronizing
19 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the
20 effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and
21 comprehensive national mandate for the elimination of discrimination against individuals with
22 disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing
23 discrimination against individuals with disabilities. (42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990))
24 Plaintiffs allege the legislative history of the Act, which reflects congressional concerns over the
25 deleterious effects of discrimination against people with disabilities. As a result, Congress
26 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation
27 Act of 1973. (As amended 29 U.S.C. § 794a) (42 U.S.C. § 12133) (See *Smith v Barton*, 914 F.2d
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1 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written recently
2 about the ADA and its mechanisms of enforcement. (See e.g., *Doran v. Del Taco, Inc.*, ---
3 F.Supp.2d ---- (C.D. Cal. June 9, 2005); Molski, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*
4 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)) For purposes of this suit, it is sufficient to
5 note that the statute creates a private right of action through which a litigant may seek injunctive
6 relief as well as attorneys' fees and costs. (42 U.S.C. § 12188(a)) Plaintiffs allege that it cannot be
7 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys
8 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are
9 just some of the examples where the legislature has made a determination that society will benefit
10 from private attorneys general. The ADA is but another example.

11 8. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL
12 DISABILITIES is an organization that advocates on the behalf of minorities and children with
13 disabilities when their civil rights and liberties have been violated.

14 9. Robert Aaron Mckissick is a nine year old with a beautiful smile and severe cerebral palsy;
15 his mom is Aida Esteta Bartosh; his sister is ANNA MARIE WIGGINS. Robert uses a walker for
16 mobility.

17 10. Robert resides in the community and enjoys going out to places. Aida Esteta Bartosh
18 understands limited English; ANNA MARIE WIGGINS assists in planning family outings.
19 Plaintiff ANNA MARIE WIGGINS desires to know if a place is accessible before the family goes
20 to the place. Hence, Plaintiff ANNA MARIE WIGGINS researches if a place is accessible before
21 traveling there. Plaintiff's Members desired to patronize Defendants' facilities to utilize their
22 goods and/or services.

23 11. Plaintiff's Members and the Class expressly intend to patronize Defendants' establishments
24 and the property that is the subject of this Complaint in the immediate future.

25 11. When Plaintiff's Member and Plaintiff visited Defendants' facilities, they had difficulty
26 utilizing the public accommodations' at Defendants' business establishments because they failed to
27 comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as
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1 "ADAAG") and/or California's Title 24 Building Code Requirements as specified in Attachment A.
2 Defendants failed to remove access barriers within the public accommodations of Defendants'
3 establishment. Plaintiff's Members were deterred from patronizing the facility because they would
4 have personally experienced difficulty with access barriers at Defendants' facility as specified in
5 Attachment A.

6 13. While Plaintiff(s) and the Class expressly want to patronize Defendants' establishment and the
7 property that is the subject of this Complaint in the immediate future, Plaintiff and Plaintiff's
8 Member is expressly deterred from returning to the establishment and the property that is the
9 subject of this Complaint due to the existence of the architectural barriers outlined above in
10 Paragraphs 10 through 11, as well as Attachment A.

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

16 15. Plaintiffs believe and herein allege Defendants' facilities have access violations not
17 directly known by Plaintiff which preclude or limit access by other members of Plaintiff
18 organization or other persons with disabilities, including but not limited to violations relating to
19 Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor
20 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform
21 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
22 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars,
23 and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
24 Accordingly, Plaintiffs allege Defendants are required to remove all architectural barriers, known or
25 unknown. Also, Plaintiffs allege Defendants are required to utilize the ADA checklist for Readily
26 Achievable Barrier Removal approved by the United States Department of Justice and created by
27 Adaptive Environments.
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16. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff(s) were discriminated against each time they patronized Defendants' establishments. Plaintiff's Member and Plaintiff(s) were extremely upset due to Defendants' conduct.

NOTICE

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

WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED

DEFENDANT

18. HIRMIZ NASIR d.b.a. NEW WAY LIQUOR; NASIR HIRMIZ; TOM SHENG 76 ENTERPRISES, L.P. (Company/Corporation); and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

With Disabilities Act Of 1990

CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal Access**

20. 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. Plaintiffs allege Defendants are a public accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and Plaintiff(s) was denied equal access to Defendants' existing facilities.

21. Plaintiff's Member and Plaintiff(s) has physical impairments as alleged in ¶ 7 above because his conditions affect one or more of the following body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's Member and

1 Plaintiff(s)' said physical impairments substantially limits one or more of the following major life
2 activities: walking. In addition, Plaintiff's Member and Plaintiff(s) cannot perform one or more of
3 the said major life activities in the manner, speed, and duration when compared to the average
4 person. Moreover, Plaintiff's Member and Plaintiff(s) has a history of or has been classified as
5 having a physical impairment as required by 42 U.S.C. § 12102(2)(A).
6

7 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such A Manner**
8 **That The Altered Portions Of The Facility Are Readily Accessible And Usable By Individuals**
9 **With Disabilities**

10 22. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's
11 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,
12 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or
13 operated by Defendants. Defendants altered their facility in a manner that affects or could affect the
14 usability of the facility or a part of the facility after January 26, 1992. In performing the alteration,
15 Defendants failed to make the alteration in such a manner that, to the maximum extent feasible, the
16 altered portions of the facility are readily accessible to and usable by individuals with disabilities,
17 including individuals who use wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

18 23. Additionally, the Defendants undertook an alteration that affects or could affect the usability
19 of or access to an area of the facility containing a primary function after January 26, 1992.
20 Defendants further failed to make the alterations in such a manner that, to the maximum extent
21 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains
22 serving the altered area, are readily accessible to and usable by individuals with disabilities in
23 violation 42 U.S.C. §12183(a)(2).

24 24. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the
25 maximum extent feasible, are readily accessible to and usable by individuals with disabilities
26 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
27 discriminated against Plaintiffs in violation of 42 U.S.C. § 12182(a).

28 25. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42

1 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's Member and
2 Plaintiff(s) was denied equal access to Defendants' existing facilities.

3
4 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural Barriers**

5 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's
6 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,
7 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or
8 operated by Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a).
9 Plaintiffs are informed, believe, and thus allege that architectural barriers which are structural in
10 nature exist within the following physical elements of Defendants' facilities: Space Allowance and
11 Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and
12 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
13 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet
14 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
15 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III requires
16 places of public accommodation to remove architectural barriers that are structural in nature to
17 existing facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to remove such
18 barriers and disparate treatment against a person who has a known association with a person with a
19 disability are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus,
20 Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42 United States
21 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because they were denied equal access to
22 Defendants' existing facilities.

23
24 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**
25 **Procedures**

26 27. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Defendants
27 failed and refused to provide a reasonable alternative by modifying its practices, policies and
28 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others

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similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. § 12188(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

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

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER CALIFORNIA ACCESSIBILITY LAWS
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,

1 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
2 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
3 Detectable Warnings, Signage, and Telephones.

4 31. These violations denied Plaintiff's Member and Plaintiff(s) full and equal access to
5 Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination
6 pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff(s) was denied
7 full, equal and safe access to Defendants' facility, causing severe emotional distress.
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10 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

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

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

19 33. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint and because
20 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
21 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
22 against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

23 34. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiffs' Second Cause
24 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable
25 harm unless Defendants are ordered to remove architectural, non-architectural, and communication
26 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory
27 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and
28 a substantial segment of the disability community. Plaintiffs allege there is a state and national

1 public interest in requiring accessibility in places of public accommodation. Plaintiffs have no
2 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to
3 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege
4 that a structural or mandatory injunction is necessary to enjoin compliance with state civil rights
5 laws enacted for the benefit of individuals with disabilities.

6 35. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

8 DEMAND FOR JUDGMENT FOR RELIEF:

9
10 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs
11 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities
12 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding
13 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
14 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking
15 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
16 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable
17 Warnings, Signage, and Telephones.

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

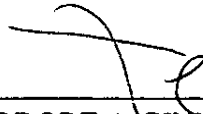
20 C. A Jury Trial and;

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

22 Respectfully submitted:

23
24 **PINNOCK & WAKEFIELD, A.P.C.**

25 Dated: 08/10/06

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

JS44

(Rev. 07/89)

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.)

FILED

I (a) PLAINTIFFS TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES DUNG ON BEHALF OF ROBERT ARRON MCKISSICK, AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS; ROBERT ARRON MCKISSICK, A MINOR; AIDA ESTETA BARTOSH AND ANNA MARIE WIGGINS

DEFENDANTS HIRMIZ NASIR d.b.a. NEW WAY LIQUOR; NASIR HIRMIZ; TOM SHENG 76 ENTERPRISES, INC. (Company/Corporation); and does 1 through 10, Inclusive, Defendants.

CLERK, U.S. DISTRICT COURT

(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)

'06 CV 1617 LAB CAB

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)

- | | | |
|---|---|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 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)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice: <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions		

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 August 10, 2006

SIGNATURE OF ATTORNEY OF RECORD

128105 [Signature] 8/10/06 \$350

ATTACHMENT A

Accessibility Survey

**Rule 11
ACCESSIBILITY SURVEY
ADA TITLE III**

Disability Compliance Documentation

**Reported by: MANTIC ASHANTI'S CAUSE INC.
Monday, July 17, 2006**

Business:

**HIRMIZ NASIR d.b.a. NEW WAY LIQUOR; NASIR HIRMIZ
5991 University Avenue, San Diego, CA 92105**

Property Owner(s):

**TOM SHENG 76 ENTERPRISES, L.P. (Company/Corporation)
c/o Jung Tom Co
1524 Dorcus Street
San Diego, CA 92110**

Assessor's Parcel No.: 472-520-04

Report of Findings

A. VIOLATIONS

1. Parking

- a. The parking space designated as accessible is on a steep slope and the striping is completely faded. Also, the access aisle is too short and too narrow. (On the date that I inspected this facility, the employee was parked in the access aisle)

2. Ramp

- a. The ramp leading to the entrance from the parking is too steep.

3. Exterior Path of Travel

- a. There fails to be a marked pathway in the exterior path of travel leading from the parking to the entrances to these businesses.
- b. There fails to be a safe and accessible path of travel from the public street to the entrances of these businesses.

4. Counter

- a. The counter is too high to be accessible, as it is higher than 34 inches.

5. Interior Path of Travel

- a. The interior path of travel fails to provide a continuous pathway of at least 36 inches, as required.

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. Ramp

If there is a change in level on a surface to be traversed by the public beyond a maximum, a curb ramp is required. (ADAAG 4.1.6(3); 4.8) Ramps shall have level landings at the bottom and top of each ramp and each ramp run. (ADAAG 4.8.4) The least possible slope shall be used for any ramp. (ADAAG 4.8.2) The maximum slope of a ramp in new construction shall be 1:12. (Id.) The maximum rise for any run shall be 30". (Id.) Interior ramps to be constructed on sites or in existing buildings where space limitations prohibit the use of a 1:12 slope or less may have a slope of between 1:10 and 1:12 for a maximum rise of 6", or a slope of between 1:8 and 1:10 for a maximum rise of 3". (ADAAG 4.1.6(3)(a)(i & ii) A slope steeper than 1:8 is not allowed. (ADAAG 4.1.6(3)(a)(ii)) If a ramp run has a rise greater than 6" or a horizontal projection greater than 72", then it shall have handrails on both sides of the ramp. (ADAAG 4.8.5) If handrails are not continuous, they shall extend at least 12" beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground. (ADAAG 4.8.5(2)) Gripping surfaces of ramp handrails shall be continuous. (ADAAG 4.8.5(4) The diameter or width of the gripping surface of a handrail shall be 1 1/4" to 1 1/2" or the shape shall provide an equivalent gripping surface. (ADAAG 4.26.2)

3. 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)

4. Counter

In retail stores where counters have cash registers and are provided for the sale or distribution of goods or services to the public, at least one (1) counter shall have a portion of the counter which is at least 36" in length with a maximum height of 36" above the finished floor. (ADAAG 7.2(1)) In alterations where it is technically infeasible to provide an accessible counter, an auxiliary counter meeting these requirements may be provided.

5. Interior Path of Travel

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.7; CA Title 24 Section 3105A). At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility. (ADAAG 4.3.2(3)) The minimum clear width of an accessible route within the interior of a facility to another area within a facility must be a minimum of 36" wide. (ADAAG 4.3.3) The minimum clear floor space or ground space required to accommodate a single, stationary wheelchair and occupant is 30" by 48". ADAAG 4.2.4.1 The minimum clear floor space or ground space for wheelchairs may be positioned for forward or for parallel approach to an object. Id. If carpet is used on a ground or floor surface, then it shall be securely attached. (ADAAG 4.5.3) If carpet or carpet tile is used on a ground or floor surface, the maximum pile thickness shall be 1/2".

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.