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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY _____ *AS* _____ DEPUTY

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

**TRIPPLE AAA ASSOCIATION FOR
CHILDREN AND ADULTS WITH
DEVELOPMENTAL DISABILITIES**

Plaintiffs,

v.

**MARMOLEJO JOSE C & MARIA;
SALSA BRAVA; 4885 EL CAJON
BOULEVARD, SAN DIEGO, CA 92115
; And DOES 1 THROUGH 10, Inclusive**

Defendants.

Case No.: **06 CV 2787 JM AJB**

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 disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to compel access compliance because empirical research on the effectiveness of Title III of the Americans with Disabilities Act indicates this Title has failed to achieve full and equal access simply by the executive branch of the Federal Government

1 funding and promoting voluntary compliance efforts. Further, empirical research shows when individuals
2 with disabilities give actual notice of potential access problems to places of public accommodation without
3 a federal civil rights action, the public accommodations do not remove the access barriers. Therefore,
4 Plaintiffs make the following allegations in this federal civil rights action:

5 **JURISDICTION AND VENUE**

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

11 **SUPPLEMENTAL JURISDICTION**

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

24 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

25 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise
26 organized and existing and/or doing business under the laws of the State of California. Plaintiffs are further
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informed and believe and thereon allege that Defendants **MARMOLEJO JOSE C & MARIA; SALSA BRAVA; 4885 EL CAJON BOULEVARD, SAN DIEGO, CA 92115**

are the owners, operators, and/or lessors of the real property, as well as the business operated thereon. As to Defendants and the property the public record reveals:

SALSA BRAVA

4885 EL CAJON BOULEVARD, SAN DIEGO, CA 92115

OWNER: MARMOLEJO JOSE C & MARIA C V (JOINT TENANCY)

MAILING ADDRESS: 4885 EL CAJON BLVD, SAN DIEGO, CA 92115

PROPERTY ADDRESS: 4885 EL CAJON BLVD, SAN DIEGO, CA 92115

***** SALES INFORMATION *****

RECORDED DATE: 01/31/2000

DOCUMENT NUMBER: 2000-047653

PRIOR SALES DATE: 12/24/1987

DOCUMENT TYPE: REGULAR OWNER CHANGE

***** ASSESSMENT INFORMATION *****

ASSESSOR'S PARCEL NUMBER: 471-281-24

4. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES and persons associated with its Members who accompanied Members to Defendants' facilities. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of **MARMOLEJO JOSE C & MARIA; SALSA BRAVA; 4885 EL CAJON BOULEVARD, SAN**

1 **DIEGO, CA 92115**

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

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

11 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO ALL**
12 **DEFENDANTS**

13 6. Plaintiffs are members of a group within the State of California composed of persons with a wide
14 range of disabilities, limited to persons who use wheelchairs for mobility, who must be able to access retail
15 merchandise establishments, like Defendants' establishments located within the facility in which

16 **MARMOLEJO JOSE C & MARIA; SALSA BRAVA; 4885 EL CAJON BOULEVARD, SAN**
17 **DIEGO, CA 92115**

18 is located. Plaintiffs are precluded from equal access to Defendants' establishment so meaningfully
19 because the establishment fails to provide access for members of the disability community who use a
20 wheelchair for mobility to disabled parking facilities, exterior path of travel facilities, entrance facilities,
21 interior path of travel facilities, and display facilities. The Supreme Court of the United States has held as
22 long as the class representative provides adequate representation for the class' interests, the court has the
23 power to adjudicate the rights and obligations of all class members – even those who would otherwise be
24 beyond the reach of its personal jurisdiction. Phillips Petroleum Co. v. Shutts, 472 US 797 (1985). This
25 case stands for the proposition that minimum contacts are not required with nonresident members of a
26 plaintiff class because, “the burdens placed by a State upon absent class action plaintiff are not of the same
27 order or magnitude as those it places on an absent defendant.” Id. Plaintiffs allege they will insure class
28 members shall receive adequate notice of the proceedings and the opportunity to “opt out,” if required.

1 Defendants have conducted themselves such as to establish a pattern and practice of architectural
2 discrimination. Plaintiffs allege that Defendants have control over each and every facility, establishment,
3 and/or business located within the Defendant Landlords' facilities in which Defendant **MARMOLEJO**
4 **JOSE C & MARIA; SALSA BRAVA; 4885 EL CAJON BOULEVARD, SAN DIEGO, CA 92115**
5 is located. Accordingly, Plaintiffs allege Defendants are responsible for removing architectural barriers at
6 Defendants' facilities and the establishment/business contained therein. For the aforementioned reasons,
7 Plaintiffs allege they are proper class representatives for members of the disability community who use a
8 wheelchair for mobility because the members of the disability community who use a wheelchair for
9 mobility are so numerous that joinder is impracticable due to the fact more than one hundred (100) persons
10 fall within the membership description. Also, the questions of law or fact are so common because the
11 members of the disability community who use a wheelchair for mobility are being denied their civil rights
12 under federal and state laws – that is, each member of the disability community who use a wheelchair for
13 mobility suffered substantially similar violations relating to exterior path of travel facilities, entrance
14 facilities, restrooms, interior path of travel facilities, and display facilities. Further, the claims or defenses
15 of the representative parties are typical – Plaintiffs have the right to access facilities, establishments, and
16 businesses like those within the facility in which Defendant **MARMOLEJO JOSE C & MARIA; SALSA**
17 **BRAVA; 4885 EL CAJON BOULEVARD, SAN DIEGO, CA 92115**
18 is located for many reasons such as the purchase of retail merchandise. Defendants' facilities are open to
19 the general public and Plaintiffs have been denied access because of violations, as outlined above and
20 specifically addressed elsewhere within this Complaint. Additionally, Plaintiffs, as the named
21 representatives, will fairly and adequately represent the interests of the class because Plaintiffs and the
22 members of the disability community in the State of California who use a wheelchair for mobility have
23 suffered substantially similar violations. Finally, a pattern and practice exists on the part of Defendants,
24 and each of them, of architectural discrimination at their public facilities located within the State of
25 California. On information and good faith belief, Plaintiffs thereon allege that Defendants, prior to the
26 passing of the Americans With Disabilities Act in 1992, conceived, commissioned, designed, and
27 implemented among other things, a design for their public facilities, including, but not limited to disabled
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1 parking facilities, exterior path of travel facilities, restroom, entrance facilities, interior path of travel
2 facilities, and display facilities, which do not meet the minimal standards outlined under the federal
3 regulations known as the Americans With Disabilities Act Accessibility Guidelines ("ADAAG") and state
4 regulations, also known as Title 24 of the California Building Code, and to which non-compliant plan they
5 continue to utilize to the injury of the members of the class. For these reasons and the facts as stated
6 herein, Plaintiffs have the right to maintain this statewide class action pursuant to Fed.R.Civ.P. Rule 23(b).

7 **CONCISE SET OF FACTS**

8 7. In 2006, Plaintiff's Member went to the **MARMOLEJO JOSE C & MARIA; SALSA BRAVA;**
9 **4885 EL CAJON BOULEVARD, SAN DIEGO, CA 92115**

10 . As Said Member is unable to walk Plaintiff's Member uses a wheelchair. Plaintiff's Member experienced
11 architectural barriers at the place at which impeded his access. Plaintiff can prove these barriers as Plaintiff
12 conducted a survey of Defendants' facility and Plaintiff's counsel will provide it to competent defense
13 counsel. Plaintiff's Members allege its visually and hearing impaired members desire to go to Defendants'
14 facility but cannot because of lack of auxiliary aids. Plaintiffs specifically allege that Defendants knew, to a
15 substantial certainty, that the architectural barriers precluded wheelchair access. First, Plaintiffs will prove
16 that Defendants had actual knowledge that the architectural barriers precluded wheelchair access - that it
17 would be hard to believe that noncompliance with ADAAG as to accessible entrances could be other than
18 intentional. Second, due to the abundance of ADA information and constant news covers of ADA lawsuits,
19 Defendants had actual knowledge of the ADA and decided deliberately not to remove architectural barriers.
20 Third, Defendants have no plans to remodel. Fourth, it would be hard to believe that Defendants did not
21 have actual knowledge of ADA given all the ADA public awareness campaigns, the abundance of free
22 ADA information and the media's constant ADA coverage. Fifth, a human being acting for the defendants
23 made a conscious decision as to how to proceed given the presence of the architectural barriers. Plaintiffs
24 allege any alternative methods preclude integration of wheelchair patrons, as it requires them to use a
25 second-class entrance. Also, expert testimony will show the facility contained inaccessible features.
26 Plaintiffs allege businesses often state that they have few customers with disabilities. Plaintiffs allege such
27 customers avoid patronizing inaccessible business and are deterred from patronizing such businesses. The
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1 courts have recognized deterrence-based damage claims under Civil Code 54.3 and 52. Since California
2 courts have held that the California disability access laws manifest an intent on the part of the legislature
3 that they be interpreted in a manner that maximizes incentives for compliance, (see Donald, 266 Cal. Rptr.
4 at 808-11) the courts conclude that application of this canon of construction requires that 54.1 and 51, and
5 their respective damages provisions, 54.3 and 52, be interpreted as extending to claims based on incidents
6 of deterrence. The courts therefore hold that where a plaintiff can prove that violations of applicable
7 California disability access standards deterred her on a particular occasion from attempting to attend a place
8 of public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and 51
9 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still face
10 systemic discrimination each and every day. One of the most debilitating forms of discrimination is
11 segregation imposed by others. Discrimination also includes exclusion, or denial of benefits, services, or
12 other opportunities that are as effective and meaningful as those provided to others. Discrimination results
13 from actions or inactions that discriminate by effect as well as by intent or design. Discrimination also
14 includes harms resulting from the construction of transportation, architectural, and communication barriers
15 and the adoption or application of standards and criteria and practices and procedures based on
16 thoughtlessness or indifference-of benign neglect. Discrimination also includes harms affecting individuals
17 with a history of disability, and those regarded by others as having a disability as well as persons associated
18 with such individuals that are based on false presumptions, generalizations, misperceptions, patronizing
19 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the effects a
20 person's disability may have on others. The ADA aim is: (1) To provide a clear and comprehensive
21 national mandate for the elimination of discrimination against individuals with disabilities; [and] (2) to
22 provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with
23 disabilities. (42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)) Plaintiffs allege the legislative history of the Act,
24 which reflects congressional, concerns over the deleterious effects of discrimination against people with
25 disabilities. As a result, Congress incorporated within Title II of the ADA the remedial provision in Section
26 504 of the Rehabilitation Act of 1973. (As amended 29 U.S.C. § 794a)(42 U.S.C. § 12133)(See *Smith v.*
27 *Barton*, 914 F.2d 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written
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1 recently about the ADA and its mechanisms of enforcement. (See e.g., *Doran v. Del Taco, Inc.*, ---
2 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*
3 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)) For purposes of this suit, it is sufficient to note
4 that the statute creates a private right of action through which a litigant may seek injunctive relief as well as
5 attorneys' fees and costs. (42 U.S.C. § 2188(a)) Plaintiffs allege that it cannot be said that because an
6 attorney has chosen to specialize in an area, which provides statutory attorneys fees his practice is
7 necessarily suspect. Class actions, antitrust, and consumer protection statutes are just some of the examples
8 where the legislature has made a determination that society will benefit from private attorneys general. The
9 ADA is but another example. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH
10 DEVELOPMENTAL DISABILITIES is an organization that advocates on the behalf of children and others
11 with disabilities specifically including adults who use wheelchairs when their civil rights and liberties have
12 been violated. Plaintiff's Member visited the place in 2006 and plans on returning to the place and he
13 encountered architectural barriers there. Association standing requires that (1) its members would otherwise
14 have standing to sue in their own right, (2) the interests the association seeks to protect are germane to the
15 organization's purpose and (3) neither the claim asserted nor the relief requested requires the participation
16 of individual members. *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333, 343; *Greater*
17 *Los Angeles Council On Deafness, Inc. v. Baldrige*, 827 F.2d 1353, 1358 (9th Cir. 1987). Plaintiffs have
18 standing to bring this action. Plaintiff Association has at least four members who use wheelchairs as they
19 cannot walk at all. The purpose of the Association is to fight to remove access and architectural barriers.

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21 8. Plaintiff's Member has a physical impairment and due to this impairment he has learned to
22 successfully operate a wheelchair. Plaintiff's Member and Plaintiff(s) has physical impairments because her
23 conditions affect one or more of the following body systems: neurological, musculoskeletal, special sense
24 organs, and/or cardiovascular. Further, Plaintiff's Member and Plaintiff(s) said physical impairments
25 substantially limits one or more of the following major life activities: walking. In addition, Plaintiff's
26 Member and Plaintiff(s) cannot perform one or more of the said major life activities in the manner, speed,
27 and duration when compared to the average person. Moreover, Plaintiff's Member and Plaintiff(s) has a
28 history of or has been classified as having a physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

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

10 11. The architectural regulations or "design standards" implemented by the federal ADA are often
11 referred to in the literature as "ADAAGs," which is an acronym for "ADA Architectural Guidelines." (See
12 *Independent Living I*, 982 F. Supp. at pp. 707-708 ["The guidelines issued by the Access Board are
13 denominated the 'ADA Accessibility Guidelines' ('ADAAG.'). The design standards enacted by the Attorney
14 General are identical to the ADAAGs, but are denominated as 'Standards.' Despite the technical distinction,
15 the two terms are often used interchangeably."]; *Access Now, Inc. v. Ambulatory Surgery Center Group,*
16 *Ltd. (S.D. Fla. 2001) 146 F. Supp. 2d 1334, 1336* ["These guidelines are called ... ("ADAAG")"].) The
17 "ADAAGs" are found in Appendix A to Part 36 of title 28 of the Code of Federal Regulations. The
18 ADAAG violations alleged here are basically so intuitive that it would be hard to believe that
19 noncompliance with them could be other than intentional.

20 12. Plaintiff(s) was deterred from patronizing the facility due to the alleged ADA violations and/or
21 alleged architectural barriers outlined in Paragraphs 10 through 11 above.

22 13. While Plaintiff's Member expressly wants to patronize Defendant's establishment and the property
23 that is the subject of this Complaint in the immediate future, Plaintiff and Plaintiff's Member is expressly
24 deterred from returning to the establishment and the property that is the subject of this Complaint due to the
25 existence of the architectural barriers outlined above in Paragraphs 10 through 11.

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

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

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

18 **NOTICE**

19 17. Plaintiffs are not required to provide notice to the defendants prior to filing a complaint. (See
20 *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832 (9th Cir 2000))
21

22 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

23 **18. MARMOLEJO JOSE C & MARIA; SALSA BRAVA; 4885 EL CAJON BOULEVARD, SAN**
24 **DIEGO, CA 92115**

25 ; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."
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27 19. Plaintiffs aver that the Defendants are liable for the following claims as alleged below:
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DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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Claim I

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

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Claim II

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

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Claim III

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

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Claim IV

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

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Claim V

29 23. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants failed to
30 afford to an individual with a disability in the most integrated setting appropriate to the needs of the

1 individual in violation of 42 U.S.C. §12182.

2 Claim VI

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

7 Claim VII

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

13 Claim VIII

14 26. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants engaged
15 in the following specific prohibitions: (i) the imposition or application of eligibility criteria that screen out
16 or tend to screen out an individual with a disability or any class of individuals with disabilities from fully
17 and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such
18 criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges,
19 advantages, or accommodations being offered; (ii) a failure to make reasonable modifications in policies,
20 practices, or procedures, when such modifications are necessary to afford such goods, services, facilities,
21 privileges, advantages, or accommodations to individuals with disabilities;

22 27. (iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is
23 excluded, denied services, segregated or otherwise treated differently than other individuals because of the
24 absence of auxiliary aids and services; (iv) a failure to remove architectural barriers, and communication
25 barriers that are structural in nature, in existing facilities in violation of 42 U.S.C. §12182.

26 Claim IX

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

4 Claim X

5 29. Based on the facts stated above, Defendants discriminated against Plaintiffs as Defendants altered
6 the use of their establishment in a manner that affected or could have affected the usability of the facility or
7 part thereof and failed to make alterations in such a manner that, to the maximum extent feasible, the
8 altered portions of the facility are readily accessible to and usable by individuals with disabilities, including
9 individuals who use wheelchairs in violation of 42 U.S.C. §12183.

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

12
13 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER CALIFORNIA**
14 **ACCESSIBILITY LAWS**

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

16 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's Member and
17 Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities, privileges,
18 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
19 Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title
20 24 Accessible Building Code by failing to provide access to Defendants' facilities due to violations
21 pertaining to the Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and
22 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform
23 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water
24 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls
25 and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. These violations
26 denied Plaintiff's Member and Plaintiff(s) full and equal access to Defendants' facility. Thus, Plaintiff's
27 Member and Plaintiff(s) was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
28 Plaintiff's Member and Plaintiff(s) was denied full, equal and safe access to Defendants' facility, causing

1 severe emotional distress. The Disabled Persons Act is found in *sections 54* of the Civil Code, and has been
2 around in some form on the statute books since the late 1960's--more than 20 years before the federal ADA.
3 (See Stats. 1968, ch. 461.) The Disabled Persons Act begins with the statement in *subdivision (a) of section*
4 *54* that "Individuals with disabilities or medical conditions have the same right as the general public to the
5 full and free use of ... public facilities, and other public places." (*β 54, subd. (a).*) *Section 54* is immediately
6 followed by *section 54.1, subdivision (a)(3)* of which--in contrast to the more spartan reference to the ADA
7 in *section 51*--specifically incorporates ADA *regulations*. The enforcement of *section 54* is to be found in
8 *section 54.3. Subdivision (a)(3) of section 54.1* provides: " 'Full and equal access,' for purposes of this
9 section in its application to transportation, means access that meets the standards of Titles II and III of the
10 Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant
11 thereto, except that, if the laws of this state prescribe higher standards, it shall mean access that meets those
12 higher standards." *Subdivision (a) of section 54.3* provides in its entirety: "Any person or persons, firm or
13 corporation who denies or interferes with admittance to or enjoyment of the public facilities as specified in
14 *Sections 54 and 54.1* or otherwise interferes with the rights of an individual with a disability under *Section*
15 *54, 54.1, and 54.2* is liable for each offense for the actual damages and any amount as may be determined
16 by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages
17 but in no case less than one thousand dollars (\$ 1,000), and attorney's fees as may be determined by the
18 court in addition thereto, suffered by any person denied any of the rights provided in *Sections 54, 54.1, and*
19 *54.2*. 'Interfere' for purposes of this section, includes, but is not limited to, preventing or causing the
20 prevention of a guide dog, signal dog, or service dog from carrying out its functions in assisting a disabled
21 person." *Section 54.3* was construed in the 1990 *Cafe Royale* decision as providing for strict liability--that
22 is, liability without any need for intentional conduct--prior to the 1992 legislation which added both
23 *subdivision (f) to section 51 and subdivision (c) of section 54* (back then in the context of the minimum
24 penalty under *section 54.3* which was \$ 250; now it is \$ 1,000). *Cafe Royale* was a case decided prior to the
25 enactment of the ADA, and contains not a word about federal law. It was also decided exclusively under
26 *Civil Code section 54 et seq.*, and contains not one word on the Unruh Act. In *Cafe Royale*, a wheelchair
27 user (a former deputy Attorney General and member of the Attorney General's task force on disability)
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1 discovered that he could not reach the main dining area of a tiered restaurant on his own, though the
2 restaurant offered to lift him up the stairs. He declined an offer of help because it would attract attention
3 and because he might be dropped in the process of being bodily picked up and moved. He sued the
4 restaurant under *section 54.3* because of the absence of ramps or elevators to the second-tiered area. The
5 restaurant thought that it had complied with the law because its architect thought, based on an informal
6 conversation with an employee of the San Francisco building department, that a certain number of
7 handicapped seating places was "all that was needed for compliance." (See *id. at p. 174.*) The building
8 department employee, however, gave the restaurant architect erroneous advice. In fact, the State Building
9 Standards Code (required by *Government Code section 4450 et seq*) provided that all floors of a restaurant
10 be on a common level or else accessible by either ramps or elevators. While a hardship exemption might be
11 obtained, 75 percent of the main dinning area would still need to be handicap accessible, and the Cafe
12 Royale's option of seating wheelchair patrons in the bar or having them carried to the common area was a
13 violation. On appeal, the fact of the violation was understood by all parties: "All parties agreed that Cafe
14 Royale's seating capacity was in violation of the handicap access requirements." (*Cafe Royale, supra, 218*
15 *Cal. App. 3d at p. 174.*) Hence issue was joined as to whether the restaurant's "good faith" belief that it was
16 "in compliance" (*ibid.*) was sufficient to deny the patron recovery under *section 54.3*. The trial court
17 thought so, but the appellate court disagreed. The appellate court reasoned thusly: the fact that *section 54.3*
18 said a person who "denies or interferes with admittance to or enjoyment of the public facilities as specified
19 in *section 54* and *54.1* ... is liable for each offense ... but in no case less than two hundred fifty dollars (\$
20 250)" The court said: "The plain meaning of this language is that ordinarily minimum statutory damages
21 in the amount of \$ 250 must be awarded for a denial of equal access in violation of *section 54 et seq.*,
22 *notwithstanding the defendant's intent.*" (*Id. at p. 177.*) The *Cafe Royale* court reasoned that an
23 interpretation of *section 54.3* that included an element of intentional violation would, because the level of
24 compliance would diminish, yield "a result that is clearly repugnant to the statutory purpose." Further, the
25 Donald case held a Plaintiff need not visit the facility to sue for compliance. (*Id. at pp. 179-180.*) So the trial
26 court reversed the trial court judgment awarding the plaintiff nothing, and concluded that he was entitled to
27 the \$ 250 statutory minimum. (See *id. at pp. 180-181.*) Café Royale applies here. Thus, Defendants' good
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faith efforts, if any, are irrelevant as is any reliance on a city building inspector.

CLAIM II: Failure To Modify Practices, Policies And Procedures

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

CLAIM III: Violation Of The Unruh Act

33. Based on the facts plead at ¶¶ 6-16 above and elsewhere herein this complaint and because Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly discriminate against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1. Plaintiffs allege the access violations alleged here are so obvious as to implicate at least a prima facie case of discriminatory intent.

34. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and III of Plaintiffs' Second 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 state and 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 state civil rights laws enacted for the benefit of individuals with disabilities.

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

DEMAND FOR JUDGMENT FOR RELIEF:

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

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: DECEMBER 26, 2006

By: 

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

JS44

(Rev. 07/88)

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 AND ADULTS WITH DEVELOPMENTAL DISABILITIES

DEFENDANTS MARMOLEJO JOSE G & MARIA; SALSA BRAVA; 4885 EL CAJON BOULEVARD, SAN DIEGO, CA 92118 through 10, Inclusive, Defendants.

CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA San Diego, CA

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) San Diego, CA
BY 20 DEPT

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
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Michelle L. Wakefield, Esq. SBN 200424
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San Diego, California 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

06 CV 2787 JM AJB

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
- Citizen of This State 1 1 Incorporated or Principal Place of Business in This State 4 4
 - Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5
 - Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 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"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment	
<input type="checkbox"/> Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	PROPERTY RIGHTS		
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY		
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 530 General	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> Other Contract		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities Exchange	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 550 Prisoner Conditions	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS		
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations		<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare		<input type="checkbox"/> Security Act		<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 290 All Other Real Property					<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	

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

DATE December 26, 2006

SIGNATURE OF ATTORNEY OF RECORD

Docket Number

133295 See 12/27/06 \$350

UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

133245 - A3
December 27, 2006

Code	Case #	Qty	Amount
CV006500	3-06-CV-2787		40.00 CC
	Judge - HILLER		
CV006400			100.00 CC
CV510000			190.00 CC
Total ->			350.00

FROM: CIVIL FILING AAA ASSOC. FOR
CHILDREN W/ DISABILITIES ET AL
V. HARKOLEJO, JOSE C ET AL
VISA AUTH# 010473 SH