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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY      DEPUTY

Attorneys for Plaintiffs

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

**TRIPPLE AAA ASSOCIATION FOR  
CHILDREN WITH  
DEVELOPMENTAL DISABILITIES,**

Plaintiffs,

v.

**NANCY'S TACO SHOP; VALENCIA  
YANEZ JOSE LUIS; And DOES 1  
THROUGH 10, Inclusive**

Defendants.

Case No. **06CV 1932** **WQH JMA**

**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 funding and promoting voluntary compliance efforts. Further, empirical research shows when individuals with disabilities give actual notice of potential access problems to places of public accommodation without a federal

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1 civil rights action, the public accommodations do not remove the access barriers. Therefore,  
2 Plaintiffs make the following allegations in this federal civil rights action:

3 **JURISDICTION AND VENUE**

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

9 **SUPPLEMENTAL JURISDICTION**

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

23 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

24 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
25 franchise organized and existing and/or doing business under the laws of the State of California.  
26 Defendants NANCY'S TACO SHOP; VALENCIA YANEZ JOSE LUIS are the tenants that  
27 operate business located at 4211 Market Street, San Diego, CA. The words "Plaintiffs" and  
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"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.

4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of NANCY'S TACO SHOP; and VALENCIA YANEZ JOSE LUIS. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10 inclusive and therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint to allege the true names and capacities of the Does when ascertained.

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

**CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b)**

6. As a class Plaintiffs are members of a group composed of persons with a wide range of disabilities, limited to persons who use wheelchairs for mobility, who must be able to access establishments, like Defendants' establishments. Plaintiffs are precluded from equal access to Defendants' establishments so meaningfully because the establishments, and each of them, fail to provide access for members of the disability community who use a wheelchair for mobility throughout the facility. The Supreme Court of the United States has held as long as the class representative provides adequate representation for the class' interests, the court has the power to adjudicate the rights and obligations of all class members – even those who would otherwise be beyond the reach of its personal jurisdiction. [See *Phillips Petroleum Co. v. Shutts*, 472 US 797 (1985)] This case stands for the proposition that minimum contacts are not required with nonresident members of a plaintiff class because, "the burdens placed by a State upon absent class

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action plaintiff are not of the same order or magnitude as those it places on an absent defendant.”

Id. Plaintiffs allege they will insure class members shall receive adequate notice of the proceedings and the opportunity to “opt out.” The class to be represented by plaintiffs is so numerous that joinder of all members is impracticable. As determined by Congress in 1990 there were approximately 43,000,000 Americans with one or more physical or mental disabilities, and that number has increased since 1990 and continues to increase. A great many on those individuals, numbering in the millions, are exposed and potentially subjected to the lack of access. The individual plaintiffs and members of the plaintiff organizations represent a representative cross-section of all of the disabilities to be protected by the ADA and include individuals with mobility impairments, hearing impairments, visual impairments, and other physical and mental disabilities. The questions of law and fact relating to the representative plaintiffs, such as the alleged ADA violations existing in defendant’s facility and the ADA requirements established by the ADA and the Department of Justice’s accessibility guidelines, are similar and common to the law and fact questions which would be raised by other members of the class if they were individually named plaintiffs herein. Similarly, the claims and defenses to be raised by and against the parties herein are typical of the claims or defenses which would be raised by the members of the class if they were a party to this action. The plaintiffs in this cause seek injunctive relief for the implementation of the relief provided by the ADA, which is the same relief which would be sought by each class member if he/she brought a claim individually. Accordingly, the plaintiffs herein as the representative parties, will fairly and adequately protect the interest of the class. The relief sought herein is for the benefit of all members of the class and consistent injunctive relief should be provided for Defendants’ facility in violation of the ADA. Prosecution of this matter by individual members of the class would only create a risk of inconsistent and varying adjudications and the establishment of the incompatible standards by defendant and adjudications which may be dispositive of the interests of the other class members. Further, plaintiffs allege that defendant’s hotels do not comply with the ADA and the Department of Justice guidelines promulgated thereunder. Therefore, defendants has acted or failed to act in a manner and on grounds applicable

1 to the class as a whole. Therefore, final injunctive relief for the class as a whole is appropriate. The  
 2 questions of law and fact common to the members of the class, such as the degree of ADA non-  
 3 compliance, specific determination of the non-compliance and the structural modifications  
 4 necessary, which will be raised and adjudicated herein predominate over any questions affecting only  
 5 the individual plaintiffs or individual members of the class. As a result, this class action is the  
 6 optimal method for reaching a fair and efficient adjudication of the controversy raised herein.  
 7 Pursuant to the mandates of 42 USC § 12134(a), on July 26, 1991, the Department of Justice,  
 8 Office of Attorney General, promulgated federal regulations to implement the requirements of the  
 9 ADA. 28 CFR Part 36.

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 11 **CONCISE SET OF FACTS**

12 7. **TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL**  
 13 **DISABILITIES** was formed to advocate for the civil rights of minorities and children with  
 14 disabilities; a substantial population with neither an advocate nor voice in the disability movement.  
 15 It is well documented by the federal government and others that the promises and opportunities  
 16 afforded by the Americans with Disabilities Act are not reaching minorities with disabilities.  
 17 Further, there is abundance of evidence to show, despite the federal government's unprecedented  
 18 and aggressive ADA awareness and technical assistance drive, businesses in the minority  
 19 communities are not complying with the ADA. For example, the National Council on Disability  
 20 reported in 1993 that minorities with disabilities face double discrimination; they are poorer; they  
 21 have fewer opportunities than others. Also, the fastest growing segment of the disability population  
 22 is from minority communities because those communities are growing faster than the Anglo  
 23 communities, and because persons from minority communities have a higher risk of disability. In  
 24 fact, studies show the rate of disability for Whites is 7%, for African-American 13%, and for  
 25 Hispanics 9%. Moreover, from 1983 to 1994 the disability non-White population increased by  
 26 50.4% whereas the disability White population only increased 11.3%. Even more intriguing is the  
 27 non-White 18 years older and under population rate of disability increased by 86.6%. Further,  
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1 evidence suggests minorities with disabilities tend to live with their families in conditions of  
2 poverty (61%), and they tend not to advocate for their civil rights. Hence, Members of TRIPPLE  
3 AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES specifically  
4 intend to zealously advocate for minorities and children with disabilities and desire equal access to  
5 businesses within their community, as well as communities more populous of minorities with  
6 disabilities, and these are the reasons Plaintiffs filed this action.

7  
8 Plaintiffs allege businesses often state that they have few customers with disabilities.  
9 Plaintiffs allege such customers avoid patronizing inaccessible business and are deterred from  
10 patronizing such businesses. The courts have recognized deterrence-based damage claims under  
11 Civil Code 54.3 and 52. Since California courts have held that the California disability access laws  
12 manifest an intent on the part of the legislature that they be interpreted in a manner that maximizes  
13 incentives for compliance, see Donald, 266 Cal. Rptr. at 808-11, the courts conclude that  
14 application of this canon of construction requires that 54.1 and 51, and their respective damages  
15 provisions, 54.3 and 52, be interpreted as extending to claims based on incidents of deterrence. The  
16 courts therefore hold that where a plaintiff can prove that violations of applicable California  
17 disability access standards deterred her on a particular occasion from attempting to attend a place of  
18 public accommodation, that plaintiff states a claim for relief under California Civil Code 54.1 and  
19 51 and, in particular, for damages, under 54.3 and 52. Plaintiffs allege people with disabilities still  
20 face systemic discrimination each and every day. One of the most debilitating forms of  
21 discrimination is segregation imposed by others. Discrimination also includes exclusion, or denial  
22 or benefits, services, or other opportunities that are as effective and meaningful as those provided to  
23 others. Discrimination results from actions or inactions that discriminate by effect as well as by  
24 intent or design. Discrimination also includes harms resulting from the construction of  
25 transportation, architectural, and communication barriers and the adoption or application of  
26 standards and criteria and practices and procedures based on thoughtlessness or indifference-of  
27 benign neglect. Discrimination also includes harms affecting individuals with a history of  
28 disability, and those regarded by others as having a disability as well as persons associated with

1 such individuals that are based on false presumptions, generalizations, misperceptions, patronizing  
 2 attitudes, ignorance, irrational fears, and pernicious mythologies. Discrimination also includes the  
 3 effects a person's disability may have on others. The ADA aim is: (1) To provide a clear and  
 4 comprehensive national mandate for the elimination of discrimination against individuals with  
 5 disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing  
 6 discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1), (2) (Supp. II 1990)  
 7 Plaintiffs allege the legislative history of the Act, which reflects congressional, concerns over the  
 8 deleterious effects of discrimination against people with disabilities. As a result, Congress  
 9 incorporated within Title II of the ADA the remedial provision in Section 504 of the Rehabilitation  
 10 Act of 1973. (As amended 29 U.S.C. § 794a) 42 U.S.C. § 12133 (See *Smith v Barton*, 914 F.2d  
 11 1330, 1336 (9th Cir. 1990), cert. denied, 111 S.Ct. 2825 (1991)) Much has been written recently  
 12 about the ADA and its mechanisms of enforcement. [See e.g., *Doran v. Del Taco, Inc.*, ---  
 13 F.Supp.2d ---- (C.D. Cal. June 9, 2005); *Molski*, 347 F.Supp.2d at 862-63; *Parr v. L & L Drive-Inn*  
 14 *Restaurant*, 96 F.Supp.2d 1065, 1070-71 (D.Haw.2000)] For purposes of this suit, it is sufficient to  
 15 note that the statute creates a private right of action through which a litigant may seek injunctive  
 16 relief as well as attorneys' fees and costs. (42 U.S.C. § 12188(a)) Plaintiffs allege that it cannot be  
 17 said that because an attorney has chosen to specialize in an area, which provides statutory attorneys  
 18 fees his practice is necessarily suspect. Class actions, antitrust, and consumer protection statutes are  
 19 just some of the examples where the legislature has made a determination that society will benefit  
 20 from private attorneys general. The ADA is but another example.

21  
 22 8. Plaintiff TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL  
 23 DISABILITIES is an organization that advocates on the behalf of minorities and children with  
 24 disabilities when their civil rights and liberties have been violated.

25 9. Plaintiff's Members desired to patronize Defendants' facilities to utilize their goods and/or  
 26 services.

27 10. Plaintiff's Members expressly intend to patronize Defendants' establishment and the  
 28 property that is the subject of this Complaint in the immediate future.

1 11. When Plaintiff's Member and Plaintiff attempted to visited Defendants' facilities, they  
2 discovered the public accommodations' at Defendants' business establishment fails to comply with  
3 ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or  
4 California's Title 24 Building Code Requirements as specified in Attachment A. Defendants failed  
5 to remove access barriers within the public accommodations of Defendants' establishment.

6 Plaintiff's Members were deterred from patronizing the facility because they would have personally  
7 experienced difficulty with access barriers at Defendants' facility as specified in Attachment A.

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

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

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

3 15. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff(s) were  
4 discriminated against each time they patronized Defendants' establishments. Plaintiff's Member  
5 and Plaintiff(s) were extremely upset due to Defendants' conduct.

6 **NOTICE**

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

9 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**

10 **DEFENDANT**

11 17. NANCY'S TACO SHOP; VALENCIA YANEZ JOSE LUIS; and Does 1 through 10 will  
12 be referred to collectively hereinafter as "Defendants."

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

14 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

16 **With Disabilities Act Of 1990**

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

18 19. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's  
19 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,  
20 privileges, advantages, or accommodations. Plaintiffs allege Defendants are a public  
21 accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or  
22 services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. §  
23 12182(a). Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of  
24 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member and  
25 Plaintiff(s) was denied equal access to Defendants' existing facilities.

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

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

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

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

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

1 24. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42  
2 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's Member and  
3 Plaintiff(s) was denied equal access to Defendants' existing facilities.  
4

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

6 25. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's  
7 Member and Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities,  
8 privileges, advantages, or accommodations within a public accommodation owned, leased, and/or  
9 operated by Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a).  
10 Plaintiffs are informed, believe, and thus allege that architectural barriers which are structural in  
11 nature exist within the following physical elements of Defendants' facilities: Space Allowance and  
12 Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and  
13 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair  
14 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet  
15 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
16 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III requires  
17 places of public accommodation to remove architectural barriers that are structural in nature to  
18 existing facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to remove such  
19 barriers and disparate treatment against a person who has a known association with a person with a  
20 disability are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus,  
21 Plaintiff's Member and Plaintiff(s) was subjected to discrimination in violation of 42 United States  
22 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because they were denied equal access to  
23 Defendants' existing facilities.  
24

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

27 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Defendants  
28 failed and refused to provide a reasonable alternative by modifying its practices, policies and

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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 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.

27. 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.

28. 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**

29. 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

1 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,  
2 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
3 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,  
4 Detectable Warnings, Signage, and Telephones.

5 30. These violations denied Plaintiff's Member and Plaintiff(s) full and equal access to  
6 Defendants' facility. Thus, Plaintiff's Member and Plaintiff(s) was subjected to discrimination  
7 pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff(s) was denied  
8 full, equal and safe access to Defendants' facility, causing severe emotional distress.  
9

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

11 31. 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 32. 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 33. 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 34. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

7 DEMAND FOR JUDGMENT FOR RELIEF:

8  
9 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs  
10 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities  
11 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding  
12 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
13 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking  
14 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,  
15 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable  
16 Warnings, Signage, and Telephones.

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


19 C. A Jury Trial and;

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

21 Respectfully submitted:

22  
23 Dated: 09-15-06

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

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

101018

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**Rule 11  
ACCESSIBILITY SURVEY  
ADA TITLE III**

**Disability Compliance Documentation**

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**Reported by: MANTIC ASHANTI'S CAUSE INC.  
Tuesday September 12, 2006**

**Business:**

NANCY'S TACO SHOP;  
VALENCIA YANEZ JOSE LUIS  
4211 Market Street  
San Diego, CA

**Property Owner(s):**

**Assessor's Parcel No.:**

# Report of Findings

## A. VIOLATIONS

### 1. Entrance

- a. There is a loose mat placed at the entrance.

### 2. Counter

- a. The counter is too high to be accessible.

### 3. Seating

- a. There fails to be accessible seating, as all the seating provided is fixed seating.

## B. REGULATIONS

### 1. Entrance

Permanent rooms and spaces shall have signage depicting the international symbol of accessibility (ADAAG 4.1(7); 4.30.). Thresholds at doorways shall not exceed ½". (ADAAG 4.13.8) Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2. (Id.) Additionally, inaccessible entrances must have directional signage indicating the route to the nearest accessible entrance. (ADAAG 4.1.2(7)(c). Entrance doorways along an accessible route shall have a minimum clear opening of 32" with a door open 90 degrees, measured between the face of the door and the opposite stop. (ADAAG 4.3.9; ADAAG 4.13.5) If doorways have two independently operated door leaves, at least one need to comply with this minimum clear opening requirement (ADAAG 4.13.4) The minimum space between two hinged doors or pivoted doors in a series shall be 48" plus the width of any door swinging into the space. (ADAAG 4.13.7) Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. (ADAAG 4.13.9) Hardware on doors along an accessible route shall be mounted no higher than 48" above the finish floor. (ADAAG 4.3.9; ADAAG 4.13.9) The floor or



ground area within the required clear floor space in and around a door shall be level and clear. (ADAAG 4.13.6)

## **2. 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.

## **3. Seating**

Where fixed tables or dining counters where food is consumed but there is no service are provided, at least 5%, but not less than 1, of the fixed tables, or a portion of the dining counter, shall be accessible. (ADAAG 5.1) At accessible fixed tables or counters, knee clearance spaces must be at least 27" high, 30" wide, and 19" deep. (ADAAG 4.32.3) The tops of accessible tables and counters shall be from 28" to 34" above the finish floor or ground. (ADAAG 4.32.4)

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.

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

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

DEFENDANTS NANCY'S TACO SHOP; VALENCIA YANEZ JOSE LUIS; and does 1 through 10, Inclusive Defendants

FILED  
2006 SEP 18 AM 9:44

(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)

'06CV 1932 WQH JMA

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

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

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

Docket Number

DATE September 15, 2006

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature and notes: OR 129423 see 9/18/06 \$350

0910123

UNITED STATES  
DISTRICT COURT  
Southern District of California  
San Diego Division

# 129423 - A1  
September 18, 2006

| Code     | Case #       | Qty | Amount    |
|----------|--------------|-----|-----------|
| CV086900 | 3-06-CV-1932 |     | 60.00 CC  |
| Judge    | - HAYES      |     |           |
| CV086400 |              |     | 100.00 CC |
| CV510000 |              |     | 190.00 CC |

Total -> 350.00

FROM: CIVIL FILING ABA ASSOC. FOR  
CHILDREN W/ DISABILITIES ET AL  
V. NANCY'S TACO SHOP ET AL  
VISA AUTH# 014251 SH