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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY RM 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.

**PALACE ENTERPRISES, LLC;  
SUNSHINE SMOOTHIES; And DOES 1  
THROUGH 10, Inclusive**

**Defendants.**

Case No. **06CV 2774 BEN NLS**

**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

1 with disabilities give actual notice of potential access problems to places of public accommodation without  
2 a federal civil rights action, the public accommodations do not remove the access barriers. Therefore,  
3 Plaintiffs make the following allegations in this federal civil rights action:

4 **JURISDICTION AND VENUE**

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

10 **SUPPLEMENTAL JURISDICTION**

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

23 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

24 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise  
25 organized and existing and/or doing business under the laws of the State of California. Plaintiffs are further  
26 informed and believe and thereon allege that Defendants **PALACE ENTERPRISES, LLC; SUNSHINE**  
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**SMOOTHIES** 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:

DBA NAME: SUNSHINE SMOOTHIE

BUSINESS ADDRESS:

5022 W POINT LOMA BLVD  
SAN DIEGO, CA 92107-1313

TELEPHONE: (619) 222-2503

TYPE: DBA

FILING DATE: 4/28/2006

COUNTY: SAN DIEGO

BUSINESS DESCRIPTION: RESTAURANTS

CONTACT NAME: JESSE HARKOUS

INDUSTRY CLASSIFICATION CODE: 581208

PALACE ENTERPRISES LLC (COMPANY/CORPORATION)

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BUYER MAILING ADDRESS: PO BOX 8336, RANCHO SANTA FE, CA 92067

PROPERTY ADDRESS: 5020&5022 W POINT LOMA BLVD

\*\*\*\*\* SALES INFORMATION \*\*\*\*\*

SALE DATE: 1/18/2005

RECORDED DATE: 1/21/2005

SALE PRICE: \$ 346,000 (FULL AMOUNT COMPUTED FROM TRANSFER TAX)

COUNTY TRANSFER TAX: \$ 380.60

DOCUMENT NUMBER: 2005-0056769

DEED TYPE: GRANT DEED

ASSESSOR'S PARCEL NUMBER: 448-142-03

COMPANY NAME: PALACE ENTERPRISES, LLC

BUSINESS ADDRESS:

14705 CALLE CARLA

RANCHO SANTA FE, CA 92067

1 MAILING ADDRESS:

2 14705 CALLE CARLA

3 RANCHO SANTA FE, CA 92067

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5  
6 TYPE: DOMESTIC FILING

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8 STATUS: ACTIVE

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10 FILING DATE: 7/3/1996

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12 STATE OR COUNTRY OF INCORPORATION: CALIFORNIA

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14 BUSINESS DESCRIPTION: ASSET MANAGEMENT

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16 REGISTERED AGENT: CHRISTINE SUPPA

17  
18 REGISTERED OFFICE:

19 14705 CALLE CARLA

20 RANCHO SANTA FE, CA 92067

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23 4. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization  
24 and TRIPPLE AAA ASSOCIATION FOR CHILDREN WITH DEVELOPMENTAL DISABILITIES and  
25 persons associated with its Members who accompanied Members to Defendants' facilities. Defendants  
26 Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of  
27 **PALACE ENTERPRISES, LLC; SUNSHINE SMOOTHIES**. Plaintiffs are ignorant of the true names  
28 and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these

1 Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint to  
2 allege the true names and capacities of the Does when ascertained.

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

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

11 6. Plaintiffs are members of a group within the State of California composed of persons with a wide  
12 range of disabilities, limited to persons who use wheelchairs for mobility, who must be able to access retail  
13 merchandise establishments, like Defendants' establishments located within the facility in which **PALACE**  
14 **ENTERPRISES, LLC; SUNSHINE SMOOTHIES** is located. Plaintiffs are precluded from equal access  
15 to Defendants' establishment so meaningfully because the establishment fails to provide access for  
16 members of the disability community who use a wheelchair for mobility to disabled parking facilities,  
17 exterior path of travel facilities, entrance facilities, interior path of travel facilities, and display facilities.  
18 The Supreme Court of the United States has held as long as the class representative provides adequate  
19 representation for the class' interests, the court has the power to adjudicate the rights and obligations of all  
20 class members – even those who would otherwise be beyond the reach of its personal jurisdiction. Phillips  
21 Petroleum Co. v. Shutts, 472 US 797 (1985). This case stands for the proposition that minimum contacts are  
22 not required with nonresident members of a plaintiff class because, “the burdens placed by a State upon  
23 absent class action plaintiff are not of the same order or magnitude as those it places on an absent  
24 defendant.” Id. Plaintiffs allege they will insure class members shall receive adequate notice of the  
25 proceedings and the opportunity to “opt out,” if required. Defendants have conducted themselves such as to  
26 establish a pattern and practice of architectural discrimination. Plaintiffs allege that Defendants have  
27 control over each and every facility, establishment, and/or business located within the Defendant  
28 Landlords' facilities in which Defendant **PALACE ENTERPRISES, LLC; SUNSHINE SMOOTHIES** is

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

3 **CONCISE SET OF FACTS**

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

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

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

27 10. When Plaintiff's Member researched Defendants' facilities, he discovered he would be unable to  
28 use the public accommodations' at Defendants' business establishment because they failed to comply with

1 ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or  
2 California's Title 24 Building Code Requirements as specified herein. Defendants failed to remove access  
3 barriers within the parking, exterior path of travel and entrance public accommodations of Defendants'  
4 establishment. Plaintiff's Member was deterred from patronizing the facility because he experienced  
5 difficulty using the parking, exterior path of travel and entrance access barriers at Defendants' facility.

6  
7 11. The architectural regulations or "design standards" implemented by the federal ADA are often  
8 referred to in the literature as "ADAAGs," which is an acronym for "ADA Architectural Guidelines." (See  
9 *Independent Living I*, 982 F. Supp. at pp. 707-708 ["The guidelines issued by the Access Board are  
10 denominated the 'ADA Accessibility Guidelines' ('ADAAG.'). The design standards enacted by the Attorney  
11 General are identical to the ADAAGs, but are denominated as 'Standards.' Despite the technical distinction,  
12 the two terms are often used interchangeably."]; *Access Now, Inc. v. Ambulatory Surgery Center Group,*  
13 *Ltd. (S.D. Fla. 2001) 146 F. Supp. 2d 1334, 1336* ["These guidelines are called ... ("ADAAG") ... ."].) The  
14 "ADAAGs" are found in Appendix A to Part 36 of title 28 of the Code of Federal Regulations. The  
15 ADAAG violations alleged here are basically so intuitive that it would be hard to believe that  
16 noncompliance with them could be other than intentional.

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

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

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

28 15. Plaintiffs believe and herein allege Defendants' facilities have access violations not directly

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

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

14 **NOTICE**

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

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

18 18. **PALACE ENTERPRISES, LLC; SUNSHINE SMOOTHIES;** and Does 1 through 10 will be  
19 referred to collectively hereinafter as "Defendants."

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

21 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

24 Claim I

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

4 Claim II

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

9 Claim III

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

15 Claim IV

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

20 Claim V

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

24 Claim VI

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

2 Claim VII

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

8 Claim VIII

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

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

21 Claim IX

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

26 Claim X

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

6 30. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.  
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8 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER CALIFORNIA**  
9 **ACCESSIBILITY LAWS**

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

11 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Plaintiff's Member and  
12 Plaintiff(s) was denied full and equal access to Defendants' goods, services, facilities, privileges,  
13 advantages, or accommodations within a public accommodation owned, leased, and/or operated by  
14 Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title  
15 24 Accessible Building Code by failing to provide access to Defendants' facilities due to violations  
16 pertaining to the Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and  
17 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform  
18 Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water  
19 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls  
20 and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. These violations  
21 denied Plaintiff's Member and Plaintiff(s) full and equal access to Defendants' facility. Thus, Plaintiff's  
22 Member and Plaintiff(s) was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because  
23 Plaintiff's Member and Plaintiff(s) was denied full, equal and safe access to Defendants' facility, causing  
24 severe emotional distress. The Disabled Persons Act is found in *sections 54* of the Civil Code, and has been  
25 around in some form on the statute books since the late 1960's--more than 20 years before the federal ADA.  
26 (See Stats. 1968, ch. 461.) The Disabled Persons Act begins with the statement in *subdivision (a) of section*  
27 *54* that "Individuals with disabilities or medical conditions have the same right as the general public to the  
28 full and free use of ... public facilities, and other public places." (*β 54, subd. (a).*) *Section 54* is immediately

1 followed by *section 54.1, subdivision (a)(3)* of which--in contrast to the more spartan reference to the ADA  
2 in *section 51*--specifically incorporates ADA regulations. The enforcement of *section 54* is to be found in  
3 *section 54.3. Subdivision (a)(3) of section 54.1* provides: " 'Full and equal access,' for purposes of this  
4 section in its application to transportation, means access that meets the standards of Titles II and III of the  
5 Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant  
6 thereto, except that, if the laws of this state prescribe higher standards, it shall mean access that meets those  
7 higher standards." *Subdivision (a) of section 54.3* provides in its entirety: "Any person or persons, firm or  
8 corporation who denies or interferes with admittance to or enjoyment of the public facilities as specified in  
9 *Sections 54 and 54.1* or otherwise interferes with the rights of an individual with a disability under *Section*  
10 *54, 54.1, and 54.2* is liable for each offense for the actual damages and any amount as may be determined  
11 by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages  
12 but in no case less than one thousand dollars (\$ 1,000), and attorney's fees as may be determined by the  
13 court in addition thereto, suffered by any person denied any of the rights provided in *Sections 54, 54.1, and*  
14 *54.2*. 'Interfere' for purposes of this section, includes, but is not limited to, preventing or causing the  
15 prevention of a guide dog, signal dog, or service dog from carrying out its functions in assisting a disabled  
16 person." *Section 54.3* was construed in the 1990 *Cafe Royale* decision as providing for strict liability--that  
17 is, liability without any need for intentional conduct--prior to the 1992 legislation which added both  
18 *subdivision (f) to section 51 and subdivision (c) of section 54* (back then in the context of the minimum  
19 penalty under *section 54.3* which was \$ 250; now it is \$ 1,000). *Cafe Royale* was a case decided prior to the  
20 enactment of the ADA, and contains not a word about federal law. It was also decided exclusively under  
21 *Civil Code section 54 et seq.*, and contains not one word on the Unruh Act. In *Cafe Royale*, a wheelchair  
22 user (a former deputy Attorney General and member of the Attorney General's task force on disability)  
23 discovered that he could not reach the main dining area of a tiered restaurant on his own, though the  
24 restaurant offered to lift him up the stairs. He declined an offer of help because it would attract attention  
25 and because he might be dropped in the process of being bodily picked up and moved. He sued the  
26 restaurant under *section 54.3* because of the absence of ramps or elevators to the second-tiered area. The  
27 restaurant thought that it had complied with the law because its architect thought, based on an informal  
28



1 conversation with an employee of the San Francisco building department, that a certain number of  
2 handicapped seating places was "all that was needed for compliance." (See *id. at p. 174.*) The building  
3 department employee, however, gave the restaurant architect erroneous advice. In fact, the State Building  
4 Standards Code (required by *Government Code section 4450 et seq*) provided that all floors of a restaurant  
5 be on a common level or else accessible by either ramps or elevators. While a hardship exemption might be  
6 obtained, 75 percent of the main dining area would still need to be handicap accessible, and the Cafe  
7 Royale's option of seating wheelchair patrons in the bar or having them carried to the common area was a  
8 violation. On appeal, the fact of the violation was understood by all parties: "All parties agreed that Cafe  
9 Royale's seating capacity was in violation of the handicap access requirements." (*Cafe Royale, supra, 218*  
10 *Cal. App. 3d at p. 174.*) Hence issue was joined as to whether the restaurant's "good faith" belief that it was  
11 "in compliance" (*ibid.*) was sufficient to deny the patron recovery under *section 54.3*. The trial court  
12 thought so, but the appellate court disagreed. The appellate court reasoned thusly: the fact that *section 54.3*  
13 said a person who "denies or interferes with admittance to or enjoyment of the public facilities as specified  
14 in *section 54* and *54.1* ... is liable for each offense ... but in no case less than two hundred fifty dollars (\$  
15 250) ... ." The court said: "The plain meaning of this language is that ordinarily minimum statutory damages  
16 in the amount of \$ 250 must be awarded for a denial of equal access in violation of *section 54 et seq.*,  
17 *notwithstanding the defendant's intent.*" (*Id. at p. 177.*) The *Cafe Royale* court reasoned that an  
18 interpretation of *section 54.3* that included an element of intentional violation would, because the level of  
19 compliance would diminish, yield "a result that is clearly repugnant to the statutory purpose." Further, the  
20 Donald case held a Plaintiff need not visit the facility to sue for compliance. (*Id. at pp. 179-180.*) So the trial  
21 court reversed the trial court judgment awarding the plaintiff nothing, and concluded that he was entitled to  
22 the \$ 250 statutory minimum. (See *id. at pp. 180-181.*) Café Royale applies here. Thus, Defendants' good  
23 faith efforts, if any, are irrelevant as is any reliance on a city building inspector.

24  
25 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

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

1 and utilizing Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff's Member and  
2 Plaintiff(s) were subjected to discrimination in violation of Civil Code § 54.1.

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

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

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

20 35. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.  
21

22 **DEMAND FOR JUDGMENT FOR RELIEF:**

23  
24 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a). Plaintiffs request this Court enjoin  
25 Defendants to remove all architectural barriers in, at, or on their facilities related to the following: Space  
26 Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking  
27 and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),  
28 Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals,

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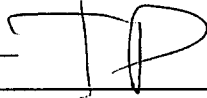
Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms,  
Alarms, Detectable Warnings, Signage, and Telephones.

- 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

CIVIL COVER SHEET

(Rev. 07/89)

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

I (a) PLAINTIFFS TRIPPLE AAA ASSOCIATION FOR CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES

DEFENDANTS PALACE ENTERPRISES, LLC; SUNSHINE SMOOTHIES; and does 1 through 10, Inclusive, Defendants.

FILED

CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

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

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

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 2774 - BEN-NLS

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

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

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

- 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)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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 December 26, 2006

SIGNATURE OF ATTORNEY OF RECORD

133229 \$350 ser 12/27/06

UNITED STATES  
DISTRICT COURT  
Southern District of California  
San Diego Division

# 133229 - A3  
December 27, 2006

Code	Case #	Qty	Amount
CV006900	3-06-CV-2774		60.00 CH
	Judge - BENETIZ		
CV006400			150.00 CH
CV510000			190.00 CH
Total->			350.00

FROM: CIVIL FILING AAA ASSOC. FOR  
CHILDREN W/ DISABILITIES ET AL  
V. PALACE ENTERPRISES ET AL  
VISA AUTHN 010473 SH