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SOUTHERN DISTRICT OF CALIFORNIA

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

**TRIPPLE AAA ASSOCIATION FOR
CHILDREN AND ADULTS WITH
DEVELOPMENTAL DISABILITIES,
SUING ON BEHALF OF ITS
MEMBER DOLORES JACKSON; and
DELORES JACKSON, An Individual;**

Plaintiffs,

v.

**ZUELKE FAMILY TRUST; OLGA S.
ZUELKE, Trustee; And DOES 1
THROUGH 10, Inclusive**

Defendants.

Case No. '07 CV 918 H (LSP)

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, TRIPLE AAA ASSOCIATION FOR CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES, SUING ON BEHALF OF ITS MEMBER DOLORES JACKSON; and DELORES JACKSON, An Individual, 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

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

11 **JURISDICTION AND VENUE**

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

17 **SUPPLEMENTAL JURISDICTION**

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

5 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

6 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
7 franchise organized and existing and/or doing business under the laws of the State of California.
8 Plaintiffs are further informed and believe and thereon allege that Defendants ZUELKE FAMILY
9 TRUST and OLGA S. ZUELKE, Trustee, are the owners, operators, and/or lessors of the real
10 property which is a commercial complex containing retail store buildings, located at 1935 through
11 1945 Alpine Boulevard, Alpine, California, 91901, also known as 1935 through 1945 Highway 80,
12 Alpine, California, 91901, Assessor Parcel Number 403-250-16-00.

13 4. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the
14 organization and TRIPPLE AAA ASSOCIATION FOR CHILDREN AND ADULTS WITH
15 DEVELOPMENTAL DISABILITIES, SUING ON BEHALF OF ITS MEMBERS; DOLORES
16 JACKSON; and persons associated with its Members who accompanied Members to Defendants'
17 facilities. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
18 employees, agents, of. ZUELKE FAMILY TRUST and OLGA S. ZUELKE, Trustee. Plaintiffs are
19 ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10,
20 inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave
21 of the court to amend this complaint to allege the true names and capacities of the Does when
22 ascertained.

23 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them
24 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
25 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
26 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs
27 are further informed and believe, and thereon allege, that each of the Defendants herein gave
28

1 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

2
3 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO ALL**
4 **DEFENDANTS**

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

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

26
27 **CONCISE SET OF FACTS**

28 7. Plaintiff TRIPLE AAA ASSOCIATION FOR CHILDREN AND ADULTS WITH

1 DEVELOPMENTAL DISABILITIES is an organization that advocates on the behalf of its
2 members with disabilities when their civil rights and liberties have been violated. Plaintiff's
3 member DELORES JACKSON (hereinafter "JACKSON") is a member of Plaintiff Organization
4 and has an impairment and due to this impairment She has learned to successfully operate a walker
5 and a wheelchair. Plaintiff JACKSON is a 71-year old elderly lady who utilizes a walker or
6 wheelchair for mobility and experiences difficulty walking and seeing. Plaintiff JACKSON drives
7 her own vehicle, therefore, non-compliant parking spaces deter her from patronizing the place due
8 to the difficulty of long walking distances. Further, Plaintiff JACKSON needs the access aisles to
9 adequately get in and out of her vehicle due to her disability. Plaintiff JACKSON has difficulty
10 walking long distances and utilizing stairs, therefore, the non-compliant facility deters her from
11 patronizing the place due to the difficulties. Further, Plaintiff JACKSON experiences grave
12 difficulty regarding egress and ingress from facility, therefore, the non-compliant ramps and path of
13 travel deters her from patronizing the place due to the difficulty. Plaintiff JACKSON has difficulty
14 seeing, therefore, non-complaint facilities which do not have directional signage or assistive seeing
15 devices deters her from patronizing the place due to the difficulty of seeing.

16
17 8. In April of 2006, Plaintiff's Member and Plaintiff JACKSON went to Defendants' public
18 accommodation facilities located at 1935 through 1945 Alpine Boulevard, Alpine, California,
19 91901, Assessor Parcel Number 403-250-16, to utilize their goods and/or services. When
20 Plaintiff's Member and Plaintiff JACKSON patronized Defendants' facilities, she was unable to
21 use and/or had difficulty using the public accommodations' facilities including but not limited to
22 the disabled parking, exterior path of travel, and entrance facilities because they failed to comply
23 with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG")
24 and/or California's Title 24 Building Code Requirements. Defendants failed to remove barriers to
25 equal access within their public accommodation facilities.

26 9. Plaintiff's Member and Plaintiff JACKSON personally experienced difficulty with said
27 access barriers at Defendants' public accommodation facilities located at 1935 through 1945
28 Alpine Boulevard, Alpine, California, 91901, Assessor Parcel Number 403-250-16. For example,

1 there fails to be the required disability signage at the driveway entrance informing patrons they may
2 be fined or their vehicles may be towed if they unlawfully park in a disabled parking space. Also,
3 there fails to be any of the required "Van Accessible" disabled parking at the facility. There are
4 seventeen (17) unmarked parking spaces in the rear parking lot and eight (8) marked parking spaces
5 in the front lot, one (1) of which is a designated disabled parking space. This existing designated
6 disabled parking space fails to be accessible as it is only fifteen feet (15') long and has only an
7 eight foot (8') wide access aisle. The slope of the existing disabled parking space is excessive, as it
8 has a slope of up to five percent (5%). The existing disabled parking space fails to have the proper
9 ground markings as well. There fails to be a safe and accessible designated exterior path of travel
10 leading from the existing disabled parking space to the entrances of the establishments within the
11 facility, as disabled patrons are forced to traverse through vehicular traffic without the benefit of a
12 marked path of travel and behind parked vehicles other than their own. The access ramp leading
13 from the parking area to the walkway serving the entrances of the establishments fails to be
14 accessible, as the ramp fails to have the required handrails, has an impermissible one inch (1") lip,
15 and has an impermissible slope of up to thirteen percent (13%). The walkway that leads patrons
16 from the parking lot to the entrance doors of the establishments is constructed of cobblestones.
17 These cobblestones create changes in the level of the walkway and should be filled in to create a
18 level surface. The access ramp that leads from the walkway serving the entrance to the entrance of
19 the salon has an excessive slope of up to twenty-five percent (25%) and fails to have the required
20 handrails. The entrance door to the salon fails to be accessible, as the door handle requires tight
21 grasping and/or twisting of the wrist to operate. The access ramp leading from the parking lot to
22 the tea shop entrance has an impermissible one inch (1") lip, fails to have the required handrails,
23 and fails to have the required side flairs. At the entrance to the tea shop, there is an impermissible
24 one inch (1") threshold. The entrance door to the tea shop fails to have the required disability
25 signage and the entrance door handle to the tea shop fails to be accessible, as the handle requires
26 tight grasping and/or twisting of the wrist to operate. The clear opening width of the exterior
27 seating doorway of the tea shop is only twenty-seven inches to twenty-eight inches (27" to 28") in
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1 width. The facility fails to have the required disability directional signage directing patrons to the
2 existence and location of accessible entrances and features of the facility. .

3 10. Plaintiffs can prove these barriers as Plaintiffs conducted a preliminary survey of
4 Defendants' facility. Plaintiffs specifically allege that Defendants knew, to a substantial certainty,
5 that the architectural barriers precluded wheelchair access. First, Plaintiffs will prove that
6 Defendants had actual knowledge that the architectural barriers precluded wheelchair access and
7 that the noncompliance with ADAAG as to accessible entrances was intentional. Second, due to
8 the abundance of ADA information and constant news covers of ADA lawsuits, Defendants had
9 actual knowledge of the ADA and decided deliberately not to remove architectural barriers. Third,
10 Defendants have no plans to remodel. Fourth, Defendants had actual knowledge of ADA given all
11 the ADA public awareness campaigns, the abundance of free ADA information and the media's
12 constant ADA coverage. Fifth, a human being acting for the defendants made a conscious decision
13 as to how to proceed given the presence of the architectural barriers. Plaintiffs allege any
14 alternative methods preclude integration of wheelchair patrons, as it requires them to use a second-
15 class facilities. Also, expert testimony will show the facility contained inaccessible features.
16 Plaintiffs allege businesses often state that they have few customers with disabilities. Plaintiffs
17 allege such customers avoid patronizing inaccessible business and are deterred from patronizing
18 such businesses.

19 11. Plaintiff's Member and Plaintiff JACKSON intends to return to Defendants' public
20 accommodation facilities in the immediate future. Plaintiffs' Member and Plaintiff JACKSON is
21 presently deterred from returning due to his knowledge of the barriers to access that exist at
22 Defendants' facilities.

23 12. Pursuant to federal and state law, Defendants are required to remove barriers to their
24 existing facilities. Further, Defendants had actual knowledge of their barrier removal duties under
25 the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also, Defendants
26 should have known that individuals with disabilities are not required to give notice to a
27 governmental agency before filing suit alleging Defendants failed to remove architectural barriers.
28

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

14 14. Based on these facts, Plaintiffs allege they were discriminated against each time they
15 patronized Defendants' facilities. Plaintiff's Member and Plaintiff JACKSON was extremely upset
16 due to Defendants' conduct.

17 **NOTICE**

18 15. Plaintiffs are not required to provide notice to the defendants prior to filing a complaint.
19 (See *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832 (9th Cir 2000)) However, a member made
20 an auxiliary aid request.
21

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

24 16. ZUELKE FAMILY TRUST and OLGA S. ZUELKE, Trustee; and Does 1 through 10 will
25 be referred to collectively hereinafter as "Defendants."

26 17. Plaintiffs aver that the Defendants are liable for the following claims as alleged below:
27

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DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

18. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff JACKSON was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member and Plaintiff JACKSON 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 JACKSON was denied equal access to Defendants' existing facilities.

19. Plaintiff's Member and Plaintiff JACKSON has physical impairments as alleged in ¶ 12 above because her conditions affect one or more of the following body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's Member and Plaintiff JACKSON' said physical impairments substantially limits one or more of the following major life activities: walking. In addition, Plaintiff's Member and Plaintiff JACKSON cannot perform one or more of the said major life activities in the manner, speed, and duration when compared to the average person. Moreover, Plaintiff's Member and Plaintiff JACKSON has a history of or has been classified as having a physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

20. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff JACKSON was denied full and equal access to Defendants' goods, services,

1 facilities, privileges, advantages, or accommodations within a public accommodation owned,
2 leased, and/or operated by Defendants. Defendants altered their facility in a manner that affects or
3 could affect the usability of the facility or a part of the facility after January 26, 1992. In performing
4 the alteration, Defendants failed to make the alteration in such a manner that, to the maximum
5 extent feasible, the altered portions of the facility are readily accessible to and usable by individuals
6 with disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C.
7 §12183(a)(2).

8 21. Additionally, the Defendants undertook an alteration that affects or could affect the usability
9 of or access to an area of the facility containing a primary function after January 26, 1992.

10 Defendants further failed to make the alterations in such a manner that, to the maximum extent
11 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains
12 serving the altered area, are readily accessible to and usable by individuals with disabilities in
13 violation 42 U.S.C. §12183(a)(2).

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

18 23. Thus, Plaintiff's Member and Plaintiff JACKSON was subjected to discrimination in
19 violation of 42 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's
20 Member and Plaintiff JACKSON was denied equal access to Defendants' existing facilities.

21
22 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural Barriers**

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

15 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices, Policies And**
16 **Procedures**

17 25. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere in this complaint, Defendants
18 failed and refused to provide a reasonable alternative by modifying its practices, policies and
19 procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others
20 similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
21 12188(a). Thus, Plaintiff's Member and Plaintiff JACKSON was subjected to discrimination in
22 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
23 Member and Plaintiff JACKSON was denied equal access to Defendants' existing facilities.

24 26. Based on the facts plead at ¶¶ 12 - 20 above, Claims I, II, and III of Plaintiff's First Cause
25 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable
26 harm unless Defendants are ordered to remove architectural, non-architectural, and communication
27 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory
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1 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and
2 a substantial segment of the disability community. Plaintiffs allege there is a national public
3 interest in requiring accessibility in places of public accommodation. Plaintiffs have no adequate
4 remedy at law to redress the discriminatory conduct of Defendants. Plaintiffs desire to return to
5 Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege that a
6 structural or mandatory injunction is necessary to enjoin compliance with federal civil rights laws
7 enacted for the benefit of individuals with disabilities.

8 27. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.
9

10 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**
11 **CALIFORNIA ACCESSIBILITY LAWS**

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

13 28. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere in this complaint, Plaintiff's
14 Member and Plaintiff JACKSON was denied full and equal access to Defendants' goods, services,
15 facilities, privileges, advantages, or accommodations within a public accommodation owned,
16 leased, and/or operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants'
17 facility violated California's Title 24 Accessible Building Code by failing to provide access to
18 Defendants' facilities due to violations pertaining to the Space Allowance and Reach Ranges,
19 Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading
20 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
21 Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories
22 and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms,
23 Alarms, Detectable Warnings, Signage, and Telephones.

24 29. These violations denied Plaintiff's Member and Plaintiff JACKSON full and equal access
25 to Defendants' facility. Thus, Plaintiff's Member and Plaintiff JACKSON was subjected to
26 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff
27 JACKSON was denied full, equal and safe access to Defendants' facility, causing severe emotional
28

1 distress.

2
3 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

4 30. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere herein this complaint,
5 Defendants failed and refused to provide a reasonable alternative by modifying its practices,
6 policies, and procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs
7 and/or others similarly situated in entering and utilizing Defendants' services as required by Civil
8 Code § 54.1. Thus, Plaintiff's Member and Plaintiff JACKSON was subjected to discrimination in
9 violation of Civil Code § 54.1.

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

11 31. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere herein this complaint and
12 because Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
13 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
14 against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

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

27 ///

1 **Treble Damages Pursuant To Claims I, II, III Under The California Accessibility Laws**

2 34. Defendants, each of them respectively, at times prior to and including, the month of January
3 2007, and continuing to the present time, knew that persons with physical disabilities were denied
4 their rights of equal access to all portions of this public facility. Despite such knowledge,
5 Defendants, and each of them, failed and refused to take steps to comply with the applicable access
6 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered
7 by Plaintiffs and other similarly situated persons with disabilities. Defendants, and each of them,
8 have failed and refused to take action to grant full and equal access to persons with physical
9 disabilities in the respects complained of hereinabove. Defendants, and each of them, have carried
10 out a course of conduct of refusing to respond to, or correct complaints about, denial of disabled
11 access and have refused to comply with their legal obligations to make Defendants' public
12 accommodation facilities accessible pursuant to the Americans With Disability Act Access
13 Guidelines (ADAAG) and Title 24 of the California Code of Regulations (also known as the
14 California Building Code). Such actions and continuing course of conduct by Defendants, and each
15 of them, evidence despicable conduct in conscious disregard of the rights and/or safety of Plaintiffs
16 and of other similarly situated persons, justifying an award of treble damages pursuant to sections
17 52(a) and 54.3(a) of the California Civil Code.

18 35. Defendants, and each of their actions have also been oppressive to persons with physical
19 disabilities and of other members of the public, and have evidenced actual or implied malicious
20 intent toward those members of the public, such as Plaintiffs and other persons with physical
21 disabilities who have been denied the proper access to which they are entitled by law. Further,
22 Defendants, and each of their, refusals on a day-to-day basis to correct these problems evidence
23 despicable conduct in conscious disregard for the rights of Plaintiffs and other members of the
24 public with physical disabilities.

25 36. Plaintiffs pray for an award of treble damages against Defendants, and each of them,
26 pursuant to California Civil Code sections 52(a) and 54.3(a), in an amount sufficient to make a
27 more profound example of Defendants and encourage owners, lessors/lessees, and operators of
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other public facilities from willful disregard of the rights of persons with disabilities. Plaintiffs do not know the financial worth of Defendants, or the amount of damages sufficient to accomplish the public purposes of section 52(a) of the California Civil Code and section 54.3 of the California Civil Code.

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

DEMAND FOR JUDGMENT FOR RELIEF:

- A. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
- B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
- C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
- D. For injunctive relief pursuant to 42 U.S.C. § 12188(a). Plaintiffs request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
- E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Code of Civil Procedure §§ 1032 and 1033.5;
- F. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);

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G. A Jury Trial and;

H. For such other further relief as the court deems proper.

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: May 8, 2007



By: _____
THEODORE A. PINNOCK, ESQ.
Attorney for Plaintiffs

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
TRIPPLE AAA ASSOCIATION FOR CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES, SUING ON BEHALF OF ITS MEMBER DOLORES JACKSON; and DELORES JACKSON, An Individual

DEFENDANTS
ZUELKE FAMILY TRUST; OLGA ZUELKE, Trustee; And DOES 1 THROUGH 10, Inclusive

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego DEPUTY
(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
David C. Wakefield, Esq. SBN: 185736
PINNOCK & WAKEFIELD, A.P.C.
3033 Fifth Ave., Suite 410, San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

07 CV 918 H (LSP)

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

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

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF
1 Incorporated or Principal Place of Business in This State
2 Incorporated and Principal Place of Business in Another State
3 Foreign Nation
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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, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 210 Land Condemnation, 302 Personal Injury, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE May 8, 2007

SIGNATURE OF ATTORNEY OF RECORD

PAID \$350 5/22/07 BH RCT # 13844

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

138441 - BH

**May 22, 2007
11:23:08**

Civ Fil Non-Pris

USAO #: 07CV0918 CIV. FIL.

Judge.: MARILYN L HUFF

Amount.: \$350.00 CC

Total-> \$350.00

FROM: TRIPLE AAA V. ZUELKE FAMILY TR
CIVIL FILING
VISA AUTH# 011231