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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO**

13 **NONI GOTTI,**

14 **Plaintiff,**

15 **v.**

16 **BENJAMIN P. FORD; THE
17 ELEPHANTS TRUNK; RICE KING;
18 And DOES 1 THROUGH 10, Inclusive**

19 **Defendants.**

20 Case No. 37-2008-00089819-CU-CR-CTL

21 **CIVIL COMPLAINT:**
22 **DISCRIMINATORY PRACTICES IN**
23 **PUBLIC ACCOMMODATIONS**
24 **[42 U.S.C. 12182(a) ET. SEQ; CIVIL**
25 **CODE 51, 52, 54, 54.1, 54.3]**

26 **UNLIMITED CIVIL CASE -**
27 **PERMANENT INJUNCTIVE RELIEF**

28 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

1. Plaintiff is informed, believes and thereon alleges that Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Plaintiff is informed and believes and thereon alleges that Defendants BENJAMIN P. FORD; THE ELEPHANTS TRUNK; RICE KING are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 5251-59 LINDA VISTA RD, SAN DIEGO, CA 92110-2604; Assessor's Parcel Number: 436-350-31. Defendant BENJAMIN P. FORD is located at 313 WILCOX ST, OCEANSIDE, CA 92054-4056. Defendant THE ELEPHANTS TRUNK is located at 5255 Linda Vista Rd, San Diego, CA 92110-2604; (619)

1 260-8511. Defendant RICE KING is located at 5259 LINDA VISTA RD, SAN
2 DIEGO, CA 92110-2604.

3 2. The words Plaintiff and Plaintiffs as used herein specifically include NONI GOTTI.

4 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
5 employees, agents, of Defendants BENJAMIN P. FORD; THE ELEPHANTS TRUNK; RICE
6 KING. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1
7 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will
8 pray leave of the court to amend this complaint to allege the true names and capacities of the
9 Does when ascertained.

10 4. Plaintiff is informed and believes, and thereon alleges, that Defendants and each of them
11 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
12 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
13 remaining Defendants and were acting within the course and scope of that relationship. Plaintiff
14 is further informed and believe, and thereon allege, that each of the Defendants herein gave
15 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

16 **CONCISE SET OF FACTS**

17 5. Plaintiff NONI GOTTI (hereinafter "Plaintiff") has physical and mental impairments and
18 due to these impairments she has successfully learned to walk with a service animal. Plaintiff
19 said physical and mental impairments substantially limit one or more of the following major life
20 activities including but not limited to: walking and clinical depression. Plaintiff has a long
21 history of mental impairments.

22 6. Plaintiff has physical and mental impairments because their conditions affect one or more
23 of the following body systems: neurological, musculoskeletal, special sense organs, and/or
24 cardiovascular.

25 7. Further, Plaintiff said physical impairments substantially limits one or more of the
26 following major life activities.

27 8. In addition, Plaintiff cannot perform one or more of the said major life activities in the
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1 manner, speed, and duration when compared to the average person. Moreover, Plaintiff has a
2 history of or has been classified as having a physical impairment as required by 42 U.S.C. §
3 12102(2)(A).

4 9. On July 11, 2008, Plaintiff NONI GOTTI desired to visit Defendants' public
5 accommodation facilities located at Property Address: 5251-59 LINDA VISTA RD, SAN
6 DIEGO, CA 92110-2604; Assessor's Parcel Number: 436-350-31 to utilize their goods and/or
7 services. When Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation
8 facilities, she was unable to use and/or had difficulty using the public accommodations' facilities
9 including but not limited to the barriers to access listed herein and said facilities were not
10 accessible because they failed to comply with ADA Access Guidelines For Buildings and
11 Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
12 California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal
13 access within their public accommodation facilities as required.

14 10. Plaintiff NONI GOTTI personally experienced difficulty with said access barriers as listed
15 herein to the present Complaint at Defendants' public accommodation facilities located on the
16 Property and/or has knowledge of said access barriers and is presently deterred from accessing
17 the public accommodation. Plaintiff alleges that these known barriers to access are not an
18 exhaustive list of the barriers to access that exist at Defendants' facilities.

19 11. The Plaintiff went to the property and encountered access violations. For example, the
20 Elephant Trunk has no International Symbol of Accessibility signage at the entrance, there are
21 loose mats, the entrance doorknob is not a lever and the interior accessible route is less than 36
22 inches. And the Rice King has no has no International Symbol of Accessibility signage at the
23 entrance, there are loose mats and the entrance doorknob is not a lever.

24 12. Plaintiff intends to return to Defendants' public accommodation facilities in the immediate
25 future. Plaintiff was deterred and is presently deterred from returning due to her knowledge of
26 the barriers to access that exist at Defendants' facilities.

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

6 14. Plaintiff believes and herein alleges Defendants' facilities have access violations not
7 directly experienced by Plaintiff which would preclude or limit access by Plaintiff potentially
8 including but not limited to violations of the ADA, ADA Accessibility Guidelines (Codified in 28
9 C.F.R. Part 36, App. A) and Title 24 of the California Building Code. Plaintiff alleges
10 Defendants are required to utilize the ADA checklist for Readily Achievable Barrier Removal
11 approved by the United States Department of Justice and created by Adaptive Environments.
12 Plaintiff is entitled to injunctive relief to remove all barriers to access that are related to her
13 disability even those barriers that are only known to exist but are not directly experienced by
14 plaintiff. *Doran v 7-Eleven Inc*, 2007 U.S.App.Lexis 26143 (9th Cir 2007).

15 15. Based on these facts, Plaintiff alleges she was discriminated against each time he
16 patronized and/or was deterred from patronizing Defendants' facilities. Plaintiff was extremely
17 upset due to Defendants' conduct.

18 16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint
19 and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832
20 (9th Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9th Cir 2007).

21 **WHAT CLAIMS ARE PLAINTIFF ALLEGING AGAINST EACH NAMED**

22 **DEFENDANT**

23 17. Defendants BENJAMIN P. FORD; THE ELEPHANTS TRUNK; RICE KING and Does 1
24 through 10 will be referred to collectively hereinafter as "Defendants."

25 18. Plaintiff avers that the Defendants are liable for the following claims as alleged below:

26 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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2 **With Disabilities Act Of 1990**

3 **Claim I**

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

8 **Claim II**

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

13 **Claim III**

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

20 **Claim IV**

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

26 **Claim V**

27 23. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
28 failed to afforded to an individual with a disability in the most integrated setting appropriate to

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

2 Claim VI

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

7 Claim VII

8 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
9 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,
10 advantages, accommodations, or other opportunities to an individual or entity because of the
11 known disability of an individual with whom the individual or entity is known to have a
12 relationship or association in violation of 42 U.S.C. §12182. See *Niece v. Fitzner* 922 F. Supp.
13 1208 (1996)

14 Claim VIII

15 26. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
16 engaged in the specific prohibitions as stated in 42 U.S.C. §12182.

17 Claim IX

18 27. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendant
19 failed to demonstrate that the removal of a barrier is not readily achievable, and made such goods,
20 services, facilities, privileges, advantages, or accommodations available through alternative
21 methods in a segregated manner in violation of 42 U.S.C. §12182. Plaintiff is entitled to
22 injunctive relief to remove all barriers to access that are related to his disability even those
23 barriers that are only known to exist but are not directly experienced by plaintiff. *Doran v 7-*
24 *Eleven Inc*, 2007 U.S.App.Lexis 26143 (9th Cir 2007).

25 Claim X

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

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

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6 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
7 **CALIFORNIA ACCESSIBILITY LAWS**

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

9 30. Based on the facts plead above and elsewhere in this complaint, Plaintiff was denied full
10 and equal access to Defendants' goods, services, facilities, privileges, advantages, or
11 accommodations within a public accommodation owned, leased, and/or operated by Defendants
12 as required by Civil Code Sections 54 and 54.1.

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

14 31. Based on the facts plead above and elsewhere herein this complaint, Defendants failed and
15 refused to provide a reasonable alternative by modifying its practices, policies, and procedures in
16 that they failed to have a scheme, plan, or design to assist Plaintiff and/or others similarly situated
17 in entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff
18 was subjected to discrimination in violation of Civil Code § 54.1.

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

20 32. Based on the facts plead above and elsewhere herein this complaint and because
21 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
22 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly
23 discriminate against Plaintiff and persons similarly situated in violation of Civil Code §§ 51, 52,
24 and 54.1. Plaintiff alleges the access violations alleged here are so obvious as to implicate at least
25 a prima facie case of discriminatory intent.

26 33. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause Of
27 Action above, and the facts elsewhere herein this complaint, Plaintiff will suffer irreparable harm
28 unless Defendants are ordered to remove architectural, non-architectural, and communication

1 barriers at Defendants' public accommodation. Plaintiff alleges that Defendants' discriminatory
2 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiff and
3 a substantial segment of the disability community. Plaintiff alleges there is a state and national
4 public interest in requiring accessibility in places of public accommodation. Plaintiff has no
5 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff desires to
6 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiff
7 alleges that a structural or mandatory injunction is necessary to enjoin compliance with state civil
8 rights laws enacted for the benefit of individuals with disabilities.

9 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.
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17 **DEMAND FOR JUDGMENT FOR RELIEF:**
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- 19 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
20 B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
21 C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
22 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
23 Guidelines (Codified in 28 C.F.R. Part 36, App. A);
24 D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C above,
25 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil
26 Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
27 E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
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1 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
2 § 52; 54.3;

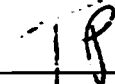
3 G. A Jury Trial and;

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

5 Respectfully submitted:

6 Dated: August 11, 2008

PINNOCK & WAKEFIELD, A.P.C.

7 By:  _____

8 THEODORE A. PINNOCK, ESQ.
9 DAVID C. WAKEFIELD, ESQ.
10 Attorneys for Plaintiff

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 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
 STREET ADDRESS 330 West Broadway
 MAILING ADDRESS
 CITY AND ZIP CODE San Diego, California 92101
 BRANCH NAME Hall of Justice
 PLAINTIFF/ PETITIONER: NONI GOTTI
 DEFENDANT/ RESPONDENT: BENJAMIN P. FORD; ET AL
 ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS

FOR COURT USE ONLY
 CASE NUMBER
 37-2008-00089819-CU-CR-CTL

- The application was filed on (date): 08-14-08 A previous order was issued on (date):
- The application was filed by (name): NONI GOTTI
- IT IS ORDERED that the application is granted in whole in part (complete item 4 below).
 - No payments. Payment of all the fees and costs listed in California Rules of Court, rule 985(i), is waived. The applicant shall pay all the fees and costs listed in California Rules of Court, rule 985(i), EXCEPT the following:

(1) <input type="checkbox"/> Filing papers.	(6) <input type="checkbox"/> Sheriff and marshal fees.
(2) <input type="checkbox"/> Certification and copying.	(7) <input type="checkbox"/> Reporter's fees* (valid for 60 days).
(3) <input type="checkbox"/> Issuing process and certification.	(8) <input type="checkbox"/> Telephone appearance (Gov. Code, § 68070.1
(4) <input type="checkbox"/> Transmittal of papers.	(9) <input type="checkbox"/> (c) Other (specify code section):
(5) <input type="checkbox"/> Court-appointed interpreter.	

Reporter's fees are per diem pursuant to Code Civ. Proc., §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195.
 - Method of payment. The applicant shall pay all the fees and costs when charged, EXCEPT as follows:
 - Pay (specify): _____ percent. (2) Pay: \$ _____ per month or more until the balance is paid.
 - The clerk of the court, county financial officer, or appropriate county officer is authorized to require the applicant to appear before and be examined by the court no sooner than four months from the date of this order, and not more than once in any four-month period. The applicant is ordered to appear in this court as follows for review of his or her financial status:

Date:	Time:	Dept.:	Div.:	Room:
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 - The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
 - All unpaid fees and costs shall be deemed to be taxable costs if the applicant is entitled to costs and shall be a lien on any judgment recovered by the applicant and shall be paid directly to the clerk by the judgment debtor upon such recovery.
 - IT IS ORDERED that the application is denied in whole in part for the following reasons (see Cal. Rules of Court, rule 985):
 - Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form 982(a)(17)(A)).
 - Other (Complete line 4b on page 2).

The applicant shall pay any fees and costs due in this action within 10 days from the date of service of this order or paper filed by the applicant with the clerk will be of no effect.

The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
 - IT IS ORDERED that a hearing be held.
 - The substantial evidentiary conflict to be resolved by the hearing is (specify):
 - The applicant should appear in this court at the following hearing to help resolve the conflict:

Date:	Time:	Dept.:	Div.:	Room:
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The address of the court is (specify):

Same as above

The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.

NOTICE: If item 3d or item 5b is filled in and the applicant does not attend the hearing, the court may revoke or change the order or deny the application without considering information the applicant wants the court to consider.

WARNING: The applicant must immediately tell the court if he or she becomes able to pay court fees or costs during this action. The applicant may be ordered to appear in court and answer questions about his or her ability to pay fees or costs.

Date: AUG 14 2008

Clerk, by A. Racelis, Deputy

JUDICIAL OFFICER (Clerk may GRANT in full a nondiscretionary fee waiver; see Cal Rules of Court, rule 985(d)) Page 1 of 2