

1 **PINNOCK & WAKEFIELD**

2 A Professional Corporation  
3 Theodore A. Pinnock, Esq. Bar #: 153434  
4 David C. Wakefield, Esq. Bar #: 185736  
5 7851 Mission Center Court, Suite 310  
6 Plaza Centre  
7 San Diego, CA 92108  
8 Telephone: 619.858.3671  
9 Facsimile: 619.858.3646

10 Attorneys for Plaintiff

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

13 **NONI GOTTI,**

14 **Plaintiff,**

15 **v.**

16 **CAO BINH MANH; KIM NGON THI;**  
17 **NICHOLAS MARTIN; OANH**  
18 **MARTIN; AAA FOREIGN AUTO**  
19 **RECYCLING; FREEWAY AUTO**  
20 **WRECKING; And DOES 1 THROUGH**  
21 **10, Inclusive**

22 **Defendants.**

23 **Case No. 37-2008-00072508-CU-CR-SC**

24 **CIVIL COMPLAINT:**  
25 **DISCRIMINATORY PRACTICES IN**  
26 **PUBLIC ACCOMMODATIONS**

27 **[42 U.S.C. 12182(a) ET. SEQ; CIVIL**  
28 **CODE 51, 52, 54, 54.1, 54.3]**

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

**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 CAO BINH MANH; KIM NGON THI; NICHOLAS MARTIN; OANH MARTIN; AAA FOREIGN AUTO RECYCLING; FREEWAY AUTO WRECKING are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 783 ENERGY WAY, CHULA VISTA, CA 91911-6166;

1 Assessor's Parcel Number: 644-181-22. Defendant CAO BINH MANH is located at  
2 783 ENERGY WAY, CHULA VISTA, CA 91911-6166 or C/O: MARTIN & MARTIN, PO  
3 BOX 938, JAMUL, CA 91935-0938. Defendant KIM NGON THI is located at  
4 783 ENERGY WAY, CHULA VISTA, CA 91911-6166 or C/O: MARTIN & MARTIN, PO  
5 BOX 938, JAMUL, CA 91935-0938. Defendant MARTIN NICHOLAS is located at  
6 783 ENERGY WAY, CHULA VISTA, CA 91911-6166 or C/O: MARTIN & MARTIN, PO  
7 BOX 938, JAMUL, CA 91935-0938. Defendant OANH MARTIN is located at  
8 783 ENERGY WAY, CHULA VISTA, CA 91911-6166 or C/O: MARTIN & MARTIN, PO  
9 BOX 938, JAMUL, CA 91935-0938. Defendant AAA FOREIGN AUTO RECYCLING is  
10 located at 783 Energy Way, Ste B, Chula Vista, CA 91911-6166; (619) 421-9252. Defendant  
11 FREEWAY AUTO WRECKING is located at 783 Energy Way, Chula Vista, CA 91911; (619)  
12 482-7277.

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

14 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employees,  
15 employees, agents, of Defendants CAO BINH MANH; KIM NGON THI; NICHOLAS  
16 MARTIN; OANH MARTIN; AAA FOREIGN AUTO RECYCLING; FREEWAY AUTO  
17 WRECKING. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as  
18 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.  
19 Plaintiff will pray leave of the court to amend this complaint to allege the true names and  
20 capacities of the Does when ascertained.

21 4. Plaintiff is informed and believes, and thereon alleges, that Defendants and each of them  
22 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,  
23 general partner, limited partner, agent, employee, representing partner, or joint venturer of the  
24 remaining Defendants and were acting within the course and scope of that relationship. Plaintiff  
25 is further informed and believe, and thereon allege, that each of the Defendants herein gave  
26 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.  
27  
28

CONCISE SET OF FACTS

1  
2 5. Plaintiff NONI GOTTI (hereinafter "Plaintiff") has physical and mental impairments and  
3 due to these impairments she has successfully learned to walk with a service animal. Plaintiff  
4 said physical and mental impairments substantially limit one or more of the following major life  
5 activities including but not limited to: walking and clinical depression. Plaintiff has a long  
6 history of mental impairments.

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

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

12 8. In addition, Plaintiff cannot perform one or more of the said major life activities in the  
13 manner, speed, and duration when compared to the average person. Moreover, Plaintiff has a  
14 history of or has been classified as having a physical impairment as required by 42 U.S.C. §  
15 12102(2)(A).

16 9. On August 2008, Plaintiff NONI GOTTI desired to visit Defendants' public  
17 accommodation facilities located at Property Address: 783 ENERGY WAY, CHULA  
18 VISTA, CA 91911-6166; Assessor's Parcel Number: 644-181-22 to utilize their goods and/or  
19 services. When Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation  
20 facilities, she was unable to use and/or had difficulty using the public accommodations' facilities  
21 including but not limited to the barriers to access listed herein and said facilities were not  
22 accessible because they failed to comply with ADA Access Guidelines For Buildings and  
23 Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or  
24 California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal  
25 access within their public accommodation facilities as required.

26 10. Plaintiff NONI GOTTI personally experienced difficulty with said access barriers as listed  
27 herein to the present Complaint at Defendants' public accommodation facilities located on the  
28

1 Property and/or has knowledge of said access barriers and is presently deterred from accessing  
2 the public accommodation. Plaintiff alleges that these known barriers to access are not an  
3 exhaustive list of the barriers to access that exist at Defendants' facilities.

4 11. The Plaintiff went to the property and encountered access violations. For example, there's  
5 no accessible route from public sidewalk to businesses, there is no accessible parking, there's no  
6 van accessible and no access aisle. Also, there's no tow away disability signage at parking lot  
7 entrances, no van sign and no signage for handicapped parking. The AAA Foreign Auto  
8 Recycling and Freeway Auto Wrecking has no International symbol of accessibility at the  
9 entrance and the entrance doorknob is not a lever.

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

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

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

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

4 16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint  
5 and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832  
6 (9<sup>th</sup> Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9<sup>th</sup> Cir 2007).

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

8 **DEFENDANT**

9 17. Defendants CAO BINH MANH; KIM NGON THI; NICHOLAS MARTIN; OANH  
10 MARTIN; AAA FOREIGN AUTO RECYCLING; FREEWAY AUTO WRECKING and Does 1  
11 through 10 will be referred to collectively hereinafter as "Defendants."

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

13 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

16 Claim I

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

21 Claim II

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

26 Claim III

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

7 Claim IV

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

13 Claim V

14 23. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants  
15 failed to afford to an individual with a disability in the most integrated setting appropriate to  
16 the needs of the individual in violation of 42 U.S.C. §12182.

17 Claim VI

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

22 Claim VII

23 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is  
24 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,  
25 advantages, accommodations, or other opportunities to an individual or entity because of the  
26 known disability of an individual with whom the individual or entity is known to have a  
27

28

1 relationship or association in violation of 42 U.S.C. §12182. See Niece v. Fitzner 922 F. Supp.  
2 1208 (1996)

3 Claim VIII

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

6 Claim IX

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

14 Claim X

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

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

21  
22 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**  
23 **CALIFORNIA ACCESSIBILITY LAWS**

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

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


DEMAND FOR JUDGMENT FOR RELIEF:

- A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
- B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
- C. 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 (Codified in 28 C.F.R. Part 36, App. A);
- D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C 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;
- E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
- F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 52; 54.3;
- G. A Jury Trial and;
- H. For such other further relief as the court deems proper.

Respectfully submitted:

Dated: August 11, 2008

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

By:   
\_\_\_\_\_  
THEODORE A. PINNOCK, ESQ.  
DAVID C. WAKEFIELD, ESQ.  
Attorneys for Plaintiff