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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

9 **NONI GOTTI,**

10 **Plaintiff,**

11 v.

12
13 **CENTRO DE SALUD DE LA
14 COMUNIDAD DE SAN YSIDRO, INC.;**
15 **SAN YSIDRO HEALTH CENTER;**
16 **And DOES 1 THROUGH 10, Inclusive**

17 **Defendants.**

Case No. 37-2008-00070273-CU-CR-SC

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

**UNLIMITED CIVIL CASE –
PERMANENT INJUNCTIVE RELIEF**

18 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

19 1. Plaintiff is informed, believes and thereon alleges that Defendants are, and, at all times
20 mentioned herein, were, a business or corporation or franchise organized and existing and/or
21 doing business under the laws of the State of California. Plaintiff is informed and believes and
22 thereon alleges that Defendants CENTRO DE SALUD DE LA COMUNIDAD DE SAN
23 YSIDRO, INC.; SAN YSIDRO HEALTH CENTER are the owner, operator, and/or lessor/lessee
24 of the real property and the public accommodation located thereon at the Property Address: 4004
25 BEYER BLVD, SAN YSIDRO, CA 92173; Assessor's Parcel Number: 638-190-37. Defendant
26 CENTRO DE SALUD DE LA COMUNIDAD DE SAN YSIDRO, INC. c/o Registered Agent:
27 ED MARTINEZ, is located at 4004 BEYER BOULEVARD, SAN YSIDRO, CA 92173.
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1 Defendant SAN YSIDRO HEALTH CENTER is located at 4004 BEYER BLVD, SAN YSIDRO,
2 CA 92173.

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 CENTRO DE SALUD DE LA COMUNIDAD DE SAN
6 YSIDRO, INC.; SAN YSIDRO HEALTH CENTER. Plaintiff is ignorant of the true names and
7 capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these
8 Defendants by such fictitious names. Plaintiff will pray leave of the court to amend this
9 complaint to allege the true names and capacities of the 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. Plaintiff's doctor required her to travel with a service dog as a
22 non-medicated treatment for her conditions. Defendants refused Plaintiff entrance due to the dog
23 or have a policy prohibiting service dogs.

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

4 7. On April 26, 2008, Plaintiff NONI GOTTI desired to visit Defendants' public
5 accommodation facilities located at Property Address: 4004 BEYER BLVD, SAN YSIDRO, CA
6 92173; Assessor's Parcel Number: 638-190-37 to utilize their goods and/or services. When
7 Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation facilities, she was
8 unable to use and/or had difficulty using the public accommodations' facilities including but not
9 limited to the barriers to access listed herein and said facilities were not accessible because they
10 failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to
11 as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or California's Title 24 Building
12 Code Requirements. Defendants failed to remove barriers to equal access within their public
13 accommodation facilities as required.

14 8. 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 9. Defendants failed to provide auxiliary aids and services that are necessary to ensure equal
20 access to the goods, services, privileges, or accommodations that it offers. Title 28, part 36.303
21 of Code of Federal Regulations states:

22 (a) General. A public accommodation shall take those steps that may be necessary to ensure that
23 no individual with a disability is excluded, denied services, segregated or otherwise treated
24 differently than other individuals because of the absence of auxiliary aids and services, unless the
25 public accommodation can demonstrate that taking those steps would fundamentally alter the
26 nature of the goods, services, facilities, privileges, advantages, or accommodations being offered
27 or would result in an undue burden, i.e., significant difficulty or expense.
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1 (b) Examples. The term "auxiliary aids and services" includes:

2 (1) Qualified interpreters, notetakers, computer-aided transcription services, written
3 materials, telephone handset amplifiers, assistive listening devices, assistive listening
4 systems, telephones compatible with hearing aids, closed caption decoders, open and
5 closed captioning, telecommunications devices for deaf persons (TDD's), videotext
6 displays, or other effective methods of making aurally delivered materials available to
7 individuals with hearing impairments;

8 (2) Qualified readers, taped texts, audio recordings, Brailled materials, large print
9 materials, or other effective methods of making visually delivered materials available to
10 individuals with visual impairments;

11 (3) Acquisition or modification of equipment or devices; and

12 (4) Other similar services and actions.

13 (c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids
14 and services where necessary to ensure effective communication with individuals with
15 disabilities.

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

5 11. Plaintiff went to the property at 4004 Beyer Blvd, San Ysidro. The restroom seat covers
6 and toilet papers are too high. And sink pipe isn't covered.

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

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

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

25 15. Based on these facts, Plaintiff alleges she was discriminated against each time he
26 patronized and/or was deterred from patronizing Defendants' facilities. Plaintiff was extremely
27 upset due to Defendants' conduct.
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1 16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint
2 and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832
3 (9th Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9th Cir 2007).

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

5 **DEFENDANT**

6 17. Defendants CENTRO DE SALUD DE LA COMUNIDAD DE SAN YSIDRO, INC.;
7 SAN YSIDRO HEALTH CENTER and Does 1 through 10 will be referred to collectively
8 hereinafter as "Defendants."

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

10 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

12 **With Disabilities Act Of 1990**

13 **Claim I**

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

18 **Claim II**

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

23 **Claim III**

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

3 **Claim IV**

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

9 **Claim V**

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

13 **Claim VI**

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

18 **Claim VII**

19 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
20 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,
21 advantages, accommodations, or other opportunities to an individual or entity because of the
22 known disability of an individual with whom the individual or entity is known to have a
23 relationship or association in violation of 42 U.S.C. §12182. See *Niece v. Fitzner* 922 F. Supp.
24 1208 (1996)

25 **Claim VIII**

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

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

9 Claim X

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

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

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17 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
18 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

25 31. Based on the facts plead above and elsewhere herein this complaint, Defendants failed and
26 refused to provide a reasonable alternative by modifying its practices, policies, and procedures in
27 that they failed to have a scheme, plan, or design to assist Plaintiff and/or others similarly situated
28 in entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff

1 was subjected to discrimination in violation of Civil Code § 54.1.

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

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

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

20 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.
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1 DEMAND FOR JUDGMENT FOR RELIEF:

- 2 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
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4 B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
5
6 C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
7 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
8 Guidelines (Codified in 28 C.F.R. Part 36, App. A);
9
10 D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C above,
11 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil
12 Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
13
14 E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
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16 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
17 § 52; 54.3;
18
19 G. A Jury Trial and;
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21 H. For such other further relief as the court deems proper.

22 Respectfully submitted:

23 Dated: April 29, 2008

PINNOCK & WAKEFIELD, A.P.C.

By: 
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