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

NONI GOTTI,

Plaintiff,

v.

**GEORGE ELLIS; MUEBLERIAS
PEREZ LEE; And DOES 1 THROUGH
10, Inclusive**

Defendants.

Case No. 37-2008-00070658-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**

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 GEORGE ELLIS; MUEBLERIAS PEREZ LEE are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 138 SAN YSIDRO BLVD W, SAN YSIDRO, CA 92173; Assessor's Parcel Number: 666-370-44. Defendant GEORGE ELLIS is located at 2955 PLAZA LEONARDO, BONITA, CA 91902. Defendant MUEBLERIAS PEREZ LEE is located at 138 SAN YSIDRO BLVD W, SAN YSIDRO, CA 92173.

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

1 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
2 employees, agents, of Defendants GEORGE ELLIS; MUEBLERIAS PEREZ LEE. Plaintiff is
3 ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10,
4 inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will pray leave
5 of the court to amend this complaint to allege the true names and capacities of the Does when
6 ascertained.

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

13 **CONCISE SET OF FACTS**

14 5. Plaintiff NONI GOTTI (hereinafter "Plaintiff") has physical and mental impairments and
15 due to these impairments she has successfully learned to walk with a service animal. Plaintiff
16 said physical and mental impairments substantially limit one or more of the following major life
17 activities including but not limited to: walking and clinical depression. Plaintiff has a long
18 history of mental impairments. Plaintiff's doctor required her to travel with a service dog as a
19 non-medicated treatment for her conditions. Defendants refused Plaintiff entrance due to the dog
20 or have a policy prohibiting service dogs.

21 6. Plaintiff has physical and mental impairments because their conditions affect one or more
22 of the following body systems: neurological, musculoskeletal, special sense organs, and/or
23 cardiovascular. Further, Plaintiff said physical impairments substantially limits one or more of
24 the following major life activities. In addition, Plaintiff cannot perform one or more of the said
25 major life activities in the manner, speed, and duration when compared to the average person.
26 Moreover, Plaintiff has a history of or has been classified as having a physical impairment as
27 required by 42 U.S.C. § 12102(2)(A).
28

1 7. On May 18, 2008, Plaintiff NONI GOTTI desired to visit Defendants' public
2 accommodation facilities located at Property Address: 138 SAN YSIDRO BLVD W, SAN
3 YSIDRO, CA 92173; Assessor's Parcel Number: 666-370-44 to utilize their goods and/or
4 services. When Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation
5 facilities, she was unable to use and/or had difficulty using the public accommodations' facilities
6 including but not limited to the barriers to access listed herein and said facilities were not
7 accessible because they failed to comply with ADA Access Guidelines For Buildings and
8 Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
9 California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal
10 access within their public accommodation facilities as required.

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

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

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

25 (b) Examples. The term "auxiliary aids and services" includes:

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

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

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

9 (4) Other similar services and actions.

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

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

2 11. The Plaintiff went to the property 138 SAN YSIDRO BLVD W, SAN YSIDRO. The
3 property has no International Symbol of Accessibility signage and there are loose mats. Also, the
4 interior accessible route is less than 36 inches.

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

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

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

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

26 16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint
27 and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832
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1 (9th Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9th Cir 2007).

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

3 **DEFENDANT**

4 17. Defendants GEORGE ELLIS; MUEBLERIAS PEREZ LEE and Does 1 through 10 will
5 be referred to collectively hereinafter as "Defendants."

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

7 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

10 Claim I

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

15 Claim II

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

20 Claim III

21 21. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
22 discriminatory to afford 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 the opportunity to participate in or benefit from a good, service, facility,
25 privilege, advantage, or accommodation that is not equal to that afforded to other individuals in
26 violation of 42 U.S.C. §12182.

27 Claim IV

1 22. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
2 discriminatory to provide 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 a good, service, facility, privilege, advantage, or accommodation that is
5 different or separate from that provided to other individuals.

6 Claim V

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

10 Claim VI

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

15 Claim VII

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

22 Claim VIII

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

25 Claim IX

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

6 **Claim X**

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

12 29. WHEREFORE, Plaintiff pray for judgment and relief as hereinafter set forth.
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14 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
15 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

28 32. Based on the facts plead above and elsewhere herein this complaint and because

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

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

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

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27 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
28 B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;

1 C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
2 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
3 Guidelines (Codified in 28 C.F.R. Part 36, App. A);

4 D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C above,
5 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil
6 Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

7 E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);

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9 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
10 § 52; 54.3;

11 G. A Jury Trial and;

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

13 Respectfully submitted:

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

14 Dated: May 19, 2008

15 By: _____

16 THEODORE A. PINNOCK, ESQ.

17 DAVID C. WAKEFIELD, ESQ.

18 Attorneys for Plaintiff