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10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SAN DIEGO**

13 **NONI GOTTI,**

Case No. **37-2008-00070271-CU-CR-SC**

14 **Plaintiff,**

15 **v.**

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

16 **GROVE PLAZA; CRYSTAL**  
17 **LIGHTING & FORMATION INC.;**  
18 **HUYNH HOA DBA HOAS BARBER**  
19 **SHOP; FORTUNE COMMODITIES**  
20 **CORP. DBA MANILA; VARATHIP**  
21 **AROONSAKOOL DBA THAI**  
22 **EXPORT JEWELRY MFG; PNB**  
23 **REMITTANCE CENTERS, INC.;**  
24 **THAI LINH DBA GALLERY**  
25 **BUILDER GROUPS; DESSERTS**  
26 **PLUS, INC. DBA FILIPINO**  
27 **DESSERTS PLUS; LISA'S DESSERT,**  
28 **INC DBA LISA'S BAKERY PLUS;**  
**RED RIBBON BAKESHOP, INC.;**  
**FORTUNE FOOD SERVICE**  
**COMPANY DBA CHOW KING;**  
**ALICE HARRELL DBA KARIHAN**  
**FILIPINO FOOB; YAN PHARMACY,**  
**INC. DBA PLAZA PHARMACY; BPI**  
**EXPRESS REMITTANCE CORP; WA**  
**LAI BERNARTE DBA SARI SARI 99**  
**& MORE; T-MOBILE; ELLEN V.**  
**SUNGA DDS; A D HAWAIIAN; ELZIE**  
**HABANA DBA KARAOKE**  
**SPECIALIST; And DOES 1**

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

1 THROUGH 10, Inclusive

2 Defendants.

3  
4 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

5 1. Plaintiff is informed, believes and thereon alleges that Defendants are, and, at all times  
6 mentioned herein, were, a business or corporation or franchise organized and existing and/or  
7 doing business under the laws of the State of California. Plaintiff is informed and believes and  
8 thereon alleges that Defendants GROVE PLAZA; CRYSTAL LIGHTING & FORMATION  
9 INC.; HUYNH HOA DBA HOAS BARBER SHOP; FORTUNE COMMODITIES CORP. DBA  
10 MANILA; VARATHIP AROONSAKOOL DBA THAI EXPORT JEWELRY MFG; PNB  
11 REMITTANCE CENTERS, INC.; THAI LINH DBA GALLERY BUILDER GROUPS;  
12 DESSERTS PLUS, INC. DBA FILIPINO DESSERTS PLUS; LISA'S DESSERT, INC DBA  
13 LISA'S BAKERY PLUS; RED RIBBON BAKESHOP, INC.; FORTUNE FOOD SERVICE  
14 COMPANY DBA CHOW KING; ALICE HARRELL DBA KARIHAN FILIPINO FOOD; YAN  
15 PHARMACY, INC. DBA PLAZA PHARMACY; BPI EXPRESS REMITTANCE CORP; WA  
16 LAI BERNARTE DBA SARI SARI 99 & MORE; T-MOBILE; ELLEN V. SUNGA DDS; A D  
17 HAWAIIAN; ELZIE HABANA DBA KARAOKE SPECIALIST are the owner, operator, and/or  
18 lessor/lessee of the real property and the public accommodation located thereon at the Property  
19 Address: 2220 PLAZA BLVD, NATIONAL CITY, CA 91950-5161; Assessor's Parcel Number:  
20 557-380-66. Defendant GROVE PLAZA C/O ESCROW ADMINISTRATION, is located at  
21 1717 MAIN ST 8TH FLOOR BOC, DALLAS, TX 75201. Defendant CRYSTAL LIGHTING &  
22 FORMATION INC. c/o Registered Agent: GORDON YUNG is located at 2220 E. PLAZA  
23 BLVD., SUITE F, NATIONAL CITY, CA 91950. Defendant HUYNH HOA DBA HOAS  
24 BARBER SHOP is located at 2220 E. PLAZA BLVD., SUITE I, NATIONAL CITY, CA 91950.  
25 Defendant FORTUNE COMMODITIES CORP. DBA MANILA SEAFOOD ORIENTAL  
26 MARKET is located at 2220 E PLAZA BLVD STE K, NATIONAL CITY, CA 91950-5162 or  
27  
28

1 FORTUNE COMMODITIES CORP. c/o Registered Agent: EVAN MEAD STONE, located at  
2 12348 HIGH BLUFF DR STE 210, SAN DIEGO, CA 92130. Defendant VARATHIP  
3 AROONSAKOOL DBA THAI EXPORT JEWELRY MFG is located at 2220 E PLAZA BLVD  
4 STE E, NATIONAL CITY, CA 91950-5162. Defendant PNB REMITTANCE CENTERS, INC.  
5 c/o Registered Agent: ALFRED MICHAEL ALEJANDRINO is located at 3345 WILSHIRE  
6 BLVD., SUITE 230, LOS ANGELES, CA 90010. Defendant THAI LINH DBA GALLERY  
7 BUILDER GROUPS is located at 2220 E PLAZA BLVD STE P, NATIONAL CITY, CA 91950.  
8 Defendant DESSERTS PLUS, INC. DBA FILIPINO DESSERTS PLUS is located at 2220 E  
9 PLAZA BLVD STE Q, NATIONAL CITY, CA 91950-5163 or DESSERTS PLUS, INC. c/o  
10 Registered Agent: MAYBELLINE CUI, located at 7193 SHERBOURNE LANE, SAN DIEGO,  
11 CA 92129. Defendant LISA'S DESSERT, INC DBA LISA'S BAKERY PLUS is located at 2220  
12 E PLAZA BLVD STE S, NATIONAL CITY, CA 91950-5163 or LISA'S DESSERT, INC c/o  
13 Registered Agent: ANA LISA M RIVERA, located at 1550 SANTA SIERRA DR, CHULA  
14 VISTA, CA 91913. Defendant RED RIBBON BAKESHOP, INC. is located at 2220 E PLAZA  
15 BLVD STE 31, NATIONAL CITY, CA 91950-5161 or c/o Registered Agent: JUDY CHUA,  
16 located at 816 N. BARCELONA PLACE, WALNUT, CA 91789. Defendant FORTUNE FOOD  
17 SERVICE COMPANY DBA CHOW KING is located at 2220 E PLAZA BLVD, NATIONAL  
18 CITY, CA 91950 or FORTUNE FOOD SERVICE COMPANY c/o Registered Agent: EVAN  
19 MEAD STONE, located at 12348 HIGH BLUFF DR STE 210, SAN DIEGO, CA 92130.  
20 Defendant ALICE HARRELL DBA KARIHAN FILIPINO FOOD is located at 2220 E PLAZA  
21 BLVD STE P, NATIONAL CITY, CA 91950-5163 or 4782 MAGNUS WAY  
22 SAN DIEGO, CA 92113. Defendant YAN PHARMACY, INC. DBA PLAZA PHARMACY is  
23 located at 2220 E PLAZA BLVD STE L, NATIONAL CITY, CA 91950-5162 or YAN  
24 PHARMACY, INC. c/o Registered Agent: KEITH GRIFFITHS, located at 931 ANZA AVE STE  
25 A, VISTA, CA 92084. Defendant BPI EXPRESS REMITTANCE CORP is located at 2220 E  
26 PLAZA BLVD #M, NATIONAL CITY, CA 91950 or c/o Registered Agent: C T  
27 CORPORATION SYSTEM, located at 818 WEST SEVENTH ST, LOS ANGELES, CA 90017.  
28

1 Defendant WA LAI BERNARTE DBA SARI SARI 99 & MORE is located at 2220 E PLAZA  
2 BLVD STE 0, NATIONAL CITY, CA 91950-5163. Defendant T-MOBILE is located at 2220 E  
3 PLAZA BLVD STE A, NATIONAL CITY, CA 91950. Defendant ELLEN V. SUNGA DDS is  
4 located at 2220 E PLAZA BLVD #B, NATIONAL CITY, CA 91950. Defendant A D  
5 HAWAIIAN is located at 2220 E PLAZA BLVD STE D, NATIONAL CITY, CA 91950.  
6 Defendant ELZIE HABANA DBA KARAOKE SPECIALIST is located at 2220 E PLAZA  
7 BLVD STE J, NATIONAL CITY, CA 91950-5162.

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

9 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
10 employees, agents, of Defendants GROVE PLAZA; CRYSTAL LIGHTING & FORMATION  
11 INC.; HUYNH HOA DBA HOAS BARBER SHOP; FORTUNE COMMODITIES CORP. DBA  
12 MANILA; VARATHIP AROONSAKOOL DBA THAI EXPORT JEWELRY MFG; PNB  
13 REMITTANCE CENTERS, INC.; THAI LINH DBA GALLERY BUILDER GROUPS;  
14 DESSERTS PLUS, INC. DBA FILIPINO DESSERTS PLUS; LISA'S DESSERT, INC DBA  
15 LISA'S BAKERY PLUS; RED RIBBON BAKESHOP, INC.; FORTUNE FOOD SERVICE  
16 COMPANY DBA CHOW KING; ALICE HARRELL DBA KARIHAN FILIPINO FOOD; YAN  
17 PHARMACY, INC. DBA PLAZA PHARMACY; BPI EXPRESS REMITTANCE CORP; WA  
18 LAI BERNARTE DBA SARI SARI 99 & MORE; T-MOBILE; ELLEN V. SUNGA DDS; A D  
19 HAWAIIAN; ELZIE HABANA DBA KARAOKE SPECIALIST. Plaintiff is ignorant of the true  
20 names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore  
21 sues these Defendants by such fictitious names. Plaintiff will pray leave of the court to amend  
22 this complaint to allege the true names and capacities of the Does when ascertained.

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

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

2 **CONCISE SET OF FACTS**

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

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

17 7. On April 17, 2008, Plaintiff NONI GOTTI desired to visit Defendants' public  
18 accommodation facilities located at Property Address: 2220 PLAZA BLVD, NATIONAL CITY,  
19 CA 91950-5161; Assessor's Parcel Number: 557-380-66 to utilize their goods and/or services.  
20 When Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation facilities,  
21 she was unable to use and/or had difficulty using the public accommodations' facilities including  
22 but not limited to the barriers to access listed herein and said facilities were not accessible  
23 because they failed to comply with ADA Access Guidelines For Buildings and Facilities  
24 (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or California's  
25 Title 24 Building Code Requirements. Defendants failed to remove barriers to equal access within  
26 their public accommodation facilities as required.

27 8. Plaintiff NONI GOTTI personally experienced difficulty with said access barriers as listed  
28

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

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

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

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

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

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

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

25 (4) Other similar services and actions.

26 (c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids  
27 and services where necessary to ensure effective communication with individuals with  
28

1 disabilities.

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

18 11. The Plaintiff went to Grove Plaza at 2220 E Plaza Blvd, National City. The property is on  
19 the corner of Grove and E Plaza. The steps on Grove only have one handrail. The steps on E  
20 Plaza have no handrails. There's no accessible route from public sidewalk to businesses. No tow  
21 away disability signage at parking lot entrances. The curb ramp encroaches into the access aisle.  
22 The steps lack the slip resistance surface. The Crystal Lighting at Suite F has no International  
23 symbol of accessibility signage at the entrance. There are loose mats. The counter exceeds 36  
24 inches. The Hoas Barber at Suite I, the counter exceeds 36 inches and there are loose mats.  
25 Karaoke Specialist at Suite J has no International symbol of accessibility signage at the entrance  
26 and the counter exceeds 36 inches. Seafood Oriental Market at Suite K has no International  
27 symbol of accessibility signage at the entrance, the counter exceeds 36 inches and there are loose  
28

1 mats. Thai Export Jewelry at Suite E has no International symbol of accessibility signage at the  
2 entrance and the counter exceeds 36 inches. A D Hawaiian at Suite D has no International  
3 symbol of accessibility signage at the entrance. PNB Remittance Center at Suite 230 has no  
4 International symbol of accessibility signage at the entrance, the counter exceeds 36 inches and  
5 there are loose mats. Gallery Builder Groups at Suite P has no International symbol of  
6 accessibility signage at the entrance. Filipino Desserts Plus at Suite Q has no International  
7 symbol of accessibility signage at the entrance, the counter exceeds 36 inches and there are loose  
8 mats. Lisa's Bakery Plus at Suite S the counter exceeds 36 inches and there are loose mats. Red  
9 Ribbon at Suite 31 the counter exceeds 36 inches, there are loose mats and chairs pole will hit  
10 knee. Chow King's counter exceeds 36 inches, there are loose mats and tables chair pole will hit  
11 knee. Karihan Filipino Food at Suite P has no International symbol of accessibility signage at the  
12 entrance, there are loose mats and chairs not appropriate will hit knee. Plaza Pharmacy at Suite L  
13 has no International symbol of accessibility signage at the entrance, the counter exceeds 36 inches  
14 and there are loose mats. BPI Express at Suite M has no International symbol of accessibility  
15 signage at the entrance. Sari sari 99 & More at Suite O has no International symbol of  
16 accessibility signage at the entrance, the counter exceeds 36 inches and there are loose mats. T-  
17 Mobile at Suite A has no International symbol of accessibility signage at the entrance and there  
18 are loose mats. And Ellen V. Sunga DDS at Suite B has no International symbol of accessibility  
19 signage at the entrance, the counter exceeds 36 inches and there are loose mats.

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

23 13. 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  
25 under the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also,  
26 Defendants should have known that individuals with disabilities are not required to give notice to  
27 a governmental agency before filing suit alleging Defendants failed to remove architectural  
28

1 barriers.

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

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

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

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

18 **DEFENDANT**

19 17. Defendants GROVE PLAZA; CRYSTAL LIGHTING & FORMATION INC.; HUYNH  
20 HOA DBA HOAS BARBER SHOP; FORTUNE COMMODITIES CORP. DBA MANILA;  
21 VARATHIP AROONSAKOOL DBA THAI EXPORT JEWELRY MFG; PNB REMITTANCE  
22 CENTERS, INC.; THAI LINH DBA GALLERY BUILDER GROUPS; DESSERTS PLUS, INC.  
23 DBA FILIPINO DESSERTS PLUS; LISA'S DESSERT, INC DBA LISA'S BAKERY PLUS;  
24 RED RIBBON BAKESHOP, INC.; FORTUNE FOOD SERVICE COMPANY DBA CHOW  
25 KING; ALICE HARRELL DBA KARIHAN FILIPINO FOOD; YAN PHARMACY, INC. DBA  
26 PLAZA PHARMACY; BPI EXPRESS REMITTANCE CORP; WA LAI BERNARTE DBA  
27 SARI SARI 99 & MORE; T-MOBILE; ELLEN V. SUNGA DDS; A D HAWAIIAN; ELZIE  
28

1 HABANA DBA KARAOKE SPECIALIST and Does 1 through 10 will be referred to collectively  
2 hereinafter as "Defendants."

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

4 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

7 **Claim I**

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

12 **Claim II**

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

17 **Claim III**

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

24 **Claim IV**

25 22. Based on the facts stated above, Defendants discriminated against Plaintiff as it is  
26 discriminatory to provide an individual or class of individuals, on the basis of a disability or  
27 disabilities of such individual or class, directly, or through contractual, licensing, or other  
28

1 arrangements with a good, service, facility, privilege, advantage, or accommodation that is  
2 different or separate from that provided to other individuals.

3 **Claim V**

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

7 **Claim VI**

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

12 **Claim VII**

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

19 **Claim VIII**

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

22 **Claim IX**

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

3 Claim X

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

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

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

13 CLAIM I: Denial Of Full And Equal Access

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

18 CLAIM II: Failure To Modify Practices, Policies And Procedures

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

24 CLAIM III: Violation Of The Unruh Act

25 32. Based on the facts plead above and elsewhere herein this complaint and because  
26 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §  
27 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly  
28 discriminate against Plaintiff and persons similarly situated in violation of Civil Code §§ 51, 52,

1 and 54.1. Plaintiff alleges the access violations alleged here are so obvious as to implicate at least  
2 a prima facie case of discriminatory intent.

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

14 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.  
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22 **DEMAND FOR JUDGMENT FOR RELIEF:**  
23

- 24 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).  
25 B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;  
26 C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of  
27 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility  
28 Guidelines (Codified in 28 C.F.R. Part 36, App. A);

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

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

5  
6 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code  
7 § 52; 54.3;

8 G. A Jury Trial and;

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

10 Respectfully submitted:

11 Dated: April 23, 2008

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

12 By: \_\_\_\_\_

13 THEODORE A. PINNOCK, ESQ.

14 DAVID C. WAKEFIELD, ESQ.

15 Attorneys for Plaintiff