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

**NONI GOTTI,**

**Plaintiff,**

**v.**

**GEORGE S HARBAUGH FAMILY  
TRUST; JOSEPH & MARCIA NAPPI  
DBA NYPD FIRST PRECINCT;  
PRESTIGE TAILORING & DRY  
CLEANING; And DOES 1 THROUGH  
10, Inclusive**

**Defendants.**

Case No. 37-2008-00086209-CU-CR-CTL

**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 S HARBAUGH FAMILY TRUST; JOSEPH & MARCIA NAPPI DBA NYPD FIRST PRECINCT; PRESTIGE TAILORING & DRY CLEANING are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 6110 FRIARS RD, SAN DIEGO, CA 92108-1004; Assessor's Parcel Number: 436-650-29. Defendant GEORGE S

1 HARBAUGH FAMILY TRUST is located at 716 ARMADA TER, SAN DIEGO, CA 92106-  
2 3033. Defendant JOSEPH & MARCIA NAPPI DBA NYPD FIRST PRECINCT is located at  
3 6110 FRIARS RD # 111, SAN DIEGO, CA 92108-1004. Defendant PRESTIGE TAILORING &  
4 DRY CLEANING is located at 6110 FRIARS RD # 105, SAN DIEGO, CA 92108-1079.

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

6 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
7 employees, agents, of Defendants GEORGE S HARBAUGH FAMILY TRUST; JOSEPH &  
8 MARCIA NAPPI DBA NYPD FIRST PRECINCT; PRESTIGE TAILORING & DRY  
9 CLEANING. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as  
10 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.  
11 Plaintiff will pray leave of the court to amend this complaint to allege the true names and  
12 capacities of the Does when ascertained.

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

19 **CONCISE SET OF FACTS**

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

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

7 7. On May 2008, Plaintiff NONI GOTTI desired to visit Defendants' public accommodation  
8 facilities located at Property Address: 6110 FRIARS RD, SAN DIEGO, CA 92108-1004;  
9 Assessor's Parcel Number: 436-650-29 to utilize their goods and/or services. When Plaintiff  
10 NONI GOTTI desired to patronize Defendants' public accommodation facilities, she was unable  
11 to use and/or had difficulty using the public accommodations' facilities including but not limited  
12 to the barriers to access listed herein and said facilities were not accessible because they failed to  
13 comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as  
14 "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or California's Title 24 Building Code  
15 Requirements. Defendants failed to remove barriers to equal access within their public  
16 accommodation facilities as required.

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

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

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

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

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

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

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

15 (4) Other similar services and actions.

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

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

8 11. The Plaintiff went to the property and encountered access violations. For example, the  
9 NY Pizza Dept has no International Symbol of Accessibility signage at the entrance, the counter  
10 exceeds 36 inches and there, loose mats and the seating is not accessible. And the Prestige  
11 Tailoring & Dry Cleaning has no International Symbol of Accessibility signage at the entrance.

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

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

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

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

6 16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint  
7 and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832  
8 (9<sup>th</sup> Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9<sup>th</sup> Cir 2007).

9 **WHAT CLAIMS ARE PLAINTIFF ALLEGING AGAINST EACH NAMED**  
10 **DEFENDANT**

11 17. Defendants GEORGE S HARBAUGH FAMILY TRUST; JOSEPH & MARCIA NAPPI  
12 DBA NYPD FIRST PRECINCT; PRESTIGE TAILORING & DRY CLEANING and Does 1  
13 through 10 will be referred to collectively hereinafter as "Defendants."

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

15 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

18 **Claim I**

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

23 **Claim II**

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

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

8 Claim IV

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

14 Claim V

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

18 Claim VI

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

23 Claim VII

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



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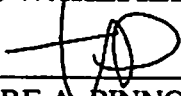
**DEMAND FOR JUDGMENT FOR RELIEF:**

- 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: June 18, 2008

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

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


ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar num., address) Theodore A. Pinnock, Esq. Bar #: 1534    David C. Wakefield, Esq. Bar #: 185736 Michelle L. Wakefield, Esq. Bar #: 200424 3033 Fifth Avenue, Suite 410 San Diego, CA 92103  TELEPHONE NO 619.858.3671    FAX NO 619.858.3646 E-MAIL ADDRESS (Optional)  ATTORNEY FOR (Name) <b>PLAINTIFF</b>	FOR COURT USE ONLY          CASE NUMBER <b>37-2008-00086209-CU-CR-CTL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS 330 West Broadway MAILING ADDRESS CITY AND ZIP CODE San Diego, California 92101 BRANCH NAME Hall of Justice	
PLAINTIFF/ PETITIONER: <b>NONI GOTTI</b>  DEFENDANT/ RESPONDENT: <b>GEORGE S HARBAUGH FAMILY TRUST; ET AL</b>	
<b>ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS</b>	

1. The application was filed on (date): 6/20/08     A previous order was issued on (date):
2. The application was filed by (name): **NONI GOTTI**
3.  IT IS ORDERED that the application is granted  in whole     in part (complete item 4 below).
- a.  **No payments.** Payment of all the fees and costs listed in California Rules of Court, rule 985(i), is waived. The
- b.  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.
- c. **Method of payment.** The applicant shall pay all the fees and costs when charged, EXCEPT as follows:  
 (1)  Pay (specify): \_\_\_\_\_ percent. (2)  Pay: \$ \_\_\_\_\_ per month or more until the balance is paid.
- d. 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: |
|-------|-------|--------|-------|-------|
- e.  The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
- f. **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.**
4.  IT IS ORDERED that the application is denied  in whole     in part for the following reasons (see Cal. Rules of Court, rule 985):
- a.  Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form 982(a)(17)(A)).
- b.  Other (Complete line 4b on page 2).
- c. 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.
- d. The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
5.  IT IS ORDERED that a hearing be held.
- a. The substantial evidentiary conflict to be resolved by the hearing is (specify):
- b. The applicant should appear in this court at the following hearing to help resolve the conflict:
- |       |       |        |       |       |
|-------|-------|--------|-------|-------|
| Date: | Time: | Dept.: | Div.: | Room: |
|-------|-------|--------|-------|-------|
- c. The address of the court is (specify):  
 Same as above
- d. 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: **JUN 20 2008**

\_\_\_\_\_ Clerk, by  Deputy

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