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

13 **NONI GOTTI,**

14 **Plaintiff,**

15 **v.**

16 **HYNUM FAMILY TRUST; ADVANCE**
17 **AUTO; RC IMPORT AUTO**
18 **RECYCLERS; JAPAN TECH AUTO**
19 **WRECKING; ASIANKARS; And**
20 **DOES 1 THROUGH 10, Inclusive**

21 **Defendants.**

22 **Case No. 37-2008-00072515-CU-CR-SC**

23 **CIVIL COMPLAINT:**
24 **DISCRIMINATORY PRACTICES IN**
25 **PUBLIC ACCOMMODATIONS**
26 **[42 U.S.C. 12182(a) ET. SEQ; CIVIL**
27 **CODE 51, 52, 54, 54.1, 54.3]**

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

29 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

30 1. Plaintiff is informed, believes and thereon alleges that Defendants are, and, at all times
31 mentioned herein, were, a business or corporation or franchise organized and existing and/or
32 doing business under the laws of the State of California. Plaintiff is informed and believes and
33 thereon alleges that Defendants HYNUM FAMILY TRUST; ADVANCE AUTO; RC IMPORT
34 AUTO RECYCLERS; JAPAN TECH AUTO WRECKING; ASIANKARS are the owner,
35 operator, and/or lessor/lessee of the real property and the public accommodation located thereon
36 at the Property Address: 777 ENERGY WAY, CHULA VISTA, CA 91911-6119; Assessor's
37 Parcel Number: 644-181-23. Defendant HYNUM FAMILY TRUST is located at

1 1039 E 24TH ST, NATIONAL CITY, CA 91950-7121. Defendant ADVANCE AUTO is located
2 at 777 Energy Way, Chula Vista, CA 91911. Defendant RC IMPORT AUTO RECYCLERS is
3 located at 777 Energy Way, Ste A, Chula Vista, CA 91911-6119; (619) 264-4655. Defendant
4 JAPAN TECH AUTO WRECKING is located at 777 Energy Way, Ste A, Chula Vista, CA
5 91911-6119; (619) 421-6875. Defendant ASIANKARS c/o Owner: RENE PERALTA is located
6 at 777 Energy Way, Chula Vista, CA 91911-6119; (619) 421-6699.

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

8 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employees,
9 employees, agents, of Defendants HYNUM FAMILY TRUST; ADVANCE AUTO; RC
10 IMPORT AUTO RECYCLERS; JAPAN TECH AUTO WRECKING; ASIANKARS. Plaintiff is
11 ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10,
12 inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will pray leave
13 of the court to amend this complaint to allege the true names and capacities of the Does when
14 ascertained.

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

21 CONCISE SET OF FACTS

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

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.

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

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

9 9. On August 2008, Plaintiff NONI GOTTI desired to visit Defendants' public
10 accommodation facilities located at Property Address: 777 ENERGY WAY, CHULA
11 VISTA, CA 91911-6119; Assessor's Parcel Number: 644-181-23 to utilize their goods and/or
12 services. When Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation
13 facilities, she was unable to use and/or had difficulty using the public accommodations' facilities
14 including but not limited to the barriers to access listed herein and said facilities were not
15 accessible because they failed to comply with ADA Access Guidelines For Buildings and
16 Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
17 California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal
18 access within their public accommodation facilities as required.

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

24 11. The Plaintiff went to the property and encountered access violations. For example, there's
25 no accessible route from public sidewalk to businesses, there is no accessible parking, there is no
26 van accessible and no access aisle. Also, there's no tow away disability signage at parking lot
27 entrances, no signage for handicapped parking and no van sign. The Advance Auto has no
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1 International symbol of accessibility at the entrance, the entrance doorknob is not a lever, the
2 entrance lacks clear floor space and the interior accessible route is less than 36 inches. The RC
3 Import Auto Recyclers has no International symbol of accessibility at the entrance, the entrance
4 doorknob is not a lever, the entrance lacks clear floor space and the interior accessible route is
5 less than 36 inches. The Japan Tech Auto Wrecking has no International symbol of accessibility
6 at the entrance, the entrance doorknob is not a lever, the entrance lacks clear floor space and the
7 interior accessible route is less than 36 inches. And the Asiankars has no International symbol of
8 accessibility at the entrance, the entrance doorknob is not a lever, the entrance lacks clear floor
9 space and the interior accessible route is less than 36 inches.

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

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

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

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

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

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

8 **DEFENDANT**

9 17. Defendants HYNUM FAMILY TRUST; ADVANCE AUTO; RC IMPORT AUTO
10 RECYCLERS; JAPAN TECH AUTO WRECKING; ASIANKARS and Does 1 through 10 will
11 be referred to collectively hereinafter as "Defendants."

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

13 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

16 Claim I

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

21 Claim II

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

26 Claim III

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

6 **Claim IV**

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

12 **Claim V**

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

16 **Claim VI**

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

21 **Claim VII**

22 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
23 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,
24 advantages, accommodations, or other opportunities to an individual or entity because of the
25 known disability of an individual with whom the individual or entity is known to have a
26 relationship or association in violation of 42 U.S.C. §12182. See Niece v. Fitzner 922 F. Supp.
27 1208 (1996)
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1 Claim VIII

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

4 Claim IX

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

12 Claim X

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

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

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

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

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

28 31. Based on the facts plead above and elsewhere herein this complaint, Defendants failed and

1 refused to provide a reasonable alternative by modifying its practices, policies, and procedures in
2 that they failed to have a scheme, plan, or design to assist Plaintiff and/or others similarly situated
3 in entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff
4 was subjected to discrimination in violation of Civil Code § 54.1.

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

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

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

23 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.
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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: August 11, 2008

PINNOCK & WAKEFIELD, A.P.C.

By: 

THEODORE A. PINNOCK, ESQ.
DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiff