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

NONI GOTTI,

Case No. 37-2008-00070668-CU-CR-SC

Plaintiff,

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

v.

**INVESTCAL REALTY
CORPORATION; RICHARD S.
MCCUNE JR & NANCY F. MCCUNE;
BEAUTY HAIR & NAILS;
FURNITURE & MATTRESS EXPO-
FURNITURE GALLERY; And DOES 1
THROUGH 10, Inclusive**

**UNLIMITED CIVIL CASE -
PERMANENT INJUNCTIVE RELIEF**

Defendants.

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 INVESTCAL REALTY CORPORATION; RICHARD S. MCCUNE JR & NANCY F. MCCUNE; BEAUTY HAIR & NAILS; FURNITURE & MATTRESS EXPO-FURNITURE GALLERY are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 1215

1 BROADWAY, CHULA VISTA, CA 91911-2968; Assessor's Parcel Number: 618-291-12.
2 Defendant INVESTCAL REALTY CORPORATION c/o Registered Agent: EDWIN L BALL,
3 located at 2333 CAMINO DEL RIO SOUTH STE 210, SAN DIEGO, CA 92108. Defendants
4 RICHARD S. MCCUNE JR; and NANCY F. MCCUNE are located at 2333 CAMINO DEL RIO
5 S #210, SAN DIEGO, CA 92108. Defendant BEAUTY HAIR & NAILS is located at 1215
6 BROADWAY STE F, CHULA VISTA, CA 91911-2968 or c/o Contact Name: THANG
7 NGUYEN, located at 236 SANDSTONE ST, CHULA VISTA, CA 91911. Defendant
8 FURNITURE & MATTRESS EXPO-FURNITURE GALLERY is located at 1215 BROADWAY
9 STE K, CHULA VISTA, CA 91911-2968 or 1185 SURF CREST DR, SAN DIEGO, CA .

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

11 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
12 employees, agents, of Defendants INVESTCAL REALTY CORPORATION; RICHARD S.
13 MCCUNE JR & NANCY F. MCCUNE; BEAUTY HAIR & NAILS; FURNITURE &

14 MATTRESS EXPO-FURNITURE GALLERY. Plaintiff is ignorant of the true names and
15 capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these
16 Defendants by such fictitious names. Plaintiff will pray leave of the court to amend this
17 complaint to allege the true names and capacities of the Does when ascertained.

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

24
25 **CONCISE SET OF FACTS**

26 5. Plaintiff NONI GOTTI (hereinafter "Plaintiff") has physical and mental impairments and
27 due to these impairments she has successfully learned to walk with a service animal. Plaintiff
28 said physical and mental impairments substantially limit one or more of the following major life

1 activities including but not limited to: walking and clinical depression. Plaintiff has a long
2 history of mental impairments. Plaintiff's doctor required her to travel with a service dog as a
3 non-medicated treatment for her conditions. Defendants refused Plaintiff entrance due to the dog
4 or have a policy prohibiting service dogs.

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

12 7. On May 18, 2008, Plaintiff NONI GOTTI desired to visit Defendants' public
13 accommodation facilities located at Property Address: 1215 BROADWAY, CHULA VISTA, CA
14 91911-2968; Assessor's Parcel Number: 618-291-12 to utilize their goods and/or services. When
15 Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation facilities, she was
16 unable to use and/or had difficulty using the public accommodations' facilities including but not
17 limited to the barriers to access listed herein and said facilities were not accessible because they
18 failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to
19 as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or California's Title 24 Building
20 Code Requirements. Defendants failed to remove barriers to equal access within their public
21 accommodation facilities as required.

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

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

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

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

10 (1) Qualified interpreters, notetakers, computer-aided transcription services, written
11 materials, telephone handset amplifiers, assistive listening devices, assistive listening
12 systems, telephones compatible with hearing aids, closed caption decoders, open and
13 closed captioning, telecommunications devices for deaf persons (TDD's), videotext

14 displays, or other effective methods of making aurally delivered materials available to
15 individuals with hearing impairments;

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

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

20 (4) Other similar services and actions.

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

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

13 11. The Plaintiff went to the property 1215 Broadway, CHULA VISTA, CA 91911. The
14 Beauty Hair & Nails at Suite F has no International Symbol of Accessibility signage, the counter
15 exceeds 36 inches and there are loose mats. The Furniture & Mattress Expo at Suite K has no
16 International Symbol of Accessibility signage, the interior accessible route is less than 36 inches
17 and there are loose mats.

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

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

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

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

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

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

16 **DEFENDANT**

17 17. Defendants INVESTCAL REALTY CORPORATION; RICHARD S. MCCUNE JR &
18 NANCY F. MCCUNE; BEAUTY HAIR & NAILS; FURNITURE & MATTRESS EXPO-
19 FURNITURE GALLERY and Does 1 through 10 will be referred to collectively hereinafter as
20 "Defendants."

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

22 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

25 **Claim I**

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

3 Claim II

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

8 Claim III

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

15 Claim IV

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

21 Claim V

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

25 Claim VI

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

3 Claim VII

4 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
5 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,
6 advantages, accommodations, or other opportunities to an individual or entity because of the
7 known disability of an individual with whom the individual or entity is known to have a
8 relationship or association in violation of 42 U.S.C. §12182. See *Niece v. Fitzner* 922 F. Supp.
9 1208 (1996)

10 Claim VIII

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

13 Claim IX

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

21 Claim X

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

27 29. WHEREFORE, Plaintiff pray for judgment and relief as hereinafter set forth.
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2 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
3 CALIFORNIA ACCESSIBILITY LAWS

4 CLAIM I: Denial Of Full And Equal Access

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

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

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

15 CLAIM III: Violation Of The Unruh Act

16 32. Based on the facts plead above and elsewhere herein this complaint and because
17 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
18 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly
19 discriminate against Plaintiff and persons similarly situated in violation of Civil Code §§ 51, 52,
20 and 54.1. Plaintiff alleges the access violations alleged here are so obvious as to implicate at least
21 a prima facie case of discriminatory intent.

22 33. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause Of
23 Action above, and the facts elsewhere herein this complaint, Plaintiff will suffer irreparable harm
24 unless Defendants are ordered to remove architectural, non-architectural, and communication
25 barriers at Defendants' public accommodation. Plaintiff alleges that Defendants' discriminatory
26 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiff and
27 a substantial segment of the disability community. Plaintiff alleges there is a state and national
28 public interest in requiring accessibility in places of public accommodation. Plaintiff has no

1 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff desires to
2 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiff
3 alleges that a structural or mandatory injunction is necessary to enjoin compliance with state civil
4 rights laws enacted for the benefit of individuals with disabilities.

5 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.
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13 DEMAND FOR JUDGMENT FOR RELIEF:
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- 15 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
16 B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
17 C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
18 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
19 Guidelines (Codified in 28 C.F.R. Part 36, App. A);
20 D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C above,
21 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil
22 Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
23 E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
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25 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
§ 52; 54.3;
26 G. A Jury Trial and;
27 H. For such other further relief as the court deems proper.
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1 Respectfully submitted:

2 Dated: May 19, 2008

PINNOCK & WAKEFIELD, A.P.C.

3 By: _____
4 THEODORE A. PINNOCK, ESQ.
5 DAVID C. WAKEFIELD, ESQ.
6 Attorneys for Plaintiff

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