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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 **JAMES H MCCORMACK; JUNE**  
17 **MCCORMACK; LOW PRICE AUTO**  
18 **GLASS; PICK YOUR PART AUTO**  
19 **WRECKING INC; And DOES 1**  
20 **THROUGH 10, Inclusive**

21 **Defendants.**

22 **Case No. 37-2008-00072513-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**

1 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

2 1. Plaintiff is informed, believes and thereon alleges that Defendants are, and, at all times  
3 mentioned herein, were, a business or corporation or franchise organized and existing and/or  
4 doing business under the laws of the State of California. Plaintiff is informed and believes and  
5 thereon alleges that Defendants JAMES H MCCORMACK; JUNE MCCORMACK; LOW  
6 PRICE AUTO GLASS; PICK YOUR PART AUTO WRECKING INC are the owner, operator,  
7 and/or lessor/lessee of the real property and the public accommodation located thereon at the  
8 Property Address: 880 ENERGY WAY, CHULA VISTA, CA 91911-6111; Assessor's Parcel  
9 Number: 644-182-08. Defendant JAMES H MCCORMACK is located at 4321 N ROGERS RD,

1 SPRING VALLEY, CA 91977-1222 or PO BOX 598, SPRING VALLEY, CA 91976-0598.

2 Defendant JUNE MCCORMACK is located at 4321 N ROGERS RD, SPRING

3 VALLEY, CA 91977-1222 or PO BOX 598, SPRING VALLEY, CA 91976-0598. Defendant

4 LOW PRICE AUTO GLASS is located at 880 Energy Way, Chula Vista, CA 91911-6111; (619)

5 656-2313. Defendant PICK YOUR PART AUTO WRECKING INC is located at

6 880 ENERGY WAY, CHULA VISTA, CA 91911-6111 or 1301 E ORANGEWOOD AVE,

7 ANAHEIM, CA 92805-6807.

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 JAMES H MCCORMACK; JUNE MCCORMACK; LOW

11 PRICE AUTO GLASS; PICK YOUR PART AUTO WRECKING INC. Plaintiff is ignorant of

12 the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and

13 therefore sues these Defendants by such fictitious names. Plaintiff will pray leave of the court to

14 amend this complaint to allege the true names and capacities of the Does when 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

28

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: 880 ENERGY WAY, CHULA  
11 VISTA, CA 91911-6111; Assessor's Parcel Number: 644-182-08 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 and there is no van accessible. Also,  
26 there's no tow away disability signage at parking lot entrances, no van sign. The Low Price Auto  
27 Glass has no International Symbol of Accessibility signage at the entrance and the entrance  
28

1 doorknob is not a lever. And the Pick Your Part Auto Wrecking has no access aisle (1 faded, 1  
2 on left hand side and 1 without blue paint) and no International Symbol of Accessibility signage  
3 at the entrance.

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

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

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

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

25 16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint  
26 and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832  
27 (9<sup>th</sup> Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9<sup>th</sup> Cir 2007).  
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1 **WHAT CLAIMS ARE PLAINTIFF ALLEGING AGAINST EACH NAMED**  
2 **DEFENDANT**

3 17. Defendants JAMES H MCCORMACK; JUNE MCCORMACK; LOW PRICE AUTO  
4 GLASS; PICK YOUR PART AUTO WRECKING INC and Does 1 through 10 will be referred  
5 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**  
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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 afforded 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 (9<sup>th</sup> 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.  
13

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:**

- 26  
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 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  
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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:

- 26  
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);

8  
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:

14 Dated: August 11, 2008

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

15 By:   
16 THEODORE A. PINNOCK, ESQ.  
17 DAVID C. WAKEFIELD, ESQ.  
18 Attorneys for Plaintiff  
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