

1 **PINNOCK & WAKEFIELD**

2 A Professional Corporation
3 Theodore A. Pinnock, Esq. Bar #: 153434
4 David C. Wakefield, Esq. Bar #: 185736
5 7851 Mission Center Court, Suite 310
6 Plaza Centre
7 San Diego, CA 92108
8 Telephone: 619.858.3671
9 Facsimile: 619.858.3646

10 Attorneys for Plaintiff

FILED
SOUTH COUNTY
2008 AUG 15 10:30
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

13 **NONI GOTTI,**

14 **Plaintiff,**

15 **v.**

16 **JEONG SOON YI; HOLIDAY LODGE
17 MOTEL; And DOES 1 THROUGH 10,
18 Inclusive**

19 **Defendants.**

20 **Case No.**

21 **37-2008-00072439-CU-CR-SC**

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

27 **UNLIMITED CIVIL CASE –**
28 **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 JEONG SOON YI; HOLIDAY LODGE MOTEL are the owner,
6 operator, and/or lessor/lessee of the real property and the public accommodation located thereon
7 at the Property Address: 672 E SAN YSIDRO BLVD, SAN DIEGO, CA 92173-3113; Assessor's
8 Parcel Number: 666-300-37. Defendant JEONG SOON YI is located at 14077 COLLINS
9 RANCH PL, SAN DIEGO, CA 92130-5572. Defendant HOLIDAY LODGE MOTEL is located
10 at 672 E SAN YSIDRO BLVD, SAN YSIDRO, CA 92173-3113.

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

2 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
3 employees, agents, of Defendants JEONG SOON YI; HOLIDAY LODGE MOTEL. Plaintiff is
4 ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10,
5 inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will pray leave
6 of the court to amend this complaint to allege the true names and capacities of the Does when
7 ascertained.

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

14 CONCISE SET OF FACTS

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

20 6. Plaintiff has physical and mental impairments because their conditions affect one or more
21 of the following body systems: neurological, musculoskeletal, special sense organs, and/or
22 cardiovascular.

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

25 8. In addition, Plaintiff cannot perform one or more of the said major life activities in the
26 manner, speed, and duration when compared to the average person. Moreover, Plaintiff has a
27 history of or has been classified as having a physical impairment as required by 42 U.S.C. §
28

1 12102(2)(A).

2 9. On August 2008, Plaintiff NONI GOTTI desired to visit Defendants' public
3 accommodation facilities located at Property Address: 672 E SAN YSIDRO BLVD, SAN
4 DIEGO, CA 92173-3113; Assessor's Parcel Number: 666-300-37 to utilize their goods and/or
5 services. When Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation
6 facilities, she was unable to use and/or had difficulty using the public accommodations' facilities
7 including but not limited to the barriers to access listed herein and said facilities were not
8 accessible because they failed to comply with ADA Access Guidelines For Buildings and
9 Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
10 California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal
11 access within their public accommodation facilities as required.

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

17 11. The Plaintiff went to the property and encountered access violations. For example, there's
18 no accessible route from public sidewalk to business, No access aisle. The entrance doorknob is
19 not a lever

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 (9th 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 (9th Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9th Cir 2007).

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

19 17. Defendants JEONG SOON YI; HOLIDAY LODGE MOTEL and Does 1 through 10 will
20 be referred to collectively hereinafter as "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,
28

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
28

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.
28

1
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.
6
7
8
9
10
11
12

13 **DEMAND FOR JUDGMENT FOR RELIEF:**
14

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);

24 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
25 § 52; 54.3;

26 G. A Jury Trial and;

27 H. For such other further relief as the court deems proper.
28

1 Respectfully submitted:

2 Dated: August 11, 2008

PINNOCK & WAKEFIELD, A.P.C.

By: _____

THEODORE A. PINNOCK, ESQ.

DAVID C. WAKEFIELD, ESQ.

Attorneys for Plaintiff

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28