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

2008 AUG 20 PM 12: 10  
SOUTH COUNTY  
SAN DIEGO COUNTY, CA

13 **NONI GOTTI,**

Case No.

14 **Plaintiff,**

**CIVIL COMPLAINT: 37-2008-00072529-CU-CR-SC**  
**DISCRIMINATORY PRACTICES IN**  
**PUBLIC ACCOMMODATIONS**  
**[42 U.S.C. 12182(a) ET. SEQ; CIVIL**  
**CODE 51, 52, 54, 54.1, 54.3]**

15 v.

16 **KHOSRO MONDEGARI; SHANAZ**  
17 **IRANI; EBRAHIM BEHIYAT;**  
18 **AKHTAR FAGHIHI; H A PARTS**  
19 **AUTO RECYCLING INC; And DOES**  
20 **1 THROUGH 10, Inclusive**

**UNLIMITED CIVIL CASE –**  
**PERMANENT INJUNCTIVE RELIEF**

21 **Defendants.**

22 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

23 1. Plaintiff is informed, believes and thereon alleges that Defendants are, and, at all times  
24 mentioned herein, were, a business or corporation or franchise organized and existing and/or  
25 doing business under the laws of the State of California. Plaintiff is informed and believes and  
26 thereon alleges that Defendants KHOSRO MONDEGARI; SHANAZ IRANI; EBRAHIM  
27 BEHIYAT; AKHTAR FAGHIHI; H A PARTS AUTO RECYCLING INC are the owner,  
28 operator, and/or lessor/lessee of the real property and the public accommodation located thereon  
at the Property Address: 895 ENERGY WAY, CHULA VISTA, CA 91911-6110; Assessor's  
Parcel Number: 644-182-15. Defendant KHOSRO MONDEGARI is located at

1 895 ENERGY WAY, CHULA VISTA, CA 91911-6110. Defendant SHANAZ IRANI is located  
2 at 895 ENERGY WAY, CHULA VISTA, CA 91911-6110. Defendant EBRAHIM BEHIYAT is  
3 located at 895 ENERGY WAY, CHULA VISTA, CA 91911-6110. Defendant AKHTAR  
4 FAGHIHI is located at 895 ENERGY WAY, CHULA VISTA, CA 91911-6110. Defendant H A  
5 PARTS AUTO RECYCLING INC is located at 895 ENERGY WAY, CHULA  
6 VISTA, CA 91911-6110.

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, employers,  
9 employees, agents, of Defendants KHOSRO MONDEGARI; SHANAZ IRANI; EBRAHIM  
10 BEHIYAT; AKHTAR FAGHIHI; H A PARTS AUTO RECYCLING INC. Plaintiff is ignorant  
11 of the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and  
12 therefore sues these Defendants by such fictitious names. Plaintiff will pray leave of the court to  
13 amend this complaint to allege the true names and capacities of the Does when ascertained.

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

20 **CONCISE SET OF FACTS**

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

26 6. Plaintiff has physical and mental impairments because their conditions affect one or more  
27 of the following body systems: neurological, musculoskeletal, special sense organs, and/or  
28

1 cardiovascular.

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

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

8 9. On August 2008, Plaintiff NONI GOTTI desired to visit Defendants' public  
9 accommodation facilities located at Property Address: 895 ENERGY WAY, CHULA  
10 VISTA, CA 91911-6110; Assessor's Parcel Number: 644-182-15 to utilize their goods and/or  
11 services. When Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation  
12 facilities, she was unable to use and/or had difficulty using the public accommodations' facilities  
13 including but not limited to the barriers to access listed herein and said facilities were not  
14 accessible because they failed to comply with ADA Access Guidelines For Buildings and  
15 Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or  
16 California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal  
17 access within their public accommodation facilities as required.

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

23 11. The Plaintiff went to the property and encountered access violations. For example, there's  
24 no accessible route from public sidewalk to business, there is no accessible parking, there's no  
25 van accessible and no access aisle. Also, there's no tow away disability signage at parking lot  
26 entrances, no signage for handicapped parking and no International Symbol of Accessibility  
27 signage at the entrance. To add, only stair lead to office and the steps lack the slip resistance  
28

1 surface

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

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

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

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

23 16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint  
24 and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832  
25 (9<sup>th</sup> Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9<sup>th</sup> Cir 2007).

26 **WHAT CLAIMS ARE PLAINTIFF ALLEGING AGAINST EACH NAMED**  
27 **DEFENDANT**

1 17. Defendants KHOSRO MONDEGARI; SHANAZ IRANI; EBRAHIM BEHIYAT;  
2 AKHTAR FAGHIHI; H A PARTS AUTO RECYCLING INC and Does 1 through 10 will be  
3 referred to collectively hereinafter as "Defendants."

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

5 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

6 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The Americans**

7 **With Disabilities Act Of 1990**

8 **Claim I**

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

13 **Claim II**

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

18 **Claim III**

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

25 **Claim IV**

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

4 **Claim V**

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

8 **Claim VI**

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

13 **Claim VII**

14 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is  
15 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,  
16 advantages, accommodations, or other opportunities to an individual or entity because of the  
17 known disability of an individual with whom the individual or entity is known to have a  
18 relationship or association in violation of 42 U.S.C. §12182. See *Niece v. Fitzner* 922 F. Supp.  
19 1208 (1996)

20 **Claim VIII**

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

23 **Claim IX**

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

4 Claim X

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

10 29. WHEREFORE, Plaintiff pray for judgment and relief as hereinafter set forth.

11  
12 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**  
13 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

26 32. Based on the facts plead above and elsewhere herein this complaint and because  
27 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §  
28 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly

1 discriminate against Plaintiff and persons similarly situated in violation of Civil Code §§ 51, 52,  
2 and 54.1. Plaintiff alleges the access violations alleged here are so obvious as to implicate at least  
3 a prima facie case of discriminatory intent.

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

15 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.  
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23 **DEMAND FOR JUDGMENT FOR RELIEF:**

- 24  
25 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).  
26 B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;  
27 C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of  
28 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility

1 Guidelines (Codified in 28 C.F.R. Part 36, App. A);

2 D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C above,  
3 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil  
4 Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

5 E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);

6  
7 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code  
8 § 52; 54.3;

9 G. A Jury Trial and;

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

11 Respectfully submitted:

12 Dated: August 11, 2008

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

13 By: 

THEODORE A. PINNOCK, ESQ.

14 DAVID C. WAKEFIELD, ESQ.

15 Attorneys for Plaintiff