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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

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

10
11 **NONI GOTTI,**

12 **Plaintiff,**

13 **v.**

14 **REBECCA A OHLAU; CELEBRITY**
15 **TATTOO; AND DOES 1 THROUGH**
16 **10, Inclusive,**

17 **Defendants.**

Case No.:37-2008-00072982-CU-CR-SC

COMPLAINT

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[CIVIL CODE 51, 52, 54, 54.1, 54.3]

DEMAND FOR JURY TRIAL

UNLIMITED CIVIL CASE – AMOUNT
DEMANDED EXCEEDS \$25,000.00;
PERMANENT INJUNCTIVE RELIEF

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22 **INTRODUCTION**

23 1. Plaintiff herein complains, by filing this Civil Complaint in accordance with rules of Civil
24 Procedure in the Superior Court For The State Of California that Defendants have in the past, and
25 presently are, engaging in discriminatory practices against individuals with disabilities. This
26 Complaint refers to ADA but Plaintiff is not pleading substantially limited necessary for federal
27 jurisdiction. Any Defendant removing this case to federal court will be in violation of Rule 11.
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1 Plaintiff is a Serial Plaintiff and a champion of disability civil rights. A Serial Plaintiff enforces
2 federal and accessibility laws. Plaintiff alleges this civil action and others substantial similar
3 thereto are necessary to compel access compliance because empirical research on the effectiveness
4 of the access statutes indicates these laws have failed to achieve full and equal access simply by the
5 executive branches of the Government funding and promoting voluntary compliance efforts.
6 Further, empirical research shows when individuals with disabilities give actual notice of potential
7 access problems to places of public accommodation without a civil rights action, the public
8 accommodations do not remove the access barriers. Therefore, Plaintiff makes the following
9 allegations in this civil rights action:

- 10 2. The property 293-295 3RD AVE, CHULA VISTA, CA 91910-2721; Assessor's Parcel
11 Number: 568-161-28 that is the subject of this action is located in the County.
- 12 3. Venue is proper in the County because a substantial part of Plaintiffs' claims arose within
13 SAN DIEGO County and the property that is the subject of this action is situated in the County.

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15 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

16 4. Defendants are, and, at all times mentioned herein, were, a business or corporation or
17 franchise organized and existing and/or doing business under the laws of the State of California.
18 Plaintiff is informed and believes and thereon alleges that Defendant REBECCA A OHLAU is
19 located at 34 VISTA WAY, CHULA VISTA, CA 91910-1934. Defendant CELEBRITY TATTOO
20 is located at 295 1/2 3rd Avenue, Chula Vista, CA 91910.

21 5. The words Plaintiffs and Plaintiff as used herein specifically include all birth and other
22 names of named Plaintiff.

23 6. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
24 employees, agents, of REBECCA A OHLAU; CELEBRITY TATTOO. Plaintiff is ignorant of
25 the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and
26 therefore sues these Defendants by such fictitious names. Plaintiff will pray leave of the court to
27 amend this complaint to allege the true names and capacities of the Does when ascertained.
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1 7. Plaintiff is informed and believes, and thereon alleges, that Defendants and each of them
2 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
3 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
4 remaining Defendants and were acting within the course and scope of that relationship. Plaintiff is
5 further informed and believes, and thereon alleges, that each of the Defendants herein gave consent
6 to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.
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8 **CONCISE SET OF FACTS**

9 8. Plaintiff's birth name is Loraine Marquez. As a child she was called Noni Gotti. At 18
10 Plaintiff used her birth name in all documents of identity until 2000 when she legally changed her
11 name to Noni Gotti. Plaintiff has physical impairments of cervical back disease, which causes
12 severe pain without medication. Plaintiff said physical impairments limit one or more of the
13 following major life activities including but not limited to: long walking, jumping, leaning, opening
14 doors, lifting, balancing, cooking, cleaning and sexual activity. Without medication Plaintiff
15 cannot perform these activities. Plaintiff learned about her access rights in March 2008. Plaintiff
16 realized she could do something about all the access problems she was having. Now, Plaintiff is a
17 Serial Plaintiff as defined by **HOLLYNN D'LIL, Plaintiff-Appellant, v. BEST WESTERN**
18 **ENCINA LODGE & SUITES; ENCINA-PEPPER TREE LTD.; DAVID Z. WEBBER;**
19 **JEANETTE WEBBER; CECELIA E. VILLINES, Defendants-Appellees. No. 06-55516,**
20 **UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 2008 U.S. App.**
21 **LEXIS 17168, November 5, 2007, Argued and Submitted, Pasadena, California, August 12,**
22 **2008, Filed**

23 9. In year 2008, Plaintiff knew that Defendants' public accommodation facilities were not
24 accessible. If Plaintiff patronized Defendants' facilities, Plaintiff would have been unable to use
25 and/or would have had difficulty using the public accommodations' facilities including but not
26 limited to the facilities, as said facilities were not accessible because they failed to comply with
27 ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG" and
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1 codified in 28 C.F.R. Part 36, App. A) and/or California's Title 24 Building Code Requirements.

2 10. Defendants failed to remove barriers to equal access within their public accommodation
3 facilities. The barriers are related to Plaintiff's impairments. The following examples of known
4 barriers to access are not an exhaustive list of the barriers to access that exist at Defendants'
5 facilities.

6 11. For example, the entrance doorknob is not a lever, the counter exceeds 36 inches, there are
7 loose mats and has no International symbol of accessibility at the entrance.

8 12. Title III of the Americans with Disabilities Act (ADA), *42 U.S.C.S. § 12181 et seq.*,
9 provides that no individual shall be discriminated against on the basis of disability in the full and
10 equal enjoyment of any place of public accommodation. *42 U.S.C.S. § 12182(a)*. "Discrimination"
11 is defined as a failure to remove barriers where such removal is readily achievable or, where an
12 entity can demonstrate that the removal of a barrier is not readily achievable, a failure to make
13 accommodations available through alternative methods if such methods are readily achievable. *42*
14 *U.S.C.S. § 12182(b)(2)(iv)-(v)*. Title III provides for injunctive relief as the exclusive remedy for
15 private individuals seeking to enforce the law. *42 U.S.C.S. § 12188(a)(2)*. A disabled individual
16 who is currently deterred from patronizing a public accommodation due to a defendant's failure to
17 comply with the Americans with Disabilities Act (ADA), *42 U.S.C.S. § 12181 et seq.*, has suffered
18 "actual injury." Similarly, a plaintiff who is threatened with harm in the future because of existing
19 or imminently threatened non-compliance with the ADA suffers "imminent injury." With regard to
20 actions brought under Title III of the Americans with Disabilities Act (ADA), *42 U.S.C.S. § 12181*
21 *et seq.*, the actual injury rule in cases where the public accommodation being sued is far from the
22 plaintiff's home, courts have found actual or imminent injury sufficient to establish standing where
23 a plaintiff demonstrates an intent to return to the geographic area where the accommodation is
24 located and a desire to visit the accommodation if it were made accessible. The United States Court
25 of Appeals for the Ninth Circuit has explicitly not required ADA plaintiffs to engage in the "futile
26 gesture" of visiting or returning to an inaccessible place of public accommodation in order to
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1 satisfy the standing requirement. With regard to actions brought under Title III of the Americans
2 with Disabilities Act (ADA), *42 U.S.C.S. § 12181 et seq.*, the attempted use of past litigation to
3 prevent a litigant from pursuing a valid claim in federal court warrants a court's most careful
4 scrutiny. This is particularly true in the ADA context where the law's provision for injunctive relief
5 only removes the incentive for most disabled persons who are injured by inaccessible places of
6 public accommodation to bring suit. As a result, most ADA suits are brought by a small number of
7 private plaintiffs who view themselves as champions of the disabled. For the ADA to yield its
8 promise of equal access for the disabled, it may indeed be necessary and desirable for committed
9 individuals to bring serial litigation advancing the time when public accommodations will be
10 compliant with the ADA. Accordingly, courts must be particularly cautious about affirming
11 credibility determinations that rely on a plaintiff's past ADA litigation. HOLLYNN D'LIL,
12 Plaintiff-Appellant, v. BEST WESTERN ENCINA LODGE & SUITES; ENCINA-PEPPER TREE
13 LTD.; DAVID Z. WEBBER; JEANETTE WEBBER; CECELIA E. VILLINES, Defendants-
14 Appellees. No. 06-55516, UNITED STATES COURT OF APPEALS FOR THE NINTH
15 CIRCUIT, *2008 U.S. App. LEXIS 17168*, November 5, 2007, Argued and Submitted, Pasadena,
16 California, August 12, 2008, Filed

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

7 14. Plaintiff intends to return to Defendants' public accommodation facilities in the immediate
8 future. Plaintiff is presently deterred from returning due to their knowledge of the barriers to access
9 that exist at Defendants' facilities. Pursuant to federal and state law, Defendants are required to
10 remove barriers to their existing facilities. Further, Defendants had actual knowledge of their
11 barrier removal duties under the Americans with Disabilities Act and the Civil Code before January
12 26, 1992. Also, Defendants should have known that individuals with disabilities are not required to
13 give notice to a governmental agency before filing suit alleging Defendants failed to remove
14 architectural barriers.

15 15. Plaintiff believes and herein alleges Defendants' facilities have access violations not directly
16 experienced by Plaintiff which would preclude or limit access by Plaintiff and other persons with
17 disabilities, potentially including but not limited to violations of the ADA, ADA Accessibility
18 Guidelines (Codified in 28 C.F.R. Part 36, App. A) and Title 24 of the California Building Code.
19 Plaintiff alleges Defendants are required to utilize the ADA checklist for Readily Achievable
20 Barrier Removal approved by the United States Department of Justice and created by Adaptive
21 Environments.

22 16. Based on these facts, Plaintiff alleges he was discriminated against each time he patronized
23 Defendants' facilities. Plaintiff was extremely upset due to Defendants' conduct.

24 **NOTICE**

25 17. Plaintiff is not required to provide notice to the defendants prior to filing a complaint.
26 Skaff v Meridien N. Am. Beverly Hills, LLC, 506 F.3d 832 (9th Cir. 2007), see also, Botosan v.
27 Paul McNally Realty, 216 F.3d 827, 832 (9th Cir 2000).
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1
2 **WHAT CLAIMS PLAINTIFF IS ALLEGING AGAINST EACH NAMED DEFENDANT**

3 18. REBECCA A OHLAU; CELEBRITY TATTOO; and Does 1 through 10 will be referred to
4 collectively hereinafter as "Defendants."

5 19. Plaintiff aver that the Defendants are liable for the following claims as alleged below:

6 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

7 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under California's**
8 **Incorporation Of The More Stringent Provisions Of The Americans With Disabilities Act Of**

9 **1990**

10 20. Based on the facts stated above, Defendants discriminated against Plaintiff on the basis of
11 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or
12 accommodations of any place of public accommodation as Defendants own, lease (or lease to), or
13 operate a place of public accommodation in violation of 42 U.S.C. §12182 as long as this
14 provision is more stringent than Civil Code 51, 52 and 54.3 and this claim does not include the
15 substantially limiting part of the definition of disability under the Americans with Disabilities Act.

16 Based on the facts stated above, Defendants discriminated against Plaintiff directly, or through
17 contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or
18 class to participate in or benefit from the goods, services, facilities, privileges, advantages, or
19 accommodations of an entity in violation of 42 U.S.C. §12182 as long as this provision is more
20 stringent than Civil Code 51, 52 and 54.3 and this claim does not include the substantially limiting
21 part of the definition of disability under the Americans with Disabilities Act. Based on the facts
22 stated above, Defendants discriminated against Plaintiff as it is discriminatory to afford an
23 individual or class of individuals, on the basis of a disability or disabilities of such individual or
24 class, directly, or through contractual, licensing, or other arrangements with the opportunity to
25 participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that
26 is not equal to that afforded to other individuals in violation of 42 U.S.C. §12182 as long as this
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1 provision is more stringent than Civil Code 51, 52 and 54.3 and this claim does not include the
2 substantially limiting part of the definition of disability under the Americans with Disabilities Act.

3 Based on the facts stated above, Defendants discriminated against Plaintiff as it is discriminatory
4 to provide an individual or class of individuals, on the basis of a disability or disabilities of such
5 individual or class, directly, or through contractual, licensing, or other arrangements with a good,
6 service, facility, privilege, advantage, or accommodation that is different or separate from that
7 provided to other individuals as long as this provision is more stringent than Civil Code 51, 52 and
8 54.3 and this claim does not include the substantially limiting part of the definition of disability
9 under the Americans with Disabilities Act. Based on the facts stated above, Defendants
10 discriminated against Plaintiff as Defendants failed to afforded to an individual with a disability in
11 the most integrated setting appropriate to the needs of the individual in violation of 42 U.S.C.

12 §12182 as long as this provision is more stringent than Civil Code 51, 52 and 54.3 and this claim
13 does not include the substantially limiting part of the definition of disability under the Americans
14 with Disabilities Act. Based on the facts stated above, Defendants discriminated against Plaintiff
15 as Defendants utilized standards or criteria or methods of administration that have the effect of
16 discriminating on the basis of disability; or that perpetuate the discrimination of others who are
17 subject to common administrative control in violation of 42 U.S.C. §12182 as long as this
18 provision is more stringent than Civil Code 51, 52 and 54.3 and this claim does not include the
19 substantially limiting part of the definition of disability under the Americans with Disabilities Act.
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21 Based on the facts stated above, Defendants discriminated against Plaintiff as it is discriminatory
22 to exclude or otherwise deny equal goods, services, facilities, privileges, advantages,
23 accommodations, or other opportunities to an individual or entity because of the known disability
24 of an individual with whom the individual or entity is known to have a relationship or association
25 in violation of 42 U.S.C. §12182 as long as this provision is more stringent than Civil Code 51, 52
26 and 54.3 and this claim does not include the substantially limiting part of the definition of
27 disability under the Americans with Disabilities Act. See Niece v. Fitzner 922 F. Supp. 1208
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1 (1996). Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
2 engaged in the specific prohibitions as stated in 42 U.S.C. §12182 as long as this provision is more
3 stringent than Civil Code 51, 52 and 54.3 and this claim does not include the substantially limiting
4 part of the definition of disability under the Americans with Disabilities Act. Based on the facts
5 stated above, Defendants discriminated against Plaintiff as Defendant failed to demonstrate that the
6 removal of a barrier is not readily achievable, and made such goods, services, facilities, privileges,
7 advantages, or accommodations available through alternative methods in a segregated manner in
8 violation of 42 U.S.C. §12182 as long as this provision is more stringent than Civil Code 51, 52
9 and 54.3 and this claim does not include the substantially limiting part of the definition of disability
10 under the Americans with Disabilities Act. Plaintiff is entitled to injunctive relief to remove all
11 barriers to access that are related to his disability even those barriers that are only known to exist
12 but are not directly experienced by plaintiff. *Doran v 7-Eleven Inc*, 2007 U.S.App.Lexis 26143 (9th
13 Cir 2007). Based on the facts stated above, Defendants discriminated against Plaintiff as
14 Defendants altered the use of their establishment in a manner that affected or could have affected
15 the usability of the facility or part thereof and failed to make alterations in such a manner that, to
16 the maximum extent feasible, the altered portions of the facility are readily accessible to and usable
17 by individuals with disabilities in violation of 42 U.S.C. §12183 as long as this provision is more
18 stringent than Civil Code 51, 52 and 54.3 and this claim does not include the substantially limiting
19 part of the definition of disability under the Americans with Disabilities Act.
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22 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
23 **CALIFORNIA ACCESSIBILITY LAWS**

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

25 21. Based on the facts plead above and elsewhere in this complaint, Plaintiff was denied full
26 and equal access to Defendants' goods, services, facilities, privileges, advantages, or
27 accommodations within a public accommodation owned, leased, and/or operated by Defendants as
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1 required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title 24
2 Accessible Building Code by failing to provide equal access to Defendants' facilities.

3 22. These violations denied Plaintiff full and equal access to Defendants' facility. Thus, Plaintiff
4 was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff was
5 denied full, equal and safe access to Defendants' facility, causing severe emotional distress.

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

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

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

13 24. Based on the facts plead at ¶¶ 8 - 15 above and elsewhere herein this complaint and because
14 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
15 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
16 against Plaintiff and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

17 25. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause Of Action
18 above, and the facts elsewhere herein this complaint, Plaintiff will suffer irreparable harm unless
19 Defendants are ordered to remove architectural, non-architectural, and communication barriers at
20 Defendants' public accommodation. Plaintiff alleges that Defendants' discriminatory conduct is
21 capable of repetition, and this discriminatory repetition adversely impacts Plaintiff and a substantial
22 segment of the disability community. Plaintiff alleges there is a state and national public interest in
23 requiring accessibility in places of public accommodation. Plaintiff has no adequate remedy at law
24 to redress the discriminatory conduct of Defendants. Plaintiff desires to return to Defendants'
25 places of business in the immediate future. Accordingly, the Plaintiff alleges that a structural or
26 mandatory injunction is necessary to enjoin compliance with state civil rights laws enacted for the
27 benefit of individuals with disabilities.
28

1 26. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.

2
3 **Treble Damages Pursuant To Claims I, II, III Under The California Accessibility Laws**

4 27. Defendants, each of them respectively, at times prior to and including the day Plaintiff
5 patronized Defendants' facilities, and continuing to the present time, knew that persons with
6 physical disabilities were denied their rights of equal access to all portions of this public facility.
7 Despite such knowledge, Defendants, and each of them, failed and refused to take steps to comply
8 with the applicable access statutes; and despite knowledge of the resulting problems and denial of
9 civil rights thereby suffered by Plaintiff and other similarly situated persons with disabilities.
10 Defendants, and each of them, have failed and refused to take action to grant full and equal access
11 to persons with physical disabilities in the respects complained of hereinabove. Defendants, and
12 each of them, have carried out a course of conduct of refusing to respond to, or correct complaints
13 about, denial of disabled access and have refused to comply with their legal obligations to make
14 Defendants' public accommodation facilities accessible pursuant to the Americans With Disability
15 Act Access Guidelines (ADAAG) and Title 24 of the California Code of Regulations (also known
16 as the California Building Code). Such actions and continuing course of conduct by Defendants,
17 and each of them, evidence despicable conduct in conscious disregard of the rights and/or safety of
18 Plaintiff and of other similarly situated persons, justifying an award of treble damages pursuant to
19 sections 52(a) and 54.3(a) of the California Civil Code.

20 28. Defendants, and each of their actions have also been oppressive to persons with physical
21 disabilities and of other members of the public, and have evidenced actual or implied malicious
22 intent toward those members of the public, such as Plaintiff and other persons with physical
23 disabilities who have been denied the proper access to which they are entitled by law. Further,
24 Defendants, and each of their, refusals on a day-to-day basis to correct these problems evidence
25 despicable conduct in conscious disregard for the rights of Plaintiff and other members of the
26 public with physical disabilities.

27 29. Plaintiff prays for an award of treble damages against Defendants, and each of them,
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1 pursuant to California Civil Code sections 52(a) and 54.3(a), in an amount sufficient to make a
2 more profound example of Defendants and encourage owners, lessors/lessees, and operators of
3 other public facilities from willful disregard of the rights of persons with disabilities. Plaintiff does
4 not know the financial worth of Defendants, or the amount of damages sufficient to accomplish the
5 public purposes of section 52(a) of the California Civil Code and section 54.3 of the California
6 Civil Code.

7 30. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.

8 **DEMAND FOR JUDGMENT FOR RELIEF:**

- 9 A. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
- 10 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of Civil
11 Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines
12 (Codified in 28 C.F.R. Part 36, App. A);
- 13 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above, for
14 \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code §
15 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
- 16 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a), Civil Code sections 52 and 54.3.
17 Plaintiff requests this Court enjoin Defendants to remove all architectural and communication
18 barriers in, at, or on their facilities including without limitation violations of the ADA, ADA
19 Accessibility Guidelines and Title 24 of the California Building Code;
- 20 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code §§
21 52, 54.3;
- 22 F. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
- 23 G. A Jury Trial and;
- 24 H. For such other further relief as the court deems proper.

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26 Respectfully submitted:

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28 PINNOCK & WAKEFIELD, APC

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Dated: September 10, 2008

By: _____



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DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiff