

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
10-1-08
SOUTH COUNTY
2008 AUG 20 PM 12:11
CLERK OF 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 **SAN YSIDRO MOTEL**
17 **INVESTMENTS INC; TRAVELODGE**
18 **AT THE BORDER; And DOES 1**
19 **THROUGH 10, Inclusive**

20 **Defendants.**

21 **Case No.**

22 **37-2008-00072532-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

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 SAN YSIDRO MOTEL INVESTMENTS INC; TRAVELODGE AT THE BORDER are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 641-43 E SAN YSIDRO BLVD, SAN YSIDRO, CA 92173-3129; Assessor's Parcel Number: 666-200-69. Defendant SAN YSIDRO MOTEL INVESTMENTS INC c/o Registered Agent: BIPICHANDRA D AMIN is located at 643 EAST SAN YSIDRO BLVD, SAN DIEGO, CA 92173. Defendant

1 TRAVELODGE AT THE BORDER is located at 643 E SAN YSIDRO BLVD, SAN
2 DIEGO, CA 92173-3112.

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

4 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
5 employees, agents, of Defendants SAN YSIDRO MOTEL INVESTMENTS INC;

6 TRAVELODGE AT THE BORDER. Plaintiff is ignorant of the true names and capacities of
7 Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by
8 such fictitious names. Plaintiff will pray leave of the court to amend this complaint to allege the
9 true names and capacities of the Does when ascertained.

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

16 **CONCISE SET OF FACTS**

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

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

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

27 8. In addition, Plaintiff cannot perform one or more of the said major life activities in the
28

1 manner, speed, and duration when compared to the average person. Moreover, Plaintiff has a
2 history of or has been classified as having a physical impairment as required by 42 U.S.C. §
3 12102(2)(A).

4 9. On August 2008, Plaintiff NONI GOTTI desired to visit Defendants' public
5 accommodation facilities located at Property Address: 641-43 E SAN YSIDRO BLVD, SAN
6 YSIDRO, CA 92173-3129; Assessor's Parcel Number: 666-200-69 to utilize their goods and/or
7 services. When Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation
8 facilities, she was unable to use and/or had difficulty using the public accommodations' facilities
9 including but not limited to the barriers to access listed herein and said facilities were not
10 accessible because they failed to comply with ADA Access Guidelines For Buildings and
11 Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or
12 California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal
13 access within their public accommodation facilities as required.

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

19 11. The Plaintiff went to the property and encountered access violations. For example, there's
20 no accessible route from public sidewalk to business and the curb ramp encroaches into the access
21 aisle. Also, no International symbol of accessibility at the entrance and the counter exceeds 36
22 inches.

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

26 13. Pursuant to federal and state law, Defendants are required to remove barriers to their
27 existing facilities. Further, Defendants had actual knowledge of their barrier removal duties
28

1 under the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also,
2 Defendants should have known that individuals with disabilities are not required to give notice to
3 a governmental agency before filing suit alleging Defendants failed to remove architectural
4 barriers.

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

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

17 16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint
18 and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832
19 (9th Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9th Cir 2007).

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

21 **DEFENDANT**

22 17. Defendants SAN YSIDRO MOTEL INVESTMENTS INC; TRAVELODGE AT THE
23 BORDER and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

25 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

26 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The Americans**
27 **With Disabilities Act Of 1990**
28

1 Claim I

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

6 Claim II

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

11 Claim III

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

18 Claim IV

19 22. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
20 discriminatory to provide 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 a good, service, facility, privilege, advantage, or accommodation that is
23 different or separate from that provided to other individuals.

24 Claim V

25 23. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
26 failed to afforded to an individual with a disability in the most integrated setting appropriate to
27 the needs of the individual in violation of 42 U.S.C. §12182.
28

1 Claim VI

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

6 Claim VII

7 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is
8 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,
9 advantages, accommodations, or other opportunities to an individual or entity because of the
10 known disability of an individual with whom the individual or entity is known to have a
11 relationship or association in violation of 42 U.S.C. §12182. See *Niece v. Fitzner* 922 F. Supp.
12 1208 (1996)

13 Claim VIII

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

16 Claim IX

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

24 Claim X

25 28. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants
26 altered the use of their establishment in a manner that affected or could have affected the usability
27 of the facility or part thereof and failed to make alterations in such a manner that, to the maximum
28

1 extent feasible, the altered portions of the facility are readily accessible to and usable by
2 individuals with disabilities in violation of 42 U.S.C. §12183.

3 29. WHEREFORE, Plaintiff pray for judgment and relief as hereinafter set forth.
4

5 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
6 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

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

25 33. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause Of
26 Action above, and the facts elsewhere herein this complaint, Plaintiff will suffer irreparable harm
27 unless Defendants are ordered to remove architectural, non-architectural, and communication
28 barriers at Defendants' public accommodation. Plaintiff alleges that Defendants' discriminatory

1 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiff and
2 a substantial segment of the disability community. Plaintiff alleges there is a state and national
3 public interest in requiring accessibility in places of public accommodation. Plaintiff has no
4 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff desires to
5 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiff
6 alleges that a structural or mandatory injunction is necessary to enjoin compliance with state civil
7 rights laws enacted for the benefit of individuals with disabilities.

8 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.
9
10
11
12
13
14

15
16 **DEMAND FOR JUDGMENT FOR RELIEF:**
17

- 18 A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
19 B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
20 C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
21 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
22 Guidelines (Codified in 28 C.F.R. Part 36, App. A);
23 D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C above,
24 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil
25 Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
26 E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
27 F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
28 § 52; 54.3;

G. A Jury Trial and;

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

Respectfully submitted:

Dated: August 11, 2008

PINNOCK & WAKEFIELD, A.P.C.

By: _____
THEODORE A. PINNOCK, ESQ.
DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiff