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FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

2008 JUN -2 P 12: 21

COURT
SANTA MONICA, CA

6 *To Be Admitted Pro Hac Vice*
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11 Attorneys for Defendant
HOLLYWOOD ENTERTAINMENT
12 CORPORATION dba HOLLYWOOD VIDEO

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN DIEGO

15 NONI GOTTI,
16 Plaintiff,
17 vs.
18 TCY LLC; CASA DEL EL TACO;
19 SERGIO CARRILLOS;
HOLLYWOOD VIDEO;
20 HOLLYWOOD ENTERTAINMENT
CORPORATION and DOES 1
21 THROUGH 10, Inclusive,
22 Defendants.

Case No. 37-2008-00069914-CU-CR
**DEFENDANT HOLLYWOOD
ENTERTAINMENT CORPORATION'S
ANSWER TO PLAINTIFF'S UNVERIFIED
COMPLAINT**

Complaint Filed: April 14, 2008

23 Defendant Hollywood Entertainment Corporation d/b/a Hollywood Video ("Hollywood"
24 or "Defendant") hereby answers the allegations asserted by Plaintiff Noni Gotti ("Gotti" or
25 "Plaintiff") in her unverified Complaint as follows:
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GENERAL DENIAL

Pursuant to the Code of Civil Procedure section 431.30(d), Defendant generally denies each and every allegation of Plaintiff's unverified Complaint and further denies that Plaintiff has suffered any damages by reason of any act or omission on Defendant's part. Defendant further submits the following Affirmative Defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State Cause of Action)

As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that Plaintiff fails to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that the claims, in whole or in part, are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

(Architectural Barriers Removed)

As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that architectural and communication barriers that are of a structural nature at the property have been removed when such removal has been readily achievable.

FOURTH AFFIRMATIVE DEFENSE

(Goods and Services Readily Available)

As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that if barrier removal is not readily achievable, the goods and/or services available at the property have been made available through alternative methods.

FIFTH AFFIRMATIVE DEFENSE

(Modifications Already Made)

As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that reasonable modifications have been made to the property where they were necessary to afford goods, services, facilities, privileges, advantages or accommodations to disabled individuals.

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SIXTH AFFIRMATIVE DEFENSE

(Compliance with the Law)

As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that any recovery on Plaintiff's Complaint, and each cause of action stated therein, is barred, in whole or in part, because of Defendant's compliance with relevant underlying law(s).

SEVENTH AFFIRMATIVE DEFENSE

(Good Faith Justification and Legitimate Business Necessity)

As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that all decisions relating to Plaintiff's employment were undertaken in good faith and without malice, were a just and proper exercise of management discretion, and were based on legitimate, non-discriminatory and non-harassing reasons undertaken for fair and honest reasons regulated by good faith under the circumstances then existing.

EIGHTH AFFIRMATIVE DEFENSE

(Reasonable Care)

As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that Defendant exercised reasonable care to prevent and correct promptly any allegedly discriminating behavior.

NINTH AFFIRMATIVE DEFENSE

(Plaintiff Lacks Standing)

As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that Plaintiff does not have standing to bring the claims asserted in this lawsuit.

TENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedy)

As an affirmative defense to each of Plaintiff's claims, Defendant avers that Plaintiff's claims are barred by reason of a failure to exhaust all applicable administrative remedies.

ELEVENTH AFFIRMATIVE DEFENSE

(Release/Waiver/Estoppel/Laches/Unclean Hands)

As an affirmative defense to each of Plaintiff's claims, Defendant avers that these claims

1 are barred, in whole or in part, by the doctrines of laches, waiver, release, estoppel and/or unclean
2 hands.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 **(Failure to State a Claim for Punitive Damages)**

5 As an affirmative defense to Plaintiff's prayer for punitive damages, Defendant avers that
6 Plaintiff has failed to state facts sufficient to state a claim for punitive damages. Plaintiff's claims
7 for punitive damages are barred by Civil Code § 3294 and the California and United States
8 Constitutions.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 **(Modifications Not Reasonable)**

11 As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that the
12 modifications sought by Plaintiff are not reasonable in nature because they would fundamentally
13 alter the services or operations of the property and/or they are not readily achievable or easily
14 accomplished and would therefore be unduly burdensome.

15 **FOURTEENTH AFFIRMATIVE DEFENSE**

16 **(Attorneys' Fees Claims)**

17 As an affirmative defense to the Complaint, Defendant avers that Plaintiff has failed to
18 state facts sufficient to support a claim for attorney's fees.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 **(Frivolous Action)**

21 As an affirmative defense to each of Plaintiff's claims, Defendant avers that Defendant has
22 engaged attorneys to represent it in defense of Plaintiff's frivolous, unfounded, and unreasonable
23 action, and Defendant is thereby entitled to an award of reasonable attorneys' fees upon judgment
24 in its favor.

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 **(Access Not Denied)**

27 As an affirmative defense to each of Plaintiff's causes of action, Defendant avers that
28 Plaintiff was not denied access to the property because of any alleged disabilities.

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SEVENTEENTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

As an affirmative defense to Plaintiff's causes of action, Defendant avers that Plaintiff's claims and remedies are barred and/or limited by the doctrine of after-acquired evidence.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Causation)

As an affirmative defense, Defendant avers that Plaintiff is barred from recovering from Defendant on any one of the alleged claims because there is no causal relationship between any damages that she claims to have suffered and any act of the Defendant.

RIGHT TO AMEND AFFIRMATIVE DEFENSES

Defendant has no independent knowledge, as of the filing of this Answer, of all facts allegedly constituting the causes of action in the Complaint, and based thereon, hereby respectfully requests leave of this Court to amend this Answer to include those affirmative defenses that are revealed during the course of Defendant's discovery.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays that:

1. Plaintiff's Complaint be dismissed in its entirety with prejudice;
2. Plaintiff take nothing by this action;
3. The Court issue judgment in favor of Defendant; and
4. Defendant be awarded its costs of suit, including attorneys' fees, and such other

relief as the Court may deem just and proper.

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 (After-Acquired Evidence)

3 As an affirmative defense to Plaintiff's causes of action, Defendant avers that Plaintiff's
4 claims and remedies are barred and/or limited by the doctrine of after-acquired evidence.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 (Causation)

7 As an affirmative defense, Defendant avers that Plaintiff is barred from recovering from
8 Defendant on any one of the alleged claims because there is no causal relationship between any
9 damages that she claims to have suffered and any act of the Defendant.

10 **RIGHT TO AMEND AFFIRMATIVE DEFENSES**

11 Defendant has no independent knowledge, as of the filing of this Answer, of all facts
12 allegedly constituting the causes of action in the Complaint, and based thereon, hereby
13 respectfully requests leave of this Court to amend this Answer to include those affirmative
14 defenses that are revealed during the course of Defendant's discovery.

15 **PRAYER FOR RELIEF**

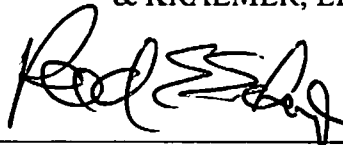
16 WHEREFORE, Defendant prays that:

- 17 1. Plaintiff's Complaint be dismissed in its entirety with prejudice;
- 18 2. Plaintiff take nothing by this action;
- 19 3. The Court issue judgment in favor of Defendant; and
- 20 4. Defendant be awarded its costs of suit, including attorneys' fees, and such other

21 relief as the Court may deem just and proper.

22 Dated: June 2, 2008

CURIALE DELLAVERSON HIRSCHFELD
& KRAEMER, LLP

23
24 By: 

Reed Schaper

25 Attorney for Defendant
26 HOLLYWOOD ENTERTAINMENT
27 CORPORATION dba HOLLYWOOD
28 VIDEO

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PROOF OF SERVICE

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

2008 JUN -2 P 12: 21

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2425 Olympic Boulevard, Suite 550, East Tower, Santa Monica, California 90404. On June 2, 2008, I served the following document(s) by the method indicated below:

**DEFENDANT HOLLYWOOD ENTERTAINMENT CORPORATION'S
ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT**

- by transmitting via facsimile on this date from fax number (415) 834-0443 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal. R.Ct 2003(3).
- by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the **United States mail** at Santa Monica, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by placing the document(s) listed above in a sealed envelope(s) and by causing messenger delivery of the envelope(s) to the person(s) at the address(es) set forth below. I am readily familiar with the business practice of my place of employment with respect to the collection and processing of correspondence, pleadings and notices for hand delivery. On June 1, 2008, I caused to be served via messenger the above-listed documents.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.

Theodore A. Pinnock
David C. Wakefield
Pinnock & Wakefield, APC
3033 Fifth Avenue, Suite 410
San Diego, CA 92103
619-858-3671
619-858-3646 (fax)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 2, 2008 at Santa Monica, California.


Robbin DeRuisé