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3:04-CV-01383 PINNOCK V. CALIFORNIA PRODUCE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 1383 LAB (LSP)

MANTIC ASHANTI'S CAUSE, SUING
ON BEHALF OF THEODORE A.
PINNOCK AND ITS MEMBERS; and
THEODORE A. PINNOCK, An
Individual,

Plaintiffs,

v.

CALIFORNIA PRODUCE;
CALIFORNIA PRODUCE, INC.;
TODD AL-BAYATI; SAMIYA ABDUL
SATTAR KADDORY; And DOES 1
THROUGH 10, Inclusive

Defendants.

Case No.:

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

NEGLIGENCE

[CIVIL CODE 1714(a), 2338,
3333; EVIDENCE CODE 669(a)]

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

INTRODUCTION

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
herein complain, by filing this Civil Complaint in accordance with
rule 8 of the Federal Rules of Civil Procedure in the Judicial
District of the United States District Court of the Southern
District of California, that Defendants have in the past, and
presently are, engaging in discriminatory practices against

1 individuals with disabilities, specifically including minorities
2 with disabilities. Plaintiffs allege this civil action and others
3 substantial similar thereto are necessary to compel access
4 compliance because empirical research on the effectiveness of
5 Title III of the Americans with Disabilities Act indicates this
6 Title has failed to achieve full and equal access simply by the
7 executive branch of the Federal Government funding and promoting
8 voluntary compliance efforts. Further, empirical research shows
9 when individuals with disabilities give actual notice of potential
10 access problems to places of public accommodation without a
11 federal civil rights action, the public accommodations do not
12 remove the access barriers. Therefore, Plaintiffs make the
13 following allegations in this federal civil rights action:

14 JURISDICTION AND VENUE

15 1. The federal jurisdiction of this action is based on the
16 Americans with Disabilities Act, 42 United States Code 12101-
17 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
18 District of the United States District Court of the Southern
19 District of California is in accordance with 28 U.S.C. § 1391(b)
20 because a substantial part of Plaintiffs' claims arose within the
21 Judicial District of the United States District Court of the
22 Southern District of California.

23 SUPPLEMENTAL JURISDICTION

24 2. The Judicial District of the United States District Court of
25 the Southern District of California has supplemental jurisdiction
26 over the state claims as alleged in this Complaint pursuant to 28
27 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
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1 in this action is because all the causes of action or claims
2 derived from federal law and those arising under state law, as
3 herein alleged, arose from common nucleus of operative facts. The
4 common nucleus of operative facts, include, but are not limited
5 to, the incidents where Plaintiff's Member Theodore A. Pinnock was
6 denied full and equal access to Defendants' facilities, goods,
7 and/or services in violation of both federal and state laws when
8 they attempted to enter, use, and/or exit Defendants' facilities
9 as described below within this Complaint. Further, due to this
10 denial of full and equal access, Theodore A. Pinnock and other
11 persons with disabilities were injured. Based upon the said
12 allegations, the state actions, as stated herein, are so related
13 to the federal actions that they form part of the same case or
14 controversy and the actions would ordinarily be expected to be
15 tried in one judicial proceeding.

16 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

17 3. Defendants are, and, at all times mentioned herein, were, a
18 business or corporation or franchise organized and existing and/or
19 doing business under the laws of the State of California.
20 Defendant CALIFORNIA PRODUCE is located at 1736 East Plaza
21 Boulevard, National City, California 91950. Plaintiffs are
22 informed and believe and thereon allege that Defendant CALIFORNIA
23 PRODUCE, INC. is the owner, operator, and/or doing business as
24 CALIFORNIA PRODUCE. Defendant CALIFORNIA PRODUCE, INC. is located
25 at 1736 East Plaza Boulevard, National City, California 91950.
26 Plaintiffs are informed and believe and thereon allege that
27 Defendants TODD AL-BAYATI and SAMIYA ABDUL SATTAR KADDORY are the
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1 owners, operators, and/or lessors of the property located at 1736
2 East Plaza Boulevard, National City, California 91950, Assessor
3 Parcel Number 557-420-30. Defendants TODD AL-BAYATI and SAMIYA
4 ABDUL SATTAR KADDORY are located at 1917 Corona Vista, El Cajon,
5 California 92019. The words "Plaintiffs" and "Plaintiff's Member"
6 as used herein specifically include the organization MANTIC
7 ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and
8 persons associated with its Members who accompanied Members to
9 Defendants' facilities, as well as THEODORE A. PINNOCK, An
10 Individual.

11 4. Defendants Does 1 through 10, were at all times relevant
12 herein subsidiaries, employers, employees, agents, of CALIFORNIA
13 PRODUCE; CALIFORNIA PRODUCE, INC.; TODD AL-BAYATI; and SAMIYA
14 ABDUL SATTAR KADDORY. Plaintiffs are ignorant of the true names
15 and capacities of Defendants sued herein as Does 1 through 10,
16 inclusive, and therefore sues these Defendants by such fictitious
17 names. Plaintiffs will pray leave of the court to amend this
18 complaint to allege the true names and capacities of the Does when
19 ascertained.

20 5. Plaintiffs are informed and believe, and thereon allege, that
21 Defendants and each of them herein were, at all times relevant to
22 the action, the owner, lessor, lessee, franchiser, franchisee,
23 general partner, limited partner, agent, employee, representing
24 partner, or joint venturer of the remaining Defendants and were
25 acting within the course and scope of that relationship.
26 Plaintiffs are further informed and believe, and thereon allege,
27 that each of the Defendants herein gave consent to, ratified,
28

1 and/or authorized the acts alleged herein to each of the remaining
2 Defendants.

3 CONCISE SET OF FACTS

4 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that
5 advocates on the behalf of its members with disabilities when
6 their civil rights and liberties have been violated. Plaintiff's
7 member THEODORE A. PINNOCK is a member of Plaintiff Organization
8 and has an impairment in that he has Cerebral Palsy and due to
9 this impairment he has learned to successfully operate a
10 wheelchair.

11 7. On May 27, 2004, Plaintiff's member THEODORE A. PINNOCK went
12 to Defendants' CALIFORNIA PRODUCE facilities to utilize their
13 goods and/or services. When Plaintiff's member patronized
14 Defendants' CALIFORNIA PRODUCE facilities, he was unable to use
15 and/or had difficulty using the public accommodations' disabled
16 parking, exterior path of travel, entrance, and interior path of
17 travel facilities at Defendants' business establishment because
18 they failed to comply with ADA Access Guidelines For Buildings and
19 Facilities (hereafter referred to as "ADAAG") and/or California's
20 Title 24 Building Code Requirements. Defendants failed to remove
21 access barriers within the disabled parking, exterior path of
22 travel, entrance, and interior path of travel facilities of
23 Defendants' CALIFORNIA PRODUCE establishment.

24 8. Plaintiff's member personally experienced difficulty with
25 said access barriers at Defendants' CALIFORNIA PRODUCE facilities.
26 For example, the parking facility of Defendants' establishment is
27 inaccessible. There are two (2) entryways into the parking lot,
28

1 both of which fail to have the required signage warning motorists
2 that anyone illegally parking in a disabled parking space would be
3 towed/fined or both. The parking facility has a total of seventeen
4 (17) parking spaces, none of which are a disabled parking space.

5 It is required that there is at least one (1) "van accessible"
6 disabled parking space that is eighteen feet (18') long, nine feet
7 (9') wide and has an access aisle that is eight feet (8') wide.

8
9 9. The exterior path of travel of the Defendants' establishment
10 is inaccessible. There fails to be a safe and accessible path of
11 travel from the public sidewalk to the primary accessible
12 entrance, as members of the disability community are forced to
13 traverse through vehicular traffic without the benefit of a marked
14 path of travel.

15 10. The entrance to the Defendants establishment is inaccessible,
16 as there are parking spaces painted directly in front of the
17 entrance, which causes said entrance to be inaccessible to
18 disabled patrons when vehicles are parked there. The entrance door
19 fails to have the required disability signage.

20 11. The seating in the bar area is inaccessible. There are
21 twelve (12) seats located in the bar area, all of which have a
22 knee clearance depth of only fourteen inches (14"). It is
23 required that five percent 5% of all seats have a knee clearance
24 depth of at least nineteen inches (19").

25 12. The interior path of travel of the Defendants' establishment
26 is inaccessible, as it is as narrow as twenty-seven inches (27"),
27 when it is required to be at least thirty-six inches (36") if
28 items are displayed on one side of the aisle and forty-four inches

1 (44") if items are displayed on both sides of the aisle.

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

10 14. Plaintiffs believe and herein allege Defendants' facilities
11 have access violations not directly experienced by Plaintiff's
12 Member which preclude or limit access by others with disabilities,
13 including, but not limited to, Space Allowance and Reach Ranges,
14 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
15 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
16 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
17 Entrances, Drinking Fountains and Water Coolers, Water Closets,
18 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
19 Handrails, Grab Bars, and Controls and Operating Mechanisms,
20 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
21 Plaintiffs allege Defendants are required to remove all
22 architectural barriers, known or unknown. Also, Plaintiffs allege
23 Defendants are required to utilize the ADA checklist for Readily
24 Achievable Barrier Removal approved by the United States
25 Department of Justice and created by Adaptive Environments.

26
27 15. Based on these facts, Plaintiffs allege Plaintiff's Member
28 and Plaintiff Theodore A. Pinnock was discriminated against each

1 time he patronized Defendants' establishments. Plaintiff's Member
2 and Plaintiff Theodore A. Pinnock was extremely upset due to
3 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
4 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
5 shoulders and wrists when he attempted to enter, use, and exit
6 Defendants' CALIFORNIA PRODUCE establishment.

7 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

8 16. CALIFORNIA PRODUCE; CALIFORNIA PRODUCE, INC.; TODD AL-BAYATI;
9 SAMIYA ABDUL SATTAR KADDORY; and Does 1 through 10 will be
10 referred to collectively hereinafter as "Defendants."

11 17. Plaintiffs aver that the Defendants are liable for the
12 following claims as alleged below:

13 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

14 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The
15 Americans With Disabilities Act Of 1990

16 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal
17 Access

18 18. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
19 this complaint, Plaintiff's Member was denied full and equal
20 access to Defendants' goods, services, facilities, privileges,
21 advantages, or accommodations. Plaintiffs allege Defendants are a
22 public accommodation owned, leased and/or operated by Defendants.
23 Defendants' existing facilities and/or services failed to provide
24 full and equal access to Defendants' facility as required by 42
25 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
26 discrimination in violation of 42 United States Code
27 12182(b) (2) (A) (iv) and 42 U.S.C. § 12188 because Plaintiff's
28

1 Member was denied equal access to Defendants' existing facilities.

2 19. Plaintiff's member Theodore A. Pinnock has physical
3 impairments as alleged in ¶ 6 above because his conditions affect
4 one or more of the following body systems: neurological,
5 musculoskeletal, special sense organs, and/or cardiovascular.

6 Further, Plaintiff's member Theodore A. Pinnock's said physical
7 impairments substantially limits one or more of the following
8 major life activities: walking. In addition, Plaintiff's member
9 Theodore A. Pinnock cannot perform one or more of the said major
10 life activities in the manner, speed, and duration when compared
11 to the average person. Moreover, Plaintiff's member Theodore A.
12 Pinnock has a history of or has been classified as having a
13 physical impairment as required by 42 U.S.C. § 12102(2)(A).
14

15 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**
16 **Such A Manner That The Altered Portions Of The Facility Are**
17 **Readily Accessible And Usable By Individuals With Disabilities**

18 20. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
19 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
20 full and equal access to Defendants' goods, services, facilities,
21 privileges, advantages, or accommodations within a public
22 accommodation owned, leased, and/or operated by Defendants.
23 Defendants altered their facility in a manner that affects or
24 could affect the usability of the facility or a part of the
25 facility after January 26, 1992. In performing the alteration,
26 Defendants failed to make the alteration in such a manner that, to
27 the maximum extent feasible, the altered portions of the facility
28 are readily accessible to and usable by individuals with
disabilities, including individuals who use wheelchairs, in

1 violation of 42 U.S.C. §12183(a)(2).

2 21. Additionally, the Defendants undertook an alteration that
3 affects or could affect the usability of or access to an area of
4 the facility containing a primary function after January 26, 1992.
5 Defendants further failed to make the alterations in such a manner
6 that, to the maximum extent feasible, the path of travel to the
7 altered area and the bathrooms, telephones, and drinking fountains
8 serving the altered area, are readily accessible to and usable by
9 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

10 22. Pursuant to 42 U.S.C. §12183(a), this failure to make the
11 alterations in a manner that, to the maximum extent feasible, are
12 readily accessible to and usable by individuals with disabilities
13 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
14 Therefore, Defendants discriminated against Plaintiff's Member
15 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

16 23. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
17 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
18 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
19 Pinnock was denied equal access to Defendants' existing
20 facilities.

21
22 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
23 Architectural Barriers

24 24. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
25 this complaint, Plaintiff's Member was denied full and equal
26 access to Defendants' goods, services, facilities, privileges,
27 advantages, or accommodations within a public accommodation owned,
28 leased, and/or operated by Defendants. Defendants failed to

1 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
2 are informed, believe, and thus allege that architectural barriers
3 which are structural in nature exist within the following physical
4 elements of Defendants' facilities: Space Allowance and Reach
5 Ranges, Accessible Route, Protruding Objects, Ground and Floor
6 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
7 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
8 Doors, Entrances, Drinking Fountains and Water Coolers, Water
9 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
10 Storage, Handrails, Grab Bars, and Controls and Operating
11 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
12 Title III requires places of public accommodation to remove
13 architectural barriers that are structural in nature to existing
14 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
15 Failure to remove such barriers and disparate treatment against a
16 person who has a known association with a person with a disability
17 are forms of discrimination. [See 42 United States Code
18 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
19 discrimination in violation of 42 United States Code
20 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
21 denied equal access to Defendants' existing facilities.
22

23 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
24 Policies And Procedures

25 25. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
26 this complaint, Defendants failed and refused to provide a
27 reasonable alternative by modifying its practices, policies and
28 procedures in that they failed to have a scheme, plan, or design

1 to assist Plaintiff's Member and/or others similarly situated in
2 entering and utilizing Defendants' services, as required by 42
3 U.S.C. § 12188(a). Thus, said Member was subjected to
4 discrimination in violation of 42 United States Code
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
6 denied equal access to Defendants' existing facilities.

7 26. Based on the facts plead at ¶¶ 6-15 above, Claims I, II, and
8 III of Plaintiffs' First Cause Of Action above, and the facts
9 elsewhere herein this complaint, Plaintiffs will suffer
10 irreparable harm unless Defendants are ordered to remove
11 architectural, non-architectural, and communication barriers at
12 Defendants' public accommodation. Plaintiffs allege that
13 Defendants' discriminatory conduct is capable of repetition, and
14 this discriminatory repetition adversely impacts Plaintiffs and a
15 substantial segment of the disability community. Plaintiffs
16 allege there is a national public interest in requiring
17 accessibility in places of public accommodation. Plaintiffs have
18 no adequate remedy at law to redress the discriminatory conduct of
19 Defendants. Plaintiff's Member desires to return to Defendants'
20 places of business in the immediate future. Accordingly, the
21 Plaintiffs allege that a structural or mandatory injunction is
22 necessary to enjoin compliance with federal civil rights laws
23 enacted for the benefit of individuals with disabilities.

24 27. WHEREFORE, Plaintiffs pray for judgment and relief as
25 hereinafter set forth.

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1 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
2 CALIFORNIA ACCESSIBILITY LAWS

3 CLAIM I: Denial Of Full And Equal Access

4 28. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
5 this complaint, Plaintiff's Member was denied full and equal
6 access to Defendants' goods, services, facilities, privileges,
7 advantages, or accommodations within a public accommodation owned,
8 leased, and/or operated by Defendants as required by Civil Code
9 Sections 54 and 54.1. Defendants' facility violated California's
10 Title 24 Accessible Building Code by failing to provide access to
11 Defendants' facilities due to violations pertaining to the Space
12 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
13 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
14 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
15 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
16 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
17 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
18 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
19 Telephones.

20 29. These violations denied Plaintiff's Member full and equal
21 access to Defendants' facility. Thus, said Member was subjected
22 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
23 because Plaintiff's Member was denied full, equal and safe access
24 to Defendants' facility, causing severe emotional distress.

25 CLAIM II: Failure To Modify Practices, Policies And Procedures

26 30. Based on the facts plead at ¶¶ 6-15 above and elsewhere
27 herein this complaint, Defendants failed and refused to provide a
28 reasonable alternative by modifying its practices, policies, and

1 procedures in that they failed to have a scheme, plan, or design
2 to assist Plaintiff's Member and/or others similarly situated in
3 entering and utilizing Defendants' services as required by Civil
4 Code § 54.1. Thus, said Member was subjected to discrimination in
5 violation of Civil Code § 54.1.

6 CLAIM III: Violation Of The Unruh Act

7 31. Based on the facts plead at ¶¶ 6-15 above and elsewhere
8 herein this complaint and because Defendants violated the Civil
9 Code § 51 by failing to comply with 42 United States Code §
10 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
11 continue to discriminate against Plaintiff's Member and persons
12 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

13 32. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
14 III of Plaintiffs' Second Cause Of Action above, and the facts
15 elsewhere herein this complaint, Plaintiffs will suffer
16 irreparable harm unless Defendants are ordered to remove
17 architectural, non-architectural, and communication barriers at
18 Defendants' public accommodation. Plaintiffs allege that
19 Defendants' discriminatory conduct is capable of repetition, and
20 this discriminatory repetition adversely impacts Plaintiffs and a
21 substantial segment of the disability community. Plaintiffs
22 allege there is a state and national public interest in requiring
23 accessibility in places of public accommodation. Plaintiffs have
24 no adequate remedy at law to redress the discriminatory conduct of
25 Defendants. Plaintiff's Member desires to return to Defendants'
26 places of business in the immediate future. Accordingly, the
27 Plaintiffs allege that a structural or mandatory injunction is
28

1 necessary to enjoin compliance with state civil rights laws
2 enacted for the benefit of individuals with disabilities.

3 33. Wherefore, Plaintiffs pray for damages and relief as
4 hereinafter stated.

5 Treble Damages Pursuant To Claims I, II, III Under The California
6 Accessibility Laws

7 34. Defendants, each of them respectively, at times prior to and
8 including, the month of May, 2004, and continuing to the present
9 time, knew that persons with physical disabilities were denied
10 their rights of equal access to all portions of this public
11 facility. Despite such knowledge, Defendants, and each of them,
12 failed and refused to take steps to comply with the applicable
13 access statutes; and despite knowledge of the resulting problems
14 and denial of civil rights thereby suffered by Plaintiff's Member
15 THEODORE A. PINNOCK and other similarly situated persons with
16 disabilities. Defendants, and each of them, have failed and
17 refused to take action to grant full and equal access to persons
18 with physical disabilities in the respects complained of
19 hereinabove. Defendants, and each of them, have carried out a
20 course of conduct of refusing to respond to, or correct complaints
21 about, denial of disabled access and have refused to comply with
22 their legal obligations to make Defendants' CALIFORNIA PRODUCE
23 facilities accessible pursuant to the Americans With Disability
24 Act Access Guidelines (ADAAG) and Title 24 of the California Code
25 of Regulations (also known as the California Building Code). Such
26 actions and continuing course of conduct by Defendants, and each
27 of them, evidence despicable conduct in conscious disregard of the
28 rights and/or safety of Plaintiff's Member and of other similarly

1 situated persons, justifying an award of treble damages pursuant
2 to sections 52(a) and 54.3(a) of the California Civil Code.

3 35. Defendants', and each of their, actions have also been
4 oppressive to persons with physical disabilities and of other
5 members of the public, and have evidenced actual or implied
6 malicious intent toward those members of the public, such as
7 Plaintiff's Member and other persons with physical disabilities
8 who have been denied the proper access to which they are entitled
9 by law. Further, Defendants', and each of their, refusals on a
10 day-to-day basis to correct these problems evidence despicable
11 conduct in conscious disregard for the rights of Plaintiff's
12 Member THEODORE A. PINNOCK and other members of the public with
13 physical disabilities.

14 36. Plaintiffs pray for an award of treble damages against
15 Defendants, and each of them, pursuant to California Civil Code
16 sections 52(a) and 54.3(a), in an amount sufficient to make a more
17 profound example of Defendants and encourage owners, lessors, and
18 operators of other public facilities from willful disregard of the
19 rights of persons with disabilities. Plaintiffs do not know the
20 financial worth of Defendants, or the amount of damages sufficient
21 to accomplish the public purposes of section 52(a) of the
22 California Civil Code and section 54.3 of the California Civil
23 Code.

24 37. Wherefore, Plaintiffs pray for damages and relief as
25 hereinafter stated.

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1 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
2 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

3 38. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
4 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
5 statutory duty to make their facility accessible and owed
6 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
7 Pinnock reasonably safe from known dangers and risks of harm.
8 This said duty arises by virtue of legal duties proscribed by
9 various federal and state statutes including, but not limited to,
10 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
11 California Administrative Code and applicable 1982 Uniform
12 Building Code standards as amended.

13 39. Title III of the ADA mandates removal of architectural
14 barriers and prohibits disability discrimination. As well,
15 Defendants' facility, and other goods, services, and/or facilities
16 provided to the public by Defendants are not accessible to and
17 usable by persons with disabilities as required by Health and
18 Safety Code § 19955 which requires private entities to make their
19 facility accessible before and after remodeling, and to remove
20 architectural barriers.

21 40. Therefore, Defendants engaged in discriminatory conduct in
22 that they failed to comply with known duties under the ADA, ADAAG,
23 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
24 or should have known that their acts of nonfeasance would cause
25 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
26 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
27 bodily injury in this matter because when Plaintiff THEODORE A.
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1 PINNOCK attempted to enter, use, and exit Defendants'
2 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
3 his legs, back, arms, shoulders, and wrists. Plaintiffs further
4 allege that such conduct was done in reckless disregard of the
5 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
6 to suffer bodily or personal injury, anger, embarrassment,
7 depression, anxiety, mortification, humiliation, distress, and
8 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
9 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
10 An Individual, to suffer the injuries of mental and emotional
11 distress, including, but not limited to, anger, embarrassment,
12 depression, anxiety, mortification, humiliation, distress, and
13 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
14 Individual, additionally alleges that such conduct caused THEODORE
15 A. PINNOCK, An Individual, to suffer damages as a result of these
16 injuries.

17 41. Wherefore, Plaintiffs pray for damages and relief as
18 hereinafter stated.

19 DEMAND FOR JUDGMENT FOR RELIEF:

- 20 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
21 3281, and 3333;
- 22 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
23 each and every offense of Civil Code § 51, Title 24 of the
24 California Building Code, ADA, and ADA Accessibility Guidelines;
- 25 C. In the alternative to the damages pursuant to Cal. Civil
26 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
27 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
28

1 54.1, Title 24 of the California Building Code, ADA, and ADA
2 Accessibility Guidelines;

3 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
4 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
5 Defendants to remove all architectural barriers in, at, or on
6 their facilities related to the following: Space Allowance and
7 Reach Ranges, Accessible Route, Protruding Objects, Ground and
8 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
9 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
10 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
11 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
12 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
13 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

14 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
15 § 12205, and Cal. Civil Code § 55;

16 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
17 and 54.3(a);

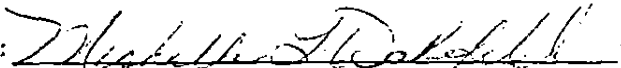
18 G. A Jury Trial and;

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

20 Respectfully submitted:

21 PINNOCK & WAKEFIELD, A.P.C.

22
23 Dated: July 8, 2004

24 By: 
25 MICHELLE L. WAKEFIELD, ESQ.
26 DAVID C. WAKEFIELD, ESQ.
27 Attorneys for Plaintiffs
28

CIVIL COVER SHEET

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

MANTIC ASHANTI'S CAUSE, SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS; And THEODORE A. PINNOCK, An Individual

DEFENDANTS 1, 2, 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, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) San Diego NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Michelle L. Wakefield, Esq. SBN: 200424 David C. Wakefield, Esq. SBN: 185736 Pinnock & Wakefield, A.P.C.; 3033 Fifth Avenue, Suite 410 San Diego, CA 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN) '04 CV 1383 LAB (LSP)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

- III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country 1 Incorporated or Principal Place of Business in This State 2 Incorporated and Principal Place of Business in Another State 3 Foreign Nation 4 5 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with 5 columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 210 Land Condemnation, 310 Airplane, 441 Voting, 510 Motions to Vacate Sentence, 610 Agriculture, 710 Fair Labor Standards Act, 810 Selective Service, 910 Appeal of Fee Determination.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE July 8, 2004

SIGNATURE OF ATTORNEY OF RECORD

Signature of Michelle L. Wakefield

Handwritten notes: 105285 150% 7/9/04