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3:04-CV-01340 PINNOCK V. RAINBOW PRODUCE

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CHECK U.S. DISTRICT COURT  
Bar # 200424  
Bar #: 185736

BY:  DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

RAINBOW PRODUCE; MARINA AREAS  
LUVIANO d.b.a. RAINBOW  
PRODUCE; MARINA AREAS MARINA;  
THE GEORGE A. URY TRUST;  
GEORGE A. URY, TRUSTEE OF THE  
GEORGE A. URY TRUST; GEORGE  
A. URY; And DOES 1 THROUGH  
10, Inclusive

Defendants.

Case No. '04 CV 1340 BEN (NLS)

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

1 presently are, engaging in discriminatory practices against  
2 individuals with disabilities, specifically including minorities  
3 with disabilities. Plaintiffs allege this civil action and others  
4 substantial similar thereto are necessary to compel access  
5 compliance because empirical research on the effectiveness of  
6 Title III of the Americans with Disabilities Act indicates this  
7 Title has failed to achieve full and equal access simply by the  
8 executive branch of the Federal Government funding and promoting  
9 voluntary compliance efforts. Further, empirical research shows  
10 when individuals with disabilities give actual notice of potential  
11 access problems to places of public accommodation without a  
12 federal civil rights action, the public accommodations do not  
13 remove the access barriers. Therefore, Plaintiffs make the  
14 following allegations in this federal civil rights action:  
15

16 **JURISDICTION AND VENUE**

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

25 **SUPPLEMENTAL JURISDICTION**

26 2. The Judicial District of the United States District Court of  
27 the Southern District of California has supplemental jurisdiction  
28 over the state claims as alleged in this Complaint pursuant to 28

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

17  
18 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

19 3. Defendants are, and, at all times mentioned herein, were, a  
20 business or corporation or franchise organized and existing and/or  
21 doing business under the laws of the State of California.

22 Defendant RAINBOW PRODUCE is located at 2708 Highland Avenue,  
23 National City, California 91950. Plaintiffs are informed and  
24 believe and thereon allege that Defendant MARINA AREAS LUVIANO is  
25 the owner, operator, and/or doing business as RAINBOW PRODUCE.

26 Defendant MARINA AREAS LUVIANO is located at 2708 Highland Avenue,  
27 National City, California 91950. Plaintiffs are informed and  
28 believe and thereon allege that Defendant THE GEORGE A. URY TRUST

1 is the owner, operator, and/or lessor of the property located at  
2 2708 Highland Avenue, National City, California 91950, Assessor  
3 Parcel Number 562-141-16. Defendant GEORGE A. URY, TRUSTEE OF THE  
4 GEORGE A. URY TRUST is located at 511 Highland Avenue, National  
5 City, California 91950. The words "Plaintiffs" and "Plaintiff's  
6 Member" as used herein specifically include the organization  
7 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A.  
8 Pinnock and persons associated with its Members who accompanied  
9 Members to Defendants' facilities, as well as THEODORE A. PINNOCK,  
10 An Individual.

11 4. Defendants Does 1 through 10, were at all times relevant  
12 herein subsidiaries, employers, employees, agents, of RAINBOW  
13 PRODUCE; MARINA AREAS LUVIANO d.b.a. RAINBOW PRODUCE; MARINA AREAS  
14 MARINA; THE GEORGE A. URY TRUST; GEORGE A. URY, TRUSTEE OF THE  
15 GEORGE A. URY TRUST; and GEORGE A. URY. Plaintiffs are ignorant  
16 of the true names and capacities of Defendants sued herein as Does  
17 1 through 10, inclusive, and therefore sues these Defendants by  
18 such fictitious names. Plaintiffs will pray leave of the court to  
19 amend this complaint to allege the true names and capacities of  
20 the Does when ascertained.

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

27 Plaintiffs are further informed and believe, and thereon allege,  
28

1 that each of the Defendants herein gave consent to, ratified,  
2 and/or authorized the acts alleged herein to each of the remaining  
3 Defendants.

4 CONCISE SET OF FACTS

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

12 7. On June 1, 2004, Plaintiff's member THEODORE A. PINNOCK went  
13 to Defendants' RAINBOW PRODUCE facilities to utilize their goods  
14 and/or services. When Plaintiff's member patronized Defendants'  
15 RAINBOW PRODUCE facilities, he was unable to use and/or had  
16 difficulty using the public accommodations' disabled parking,  
17 exterior path of travel, entrance, interior path of travel, and  
18 cashier counter facilities at Defendants' business establishment  
19 because they failed to comply with ADA Access Guidelines For  
20 Buildings and Facilities (hereafter referred to as "ADAAG") and/or  
21 California's Title 24 Building Code Requirements. Defendants  
22 failed to remove access barriers within the disabled parking,  
23 exterior path of travel, entrance, interior path of travel,  
24 cashier counter, public pay telephone, and restroom facilities of  
25 Defendants' RAINBOW PRODUCE establishment.

26  
27 8. Plaintiff's member personally experienced difficulty with  
28 said access barriers at Defendants' RAINBOW PRODUCE facilities.

1 For example, the parking facility of Defendants' establishment is  
2 inaccessible. The entryway into the parking lot fails to have the  
3 required signage warning motorists that anyone illegally parking  
4 in a disabled parking space would be towed/fined or both. The  
5 parking facility has a total of five (5) parking spaces, none of  
6 which are a disabled parking space. It is required that there is  
7 at least One (1) "van accessible" disabled parking space.

8  
9 9. The exterior path of travel of the Defendants' establishment  
10 is inaccessible. The path of travel from the parking lot and the  
11 public sidewalk to the entrance is rough, uneven and has changes  
12 in level that are more than one inch (1"). It is required that  
13 this exterior path of travel's surface is smooth and slip  
14 resistant. Changes in level greater than one half of an inch  
15 (1/2") must be ramped.

16 10. The entrance to the Defendants establishment is inaccessible,  
17 as the height of the threshold at the front entrance door is an  
18 impermissible two inches (2"). Changes in level greater than one  
19 half of an inch (1/2") are required to have a ramp. The entrance  
20 door fails to have the required smooth and uninterrupted surface  
21 on the bottom ten inches (10") of the door that allows the door to  
22 be opened with a wheelchair footrest without creating a hazard.  
23 The front entrance door also fails to have the required disability  
24 signage.

25 11. The interior path of travel is inaccessible, as the interior  
26 path of travel is only twenty-four inches (24") wide. The  
27 interior path of travel is required to be at least thirty-six  
28 (36") wide. The path of travel from the front entrance door to

1 the restroom is as narrow as twenty inches (20"), when it is  
2 required to be no less than thirty-six inches (36") wide.

3 12. The cashier counter inside the Defendants' establishment is  
4 inaccessible, as it is forty-two inches (42") high, when the  
5 maximum height requirement is thirty-four inches (34").

6 13. In addition to the violations personally experienced by  
7 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional  
8 violations of federal and state disability laws exist at  
9 Defendants' RAINBOW PRODUCE. For example, the public pay  
10 telephone is inaccessible, as it fails to have the required volume  
11 control unit and disability signage.

12 14. The unisex restroom located inside the defendants'  
13 establishment is inaccessible. The restroom area doorknob is  
14 inaccessible, as it requires tight grasping and/or twisting of the  
15 wrist to operate. The restroom door fails to have the required  
16 disability signage. The unisex restroom doorknob is inaccessible,  
17 as it requires tight grasping and/or twisting of the wrist to  
18 operate. The clear opening width of the unisex restroom doorway  
19 is only twenty-one inches (21"), when it is required to be at  
20 least thirty-two inches (32"). The small round locking mechanism  
21 on the unisex restroom door is inaccessible, as it requires tight  
22 grasping and/or twisting of the wrist to operate. The wheelchair  
23 turn around space in the unisex restroom is only thirty inches by  
24 forty inches (30"X 40"), when it is required to be at least sixty  
25 inches (60") in diameter. The commode fails to have any of the  
26 required grab bars. The height of the commode is only fifteen  
27 inches (15"), when it is required to be between seventeen inches  
28



1 and nineteen inches (17" - 19") high. The distance from the side  
2 edge of the commode to the far wall is a mere five inches (5"),  
3 when it is required to be at least thirty-two inches (32"). The  
4 distance from the front edge of the commode to the front wall is  
5 only thirty inches (30"), when it is required to be at least  
6 forty-eight inches (48"). The distance from the centerline of the  
7 commode to the near wall is only twelve inches (12"), when it is  
8 required to be at least eighteen inches (18"). The toilet paper  
9 dispenser is inaccessible, as it is located thirty inches (30")  
10 from the front edge of the commode, when it is required to be  
11 mounted no further than twelve inches (12"). The distance from  
12 the centerline of the lavatory to the adjacent wall is only eleven  
13 inches (11"), when it is required to be at least eighteen inches  
14 (18"). The knee clearance depth of the area beneath the lavatory  
15 is only five inches (5"), when it is required to be at least eight  
16 inches (8"). The lavatory faucet handles are inaccessible, as  
17 they require tight grasping and/or twisting of the wrist to  
18 operate. The paper towel dispenser is inaccessible, as it is  
19 mounted at sixty-five inches (65") high, when it is required to be  
20 mounted no higher than forty inches (40") from the floor surface.  
21 The restroom fails to have the required audible and visual alarm  
22 system.

23  
24 15. Pursuant to federal and state law, Defendants are required to  
25 remove barriers to their existing facilities. Further, Defendants  
26 had actual knowledge of their barrier removal duties under the  
27 Americans with Disabilities Act and the Civil Code before January  
28 26, 1992. Also, Defendants should have known that individuals

1 with disabilities are not required to give notice to a  
2 governmental agency before filing suit alleging Defendants failed  
3 to remove architectural barriers.

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

20 17. Based on these facts, Plaintiffs allege Plaintiff's Member  
21 and Plaintiff Theodore A. Pinnock was discriminated against each  
22 time he patronized Defendants' establishments. Plaintiff's Member  
23 and Plaintiff Theodore A. Pinnock was extremely upset due to  
24 Defendants' conduct. Further, Plaintiff's Member and Plaintiff  
25 THEODORE A. PINNOCK experienced pain in his legs, back, arms,  
26 shoulders and wrists when he attempted to enter, use, and exit  
27 Defendants' RAINBOW PRODUCE establishment.  
28

1 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

2  
3 18. RAINBOW PRODUCE; MARINA AREAS LUVIANO d.b.a. RAINBOW PRODUCE;  
4 MARINA AREAS MARINA; THE GEORGE A. URY TRUST; GEORGE A. URY,  
5 TRUSTEE OF THE GEORGE A. URY TRUST; GEORGE A. URY; and Does 1  
6 through 10 will be referred to collectively hereinafter as  
7 "Defendants."

8 19. Plaintiffs aver that the Defendants are liable for the  
9 following claims as alleged below:

10 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

13 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal  
14 Access

15 20. Based on the facts plead at ¶¶ 6-17 above and elsewhere in  
16 this complaint, Plaintiff's Member was denied full and equal  
17 access to Defendants' goods, services, facilities, privileges,  
18 advantages, or accommodations. Plaintiffs allege Defendants are a  
19 public accommodation owned, leased and/or operated by Defendants.  
20 Defendants' existing facilities and/or services failed to provide  
21 full and equal access to Defendants' facility as required by 42  
22 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to  
23 discrimination in violation of 42 United States Code  
24 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's  
25 Member was denied equal access to Defendants' existing facilities.

26 21. Plaintiff's member Theodore A. Pinnock has physical  
27 impairments as alleged in ¶ 6 above because his conditions affect  
28 one or more of the following body systems: neurological,

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

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

13 22. Based on the facts plead at ¶¶ 6-17 above and elsewhere in  
14 this complaint, Plaintiff's Member Theodore A. Pinnock was denied  
15 full and equal access to Defendants' goods, services, facilities,  
16 privileges, advantages, or accommodations within a public  
17 accommodation owned, leased, and/or operated by Defendants.  
18 Defendants altered their facility in a manner that affects or  
19 could affect the usability of the facility or a part of the  
20 facility after January 26, 1992. In performing the alteration,  
21 Defendants failed to make the alteration in such a manner that, to  
22 the maximum extent feasible, the altered portions of the facility  
23 are readily accessible to and usable by individuals with  
24 disabilities, including individuals who use wheelchairs, in  
25 violation of 42 U.S.C. §12183(a)(2).

26 23. Additionally, the Defendants undertook an alteration that  
27 affects or could affect the usability of or access to an area of  
28 the facility containing a primary function after January 26, 1992.

1 Defendants further failed to make the alterations in such a manner  
2 that, to the maximum extent feasible, the path of travel to the  
3 altered area and the bathrooms, telephones, and drinking fountains  
4 serving the altered area, are readily accessible to and usable by  
5 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

6 24. Pursuant to 42 U.S.C. §12183(a), this failure to make the  
7 alterations in a manner that, to the maximum extent feasible, are  
8 readily accessible to and usable by individuals with disabilities  
9 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

10 Therefore, Defendants discriminated against Plaintiff's Member  
11 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

12 25. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to  
13 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.  
14 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.  
15 Pinnock was denied equal access to Defendants' existing  
16 facilities.

17  
18 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove  
19 Architectural Barriers

20 26. Based on the facts plead at ¶¶ 6-17 above and elsewhere in  
21 this complaint, Plaintiff's Member was denied full and equal  
22 access to Defendants' goods, services, facilities, privileges,  
23 advantages, or accommodations within a public accommodation owned,  
24 leased, and/or operated by Defendants. Defendants failed to  
25 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs  
26 are informed, believe, and thus allege that architectural barriers  
27 which are structural in nature exist within the following physical  
28 elements of Defendants' facilities: Space Allowance and Reach

1 Ranges, Accessible Route, Protruding Objects, Ground and Floor  
2 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
3 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,  
4 Doors, Entrances, Drinking Fountains and Water Coolers, Water  
5 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,  
6 Storage, Handrails, Grab Bars, and Controls and Operating  
7 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

8 Title III requires places of public accommodation to remove  
9 architectural barriers that are structural in nature to existing  
10 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]  
11 Failure to remove such barriers and disparate treatment against a  
12 person who has a known association with a person with a disability  
13 are forms of discrimination. [See 42 United States Code  
14 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to  
15 discrimination in violation of 42 United States Code  
16 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
17 denied equal access to Defendants' existing facilities.

18  
19 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,**  
20 **Policies And Procedures**

21 27. Based on the facts plead at ¶¶ 6-17 above and elsewhere in  
22 this complaint, Defendants failed and refused to provide a  
23 reasonable alternative by modifying its practices, policies and  
24 procedures in that they failed to have a scheme, plan, or design  
25 to assist Plaintiff's Member and/or others similarly situated in  
26 entering and utilizing Defendants' services, as required by 42  
27 U.S.C. § 12188(a). Thus, said Member was subjected to  
28 discrimination in violation of 42 United States Code

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
2 denied equal access to Defendants' existing facilities.

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

20  
21 29. WHEREFORE, Plaintiffs pray for judgment and relief as  
22 hereinafter set forth.

23 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**  
24 **CALIFORNIA ACCESSIBILITY LAWS**

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

26 30. Based on the facts plead at ¶¶ 6-17 above and elsewhere in  
27 this complaint, Plaintiff's Member was denied full and equal  
28 access to Defendants' goods, services, facilities, privileges,

1 advantages, or accommodations within a public accommodation owned,  
2 leased, and/or operated by Defendants as required by Civil Code  
3 Sections 54 and 54.1. Defendants' facility violated California's  
4 Title 24 Accessible Building Code by failing to provide access to  
5 Defendants' facilities due to violations pertaining to the Space  
6 Allowance and Reach Ranges, Accessible Route, Protruding Objects,  
7 Ground and Floor Surfaces, Parking and Passenger Loading Zones,  
8 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair  
9 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water  
10 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
11 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
12 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and  
13 Telephones.

14 31. These violations denied Plaintiff's Member full and equal  
15 access to Defendants' facility. Thus, said Member was subjected  
16 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1  
17 because Plaintiff's Member was denied full, equal and safe access  
18 to Defendants' facility, causing severe emotional distress.

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

20 32. Based on the facts plead at ¶¶ 6-17 above and elsewhere  
21 herein this complaint, Defendants failed and refused to provide a  
22 reasonable alternative by modifying its practices, policies, and  
23 procedures in that they failed to have a scheme, plan, or design  
24 to assist Plaintiff's Member and/or others similarly situated in  
25 entering and utilizing Defendants' services as required by Civil  
26 Code § 54.1. Thus, said Member was subjected to discrimination in  
27 violation of Civil Code § 54.1.  
28



1 CLAIM III: Violation Of The Unruh Act

2 33. Based on the facts plead at ¶¶ 6-17 above and elsewhere  
3 herein this complaint and because Defendants violated the Civil  
4 Code § 51 by failing to comply with 42 United States Code §  
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and  
6 continue to discriminate against Plaintiff's Member and persons  
7 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

25 35. Wherefore, Plaintiffs pray for damages and relief as  
26 hereinafter stated.

27  
28 ///

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

3 36. Defendants, each of them respectively, at times prior to and  
4 including, the month of June, 2004, and continuing to the present  
5 time, knew that persons with physical disabilities were denied  
6 their rights of equal access to all portions of this public  
7 facility. Despite such knowledge, Defendants, and each of them,  
8 failed and refused to take steps to comply with the applicable  
9 access statutes; and despite knowledge of the resulting problems  
10 and denial of civil rights thereby suffered by Plaintiff's Member  
11 THEODORE A. PINNOCK and other similarly situated persons with  
12 disabilities. Defendants, and each of them, have failed and  
13 refused to take action to grant full and equal access to persons  
14 with physical disabilities in the respects complained of  
15 hereinabove. Defendants, and each of them, have carried out a  
16 course of conduct of refusing to respond to, or correct complaints  
17 about, denial of disabled access and have refused to comply with  
18 their legal obligations to make Defendants' RAINBOW PRODUCE  
19 facilities accessible pursuant to the Americans With Disability  
20 Act Access Guidelines (ADAAG) and Title 24 of the California Code  
21 of Regulations (also known as the California Building Code). Such  
22 actions and continuing course of conduct by Defendants, and each  
23 of them, evidence despicable conduct in conscious disregard of the  
24 rights and/or safety of Plaintiff's Member and of other similarly  
25 situated persons, justifying an award of treble damages pursuant  
26 to sections 52(a) and 54.3(a) of the California Civil Code.

27 37. Defendants', and each of their, actions have also been  
28 oppressive to persons with physical disabilities and of other

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

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

20 39. Wherefore, Plaintiffs pray for damages and relief as  
21 hereinafter stated.

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

24 40. Based on the facts plead at ¶¶ 6-17 above and elsewhere in  
25 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a  
26 statutory duty to make their facility accessible and owed  
27 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.  
28

1 Pinnock reasonably safe from known dangers and risks of harm.  
2 This said duty arises by virtue of legal duties proscribed by  
3 various federal and state statutes including, but not limited to,  
4 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the  
5 California Administrative Code and applicable 1982 Uniform  
6 Building Code standards as amended.

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

15 42. Therefore, Defendants engaged in discriminatory conduct in  
16 that they failed to comply with known duties under the ADA, ADAAG,  
17 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew  
18 or should have known that their acts of nonfeasance would cause  
19 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal  
20 injury. Plaintiff THEODORE A. PINNOCK alleges that there was  
21 bodily injury in this matter because when Plaintiff THEODORE A.  
22 PINNOCK attempted to enter, use, and exit Defendants'  
23 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in  
24 his legs, back, arms, shoulders, and wrists. Plaintiffs further  
25 allege that such conduct was done in reckless disregard of the  
26 probability of said conduct causing Plaintiff THEODORE A. PINNOCK  
27 to suffer bodily or personal injury, anger, embarrassment,  
28

1 depression, anxiety, mortification, humiliation, distress, and  
2 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
3 Individual, alleges that such conduct caused THEODORE A. PINNOCK,  
4 An Individual, to suffer the injuries of mental and emotional  
5 distress, including, but not limited to, anger, embarrassment,  
6 depression, anxiety, mortification, humiliation, distress, and  
7 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
8 Individual, additionally alleges that such conduct caused THEODORE  
9 A. PINNOCK, An Individual, to suffer damages as a result of these  
10 injuries.

11 43. Wherefore, Plaintiffs pray for damages and relief as  
12 hereinafter stated.

13 DEMAND FOR JUDGMENT FOR RELIEF:

14 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
15 3281, and 3333;

16 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for  
17 each and every offense of Civil Code § 51, Title 24 of the  
18 California Building Code, ADA, and ADA Accessibility Guidelines;

19 C. In the alternative to the damages pursuant to Cal. Civil  
20 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to  
21 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
22 54.1, Title 24 of the California Building Code, ADA, and ADA  
23 Accessibility Guidelines;

24 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and  
25 Cal. Civil Code § 55. Plaintiffs request this Court enjoin  
26 Defendants to remove all architectural barriers in, at, or on  
27 their facilities related to the following: Space Allowance and  
28 Reach Ranges, Accessible Route, Protruding Objects, Ground and

1 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,  
2 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),  
3 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,  
4 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,  
5 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating  
6 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

7 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.  
8 § 12205, and Cal. Civil Code § 55;

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


11 G. A Jury Trial and;

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

13 Respectfully submitted:

14 PINNOCK & WAKEFIELD, A.P.C.

15  
16 Dated: July 2, 2004

17 By:   
18 MICHELLE L. WAKEFIELD, ESQ.  
19 DAVID C. WAKEFIELD, ESQ.  
20 Attorneys for Plaintiffs  
21  
22  
23  
24  
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26  
27  
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CIVIL COVER SHEET

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 filing 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 RAINBOW PRODUCE; MARINA AREAS LUVIANO d.b.a. RAINBOW PRODUCE; MARINA AREAS MARINA; THE GEORGE A. URY TRUST; GEORGE A. URY, TRUSTEE OF THE GEORGE A. URY TRUST; GEORGE A. URY; And DOES 1 THROUGH 10, Inclusive

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE REPORT OF THE TRACT OF LAND INVOLVED

(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)

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
PT DEF
1 Incorporated or Principal Place of Business in This State
2 Incorporated and Principal Place of Business in Another State
3 Foreign Nation
PT DEF
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, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SECURITY ACT, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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.c.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 2, 2004

SIGNATURE OF ATTORNEY OF RECORD

105142

150.00

7/6/04

Signature of Michelle L. Wakefield