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3:04-CV-01458 PINNOCK V. ANTIQUE ROW CAFE

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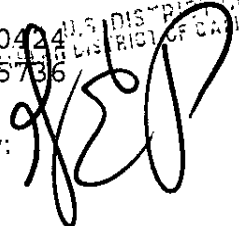
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PINNOCK & WAKEFIELD
A Professional Corporation
Michelle L. Wakefield, Esq.
David C. Wakefield, Esq.
3033 Fifth Ave., Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671
Facsimile: (619) 858-3646

Bar #: 200424
Bar #: 185736
BY:  DEPUTY
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 1458 J

(JFS)

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

Plaintiffs,

v.

ANTIQUÉ ROW CAFÉ a.k.a. THE
ANTIQUÉ ROW CAFÉ NORMAL
HEIGHTS; THE ANTIQUÉ ROW
RESTAURANT GROUP, INC. d.b.a.
ANTIQUÉ ROW CAFÉ a.k.a. THE
ANTIQUÉ ROW CAFÉ NORMAL
HEIGHTS; DENNIS R. SCIOTTO
FAMILY TRUST DATED 12-19-94;
DENNIS R. SCIOTTO, TRUSTEE OF
THE DENNIS R. SCIOTTO FAMILY
TRUST DATED 12-19-94; EDWARD
E. COLSON III TRUST DATED 1-
12-95; EDWARD E. COLSON III,
TRUSTEE OF THE EDWARD E.
COLSON III TRUST DATED 1-12-
95; 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]



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1
2 INTRODUCTION

3 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
4 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
5 herein complain, by filing this Civil Complaint in accordance with
6 rule 8 of the Federal Rules of Civil Procedure in the Judicial
7 District of the United States District Court of the Southern
8 District of California, that Defendants have in the past, and
9 presently are, engaging in discriminatory practices against
10 individuals with disabilities, specifically including minorities
11 with disabilities. Plaintiffs allege this civil action and others
12 substantial similar thereto are necessary to compel access
13 compliance because empirical research on the effectiveness of
14 Title III of the Americans with Disabilities Act indicates this
15 Title has failed to achieve full and equal access simply by the
16 executive branch of the Federal Government funding and promoting
17 voluntary compliance efforts. Further, empirical research shows
18 when individuals with disabilities give actual notice of potential
19 access problems to places of public accommodation without a
20 federal civil rights action, the public accommodations do not
21 remove the access barriers. Therefore, Plaintiffs make the
22 following allegations in this federal civil rights action:

23 JURISDICTION AND VENUE

24 1. The federal jurisdiction of this action is based on the
25 Americans with Disabilities Act, 42 United States Code 12101-
26 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
27 District of the United States District Court of the Southern
28 District of California is in accordance with 28 U.S.C. § 1391(b)

1 because a substantial part of Plaintiffs' claims arose within the
2 Judicial District of the United States District Court of the
3 Southern District of California.

4 SUPPLEMENTAL JURISDICTION

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

24 NAMED DEFENDANTS AND NAMED PLAINTIFFS

25 3. Defendants are, and, at all times mentioned herein, were, a
26 business or corporation or franchise organized and existing and/or
27 doing business under the laws of the State of California.
28

1 Defendant ANTIQUE ROW CAFÉ a.k.a. THE ANTIQUE ROW CAFÉ NORMAL
2 HEIGHTS is located at 3002 Adams Avenue, San Diego, California
3 92116. Plaintiffs are informed and believe and thereon allege
4 that Defendant THE ANTIQUE ROW RESTAURANT GROUP, INC. is the
5 owner, operator, and/or doing business as ANTIQUE ROW CAFÉ a.k.a.
6 THE ANTIQUE ROW CAFÉ NORMAL HEIGHTS. Defendant THE ANTIQUE ROW
7 RESTAURANT GROUP, INC. is located at 2550 Fifth Avenue, Suite 520,
8 San Diego, California 92103. Plaintiffs are informed and believe
9 and thereon allege that Defendants DENNIS R. SCIOTTO FAMILY TRUST
10 DATED 12-19-94 and EDWARD E. COLSON III TRUST DATED 1-12-95 are
11 the owners, operators, and/or lessors of the property located at
12 3002-6 Adams Avenue, San Diego, California 92116, Assessor Parcel
13 Number 438-302-30. Defendant DENNIS R. SCIOTTO, TRUSTEE OF THE
14 DENNIS R. SCIOTTO FAMILY TRUST DATED 12-19-94 is located at 7315
15 El Fuerte Street, Carlsbad, California 92009 or 1288 Seacoast
16 Drive, Imperial Beach, California 91932. Defendant EDWARD E.
17 COLSON III, TRUSTEE OF THE EDWARD E. COLSON III TRUST DATED 1-12-
18 95 is located at 2646 Marmol Court, Carlsbad, California 92009.
19 The words "Plaintiffs" and "Plaintiff's Member" as used herein
20 specifically include the organization MANTIC ASHANTI'S CAUSE, its
21 Members, its member Theodore A. Pinnock and persons associated
22 with its Members who accompanied Members to Defendants'
23 facilities, as well as THEODORE A. PINNOCK, An Individual.

24 4. Defendants Does 1 through 10, were at all times relevant
25 herein subsidiaries, employers, employees, agents, of ANTIQUE ROW
26 CAFÉ a.k.a. THE ANTIQUE ROW CAFÉ NORMAL HEIGHTS; THE ANTIQUE ROW
27 RESTAURANT GROUP, INC. d.b.a. ANTIQUE ROW CAFÉ a.k.a. THE ANTIQUE
28

1 ROW CAFÉ NORMAL HEIGHTS; DENNIS R. SCIOTTO FAMILY TRUST DATED 12-
2 19-94; DENNIS R. SCIOTTO, TRUSTEE OF THE DENNIS R. SCIOTTO FAMILY
3 TRUST DATED 12-19-94; EDWARD E. COLSON III TRUST DATED 1-12-95;
4 and EDWARD E. COLSON III, TRUSTEE OF THE EDWARD E. COLSON III
5 TRUST DATED 1-12-95. Plaintiffs are ignorant of the true names
6 and capacities of Defendants sued herein as Does 1 through 10,
7 inclusive, and therefore sues these Defendants by such fictitious
8 names. Plaintiffs will pray leave of the court to amend this
9 complaint to allege the true names and capacities of the Does when
10 ascertained.

11 5. Plaintiffs are informed and believe, and thereon allege, that
12 Defendants and each of them herein were, at all times relevant to
13 the action, the owner, lessor, lessee, franchiser, franchisee,
14 general partner, limited partner, agent, employee, representing
15 partner, or joint venturer of the remaining Defendants and were
16 acting within the course and scope of that relationship.

17 Plaintiffs are further informed and believe, and thereon allege,
18 that each of the Defendants herein gave consent to, ratified,
19 and/or authorized the acts alleged herein to each of the remaining
20 Defendants.

21 CONCISE SET OF FACTS

22 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that
23 advocates on the behalf of its members with disabilities when
24 their civil rights and liberties have been violated. Plaintiff's
25 member THEODORE A. PINNOCK is a member of Plaintiff Organization
26 and has an impairment in that he has Cerebral Palsy and due to
27 this impairment he has learned to successfully operate a
28

1 wheelchair.

2 7. On June 9, 2004, Plaintiff's member THEODORE A. PINNOCK went
3 to Defendants' ANTIQUE ROW CAFÉ a.k.a. THE ANTIQUE ROW CAFÉ NORMAL
4 HEIGHTS facilities to utilize their goods and/or services. When
5 Plaintiff's member patronized Defendants' ANTIQUE ROW CAFÉ a.k.a.
6 THE ANTIQUE ROW CAFÉ NORMAL HEIGHTS facilities, he was unable to
7 use and/or had difficulty using the public accommodations'
8 entrance, interior path of travel, public seating, cashier
9 counter, bar, and restroom facilities at Defendants' business
10 establishment because they failed to comply with ADA Access
11 Guidelines For Buildings and Facilities (hereafter referred to as
12 "ADAAG") and/or California's Title 24 Building Code Requirements.
13 Defendants failed to remove access barriers within the entrance,
14 interior path of travel, public seating, cashier counter, bar, and
15 restroom facilities of Defendants' ANTIQUE ROW CAFÉ a.k.a. THE
16 ANTIQUE ROW CAFÉ NORMAL HEIGHTS establishment.

17 8. Plaintiff's member personally experienced difficulty with
18 said access barriers at Defendants' ANTIQUE ROW CAFÉ a.k.a. THE
19 ANTIQUE ROW CAFÉ NORMAL HEIGHTS facilities. For example, the
20 entrance to the Defendants establishment is inaccessible, as the
21 front entrance door fails to have the required disability signage.

22 9. The interior path of travel of the Defendants' establishment
23 is inaccessible, as it is as narrow as twenty-nine inches (29") in
24 some areas, when it is required to be at least thirty-six inches
25 (36") wide.

26 10. The public seating located inside by the entrance door of the
27 Defendants' establishment is inaccessible, as there are a total of
28

1 twenty (20) seats, sixteen (16) of which have a knee clearance
2 width of only twenty-three inches to twenty-five inches (23- 25")
3 and the remaining four (4) seats have a table height of forty
4 three inches (43"). It is required that five percent (5%) of all
5 seats have a knee clearance width of at least thirty inches (30")
6 and a maximum table height of thirty-four inches (34"). The
7 public seating located in the main dining area is inaccessible, as
8 there are a total of sixty-eight (68) seats, all with a knee
9 clearance depth of only five inches to eight inches (5"- 8"). It
10 is required that five percent (5%) of all seats have a knee
11 clearance depth of at least nineteen inches (19"). The public
12 seating located outside of the restaurant is inaccessible, as
13 there are a total of twenty-eight (28) seats, all with a knee
14 clearance depth of only five inches to eight inches (5"- 8"). It
15 is required that five percent (5%) of all seats have a knee
16 clearance depth of at least nineteen inches (19").

17
18 11. The cashier counter located inside that Defendants'
19 establishment is inaccessible, as it is forty inches (40") high,
20 when it is required to be no higher than thirty-four inches (34").
21 The bar located inside the Defendants' establishment is
22 inaccessible, as it is forty-one inches (41") high, when it is
23 required to be no higher than thirty-four inches (34").

24 12. The men's restroom located inside the Defendants'
25 establishment is inaccessible. The grab bars around the commode
26 are inaccessible, as the length of the rear grab bar is only
27 twenty-four inches (24") and the height of the side grab bar is
28 only thirty-two inches (32"). It is required that the rear grab

1 bar is at least thirty-six inches (36") long and both grab bars
2 are required to be mounted at thirty-three inches (33") from the
3 floor surface. The distance from the side edge of the commode to
4 the far wall is blocked by merchandise, when it is required to be
5 at least thirty-two inches (32"). The height of the commode seat
6 cover dispenser is forty-eight inches (48"), when it is required
7 to be no more than forty inches (40") high. The lavatory knee
8 clearance depth is only five inches (5"), when it is required to
9 be at least eight inches (8"). The height of the bottom of the
10 mirror is forty-three inches (43"), when it is required to be
11 mounted no higher than forty inches (40") from the floor surface.
12 The paper towel dispenser is inaccessible, as it is mounted at
13 forty-six inches (46") high, when it is required to be mounted no
14 higher than forty inches (40") high. The restroom fails to have
15 the required audible and visual alarm system.

16
17 13. Pursuant to federal and state law, Defendants are required to
18 remove barriers to their existing facilities. Further, Defendants
19 had actual knowledge of their barrier removal duties under the
20 Americans with Disabilities Act and the Civil Code before January
21 26, 1992. Also, Defendants should have known that individuals
22 with disabilities are not required to give notice to a
23 governmental agency before filing suit alleging Defendants failed
24 to remove architectural barriers.

25 14. Plaintiffs believe and herein allege Defendants' facilities
26 have access violations not directly experienced by Plaintiff's
27 Member which preclude or limit access by others with disabilities,
28 including, but not limited to, Space Allowance and Reach Ranges,

1 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
2 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
3 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
4 Entrances, Drinking Fountains and Water Coolers, Water Closets,
5 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
6 Handrails, Grab Bars, and Controls and Operating Mechanisms,
7 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
8 Plaintiffs allege Defendants are required to remove all
9 architectural barriers, known or unknown. Also, Plaintiffs allege
10 Defendants are required to utilize the ADA checklist for Readily
11 Achievable Barrier Removal approved by the United States
12 Department of Justice and created by Adaptive Environments.

13 15. Based on these facts, Plaintiffs allege Plaintiff's Member
14 and Plaintiff Theodore A. Pinnock was discriminated against each
15 time he patronized Defendants' establishments. Plaintiff's Member
16 and Plaintiff Theodore A. Pinnock was extremely upset due to
17 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
18 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
19 shoulders and wrists when he attempted to enter, use, and exit
20 Defendants' ANTIQUE ROW CAFÉ a.k.a. THE ANTIQUE ROW CAFÉ NORMAL
21 HEIGHTS establishment.

22 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

23 16. ANTIQUE ROW CAFÉ a.k.a. THE ANTIQUE ROW CAFÉ NORMAL HEIGHTS;
24 THE ANTIQUE ROW RESTAURANT GROUP, INC. d.b.a. ANTIQUE ROW CAFÉ
25 a.k.a. THE ANTIQUE ROW CAFÉ NORMAL HEIGHTS; DENNIS R. SCIOTTO
26 FAMILY TRUST DATED 12-19-94; DENNIS R. SCIOTTO, TRUSTEE OF THE
27 DENNIS R. SCIOTTO FAMILY TRUST DATED 12-19-94; EDWARD E. COLSON
28

1 III TRUST DATED 1-12-95; EDWARD E. COLSON III, TRUSTEE OF THE
2 EDWARD E. COLSON III TRUST DATED 1-12-95; and Does 1 through 10
3 will be referred to collectively hereinafter as "Defendants."

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

6 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

9 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal
10 Access

11 18. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
12 this complaint, Plaintiff's Member was denied full and equal
13 access to Defendants' goods, services, facilities, privileges,
14 advantages, or accommodations. Plaintiffs allege Defendants are a
15 public accommodation owned, leased and/or operated by Defendants.
16 Defendants' existing facilities and/or services failed to provide
17 full and equal access to Defendants' facility as required by 42
18 U.S.C. § 12182(a). 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 Plaintiff's
21 Member was denied equal access to Defendants' existing facilities.

22 19. Plaintiff's member Theodore A. Pinnock has physical
23 impairments as alleged in ¶ 6 above because his conditions affect
24 one or more of the following body systems: neurological,
25 musculoskeletal, special sense organs, and/or cardiovascular.
26 Further, Plaintiff's member Theodore A. Pinnock's said physical
27 impairments substantially limits one or more of the following
28

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

7
8 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**
9 **Such A Manner That The Altered Portions Of The Facility Are**
10 **Readily Accessible And Usable By Individuals With Disabilities**

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

24 21. Additionally, the Defendants undertook an alteration that
25 affects or could affect the usability of or access to an area of
26 the facility containing a primary function after January 26, 1992.
27 Defendants further failed to make the alterations in such a manner
28 that, to the maximum extent feasible, the path of travel to the
altered area and the bathrooms, telephones, and drinking fountains

1 serving the altered area, are readily accessible to and usable by
2 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

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

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

9 23. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
10 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
11 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
12 Pinnock was denied equal access to Defendants' existing
13 facilities.

14
15 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
Architectural Barriers

16 24. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
17 this complaint, Plaintiff's Member was denied full and equal
18 access to Defendants' goods, services, facilities, privileges,
19 advantages, or accommodations within a public accommodation owned,
20 leased, and/or operated by Defendants. Defendants failed to
21 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
22 are informed, believe, and thus allege that architectural barriers
23 which are structural in nature exist within the following physical
24 elements of Defendants' facilities: Space Allowance and Reach
25 Ranges, Accessible Route, Protruding Objects, Ground and Floor
26 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
27 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
28

1 Doors, Entrances, Drinking Fountains and Water Coolers, Water
2 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
3 Storage, Handrails, Grab Bars, and Controls and Operating
4 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

5 Title III requires places of public accommodation to remove
6 architectural barriers that are structural in nature to existing
7 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]

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

15
16 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
Policies And Procedures**

17 25. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
18 this complaint, Defendants failed and refused to provide a
19 reasonable alternative by modifying its practices, policies and
20 procedures in that they failed to have a scheme, plan, or design
21 to assist Plaintiff's Member and/or others similarly situated in
22 entering and utilizing Defendants' services, as required by 42
23 U.S.C. § 12188(a). Thus, said Member was subjected to
24 discrimination in violation of 42 United States Code
25 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
26 denied equal access to Defendants' existing facilities.

27 26. Based on the facts plead at ¶¶ 6-15 above, Claims I, II, and
28

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

17 27. WHEREFORE, Plaintiffs pray for judgment and relief as
18 hereinafter set forth.
19

20 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
21 **CALIFORNIA ACCESSIBILITY LAWS**

22 CLAIM I: Denial Of Full And Equal Access

23 28. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
24 this complaint, Plaintiff's Member was denied full and equal
25 access to Defendants' goods, services, facilities, privileges,
26 advantages, or accommodations within a public accommodation owned,
27 leased, and/or operated by Defendants as required by Civil Code
28 Sections 54 and 54.1. Defendants' facility violated California's

1 Title 24 Accessible Building Code by failing to provide access to
2 Defendants' facilities due to violations pertaining to the Space
3 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
4 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
5 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
6 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
7 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
8 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
9 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
10 Telephones.

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

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

17 30. Based on the facts plead at ¶¶ 6-15 above and elsewhere
18 herein this complaint, Defendants failed and refused to provide a
19 reasonable alternative by modifying its practices, policies, and
20 procedures in that they failed to have a scheme, plan, or design
21 to assist Plaintiff's Member and/or others similarly situated in
22 entering and utilizing Defendants' services as required by Civil
23 Code § 54.1. Thus, said Member was subjected to discrimination in
24 violation of Civil Code § 54.1.

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

26 31. Based on the facts plead at ¶¶ 6-15 above and elsewhere
27 herein this complaint and because Defendants violated the Civil
28

1 Code § 51 by failing to comply with 42 United States Code §
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
3 continue to discriminate against Plaintiff's Member and persons
4 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
5 32. Based on the facts plead at ¶¶ 6-15 above, Claims I, II, and
6 III of Plaintiffs' Second Cause Of Action above, and the facts
7 elsewhere herein this complaint, Plaintiffs will suffer
8 irreparable harm unless Defendants are ordered to remove
9 architectural, non-architectural, and communication barriers at
10 Defendants' public accommodation. Plaintiffs allege that
11 Defendants' discriminatory conduct is capable of repetition, and
12 this discriminatory repetition adversely impacts Plaintiffs and a
13 substantial segment of the disability community. Plaintiffs
14 allege there is a state and national public interest in requiring
15 accessibility in places of public accommodation. Plaintiffs have
16 no adequate remedy at law to redress the discriminatory conduct of
17 Defendants. Plaintiff's Member desires to return to Defendants'
18 places of business in the immediate future. Accordingly, the
19 Plaintiffs allege that a structural or mandatory injunction is
20 necessary to enjoin compliance with state civil rights laws
21 enacted for the benefit of individuals with disabilities.

22 33. Wherefore, Plaintiffs pray for damages and relief as
23 hereinafter stated.

24 **Treble Damages Pursuant To Claims I, II, III Under The California**
25 **Accessibility Laws**

26 34. Defendants, each of them respectively, at times prior to and
27 including, the month of May, 2004, and continuing to the present
28 time, knew that persons with physical disabilities were denied

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

23
24 35. Defendants', and each of their, actions have also been
25 oppressive to persons with physical disabilities and of other
26 members of the public, and have evidenced actual or implied
27 malicious intent toward those members of the public, such as
28 Plaintiff's Member and other persons with physical disabilities

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

7
8 36. Plaintiffs pray for an award of treble damages against
9 Defendants, and each of them, pursuant to California Civil Code
10 sections 52(a) and 54.3(a), in an amount sufficient to make a more
11 profound example of Defendants and encourage owners, lessors, and
12 operators of other public facilities from willful disregard of the
13 rights of persons with disabilities. Plaintiffs do not know the
14 financial worth of Defendants, or the amount of damages sufficient
15 to accomplish the public purposes of section 52(a) of the
16 California Civil Code and section 54.3 of the California Civil
17 Code.

18 37. Wherefore, Plaintiffs pray for damages and relief as
19 hereinafter stated.

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

22 38. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
23 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
24 statutory duty to make their facility accessible and owed
25 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
26 Pinnock reasonably safe from known dangers and risks of harm.
27 This said duty arises by virtue of legal duties proscribed by
28 various federal and state statutes including, but not limited to,

1 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
2 California Administrative Code and applicable 1982 Uniform
3 Building Code standards as amended.

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

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

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

8 41. Wherefore, Plaintiffs pray for damages and relief as
9 hereinafter stated.

10 DEMAND FOR JUDGMENT FOR RELIEF:

11 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
12 3281, and 3333;

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

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

21 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
22 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
23 Defendants to remove all architectural barriers in, at, or on
24 their facilities related to the following: Space Allowance and
25 Reach Ranges, Accessible Route, Protruding Objects, Ground and
26 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
27 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
28 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,

1 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
2 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
3 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

4 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
5 § 12205, and Cal. Civil Code § 55;

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


8 G. A Jury Trial and;

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

10 Respectfully submitted:

11 PINNOCK & WAKEFIELD, A.P.C.

12
13 Dated: July 21, 2004

14 By: 
15 MICHELLE L. WAKEFIELD, ESQ.
16 DAVID C. WAKEFIELD, ESQ.
17 Attorneys for Plaintiffs
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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 initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

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

DEFENDANTS

ANTIQUE ROW CAFÉ a.k.a. THE ANTIQUE ROW CAFÉ NORMAL HEIGHTS; THE ANTIQUE ROW RESTAURANT GROUP, INC. d.b.a. ANTIQUE ROW CAFÉ a.k.a. THE ANTIQUE ROW CAFÉ NORMAL HEIGHTS; DENNIS R. SCIOTTO FAMILY TRUST DATED 12-19-94; DENNIS R. SCIOTTO, TRUSTEE OF THE DENNIS R. SCIOTTO FAMILY TRUST DATED 12-19-94; EDWARD E. COLSON III, TRUSTEE OF THE EDWARD E. COLSON III TRUST DATED 1-12-95; EDWARD E. COLSON III, TRUSTEE OF THE EDWARD E. COLSON III TRUST DATED 1-12-95; And DOES 1 THROUGH 10, Inclusive

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION 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 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 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).

04 CV 1458 J (JFS)

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 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, 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 fr.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 21, 2004

SIGNATURE OF ATTORNEY OF RECORD

105634 7/21/04 1500

Michelle L. Wakefield