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3:04-CV-01986 PINNOCK V. NEIMANS RESTAURANT

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\*CMP.\*

**PINNOCK & WAKEFIELD**

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

Bar #: 185736  
Bar #: 200424

Attorneys for Plaintiffs

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**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.

**NEIMANS RESTAURANT;  
CARLSBAD RESTAURANTS, INC.  
d.b.a. NEIMANS RESTAURANT;  
OREXCIV, LLC; And DOES 1  
THROUGH 10, Inclusive**

Defendants.

Case No. **04CV 1986** JAH (BLM)

**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 individuals with disabilities, specifically including minorities with disabilities. Plaintiffs  
allege this civil action and others substantial similar thereto are necessary to compel access  
compliance because empirical research on the effectiveness of Title III of the Americans with  
Disabilities Act indicates this Title has failed to achieve full and equal access simply by the

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1 executive branch of the Federal Government funding and promoting voluntary compliance efforts.  
2 Further, empirical research shows when individuals with disabilities give actual notice of potential  
3 access problems to places of public accommodation without a federal civil rights action, the public  
4 accommodations do not remove the access barriers. Therefore, Plaintiffs make the following  
5 allegations in this federal civil rights action:

6 **JURISDICTION AND VENUE**

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

12 **SUPPLEMENTAL JURISDICTION**

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

26 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

27 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
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1 franchise organized and existing and/or doing business under the laws of the State of California.  
2 Defendant NEIMANS RESTAURANT is located at 300 Carlsbad Village Drive, Carlsbad,  
3 California 92008. Plaintiffs are informed and believe and thereon allege that Defendant  
4 CARLSBAD RESTAURANTS, INC. is the owner, operator, and/or doing business as NEIMANS  
5 RESTAURANT. Defendant CARLSBAD RESTAURANTS, INC. is located at 300 Carlsbad  
6 Village Drive, Bldg. 301, Carlsbad, California 92008. Plaintiffs are informed and believe and  
7 thereon allege that Defendant OREXCIV, LLC is the owner, operator, and/or lessor of the property  
8 located at 300 Carlsbad Village Drive, Carlsbad, California 92008, Assessor Parcel Number 203-  
9 174-07. Defendant OREXCIV, LLC is located at 12411 Ventura Boulevard, Studio City, California  
10 91604. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the  
11 organization MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and  
12 persons associated with its Members who accompanied Members to Defendants' facilities, as well  
13 as THEODORE A. PINNOCK, An Individual.

14 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
15 employees, agents, of NEIMANS RESTAURANT; CARLSBAD RESTAURANTS, INC. d.b.a.  
16 NEIMANS RESTAURANT; and OREXCIV, LLC. Plaintiffs are ignorant of the true names and  
17 capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these  
18 Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint  
19 to allege the true names and capacities of the Does when ascertained.

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

#### 26 CONCISE SET OF FACTS

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

5 7. On August 2, 2004, Plaintiff's member THEODORE A. PINNOCK went to Defendants'  
6 NEIMANS RESTAURANT facilities to utilize their goods and/or services. When Plaintiff's  
7 member patronized Defendants' NEIMANS RESTAURANT facilities, he was unable to use and/or  
8 had difficulty using the public accommodations' disabled parking, exterior path of travel, entrance,  
9 interior path of travel, public seating, counter, and restroom facilities at Defendants' business  
10 establishment because they failed to comply with ADA Access Guidelines For Buildings and  
11 Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code  
12 Requirements. Defendants failed to remove access barriers within the disabled parking, exterior  
13 path of travel, entrance, interior path of travel, public seating, counter, public pay telephone, and  
14 restroom facilities of Defendants' NEIMANS RESTAURANT establishment.

15 8. Plaintiff's member personally experienced difficulty with said access barriers at  
16 Defendants' NEIMANS RESTAURANT facilities. For example, the parking facility of  
17 Defendants' establishment is inaccessible. The parking lot has a total of two hundred and twenty-  
18 three (223) parking spaces, nine (9) of which are designated as disabled parking spaces. Two (2) of  
19 the nine (9) disabled parking spaces, which are located in front of MTA International Gallery, are  
20 non-compliant "regular" disabled parking spaces that are only sixteen feet (16') long and fail to  
21 have the required access aisle. Two (2) of the remaining seven (7) disabled parking spaces, which  
22 are located by Martin & Co., are non-complaint "van accessible" disabled parking spaces that are  
23 only sixteen feet (16) long, have a slope of up to four percent (4%), and fail to have the proper  
24 signage. Two (2) of the remaining five (5) disabled parking spaces, which are located by Linda's  
25 Gift Shop, are non-compliant "regular" disabled parking spaces that are only sixteen feet to  
26 seventeen feet (16'- 17') long, have a slope of up to four percent (4%), and fail to have the required  
27 access aisle. It is required that all disabled parking spaces are at least eighteen feet (18') long, have  
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1 the proper access aisles, have the appropriate disability signage, and have a slope that is no greater  
2 than two percent (2%).

3 9. The exterior path of travel of the Defendants' establishment is inaccessible. There fails to  
4 be a safe and accessible path of travel from the public sidewalk and from the nearest disabled  
5 parking space to the Defendants' NEIMANS RESTAURANT's primary accessible entrance, as  
6 members of the disability community are forced to traverse through vehicular traffic without the  
7 benefit of a marked path of travel. The width of the exterior path of travel from the disabled  
8 parking spaces located by Linda's Gift Shop to the accessible walkway is only thirty-four inches  
9 (34"), when it is required to be at least forty-eight inches (48"). The side slope of the ramp from  
10 the parking lot to the Defendants' NEIMANS RESTAURANT is up to an impermissible forty  
11 percent (40%), when it is required to be no more than ten percent (10%).

12 10. The entrance to the Defendants establishment is inaccessible, as the front entrance door fails  
13 to have the required disability signage.

14 11. The interior path of travel is inaccessible, as the path of travel around the exterior seating  
15 area is as narrow as ten inches (10") wide, when it is required to be at least thirty-six (36") wide.

16 12. The public seating located by the bar of the Defendants' establishment is inaccessible, as  
17 there are a total of approximately sixty (60) seats, thirty-six (36) of which have a knee clearance  
18 width of only twenty-four inches (24") and the remaining twenty-four (24) seats have a knee  
19 clearance depth of only five inches to eight inches (5"- 8"). It is required that five percent (5%) of  
20 all seats must have a knee clearance width of at least thirty inches (30") and a knee clearance depth  
21 of at least nineteen inches (19"). The public seating located by the balcony of the Defendants'  
22 establishment is inaccessible, as there are a total of sixty-four (64) seats, all of which have a knee  
23 clearance depth of only five inches to eleven inches (5"- 11"). It is required that five percent (5%)  
24 of all seats must have a knee clearance depth of at least nineteen inches (19"). The public seating  
25 located in the exterior dining area of the Defendants' establishment is inaccessible, as there are a  
26 total of sixteen (16) seats, all of which have a knee clearance depth of only five inches to eight  
27 inches (5"- 8"). It is required that five percent (5%) of all seats must have a knee clearance depth  
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1 of at least nineteen inches (19").

2 13. The bar counter located inside that Defendants' establishment is inaccessible, as it is forty  
3 inches (40") high, when it is required to be no higher than thirty-four inches (34").

4 14. The men's restroom located inside the Defendants' establishment is inaccessible. The  
5 restroom area door fails to have the required smooth and uninterrupted surface on the bottom ten  
6 inches (10") of the door that allows the door to be opened with a wheelchair footrest without  
7 creating a hazard. The strike clearance of the restroom area door is only six inches (6"), when it is  
8 required to be at least eighteen inches (18"). The height of the threshold at the restroom area door  
9 is one half of an inch (1/2") and fails to be beveled. The men's restroom door fails to have the  
10 required disability signage. The stall door opens inward, when it is required to open outward. The  
11 stall door fails to have the required handles on both sides of the stall door. The stall fails to have  
12 the required self-closing mechanism. The height of the grab bars located around the commode are  
13 thirty-eight inches (38") high, when they are required to be mounted at thirty-three inches (33")  
14 from the floor surface. The toilet paper dispenser is located an impermissible thirty-five inches  
15 (35") from the front edge of the commode, when it is required to be mounted no further than twelve  
16 inches (12") from the front edge of the commode. The height of the urinal lip is eighteen inches  
17 (18"), when it is required to be no higher than seventeen inches (17"). The height of the lavatory  
18 knee clearance is only twenty-six inches (26"), when it is required to be at least twenty-seven  
19 inches (27"). The hot water and drainpipes underneath the lavatory fail to have the required  
20 covering. The lavatory faucet handles are inaccessible, as they require tight grasping and/or  
21 twisting of the wrist to operate. The soap dispenser is mounted at forty-eight inches (48") high,  
22 when it is required to be mounted no higher than forty inches (40") high. The paper towel  
23 dispenser is inaccessible, as it is mounted at an impermissible sixty-five inches (65") high, when it  
24 is required to be mounted no higher than forty inches (40") high. The restroom fails to have the  
25 required audible and visual alarm system.

26 15. In addition to the violations personally experienced by Plaintiff's member THEODORE A.  
27 PINNOCK, additional violations of federal and state disability laws exist at the Defendants'  
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1 NEIMANS RESTAURANT establishment. For example, the public pay telephone is inaccessible,  
2 as it fails to have the required volume control unit and the proper signage.

3 16. The women's restroom is inaccessible. The women's restroom entrance door fails to have  
4 the required disability signage. The women's restroom door fails to have the required smooth and  
5 uninterrupted surface on the bottom ten inches (10") of the door that allows the door to be opened  
6 with a wheelchair footrest without creating a hazard. The women's restroom fails to have the  
7 required audible and visual alarm system.

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

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

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

3 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**

4 **DEFENDANT**

5 20. NEIMANS RESTAURANT; CARLSBAD RESTAURANTS, INC. d.b.a. NEIMANS  
6 RESTAURANT; OREXCIV, LLC; and Does 1 through 10 will be referred to collectively  
7 hereinafter as "Defendants."

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

9 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

10 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The Americans**

11 **With Disabilities Act Of 1990**

12 CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal Access**

13 22. Based on the facts plead at ¶¶ 6-19 above and elsewhere in this complaint, Plaintiff's  
14 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,  
15 advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned,  
16 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to  
17 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,  
18 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code  
19 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to  
20 Defendants' existing facilities. 22. Plaintiff's member Theodore A. Pinnock has physical  
21 impairments as alleged in ¶ 6 above because his conditions affect one or more of the following  
22 body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further,  
23 Plaintiff's member Theodore A. Pinnock's said physical impairments substantially limits one or  
24 more of the following major life activities: walking. In addition, Plaintiff's member Theodore A.  
25 Pinnock cannot perform one or more of the said major life activities in the manner, speed, and  
26 duration when compared to the average person. Moreover, Plaintiff's member Theodore A.  
27 Pinnock has a history of or has been classified as having a physical impairment as required by 42  
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1 U.S.C. § 12102(2)(A).

2  
3 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such A**  
4 **Manner That The Altered Portions Of The Facility Are Readily Accessible And Usable By**  
5 **Individuals With Disabilities**

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

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

21 25. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the  
22 maximum extent feasible, are readily accessible to and usable by individuals with disabilities  
23 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants  
24 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §  
25 12182(a).

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

1 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural Barriers**

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

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

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

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

30. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

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

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

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

32. These violations denied Plaintiff's Member full and equal access to Defendants' facility.

1 Thus, said Member was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1  
2 because Plaintiff's Member was denied full, equal and safe access to Defendants' facility, causing  
3 severe emotional distress.

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

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

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

11 34. Based on the facts plead at ¶¶ 6-19 above and elsewhere herein this complaint and because  
12 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §  
13 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate  
14 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and  
15 54.1.

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

27 36. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.  
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**Treble Damages Pursuant To Claims I, II, III Under The California Accessibility Laws**

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2 37. Defendants, each of them respectively, at times prior to and including, the month of August,  
3 2004, and continuing to the present time, knew that persons with physical disabilities were denied  
4 their rights of equal access to all portions of this public facility. Despite such knowledge,  
5 Defendants, and each of them, failed and refused to take steps to comply with the applicable access  
6 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered  
7 by Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons with  
8 disabilities. Defendants, and each of them, have failed and refused to take action to grant full and  
9 equal access to persons with physical disabilities in the respects complained of hereinabove.

10 Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or  
11 correct complaints about, denial of disabled access and have refused to comply with their legal  
12 obligations to make Defendants' NEIMANS RESTAURANT facilities accessible pursuant to the  
13 Americans With Disability Act Access Guidelines (ADAAG) and Title 24 of the California Code  
14 of Regulations (also known as the California Building Code). Such actions and continuing course  
15 of conduct by Defendants, and each of them, evidence despicable conduct in conscious disregard of  
16 the rights and/or safety of Plaintiff's Member and of other similarly situated persons, justifying an  
17 award of treble damages pursuant to sections 52(a) and 54.3(a) of the California Civil Code.

18 38. Defendants', and each of their, actions have also been oppressive to persons with physical  
19 disabilities and of other members of the public, and have evidenced actual or implied malicious  
20 intent toward those members of the public, such as Plaintiff's Member and other persons with  
21 physical disabilities who have been denied the proper access to which they are entitled by law.  
22 Further, Defendants', and each of their, refusals on a day-to-day basis to correct these problems  
23 evidence despicable conduct in conscious disregard for the rights of Plaintiff's Member  
24 THEODORE A. PINNOCK and other members of the public with physical disabilities.

25 39. Plaintiffs pray for an award of treble damages against Defendants, and each of them,  
26 pursuant to California Civil Code sections 52(a) and 54.3(a), in an amount sufficient to make a  
27 more profound example of Defendants and encourage owners, lessors, and operators of other public  
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1 facilities from willful disregard of the rights of persons with disabilities. Plaintiffs do not know the  
2 financial worth of Defendants, or the amount of damages sufficient to accomplish the public  
3 purposes of section 52(a) of the California Civil Code and section 54.3 of the California Civil  
4 Code.

5 40. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

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

8 41. Based on the facts plead at ¶¶ 6-19 above and elsewhere in this complaint, Defendants owed  
9 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff  
10 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known  
11 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various  
12 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1  
13 and Title 24 of the California Administrative Code and applicable 1982 Uniform Building Code  
14 standards as amended.

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

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

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

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

9 DEMAND FOR JUDGMENT FOR RELIEF:

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

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

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

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

25 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code  
26 § 55;

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

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G. A Jury Trial and;  
H. For such other further relief as the court deems proper.

Respectfully submitted:

**PINNOCK & WAKEFIELD, A.P.C.**

Dated: 9/22/04

By: David C. Wakefield  
DAVID C. WAKEFIELD, ESQ.  
Attorneys for Plaintiffs

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.

I (a) PLAINTIFFS

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

DEFENDANTS

NEIMANS RESTAURANT; CARLSBAD RESTAURANTS, INC. d.b.a. NEIMANS RESTAURANT; OREXCIV, LLC; And DOES 1 THROUGH 10, Inclusive

FILED

CLERK, U.S. DISTRICT COURT San Diego

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

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

San Diego

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David C. Wakefield, Esq. SBN: 185736 Michelle L. Wakefield, Esq. SBN: 200424 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 1986 JAH (BLM)

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 PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF
DEF 1 Incorporated or Principal Place of Business in This State
DEF 2 Incorporated and Principal Place of Business in Another State
DEF 3 Foreign Nation
PT DEF 4
PT DEF 5
PT DEF 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 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, 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

9/22/04

SIGNATURE OF ATTORNEY OR PARTY

Handwritten signature of David C. Wakefield

# 107464 \$150.00