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3:06-CV-01710 2150 SIGOURNEY V. A & J CAPITAL INC

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

2150 SIGOURNEY JOSSIAH -
FRANCIS LEE ASSOCIATION,
SUING ON BEHALF OF THEODORE
A. PINNOCK AND ITS MEMBERS;
and THEODORE A. PINNOCK, An
Individual,

Plaintiffs,

v.

A & J CAPITAL, INC., d.b.a.
SUSHI SOLANA; FLETCHCO
PROPERTIES, L.P.; And DOES 1
THROUGH 10, Inclusive

Defendants.

Case No.: 06 CV 171 IEG

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CIVIL COMPLAINT:

CLASS ACTION

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

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b)]

INTRODUCTION

Plaintiffs 2150 SIGOURNEY JOSSIAH - FRANCIS LEE ASSOCIATION,
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

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

17
18 **JURISDICTION AND VENUE**

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

27 **SUPPLEMENTAL JURISDICTION**

28 2. The Judicial District of the United States District Court of

1 the Southern District of California has supplemental jurisdiction
2 over the state claims as alleged in this Complaint pursuant to 28
3 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
4 in this action is because all the causes of action or claims
5 derived from federal law and those arising under state law, as
6 herein alleged, arose from common nucleus of operative facts. The
7 common nucleus of operative facts, include, but are not limited
8 to, the incidents where Plaintiffs were denied full and equal
9 access to Defendants' facilities, goods, and/or services in
10 violation of both federal and state laws when they attempted to
11 enter, use, and/or exit Defendants' facilities as described below
12 within this Complaint. Further, due to this denial of full and
13 equal access, 2150 SIGOURNEY JOSSIAH - FRANCIS LEE ASSOCIATION,
14 SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS; and
15 THEODORE A. PINNOCK, An Individual, and other persons with
16 disabilities were injured. Based upon the said allegations, the
17 state actions, as stated herein, are so related to the federal
18 actions that they form part of the same case or controversy and
19 the actions would ordinarily be expected to be tried in one
20 judicial proceeding.

21
22 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

23 3. Defendants are, and, at all times mentioned herein, were, a
24 business or corporation or franchise organized and existing and/or
25 doing business under the laws of the State of California.
26 Plaintiffs are informed and believe and thereon allege that
27 Defendant A & J CAPITAL, INC., d.b.a. SUSHI SOLANA is located at
28 117 West Plaza Street, Solana Beach, California, 92075-1123.

1 Plaintiffs are informed and believe and thereon allege that
2 Defendant FLETCHCO PROPERTIES, L.P., is the owner, operator,
3 and/or lesser of the real property located at 117 West Plaza
4 Street, Solana Beach, California, 92075-1123, Assessor Parcel
5 Number 298-010-45. Defendant FLETCHCO PROPERTIES, L.P., is
6 located in San Diego County, California.

7 4. The words Plaintiff, Plaintiffs, Plaintiff's Member, and
8 Plaintiff's Members as used herein specifically include 2150
9 SIGOURNEY JOSSIAH - FRANCIS LEE ASSOCIATION, SUING ON BEHALF OF
10 THEODORE A. PINNOCK AND ITS MEMBERS; and THEODORE A. PINNOCK, An
11 Individual, and persons associated with 2150 SIGOURNEY JOSSIAH -
12 FRANCIS LEE ASSOCIATION, SUING ON BEHALF OF THEODORE A. PINNOCK
13 AND ITS MEMBERS; and THEODORE A. PINNOCK, An Individual, who
14 accompanied them to Defendants' facilities.

15 5. Defendants Does 1 through 10, were at all times relevant
16 herein subsidiaries, employers, employees, agents, of A & J
17 CAPITAL, INC., d.b.a. SUSHI SOLANA and/or FLETCHCO PROPERTIES,
18 L.P.. Plaintiffs are ignorant of the true names and capacities of
19 Defendants sued herein as Does 1 through 10, inclusive, and
20 therefore sue these Defendants by such fictitious names.

21 Plaintiffs will pray leave of the court to amend this complaint to
22 allege the true names and capacities of the Does when ascertained.

23 6. Plaintiffs are informed and believe, and thereon allege, that
24 Defendants and each of them herein were, at all times relevant to
25 the action, the owner, lesser, lessee, franchiser, franchisee,
26 general partner, limited partner, agent, employee, representing
27 partner, or joint venturer of the remaining Defendants and were
28

1 acting within the course and scope of that relationship.

2 Plaintiffs are further informed and believe, and thereon allege,
3 that each of the Defendants herein gave consent to, ratified,
4 and/or authorized the acts alleged herein to each of the remaining
5 Defendants.

6 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO**
7 **ALL DEFENDANTS**

8 7. Plaintiffs are members of a group within the State of
9 California composed of persons with a wide range of disabilities,
10 limited to persons who use wheelchairs for mobility, who must be
11 able to access restaurant establishments, like Defendants'
12 establishment located within the property located at 117 West
13 Plaza Street, Solana Beach, California, 92075-1123, Assessor
14 Parcel Number 298-010-45. Plaintiffs are precluded from equal
15 access to Defendants' establishment so meaningfully because the
16 establishment fails to provide access for members of the
17 disability community who use a wheelchair for mobility to the
18 disabled parking and the entrance facilities. The Supreme Court
19 of the United States has held as long as the class representative
20 provides adequate representation for the class' interests, the
21 court has the power to adjudicate the rights and obligations of
22 all class members - even those who would otherwise be beyond the
23 reach of its personal jurisdiction. Phillips Petroleum Co. v.
24 Shutts, 472 US 797 (1985). This case stands for the proposition
25 that minimum contacts are not required with nonresident members of
26 a plaintiff class because, "the burdens placed by a State upon
27 absent class action plaintiff are not of the same order or
28 magnitude as those it places on an absent defendant." Id.

1 Plaintiffs allege they will insure class members shall receive
2 adequate notice of the proceedings and the opportunity to "opt
3 out," if required

4 8. Defendants have conducted themselves such as to establish a
5 pattern and practice of architectural discrimination. Plaintiffs
6 allege that Defendants have control over each and every facility,
7 establishment, and/or business located within the property located
8 at 117 West Plaza Street, Solana Beach, California, 92075-1123,
9 Assessor Parcel Number 298-010-45. Accordingly, Plaintiffs allege
10 Defendants are responsible for removing architectural barriers at
11 Defendants' facilities and the establishment/business contained
12 therein.

13 9. For the aforementioned reasons, Plaintiffs allege they are
14 proper class representatives for members of the disability
15 community who use a wheelchair for mobility because the members of
16 the disability community who use a wheelchair for mobility are so
17 numerous that joinder is impracticable due to the fact more than
18 one hundred (100) persons fall within the membership description.
19 Also, the questions of law or fact are so common because the
20 members of the disability community who use a wheelchair for
21 mobility are being denied their civil rights under federal and
22 state laws - that is, each member of the disability community who
23 use a wheelchair for mobility suffered substantially similar
24 violations relating to the disabled parking and the entrance
25 facilities. Further, the claims or defenses of the representative
26 parties are typical - Plaintiffs have the right to access
27 facilities, establishments, and businesses like those within the
28

1 property located at 117 West Plaza Street, Solana Beach,
2 California, 92075-1123, Assessor Parcel Number 298-010-45, for
3 many reasons such as the patronage of restaurant establishments.
4 Defendants' facilities are open to the general public and
5 Plaintiffs have been denied access because of violations, as
6 outlined above and specifically addressed elsewhere within this
7 Civil Complaint.

8 10. Additionally, Plaintiffs, as the named representatives, will
9 fairly and adequately represent the interests of the class because
10 Plaintiffs and the members of the disability community in the
11 State of California who use a wheelchair for mobility have
12 suffered substantially similar violations. Finally, a pattern and
13 practice exists on the part of Defendants, and each of them, of
14 architectural discrimination at their public facilities located
15 within the State of California. On information and good faith
16 belief, Plaintiffs thereon allege that Defendants, prior to the
17 passing of the Americans With Disabilities Act in 1992, conceived,
18 commissioned, designed, and implemented among other things, a
19 design for their public facilities, including, but not limited to
20 the disabled parking and the entrance facilities which do not meet
21 the minimal standards outlined under the federal regulations known
22 as the Americans With Disabilities Act Accessibility Guidelines
23 ("ADAAG") and state regulations, also known as Title 24 of the
24 California Building Code, and to which non-compliant plan they
25 continue to utilize to the injury of the members of the class.
26 For these reasons and the facts as stated herein, Plaintiffs have
27 the right to maintain this statewide class action pursuant to
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1 Fed.R.Civ.P. Rule 23(b).
2

3
4 **CONCISE SET OF FACTS**

5 11. Plaintiff 2150 SIGOURNEY JOSSIAH - FRANCIS LEE ASSOCIATION
6 is an organization that advocates on the behalf of its members
7 with disabilities when their civil rights and liberties have been
8 violated. Plaintiff's member THEODORE A. PINNOCK is a member of
9 Plaintiff Organization and has an impairment in that he has
10 Cerebral Palsy and due to this impairment he has learned to
11 successfully operate a wheelchair.

12 12. In August 2006, Plaintiff's Member and Plaintiff THEODORE A.
13 PINNOCK went to Defendants' A & J CAPITAL, INC., d.b.a. SUSHI
14 SOLANA (hereinafter "SUSHI SOLANA") facilities to utilize their
15 goods and/or services. When Plaintiff's Member and Plaintiff
16 THEODORE A. PINNOCK patronized Defendants' facilities, he was
17 unable to use and/or had difficulty using the public
18 accommodations' disabled parking and entrance facilities at
19 Defendants' SUSHI SOLANA business establishment because they
20 failed to comply with ADA Access Guidelines For Buildings and
21 Facilities (hereafter referred to as "ADAAG") and/or California's
22 Title 24 Building Code Requirements. Defendants failed to remove
23 access barriers within the disabled parking and entrance
24 facilities of Defendants' SUSHI SOLANA establishment.

25 13. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
26 personally experienced difficulty with said access barriers at
27 Defendants' SUSHI SOLANA facilities.

28 14. For example, Defendants' parking facilities fail to be

1 accessible. The establishment fails to have the required
2 disability signage at either of the two (2) parking lot entrances
3 that inform patrons they may be fined or their vehicle may be
4 towed if they unlawfully park in a disabled parking space.

5 15. The establishment fails to have any of the required "Van
6 Accessible" disabled parking. There is one (1) existing non-"Van
7 Accessible" disabled parking space that also fails to be
8 accessible.

9 16. The establishment's entrance fails to have the required
10 disability signage.

11 17. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK intends
12 to return to Defendants' SUSHI SOLANA facilities in the immediate
13 future..

14 18. Plaintiffs' Member and Plaintiff THEODORE A. PINNOCK is
15 presently deterred from returning due to his knowledge of the
16 barriers to access that exist at Defendants' SUSHI SOLANA
17 facilities.

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

27 20. Plaintiffs believe and herein allege Defendants' SUSHI
28 SOLANA facilities have access violations not directly experienced

1 by Plaintiff's Member and Plaintiff THEODORE A. PINNOCK which
2 preclude or limit access by other members of Plaintiff 2150
3 SIGOURNEY JOSSIAH - FRANCIS LEE ASSOCIATION or other persons with
4 disabilities, including but not limited to violations relating to
5 Space Allowance and Reach Ranges, Accessible Route, Protruding
6 Objects, Ground and Floor Surfaces, Parking and Passenger Loading
7 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts
8 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains
9 and Water Coolers, Water Closets, Toilet Stalls, Urinals,
10 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and
11 Controls and Operating Mechanisms, Alarms, Detectable Warnings,
12 Signage, and Telephones. Accordingly, Plaintiffs allege Defendants
13 are required to remove all architectural barriers, known or
14 unknown. Also, Plaintiffs allege Defendants are required to
15 utilize the ADA checklist for Readily Achievable Barrier Removal
16 approved by the United States Department of Justice and created by
17 Adaptive Environments.

18
19 21. Based on these facts, Plaintiffs allege they were
20 discriminated against each time they patronized Defendants' SUSHI
21 SOLANA establishment. Plaintiff's Member and Plaintiff THEODORE
22 A. PINNOCK was extremely upset due to Defendants' conduct.

23 **NOTICE**

24 22. Plaintiffs are not required to provide notice to the
25 defendants prior to filing a complaint. *Botosan v. Paul McNally*
26 *Realty*, 216 F.3d 827, 832 (9th Cir 2000).

27
28 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

1 23. A & J CAPITAL, INC., d.b.a. SUSHI SOLANA; FLETCHCO
2 PROPERTIES, L.P.; and Does 1 through 10 will be referred to
3 collectively hereinafter as "Defendants."

4 24. 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 Access**

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

23 26. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK has
24 physical impairments as alleged in ¶ 11 above because his
25 conditions affect one or more of the following body systems:
26 neurological, musculoskeletal, special sense organs, and/or
27 cardiovascular. Further, Plaintiff's Member and Plaintiff
28

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

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

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

27 28. Additionally, the Defendants undertook an alteration that
28 affects or could affect the usability of or access to an area of

1 the facility containing a primary function after January 26, 1992.
2 Defendants further failed to make the alterations in such a manner
3 that, to the maximum extent feasible, the path of travel to the
4 altered area and the bathrooms, telephones, and drinking fountains
5 serving the altered area, are readily accessible to and usable by
6 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

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

11 Therefore, Defendants discriminated against Plaintiffs in
12 violation of 42 U.S.C. § 12182(a).

13 30. Thus, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
14 was subjected to discrimination in violation of 42 U.S.C. §
15 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because
16 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK was denied
17 equal access to Defendants' existing facilities.
18

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

21 31. Based on the facts plead at ¶¶ 11 - 21 above and elsewhere in
22 this complaint, Plaintiff's Member and Plaintiff THEODORE A.
23 PINNOCK was denied full and equal access to Defendants' goods,
24 services, facilities, privileges, advantages, or accommodations
25 within a public accommodation owned, leased, and/or operated by
26 Defendants. Defendants failed to remove barriers as required by
27 42 U.S.C. § 12182(a). Plaintiffs are informed, believe, and thus
28 allege that architectural barriers which are structural in nature

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

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

24 32. Based on the facts plead at ¶¶ 11 - 21 above and elsewhere in
25 this complaint, Defendants failed and refused to provide a
26 reasonable alternative by modifying its practices, policies and
27 procedures in that they failed to have a scheme, plan, or design
28 to assist Plaintiffs and/or others similarly situated in entering

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

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

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

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

4 CLAIM I: Denial Of Full And Equal Access

5 35. Based on the facts plead at ¶¶ 11 - 21 above and elsewhere in
6 this complaint, Plaintiff's Member and Plaintiff THEODORE A.
7 PINNOCK was denied full and equal access to Defendants' goods,
8 services, facilities, privileges, advantages, or accommodations
9 within a public accommodation owned, leased, and/or operated by
10 Defendants as required by Civil Code Sections 54 and 54.1.
11 Defendants' facility violated California's Title 24 Accessible
12 Building Code by failing to provide access to Defendants'
13 facilities due to violations pertaining to the Space Allowance and
14 Reach Ranges, Accessible Route, Protruding Objects, Ground and
15 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
16 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
17 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
18 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
19 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
20 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

21 36. These violations denied Plaintiff's Member and Plaintiff
22 THEODORE A. PINNOCK full and equal access to Defendants' facility.
23 Thus, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK was
24 subjected to discrimination pursuant to Civil Code §§ 51, 52, and
25 54.1 because Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
26 was denied full, equal and safe access to Defendants' facility,
27 causing severe emotional distress.
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CLAIM II: Failure To Modify Practices, Policies And Procedures

37. Based on the facts plead at ¶¶ 11 - 21 above and elsewhere herein this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies, and procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others similarly situated in entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK was subjected to discrimination in violation of Civil Code § 54.1.

CLAIM III: Violation Of The Unruh Act

38. Based on the facts plead at ¶¶ 11 - 21 above and elsewhere herein this complaint and because Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate against Plaintiffs and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

39. Based on the facts plead at ¶¶ 11 - 21 above, Claims I, II, and III of Plaintiffs' Second 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

1 substantial segment of the disability community. Plaintiffs
2 allege there is a state and national public interest in requiring
3 accessibility in places of public accommodation. Plaintiffs have
4 no adequate remedy at law to redress the discriminatory conduct of
5 Defendants. Plaintiffs desire to return to Defendants' places of
6 business in the immediate future. Accordingly, the Plaintiffs
7 allege that a structural or mandatory injunction is necessary to
8 enjoin compliance with state civil rights laws enacted for the
9 benefit of individuals with disabilities.

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

12
13 **Treble Damages Pursuant To Claims I, II, III Under The California**
14 **Accessibility Laws**

15 41. Defendants, each of them respectively, at times prior to and
16 including, the month of August, 2006, and continuing to the
17 present time, knew that persons with physical disabilities were
18 denied their rights of equal access to all portions of this public
19 facility. Despite such knowledge, Defendants, and each of them,
20 failed and refused to take steps to comply with the applicable
21 access statutes; and despite knowledge of the resulting problems
22 and denial of civil rights thereby suffered by Plaintiffs and
23 other similarly situated persons with disabilities. Defendants,
24 and each of them, have failed and refused to take action to grant
25 full and equal access to persons with physical disabilities in the
26 respects complained of hereinabove. Defendants, and each of them,
27 have carried out a course of conduct of refusing to respond to, or
28 correct complaints about, denial of disabled access and have

1 refused to comply with their legal obligations to make Defendants'
2 SUSHI SOLANA facilities accessible pursuant to the Americans With
3 Disability Act Access Guidelines (ADAAG) and Title 24 of the
4 California Code of Regulations (also known as the California
5 Building Code). Such actions and continuing course of conduct by
6 Defendants, and each of them, evidence despicable conduct in
7 conscious disregard of the rights and/or safety of Plaintiffs and
8 of other similarly situated persons, justifying an award of treble
9 damages pursuant to sections 52(a) and 54.3(a) of the California
10 Civil Code.

11 42. Defendants, and each of their actions have also been
12 oppressive to persons with physical disabilities and of other
13 members of the public, and have evidenced actual or implied
14 malicious intent toward those members of the public, such as
15 Plaintiffs and other persons with physical disabilities who have
16 been denied the proper access to which they are entitled by law.
17 Further, Defendants, and each of their, refusals on a day-to-day
18 basis to correct these problems evidence despicable conduct in
19 conscious disregard for the rights of Plaintiffs and other members
20 of the public with physical disabilities.

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

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

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7
8
9 DEMAND FOR JUDGMENT FOR RELIEF:

10
11 A. For general damages pursuant to Cal. Civil Code §§ 52 and
12 54.3;

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. Code of Civil Procedure §§ 1032 and 1033.5;

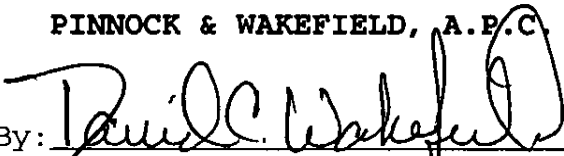
6 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
7 and 54.3(a);
8

9 G. A Jury Trial and;

10 H. For such other further relief as the court deems proper.
11

12 Respectfully submitted:

13
14 Dated: August 22, 2006

PINNOCK & WAKEFIELD, A.P.C.
By: 
DAVID C. WAKEFIELD, ESQ.
MICHELLE L. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

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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

2150 SIGOURNEY JOSSIAH - FRANCIS LEE ASSOCIATION, SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS; and THEODORE A. PINNOCK, An Individual.

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

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

A & J CAPITAL, INC., d.b.a. SUSHI SOLANA; FLETCHCO PROPERTIES, L.P.; And DOES 1 THROUGH 10, Inclusive

FILED
06 AUG 23 PM 1:05

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

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

San Diego

(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 Ave., Suite 410, San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

06 CV 171 IEG LSP

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)

- | | | |
|---|---|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 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)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commercial/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 378 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Electment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prisoner Conditions			

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 August 22, 2006

SIGNATURE OF ATTORNEY OF RECORD

Michelle L. Wakefield

CR 128535 SU 8/27/00 \$350