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3:04-CV-00585 PINNOCK V. AMERICANA RESTAURANT

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SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00585 IEG (JMA)

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

Case No.:

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

Plaintiffs,

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

v.

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

AMERICANA RESTAURANT GROUP,
INC. d.b.a. AMERICANA;
AMERICANA RESTAURANT GROUP,
INC.; WATKINS 2001 TRUST
DATED 11-30-01; JAMES M.
WATKINS, TRUSTEE OF THE
WATKINS 2001 TRUST DATED 11-
30-01; CAROL WATKINS, TRUSTEE
OF THE WATKINS 2001 TRUST
DATED 11-30-01; JAMES M.
WATKINS; CAROL WATKINS; And
DOES 1 THROUGH 10, Inclusive

Defendants.

INTRODUCTION

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

CR

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

19
20 JURISDICTION AND VENUE

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

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SUPPLEMENTAL JURISDICTION

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

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NAMED DEFENDANTS AND NAMED PLAINTIFFS

3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Defendant AMERICANA RESTAURANT GROUP, INC. d.b.a. AMERICANA is located at 1454 Camino Del Mar, Del Mar, California, 92014. Plaintiffs are informed and believe and thereon allege that

1 Defendants AMERICANA RESTAURANT GROUP, INC., is the owner,
2 operator, and/or doing business as AMERICANA. Defendant AMERICANA
3 RESTAURANT GROUP, INC. is located at 1454 Camino Del Mar, Del Mar,
4 California, 92014. Plaintiffs are informed and believe and thereon
5 allege that Defendants WATKINS 2001 TRUST DATED 11-30-01; JAMES M.
6 WATKINS, TRUSTEE OF THE WATKINS 2001 TRUST DATED 11-30-01; CAROL
7 WATKINS, TRUSTEE OF THE WATKINS 2001 TRUST DATED 11-30-01; JAMES
8 M. WATKINS; and CAROL WATKINS are the owners, operators, and/or
9 lessors of the property located at 1438-1454 Camino Del Mar, Del
10 Mar, California, 92014, Assessor Parcel Number 300-012-04.

11 Defendants JAMES M. WATKINS, TRUSTEE OF THE WATKINS 2001 TRUST
12 DATED 11-30-01 and CAROL WATKINS, TRUSTEE OF THE WATKINS 2001
13 TRUST DATED 11-30-01, are located at 3021 Pine Hills Road, Julian,
14 California, 92036. The words "Plaintiffs" and "Plaintiff's Member"
15 as used herein specifically include the organization MANTIC
16 ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and
17 persons associated with its Members who accompanied Members to
18 Defendants' facilities, as well as THEODORE A. PINNOCK, An
19 Individual.

20 4. Defendants Does 1 through 10, were at all times relevant
21 herein subsidiaries, employers, employees, agents, of AMERICANA
22 RESTAURANT GROUP, INC. d.b.a. AMERICANA; AMERICANA RESTAURANT
23 GROUP, INC.; WATKINS 2001 TRUST DATED 11-30-01; JAMES M. WATKINS,
24 TRUSTEE OF THE WATKINS 2001 TRUST DATED 11-30-01; CAROL WATKINS,
25 TRUSTEE OF THE WATKINS 2001 TRUST DATED 11-30-01; JAMES M.
26 WATKINS; CAROL WATKINS. Plaintiffs are ignorant of the true names
27 and capacities of Defendants sued herein as Does 1 through 10,
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1 inclusive, and therefore sues these Defendants by such fictitious
2 names. Plaintiffs will pray leave of the court to amend this
3 complaint to allege the true names and capacities of the Does when
4 ascertained.

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

11 Plaintiffs are further informed and believe, and thereon allege,
12 that each of the Defendants herein gave consent to, ratified,
13 and/or authorized the acts alleged herein to each of the remaining
14 Defendants.

15 CONCISE SET OF FACTS

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

23 7. On or about September 30, 2003, Plaintiff's member THEODORE
24 A. PINNOCK went to Defendants' AMERICANA RESTAURANT GROUP, INC.
25 d.b.a. AMERICANA facilities to utilize their goods and/or
26 services. When Plaintiff's member patronized Defendants'
27 AMERICANA RESTAURANT GROUP, INC. d.b.a. AMERICANA facilities, he
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1 was unable to use and/or had difficulty using the public
2 accommodations' access ramp, entrance, bar/cashier counter,
3 front/hostess counter, public seating, interior path of travel,
4 public pay telephone, and restroom facilities at Defendants'
5 business establishment because they failed to comply with ADA
6 Access Guidelines For Buildings and Facilities (hereafter referred
7 to as "ADAAG") and/or California's Title 24 Building Code
8 Requirements. Defendants failed to remove access barriers within
9 the access ramp, entrance, bar/cashier counter, front/hostess
10 counter, public seating, interior path of travel, public pay
11 telephone, and restroom facilities of Defendants' AMERICANA
12 RESTAURANT GROUP, INC. d.b.a. AMERICANA establishment.

13 8. Plaintiff's member personally experienced difficulty with
14 said access barriers at Defendants' AMERICANA RESTAURANT GROUP,
15 INC. d.b.a. AMERICANA facilities. For example, the front entrance
16 to Defendants establishment is not accessible. The access ramp
17 leading to the entrance of the restaurant, fails to be accessible,
18 as the slope is up to ten percent (10%). The slope of ramp cannot
19 exceed 8.33%. The strike clearance of the front entrance door is a
20 mere five inches (5"), when it is required to be no less than
21 eighteen inches (18"). The entrance to the restaurant fails to
22 have the required disability signage.

23 9. The interior path of travel within the restaurant fails to be
24 accessible, as the interior path of travel narrows to a mere
25 twenty-nine inches (29") in some areas. The interior path of
26 travel is required to be a minimum of thirty-six inches (36") in
27 width.
28

1 10. The front/hostess counter and the bar/cashier counter are
2 both inaccessible, as they both exceed the maximum height
3 requirement of thirty-four inches (34"). The front/hostess
4 counter is thirty-six inches (36") high and the bar/cashier is
5 forty inches (40") high.

6 11. The seating inside the Defendants' establishment is
7 inaccessible, as the seating fails to have to have any of the
8 required accessible seats. There are a total of fifty (50) seats
9 located in the dining area, all of which have a knee clearance
10 depth of a mere five inches (5"). These seats fail to meet the
11 requirement that five percent (5%) of all of its seats have a knee
12 clearance depth of nineteen inches (19") a width of thirty inches
13 (30") and a height of twenty-seven inches (27") minimum, which in
14 this case requires three (3) seats to be designated as accessible.

15 12. The slope of the ramp from the main dining area to the
16 restroom is up to an impermissible ten to twelve percent (10%-
17 12%). The Men's restroom at the Defendants' establishment is
18 inaccessible. The clear opening width of the restroom area
19 doorway is only twenty-seven inches (27"). As a result of these
20 violations of the Americans With Disabilities Act and/or Title 24
21 of the California Building Code, Plaintiff's Member and Plaintiff
22 THEODORE A. PINNOCK was unable to maneuver his wheelchair into the
23 men's restroom, therefore, was completely denied access to the
24 men's restroom.
25

26 13. In addition to the violations personally experienced by
27 Plaintiff's Member THEODORE A. PINNOCK, additional violations of
28 federal and state disability laws exist at Defendants' AMERICANA

1 RESTAURANT GROUP, INC. d.b.a. AMERICANA. For example, the men's
2 restroom door fails to have the required disability signage.
3 Within the men's restroom, the stall fails to have the required
4 handles on both sides of the door. The stall fails to have the
5 required self-closing mechanism. The commode is inaccessible, as
6 it is only fifteen inches (15") high. The height of the commode
7 seat cover dispenser is an impermissible fifty-four inches (54")
8 high. The toilet paper dispenser is inaccessible, as it is mounted
9 at seventeen inches (17") from the front edge of the commode. The
10 flush handle on the commode tank is inaccessible as it is located
11 on the top of the tank, when it is required to be on the wide side
12 of the tank. The soap dispenser fails to be accessible as it is
13 mounted at forty-three inches (43") above the floor surface. The
14 restroom also fails to have the required audible visual alarm
15 system.

16
17 14. The public pay telephone located inside the defendants'
18 establishment is inaccessible, as it fails to have the required
19 volume control unit and disability signage.

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

28 16. Plaintiffs believe and herein allege Defendants' facilities

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

16
17 17. Based on these facts, Plaintiffs allege Plaintiff's Member
18 and Plaintiff Theodore A. Pinnock was discriminated against each
19 time he patronized Defendants' establishments. Plaintiff's Member
20 and Plaintiff Theodore A. Pinnock was extremely upset due to
21 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
22 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
23 shoulders and wrists when he attempted to enter, use, and exit
24 Defendants' AMERICANA RESTAURANT GROUP, INC. d.b.a. AMERICANA
25 establishment.

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

27 18. AMERICANA RESTAURANT GROUP, INC. d.b.a. AMERICANA; AMERICANA
28 RESTAURANT GROUP, INC.; WATKINS 2001 TRUST DATED 11-30-01; JAMES

1 M. WATKINS, TRUSTEE OF THE WATKINS 2001 TRUST DATED 11-30-01;
2 CAROL WATKINS, TRUSTEE OF THE WATKINS 2001 TRUST DATED 11-30-01;
3 JAMES M. WATKINS; CAROL WATKINS; and Does 1 through 10 will be
4 referred to collectively hereinafter as "Defendants."

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

7 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 27. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
19 this complaint, Defendants failed and refused to provide a
20 reasonable alternative by modifying its practices, policies and
21 procedures in that they failed to have a scheme, plan, or design
22 to assist Plaintiff's Member and/or others similarly situated in
23 entering and utilizing Defendants' services, as required by 42
24 U.S.C. § 12188(a). Thus, said Member was subjected to
25 discrimination in violation of 42 United States Code
26 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
27 denied equal access to Defendants' existing facilities.
28

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

18 29. WHEREFORE, Plaintiffs pray for judgment and relief as
19 hereinafter set forth.
20

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

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

24 30. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
25 this complaint, Plaintiff's Member was denied full and equal
26 access to Defendants' goods, services, facilities, privileges,
27 advantages, or accommodations within a public accommodation owned,
28 leased, and/or operated by Defendants as required by Civil Code

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

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

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

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

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1 CLAIM III: Violation Of The Unruh Act

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

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

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

27
28 ///

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

3 36. Defendants, each of them respectively, at times prior to and
4 including, the month of September, 2003, and continuing to the
5 present time, knew that persons with physical disabilities were
6 denied their rights of equal access to all portions of this public
7 facility. Despite such knowledge, Defendants, and each of them,
8 failed and refused to take steps to comply with the applicable
9 access statutes; and despite knowledge of the resulting problems
10 and denial of civil rights thereby suffered by Plaintiff's Member
11 THEODORE A. PINNOCK and other similarly situated persons with
12 disabilities. Defendants, and each of them, have failed and
13 refused to take action to grant full and equal access to persons
14 with physical disabilities in the respects complained of
15 hereinabove. Defendants, and each of them, have carried out a
16 course of conduct of refusing to respond to, or correct complaints
17 about, denial of disabled access and have refused to comply with
18 their legal obligations to make Defendants' AMERICANA RESTAURANT
19 GROUP, INC. d.b.a. AMERICANA facilities accessible pursuant to the
20 Americans With Disability Act Access Guidelines (ADAAG) and Title
21 24 of the California Code of Regulations (also known as the
22 California Building Code). Such actions and continuing course of
23 conduct by Defendants, and each of them, evidence despicable
24 conduct in conscious disregard of the rights and/or safety of
25 Plaintiff's Member and of other similarly situated persons,
26 justifying an award of treble damages pursuant to sections 52(a)
27 and 54.3(a) of the California Civil Code.

28 37. Defendants', and each of their, actions have also been

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

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

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

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

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

1 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
2 Pinnock reasonably safe from known dangers and risks of harm.

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

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

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

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

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

14 DEMAND FOR JUDGMENT FOR RELIEF:

15 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
16 3281, and 3333;

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

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

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

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

8 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
9 § 12205, and Cal. Civil Code § 55;

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

12 G. A Jury Trial and;

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

14 Respectfully submitted:

15 PINNOCK & WAKEFIELD

16
17 Dated: March 18, 2004

18 By: 

MICHELLE L. WAKEFIELD, ESQ.

19 DAVID C. WAKEFIELD, ESQ.

20 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
AMERICANA RESTAURANT GROUP, INC. d.b.a. AMERICANA; AMERICANA RESTAURANT GROUP, INC.; WATKINS 2001 TRUST DATED 11-30-01; JAMES M. WATKINS TRUSTEE OF THE WATKINS 2001 TRUST DATED 11-30-01; CAROL WATKINS TRUSTEE OF THE WATKINS 2001 TRUST DATED 11-30-01; CAROL WATKINS; CAROL WATKINS; And DOES 1 THROUGH 10, Inclusive

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) San Diego
NOTE: IN LAND CONDEMNATION CASES, USE THE 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; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)
'04 CV 00585 IEG (JMA)

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

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

- III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF 1 Incorporated or Principal Place of Business in This State
PT DEF 2 Incorporated and Principal Place of Business in Another State
PT 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 checkboxes for various legal categories like 110 Insurance, 310 Airplane, 362 Personal Injury, etc.

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 MARCH 18, 2004

SIGNATURE OF ATTORNEY OF RECORD

#102051 MS 150-

Signature of Michelle L. Wakefield

Handwritten initials 'CA'