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3:04-CV-02345 PINNOCK V. CARLSBAD CO STORES

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *SO* DEPUTY

Attorneys for Plaintiffs

9 **UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA**

'04 CV 2345 IEG (JMA)

11 **MANTIC ASHANTI'S CAUSE, SUING
12 ON BEHALF OF THEODORE A.
13 PINNOCK AND ITS MEMBERS; and
14 THEODORE A. PINNOCK, An
15 Individual,**

Plaintiffs,

v.

16 **CARLSBAD COMPANY STORES;
17 CRAIG REALTY GROUP
18 CARLSBAD, LLC; And DOES 1
19 THROUGH 10, Inclusive**

Defendants.

Case No.:

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

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

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

20 **INTRODUCTION**

21 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE A.
22 PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual, herein
23 complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil
24 Procedure in the Judicial District of the United States District Court of the Southern District of
25 California, that Defendants have in the past, and presently are, engaging in discriminatory practices
26 against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs
27 allege this civil action and others substantial similar thereto are necessary to compel access
28 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

or

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
28

1 franchise organized and existing and/or doing business under the laws of the State of California.
2 Plaintiffs are informed and believe and thereon allege that Defendant CRAIG REALTY GROUP
3 CARLSBAD, LLC is the owner, operator, and/or lessor of the property located at 5600-30 Paseo
4 Del Norte, Carlsbad, California 92008, Assessor Parcel Number 211-022-22. Defendant CRAIG
5 REALTY GROUP CARLSBAD, LLC is located at 1500 Quail Street, Suite 100, Newport Beach,
6 California 92660. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically
7 include the organization MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A.
8 Pinnock and persons associated with its Members who accompanied Members to Defendants'
9 facilities, as well as THEODORE A. PINNOCK, An Individual.

10 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
11 employees, agents, of CARLSBAD COMPANY STORES and CRAIG REALTY GROUP
12 CARLSBAD, LLC. Plaintiffs are ignorant of the true names and capacities of Defendants sued
13 herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious
14 names. Plaintiffs will pray leave of the court to amend this complaint to allege the true names and
15 capacities of the Does when ascertained.

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

22 CONCISE SET OF FACTS

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

1 7. On August 29, 2004, Plaintiff's member THEODORE A. PINNOCK went to Defendants'
2 CARLSBAD COMPANY STORES facilities to utilize their goods and/or services. When
3 Plaintiff's member patronized Defendants' CARLSBAD COMPANY STORES facilities, he was
4 unable to use and/or had difficulty using the public accommodations' common area facilities such
5 as the disabled parking, exterior path of travel, and restroom facilities at Defendants' business
6 establishment because they failed to comply with ADA Access Guidelines For Buildings and
7 Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code
8 Requirements. Defendants failed to remove access barriers within the disabled parking, exterior
9 path of travel, public pay telephone, and restroom facilities of Defendants' CARLSBAD
10 COMPANY STORES establishment.

11 8. Plaintiff's member personally experienced difficulty with said access barriers at
12 Defendants' CARLSBAD COMPANY STORES facilities. For example, the parking facility of
13 Defendants' establishment is inaccessible. The parking lot has a total of one thousand one hundred
14 and eighty seven (1187) parking spaces, twenty-nine (29) of which are designated as disabled
15 parking spaces, which fail to be compliant. Two (2) of the twenty-nine (29) disabled parking
16 spaces, which are located by Ruby's, are non-compliant "van accessible" disabled parking spaces
17 that have an impermissible encroachment into their access aisles and fail to have the required
18 disability signage. Two (2) of the remaining twenty-seven (27) disabled parking spaces, which are
19 also located by Ruby's, are non-complaint "regular" disabled parking spaces that have an
20 impermissible encroachment into their access aisles. Two (2) of the remaining twenty-five (25)
21 disabled parking spaces, which are located by Vitamin World, are non-compliant "van accessible"
22 disabled parking spaces that have an impermissible encroachment into their access aisles and one
23 (1) of which also fails to have the required disability signage. Two (2) of the remaining twenty-
24 three (23) disabled parking spaces, which are located by Barney's New York, are non-compliant
25 "van accessible" disabled parking spaces that are only seventeen feet (17') long, have an
26 impermissible encroachment into their access aisles, and one (1) of which also fails to have the
27 required disability signage. Four (4) of the remaining twenty-one (21) disabled parking spaces,
28

1 which are located by Barney's New York, are non-compliant "regular" disabled parking spaces that
2 are only seventeen feet (17') long and have an impermissible encroachment into their access aisles.
3 Six (6) of the remaining seventeen (17) disabled parking spaces, which are located by Adidas, are
4 non-compliant "regular" disabled parking spaces that are only sixteen feet to seventeen feet (16'-
5 17') long and have an impermissible encroachment into their access aisles. One (1) of the
6 remaining eleven (11) disabled parking spaces, which are located at the rear of the shopping center,
7 is a non-compliant "van accessible" disabled parking space that is only seventeen feet (17') long.
8 Two (2) of the remaining ten (10) disabled parking spaces, which are located by Garden State
9 Bagels, are non-compliant "regular" disabled parking spaces that have an impermissible
10 encroachment into their access aisles. Two (2) of the remaining eight (8) disabled parking spaces,
11 which are located by BelleFleur, are non-compliant "van accessible" disabled parking spaces that
12 are only seventeen feet (17') long, have an impermissible encroachment into their access aisles,
13 have a slope of up to four percent (4%), and one (1) space fails to have the required disability
14 signage. Two (2) of the remaining six (6) disabled parking spaces, which are located by BelleFleur,
15 are non-compliant "regular" disabled parking spaces that are only seventeen feet (17') long, have
16 an impermissible encroachment into their access aisles, and have a slope of up to four percent
17 (4%). Two (2) of the remaining four (4) disabled parking spaces, which are located by Sansai
18 Japanese Grill, are non-compliant "van accessible" disabled parking spaces that are only seventeen
19 feet (17') long and have an impermissible encroachment into their access aisles. The remaining
20 two (2) disabled parking spaces, which are located by Sansai Japanese Grill, are non-compliant
21 "regular" disabled parking spaces that are only seventeen feet (17') long and have an impermissible
22 encroachment into their access aisles. It is required that all disabled parking spaces are at least
23 eighteen feet (18') long, have the proper access aisles without any encroachments, have the
24 appropriate disability signage, and have a slope that is no greater than two percent (2%). It is also
25 required that disabled parking spaces are dispersed evenly throughout the shopping center. The
26 Defendants' parking facilities fail to provide disabled parking spaces that are dispersed evenly
27 throughout the shopping center.
28

1 9. The exterior path of travel of the Defendants' establishment is inaccessible. There fails to
2 be a safe and accessible path of travel from the public sidewalk and from the disabled parking
3 space located in the rear of the shopping center to the primary accessible entrances, as members of
4 the disability community are forced to traverse through vehicular traffic without the benefit of a
5 marked path of travel.

6 10. The men's restroom located by Geoffrey Beane is inaccessible. The locking mechanism on
7 the stall door is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate.
8 The diaper changing counter is thirty-five inches (35") high, when it is required to be no higher
9 than thirty-four inches (34") high. The restroom fails to have the required audible and visual alarm
10 system.

11 11. The men's restroom located by Tommy Hillfiger is inaccessible. There is a loose mat at the
12 restroom door that fails to meet the minimum requirements that is anchored securely or recessed
13 onto the door landing. The locking mechanism on the stall door is inaccessible, as it requires tight
14 grasping and/or twisting of the wrist to operate. The height of the paper towel dispenser located
15 inside the accessible stall is forty-three inches (43") high, when it is required to be no higher than
16 forty inches (40") high. The height of the paper towel dispenser is forty-three inches (43") high,
17 when it is required to be no higher than forty inches (40"). The shower fails to have any of the
18 required grab bars. The shower fails to provide the required handheld shower sprayer. The
19 restroom fails to have the required audible and visual alarm system.

20 12. The men's restroom located by BelleFleur is inaccessible. There is a loose mat at the
21 restroom door that fails to meet the minimum requirements that is anchored securely or recessed
22 onto the door landing. The pressure required to open the restroom door is eleven pounds (11 lbs.),
23 when it is required to be no more than five pounds (5 lbs.). The height of the threshold at the
24 restroom entrance door is one half of an inch (1/2") and fails to have the required bevel. The
25 locking mechanism on the stall door is inaccessible, as it requires tight grasping and/or twisting of
26 the wrist to operate. The height of the commode seat cover dispenser is mounted at forty-two
27 inches (42") high, when it is required to be no higher than forty inches (40") high. The diaper
28

1 changing counter is forty inches (40") high, when it is required to be no higher than thirty-four
2 inches (34") high. The pressure that is required to pull down the diaper changing counter is eleven
3 pounds (11 lbs.), when it is required to be no more than five pounds (5 lbs.). The restroom fails to
4 have the required audible and visual alarm system.

5 13. In addition to the violations personally experienced by Plaintiff's member THEODORE A.
6 PINNOCK, additional violations of federal and state disability laws exist at the Defendants'
7 CARLSBAD COMPANY STORES establishment. For example, the public pay telephones are
8 inaccessible, as they fail to have the required volume control unit and signage.

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

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

25 16. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock
26 was discriminated against each time he patronized Defendants' establishments. Plaintiff's Member
27 and Plaintiff Theodore A. Pinnock was extremely upset due to Defendants' conduct. Further,
28

1 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back,
2 arms, shoulders and wrists when he attempted to enter, use, and exit Defendants' CARLSBAD
3 COMPANY STORES establishment.

4 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
5 **DEFENDANT**

6 17. CARLSBAD COMPANY STORES; CRAIG REALTY GROUP CARLSBAD, LLC; and
7 Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

8 18. 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 19. Based on the facts plead at ¶¶ 6-16 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.

21 20. Plaintiff's member Theodore A. Pinnock has physical impairments as alleged in ¶ 6 above
22 because his conditions affect one or more of the following body systems: neurological,
23 musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's member Theodore
24 A. Pinnock's said physical impairments substantially limits one or more of the following major life
25 activities: walking. In addition, Plaintiff's member Theodore A. Pinnock cannot perform one or
26 more of the said major life activities in the manner, speed, and duration when compared to the
27 average person. Moreover, Plaintiff's member Theodore A. Pinnock has a history of or has been
28

1 classified as having a physical impairment as required by 42 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 21. Based on the facts plead at ¶¶ 6-16 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 22. 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 23. 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 24. 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 25. Based on the facts plead at ¶¶ 6-16 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 26. Based on the facts plead at ¶¶ 6-16 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.

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

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

13
14 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
CALIFORNIA ACCESSIBILITY LAWS

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

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

27 30. These violations denied Plaintiff's Member full and equal access to Defendants' facility.
28

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 31. Based on the facts plead at ¶¶ 6-16 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 32. Based on the facts plead at ¶¶ 6-16 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 33. Based on the facts plead at ¶¶ 6-16 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 34. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
28

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

1
2 35. 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' CARLSBAD COMPANY STORES facilities accessible pursuant
13 to the Americans With Disability Act Access Guidelines (ADAAG) and Title 24 of the California
14 Code of Regulations (also known as the California Building Code). Such actions and continuing
15 course of conduct by Defendants, and each of them, evidence despicable conduct in conscious
16 disregard of the rights and/or safety of Plaintiff's Member and of other similarly situated persons,
17 justifying an award of treble damages pursuant to sections 52(a) and 54.3(a) of the California Civil
18 Code.

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

26 37. Plaintiffs pray for an award of treble damages against Defendants, and each of them,
27 pursuant to California Civil Code sections 52(a) and 54.3(a), in an amount sufficient to make a
28

1 more profound example of Defendants and encourage owners, lessors, and operators of other public
2 facilities from willful disregard of the rights of persons with disabilities. Plaintiffs do not know the
3 financial worth of Defendants, or the amount of damages sufficient to accomplish the public
4 purposes of section 52(a) of the California Civil Code and section 54.3 of the California Civil
5 Code.

6 38. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

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

9 39. Based on the facts plead at ¶¶ 6-16 above and elsewhere in this complaint, Defendants owed
10 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
11 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
12 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
13 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1
14 and Title 24 of the California Administrative Code and applicable 1982 Uniform Building Code
15 standards as amended.

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

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

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

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

10 DEMAND FOR JUDGMENT FOR RELIEF:

- 11 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and 3333;
- 12 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
13 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
14 Guidelines;
- 15 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above,
16 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code
17 § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
- 18 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs
19 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities
20 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding
21 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
22 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking
23 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
24 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable
25 Warnings, Signage, and Telephones.
- 26 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
27 § 55;
- 28 F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and 54.3(a);

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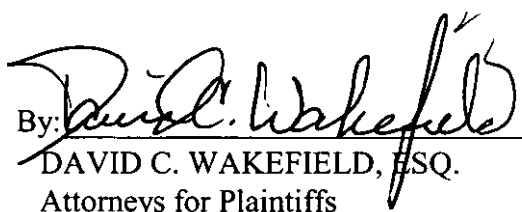
G. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: 11/19/04

By: 
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. 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, SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS; And THEODORE A. PINNOCK, An Individual

DEFENDANTS
CARLSBAD COMPANY STORES; CRAIG REALTY GROUP CARLSBAD, LLC; And DOES 1 THROUGH 10, AKA 10751

(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)
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 2345 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) (For Diversity Cases Only)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT/DEF
[] 1 Incorporated or Principal Place of Business in This State
[] 2 Incorporated and Principal Place of Business in Another State
[] 3 Foreign Nation
PT/DEF
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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, PERSONAL INJURY, CIVIL RIGHTS, TORTS, 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 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 11/19/04 SIGNATURE OF ATTORNEY OF RECORD David C. Wakefield

Handwritten notes: \$150.00 11/23/04 #108908 VB