

USDC SCAN INDEX SHEET



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3:04-CV-00233 PINNOCK V. MITICH
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CMP.

1 PINNOCK & WAKEFIELD,
Michelle L. Wakefield, Esq.
2 David C. Wakefield, Esq.
3033 Fifth Avenue, Suite 410
3 San Diego, CA 92103-5973
Telephone: (619) 858-3671
4 Facsimile: (619) 858-3646

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

5 Attorneys for Plaintiffs

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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

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

12 Plaintiffs,

13
14 v.

15 SUZAN MITICH d.b.a. CHARLIE'S
FAMILY RESTAURANT a.k.a.
16 CHARLIE'S RESTAURANT; SUZAN
17 MITICH a.k.a. SUZAN MELEKA;
18 DARLENE K. REYNOLDS; JOHN D.
REYNOLDS & ELANORA M.
REYNOLDS TRUST;

19
20 And

21 DOES 1 THROUGH 10, Inclusive

22 Defendants.

Case No.:

'04 CV 0233 JAH (JFS)

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]

23
24 INTRODUCTION

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26 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
27 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
28 herein complain, by filing this Civil Complaint in accordance with

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

18 JURISDICTION AND VENUE

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20 1. The federal jurisdiction of this action is based on the
21 Americans with Disabilities Act, 42 United States Code 12101-
22 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
23 District of the United States District Court of the Southern
24 District of California is in accordance with 28 U.S.C. § 1391(b)
25 because a substantial part of Plaintiffs' claims arose within the
26 Judicial District of the United States District Court of the
27 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 SUZAN MITICH d.b.a. CHARLIE'S FAMILY RESTAURANT a.k.a. CHARLIE'S RESTAURANT is located at 210 N. Ivy Street, Escondido, California 92025. Plaintiffs are informed and believe and thereon

1 allege that Defendant SUZAN MITICH a.k.a. SUZAN MELEKA, is the
2 owner, operator, and/or doing business as CHARLIE'S FAMILY
3 RESTAURANT a.k.a. CHARLIE'S RESTURANT. Defendant SUZAN MITICH
4 a.k.a. SUZAN MELEKA is located at 2316 Rock View Glen, Escondido,
5 California 92026. Plaintiffs are informed and believe and thereon
6 allege that Defendants DARLENE K. REYNOLDS and JOHN D. REYNOLDS &
7 ELANORA M. REYNOLDS TRUST, are the owners, operators, and/or
8 lessors of the property located at 210 N. Ivy Street, Escondido,
9 California 92025, Assessor Parcel number 229-441-08. Defendant
10 DARLENE K. REYNOLDS is located at 306 Lion Valley Road, Escondido,
11 California 92027. Defendant JOHN D. REYNOLDS & ELANORA M.
12 REYNOLDS TRUST is located at 210 N. Ivy Street, Escondido,
13 California 92025. The words "Plaintiffs" and "Plaintiff's Member"
14 as used herein specifically include the organization MANTIC
15 ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and
16 persons associated with its Members who accompanied Members to
17 Defendants' facilities, as well as THEODORE A. PINNOCK, An
18 Individual.

19 4. Defendants Does 1 through 10, were at all times relevant
20 herein subsidiaries, employers, employees, agents, of SUZAN MITICH
21 d.b.a. CHARLIE'S FAMILY RESTAURANT a.k.a. CHARLIE'S RESTAURANT;
22 SUZAN MITICH a.k.a. SUZAN MELEKA; DARLENE K. REYNOLDS; JOHN D.
23 REYNOLDS & ELANORA M. REYNOLDS TRUST. Plaintiffs are ignorant of
24 the true names and capacities of Defendants sued herein as Does 1
25 through 10, inclusive, and therefore sues these Defendants by such
26 fictitious names. Plaintiffs will pray leave of the court to
27 amend this complaint to allege the true names and capacities of
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1 the Does when ascertained.

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

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

12 CONCISE SET OF FACTS

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

20 7. On November 25, 2003, Plaintiff's Member and Plaintiff
21 THEODORE A. PINNOCK went to Defendants' SUZAN MITICH d.b.a.
22 CHARLIE'S FAMILY RESTAURANT a.k.a. CHARLIE'S RESTAURANT facilities
23 located at 210 N. Ivy Street, Escondido, California 92025, to
24 utilize their goods and/or services. When Plaintiff's Member and
25 Plaintiff THEODORE A. PINNOCK patronized Defendants' SUZAN MITICH
26 d.b.a. CHARLIE'S FAMILY RESTAURANT a.k.a. CHARLIE'S RESTAURANT
27 facilities, he was unable to use and/or had difficulty using the
28

1 public accommodations' disabled parking, exterior path of travel,
2 public seating, counter, and restroom facilities at Defendants'
3 business establishments because they failed to comply with ADA
4 Access Guidelines For Buildings and Facilities (hereafter referred
5 to as "ADAAG") and/or California's Title 24 Building Code
6 Requirements. Defendants failed to remove access barriers within
7 the public accommodations' disabled parking, exterior path of
8 travel, public seating, counter, and restroom facilities of
9 Defendants' SUZAN MITICH d.b.a. CHARLIE'S FAMILY RESTAURANT a.k.a.
10 CHARLIE'S RESTAURANT establishment.

11 8. Plaintiff's member personally experienced difficulty with
12 said access barriers at Defendants' SUZAN MITICH d.b.a. CHARLIE'S
13 FAMILY RESTAURANT a.k.a. CHARLIE'S RESTAURANT facility. For
14 example, neither of the two (2) entrances to the parking area has
15 the required disability signage informing patrons they may be
16 fined or their vehicle may be towed if they unlawfully park in a
17 disabled parking space. The parking facility is comprised of
18 thirty (30) parking spaces, only one (1) of which is designated as
19 disabled parking spaces. The parking facilities fail to have the
20 required "Van Accessible" disabled parking space. There should be
21 a total of two (2) disabled parking spaces, one (1) of which must
22 be a "Van Accessible" disabled parking space. The existing
23 disabled parking space is not compliant, as a parking bumper is
24 located inside the access aisle and the parking space also fails
25 to have the proper signage.

26
27 9. The exterior path of travel is inaccessible. The path of
28 travel from the public sidewalk to the primary accessible entrance

1 fails to be accessible, as members of the disability community are
2 forced to travel through vehicular traffic without the benefit of
3 a marked path of travel. The access ramp that leads to the front
4 entrance door is inaccessible as the disabled parking space is
5 painted directly in front of said ramp. As a result, the access
6 ramp is blocked when vehicles are parked in the disabled parking
7 space.

8 10. The entrance to the restaurant fails to have the required
9 disabled signage.

10 11. The entrance to the exterior dining area is inaccessible, as
11 there is an impermissible threshold with a height of two inches
12 (2"). Changes in level that are greater than ½" are required to
13 have a ramp installed. Also, the entrance to the exterior dining
14 area is too narrow to be accessible, as it is less than thirty
15 inches (30") in width.

16 12. The cashier counter is inaccessible, as it is thirty-six
17 inches (36") high.

18 13. There are twelve (12) public seats located outside of the
19 restaurant with a knee clearance of a mere three inches (3"). It
20 is a requirement that five percent (5%) of all seats, or one (1)
21 in this case, must have a knee clearance depth of at least
22 nineteen inches (19"), a width of thirty inches (30"), and a
23 height of twenty-seven inches (27").

24 14. The men's restroom within the restaurant is not accessible.
25 The men's restroom door fails to have the required disability
26 signage. The clear opening width of the restroom area doorway is
27 only nineteen inches (19") wide, which prevented Plaintiff's
28

1 Member and Plaintiff THEODORE A. PINNOCK from entering the men's
2 restroom. The men's restroom is completely inaccessible. The
3 restroom area doorknob is not compliant. The men's restroom
4 doorknob is also not compliant. The men's restroom door does not
5 have the required ten-inch (10") high kick plate attached to
6 bottom portion of the door to prevent a trap condition. The clear
7 opening width of the restroom door is a mere nineteen inches (19")
8 wide.

9 15. The women's restroom door does have disability signage, which
10 therefore led Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
11 to believe that the women's restroom was for the handicap and
12 women. Therefore Plaintiff's Member and Plaintiff THEODORE A.
13 PINNOCK entered the restroom. The restroom doorknob fails to be
14 accessible, as it requires tight grasping or twisting by the wrist
15 to operate. The paper towel dispenser is located too high to be
16 accessible. The path of travel leading to the toilet stall is
17 only thirty-one inches (31") wide. The stall door does not have
18 the required self-closing mechanism. The commode seat cover
19 dispenser is located too high to be accessible. There are two grab
20 bars on the right wall of the restroom stall. One (1) is vertical
21 and the other is horizontal. The vertical bar is not mounted
22 behind the commode, and is less than eighteen inches (18"). The
23 distance between the commode and the right wall of the stall is
24 less than eighteen inches (18"), and the distance between the
25 commode and the front wall is only thirty-one inches (31").

26 16. In addition to the violations not personally experienced by
27 Plaintiff's member and Plaintiff Theodore A. Pinnock, additional
28

1 violations of federal and state disability laws exist at
2 Defendants' SUZAN MITICH d.b.a. CHARLIE'S FAMILY RESTAURANT a.k.a.
3 CHARLIE'S RESTAURANT establishment. For example, the wheelchair
4 turn-around space inside the restroom is only 40"X60". The
5 requirement is that there should be at least sixty inches (60") is
6 diameter for wheelchair turn-around space. The stall does not
7 have the required self-closing mechanism, and also fails to have
8 the required handles on each side of the door. The stall door is
9 the type that opens inward, when it should open outward. The
10 clear opening width of the stall doorway is only twenty-two inches
11 (22"), which fails to meet the minimum requirement of thirty-two
12 inches (32"). The locking mechanism on the stall door is not
13 compliant. There are no grab bars around the commode. There
14 should be two (2) compliant grab bars either one on either side of
15 the commode or one on one side of the commode and one behind the
16 commode mounted at thirty-three inches (33") from the floor
17 surface. Side grab bars should be a minimum of forty-two inches
18 (42") long and extend a minimum of twenty-four inches (24") beyond
19 the front of the commode and rear grab bars should be a minimum of
20 thirty-six inches (36") long and should be attached a maximum of
21 six inches (6") from the corner of the wall on the toilet seat.
22 The distance from the front edge of the commode to the front wall
23 is only thirty-three inches (33"); it should be at least forty-
24 eight inches (48"). The distance from the side edge of the
25 commode to the near wall is only sixteen inches (16"); it should
26 be at least thirty-two inches (32"). The distance from the front
27 edge of the commode to the far wall is only sixteen inches (16");
28

1 it should be at least thirty-two inches (32"). The commode seat
2 protective cover dispenser is mounted sixty-one inches (61") above
3 the finished floor, which fails to meet the maximum height
4 requirement of forty inches (40"). The height of the commode is
5 only sixteen inches (16"). The toilet paper dispenser is mounted
6 twenty inches (20") from the front edge of the commode, when it
7 should be mounted no more than twelve inches (12") from the front
8 edge of the commode. The lavatory faucet handles are not
9 compliant, as they require grasping or twisting by the wrist. The
10 operable parts of the soap dispenser, paper towel dispenser, and
11 the bottom edge of the mirror are mounted too high to be
12 accessible, as the operable parts of the soap dispenser are
13 mounted forty-four inches (44") high, the paper towel dispenser is
14 mounted at fifty-six inches (56") high, and the bottom edge of the
15 mirror is mounted fifty-five inches (55") high. The men's
16 restroom fails to have the required audible and visual alarm
17 system.

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

27 18. Plaintiffs believe and herein allege Defendants' facilities
28 have access violations not directly experienced by Plaintiff's

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

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

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

24 20. SUZAN MITICH d.b.a. CHARLIE'S FAMILY RESTAURANT a.k.a.
25 CHARLIE'S RESTAURANT; SUZAN MITICH a.k.a. SUZAN MELEKA; DARLENE K.
26 REYNOLDS; JOHN D. REYNOLDS & ELANORA M. REYNOLDS TRUST; and Does 1
27 through 10 will be referred to collectively hereinafter as
28

1 "Defendants."

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

4 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

7 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal
8 Access

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

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

1 life activities in the manner, speed, and duration when compared
2 to the average person. Moreover, Plaintiff's member Theodore A.
3 Pinnock has a history of or has been classified as having a
4 physical impairment as required by 42 U.S.C. § 12102(2)(A).
5

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

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

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

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

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

12
13 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
Architectural Barriers

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

1 Storage, Handrails, Grab Bars, and Controls and Operating
2 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
3 Title III requires places of public accommodation to remove
4 architectural barriers that are structural in nature to existing
5 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
6 Failure to remove such barriers and disparate treatment against a
7 person who has a known association with a person with a disability
8 are forms of discrimination. [See 42 United States Code
9 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
10 discrimination in violation of 42 United States Code
11 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
12 denied equal access to Defendants' existing facilities.
13

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

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

26 30. Based on the facts plead at ¶¶ 6-19 above, Claims I, II, and
27 III of Plaintiffs' First Cause Of Action above, and the facts
28 elsewhere herein this complaint, Plaintiffs will suffer

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

15 31. WHEREFORE, Plaintiffs pray for judgment and relief as
16 hereinafter set forth.
17

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

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

21 32. Based on the facts plead at ¶¶ 6-19 above and elsewhere in
22 this complaint, Plaintiff's Member was denied full and equal
23 access to Defendants' goods, services, facilities, privileges,
24 advantages, or accommodations within a public accommodation owned,
25 leased, and/or operated by Defendants as required by Civil Code
26 Sections 54 and 54.1. Defendants' facility violated California's
27 Title 24 Accessible Building Code by failing to provide access to
28 Defendants' facilities due to violations pertaining to the Space

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

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

14 CLAIM II: Failure To Modify Practices, Policies And
15 Procedures

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

24 CLAIM III: Violation Of The Unruh Act

25 35. Based on the facts plead at ¶¶ 6-19 above and elsewhere
26 herein this complaint and because Defendants violated the Civil
27 Code § 51 by failing to comply with 42 United States Code §
28

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

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

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

26 38. Defendants, each of them respectively, at times prior to and
27 including, the month of November, 2003, and continuing to the
28 present time, knew that persons with physical disabilities were

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

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

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

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

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

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

23 42. Based on the facts plead at ¶¶ 6-19 above and elsewhere in
24 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
25 statutory duty to make their facility accessible and owed
26 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
27 Pinnock reasonably safe from known dangers and risks of harm.
28 This said duty arises by virtue of legal duties proscribed by

1 various federal and state statutes including, but not limited to,
2 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the
3 California Administrative Code and applicable 1982 Uniform
4 Building Code standards as amended.

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

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

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

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

11
12 DEMAND FOR JUDGMENT FOR RELIEF:

13 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
14 3281, and 3333;

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

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

23
24 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
25 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
26 Defendants to remove all architectural barriers in, at, or on
27 their facilities related to the following: Space Allowance and
28

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
9 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
10 § 12205, and Cal. Civil Code § 55;

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

13 G. A Jury Trial and;

14 H. For such other further relief as the court deems proper.
15

16
17 Respectfully submitted:

18
19 PINNOCK & WAKEFIELD

20 Dated: February 3, 2004

21 BY: 
22 MICHELLE L. WAKEFIELD, ESQ.
23 Attorneys for Plaintiffs
24
25
26
27
28

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

SUZAN MITICH d.b.a. CHARLIE'S FAMILY RESTAURANT a.k.a. CHARLIE'S RESTAURANT; SUZAN MITICH a.k.a. SUZAN MELEKA; DARLENE K. REYNOLDS; JOHN D. REYNOLDS & ELANORA M. REYNOLDS TRUST; And DOES 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 San Diego

(IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

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

Michelle L. Wakefield, Esq. SBN: 200424 David C. Wakefield, Esq. SBN: 185736 Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410 San Diego, CA 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

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

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)

- 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

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 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes 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 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 February 3, 2004

SIGNATURE OF ATTORNEY OF RECORD

Signature of Michelle L. Wakefield

Handwritten notes: 100871 - pd # 150