

USDC SCAN INDEX SHEET



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3:04-CV-01185 PINNOCK V. PHO TAU BAY  
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U.S. DISTRICT COURT  
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BY JD DEPUTY

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

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

18 Plaintiffs,

19 v.

20 PHO TAU BAY RESTAURANT/LA CAI  
21 MI GIA a.k.a. MI LA CAI-PHO  
22 TAU BAY RESTAURANT; DO HONEY  
23 LE; TINA HAI LE; AFJR  
24 PARTNERSHIP, L.P.; AFJR  
25 PARTNERSHIP, A GENERAL  
26 PARTNERSHIP; And DOES 1  
27 THROUGH 10, Inclusive

28 Defendants.

Case No. 04 CV 1185 K (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]

29 INTRODUCTION

30 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE  
31 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,  
32 herein complain, by filing this Civil Complaint in accordance with  
33 rule 8 of the Federal Rules of Civil Procedure in the Judicial  
34 District of the United States District Court of the Southern

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

16  
17 JURISDICTION AND VENUE

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

26 SUPPLEMENTAL JURISDICTION

27 2. The Judicial District of the United States District Court of  
28 the Southern District of California has supplemental jurisdiction

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

18  
19 NAMED DEFENDANTS AND NAMED PLAINTIFFS

20 3. Defendants are, and, at all times mentioned herein, were, a  
21 business or corporation or franchise organized and existing and/or  
22 doing business under the laws of the State of California.

23 Defendant PHO TAU BAY RESTAURANT/LA CAI MI GIA a.k.a. MI LA CAI-  
24 PHO TAU BAY RESTAURANT is located at 7604 Linda Vista Road, San  
25 Diego, California 92111. Plaintiffs are informed and believe and  
26 thereon allege that Defendants DO HONEY LE and/or TINA HAI LE are  
27 the owners, operators, and/or doing business as PHO TAU BAY  
28 RESTAURANT/LA CAI MI GIA a.k.a. MI LA CAI-PHO TAU BAY RESTAURANT.

1 Defendant DO HONEY LE is located at 7612 Linda Vista Road, Suite  
2 116, San Diego, California 92111. Defendant TH TINA HAI LE is  
3 located at 4833 Mount Royal Avenue, San Diego, California 92117.  
4 Plaintiffs are informed and believe and thereon allege that  
5 Defendants AFJR PARTNERSHIP, L.P. and/or AFJR PARTNERSHIP, A  
6 GENERAL PARTNERSHIP are the owners, operators, and/or lessors of  
7 the property located at 7604 Linda Vista Road, San Diego,  
8 California 92111, Assessor Parcel Number 427-082-15. Defendants  
9 AFJR PARTNERSHIP, L.P. and AFJR PARTNERSHIP, A GENERAL PARTNERSHIP  
10 are located at 4255 Ocean Boulevard, San Diego, California 92109.  
11 The words "Plaintiffs" and "Plaintiff's Member" as used herein  
12 specifically include the organization MANTIC ASHANTI'S CAUSE, its  
13 Members, its member Theodore A. Pinnock and persons associated  
14 with its Members who accompanied Members to Defendants'  
15 facilities, as well as THEODORE A. PINNOCK, An Individual.

16 4. Defendants Does 1 through 10, were at all times relevant  
17 herein subsidiaries, employers, employees, agents, of PHO TAU BAY  
18 RESTAURANT/LA CAI MI GIA a.k.a. MI LA CAI-PHO TAU BAY RESTAURANT;  
19 DO HONEY LE; TINA HAI LE; AFJR PARTNERSHIP, L.P.; and AFJR  
20 PARTNERSHIP, A GENERAL PARTNERSHIP. Plaintiffs are ignorant of  
21 the true names and capacities of Defendants sued herein as Does 1  
22 through 10, inclusive, and therefore sues these Defendants by such  
23 fictitious names. Plaintiffs will pray leave of the court to  
24 amend this complaint to allege the true names and capacities of  
25 the Does when ascertained.

26 5. Plaintiffs are informed and believe, and thereon allege, that  
27 Defendants and each of them herein were, at all times relevant to  
28

1 the action, the owner, lessor, lessee, franchiser, franchisee,  
2 general partner, limited partner, agent, employee, representing  
3 partner, or joint venturer of the remaining Defendants and were  
4 acting within the course and scope of that relationship.  
5 Plaintiffs are further informed and believe, and thereon allege,  
6 that each of the Defendants herein gave consent to, ratified,  
7 and/or authorized the acts alleged herein to each of the remaining  
8 Defendants.

9  
10 CONCISE SET OF FACTS

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

18 7. On May 17, 2004, Plaintiff's member THEODORE A. PINNOCK went  
19 to Defendants' PHO TAU BAY RESTAURANT/LA CAI MI GIA a.k.a. MI LA  
20 CAI-PHO TAU BAY RESTAURANT facilities to utilize their goods  
21 and/or services. When Plaintiff's member patronized Defendants'  
22 PHO TAU BAY RESTAURANT/LA CAI MI GIA a.k.a. MI LA CAI-PHO TAU BAY  
23 RESTAURANT facilities, he was unable to use and/or had difficulty  
24 using the public accommodations' disabled parking, exterior path  
25 of travel, entrance, cashier counter, and restroom facilities at  
26 Defendants' business establishment because they failed to comply  
27 with ADA Access Guidelines For Buildings and Facilities (hereafter  
28 referred to as "ADAAG") and/or California's Title 24 Building Code

1 Requirements. Defendants failed to remove access barriers within  
2 the disabled parking, exterior path of travel, entrance, cashier  
3 counter, public pay telephone, and restroom facilities of  
4 Defendants' PHO TAU BAY RESTAURANT/LA CAI MI GIA a.k.a. MI LA CAI-  
5 PHO TAU BAY RESTAURANT establishment.

6 8. Plaintiff's member personally experienced difficulty with  
7 said access barriers at Defendants' PHO TAU BAY RESTAURANT/LA CAI  
8 MI GIA a.k.a. MI LA CAI-PHO TAU BAY RESTAURANT facilities. For  
9 example, the parking facility of Defendants' establishment is  
10 inaccessible. The parking facility has a total of eighty-seven  
11 (87) parking spaces, including four (4) disabled parking spaces  
12 that are not compliant. One (1) of the disabled parking spaces,  
13 which is located adjacent to the restaurant, is a "regular"  
14 disabled parking space that is only sixteen feet (16') long with  
15 an impermissible encroachment of a ramp into the access aisle.  
16 One (1) of the other disabled parking spaces is a "van accessible"  
17 disabled parking space, however it too is only sixteen feet (16')  
18 long. The other two (2) disabled parking spaces are also only  
19 sixteen feet (16') long, one (1) of which has an access aisle that  
20 is on the left hand side, when is required to be on the right hand  
21 side, and the other disabled parking space has an access aisle  
22 that is only three feet (3') wide. It is required that there is  
23 at least one (1) "van accessible" disabled parking space that is  
24 at least eighteen feet (18") long. It is also required that there  
25 are three (3) "regular" disabled parking spaces that are at least  
26 eighteen feet (18') long, with five foot (5') wide access aisles  
27 on the right hand side of the parking spaces that are not  
28

1 encroached upon by a ramp.

2 9. The exterior path of travel of the Defendants' establishment  
3 is inaccessible. The width of the walkway is as narrow as twenty-  
4 five inches (25") in some areas, when the minimum requirement is  
5 forty-eight inches (48") in width. The ramp from the parking lot  
6 to the entrance has an impermissible one-inch (1") lip. Changes  
7 in level greater than one half of an inch (1/2") are required to  
8 be ramped.

9 10. The entrance to the Defendants' establishment is  
10 inaccessible, as the entrance door fails to have the required  
11 smooth and uninterrupted surface on the bottom ten inches (10") of  
12 the door that allows the door to be opened with a wheelchair  
13 footrest without creating a hazard. The front entrance door also  
14 fails to have the required disability signage.

15 11. The cashier counter at the Defendants' establishment is  
16 inaccessible, as the counter is forty inches (40") high, when it  
17 is required to be no higher than thirty-four inches (34") high.

18 12. The men's restroom located inside the defendants'  
19 establishment is inaccessible. The men's restroom door is  
20 inaccessible, as it requires seven pounds (7 lbs.) of pressure to  
21 operate. The maximum requirement is five pounds (5 lbs.) of  
22 pressure to operate a door like this one. The wheelchair turn  
23 around space in the restroom is only forty-seven inches by sixty  
24 inches (47"X60"), when it is required to be at least sixty inches  
25 (60") in diameter. The stall door fails to have the required  
26 self-closing mechanism. The stall door fails to have the required  
27 handles on both sides of the door. The height of the commode  
28



1 seat cover dispenser is fifty-four inches (54") high, when it is  
2 required to be no higher than forty inches (40") high. The  
3 distance from the side edge of the commode to the far wall is only  
4 sixteen inches (16"), when it is required to be at least thirty-  
5 two inches (32"). The distance from the front edge of the commode  
6 to the front wall is only forty-six inches (46"), when it is  
7 required to be at least sixty inches (60"). The length of the  
8 rear grab bar of the commode is only twenty-nine inches (29")  
9 long, when it is required to be at least thirty-six inches (36")  
10 long. The height of the urinal lip is twenty-four inches (24"),  
11 when it is required to be no more than seventeen inches (17")  
12 high. The distance from the lavatory to the adjacent wall is only  
13 ten inches (10"), when the minimum requirement is eighteen inches  
14 (18"). The lavatory faucet handles are inaccessible, as they  
15 require tight grasping and/or twisting of the wrist to operate.  
16 The height of the bottom of the mirror is forty-eight inches  
17 (48"), when the maximum height requirement is forty inches (40")  
18 high. The hot water and drainpipes under the lavatory fail to  
19 have the required covering. The soap dispenser is mounted at  
20 forty-two inches (42"), when it is required to be mounted no  
21 higher than forty inches (40"). The height of the paper towel  
22 dispenser is forty-seven inches (47"), when it is required to be  
23 no higher than forty inches (40"). The restroom fails to have the  
24 required audible and visual alarm system.

25  
26 13. In addition to the violations personally experienced by  
27 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional  
28 violations of federal and state disability laws exist at

1 Defendants' PHO TAU BAY RESTAURANT/LA CAI MI GIA a.k.a. MI LA CAI-  
2 PHO TAU BAY RESTAURANT. For example, the public pay telephone is  
3 inaccessible, as it fails to have the required signage.

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

12 15. Plaintiffs believe and herein allege Defendants' facilities  
13 have access violations not directly experienced by Plaintiff's  
14 Member which preclude or limit access by others with disabilities,  
15 including, but not limited to, Space Allowance and Reach Ranges,  
16 Accessible Route, Protruding Objects, Ground and Floor Surfaces,  
17 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,  
18 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,  
19 Entrances, Drinking Fountains and Water Coolers, Water Closets,  
20 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,  
21 Handrails, Grab Bars, and Controls and Operating Mechanisms,  
22 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,  
23 Plaintiffs allege Defendants are required to remove all  
24 architectural barriers, known or unknown. Also, Plaintiffs allege  
25 Defendants are required to utilize the ADA checklist for Readily  
26 Achievable Barrier Removal approved by the United States  
27 Department of Justice and created by Adaptive Environments.  
28

1 16. Based on these facts, Plaintiffs allege Plaintiff's Member  
2 and Plaintiff Theodore A. Pinnock was discriminated against each  
3 time he patronized Defendants' establishments. Plaintiff's Member  
4 and Plaintiff Theodore A. Pinnock was extremely upset due to  
5 Defendants' conduct. Further, Plaintiff's Member and Plaintiff  
6 THEODORE A. PINNOCK experienced pain in his legs, back, arms,  
7 shoulders and wrists when he attempted to enter, use, and exit  
8 Defendants' PHO TAU BAY RESTAURANT/LA CAI MI GIA a.k.a. MI LA CAI-  
9 PHO TAU BAY RESTAURANT establishment.

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

11  
12 17. PHO TAU BAY RESTAURANT/LA CAI MI GIA a.k.a. MI LA CAI-PHO TAU  
13 BAY RESTAURANT; DO HONEY LE; TINA HAI LE; AFJR PARTNERSHIP, L.P.;  
14 AFJR PARTNERSHIP, A GENERAL PARTNERSHIP; and Does 1 through 10  
15 will be referred to collectively hereinafter as "Defendants."

16 18. Plaintiffs aver that the Defendants are liable for the  
17 following claims as alleged below:

18 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

19 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The**  
20 **Americans With Disabilities Act Of 1990**

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

23 19. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
24 this complaint, Plaintiff's Member was denied full and equal  
25 access to Defendants' goods, services, facilities, privileges,  
26 advantages, or accommodations. Plaintiffs allege Defendants are a  
27 public accommodation owned, leased and/or operated by Defendants.  
28 Defendants' existing facilities and/or services failed to provide

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

6 20. Plaintiff's member Theodore A. Pinnock has physical  
7 impairments as alleged in ¶ 6 above because his conditions affect  
8 one or more of the following body systems: neurological,  
9 musculoskeletal, special sense organs, and/or cardiovascular.

10 Further, Plaintiff's member Theodore A. Pinnock's said physical  
11 impairments substantially limits one or more of the following  
12 major life activities: walking. In addition, Plaintiff's member  
13 Theodore A. Pinnock cannot perform one or more of the said major  
14 life activities in the manner, speed, and duration when compared  
15 to the average person. Moreover, Plaintiff's member Theodore A.  
16 Pinnock has a history of or has been classified as having a  
17 physical impairment as required by 42 U.S.C. § 12102(2)(A).

18  
19 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**  
20 **Such A Manner That The Altered Portions Of The Facility Are**  
**Readily Accessible And Usable By Individuals With Disabilities**

21 21. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
22 this complaint, Plaintiff's Member Theodore A. Pinnock was denied  
23 full and equal access to Defendants' goods, services, facilities,  
24 privileges, advantages, or accommodations within a public  
25 accommodation owned, leased, and/or operated by Defendants.  
26 Defendants altered their facility in a manner that affects or  
27 could affect the usability of the facility or a part of the  
28 facility after January 26, 1992. In performing the alteration,

1 Defendants failed to make the alteration in such a manner that, to  
2 the maximum extent feasible, the altered portions of the facility  
3 are readily accessible to and usable by individuals with  
4 disabilities, including individuals who use wheelchairs, in  
5 violation of 42 U.S.C. §12183(a)(2).

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

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

20 24. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to  
21 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.  
22 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.  
23 Pinnock was denied equal access to Defendants' existing  
24 facilities.

25  
26 ///

27 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural  
Barriers

28 25. Based on the facts plead at ¶¶ 6-16 above and elsewhere in

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

27 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,  
28 Policies And Procedures

1 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
2 this complaint, Defendants failed and refused to provide a  
3 reasonable alternative by modifying its practices, policies and  
4 procedures in that they failed to have a scheme, plan, or design  
5 to assist Plaintiff's Member and/or others similarly situated in  
6 entering and utilizing Defendants' services, as required by 42  
7 U.S.C. § 12188(a). Thus, said Member was subjected to  
8 discrimination in violation of 42 United States Code  
9 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
10 denied equal access to Defendants' existing facilities.

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

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

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

5 CLAIM I: Denial Of Full And Equal Access

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

22 30. These violations denied Plaintiff's Member full and equal  
23 access to Defendants' facility. Thus, said Member was subjected  
24 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1  
25 because Plaintiff's Member was denied full, equal and safe access  
26 to Defendants' facility, causing severe emotional distress.

27 CLAIM II: Failure To Modify Practices, Policies And Procedures  
28



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

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

10 32. Based on the facts plead at ¶¶ 6-16 above and elsewhere  
11 herein this complaint and because Defendants violated the Civil  
12 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  
14 continue to discriminate against Plaintiff's Member and persons  
15 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

16 33. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and  
17 III of Plaintiffs' Second Cause Of Action above, and the facts  
18 elsewhere herein this complaint, Plaintiffs will suffer  
19 irreparable harm unless Defendants are ordered to remove  
20 architectural, non-architectural, and communication barriers at  
21 Defendants' public accommodation. Plaintiffs allege that  
22 Defendants' discriminatory conduct is capable of repetition, and  
23 this discriminatory repetition adversely impacts Plaintiffs and a  
24 substantial segment of the disability community. Plaintiffs  
25 allege there is a state and national public interest in requiring  
26 accessibility in places of public accommodation. Plaintiffs have  
27 no adequate remedy at law to redress the discriminatory conduct of  
28

1 Defendants. Plaintiff's Member desires to return to Defendants'  
2 places of business in the immediate future. Accordingly, the  
3 Plaintiffs allege that a structural or mandatory injunction is  
4 necessary to enjoin compliance with state civil rights laws  
5 enacted for the benefit of individuals with disabilities.

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

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

10 35. Defendants, each of them respectively, at times prior to and  
11 including, the month of May, 2004, and continuing to the present  
12 time, knew that persons with physical disabilities were denied  
13 their rights of equal access to all portions of this public  
14 facility. Despite such knowledge, Defendants, and each of them,  
15 failed and refused to take steps to comply with the applicable  
16 access statutes; and despite knowledge of the resulting problems  
17 and denial of civil rights thereby suffered by Plaintiff's Member  
18 THEODORE A. PINNOCK and other similarly situated persons with  
19 disabilities. Defendants, and each of them, have failed and  
20 refused to take action to grant full and equal access to persons  
21 with physical disabilities in the respects complained of  
22 hereinabove. Defendants, and each of them, have carried out a  
23 course of conduct of refusing to respond to, or correct complaints  
24 about, denial of disabled access and have refused to comply with  
25 their legal obligations to make Defendants' PHO TAU BAY  
26 RESTAURANT/LA CAI MI GIA a.k.a. MI LA CAI-PHO TAU BAY RESTAURANT  
27 facilities accessible pursuant to the Americans With Disability  
28 Act Access Guidelines (ADAAG) and Title 24 of the California Code

1 of Regulations (also known as the California Building Code). Such  
2 actions and continuing course of conduct by Defendants, and each  
3 of them, evidence despicable conduct in conscious disregard of the  
4 rights and/or safety of Plaintiff's Member and of other similarly  
5 situated persons, justifying an award of treble damages pursuant  
6 to sections 52(a) and 54.3(a) of the California Civil Code.

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

18 37. Plaintiffs pray for an award of treble damages against  
19 Defendants, and each of them, pursuant to California Civil Code  
20 sections 52(a) and 54.3(a), in an amount sufficient to make a more  
21 profound example of Defendants and encourage owners, lessors, and  
22 operators of other public facilities from willful disregard of the  
23 rights of persons with disabilities. Plaintiffs do not know the  
24 financial worth of Defendants, or the amount of damages sufficient  
25 to accomplish the public purposes of section 52(a) of the  
26 California Civil Code and section 54.3 of the California Civil  
27 Code.  
28

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

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

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

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

23 41. Therefore, Defendants engaged in discriminatory conduct in  
24 that they failed to comply with known duties under the ADA, ADAAG,  
25 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew  
26 or should have known that their acts of nonfeasance would cause  
27 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal  
28

1 injury. Plaintiff THEODORE A. PINNOCK alleges that there was  
2 bodily injury in this matter because when Plaintiff THEODORE A.  
3 PINNOCK attempted to enter, use, and exit Defendants'  
4 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in  
5 his legs, back, arms, shoulders, and wrists. Plaintiffs further  
6 allege that such conduct was done in reckless disregard of the  
7 probability of said conduct causing Plaintiff THEODORE A. PINNOCK  
8 to suffer bodily or personal injury, anger, embarrassment,  
9 depression, anxiety, mortification, humiliation, distress, and  
10 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
11 Individual, alleges that such conduct caused THEODORE A. PINNOCK,  
12 An Individual, to suffer the injuries of mental and emotional  
13 distress, including, but not limited to, anger, embarrassment,  
14 depression, anxiety, mortification, humiliation, distress, and  
15 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
16 Individual, additionally alleges that such conduct caused THEODORE  
17 A. PINNOCK, An Individual, to suffer damages as a result of these  
18 injuries.

19  
20 42. Wherefore, Plaintiffs pray for damages and relief as  
21 hereinafter stated.

22 DEMAND FOR JUDGMENT FOR RELIEF:

- 23 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
24 3281, and 3333;  
25 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for  
26 each and every offense of Civil Code § 51, Title 24 of the  
27 California Building Code, ADA, and ADA Accessibility Guidelines;  
28 C. In the alternative to the damages pursuant to Cal. Civil

1 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to  
2 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
3 54.1, Title 24 of the California Building Code, ADA, and ADA  
4 Accessibility Guidelines;

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

16 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.  
17 § 12205, and Cal. Civil Code § 55;

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


20 G. A Jury Trial and;

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

22 Respectfully submitted:

23 PINNOCK & WAKEFIELD, A.P.C.

24 Dated: June 10, 2004

25 BY:   
26 MICHELLE L. WAKEFIELD, ESQ.  
27 DAVID C. WAKEFIELD, ESQ.  
28 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, SUIING ON BEHALF OF  
THEODORE A. PINNOCK AND ITS MEMBERS; And  
THEODORE A. PINNOCK, An Individual

DEFENDANTS PHO TAU BAY RESTAURANT/LA CAI MI GIA  
a.k.a. MI LA CAI-PHO TAU BAY RESTAURANT; DO HONEY  
LE; TINA HAI LE LAFOR PARTNERSHIP, L.P.; AFJR  
PARTNERSHIP A GENERAL PARTNERSHIP; And DOES 1  
THROUGH 10, Inclusive

FILED  
JUN 11 2004  
CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

(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, 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 1185 K (JFS)

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

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

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RFR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 480 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND:  YES  NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE June 10, 2004

SIGNATURE OF ATTORNEY OF RECORD

*Michelle Wakefield*

104480 150<sup>00</sup> JF 6/14/04