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3:03-CV-00191 MANTIC ASHANTIS V. TONYS CAFE

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CMP.

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BY: *Amend*
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

**TONY'S CAFÉ a.k.a. NO BIG
DEAL, INC., d.b.a. TONY'S
CAFÉ; NO BIG DEAL, INC.; J &
L SMALL FAMILY TRUST, Dated
06/23/92; JOHN G. SMALL,
Trustee; LINDA M. SMALL,
Trustee; And DOES 1 THROUGH
10, Inclusive**

Defendants.

Case No.: **03 CV 0191L (POR)**

CIVIL COMPLAINT:

**DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS**

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE 19995;
BUSINESS & PROFESSIONS CODE
17200 et. seq.]

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]

INTRODUCTION

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

ca

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 TONY'S CAFÉ a.k.a. NO BIG DEAL, INC., d.b.a. TONY'S CAFÉ
24 is located at 5034 Newport Avenue, San Diego, California, 92107.
25 Plaintiffs are informed and believe and thereon allege that
26 Defendant NO BIG DEAL, INC., is the owner, operator, lessor,
27 and/or doing business as TONY'S CAFÉ a.k.a. NO BIG DEAL, INC.,
28 d.b.a. TONY'S CAFÉ. Defendant NO BIG DEAL, INC., is located at

1 4960 Newport Avenue, San Diego, California, 92107.

2 4. Plaintiffs are informed and believe and thereon allege that
3 Defendants J & L SMALL FAMILY TRUST, Dated 06/23/92; JOHN G.
4 SMALL, Trustee; and LINDA M. SMALL, Trustee, are the owners,
5 operators, and/or lessors of the property located at 5034 Newport
6 Avenue, San Diego, California, 92107, Assessor Parcel Number 448-
7 092-20-00. Defendants J & L SMALL FAMILY TRUST, Dated 06/23/92;
8 JOHN G. SMALL, Trustee; and LINDA M. SMALL, Trustee, are located
9 at 4960 Newport Avenue, San Diego, California, 92107.

10 5. The words "Plaintiffs" and "Plaintiff's Member" as used herein
11 specifically include the organization MANTIC ASHANTI'S CAUSE, its
12 Members, its member Theodore A. Pinnock and persons associated
13 with its Members who accompanied Members to Defendants'
14 facilities, as well as THEODORE A. PINNOCK, An Individual.

15 6. Defendants Does 1 through 10, were at all times relevant
16 herein subsidiaries, employers, employees, agents, of TONY'S CAFÉ
17 a.k.a. NO BIG DEAL, INC., d.b.a. TONY'S CAFÉ; NO BIG DEAL, INC.; J
18 & L SMALL FAMILY TRUST, Dated 06/23/92; JOHN G. SMALL, Trustee;
19 and/or LINDA M. SMALL, Trustee. Plaintiffs are ignorant of the
20 true names and capacities of Defendants sued herein as Does 1
21 through 10, inclusive, and therefore sues these Defendants by such
22 fictitious names. Plaintiffs will pray leave of the court to
23 amend this complaint to allege the true names and capacities of
24 the Does when ascertained.

25 7. Plaintiffs are informed and believe, and thereon allege, that
26 Defendants and each of them herein were, at all times relevant to
27 the action, the owner, lessor, lessee, franchiser, franchisee,
28

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

8
9 **CONCISE SET OF FACTS**

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

17 9. On February 1, 2002, Plaintiff's member THEODORE A. PINNOCK
18 went to Defendants' TONY'S CAFÉ a.k.a. NO BIG DEAL, INC., d.b.a.
19 TONY'S CAFÉ facilities to utilize their goods and/or services.
20 When Plaintiff's member patronized Defendants' TONY'S CAFÉ a.k.a.
21 NO BIG DEAL, INC., d.b.a. TONY'S CAFÉ facilities, he was unable to
22 use and/or had difficulty using the public accommodations'
23 entrance, bar, public seating, men's restroom, and public pay
24 telephone facilities at Defendants' TONY'S CAFÉ a.k.a. NO BIG
25 DEAL, INC., d.b.a. TONY'S CAFÉ business establishment because they
26 failed to comply with ADA Access Guidelines For Buildings and
27 Facilities (hereafter referred to as "ADAAG") and/or California's
28 Title 24 Building Code Requirements. Defendants failed to remove

1 access barriers within the entrance, bar, public seating, men's
2 restroom, and public pay telephone facilities of Defendants'
3 TONY'S CAFÉ a.k.a. NO BIG DEAL, INC., d.b.a. TONY'S CAFÉ
4 establishment.

5 10. Plaintiff's member personally experienced difficulty with
6 said access barriers at Defendants' TONY'S CAFÉ a.k.a. NO BIG
7 DEAL, INC., d.b.a. TONY'S CAFÉ facilities. For example, the front
8 entrance to the establishment fails to have sufficient disability
9 signage. The bar is too high to be accessible to and usable by a
10 member of the disability community who uses a wheelchair for
11 mobility, as the bar is forty-eight inches (48") high. On the
12 date Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
13 patronized Defendants TONY'S CAFÉ a.k.a. NO BIG DEAL, INC., d.b.a.
14 TONY'S CAFÉ establishment, the establishment failed to have any of
15 the required accessible public seating.

16 11. The men's restroom within Defendants' TONY'S CAFÉ a.k.a. NO
17 BIG DEAL, INC., d.b.a. TONY'S CAFÉ establishment is completely
18 inaccessible. The clear width of the men's restroom entrance
19 doorway is a mere twenty-seven inches (27") wide when it should be
20 a minimum of thirty-two inches (32") wide. The men's restroom
21 entrance door fails to have sufficient disability signage. The
22 strike edge clearance on both the men's restroom entrance door and
23 the commode stall within the restroom is a mere five inches (5")
24 when it should be a minimum of eighteen inches (18").

25 12. The commode stall door fails to have accessible handles and
26 locking mechanism and the stall door fails to be self-closing.
27 The commode stall door is only twenty-one inches (21") wide, when
28

1 it should be a minimum of thirty-two inches (32") in width. The
2 distance from the edge of the commode to the farthest wall is only
3 seventeen inches (17") and the distance from the front edge of the
4 commode to the stall door is only thirty-three inches (33").
5 There should be a minimum distance of thirty-two inches (32") from
6 the edge of the commode to the farthest wall and a distance of
7 forty-eight inches (48") from the front edge of the commode to the
8 stall door. The men's restroom fails to have sufficient clear
9 floor space for wheelchair maneuverability, as the clear floor
10 space is only thirty-four inches (34") in diameter. There should
11 be a clear floor space that is sixty inches (60") in diameter.
12 The commode area fails to have any of the required grab bars. The
13 interior path of travel within the men's restroom to the urinal is
14 a mere twenty-three inches (23") in width when it should be
15 thirty-two inches (32") in width. The urinal is also too high to
16 be accessible, as the lip of the urinal is twenty-four inches
17 (24") above the finished floor, when it should be a maximum of
18 seventeen inches (17") above the finished floor. As a result of
19 these violations of federal and state disability laws, Plaintiff's
20 Member and Plaintiff THEODORE A. PINNOCK was completely unable to
21 use the men's restroom facilities within Defendants'
22 establishment.

23
24 13. The public pay telephone within Defendants' TONY'S CAFÉ
25 a.k.a. NO BIG DEAL, INC., d.b.a. TONY'S CAFÉ establishment is also
26 completely inaccessible. The width of the entrance to the public
27 pay telephone booth is a mere twenty-one inches (21") when it
28 should be a minimum of thirty-two inches (32") wide. There is

1 also an impermissible six inch (6") lip at the entrance to the
2 public pay telephone booth. This public pay telephone booth is a
3 mere twenty-five inches (25") in diameter, instead of the required
4 thirty-two inches (32") in diameter. The public pay telephone
5 fails to have the required volume control and disability signage.

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

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

1 Achievable Barrier Removal approved by the United States
2 Department of Justice and created by Adaptive Environments.

3 16. Based on these facts, Plaintiffs allege Plaintiff's Member
4 and Plaintiff Theodore A. Pinnock was discriminated against each
5 time he patronized Defendants' establishments. Plaintiff's Member
6 and Plaintiff Theodore A. Pinnock was extremely upset due to
7 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
8 THEODORE A. PINNOCK experienced pain in hid legs, back, arms,
9 shoulders and wrists when he attempted to enter, use, and exit
10 Defendants' establishment.

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

12
13 17. TONY'S CAFÉ a.k.a. NO BIG DEAL, INC., d.b.a. TONY'S CAFÉ; NO
14 BIG DEAL, INC.; J & L SMALL FAMILY TRUST, Dated 06/23/92; JOHN G.
15 SMALL, Trustee; LINDA M. SMALL, Trustee; and Does 1 through 10
16 will be referred to collectively hereinafter as "Defendants."

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

19
20 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

23
24 CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal**
25 **Access**

26 19. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in
27 this complaint, Plaintiff's Member was denied full and equal
28 access to Defendants' goods, services, facilities, privileges,

1 advantages, or accommodations. Plaintiffs allege Defendants are a
2 public accommodation owned, leased and/or operated by Defendants.
3 Defendants' existing facilities and/or services failed to provide
4 full and equal access to Defendants' facility as required by 42
5 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
6 discrimination in violation of 42 United States Code
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
8 Member was denied equal access to Defendants' existing facilities.

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

13 Further, Plaintiff's member Theodore A. Pinnock's said physical
14 impairments substantially limits one or more of the following
15 major life activities: walking. In addition, Plaintiff's member
16 Theodore A. Pinnock cannot perform one or more of the said major
17 life activities in the manner, speed, and duration when compared
18 to the average person. Moreover, Plaintiff's member Theodore A.
19 Pinnock has a history of or has been classified as having a
20 physical impairment as required by 42 U.S.C. § 12102(2)(A).
21

22 CLAIM II AGAINST ALL DEFENDANTS: **Failure To Remove**
23 **Architectural Barriers**

24 21. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in
25 this complaint, Plaintiff's Member was denied full and equal
26 access to Defendants' goods, services, facilities, privileges,
27 advantages, or accommodations within a public accommodation owned,
28 leased, and/or operated by Defendants. Defendants failed to

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

23 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Modify Practices,**
24 **Policies And Procedures**

25 22. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in
26 this complaint, Defendants failed and refused to provide a
27 reasonable alternative by modifying its practices, policies and
28 procedures in that they failed to have a scheme, plan, or design

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

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

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

26 ///

27 ///

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

3 CLAIM I: Denial Of Full And Equal Access

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

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

25 CLAIM II: Failure To Modify Practices, Policies And Procedures

26 27. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere
27 herein this complaint, Defendants failed and refused to provide a
28 reasonable alternative by modifying its practices, policies, and

1 procedures in that they failed to have a scheme, plan, or design
2 to assist Plaintiff's Member and/or others similarly situated in
3 entering and utilizing Defendants' services as required by Civil
4 Code § 54.1. Thus, said Member was subjected to discrimination in
5 violation of Civil Code § 54.1.

6 CLAIM III: Violation Of The Unruh Act

7 28. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere
8 herein this complaint and because Defendants violated the Civil
9 Code § 51 by failing to comply with 42 United States Code §
10 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
11 continue to discriminate against Plaintiff's Member and persons
12 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

13 29. Based on the facts plead at ¶¶ 8 - 16 above, Claims I, II,
14 and III of Plaintiffs' Second Cause Of Action above, and the facts
15 elsewhere herein this complaint, Plaintiffs will suffer
16 irreparable harm unless Defendants are ordered to remove
17 architectural, non-architectural, and communication barriers at
18 Defendants' public accommodation. Plaintiffs allege that
19 Defendants' discriminatory conduct is capable of repetition, and
20 this discriminatory repetition adversely impacts Plaintiffs and a
21 substantial segment of the disability community. Plaintiffs
22 allege there is a state and national public interest in requiring
23 accessibility in places of public accommodation. Plaintiffs have
24 no adequate remedy at law to redress the discriminatory conduct of
25 Defendants. Plaintiff's Member desires to return to Defendants'
26 places of business in the immediate future. Accordingly, the
27 Plaintiffs allege that a structural or mandatory injunction is
28

1 necessary to enjoin compliance with state civil rights laws
2 enacted for the benefit of individuals with disabilities.

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

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

8 31. Defendants, each of them respectively, at times prior to and
9 including, the month of February, 2002, and continuing to the
10 present time, knew that persons with physical disabilities were
11 denied their rights of equal access to all portions of this public
12 facility. Despite such knowledge, Defendants, and each of them,
13 failed and refused to take steps to comply with the applicable
14 access statutes; and despite knowledge of the resulting problems
15 and denial of civil rights thereby suffered by Plaintiff's Member
16 and Plaintiff THEODORE A. PINNOCK and other similarly situated
17 persons with disabilities. Defendants, and each of them, have
18 failed and refused to take action to grant full and equal access
19 to persons with physical disabilities in the respects complained
20 of hereinabove. Defendants, and each of them, have carried out a
21 course of conduct of refusing to respond to, or correct complaints
22 about, denial of disabled access and have refused to comply with
23 their legal obligations to make Defendants' TONY'S CAFÉ a.k.a. NO
24 BIG DEAL, INC., d.b.a. TONY'S CAFÉ facilities accessible pursuant
25 to the Americans With Disability Act Access Guidelines (ADAAG) and
26 Title 24 of the California Code of Regulations (also known as the
27 California Building Code). Such actions and continuing course of
28 conduct by Defendants, and each of them, evidence despicable

1 conduct in conscious disregard of the rights and/or safety of
2 Plaintiff's Member and of other similarly situated persons,
3 justifying an award of treble damages pursuant to sections 52(a)
4 and 54.3(a) of the California Civil Code.

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

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

26 34. Wherefore, Plaintiffs pray for damages and relief as
27 hereinafter stated.
28

1 THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS - **Violation of**
2 **Business and Professions Code section 17200 et seq.**

3 35. Plaintiffs incorporate by reference herein the facts plead
4 at ¶¶ 8 - 16 above and elsewhere in this complaint.

5 36. Defendants failed to remove access barriers within the
6 entrance, bar, public seating, men's restroom, and public pay
7 telephone facilities of Defendants' TONY'S CAFÉ a.k.a. NO BIG
8 DEAL, INC., d.b.a. TONY'S CAFÉ establishment. Business and
9 Professions Code section 17200 defines "unfair competition" and
10 prohibited activities as, ". . . any unlawful, unfair or
11 fraudulent business act or practice and unfair, deceptive, untrue
12 or misleading advertising and any act prohibited by Chapter 1
13 (commencing with Section 17500) of Part 3 of Division 7 of the
14 Business and Professions Code." Defendants' acts and omissions
15 alleged herein are violations of the below-enumerated federal and
16 state statutory requirements and public policy and therefore
17 constitute unfair competition and/or prohibited activities as such
18 violations are *unlawful, unfair or fraudulent business acts or*
19 *practices.*

20 37. Pursuant to federal law, Defendants are required to remove
21 barriers to their existing facilities. Title III of the Americans
22 With Disabilities Act requires places of public accommodation to
23 remove architectural barriers that are structural in nature to
24 existing facilities. [42 United States Code 12182(b)(2)(A)(iv).]
25 Failure to remove such barriers and disparate treatment against a
26 person who has a known association with a person with a disability
27 are forms of discrimination. [See 42 United States Code
28

1 12182(b)(2)(A)(iv)]. Defendants failed to remove obstructions in
2 the disabled parking, paths of travel, and restroom facilities
3 from Defendants' establishment. Thus, Plaintiffs were subjected
4 to discrimination in violation of 42 United States Code
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
6 Member was denied equal access to Defendants' existing facilities.
7 Also, Defendants' facilities failed to provide full and equal
8 access to Defendants' facility as required by 42 U.S.C. §
9 12182(a). Thus, Plaintiffs were subjected to discrimination in
10 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
11 U.S.C. § 12188 because Plaintiff's Member was denied equal access
12 to Defendants' existing facilities. Additionally, as a result of
13 said access barriers, Defendants failed and refused to provide a
14 reasonable alternative by modifying its practices, policies and
15 procedures in that they failed to have a scheme, plan, or design
16 to assist Plaintiff's Member and/or others similarly situated in
17 entering and utilizing Defendants' services, as required by 42
18 U.S.C. § 12188(a). Thus, Plaintiffs were subjected to
19 discrimination in violation of 42 United States Code
20 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
21 Member was denied equal access to Defendants' existing facilities.
22 38. Pursuant to California state law, Defendants are also
23 required to remove barriers to their existing facilities.
24 Defendants' failure to remove barriers to their existing
25 facilities denied Plaintiff's Member full and equal access to
26 Defendants' facilities. Thus, Plaintiffs were subjected to
27 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
28

1 Plaintiff's Member was denied full, equal and safe access to
2 Defendants' facility. Further, Defendants' facility, and other
3 goods, services, and/or facilities provided to the public by
4 Defendants are not accessible to and usable by persons with
5 disabilities as required by Health and Safety Code § 19955 which
6 requires private entities to make their facility accessible before
7 and after remodeling, and to remove architectural barriers.
8 Additionally, Defendants failed and refused to provide a
9 reasonable alternative by modifying its practices, policies, and
10 procedures in that they failed to have a scheme, plan, or design
11 to assist Plaintiff's Member and/or others similarly situated in
12 entering and utilizing Defendants' services as required by Civil
13 Code § 54.1. Thus, Plaintiffs were subjected to discrimination in
14 violation of Civil Code § 54.1. Also, under the Unruh Act,
15 Defendants violated Civil Code § 51 by failing to comply with 42
16 United States Code 12182(b)(2)(A)(iv), Defendants did and continue
17 to discriminate against Plaintiffs and persons similarly situated
18 in violation of Civil Code §§ 51, 52, and 54.1. Further,
19 Defendants had actual knowledge of their barrier removal duties
20 under the Americans with Disabilities Act, the California Civil
21 Code, and the California Health & Safety Code before January 26,
22 1992.

23
24 39. Defendants' alleged unlawful, unfair, or fraudulent business
25 acts or practices are specifically prohibited by the specific
26 introductory language of B&P section 17200 that is stated in the
27 conjunctive. Consequently, Plaintiffs allege that Defendants'
28 acts and omissions constitute a violation specifically of this

1 section 17200 of the Business and Professions Code.

2 40. Plaintiffs seek injunctive relief requiring Defendants to
3 remedy the disabled access violations present at the Defendants'
4 facilities. Ancillary to this injunctive relief, Plaintiffs also
5 request restitution for amounts paid by Plaintiff's Member who
6 attempted to visit and patronize Defendants' facilities during the
7 time period that the subject premises have been in violation of
8 the disabled access laws of the State of California.

9 41. Plaintiffs seek, on behalf of the general public, injunctive
10 relief requiring Defendants to comply with the disabled access
11 laws of the State of California at facilities throughout the State
12 of California built, owned, operated, and/or controlled by
13 Defendants.

14 42. WHEREFORE, Plaintiffs pray for judgment and relief as
15 hereinafter set forth.

16
17
18 PLAINTIFF THEODORE A. PINNOCK'S FOURTH CAUSE OF ACTION AGAINST ALL
19 DEFENDANTS - Negligence as to Plaintiff THEODORE A. PINNOCK only

20 43. Based on the facts plead at ¶¶ 8 - 16 above and elsewhere in
21 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
22 statutory duty to make their facility accessible and owed
23 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
24 Pinnock reasonably safe from known dangers and risks of harm.
25 This said duty arises by virtue of legal duties proscribed by
26 various federal and state statutes including, but not limited to,
27 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
28 California Administrative Code and applicable 1982 Uniform

1 Building Code standards as amended.

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

10 45. Therefore, Defendants engaged in discriminatory conduct in
11 that they failed to comply with known duties under the ADA, ADAAG,
12 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
13 should have known that their acts of nonfeasance would cause
14 Plaintiff Theodore A. Pinnock emotional, bodily and personal
15 injury. Plaintiffs allege that there was bodily injury in this
16 matter because when Plaintiff's Member and Plaintiff THEODORE A.
17 PINNOCK attempted to enter, use, and exit Defendants'
18 establishment, Plaintiff's Member and Plaintiff THEODORE A.
19 PINNOCK experienced pain in his legs, back, arms, shoulders, and
20 wrists. Plaintiffs further allege that such conduct was done in
21 reckless disregard of the probability of said conduct causing
22 Plaintiff Theodore A. Pinnock to suffer bodily or personal injury,
23 anger, embarrassment, depression, anxiety, mortification,
24 humiliation, distress, and fear of physical injury. Plaintiff
25 THEODORE A. PINNOCK, An Individual, alleges that such conduct
26 caused THEODORE A. PINNOCK, An Individual, to suffer the injuries
27 of mental and emotional distress, including, but not limited to,
28

1 anger, embarrassment, depression, anxiety, mortification,
2 humiliation, distress, and fear of physical injury. Plaintiff
3 THEODORE A. PINNOCK, An Individual, additionally alleges that such
4 conduct caused THEODORE A. PINNOCK, An Individual, to
5 suffer damages as a result of these injuries.

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

8
9 DEMAND FOR JUDGMENT FOR RELIEF:

10 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
11 3281, and 3333;

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

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

20
21 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
22 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
23 Defendants to remove all architectural barriers in, at, or on
24 their facilities related to the following: Space Allowance and
25 Reach Ranges, Accessible Route, Protruding Objects, Ground and
26 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
27 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
28

1 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
2 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
3 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
4 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

5 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
6 § 12205, and Cal. Civil Code § 55;

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

10 G. For Restitution pursuant to Business and Professions section
11 17200;


12 H. A Jury Trial and;

13 I. For such other further relief as the court deems proper.
14

15 Respectfully submitted:
16

17
18 PINNOCK & WAKEFIELD

19 Dated: January 28, 2003

20 By: 
21 MICHELLE L. WAKEFIELD, ESQ.
22 DAVID C. 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

TONY'S CAFE a.k.a. NO BIG DEAL, INC., d.b.a. TONY'S CAFE; NO BIG DEAL, INC.; J & L SMALL FAMILY TRUST, Dated 06/23/92; JOHN G. SMALL, Trustee; LINDA G. SMALL, Trustee; and DOES 1 THROUGH 10, Inclusive.

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) San Diego

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

DEPUTY

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

Michelle L. Wakefield, Esq. SBN: 200424
David C. Wakefield, Esq. SBN: 185736
Pinnock & Wakefield; 7966 Arjons Drive, Suite 119
San Diego, CA 92126
Telephone: (858) 689-1750; Facsimile: (858) 689-1950

ATTORNEYS (IF KNOWN)

'03 CV 0191L (FOR)

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

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

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF 1 Incorporated or Principal Place of Business in This State
PT DEF 2 Incorporated and Principal Place of Business in Another State
PT DEF 3 Foreign Nation
PT DEF 4
PT DEF 5
PT DEF 6

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

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

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

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 422 Appeal, 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 January 28, 2003

SIGNATURE OF ATTORNEY OF RECORD

Michelle L. Wakefield

pd \$150.00 1/29/03 # 90862 NB