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3:04-CV-01342 PINNOCK V. PLAZA DONUTS

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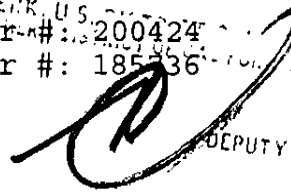
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 1342 J (RBB)

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

Plaintiffs,

v.

PLAZA DONUTS; HEANG LY CHAU  
d.b.a. PLAZA DONUTS; HEANG LY  
CHAU; EPSTEIN ENTERPRISES  
f.k.a. EPSTEIN INVESTMENTS;  
And DOES 1 THROUGH 10,  
Inclusive

Defendants.

Case No.:

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

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

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

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  
District of California, that Defendants have in the past, and  
presently are, engaging in discriminatory practices against

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

14 **JURISDICTION AND VENUE**

15 1. The federal jurisdiction of this action is based on the  
16 Americans with Disabilities Act, 42 United States Code 12101-  
17 12102, 12181-12183 and 12201, et seq. Venue in the Judicial  
18 District of the United States District Court of the Southern  
19 District of California is in accordance with 28 U.S.C. § 1391(b)  
20 because a substantial part of Plaintiffs' claims arose within the  
21 Judicial District of the United States District Court of the  
22 Southern District of California.

23 **SUPPLEMENTAL JURISDICTION**

24 2. The Judicial District of the United States District Court of  
25 the Southern District of California has supplemental jurisdiction  
26 over the state claims as alleged in this Complaint pursuant to 28  
27 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper  
28

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

16  
17 NAMED DEFENDANTS AND NAMED PLAINTIFFS

18 3. Defendants are, and, at all times mentioned herein, were, a  
19 business or corporation or franchise organized and existing and/or  
20 doing business under the laws of the State of California.  
21 Defendant PLAZA DONUTS is located at 1548 Highland Avenue,  
22 National City, California 91950. Plaintiffs are informed and  
23 believe and thereon allege that Defendant HEANG LY CHAU is the  
24 owner, operator, and/or doing business as PLAZA DONUTS. Defendant  
25 HEANG LY CHAU is located at 882 Buen Tiempo Drive, Chula Vista,  
26 California 91910. Plaintiffs are informed and believe and thereon  
27 allege that Defendants EPSTEIN ENTERPRISES f.k.a. EPSTEIN  
28 INVESTMENTS is the owner, operator, and/or lessor of the property

1 located at 1548 Highland Avenue, National City, California 91950,  
2 Assessor Parcel Number 560-131-19. Defendant EPSTEIN ENTERPRISES  
3 f.k.a. EPSTEIN INVESTMENTS is located at 26 Bahama Bend, Coronado,  
4 California 92118. The words "Plaintiffs" and "Plaintiff's Member"  
5 as used herein specifically include the organization MANTIC  
6 ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and  
7 persons associated with its Members who accompanied Members to  
8 Defendants' facilities, as well as THEODORE A. PINNOCK, An  
9 Individual.

10 4. Defendants Does 1 through 10, were at all times relevant  
11 herein subsidiaries, employers, employees, agents, of PLAZA  
12 DONUTS; HEANG LY CHAU d.b.a. PLAZA DONUTS; HEANG LY CHAU; and  
13 EPSTEIN ENTERPRISES f.k.a. EPSTEIN INVESTMENTS. Plaintiffs are  
14 ignorant of the true names and capacities of Defendants sued  
15 herein as Does 1 through 10, inclusive, and therefore sues these  
16 Defendants by such fictitious names. Plaintiffs will pray leave  
17 of the court to amend this complaint to allege the true names and  
18 capacities of the Does when ascertained.

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

25 Plaintiffs are further informed and believe, and thereon allege,  
26 that each of the Defendants herein gave consent to, ratified,  
27 and/or authorized the acts alleged herein to each of the remaining  
28

1 Defendants.

2 CONCISE SET OF FACTS

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

10 7. On March 31, 2004, Plaintiff's member THEODORE A. PINNOCK  
11 went to Defendants' PLAZA DONUTS facilities to utilize their goods  
12 and/or services. When Plaintiff's member patronized Defendants'  
13 PLAZA DONUTS facilities, he was unable to use and/or had  
14 difficulty using the public accommodations' disabled parking,  
15 exterior path of travel, entrance, interior path of travel, and  
16 public seating facilities at Defendants' business establishment  
17 because they failed to comply with ADA Access Guidelines For  
18 Buildings and Facilities (hereafter referred to as "ADAAG") and/or  
19 California's Title 24 Building Code Requirements. Defendants  
20 failed to remove access barriers within the disabled parking,  
21 exterior path of travel, entrance, interior path of travel, and  
22 public seating facilities of Defendants' PLAZA DONUTS  
23 establishment.

24 8. Plaintiff's member personally experienced difficulty with  
25 said access barriers at Defendants' PLAZA DONUTS facilities. For  
26 example, the parking facility of Defendants' establishment is  
27 inaccessible. There are two (2) entryways into the parking lot,  
28

1 both of which fail to have the required signage warning motorists  
2 that anyone illegally parking in a disabled parking space would be  
3 towed/fined or both. The parking facility has a total of twelve  
4 (12) parking spaces, none of which are a disabled parking space.  
5 It is required that there is at least One (1) "van accessible"  
6 disabled parking space.

7 9. The exterior path of travel of the Defendants' establishment  
8 is inaccessible. There fails to be a safe and accessible path of  
9 travel from the parking lot to the primary accessible entrance, as  
10 members of the disability community are forced to traverse through  
11 vehicular traffic without the benefit of a marked path of travel.

12 10. The entrance to the Defendants establishment is inaccessible,  
13 as the entrance fails to have the required five-foot by five-foot  
14 (5'x 5') level landing in front of the entrance door. The  
15 entrance door fails to have the required smooth and uninterrupted  
16 surface on the bottom ten inches (10") of the door that allows the  
17 door to be opened with a wheelchair footrest without creating a  
18 hazard. The front entrance door also fails to have the required  
19 disability signage.

20 11. The interior path of travel is inaccessible, as the interior  
21 path of travel is only thirty-two inches (32") wide. The interior  
22 path of travel is required to be at least thirty-six (36") wide.

23 12. The public seating located inside the Defendants'  
24 establishment is inaccessible, as there are a total of twenty-four  
25 (24) seats, all with a knee clearance depth of a mere five inches  
26 (5"). It is required that five percent (5%) of all seats, or at  
27 least two (2) in this case, have a knee clearance depth of at  
28

1 least nineteen inches (19").

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

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

26 15. Based on these facts, Plaintiffs allege Plaintiff's Member  
27 and Plaintiff Theodore A. Pinnock was discriminated against each  
28



1 time he patronized Defendants' establishments. Plaintiff's Member  
2 and Plaintiff Theodore A. Pinnock was extremely upset due to  
3 Defendants' conduct. Further, Plaintiff's Member and Plaintiff  
4 THEODORE A. PINNOCK experienced pain in his legs, back, arms,  
5 shoulders and wrists when he attempted to enter, use, and exit  
6 Defendants' PLAZA DONUTS establishment.

7 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

8  
9 16. PLAZA DONUTS; HEANG LY CHAU d.b.a. PLAZA DONUTS; HEANG LY  
10 CHAU; EPSTEIN ENTERPRISES f.k.a. EPSTEIN INVESTMENTS; and Does 1  
11 through 10 will be referred to collectively hereinafter as  
12 "Defendants."

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

15 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

18 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal  
19 Access

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

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's  
2 Member was denied equal access to Defendants' existing facilities.

3 19. Plaintiff's member Theodore A. Pinnock has physical  
4 impairments as alleged in ¶ 6 above because his conditions affect  
5 one or more of the following body systems: neurological,  
6 musculoskeletal, special sense organs, and/or cardiovascular.  
7 Further, Plaintiff's member Theodore A. Pinnock's said physical  
8 impairments substantially limits one or more of the following  
9 major life activities: walking. In addition, Plaintiff's member  
10 Theodore A. Pinnock cannot perform one or more of the said major  
11 life activities in the manner, speed, and duration when compared  
12 to the average person. Moreover, Plaintiff's member Theodore A.  
13 Pinnock has a history of or has been classified as having a  
14 physical impairment as required by 42 U.S.C. § 12102(2)(A).

15  
16 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**  
17 **Such A Manner That The Altered Portions Of The Facility Are**  
18 **Readily Accessible And Usable By Individuals With Disabilities**

19 20. Based on the facts plead at ¶¶ 6-15 above and elsewhere in  
20 this complaint, Plaintiff's Member Theodore A. Pinnock was denied  
21 full and equal access to Defendants' goods, services, facilities,  
22 privileges, advantages, or accommodations within a public  
23 accommodation owned, leased, and/or operated by Defendants.  
24 Defendants altered their facility in a manner that affects or  
25 could affect the usability of the facility or a part of the  
26 facility after January 26, 1992. In performing the alteration,  
27 Defendants failed to make the alteration in such a manner that, to  
28 the maximum extent feasible, the altered portions of the facility  
are readily accessible to and usable by individuals with

1 disabilities, including individuals who use wheelchairs, in  
2 violation of 42 U.S.C. §12183(a)(2).

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

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

17 23. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to  
18 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.  
19 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.  
20 Pinnock was denied equal access to Defendants' existing  
21 facilities.

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

25 24. Based on the facts plead at ¶¶ 6-15 above and elsewhere in  
26 this complaint, Plaintiff's Member was denied full and equal  
27 access to Defendants' goods, services, facilities, privileges,  
28 advantages, or accommodations within a public accommodation owned,

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

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

26 25. Based on the facts plead at ¶¶ 6-15 above and elsewhere in  
27 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 42  
4 U.S.C. § 12188(a). Thus, said Member was subjected to  
5 discrimination in violation of 42 United States Code  
6 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
7 denied equal access to Defendants' existing facilities.

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

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

28 ///

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

3 CLAIM I: Denial Of Full And Equal Access

4 28. Based on the facts plead at ¶¶ 6-15 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 29. 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 30. Based on the facts plead at ¶¶ 6-15 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 31. Based on the facts plead at ¶¶ 6-15 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 32. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and  
14 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 33. Wherefore, Plaintiffs pray for damages and relief as  
4 hereinafter stated.

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

7 34. Defendants, each of them respectively, at times prior to and  
8 including, the month of March, 2004, and continuing to the present  
9 time, knew that persons with physical disabilities were denied  
10 their rights of equal access to all portions of this public  
11 facility. Despite such knowledge, Defendants, and each of them,  
12 failed and refused to take steps to comply with the applicable  
13 access statutes; and despite knowledge of the resulting problems  
14 and denial of civil rights thereby suffered by Plaintiff's Member  
15 THEODORE A. PINNOCK and other similarly situated persons with  
16 disabilities. Defendants, and each of them, have failed and  
17 refused to take action to grant full and equal access to persons  
18 with physical disabilities in the respects complained of  
19 hereinabove. Defendants, and each of them, have carried out a  
20 course of conduct of refusing to respond to, or correct complaints  
21 about, denial of disabled access and have refused to comply with  
22 their legal obligations to make Defendants' PLAZA DONUTS  
23 facilities accessible pursuant to the Americans With Disability  
24 Act Access Guidelines (ADAAG) and Title 24 of the California Code  
25 of Regulations (also known as the California Building Code). Such  
26 actions and continuing course of conduct by Defendants, and each  
27 of them, evidence despicable conduct in conscious disregard of the  
28 rights and/or safety of Plaintiff's Member and of other similarly



1 situated persons, justifying an award of treble damages pursuant  
2 to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

24  
25 37. Wherefore, Plaintiffs pray for damages and relief as  
26 hereinafter stated.

27 ///

28 ///

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

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

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

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

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

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

19 DEMAND FOR JUDGMENT FOR RELIEF:

- 20 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
21 3281, and 3333;  
22 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for  
23 each and every offense of Civil Code § 51, Title 24 of the  
24 California Building Code, ADA, and ADA Accessibility Guidelines;  
25 C. In the alternative to the damages pursuant to Cal. Civil  
26 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to  
27 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
28

1 54.1, Title 24 of the California Building Code, ADA, and ADA  
2 Accessibility Guidelines;

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

14 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.  
15 § 12205, and Cal. Civil Code § 55;

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


18 G. A Jury Trial and;

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

20 Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

21  
22  
23 Dated: July 1, 2004

24 By:   
25 MICHELLE L. WAKEFIELD, ESQ.  
26 DAVID C. WAKEFIELD, ESQ.  
27 Attorneys for Plaintiffs  
28

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  
PLAZA DONUTS; HEANG LY CHAU d.b.a. PLAZA DONUTS;  
HEANG LY CHAU; EPSTEIN ENTERPRISES f.k.a. EPSTEIN  
INVESTMENTS; and DOES 1 THROUGH 10, Inclusive

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

FILED  
04 JUL 05 AM 10:54  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY) San Diego  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Michelle L. Wakefield, Esq. SBN: 200424  
David C. Wakefield, Esq. SBN: 185736  
Pinnock & Wakefield, 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 1342 J (RBB)

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

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

- 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)

- |   |   |   |
|---|---|---|
|   | PT/DEF  | PT/DEF  |
| Citizen of This State                   | <input type="checkbox"/> 1 <input type="checkbox"/> Incorporated or Principal Place of Business in This State       | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation  | <input type="checkbox"/> 6 <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	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplanes	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/CC Rates/etc.
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395B)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> Security Act		<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 990 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<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 July 2, 2004

SIGNATURE OF ATTORNEY OF RECORD

105144 150<sup>ec</sup> 7/6/04

*Michelle A. Wakefield*