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PINNOCK & WAKEFIELD

A Professional Corporation
Michelle L. Wakefield, Esq.
David C. Wakefield, Esq.
3033 Fifth Ave., Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671
Facsimile: (619) 858-3646

Bar # 200424
Bar # 185736

BY: *[Signature]* DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 1343 JAH (POR)

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

Case No.:

CIVIL COMPLAINT:

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

Plaintiffs,

NEGLIGENCE

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

v.

FAMILY HOUSE OF PANCAKES; THE
FAMILY HOUSE OF PANCAKES,
INC.; THE MADELINE A.
SPEZZANO TRUST; JAMES A.
SPEZZANO, TRUSTEE OF THE
MADELINE A. SPEZZANO TRUST;
JAMES A. SPEZZANO; And DOES 1
THROUGH 10, Inclusive

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

Defendants.

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

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 ///

27 **SUPPLEMENTAL JURISDICTION**

28 2. The Judicial District of the United States District Court of

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

19
20 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

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

24 Defendant FAMILY HOUSE OF PANCAKES is located at 562 Broadway,
25 Chula Vista, California, 91910. Plaintiffs are informed and
26 believe and thereon allege that Defendants THE FAMILY HOUSE OF
27 PANCAKES, INC. are the owners, operators, and/or doing business as
28 FAMILY HOUSE OF PANCAKES. Defendant THE FAMILY HOUSE OF PANCAKES,

1 INC. is located at 562 Broadway, Chula Vista, California, 91910.
2 Plaintiffs are informed and believe and thereon allege that
3 Defendants THE MADELINE A. SPEZZANO TRUST is the owner, operator,
4 and/or lessor of the property located at 562 Broadway, Chula
5 Vista, California, 91910, Assessor Parcel Number 571-050-01.
6 Defendant JAMES A. SPEZZANO, TRUSTEE OF THE MADELINE A. SPEZZANO
7 TRUST is located at 1230 Calle Canderlero, Chula Vista,
8 California, 91910. The words "Plaintiffs" and "Plaintiff's Member"
9 as used herein specifically include the organization MANTIC
10 ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and
11 persons associated with its Members who accompanied Members to
12 Defendants' facilities, as well as THEODORE A. PINNOCK, An
13 Individual.

14 4. Defendants Does 1 through 10, were at all times relevant
15 herein subsidiaries, employers, employees, agents, of FAMILY HOUSE
16 OF PANCAKES; THE FAMILY HOUSE OF PANCAKES, INC.; THE MADELINE A.
17 SPEZZANO TRUST; JAMES A. SPEZZANO, TRUSTEE OF THE MADELINE A.
18 SPEZZANO TRUST; JAMES A. SPEZZANO. Plaintiffs are ignorant of the
19 true names and capacities of Defendants sued herein as Does 1
20 through 10, inclusive, and therefore sues these Defendants by such
21 fictitious names. Plaintiffs will pray leave of the court to
22 amend this complaint to allege the true names and capacities of
23 the Does when ascertained.

24 5. Plaintiffs are informed and believe, and thereon allege, that
25 Defendants and each of them herein were, at all times relevant to
26 the action, the owner, lessor, lessee, franchiser, franchisee,
27 general partner, limited partner, agent, employee, representing
28

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

7
8 CONCISE SET OF FACTS

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

16 7. On May 28, 2004, Plaintiff's member THEODORE A. PINNOCK went
17 to Defendants' FAMILY HOUSE OF PANCAKES facilities to utilize
18 their goods and/or services. When Plaintiff's member patronized
19 Defendants' FAMILY HOUSE OF PANCAKES facilities, he was unable to
20 use and/or had difficulty using the public accommodations'
21 disabled parking, exterior path of travel, entrance, interior path
22 of travel, counter, public seating, and restroom facilities at
23 Defendants' business establishment because they failed to comply
24 with ADA Access Guidelines For Buildings and Facilities (hereafter
25 referred to as "ADAAG") and/or California's Title 24 Building Code
26 Requirements. Defendants failed to remove access barriers within
27 the disabled parking, exterior path of travel, entrance, interior
28 path of travel, counter, public seating, public pay telephone, and

1 restroom facilities of Defendants' FAMILY HOUSE OF PANCAKES
2 establishment.

3 8. Plaintiff's member personally experienced difficulty with
4 said access barriers at Defendants' FAMILY HOUSE OF PANCAKES
5 facilities. For example, the parking facility at the defendants'
6 establishment is inaccessible. There are a total of twenty-two
7 (22) parking spaces, one of which is a "van accessible" disabled
8 parking space. The existing "van accessible" disabled parking
9 space is inaccessible, as it is only fifteen feet (15') long.
10 The parking facility fails to meet the requirement that there is
11 at least one (1) "van accessible" disabled parking space that is
12 eighteen feet (18'). The one (1) entryway into to the parking lot
13 fails to have the required signage warning motorists that anyone
14 illegally parking in a disabled parking space would be towed/fined
15 or both.

16 9. The exterior path of travel fails to be accessible from the
17 parking lot to the primary accessible entrance as members of the
18 disability community are forced to traverse through vehicular
19 traffic without the benefit of a marked path of travel.

20 10. The entrance to the Defendant's establishment is
21 inaccessible. The entrance door fails to have the required smooth
22 and uninterrupted surface on the bottom ten inches (10") that
23 allows for a door to be opened with a wheelchair footrest without
24 creating a hazard. The entrance door is inaccessible, as it
25 requires thirteen pounds (13 lbs.) of pressure to operate, when
26 the amount of pressure that is required to open an outside door
27 like this one is required to be no more than eight and one half
28

1 pounds (8 ½ lbs.). The front entrance door fails to have the
2 required disability signage.

3 11. The interior path of travel fails to be accessible, as the
4 path of travel from the entrance to the restroom is only thirty
5 inches (30") wide, when it is required to be at least thirty-six
6 inches (36") wide.

7 12. The cashier counter is inaccessible, as it is forty-four
8 inches (44") high, which exceeds the maximum height requirement of
9 thirty-four inches (34").

10 13. The public seating located inside of the Defendants'
11 establishment is inaccessible. There are a total of eighty-eight
12 (88) seats inside the restaurant. Of these eighty-eight seats,
13 there are four (4) booths, each booth seating four (4) people,
14 with a knee clearance depth of only thirteen inches (13'). The
15 remaining seats all have a knee clearance depth of only ten inches
16 (10"), including one (1) "accessible" seat. It is required that
17 five percent (5%) of all seats, or at least five (5) seats in this
18 case, must have a knee clearance depth of at least nineteen inches
19 (19").

20 14. The men's restroom located in the Defendant's establishment
21 is inaccessible. The restroom area doorknob fails to be
22 accessible, as it requires tight grasping and/or twisting by the
23 wrist to operate. The clear opening width of the restroom area
24 doorway is only twenty-one inches (21") wide, when it is required
25 to be at least thirty-two inches (32") wide. The strike clearance
26 of the restroom area door is only nine inches (9"), when it is
27 required to be at least eighteen inches (18"). The space between
28

1 the restroom area door and the restroom door is only thirty-eight
2 inches (38") when the door is open, which fails to meet the
3 minimum requirement on forty-eight inches (48"). The restroom
4 door fails to have the required disability signage. The restroom
5 doorknob fails to be accessible, as it requires tight grasping
6 and/or twisting by the wrist to operate. The clear opening width
7 of the restroom doorway is only twenty-one inches (21") wide, when
8 it is required to be at least thirty-two inches (32") wide. The
9 wheelchair turnaround space inside the restroom is only fifteen
10 inches by thirty inches (15" X 30"). The required turnaround space
11 is at least sixty inches (60") in diameter. The commode fails to
12 have the required rear grab bar. The side grab bar is only
13 twenty-four inches (24") long, when it is required to be at least
14 forty-two inches (42") long. The commode is inaccessible, as it
15 is only fifteen inches (15") high, when it should be between
16 seventeen inches and nineteen inches (17"-19") high. The distance
17 from the side edge of the commode to the far wall is only fourteen
18 inches (14"), when it should be at least thirty-two inches (32").
19 The distance from the front edge of the commode to the front wall
20 is only thirty-one inches (31"), when it should be at least forty-
21 eight inches (48"). The commode seat cover dispenser is
22 inaccessible, as it is mounted at fifty-four inches (54") high,
23 when it is required to be no higher than forty inches (40") from
24 the floor surface. The flush handle on the commode is
25 inaccessible, as it is located on the narrow side, when it is
26 required to be located on the wide side of the commode. The knee
27 clearance depth of the area beneath the lavatory is only five
28

1 inches (5"), when it is required to be at least eight inches (8").
2 The height of the bottom of the mirror is fifty-five inches (55"),
3 when it is required to be no higher than forty inches (40") high.
4 The soap dispenser fails to be accessible as it is mounted at
5 forty-eight inches (48") above the floor surface, when it should
6 be no more than forty inches (40") high. The pressure that is
7 required to operate the lavatory faucet handles is eight pounds (8
8 lbs.), when it is required to be no more than five pounds (5
9 lbs.). The paper towel dispenser is inaccessible as it is mounted
10 fifty-three inches (53") high, which exceeds the maximum height
11 requirement of forty inches (40"). The restroom also fails to
12 have the required audible visual alarm system.

13 15. In addition to the violations personally experienced by
14 Plaintiff's Member THEODORE A. PINNOCK, additional violations of
15 federal and state disability laws exist at Defendants' FAMILY
16 HOUSE OF PANCAKES. For example, the public pay telephone is
17 inaccessible, as the height of the coin drop is fifty-six inches
18 (56") high, when it is required to be no more than fifty-four
19 inches (54"). The payphone also fails to have the required volume
20 control unit and signage.

21 16. Pursuant to federal and state law, Defendants are required to
22 remove barriers to their existing facilities. Further, Defendants
23 had actual knowledge of their barrier removal duties under the
24 Americans with Disabilities Act and the Civil Code before January
25 26, 1992. Also, Defendants should have known that individuals
26 with disabilities are not required to give notice to a
27 governmental agency before filing suit alleging Defendants failed
28

1 to remove architectural barriers.

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

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

26 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

27 19. FAMILY HOUSE OF PANCAKES; THE FAMILY HOUSE OF PANCAKES, INC.;

1 THE MADELINE A. SPEZZANO TRUST; JAMES A. SPEZZANO, TRUSTEE OF THE
2 MADELINE A. SPEZZANO TRUST; JAMES A. SPEZZANO; and Does 1 through
3 10 will be referred to collectively hereinafter as "Defendants."

4 20. Plaintiffs aver that the Defendants are liable for the
5 following claims as alleged below:

6 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

9 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal
10 Access

11 21. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
12 this complaint, Plaintiff's Member was denied full and equal
13 access to Defendants' goods, services, facilities, privileges,
14 advantages, or accommodations. Plaintiffs allege Defendants are a
15 public accommodation owned, leased and/or operated by Defendants.
16 Defendants' existing facilities and/or services failed to provide
17 full and equal access to Defendants' facility as required by 42
18 U.S.C. § 12182(a). 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 Plaintiff's
21 Member was denied equal access to Defendants' existing facilities.

22 22. Plaintiff's member Theodore A. Pinnock has physical
23 impairments as alleged in ¶ 6 above because his conditions affect
24 one or more of the following body systems: neurological,
25 musculoskeletal, special sense organs, and/or cardiovascular.
26 Further, Plaintiff's member Theodore A. Pinnock's said physical
27 impairments substantially limits one or more of the following
28

1 major life activities: walking. In addition, Plaintiff's member
2 Theodore A. Pinnock cannot perform one or more of the said major
3 life activities in the manner, speed, and duration when compared
4 to the average person. Moreover, Plaintiff's member Theodore A.
5 Pinnock has a history of or has been classified as having a
6 physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

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

24 24. Additionally, the Defendants undertook an alteration that
25 affects or could affect the usability of or access to an area of
26 the facility containing a primary function after January 26, 1992.
27 Defendants further failed to make the alterations in such a manner
28 that, to the maximum extent feasible, the path of travel to the
altered area and the bathrooms, telephones, and drinking fountains

1 serving the altered area, are readily accessible to and usable by
2 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

3 25. Pursuant to 42 U.S.C. §12183(a), this failure to make the
4 alterations in a manner that, to the maximum extent feasible, are
5 readily accessible to and usable by individuals with disabilities
6 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

7 Therefore, Defendants discriminated against Plaintiff's Member
8 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

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

14
15 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
16 Architectural Barriers

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

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

5 Title III requires places of public accommodation to remove
6 architectural barriers that are structural in nature to existing
7 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]

8 Failure to remove such barriers and disparate treatment against a
9 person who has a known association with a person with a disability
10 are forms of discrimination. [See 42 United States Code
11 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
12 discrimination in violation of 42 United States Code
13 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
14 denied equal access to Defendants' existing facilities.

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

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

27 29. Based on the facts plead at ¶¶ 6-18 above, Claims I, II, and
28

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

17 30. WHEREFORE, Plaintiffs pray for judgment and relief as
18 hereinafter set forth.

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

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

23 31. Based on the facts plead at ¶¶ 6-18 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 within a public accommodation owned,
27 leased, and/or operated by Defendants as required by Civil Code
28 Sections 54 and 54.1. Defendants' facility violated California's

1 Title 24 Accessible Building Code by failing to provide access to
2 Defendants' facilities due to violations pertaining to the Space
3 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
4 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
5 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
6 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
7 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
8 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
9 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
10 Telephones.

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

16 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

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

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

26 34. Based on the facts plead at ¶¶ 6-18 above and elsewhere
27 herein this complaint and because Defendants violated the Civil
28

1 Code § 51 by failing to comply with 42 United States Code §
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
3 continue to discriminate against Plaintiff's Member and persons
4 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
5 35. Based on the facts plead at ¶¶ 6-18 above, Claims I, II, and
6 III of Plaintiffs' Second Cause Of Action above, and the facts
7 elsewhere herein this complaint, Plaintiffs will suffer
8 irreparable harm unless Defendants are ordered to remove
9 architectural, non-architectural, and communication barriers at
10 Defendants' public accommodation. Plaintiffs allege that
11 Defendants' discriminatory conduct is capable of repetition, and
12 this discriminatory repetition adversely impacts Plaintiffs and a
13 substantial segment of the disability community. Plaintiffs
14 allege there is a state and national public interest in requiring
15 accessibility in places of public accommodation. Plaintiffs have
16 no adequate remedy at law to redress the discriminatory conduct of
17 Defendants. Plaintiff's Member desires to return to Defendants'
18 places of business in the immediate future. Accordingly, the
19 Plaintiffs allege that a structural or mandatory injunction is
20 necessary to enjoin compliance with state civil rights laws
21 enacted for the benefit of individuals with disabilities.
22 36. Wherefore, Plaintiffs pray for damages and relief as
23 hereinafter stated.
24

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

27 37. Defendants, each of them respectively, at times prior to and
28 including, the month of May, 2004, and continuing to the present

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

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

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

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

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

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

23 41. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
24 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
25 statutory duty to make their facility accessible and owed
26 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
27 Pinnock reasonably safe from known dangers and risks of harm.
28 This said duty arises by virtue of legal duties proscribed by

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

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

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

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

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

11 DEMAND FOR JUDGMENT FOR RELIEF:

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

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

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

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

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

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

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

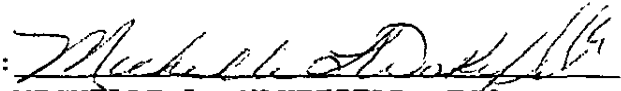
G. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: July 1, 2004

By: 
MICHELLE L. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

CIVIL COVER SHEET

(Rev. 07/89)

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

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

FAMILY HOUSE OF PANCAKES; THE FAMILY HOUSE OF PANCAKES; THE MADELINE A. SPEZZANO TRUST; JAMES A. SPEZZANO, TRUSTEE OF THE MADELINE A. SPEZZANO TRUST; JAMES A. SPEZZANO; And DOES 1 THROUGH 10, Inclusive

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 1343 JAH (POR)

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 Diversity Cases Only)

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
2 Incorporated and Principal Place of Business in Another State
3 Foreign Nation
PT DEF
4
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IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

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

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, LABOR, LABOR, LABOR, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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

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

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER 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

105146 15000 76604

Michelle Wakefield