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3:04-CV-01340 PINNOCK V. RAINBOW PRODUCE

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CHECK U.S. DISTRICT COURT
Bar # 200424
Bar #: 185736

BY:  DEPUTY

Attorneys for Plaintiffs

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.

RAINBOW PRODUCE; MARINA AREAS
LUVIANO d.b.a. RAINBOW
PRODUCE; MARINA AREAS MARINA;
THE GEORGE A. URY TRUST;
GEORGE A. URY, TRUSTEE OF THE
GEORGE A. URY TRUST; GEORGE
A. URY; And DOES 1 THROUGH
10, Inclusive

Defendants.

Case No. '04 CV 1340 BEN (NLS)

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

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

16 **JURISDICTION AND VENUE**

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

25 **SUPPLEMENTAL JURISDICTION**

26 2. The Judicial District of the United States District Court of
27 the Southern District of California has supplemental jurisdiction
28 over the state claims as alleged in this Complaint pursuant to 28

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

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 RAINBOW PRODUCE is located at 2708 Highland Avenue,
22 National City, California 91950. Plaintiffs are informed and
23 believe and thereon allege that Defendant MARINA AREAS LUVIANO is
24 the owner, operator, and/or doing business as RAINBOW PRODUCE.
25 Defendant MARINA AREAS LUVIANO is located at 2708 Highland Avenue,
26 National City, California 91950. Plaintiffs are informed and
27 believe and thereon allege that Defendant THE GEORGE A. URY TRUST
28

1 is the owner, operator, and/or lessor of the property located at
2 2708 Highland Avenue, National City, California 91950, Assessor
3 Parcel Number 562-141-16. Defendant GEORGE A. URY, TRUSTEE OF THE
4 GEORGE A. URY TRUST is located at 511 Highland Avenue, National
5 City, California 91950. The words "Plaintiffs" and "Plaintiff's
6 Member" as used herein specifically include the organization
7 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A.
8 Pinnock and persons associated with its Members who accompanied
9 Members to Defendants' facilities, as well as THEODORE A. PINNOCK,
10 An Individual.

11 4. Defendants Does 1 through 10, were at all times relevant
12 herein subsidiaries, employers, employees, agents, of RAINBOW
13 PRODUCE; MARINA AREAS LUVIANO d.b.a. RAINBOW PRODUCE; MARINA AREAS
14 MARINA; THE GEORGE A. URY TRUST; GEORGE A. URY, TRUSTEE OF THE
15 GEORGE A. URY TRUST; and GEORGE A. URY. Plaintiffs are ignorant
16 of the true names and capacities of Defendants sued herein as Does
17 1 through 10, inclusive, and therefore sues these Defendants by
18 such fictitious names. Plaintiffs will pray leave of the court to
19 amend this complaint to allege the true names and capacities of
20 the Does when ascertained.

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

27 Plaintiffs are further informed and believe, and thereon allege,
28

1 that each of the Defendants herein gave consent to, ratified,
2 and/or authorized the acts alleged herein to each of the remaining
3 Defendants.

4 CONCISE SET OF FACTS

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

12 7. On June 1, 2004, Plaintiff's member THEODORE A. PINNOCK went
13 to Defendants' RAINBOW PRODUCE facilities to utilize their goods
14 and/or services. When Plaintiff's member patronized Defendants'
15 RAINBOW PRODUCE facilities, he was unable to use and/or had
16 difficulty using the public accommodations' disabled parking,
17 exterior path of travel, entrance, interior path of travel, and
18 cashier counter facilities at Defendants' business establishment
19 because they failed to comply with ADA Access Guidelines For
20 Buildings and Facilities (hereafter referred to as "ADAAG") and/or
21 California's Title 24 Building Code Requirements. Defendants
22 failed to remove access barriers within the disabled parking,
23 exterior path of travel, entrance, interior path of travel,
24 cashier counter, public pay telephone, and restroom facilities of
25 Defendants' RAINBOW PRODUCE establishment.

26
27 8. Plaintiff's member personally experienced difficulty with
28 said access barriers at Defendants' RAINBOW PRODUCE facilities.

1 For example, the parking facility of Defendants' establishment is
2 inaccessible. The entryway into the parking lot fails to have the
3 required signage warning motorists that anyone illegally parking
4 in a disabled parking space would be towed/fined or both. The
5 parking facility has a total of five (5) parking spaces, none of
6 which are a disabled parking space. It is required that there is
7 at least One (1) "van accessible" disabled parking space.

8
9 9. The exterior path of travel of the Defendants' establishment
10 is inaccessible. The path of travel from the parking lot and the
11 public sidewalk to the entrance is rough, uneven and has changes
12 in level that are more than one inch (1"). It is required that
13 this exterior path of travel's surface is smooth and slip
14 resistant. Changes in level greater than one half of an inch
15 (1/2") must be ramped.

16 10. The entrance to the Defendants establishment is inaccessible,
17 as the height of the threshold at the front entrance door is an
18 impermissible two inches (2"). Changes in level greater than one
19 half of an inch (1/2") are required to have a ramp. The entrance
20 door fails to have the required smooth and uninterrupted surface
21 on the bottom ten inches (10") of the door that allows the door to
22 be opened with a wheelchair footrest without creating a hazard.
23 The front entrance door also fails to have the required disability
24 signage.

25 11. The interior path of travel is inaccessible, as the interior
26 path of travel is only twenty-four inches (24") wide. The
27 interior path of travel is required to be at least thirty-six
28 (36") wide. The path of travel from the front entrance door to

1 the restroom is as narrow as twenty inches (20"), when it is
2 required to be no less than thirty-six inches (36") wide.

3 12. The cashier counter inside the Defendants' establishment is
4 inaccessible, as it is forty-two inches (42") high, when the
5 maximum height requirement is thirty-four inches (34").

6 13. In addition to the violations personally experienced by
7 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
8 violations of federal and state disability laws exist at
9 Defendants' RAINBOW PRODUCE. For example, the public pay
10 telephone is inaccessible, as it fails to have the required volume
11 control unit and disability signage.

12 14. The unisex restroom located inside the defendants'
13 establishment is inaccessible. The restroom area doorknob is
14 inaccessible, as it requires tight grasping and/or twisting of the
15 wrist to operate. The restroom door fails to have the required
16 disability signage. The unisex restroom doorknob is inaccessible,
17 as it requires tight grasping and/or twisting of the wrist to
18 operate. The clear opening width of the unisex restroom doorway
19 is only twenty-one inches (21"), when it is required to be at
20 least thirty-two inches (32"). The small round locking mechanism
21 on the unisex restroom door is inaccessible, as it requires tight
22 grasping and/or twisting of the wrist to operate. The wheelchair
23 turn around space in the unisex restroom is only thirty inches by
24 forty inches (30"X 40"), when it is required to be at least sixty
25 inches (60") in diameter. The commode fails to have any of the
26 required grab bars. The height of the commode is only fifteen
27 inches (15"), when it is required to be between seventeen inches
28

1 and nineteen inches (17" - 19") high. The distance from the side
2 edge of the commode to the far wall is a mere five inches (5"),
3 when it is required to be at least thirty-two inches (32"). The
4 distance from the front edge of the commode to the front wall is
5 only thirty inches (30"), when it is required to be at least
6 forty-eight inches (48"). The distance from the centerline of the
7 commode to the near wall is only twelve inches (12"), when it is
8 required to be at least eighteen inches (18"). The toilet paper
9 dispenser is inaccessible, as it is located thirty inches (30")
10 from the front edge of the commode, when it is required to be
11 mounted no further than twelve inches (12"). The distance from
12 the centerline of the lavatory to the adjacent wall is only eleven
13 inches (11"), when it is required to be at least eighteen inches
14 (18"). The knee clearance depth of the area beneath the lavatory
15 is only five inches (5"), when it is required to be at least eight
16 inches (8"). The lavatory faucet handles are inaccessible, as
17 they require tight grasping and/or twisting of the wrist to
18 operate. The paper towel dispenser is inaccessible, as it is
19 mounted at sixty-five inches (65") high, when it is required to be
20 mounted no higher than forty inches (40") from the floor surface.
21 The restroom fails to have the required audible and visual alarm
22 system.

23
24 15. Pursuant to federal and state law, Defendants are required to
25 remove barriers to their existing facilities. Further, Defendants
26 had actual knowledge of their barrier removal duties under the
27 Americans with Disabilities Act and the Civil Code before January
28 26, 1992. Also, Defendants should have known that individuals

1 with disabilities are not required to give notice to a
2 governmental agency before filing suit alleging Defendants failed
3 to remove architectural barriers.

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

20 17. Based on these facts, Plaintiffs allege Plaintiff's Member
21 and Plaintiff Theodore A. Pinnock was discriminated against each
22 time he patronized Defendants' establishments. Plaintiff's Member
23 and Plaintiff Theodore A. Pinnock was extremely upset due to
24 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
25 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
26 shoulders and wrists when he attempted to enter, use, and exit
27 Defendants' RAINBOW PRODUCE establishment.
28

1 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

2
3 18. RAINBOW PRODUCE; MARINA AREAS LUVIANO d.b.a. RAINBOW PRODUCE;
4 MARINA AREAS MARINA; THE GEORGE A. URY TRUST; GEORGE A. URY,
5 TRUSTEE OF THE GEORGE A. URY TRUST; GEORGE A. URY; and Does 1
6 through 10 will be referred to collectively hereinafter as
7 "Defendants."

8 19. Plaintiffs aver that the Defendants are liable for the
9 following claims as alleged below:

10 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

13 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal
14 Access

15 20. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
16 this complaint, Plaintiff's Member was denied full and equal
17 access to Defendants' goods, services, facilities, privileges,
18 advantages, or accommodations. Plaintiffs allege Defendants are a
19 public accommodation owned, leased and/or operated by Defendants.
20 Defendants' existing facilities and/or services failed to provide
21 full and equal access to Defendants' facility as required by 42
22 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
23 discrimination in violation of 42 United States Code
24 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
25 Member was denied equal access to Defendants' existing facilities.

26 21. Plaintiff's member Theodore A. Pinnock has physical
27 impairments as alleged in ¶ 6 above because his conditions affect
28 one or more of the following body systems: neurological,

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

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

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

26 23. Additionally, the Defendants undertook an alteration that
27 affects or could affect the usability of or access to an area of
28 the facility containing a primary function after January 26, 1992.

1 Defendants further failed to make the alterations in such a manner
2 that, to the maximum extent feasible, the path of travel to the
3 altered area and the bathrooms, telephones, and drinking fountains
4 serving the altered area, are readily accessible to and usable by
5 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

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

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

12 25. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
13 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
14 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
15 Pinnock was denied equal access to Defendants' existing
16 facilities.

17
18 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
19 Architectural Barriers

20 26. Based on the facts plead at ¶¶ 6-17 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 within a public accommodation owned,
24 leased, and/or operated by Defendants. Defendants failed to
25 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
26 are informed, believe, and thus allege that architectural barriers
27 which are structural in nature exist within the following physical
28 elements of Defendants' facilities: Space Allowance and Reach

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

8 Title III requires places of public accommodation to remove
9 architectural barriers that are structural in nature to existing
10 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
11 Failure to remove such barriers and disparate treatment against a
12 person who has a known association with a person with a disability
13 are forms of discrimination. [See 42 United States Code
14 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
15 discrimination in violation of 42 United States Code
16 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
17 denied equal access to Defendants' existing facilities.

18
19 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,**
20 **Policies And Procedures**

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

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

20
21 29. WHEREFORE, Plaintiffs pray for judgment and relief as
22 hereinafter set forth.

23 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
24 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

20 32. Based on the facts plead at ¶¶ 6-17 above and elsewhere
21 herein this complaint, Defendants failed and refused to provide a
22 reasonable alternative by modifying its practices, policies, and
23 procedures in that they failed to have a scheme, plan, or design
24 to assist Plaintiff's Member and/or others similarly situated in
25 entering and utilizing Defendants' services as required by Civil
26 Code § 54.1. Thus, said Member was subjected to discrimination in
27 violation of Civil Code § 54.1.
28

1 CLAIM III: Violation Of The Unruh Act

2 33. Based on the facts plead at ¶¶ 6-17 above and elsewhere
3 herein this complaint and because Defendants violated the Civil
4 Code § 51 by failing to comply with 42 United States Code §
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
6 continue to discriminate against Plaintiff's Member and persons
7 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

8 34. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
9 III of Plaintiffs' Second 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 state and 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 state civil rights laws
24 enacted for the benefit of individuals with disabilities.

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

27
28 ///

1 Treble Damages Pursuant To Claims I, II, III Under The California
2 Accessibility Laws

3 36. Defendants, each of them respectively, at times prior to and
4 including, the month of June, 2004, and continuing to the present
5 time, knew that persons with physical disabilities were denied
6 their rights of equal access to all portions of this public
7 facility. Despite such knowledge, Defendants, and each of them,
8 failed and refused to take steps to comply with the applicable
9 access statutes; and despite knowledge of the resulting problems
10 and denial of civil rights thereby suffered by Plaintiff's Member
11 THEODORE A. PINNOCK and other similarly situated persons with
12 disabilities. Defendants, and each of them, have failed and
13 refused to take action to grant full and equal access to persons
14 with physical disabilities in the respects complained of
15 hereinabove. Defendants, and each of them, have carried out a
16 course of conduct of refusing to respond to, or correct complaints
17 about, denial of disabled access and have refused to comply with
18 their legal obligations to make Defendants' RAINBOW PRODUCE
19 facilities accessible pursuant to the Americans With Disability
20 Act Access Guidelines (ADAAG) and Title 24 of the California Code
21 of Regulations (also known as the California Building Code). Such
22 actions and continuing course of conduct by Defendants, and each
23 of them, evidence despicable conduct in conscious disregard of the
24 rights and/or safety of Plaintiff's Member and of other similarly
25 situated persons, justifying an award of treble damages pursuant
26 to sections 52(a) and 54.3(a) of the California Civil Code.

27 37. Defendants', and each of their, actions have also been
28 oppressive to persons with physical disabilities and of other

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

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

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

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

25 40. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
26 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
27 statutory duty to make their facility accessible and owed
28 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.

1 Pinnock reasonably safe from known dangers and risks of harm.
2 This said duty arises by virtue of legal duties proscribed by
3 various federal and state statutes including, but not limited to,
4 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
5 California Administrative Code and applicable 1982 Uniform
6 Building Code standards as amended.

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

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

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

11 43. Wherefore, Plaintiffs pray for damages and relief as
12 hereinafter stated.

13 DEMAND FOR JUDGMENT FOR RELIEF:

14 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
15 3281, and 3333;

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

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


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

- 1 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
- 2 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
- 3 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
- 4 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
- 5 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
- 6 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
- 7 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
- 8 § 12205, and Cal. Civil Code § 55;
- 9 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
- 10 and 54.3(a);
- 11 G. A Jury Trial and;
- 12 H. For such other further relief as the court deems proper.

13 Respectfully submitted:

14 PINNOCK & WAKEFIELD, A.P.C.

15
16 Dated: July 2, 2004

17 By: 
18 MICHELLE L. WAKEFIELD, ESQ.
19 DAVID C. WAKEFIELD, ESQ.
20 Attorneys for Plaintiffs
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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 filing 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

RAINBOW PRODUCE; MARINA AREAS LUVIANO d.b.a. RAINBOW PRODUCE; MARINA AREAS MARINA; THE GEORGE A. URY TRUST; GEORGE A. URY, TRUSTEE OF THE GEORGE A. URY TRUST; GEORGE A. URY; And DOES 1 THROUGH 10, Inclusive

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

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

NOTE: IN LAND CONDEMNATION CASES, USE THE REPORT 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)

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
5
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 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SECURITY ACT, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like 110 Insurance, 310 Airplane, 362 Personal Injury, etc.

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

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

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

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

JUDGE

Docket Number

DATE July 2, 2004

SIGNATURE OF ATTORNEY OF RECORD

105142

15000

7/6/04

Signature of Michelle L. Wakefield