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3:04-CV-01459 PINNOCK V. ADAMS AVENUE GRILL

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

BY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

04-01459 J

(NLS)

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

Plaintiffs,

v.

ADAMS AVENUE GRILL; WINE
ADVENTURES, INC. d.b.a. ADAMS
AVENUE GRILL; WINE
ADVENTURES, INC.; SILAS SHIH;
LIEN SHIH; 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
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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 ADAMS AVENUE GRILL is located at 2201 Adams Avenue, San
22 Diego, California 92116. Plaintiffs are informed and believe and
23 thereon allege that Defendant WINE ADVENTURES, INC. is the owner,
24 operator, and/or doing business as ADAMS AVENUE GRILL. Defendant
25 WINE ADVENTURES, INC. is located at 2201 Adams Avenue, San Diego,
26 California 92116. Plaintiffs are informed and believe and thereon
27 allege that Defendants SILAS SHIH and LIEN SHIH are the owners,
28 operators, and/or lessors of the property located at 2201 Adams

1 Avenue, San Diego, California 92116, Assessor Parcel Number 445-
2 062-02. Defendants SILAS SHIH and LIEN SHIH are located at 2830
3 Chicago Street, San Diego, California 92117. The words
4 "Plaintiffs" and "Plaintiff's Member" as used herein specifically
5 include the organization MANTIC ASHANTI'S CAUSE, its Members, its
6 member Theodore A. Pinnock and persons associated with its Members
7 who accompanied Members to Defendants' facilities, as well as
8 THEODORE A. PINNOCK, An Individual.

9 4. Defendants Does 1 through 10, were at all times relevant
10 herein subsidiaries, employers, employees, agents, of ADAMS AVENUE
11 GRILL; WINE ADVENTURES, INC. d.b.a. ADAMS AVENUE GRILL; WINE
12 ADVENTURES, INC.; SILAS SHIH; and LIEN SHIH. Plaintiffs are
13 ignorant of the true names and capacities of Defendants sued
14 herein as Does 1 through 10, inclusive, and therefore sues these
15 Defendants by such fictitious names. Plaintiffs will pray leave
16 of the court to amend this complaint to allege the true names and
17 capacities of the Does when ascertained.

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

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

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

7. On June 8, 2004, Plaintiff's member THEODORE A. PINNOCK went to Defendants' ADAMS AVENUE GRILL facilities to utilize their goods and/or services. When Plaintiff's member patronized Defendants' ADAMS AVENUE GRILL facilities, he was unable to use and/or had difficulty using the public accommodations' disabled parking, exterior path of travel, entrance, interior path of travel, public seating, counter, and restroom facilities at Defendants' business establishment because they failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants failed to remove access barriers within the disabled parking, exterior path of travel, entrance, interior path of travel, public seating, counter, public pay telephone, and restroom facilities of Defendants' ADAMS AVENUE GRILL establishment.

8. Plaintiff's member personally experienced difficulty with said access barriers at Defendants' ADAMS AVENUE GRILL facilities. For example, the parking facility of Defendants' establishment is inaccessible. The entryway into the parking lot fails to have the

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

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

11 10. The entrance to the Defendants establishment is inaccessible,
12 as the front entrance door fails to have the required level
13 landing. It is required that there is at least five feet by five
14 feet of flat surface in front of every entrance door. The
15 pressure that is required to open the entrance door is eleven
16 pounds (11 lbs.), when it is required to be no more than eight and
17 one half pounds (8 ½ lbs.). The front entrance door also fails to
18 have the required disability signage.

19 11. The interior path of travel is inaccessible, as the interior
20 path of travel is only twenty-eight inches (28") wide. The
21 interior path of travel is required to be at least thirty-six
22 (36") wide.

23 12. The public seating located inside the Defendants'
24 establishment is inaccessible, as there are a total of
25 approximately sixty (6) seats, all with a knee clearance depth of
26 only five inches to eight inches (5"- 8"). It is required that
27 five percent (5%) of all seats must have a knee clearance depth of
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1 at least nineteen inches (19").

2 13. The front counter located inside that Defendants'
3 establishment is inaccessible, as it is forty inches (40") high,
4 when it is required to be no higher than thirty-four inches (34").

5 14. The men's restroom located inside the Defendants'
6 establishment is inaccessible. The pressure that is required to
7 open the restroom door is an impermissible thirteen pounds (13
8 lbs.), when it is required to be no more than five pounds (5 lbs.)
9 of pressure. The round locking mechanism on the restroom door is
10 inaccessible, as it requires tight grasping and/or twisting of the
11 wrist to operate. The length of the side grab bar of the commode
12 is only thirty-six inches (36"), when it is required to be at
13 least forty-two inches (42") long and extend a minimum of twenty-
14 four inches (24") beyond the front edge of the commode. The
15 distance from the front edge of the commode to the front wall is
16 only forty-two inches (42"), when it is required to be at least
17 forty-eight inches (48"). The commode seat cover dispenser is
18 inaccessible, as it is mounted fifty-three inches (53") high, when
19 it is required to be no higher than forty inches (40"). The coat
20 hook is mounted at sixty-five inches (65") high, when it is
21 required to be no higher than forty-eight inches (48") high. The
22 paper towel dispenser is inaccessible, as it is mounted at an
23 impermissible fifty-eight inches (58") high, when it is required
24 to be mounted no higher than forty inches (40") high. The round
25 lavatory faucet handles are inaccessible, as they require tight
26 grasping and/or twisting of the wrist to operate. The soap
27 dispenser is mounted at forty-three inches (43") high, when it is
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1 required to be mounted no higher than forty inches (40") high.
2 The height of the bottom of the mirror is mounted at fifty-eight
3 inches (58"), when it is required to be mounted no higher than
4 forty inches (40") from the floor surface. The restroom fails to
5 have the required audible and visual alarm system.

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

12 16. Pursuant to federal and state law, Defendants are required to
13 remove barriers to their existing facilities. Further, Defendants
14 had actual knowledge of their barrier removal duties under the
15 Americans with Disabilities Act and the Civil Code before January
16 26, 1992. Also, Defendants should have known that individuals
17 with disabilities are not required to give notice to a
18 governmental agency before filing suit alleging Defendants failed
19 to remove architectural barriers.

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

9 18. Based on these facts, Plaintiffs allege Plaintiff's Member
 10 and Plaintiff Theodore A. Pinnock was discriminated against each
 11 time he patronized Defendants' establishments. Plaintiff's Member
 12 and Plaintiff Theodore A. Pinnock was extremely upset due to
 13 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
 14 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
 15 shoulders and wrists when he attempted to enter, use, and exit
 16 Defendants' ADAMS AVENUE GRILL establishment.

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

18 19. ADAMS AVENUE GRILL; WINE ADVENTURES, INC. d.b.a. ADAMS AVENUE
 19 GRILL; WINE ADVENTURES, INC.; SILAS SHIH; LIEN SHIH; and Does 1
 20 through 10 will be referred to collectively hereinafter as
 21 "Defendants."

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

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DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

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

22. Plaintiff's member Theodore A. Pinnock has physical impairments as alleged in ¶ 6 above because his conditions affect one or more of the following body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further, Plaintiff's member Theodore A. Pinnock's said physical impairments substantially limits one or more of the following major life activities: walking. In addition, Plaintiff's member Theodore A. Pinnock cannot perform one or more of the said major life activities in the manner, speed, and duration when compared to the average person. Moreover, Plaintiff's member Theodore A. Pinnock has a history of or has been classified as having a

1 physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

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

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

26 25. Pursuant to 42 U.S.C. §12183(a), this failure to make the
27 alterations in a manner that, to the maximum extent feasible, are
28 readily accessible to and usable by individuals with disabilities

1 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
2 Therefore, Defendants discriminated against Plaintiff's Member
3 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

4 26. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
5 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
6 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
7 Pinnock was denied equal access to Defendants' existing
8 facilities.

9
10 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove**
Architectural Barriers

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

10 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
11 Policies And Procedures

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

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

12 30. WHEREFORE, Plaintiffs pray for judgment and relief as
13 hereinafter set forth.

14
15 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
16 **CALIFORNIA ACCESSIBILITY LAWS**

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

18 31. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
19 this complaint, Plaintiff's Member was denied full and equal
20 access to Defendants' goods, services, facilities, privileges,
21 advantages, or accommodations within a public accommodation owned,
22 leased, and/or operated by Defendants as required by Civil Code
23 Sections 54 and 54.1. Defendants' facility violated California's
24 Title 24 Accessible Building Code by failing to provide access to
25 Defendants' facilities due to violations pertaining to the Space
26 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
27 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
28 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair

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

6 32. These violations denied Plaintiff's Member full and equal
7 access to Defendants' facility. Thus, said Member was subjected
8 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
9 because Plaintiff's Member was denied full, equal and safe access
10 to Defendants' facility, causing severe emotional distress.

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

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

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

21 34. Based on the facts plead at ¶¶ 6-18 above and elsewhere
22 herein this complaint and because Defendants violated the Civil
23 Code § 51 by failing to comply with 42 United States Code §
24 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
25 continue to discriminate against Plaintiff's Member and persons
26 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

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

19 **Treble Damages Pursuant To Claims I, II, III Under The California**
20 **Accessibility Laws**

21 37. Defendants, each of them respectively, at times prior to and
22 including, the month of June, 2004, and continuing to the present
23 time, knew that persons with physical disabilities were denied
24 their rights of equal access to all portions of this public
25 facility. Despite such knowledge, Defendants, and each of them,
26 failed and refused to take steps to comply with the applicable
27 access statutes; and despite knowledge of the resulting problems
28 and denial of civil rights thereby suffered by Plaintiff's Member

1 THEODORE A. PINNOCK and other similarly situated persons with
2 disabilities. Defendants, and each of them, have failed and
3 refused to take action to grant full and equal access to persons
4 with physical disabilities in the respects complained of
5 hereinabove. Defendants, and each of them, have carried out a
6 course of conduct of refusing to respond to, or correct complaints
7 about, denial of disabled access and have refused to comply with
8 their legal obligations to make Defendants' ADAMS AVENUE GRILL
9 facilities accessible pursuant to the Americans With Disability
10 Act Access Guidelines (ADAAG) and Title 24 of the California Code
11 of Regulations (also known as the California Building Code). Such
12 actions and continuing course of conduct by Defendants, and each
13 of them, evidence despicable conduct in conscious disregard of the
14 rights and/or safety of Plaintiff's Member and of other similarly
15 situated persons, justifying an award of treble damages pursuant
16 to sections 52(a) and 54.3(a) of the California Civil Code.
17 38. Defendants', and each of their, actions have also been
18 oppressive to persons with physical disabilities and of other
19 members of the public, and have evidenced actual or implied
20 malicious intent toward those members of the public, such as
21 Plaintiff's Member and other persons with physical disabilities
22 who have been denied the proper access to which they are entitled
23 by law. Further, Defendants', and each of their, refusals on a
24 day-to-day basis to correct these problems evidence despicable
25 conduct in conscious disregard for the rights of Plaintiff's
26 Member THEODORE A. PINNOCK and other members of the public with
27 physical disabilities.
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1 39. Plaintiffs pray for an award of treble damages against
2 Defendants, and each of them, pursuant to California Civil Code
3 sections 52(a) and 54.3(a), in an amount sufficient to make a more
4 profound example of Defendants and encourage owners, lessors, and
5 operators of other public facilities from willful disregard of the
6 rights of persons with disabilities. Plaintiffs do not know the
7 financial worth of Defendants, or the amount of damages sufficient
8 to accomplish the public purposes of section 52(a) of the
9 California Civil Code and section 54.3 of the California Civil
10 Code.

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

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

15 41. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
16 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
17 statutory duty to make their facility accessible and owed
18 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
19 Pinnock reasonably safe from known dangers and risks of harm.
20 This said duty arises by virtue of legal duties proscribed by
21 various federal and state statutes including, but not limited to,
22 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
23 California Administrative Code and applicable 1982 Uniform
24 Building Code standards as amended.

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

6 43. Therefore, Defendants engaged in discriminatory conduct in
7 that they failed to comply with known duties under the ADA, ADAAG,
8 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
9 or should have known that their acts of nonfeasance would cause
10 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
11 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
12 bodily injury in this matter because when Plaintiff THEODORE A.
13 PINNOCK attempted to enter, use, and exit Defendants'
14 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
15 his legs, back, arms, shoulders, and wrists. Plaintiffs further
16 allege that such conduct was done in reckless disregard of the
17 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
18 to suffer bodily or personal injury, anger, embarrassment,
19 depression, anxiety, mortification, humiliation, distress, and
20 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
21 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
22 An Individual, to suffer the injuries of mental and emotional
23 distress, including, but not limited to, anger, embarrassment,
24 depression, anxiety, mortification, humiliation, distress, and
25 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
26 Individual, additionally alleges that such conduct caused THEODORE
27 A. PINNOCK, An Individual, to suffer damages as a result of these
28

1 injuries.

2 44. Wherefore, Plaintiffs pray for damages and relief as
3 hereinafter stated.

4 DEMAND FOR JUDGMENT FOR RELIEF:

5 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
6 3281, and 3333;

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

10 C. In the alternative to the damages pursuant to Cal. Civil
11 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
12 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
13 54.1, Title 24 of the California Building Code, ADA, and ADA
14 Accessibility Guidelines;

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

26 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
27 § 12205, and Cal. Civil Code § 55;

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

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and 54.3(a);

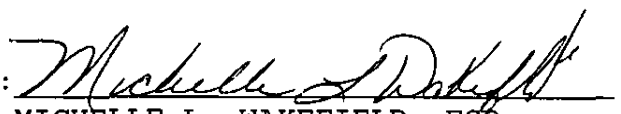
G. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: July 15, 2004

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

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 ADAMS AVENUE GRILL, WINE ADVENTURES, INC. d.b.a. ADAMS AVENUE GRILL; WINE ADVENTURES, INC.; SILAS SHIH; LIEN SHIH; And THROUGH 10, Inclusive

04 JUL 20 04 PM 4:00
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (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 1459 J (NLS)

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

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

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

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions		

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

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

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER fr.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 20, 2004

SIGNATURE OF ATTORNEY OF RECORD

105633 7/21/04 1500

Michelle L. Wakefield