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3:04-CV-02206 PINNOCK V. POINSETTIA VILLAGE

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CMP.

1 **PINNOCK & WAKEFIELD**

2 A Professional Corporation
3 David C. Wakefield, Esq.
4 Michelle L. Wakefield, Esq.
5 3033 Fifth Ave., Suite 410
6 San Diego, CA 92103
7 Telephone: (619) 858-3671
8 Facsimile: (619) 858-3646

Bar #: 185736
Bar #: 200424

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



DEPUTY

Attorneys for Plaintiffs

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

15 **POINSETTIA VILLAGE SHOPPING**
16 **CENTER; PELLY'S FISH MARKET &**
17 **DELI; PELLY'S FISH MARKET &**
18 **DELI, INC.; SUBWAY SANDWICHES**
19 **& SALADS a.k.a. SUBWAY; MANOS**
20 **NANCY d.b.a. SUBWAY**
21 **SANDWICHES & SALADS a.k.a.**
22 **SUBWAY; CHRISTENSEN &**
23 **CHRISTENSEN, INC. d.b.a. SUBWAY**
24 **a.k.a. SUBWAY SANDWICHES &**
25 **SALADS; PRIMO PIZZA & PASTA;**
26 **SABAH B. BANNA d.b.a. PRIMO**
27 **PIZZA & PASTA; ILHAM N. BANNA**
28 **d.b.a. PRIMO PIZZA & PASTA; THE**
UPS STORE # 4460; SHONUF, INC.
d.b.a. THE UPS STORE # 4460; EL
POLLO LOCO #3423; R & L
ALVAREZ-MALO, INC. d.b.a. EL
POLLO LOCO #3423; NAIL DESIGN;
NGUYEN TUANH d.b.a. NAIL
DESIGN; POINSETTIA VISION
CENTER; JEFFREY ANSHEL d.b.a.
POINSETTIA VISION CENTER;
ROBERT E. BRUCE TRUST DATED
04-29-95; ROBERT E. BRUCE,
TRUSTEE OF THE ROBERT E.
BRUCE TRUST DATED 04-29-95;
ROBERT E. BRUCE; PHYLLIS A.
BRUCE TRUST DATED 04-29-95;

Case No. 04 CV 2206 JM (AJB)

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]

1 **PHYLLIS A. BRUCE, TRUSTEE OF**
2 **THE PHYLLIS A. BRUCE TRUST**
3 **DATED 04-29-95; PHYLLIS A.**
4 **BRUCE; DONAHUE SCHRIBER**
5 **REALTY GROUP, L.P.; DONAHUE**
6 **SCHRIBER REALTY GROUP, INC., A**
7 **General Partner of DONAHUE**
8 **SCHRIBER REALTY GROUP, L.P.;**
9 **and DOES 1 THROUGH 10, Inclusive**
10 **Defendants.**

11 **INTRODUCTION**

12 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE A.
13 PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual, herein
14 complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil
15 Procedure in the Judicial District of the United States District Court of the Southern District of
16 California, that Defendants have in the past, and presently are, engaging in discriminatory practices
17 against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs
18 allege this civil action and others substantial similar thereto are necessary to compel access
19 compliance because empirical research on the effectiveness of Title III of the Americans with
20 Disabilities Act indicates this Title has failed to achieve full and equal access simply by the
21 executive branch of the Federal Government funding and promoting voluntary compliance efforts.
22 Further, empirical research shows when individuals with disabilities give actual notice of potential
23 access problems to places of public accommodation without a federal civil rights action, the public
24 accommodations do not remove the access barriers. Therefore, Plaintiffs make the following
25 allegations in this federal civil rights action:

26 **JURISDICTION AND VENUE**

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

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SUPPLEMENTAL JURISDICTION

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

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NAMED DEFENDANTS AND NAMED PLAINTIFFS

3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Defendant POINSETTIA VILLAGE SHOPPING CENTER is a shopping center which includes the following addresses: 7110-30 Avenida Encinas, Carlsbad, California 92009; 7120 Avenida Encinas, Carlsbad, California 92009; and 7030-40 Avenida Encinas, Carlsbad, California 92009. Defendants PELLY'S FISH MARKET & DELI; SUBWAY SANDWICHES & SALADS a.k.a. SUBWAY; PRIMO PIZZA & PASTA; THE UPS STORE # 4460; EL POLLO LOCO #3423; NAIL DESIGN; and POINSETTIA VISION CENTER are all located in the shopping center known as POINSETTIA VILLAGE SHOPPING CENTER. Defendant PELLY'S FISH MARKET & DELI is located at 7110 Avenida Encinas #101, Carlsbad, California 92009. Plaintiffs are informed and believe and thereon allege that Defendant PELLY'S FISH MARKET & DELI, INC. is the owner, operator, and/or doing business as PELLY'S FISH MARKET & DELI. Defendant

1 PELLY'S FISH MARKET & DELI, INC. is located at 7110 Avenida Encinas #101, Carlsbad,
2 California 92009. Defendant SUBWAY SANDWICHES & SALADS a.k.a. SUBWAY is located
3 at 7110 Avenida Encinas #100, Carlsbad, California 92009. Plaintiffs are informed and believe
4 and thereon allege that Defendants NANCY MANOS and/or CHRISTENSEN & CHRISTENSEN,
5 INC. are the owners, operators, and/or doing business as SUBWAY SANDWICHES & SALADS
6 a.k.a. SUBWAY. Defendant NANCY MANOS is located at 7211 Wisteria Way, Carlsbad,
7 California 92009. Defendant CHRISTENSEN & CHRISTENSEN, INC. is located at 2094 Vintage
8 Place, Escondido, California 92027. Defendant PRIMO PIZZA & PASTA is located at 7110
9 Avenida Encinas #103, Carlsbad, California 92009. Plaintiffs are informed and believe and
10 thereon allege that Defendants SABAH B. BANNA and/or ILHAM N. BANNA are the owners,
11 operators, and/or doing business as PRIMO PIZZA & PASTA. Defendants SABAH B. BANNA
12 and ILHAM N. BANNA are located at 1238 Mariposa Road, Carlsbad, California 92009. Plaintiffs
13 are informed and believe and thereon allege that Defendant DONAHUE SCHRIBER REALTY
14 GROUP, L.P. is the owner, operator, and/or lessor of the property located at 7110-30 Avenida
15 Encinas, Carlsbad, California 92009, Assessor Parcel Number 214-430-16. Defendant DONAHUE
16 SCHRIBER REALTY GROUP, L.P. is located at 200 East Baker Street, Suite 100, Costa Mesa,
17 California 92626. Defendant THE UPS STORE # 4460 is located at 7040 Avenida Encinas,
18 Carlsbad, California 92009. Plaintiffs are informed and believe and thereon allege that Defendant
19 SHONUF, INC. is the owner, operator, and/or doing business as THE UPS STORE # 4460.
20 Defendant SHONUF, INC. is located at 26811 Ashford, Mission Viejo, California 92692.
21 Plaintiffs are informed and believe and thereon allege that Defendant DONAHUE SCHRIBER
22 REALTY GROUP, L.P. is also the owner, operator, and/or lessor of the property located at 7030-
23 40 Avenida Encinas, Carlsbad, California 92009, Assessor Parcel Number 214-430-14. Defendant
24 DONAHUE SCHRIBER REALTY GROUP, L.P. is located at 200 East Baker Street, Suite 100,
25 Costa Mesa, California 92626. Plaintiffs are informed and believe and thereon allege that
26 Defendant DONAHUE SCHRIBER REALTY GROUP, INC. is a General Partner of DONAHUE
27 SCHRIBER REALTY GROUP, L.P. Defendant DONAHUE SCHRIBER REALTY GROUP,
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1 INC. is located at 200 East Baker Street, Suite 100, Costa Mesa, California 92626. Defendant EL
2 POLLO LOCO #3423 is located at 7120 Avenida Encinas, Carlsbad, California, 92009. Plaintiffs
3 are informed and believe and thereon allege that Defendant R & L ALVAREZ-MALO, INC. is the
4 owner, operator, and/or doing business as EL POLLO LOCO #3423. Defendant R & L
5 ALVAREZ-MALO, INC. is located at 5415 El Cajon Boulevard, San Diego, California, 92115.
6 Defendant NAIL DESIGN is located at 7130 Avenida Encinas, Carlsbad, California, 92009.
7 Plaintiffs are informed and believe and thereon allege that Defendant NGUYEN TUANH is the
8 owner, operator, and/or doing business as NAIL DESIGN. Defendant NGUYEN TUANH is
9 located at 8790 Donaker Street, San Diego, California, 92129. Defendant POINSETTIA VISION
10 CENTER is located at 7130 Avenida Encinas #103, Carlsbad, California, 92009. Plaintiffs are
11 informed and believe and thereon allege that Defendant JEFFREY ANSHEL is the owner,
12 operator, and/or doing business as POINSETTIA VISION CENTER. Defendant JEFFREY
13 ANSHEL is located at 842 Arden Drive, Encinitas, California 92024. Plaintiffs are informed and
14 believe and thereon allege that Defendants ROBERT E. BRUCE TRUST DATED 04-29-95 and
15 PHYLLIS A. BRUCE TRUST DATED 04-29-95 are the owners, operators, and/or lessor of the
16 property located at 7120 Avenida Encinas, Carlsbad, California 92009, Assessor Parcel Number
17 214-430-25. Defendant ROBERT E. BRUCE, TRUSTEE OF THE ROBERT E. BRUCE TRUST
18 DATED 04-29-95 is located at 6272 Silverwood Drive, Huntington Beach, California 92647. The
19 words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization
20 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and persons
21 associated with its Members who accompanied Members to Defendants' facilities, as well as
22 THEODORE A. PINNOCK, An Individual.

23 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
24 employees, agents, of POINSETTIA VILLAGE SHOPPING CENTER; PELLY'S FISH MARKET
25 & DELI; PELLY'S FISH MARKET & DELI, INC.; SUBWAY SANDWICHES & SALADS a.k.a.
26 SUBWAY; MANOS NANCY d.b.a. SUBWAY SANDWICHES & SALADS a.k.a. SUBWAY;
27 CHRISTENSEN & CHRISTENSEN, INC. d.b.a. SUBWAY a.k.a. SUBWAY SANDWICHES &
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1 SALADS; PRIMO PIZZA & PASTA; SABAH B. BANNA d.b.a. PRIMO PIZZA & PASTA;
2 ILHAM N. BANNA d.b.a. PRIMO PIZZA & PASTA; THE UPS STORE # 4460; SHONUF, INC.
3 d.b.a. THE UPS STORE # 4460; EL POLLO LOCO #3423; R & L ALVAREZ-MALO, INC. d.b.a.
4 EL POLLO LOCO #3423; NAIL DESIGN; NGUYEN TUANH d.b.a. NAIL DESIGN;
5 POINSETTIA VISION CENTER; JEFFREY ANSHEL d.b.a. POINSETTIA VISION CENTER;
6 ROBERT E. BRUCE TRUST DATED 04-29-95; ROBERT E. BRUCE, TRUSTEE OF THE
7 ROBERT E. BRUCE TRUST DATED 04-29-95; ROBERT E. BRUCE; PHYLLIS A. BRUCE
8 TRUST DATED 04-29-95; PHYLLIS A. BRUCE, TRUSTEE OF THE PHYLLIS A. BRUCE
9 TRUST DATED 04-29-95; PHYLLIS A. BRUCE; DONAHUE SCHRIBER REALTY GROUP,
10 L.P.; and DONAHUE SCHRIBER REALTY GROUP, INC., A General Partner of DONAHUE
11 SCHRIBER REALTY GROUP, L.P. Plaintiffs are ignorant of the true names and capacities of
12 Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by
13 such fictitious names. Plaintiffs will pray leave of the court to amend this complaint to allege the
14 true names and capacities of the Does when ascertained.

15 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them
16 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
17 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
18 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs
19 are further informed and believe, and thereon allege, that each of the Defendants herein gave
20 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

21 CONCISE SET OF FACTS

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

27 7. On August 9, 2004, Plaintiff's member THEODORE A. PINNOCK went to Defendants'
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1 POINSETTIA VILLAGE SHOPPING CENTER facilities to utilize their goods and/or services.
2 When Plaintiff's member patronized Defendants' POINSETTIA VILLAGE SHOPPING CENTER
3 facilities, he was unable to use and/or had difficulty using the common area facilities such as the
4 disabled parking, exterior path of travel, and restroom facilities at the Defendants' POINSETTIA
5 VILLAGE SHOPPING CENTER establishment because they failed to comply with ADA Access
6 Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or California's
7 Title 24 Building Code Requirements. Defendants failed to remove access barriers within the
8 disabled parking, exterior path of travel, and restroom facilities of Defendants' POINSETTIA
9 VILLAGE SHOPPING CENTER establishment.

10 8. Plaintiff's Member personally experienced difficulty with said access barriers in the
11 common areas of the shopping center, known as POINSETTIA VILLAGE SHOPPING CENTER.
12 For example, the parking is inaccessible, as there are a total of seven hundred and eleven (711)
13 parking spaces, eleven (11) of which are designated disabled parking spaces that are non-compliant.
14 Two (2) disabled parking spaces, which are located by Coldwell Banker, are "van accessible"
15 disabled parking spaces that are only sixteen (16') feet long. Two (2) disabled spaces, which are
16 located by Prudential, are "regular" disabled parking spaces that are only sixteen (16') feet long.
17 Two (2) disabled spaces, which are located by All Cats Hospital, are "regular" disabled parking
18 spaces that are only sixteen (16') feet long, one of which has the improper signage indicating it is a
19 "van accessible" disabled parking space. Two (2) disabled spaces, which are located by Rite Aid,
20 are "van accessible" disabled parking spaces that are only seventeen (17') feet long, both of which
21 have the improper signage indicating they are "regular" disabled parking spaces. One (1) disabled
22 space, which is also located by Rite Aid, is "van accessible" disabled parking spaces that is only
23 fifteen (15') feet long. Two (2) disabled spaces, which are located by EL POLLO LOCO #3423,
24 are "van accessible" disabled parking spaces that are only seventeen (17') feet long, one of which
25 has the improper signage indicating it is a "regular" disabled parking space. It is required that all
26 disabled parking spaces are at least eighteen feet (18') long. It is also required that all disabled
27 parking spaces have the proper signage.
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1 9. The exterior path of travel of the Defendants' establishment is inaccessible. There fails to
2 be a safe and accessible path of travel from six (6) of the disabled parking spaces and from the
3 public sidewalk to the primary accessible entrance, as members of the disability community are
4 forced to traverse through vehicular traffic without the benefit of a marked path of travel. The
5 walkway that connects the shopping center is as narrow as thirty-four inches (34"), when it is
6 required to be at least forty-eight inches (48").

7 10. In addition to the violations personally experienced by Plaintiff's Member and Plaintiff
8 THEODORE A. PINNOCK, additional violations of federal and state disability laws exist at
9 Defendants' shopping center, known as POINSETTIA VILLAGE SHOPPING CENTER. For
10 example, the public pay telephones are inaccessible, as they fails to have the required volume
11 control units and the required signage.

12 11. The women's restroom located in the common area of the shopping center is inaccessible.
13 The women's restroom is located on the second (2nd) floor of the shopping center and is completely
14 inaccessible as there is no elevator or any other means for a disabled patron in a wheelchair to
15 access the second (2nd) floor. The women's restroom entrance door fails to have the required
16 disability signage. The small round metal key that is required to open the restroom door is
17 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The pressure that
18 is required to open the restroom door is an impermissible fifteen pounds (15 lbs.), when it is
19 required to be no more than five pounds (5 lbs.). The commode fails to have the required grab
20 bars. The commode seat cover dispenser is fifty-three inches (53") high, when it is required to be
21 no higher than forty inches (40") high. The height of the commode is only sixteen inches (16"),
22 when it is required to be between seventeen inches and nineteen inches (17"- 19") high. The height
23 of the bottom of the mirror is forty-seven inches (47"), when it is required to be no higher than
24 forty inches (40"). The height of the soap dispenser is fifty inches (50") high, when it is required to
25 be no higher than forty inches (40") high. The paper towel dispenser is fifty inches (50") high,
26 when it is required to be no higher than forty inches (40"). The restroom fails to have the required
27 audible and visual alarm system.
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1 12. The men's restroom located in the common area of the shopping center is inaccessible. The
2 men's restroom is located on the second (2nd) floor of the shopping center and is completely
3 inaccessible as there is no elevator or any other means for a disabled patron in a wheelchair to
4 access the second (2nd) floor. The men's restroom entrance door fails to have the required
5 disability signage. The small round metal key that is required to open the restroom door is
6 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The pressure that
7 is required to open the restroom door is an impermissible fifteen pounds (15 lbs.), when it is
8 required to be no more than five pounds (5 lbs.). The wheelchair turn-around space inside the
9 restroom is only fifty inches by sixty inches (50"x 60"), when it is required to be at least sixty
10 inches (60") in diameter. The stall door fails to have the required handles on both sides of the stall
11 door. The stall fails to have the required self-closing mechanism. The commode fails to have the
12 required grab bars. The commode seat cover dispenser is fifty-three inches (53") high, when it is
13 required to be no higher than forty inches (40") high. The height of the commode is only sixteen
14 inches (16"), when it is required to be between seventeen inches and nineteen inches (17"- 19")
15 high. The distance from the side edge of the commode to the far wall is only eleven inches (11"),
16 when it is required to be at least thirty-two inches (32"). The toilet paper dispenser is located at an
17 impermissible thirty-eight inches (38") from the front edge of the commode, when it is required to
18 be no more than twelve inches (12") from the front edge of the commode. The flush mechanism on
19 the commode tank is located on the narrow side, when it is required to be located on the wide side
20 of the tank. The height of the coat hook is sixty-five inches (65"), when it is required to be no
21 higher than forty-eight inches (48"). The height of the bottom of the mirror is forty-seven inches
22 (47"), when it is required to be no higher than forty inches (40"). The area beneath the lavatory is
23 enclosed and fails to provide the minimum required knee clearance. The height of the soap
24 dispenser is fifty inches (50") high, when it is required to be no higher than forty inches (40") high.
25 The paper towel dispenser is fifty inches (50") high, when it is required to be no higher than forty
26 inches (40"). The restroom fails to have the required audible and visual alarm system.

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28 13. On August 9, 2004, Plaintiff's member THEODORE A. PINNOCK went to Defendants'

1 PELLY'S FISH MARKET & DELI; SUBWAY SANDWICHES & SALADS a.k.a. SUBWAY;
2 PRIMO PIZZA & PASTA; THE UPS STORE # 4460; EL POLLO LOCO #3423; NAIL DESIGN;
3 and POINSETTIA VISION CENTER facilities, which are all located in the shopping center facility
4 known as POINSETTIA VILLAGE SHOPPING CENTER, to utilize their goods and/or services.

5 14. When Plaintiff's member patronized Defendants' PELLY'S FISH MARKET & DELI
6 facilities, he was unable to use and/or had difficulty using the entrance, counter, public seating,
7 interior path of travel, and restroom facilities at the Defendants' PELLY'S FISH MARKET &
8 DELI establishment because they failed to comply with ADA Access Guidelines For Buildings and
9 Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code
10 Requirements. Defendants failed to remove access barriers within the entrance, counter, public
11 seating, interior path of travel, and restroom facilities of Defendants' PELLY'S FISH MARKET &
12 DELI establishment.

13 15. Plaintiff's member personally experienced difficulty with said access barriers at
14 Defendants' PELLY'S FISH MARKET & DELI facilities. For example, the entrance to the
15 Defendants establishment is inaccessible, as the front entrance door fails to have the required
16 smooth and uninterrupted surface on the bottom ten inches (10") of the door that allows the door to
17 be opened with a wheelchair footrest without creating a hazard. The front entrance door fails to
18 have the required disability signage. There is a loose doormat at the entrance that fails to meet the
19 requirements that it is anchored securely or recessed onto the door landing.

20 16. The meat/fish counter is inaccessible, as it is an impermissible fifty-six inches (56") high,
21 when it is required to be no more than thirty-four inches (34").

22 17. The public seating located in the outside seating area of the Defendants establishment is
23 inaccessible. There are a total of forty (40) seats located in the outside seating area, all of which
24 have a knee clearance depth of a mere four inches (4"). It is required that five percent (5%) of all
25 seats have a knee clearance depth of at least nineteen inches (19"). The public seating located in
26 the inside seating area of the Defendants establishment is inaccessible. There are a total of twenty-
27 eight (28) seats located in the inside seating area, all of which have a knee clearance depth of a only
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1 twelve inches to fifteen inches (12"- 15"). It is required that five percent (5%) of all seats have a
2 knee clearance depth of at least nineteen inches (19").

3 18. The interior path of travel is inaccessible, as it is as narrow as twenty-eight inches (28"),
4 when it is required to be no less than forty-eight inches (48").

5 19. The unisex restroom located inside the Defendants' establishment is inaccessible. The
6 restroom door fails to have the required smooth and uninterrupted surface on the bottom ten inches
7 (10") of the door that allows the door to be opened with a wheelchair footrest without creating a
8 hazard. The restroom doorknob fails to be accessible, as it requires tight grasping and/or twisting
9 of the wrist to operate. The strike clearance of the restroom door is a mere two inches (2"), when it
10 is required to be at least eighteen inches (18"). The height of the commode seat cover dispenser is
11 fifty-seven inches (57"), when it is required to be no higher than forty inches (40") high. The
12 height of the bottom of the mirror is fifty-one inches (51"), when it is required to be no higher than
13 forty inches (40"). The hot water and drainpipes underneath the lavatory fail to have the required
14 covering. The paper towel dispenser is fifty inches (50") high, when it is required to be no higher
15 than forty inches (40") high. The restroom fails to have the required audible and visual alarm
16 system.

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18 20. When Plaintiff's member patronized Defendants' SUBWAY SANDWICHES & SALADS
19 a.k.a. SUBWAY facilities, he was unable to use and/or had difficulty using the entrance, counter,
20 and public seating facilities at the Defendants' SUBWAY SANDWICHES & SALADS a.k.a.
21 SUBWAY establishment because they failed to comply with ADA Access Guidelines For
22 Buildings and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building
23 Code Requirements. Defendants failed to remove access barriers within the entrance, counter, and
24 public seating facilities of Defendants' SUBWAY SANDWICHES & SALADS a.k.a. SUBWAY
25 establishment.

26 21. Plaintiff's member personally experienced difficulty with said access barriers at
27 Defendants' SUBWAY SANDWICHES & SALADS a.k.a. SUBWAY facilities. For example, the
28 entrance to the Defendants establishment is inaccessible, as the front entrance door fails to have the

1 required smooth and uninterrupted surface on the bottom ten inches (10") of the door that allows
2 the door to be opened with a wheelchair footrest without creating a hazard. The front entrance also
3 fails to have the required disability signage. There is a loose doormat at the entrance that fails to
4 meet the requirement that all doormats are anchored securely or are recessed onto the door landing.

5 22. The cashier counter is inaccessible, as it is forty-six inches (46") high, when it is required to
6 be no more than thirty-four inches (34").

7 23. The public seating located in the outside seating area of the Defendants establishment is
8 inaccessible. There are a total of twelve (12) seats located in the outside seating area, all of which
9 have a knee clearance depth of a mere four inches (4"). It is required that five percent (5%) of all
10 seats have a knee clearance depth of at least nineteen inches (19"). The public seating located in
11 the inside seating area of the Defendants establishment is inaccessible. There are a total of twenty-
12 four (24) seats located in the inside seating area, all of which have a knee clearance width of a only
13 twenty-three inches (23"). It is required that five percent (5%) of all seats have a knee clearance
14 width of at least thirty inches (30").

15 24. When Plaintiff's member patronized Defendants' PRIMO PIZZA & PASTA facilities, he
16 was unable to use and/or had difficulty using the entrance, path of travel, counter, and public
17 seating facilities at the Defendants' PRIMO PIZZA & PASTA establishment because they failed to
18 comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as
19 "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants failed to remove
20 access barriers within the entrance, path of travel, counter, and public seating facilities of
21 Defendants' PRIMO PIZZA & PASTA establishment.

22 25. Plaintiff's member personally experienced difficulty with said access barriers at
23 Defendants' PRIMO PIZZA & PASTA facilities. For example, the entrance to the Defendants
24 establishment is inaccessible, as the front entrance door fails to have the required smooth and
25 uninterrupted surface on the bottom ten inches (10") of the door that allows the door to be opened
26 with a wheelchair footrest without creating a hazard. The front entrance has a threshold that is one
27 quarter of an inch to one half of an inch (1/4" - 1/2") in height and fails to have the required bevel. It
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1 is required that changes in level between one quarter of an inch and one half of an inch (1/4"- 1/2")
2 have a bevel. The front entrance also fails to have the required disability signage. There is a loose
3 doormat at the entrance that fails to meet the requirement that all doormats are anchored securely or
4 are recessed onto the door landing.

5 26. The path of travel around the exterior dining area is as narrow as twenty-eight inches (28"),
6 when it is required to be at least forty-eight inches (48").

7 27. The cashier counter is inaccessible, as it is thirty-nine inches (39") high, when it is required
8 to be no more than thirty-four inches (34").

9 28. The public seating located in the outside seating area of the Defendants establishment is
10 inaccessible. There are a total of thirty-two (32) seats located in the outside seating area, all of
11 which have a knee clearance depth of a mere four inches (4"). It is required that five percent (5%)
12 of all seats have a knee clearance depth of at least nineteen inches (19").

13 29. When Plaintiff's member patronized Defendants' THE UPS STORE # 4460 facilities, he
14 was unable to use and/or had difficulty using the entrance and counter facilities at the Defendants'
15 THE UPS STORE # 4460 establishment because they failed to comply with ADA Access
16 Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or California's
17 Title 24 Building Code Requirements. Defendants failed to remove access barriers within the
18 entrance and counter facilities of Defendants' THE UPS STORE # 4460 establishment.

19 30. Plaintiff's member personally experienced difficulty with said access barriers at
20 Defendants' THE UPS STORE # 4460 facilities. For example, the entrance to the Defendants
21 establishment is inaccessible, as the front entrance door fails to have the required smooth and
22 uninterrupted surface on the bottom ten inches (10") of the door that allows the door to be opened
23 with a wheelchair footrest without creating a hazard. The front entrance also fails to have the
24 required disability signage.

25 31. The cashier counter is inaccessible, as it is thirty-eight inches (38") high, when it is required
26 to be no more than thirty-four inches (34").

27 32. When Plaintiff's member patronized Defendants' EL POLLO LOCO #3423 facilities, he
28

1 was unable to use and/or had difficulty using the entrance facilities at the Defendants' EL POLLO
2 LOCO #3423 establishment because they failed to comply with ADA Access Guidelines For
3 Buildings and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building
4 Code Requirements. Defendants failed to remove access barriers within the entrance, counter,
5 public pay telephone, and restroom facilities of Defendants' EL POLLO LOCO #3423
6 establishment.

7 33. Plaintiff's member personally experienced difficulty with said access barriers at
8 Defendants' EL POLLO LOCO #3423 facilities. For example, the entrance door to the Defendants
9 establishment is inaccessible, as it requires ten pounds (10 lbs.) of pressure to open, when it is
10 required to be no more than eight and one half pounds (8 ½ lbs.) of pressure. The front entrance
11 also fails to have the required disability signage.

12 34. In addition to the violations personally experienced by Plaintiff's Member and Plaintiff
13 THEODORE A. PINNOCK, additional violations of federal and state disability laws exist at
14 Defendants' establishment, known as EL POLLO LOCO #3423. For example, the public pay
15 telephones are inaccessible, as they fails to have the required volume control units and the required
16 signage.

17 35. The men's restroom is inaccessible. The restroom entrance door is inaccessible, as it
18 requires twelve pounds (12 lbs.) of pressure to open, when it is required to be no more than five
19 pounds (5 lbs.) of pressure. The locking mechanism on the restroom door is inaccessible, as it
20 requires tight grasping and/or twisting of the wrist to operate. The distance from the front edge of
21 the commode to the front wall is forty-six and one half inches (46 ½"), when it is required to be at
22 least forty-eight inches (48"). The height of the commode seat cover dispenser is forty-seven
23 inches (47"), when it is required to be no higher than forty inches (40") high. The height of the
24 bottom of the mirror is forty-three inches (43"), when it is required to be no higher than forty inches
25 (40"). The soap dispenser is forty-four inches (44") high, when it is required to be no more than
26 forty inches (40") high. The paper towel dispenser is forty-two inches (42"), when it is required to
27 be no higher than forty inches (40"). The restroom fails to have the required audible and visual
28

1 alarm system.

2 36. When Plaintiff's member patronized Defendants' NAIL DESIGN facilities, he was unable
3 to use and/or had difficulty using the entrance, interior path of travel, and counter facilities at the
4 Defendants' NAIL DESIGN establishment because they failed to comply with ADA Access
5 Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or California's
6 Title 24 Building Code Requirements. Defendants failed to remove access barriers within the
7 entrance, interior path of travel, counter, and restroom facilities of Defendants' NAIL DESIGN
8 establishment.

9 37. Plaintiff's member personally experienced difficulty with said access barriers at
10 Defendants' NAIL DESIGN facilities. For example, the entrance to the Defendants establishment is
11 inaccessible, as the front entrance door fails to have the required smooth and uninterrupted surface
12 on the bottom ten inches (10") of the door that allows the door to be opened with a wheelchair
13 footrest without creating a hazard. The front entrance fails to have the required disability signage.
14 There is a loose doormat at the entrance that fails to meet the requirement that all doormats are
15 anchored securely or are recessed onto the door landing.

16 38. The interior path of travel is as narrow as twenty-seven inches (27"), when it is required to
17 be at least thirty-six inches (36") wide. The interior path of travel from the front entrance to the
18 restroom is as narrow as twenty-six inches (26"), when it is required to be at least thirty-six inches
19 (36") wide.

20 39. The service counter is inaccessible, as it is forty-one inches (41") high, when it is required
21 to be no more than thirty-four inches (34").

22 40. In addition to the violations personally experienced by Plaintiff's Member and Plaintiff
23 THEODORE A. PINNOCK, additional violations of federal and state disability laws exist at
24 Defendants' establishment, known as NAIL DESIGN. For example, the unisex restroom located
25 inside the Defendants' establishment fails to have the required disability signage. The unisex
26 restroom also fails to have the required audible and visual alarm system.

27 41. When Plaintiff's member patronized Defendants' POINSETTIA VISION CENTER
28

1 facilities, he was unable to use and/or had difficulty using the entrance and counter facilities at the
2 Defendants' POINSETTIA VISION CENTER establishment because they failed to comply with
3 ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or
4 California's Title 24 Building Code Requirements. Defendants failed to remove access barriers
5 within the entrance and counter facilities of Defendants' POINSETTIA VISION CENTER
6 establishment.

7 42. Plaintiff's member personally experienced difficulty with said access barriers at
8 Defendants' POINSETTIA VISION CENTER facilities. For example, the entrance to the
9 Defendants establishment is inaccessible, as the front entrance door fails to have the required
10 smooth and uninterrupted surface on the bottom ten inches (10") of the door that allows the door to
11 be opened with a wheelchair footrest without creating a hazard. The front entrance fails to have the
12 required disability signage. There is a loose doormat at the entrance that fails to meet the
13 requirement that all doormats are anchored securely or are recessed onto the door landing.

14 43. The service counter is inaccessible, as it is forty inches (40") high, when it is required to be
15 no more than thirty-four inches (34").

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

21 45. Plaintiffs believe and herein allege Defendants' facilities have access violations not
22 directly experienced by Plaintiff's Member which preclude or limit access by others with
23 disabilities, including, but not limited to, Space Allowance and Reach Ranges, Accessible Route,
24 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
25 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
26 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
27 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
28

1 Detectable Warnings, Signage, and Telephones. Accordingly, Plaintiffs allege Defendants are
2 required to remove all architectural barriers, known or unknown. Also, Plaintiffs allege Defendants
3 are required to utilize the ADA checklist for Readily Achievable Barrier Removal approved by the
4 United States Department of Justice and created by Adaptive Environments.

5 46. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock
6 was discriminated against each time he patronized Defendants' establishments. Plaintiff's Member
7 and Plaintiff Theodore A. Pinnock was extremely upset due to Defendants' conduct. Further,
8 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back,
9 arms, shoulders and wrists when he attempted to enter, use, and exit Defendants' POINSETTIA
10 VILLAGE SHOPPING CENTER; PELLY'S FISH MARKET & DELI; SUBWAY
11 SANDWICHES & SALADS a.k.a. SUBWAY; PRIMO PIZZA & PASTA; THE UPS STORE #
12 4460; EL POLLO LOCO #3423; NAIL DESIGN; and POINSETTIA VISION CENTER
13 establishments.

14 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**

15 **DEFENDANT**

16 47. POINSETTIA VILLAGE SHOPPING CENTER; PELLY'S FISH MARKET & DELI;
17 PELLY'S FISH MARKET & DELI, INC.; SUBWAY SANDWICHES & SALADS a.k.a.
18 SUBWAY; MANOS NANCY d.b.a. SUBWAY SANDWICHES & SALADS a.k.a. SUBWAY;
19 CHRISTENSEN & CHRISTENSEN, INC. d.b.a. SUBWAY a.k.a. SUBWAY SANDWICHES &
20 SALADS; PRIMO PIZZA & PASTA; SABAH B. BANNA d.b.a. PRIMO PIZZA & PASTA;
21 ILHAM N. BANNA d.b.a. PRIMO PIZZA & PASTA; THE UPS STORE # 4460; SHONUF, INC.
22 d.b.a. THE UPS STORE # 4460; EL POLLO LOCO #3423; R & L ALVAREZ-MALO, INC. d.b.a.
23 EL POLLO LOCO #3423; NAIL DESIGN; NGUYEN TUANH d.b.a. NAIL DESIGN;
24 POINSETTIA VISION CENTER; JEFFREY ANSHEL d.b.a. POINSETTIA VISION CENTER;
25 ROBERT E. BRUCE TRUST DATED 04-29-95; ROBERT E. BRUCE, TRUSTEE OF THE
26 ROBERT E. BRUCE TRUST DATED 04-29-95; ROBERT E. BRUCE; PHYLLIS A. BRUCE
27 TRUST DATED 04-29-95; PHYLLIS A. BRUCE, TRUSTEE OF THE PHYLLIS A. BRUCE
28

1 TRUST DATED 04-29-95; PHYLLIS A. BRUCE; DONAHUE SCHRIBER REALTY GROUP,
2 L.P.; DONAHUE SCHRIBER REALTY GROUP, INC., A General Partner of DONAHUE
3 SCHRIBER REALTY GROUP, L.P.; and Does 1 through 10 will be referred to collectively
4 hereinafter as "Defendants."

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

6 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

10 49. Based on the facts plead at ¶¶ 6-46 above and elsewhere in this complaint, Plaintiff's
11 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
12 advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned,
13 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to
14 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,
15 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code
16 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to
17 Defendants' existing facilities. 31. Plaintiff's member Theodore A. Pinnock has physical
18 impairments as alleged in ¶ 6 above because his conditions affect one or more of the following
19 body systems: neurological, musculoskeletal, special sense organs, and/or cardiovascular. Further,
20 Plaintiff's member Theodore A. Pinnock's said physical impairments substantially limits one or
21 more of the following major life activities: walking. In addition, Plaintiff's member Theodore A.
22 Pinnock cannot perform one or more of the said major life activities in the manner, speed, and
23 duration when compared to the average person. Moreover, Plaintiff's member Theodore A.
24 Pinnock has a history of or has been classified as having a physical impairment as required by 42
25 U.S.C. § 12102(2)(A).

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27 ///

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

4 50. Based on the facts plead at ¶¶ 6-46 above and elsewhere in this complaint, Plaintiff's
5 Member Theodore A. Pinnock was denied full and equal access to Defendants' goods, services,
6 facilities, privileges, advantages, or accommodations within a public accommodation owned,
7 leased, and/or operated by Defendants. Defendants altered their facility in a manner that affects or
8 could affect the usability of the facility or a part of the facility after January 26, 1992. In performing
9 the alteration, Defendants failed to make the alteration in such a manner that, to the maximum
10 extent feasible, the altered portions of the facility are readily accessible to and usable by individuals
11 with disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C.
12 §12183(a)(2).

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

19 52. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the
20 maximum extent feasible, are readily accessible to and usable by individuals with disabilities
21 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
22 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §
23 12182(a).

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

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

28 54. Based on the facts plead at ¶¶ 6-46 above and elsewhere in this complaint, Plaintiff's

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

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

21 55. Based on the facts plead at ¶¶ 6-46 above and elsewhere in this complaint, Defendants
22 failed and refused to provide a reasonable alternative by modifying its practices, policies and
23 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
24 others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
25 12188(a). Thus, said Member was subjected to discrimination in violation of 42 United States
26 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal access to
27 Defendants' existing facilities.

28 56. Based on the facts plead at ¶¶ 6-46 above, Claims I, II, and III of Plaintiffs' First Cause Of

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

11 57. WHEREFORE, Plaintiffs pray for judgment and relief as hereinafter set forth.

12
13 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
14 **CALIFORNIA ACCESSIBILITY LAWS**

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

16 58. Based on the facts plead at ¶¶ 6-46 above and elsewhere in this complaint, Plaintiff's
17 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
18 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
19 Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated
20 California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities
21 due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
22 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
23 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
24 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
25 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
26 Detectable Warnings, Signage, and Telephones.

27 59. These violations denied Plaintiff's Member full and equal access to Defendants' facility.
28 Thus, said Member was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1

1 because Plaintiff's Member was denied full, equal and safe access to Defendants' facility, causing
2 severe emotional distress.

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

4 60. Based on the facts plead at ¶¶ 6-46 above and elsewhere herein this complaint, Defendants
5 failed and refused to provide a reasonable alternative by modifying its practices, policies, and
6 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
7 others similarly situated in entering and utilizing Defendants' services as required by Civil Code §
8 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.

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

10 61. Based on the facts plead at ¶¶ 6-46 above and elsewhere herein this complaint and because
11 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
12 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
13 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
14 54.1.

15 62. Based on the facts plead at ¶¶ 6-46 above, Claims I, II, and III of Plaintiffs' Second Cause
16 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable
17 harm unless Defendants are ordered to remove architectural, non-architectural, and communication
18 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory
19 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and
20 a substantial segment of the disability community. Plaintiffs allege there is a state and national
21 public interest in requiring accessibility in places of public accommodation. Plaintiffs have no
22 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff's Member
23 desires to return to Defendants' places of business in the immediate future. Accordingly, the
24 Plaintiffs allege that a structural or mandatory injunction is necessary to enjoin compliance with
25 state civil rights laws enacted for the benefit of individuals with disabilities.

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

27 ///
28

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

3 64. Defendants, each of them respectively, at times prior to and including, the month of August,
4 2004, and continuing to the present time, knew that persons with physical disabilities were denied
5 their rights of equal access to all portions of this public facility. Despite such knowledge,
6 Defendants, and each of them, failed and refused to take steps to comply with the applicable access
7 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered
8 by Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons with
9 disabilities. Defendants, and each of them, have failed and refused to take action to grant full and
10 equal access to persons with physical disabilities in the respects complained of hereinabove.
11 Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or
12 correct complaints about, denial of disabled access and have refused to comply with their legal
13 obligations to make Defendants' POINSETTIA VILLAGE SHOPPING CENTER; PELLY'S FISH
14 MARKET & DELI; PELLY'S FISH MARKET & DELI, INC.; SUBWAY SANDWICHES &
15 SALADS a.k.a. SUBWAY; MANOS NANCY d.b.a. SUBWAY SANDWICHES & SALADS
16 a.k.a. SUBWAY; CHRISTENSEN & CHRISTENSEN, INC. d.b.a. SUBWAY a.k.a. SUBWAY
17 SANDWICHES & SALADS; PRIMO PIZZA & PASTA; SABAH B. BANNA d.b.a. PRIMO
18 PIZZA & PASTA; ILHAM N. BANNA d.b.a. PRIMO PIZZA & PASTA; THE UPS STORE #
19 4460; SHONUF, INC. d.b.a. THE UPS STORE # 4460; EL POLLO LOCO #3423; R & L
20 ALVAREZ-MALO, INC. d.b.a. EL POLLO LOCO #3423; NAIL DESIGN; NGUYEN TUANH
21 d.b.a. NAIL DESIGN; POINSETTIA VISION CENTER; JEFFREY ANSHEL d.b.a. POINSETTIA
22 VISION CENTER; ROBERT E. BRUCE TRUST DATED 04-29-95; ROBERT E. BRUCE,
23 TRUSTEE OF THE ROBERT E. BRUCE TRUST DATED 04-29-95; ROBERT E. BRUCE;
24 PHYLLIS A. BRUCE TRUST DATED 04-29-95; PHYLLIS A. BRUCE, TRUSTEE OF THE
25 PHYLLIS A. BRUCE TRUST DATED 04-29-95; PHYLLIS A. BRUCE; DONAHUE SCHRIBER
26 REALTY GROUP, L.P.; and DONAHUE SCHRIBER REALTY GROUP, INC., A General
27 Partner of DONAHUE SCHRIBER REALTY GROUP, L.P. facilities accessible pursuant to the
28 Americans With Disability Act Access Guidelines (ADAAG) and Title 24 of the California Code

1 of Regulations (also known as the California Building Code). Such actions and continuing course
2 of conduct by Defendants, and each of them, evidence despicable conduct in conscious disregard of
3 the rights and/or safety of Plaintiff's Member and of other similarly situated persons, justifying an
4 award of treble damages pursuant to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

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

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

22 68. Based on the facts plead at ¶¶ 6-46 above and elsewhere in this complaint, Defendants owed
23 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
24 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
25 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
26 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1
27 and Title 24 of the California Administrative Code and applicable 1982 Uniform Building Code
28

1 standards as amended.

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

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

22 71. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.

23
24 **DEMAND FOR JUDGMENT FOR RELIEF:**

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

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

1 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above,
2 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code
3 § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

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

12 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
13 § 55;

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

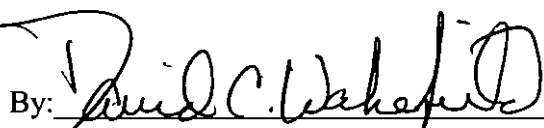
15 G. A Jury Trial and;

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

17 Respectfully submitted:

18 **PINNOCK & WAKEFIELD, A.P.C.**

19
20 Dated: November 1, 2004

21 By: 
22 DAVID C. WAKEFIELD, ESQ.
23 Attorneys for Plaintiffs
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DEFENDANTS:

POINSETTIA VILLAGE SHOPPING CENTER; PELLY'S FISH MARKET & DELI; PELLY'S FISH MARKET & DELI, INC.; SUBWAY SANDWICHES & SALADS a.k.a. SUBWAY; MANOS NANCY d.b.a. SUBWAY SANDWICHES & SALADS a.k.a. SUBWAY; CHRISTENSEN & CHRISTENSEN, INC. d.b.a. SUBWAY a.k.a. SUBWAY SANDWICHES & SALADS; PRIMO PIZZA & PASTA; SABAH B. BANNA d.b.a. PRIMO PIZZA & PASTA; ILHAM N. BANNA d.b.a. PRIMO PIZZA & PASTA; THE UPS STORE # 4460; SHONUF, INC. d.b.a. THE UPS STORE # 4460; EL POLLO LOCO #3423; R & L ALVAREZ-MALO, INC. d.b.a. EL POLLO LOCO #3423; NAIL DESIGN; NGUYEN TUANH d.b.a. NAIL DESIGN; POINSETTIA VISION CENTER; JEFFREY ANSHEL d.b.a. POINSETTIA VISION CENTER; ROBERT E. BRUCE TRUST DATED 04-29-95; ROBERT E. BRUCE, TRUSTEE OF THE ROBERT E. BRUCE TRUST DATED 04-29-95; ROBERT E. BRUCE; PHYLLIS A. BRUCE TRUST DATED 04-29-95; PHYLLIS A. BRUCE, TRUSTEE OF THE PHYLLIS A. BRUCE TRUST DATED 04-29-95; PHYLLIS A. BRUCE; DONAHUE SCHRIBER REALTY GROUP, L.P.; DONAHUE SCHRIBER REALTY GROUP, INC., A General Partner of DONAHUE SCHRIBER REALTY GROUP, L.P.; and DOES 1 THROUGH 10, Inclusive