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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

CARLSBAD GAS & PROPANE, INC.
a.k.a. CARLSBAD GAS;
ALLAHYARI FAMILY TRUST DATED
07-17-02; AHMAD ALLAHYARI,
TRUSTEE OF THE ALLAHYARI
FAMILY TRUST DATED 07-17-02;
MITRA ALLAHYARI, TRUSTEE OF
THE ALLAHYARI FAMILY TRUST
DATED 07-17-02; And DOES 1
THROUGH 10, Inclusive

Defendants.

Case No. 04 CV 2136 JM (WMC)

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

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

17
18 JURISDICTION AND VENUE

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

27 SUPPLEMENTAL JURISDICTION

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

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

19
20 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

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

24 Defendant CARLSBAD GAS & PROPANE, INC. a.k.a. CARLSBAD GAS is
25 located at 1089 Carlsbad Village Drive, Carlsbad, California
26 92008. Plaintiffs are informed and believe and thereon allege
27 that Defendant CARLSBAD GAS & PROPANE, INC. is the owner,
28 operator, and/or doing business as CARLSBAD GAS & PROPANE, INC.

1 a.k.a. CARLSBAD GAS. Defendant CARLSBAD GAS & PROPANE, INC. is
2 located at 1089 Carlsbad Village Drive, Carlsbad, California
3 92008. Plaintiffs are informed and believe and thereon allege
4 that Defendant ALLAHYARI FAMILY TRUST DATED 07-17-02 is the owner,
5 operator, and/or lessor of the property located at 1089 Carlsbad
6 Village Drive, Carlsbad, California 92008, Assessor Parcel Number
7 203-320-31. Defendants AHMAD ALLAHYARI, TRUSTEE OF THE ALLAHYARI
8 FAMILY TRUST DATED 07-17-02 and MITRA ALLAHYARI, TRUSTEE OF THE
9 ALLAHYARI FAMILY TRUST DATED 07-17-02 are located at 19 Tierra
10 Vista, Laguna Hills, California 92653. The words "Plaintiffs" and
11 "Plaintiff's Member" as used herein specifically include the
12 organization MANTIC ASHANTI'S CAUSE, its Members, its member
13 Theodore A. Pinnock and persons associated with its Members who
14 accompanied Members to Defendants' facilities, as well as THEODORE
15 A. PINNOCK, An Individual.

16 4. Defendants Does 1 through 10, were at all times relevant
17 herein subsidiaries, employers, employees, agents, of CARLSBAD GAS
18 & PROPANE, INC. a.k.a. CARLSBAD GAS; ALLAHYARI FAMILY TRUST DATED
19 07-17-02; AHMAD ALLAHYARI, TRUSTEE OF THE ALLAHYARI FAMILY TRUST
20 DATED 07-17-02; and MITRA ALLAHYARI, TRUSTEE OF THE ALLAHYARI
21 FAMILY TRUST DATED 07-17-02. Plaintiffs are ignorant of the true
22 names and capacities of Defendants sued herein as Does 1 through
23 10, inclusive, and therefore sues these Defendants by such
24 fictitious names. Plaintiffs will pray leave of the court to
25 amend this complaint to allege the true names and capacities of
26 the Does when ascertained.

27 5. Plaintiffs are informed and believe, and thereon allege, that
28

1 Defendants and each of them herein were, at all times relevant to
2 the action, the owner, lessor, lessee, franchiser, franchisee,
3 general partner, limited partner, agent, employee, representing
4 partner, or joint venturer of the remaining Defendants and were
5 acting within the course and scope of that relationship.

6 Plaintiffs are further informed and believe, and thereon allege,
7 that each of the Defendants herein gave consent to, ratified,
8 and/or authorized the acts alleged herein to each of the remaining
9 Defendants.

10 CONCISE SET OF FACTS

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

18 7. On August 27, 2004, Plaintiff's member THEODORE A. PINNOCK
19 went to Defendants' CARLSBAD GAS & PROPANE, INC. a.k.a. CARLSBAD
20 GAS facilities to utilize their goods and/or services. When
21 Plaintiff's member patronized Defendants' CARLSBAD GAS & PROPANE,
22 INC. a.k.a. CARLSBAD GAS facilities, he was unable to use and/or
23 had difficulty using the public accommodations' disabled parking,
24 exterior path of travel, entrance, interior path of travel, and
25 cashier counter facilities at Defendants' business establishment
26 because they failed to comply with ADA Access Guidelines For
27 Buildings and Facilities (hereafter referred to as "ADAAG") and/or
28

1 California's Title 24 Building Code Requirements. Defendants
2 failed to remove access barriers within the disabled parking,
3 exterior path of travel, paper towel dispenser at gas pump,
4 entrance, interior path of travel, cashier counter, ATM machine,
5 public pay telephone, and restroom facilities of Defendants'
6 CARLSBAD GAS & PROPANE, INC. a.k.a. CARLSBAD GAS establishment.

7 8. Plaintiff's member personally experienced difficulty with
8 said access barriers at Defendants' CARLSBAD GAS & PROPANE, INC.
9 a.k.a. CARLSBAD GAS facilities. For example, the parking facility
10 of Defendants' establishment is inaccessible. The parking
11 facility has a total of six (6) parking spaces, including one (1)
12 non-complaint disabled parking space. The existing disabled
13 parking space is a non-complaint "van accessible" disabled parking
14 space that is only seventeen feet (17') long and has an
15 impermissible encroachment into its access aisle. It is required
16 that there is at least one (1) "van accessible" disabled parking
17 space that is eighteen feet (18') long, nine feet (9') wide, has
18 an access aisle on the right hand side that is not encroached
19 upon. There are two (2) entryways into the Defendants' parking
20 lot, both of which fail to have the required signage warning
21 motorists that anyone illegally parking in a disabled parking
22 space would be towed/fined or both.

23
24 9. The exterior path of travel of the Defendants' establishment
25 is inaccessible. There fails to be a safe and accessible path of
26 travel from the parking lot to the auto service station, as
27 members of the disability community are forced to traverse through
28 vehicular traffic without the benefit of a marked path of travel.

1 There fails to be a safe and accessible path of travel from the
2 public sidewalk to the primary accessible entrance, as members of
3 the disability community are forced to traverse through vehicular
4 traffic without the benefit of a marked path of travel. The ramp
5 from the parking lot to the entrance door fails to have the
6 required side flares.

7 10. The entrance to the Defendants establishment is
8 inaccessible, as the entrance door fails to have the required
9 disability signage.

10 11. The interior path of travel of the defendants' establishment
11 is inaccessible, as it is as narrow as twenty-five inches (25"), when
12 it is required to be at least thirty-six inches (36") wide if
13 items are displayed on one side of the aisle and at least forty-
14 four inches (44") wide if items are displayed on both sides of the
15 aisle.

16 12. The cashier counter is inaccessible, as it is thirty-nine
17 inches (39") high, when it is required to be no higher than
18 thirty-four inches (34").

19 13. In addition to the violations personally experienced by
20 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
21 violations of federal and state disability laws exist at
22 Defendants' CARLSBAD GAS & PROPANE, INC. a.k.a. CARLSBAD GAS. For
23 example, the unisex restroom located inside the defendants'
24 establishment is inaccessible. The restroom door fails to have
25 the required disability signage. The restroom doorknob is
26 inaccessible, as it requires tight grasping and/or twisting of the
27 wrist to operate. The strike clearance of the restroom door is a
28

1 mere three inches (3"), when it is required to be at least
2 eighteen inches (18"). The locking mechanism on the restroom door
3 is inaccessible, as it requires tight grasping and/or twisting of
4 the wrist to operate. The wheelchair turn-around space inside the
5 restroom is only fifty-five inches by sixty inches (55"x 60"),
6 when it is required to be at least sixty inches (60") in diameter.
7 The distance from the side edge of the commode to the far wall is
8 only twenty-five inches (25"), when it is required to be at least
9 thirty-two inches (32"). The distance from the centerline of the
10 lavatory to the adjacent wall is only twelve inches (12"), when it
11 is required to be at least eighteen inches (18"). The height of
12 the bottom of the mirror is forty-three inches (43"), when it is
13 required to be no more than forty inches (40") from the floor
14 surface. The hot water and drainpipes underneath the lavatory
15 fail to have the required covering. The restroom fails to have
16 the required audible and visual alarm system.

17
18 14. The ATM machine located in the defendants' establishment is
19 inaccessible, as it has a clear floor space in front of the
20 machine that is only twenty-five inches (25"), when it is required
21 to be at least thirty inches by forty-eight inches (30"x 48").

22 15. The public pay telephone is inaccessible, as it fails to have
23 the required signage.

24 16. The paper towel dispenser located at the gas pumps is
25 inaccessible, as it is sixty inches (60") high, when it is
26 required be no higher than forty-eight inches (48").

27 17. Pursuant to federal and state law, Defendants are required to
28 remove barriers to their existing facilities. Further, Defendants

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

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

23 19. Based on these facts, Plaintiffs allege Plaintiff's Member
24 and Plaintiff Theodore A. Pinnock was discriminated against each
25 time he patronized Defendants' establishments. Plaintiff's Member
26 and Plaintiff Theodore A. Pinnock was extremely upset due to
27 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
28

1 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
2 shoulders and wrists when he attempted to enter, use, and exit
3 Defendants' establishment.

4 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

5 20. CARLSBAD GAS & PROPANE, INC. a.k.a. CARLSBAD GAS; ALLAHYARI
6 FAMILY TRUST DATED 07-17-02; AHMAD ALLAHYARI, TRUSTEE OF THE
7 ALLAHYARI FAMILY TRUST DATED 07-17-02; MITRA ALLAHYARI, TRUSTEE OF
8 THE ALLAHYARI FAMILY TRUST DATED 07-17-02; and Does 1 through 10
9 will be referred to collectively hereinafter as "Defendants."

10 21. Plaintiffs aver that the Defendants are liable for the
11 following claims as alleged below:

12 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

16 22. Based on the facts plead at ¶¶ 6-19 above and elsewhere in
17 this complaint, Plaintiff's Member was denied full and equal
18 access to Defendants' goods, services, facilities, privileges,
19 advantages, or accommodations. Plaintiffs allege Defendants are a
20 public accommodation owned, leased and/or operated by Defendants.
21 Defendants' existing facilities and/or services failed to provide
22 full and equal access to Defendants' facility as required by 42
23 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
24 discrimination in violation of 42 United States Code
25 12182(b) (2) (A) (iv) and 42 U.S.C. § 12188 because Plaintiff's
26 Member was denied equal access to Defendants' existing facilities.
27

28 23. Plaintiff's member Theodore A. Pinnock has physical

1 impairments as alleged in ¶ 6 above because his conditions affect
2 one or more of the following body systems: neurological,
3 musculoskeletal, special sense organs, and/or cardiovascular.

4 Further, Plaintiff's member Theodore A. Pinnock's said physical
5 impairments substantially limits one or more of the following
6 major life activities: walking. In addition, Plaintiff's member
7 Theodore A. Pinnock cannot perform one or more of the said major
8 life activities in the manner, speed, and duration when compared
9 to the average person. Moreover, Plaintiff's member Theodore A.
10 Pinnock has a history of or has been classified as having a
11 physical impairment as required by 42 U.S.C. § 12102(2)(A).
12

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

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

25. Additionally, the Defendants undertook an alteration that

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

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

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

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

19
20 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural
21 Barriers

22 28. Based on the facts plead at ¶¶ 6-19 above and elsewhere in
23 this complaint, Plaintiff's Member was denied full and equal
24 access to Defendants' goods, services, facilities, privileges,
25 advantages, or accommodations within a public accommodation owned,
26 leased, and/or operated by Defendants. Defendants failed to
27 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
28 are informed, believe, and thus allege that architectural barriers

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

21 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
22 Policies And Procedures

23 29. Based on the facts plead at ¶¶ 6-19 above and elsewhere in
24 this complaint, Defendants failed and refused to provide a
25 reasonable alternative by modifying its practices, policies and
26 procedures in that they failed to have a scheme, plan, or design
27 to assist Plaintiff's Member and/or others similarly situated in
28 entering and utilizing Defendants' services, as required by 42

1 U.S.C. § 12188(a). Thus, said Member was subjected to
2 discrimination in violation of 42 United States Code
3 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
4 denied equal access to Defendants' existing facilities.

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

22
23 31. WHEREFORE, Plaintiffs pray for judgment and relief as
24 hereinafter set forth.

25 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
26 CALIFORNIA ACCESSIBILITY LAWS

27 CLAIM I: Denial Of Full And Equal Access

28 32. Based on the facts plead at ¶¶ 6-19 above and elsewhere in

1 this complaint, Plaintiff's Member was denied full and equal
2 access to Defendants' goods, services, facilities, privileges,
3 advantages, or accommodations within a public accommodation owned,
4 leased, and/or operated by Defendants as required by Civil Code
5 Sections 54 and 54.1. Defendants' facility violated California's
6 Title 24 Accessible Building Code by failing to provide access to
7 Defendants' facilities due to violations pertaining to the Space
8 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
9 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
10 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
11 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
12 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
13 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
14 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
15 Telephones.

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

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

23 34. Based on the facts plead at ¶¶ 6-19 above and elsewhere
24 herein this complaint, Defendants failed and refused to provide a
25 reasonable alternative by modifying its practices, policies, and
26 procedures in that they failed to have a scheme, plan, or design
27 to assist Plaintiff's Member and/or others similarly situated in
28 entering and utilizing Defendants' services as required by Civil

1 Code § 54.1. Thus, said Member was subjected to discrimination in
2 violation of Civil Code § 54.1.

3 CLAIM III: Violation Of The Unruh Act

4 35. Based on the facts plead at ¶¶ 6-19 above and elsewhere
5 herein this complaint and because Defendants violated the Civil
6 Code § 51 by failing to comply with 42 United States Code §
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
8 continue to discriminate against Plaintiff's Member and persons
9 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

27 37. Wherefore, Plaintiffs pray for damages and relief as
28

1 hereinafter stated.

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

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

1 and 54.3(a) of the California Civil Code.

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

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

23 41. Wherefore, Plaintiffs pray for damages and relief as
24 hereinafter stated.

25
26 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
27 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

28 42. Based on the facts plead at ¶¶ 6-19 above and elsewhere in

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

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

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

1 allege that such conduct was done in reckless disregard of the
2 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
3 to suffer bodily or personal injury, anger, embarrassment,
4 depression, anxiety, mortification, humiliation, distress, and
5 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
6 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
7 An Individual, to suffer the injuries of mental and emotional
8 distress, including, but not limited to, anger, embarrassment,
9 depression, anxiety, mortification, humiliation, distress, and
10 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
11 Individual, additionally alleges that such conduct caused THEODORE
12 A. PINNOCK, An Individual, to suffer damages as a result of these
13 injuries.

14 45. Wherefore, Plaintiffs pray for damages and relief as
15 hereinafter stated.

16 DEMAND FOR JUDGMENT FOR RELIEF:

17 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
18 3281, and 3333;

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

22 C. In the alternative to the damages pursuant to Cal. Civil
23 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
24 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
25 54.1, Title 24 of the California Building Code, ADA, and ADA
26 Accessibility Guidelines;

27 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
28 Cal. Civil Code § 55. Plaintiffs request this Court enjoin

1 Defendants to remove all architectural barriers in, at, or on
2 their facilities related to the following: Space Allowance and
3 Reach Ranges, Accessible Route, Protruding Objects, Ground and
4 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
5 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
6 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
7 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
8 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
9 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

10 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
11 § 12205, and Cal. Civil Code § 55;

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

14 G. A Jury Trial and;

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

16 Respectfully submitted:

17 PINNOCK & WAKEFIELD, A.P.C.

18
19 Dated: 10/20/04

20 By: Michelle L. Wakefield
21 MICHELLE L. WAKEFIELD, ESQ.
22 DAVID C. WAKEFIELD, ESQ.
23 Attorneys for Plaintiffs
24
25
26
27
28

J544

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of 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 CARLSBAD GAS & PROPANE, INC. a.k.a. CARLSBAD GAS; ALLAHYARI FAMILY TRUST DATED 07-17-02; AHMAD ALLAHYARI, TRUSTEE OF THE ALLAHYARI FAMILY TRUST DATED 07-17-02; MITRA ALLAHYARI, TRUSTEE OF THE ALLAHYARI FAMILY TRUST DATED 07-17-02; And DOES 1 THROUGH 10, Inclusive

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) DEPUTY 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 2136 JM (WMC)

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <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 RFR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 660 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act 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 RSJ (405(g)) 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 Commercial/CC 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 f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

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

JUDGE

Docket Number

DATE 10/20/04

SIGNATURE OF ATTORNEY OF RECORD

#108111 \$150,000

Michelle L. Wakefield