

USDC SCAN INDEX SHEET



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3:01-CV-00100 MANTIC ASHANTIS V. 4 JS MINI MART

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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *B. Reed* DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

01 CV 0100BTM (JFS)

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

Plaintiffs,

v.

4 Js MINI MART - EL CAJON
BOULEVARD, SAN DIEGO; LATIF
K. MAROGY; ROLBERTO'S TACO
SHOP - EL CAJON BOULEVARD,
SAN DIEGO; JUAN GARCIA;
ROSALBA OSORIA; FERRANTELLI
FAMILY TRUST 01-09-90; PETER
J. FERRANTELLI; MARY E.
FERRANTELLI;

And

DOES 1 THROUGH 10, Inclusive

Defendants.

Case No.:

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE 19995;
BUSINESS & PROFESSIONS CODE
17200 et. seq.]

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

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3 **INTRODUCTION**

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

24 **JURISDICTION AND VENUE**

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

1 because a substantial part of Plaintiffs' claims arose within the
2 Judicial District of the United States District Court of the
3 Southern District of California.

4 **SUPPLEMENTAL JURISDICTION**

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

24 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

25 3. Defendants are, and, at all times mentioned herein, were, a
26 business or corporation or franchise organized and existing and/or
27 doing business under the laws of the State of California.
28

1 Defendant 4 Js MINI MART - EL CAJON BOULEVARD, SAN DIEGO is
2 located at 4090 El Cajon Boulevard #F, San Diego, California,
3 92105. Plaintiffs are informed and believe that Defendant LATIF
4 K. MAROGY is the owner, lessor, and/or operator of 4 Js MINI MART
5 - EL CAJON BOULEVARD, SAN DIEGO. Defendant LATIF K. MAROGY is
6 located at 3091 Jamacha View Drive, El Cajon, CA 92019. Defendant
7 ROLBERTO'S TACO SHOP - EL CAJON BOULEVARD, SAN DIEGO is located at
8 4090 El Cajon Boulevard, San Diego, California, 92105. Plaintiffs
9 are informed and believe that Defendants JUAN GARCIA and ROSALBA
10 OSORIA are the owners, lessors, and/or operators of ROLBERTO'S
11 TACO SHOP - EL CAJON BOULEVARD, SAN DIEGO. Defendant JUAN GARCIA
12 and ROSALBA OSORIA are located at 4157 41st, Apt 3, San Diego, CA
13 92105. Plaintiffs are informed and believe and thereon allege
14 that Defendants FERRANTELLI FAMILY TRUST 01-09-90 are the owners,
15 lessors, and/or operators of the property located at 4090 El Cajon
16 Boulevard, San Diego, California; Assessor Parcel Number 454-732-
17 33-00. Plaintiffs are further informed and believe and thereon
18 allege that the property located at 4090 El Cajon Boulevard, San
19 Diego, California is located on and is a part of Assessor Parcel
20 Number 454-732-33-00. Defendants PETER J. FERRANTELLI and MARY E.
21 FERRANTELLI are trustees of Defendant FERRANTELLI FAMILY TRUST 01-
22 09-90 and are located at 2744 State Street, San Diego, CA 92103.
23 The words "Plaintiffs" and "Plaintiff's Member" as used herein
24 specifically include the organization MANTIC ASHANTI'S CAUSE, its
25 Members, its member Theodore A. Pinnock and persons associated
26 with its Members who accompanied Members to Defendants'
27 facilities, as well as THEODORE A. PINNOCK, An Individual.
28

1 4. Defendants Does 1 through 10, were at all times relevant
2 herein subsidiaries, employers, employees, agents, of 4 Js MINI
3 MART - EL CAJON BOULEVARD, SAN DIEGO; LATIF K. MAROGY; ROBERTO'S
4 TACO SHOP - EL CAJON BOULEVARD, SAN DIEGO; JUAN GARCIA; ROSALBA
5 OSORIA; FERRANTELLI FAMILY TRUST 01-09-90; PETER J. FERRANTELLI;
6 and MARY E. FERRANTELLI. Plaintiffs are ignorant of the true
7 names and capacities of Defendants sued herein as Does 1 through
8 10, inclusive, and therefore sues these Defendants by such
9 fictitious names. Plaintiffs will pray leave of the court to
10 amend this complaint to allege the true names and capacities of
11 the Does when ascertained.

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

22 **CONCISE SET OF FACTS**

23 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that
24 advocates on the behalf of its members with disabilities when
25 their civil rights and liberties have been violated. Plaintiff's
26 member THEODORE A. PINNOCK is a member of Plaintiff Organization
27 and has an impairment in that he has Cerebral Palsy and due to
28

1 this impairment he has learned to successfully operate a
2 wheelchair.

3 7. On July 6, 2000, Plaintiff's member THEODORE A. PINNOCK went
4 to Defendants' ROLBERTO'S TACO SHOP - EL CAJON BOULEVARD, SAN
5 DIEGO and 4 Js MINI MART - EL CAJON BOULEVARD, SAN DIEGO
6 facilities to utilize their goods and/or services. When
7 Plaintiff's member patronized Defendants' facilities, he was
8 unable to use and/or had difficulty using the public
9 accommodations' disabled parking, exterior path of travel,
10 entrances, public seating and service counter facilities at
11 Defendants' business establishment because they failed to comply
12 with ADA Access Guidelines For Buildings and Facilities (hereafter
13 referred to as "ADAAG") and/or California's Title 24 Building Code
14 Requirements. Defendants failed to remove access barriers within
15 the disabled parking, exterior path of travel, entrances, public
16 seating and service counter facilities of Defendants'
17 establishments.

18 8. Plaintiff's member personally experienced difficulty with
19 said access barriers at the common areas of Defendants'
20 facilities. For example, Defendants' parking facility fails to
21 have an accessible Van Accessible disabled parking space since the
22 parking space is located on a grade which exceeds 2% (two percent)
23 and fails to have the required disabled parking signage including
24 the tow-away signage at the entrances to the parking facilities.
25 Additionally, the exterior path of travel from the public sidewalk
26 to the entrances to the Defendants retail store facilities exceed
27 the maximum 5% (five percent) slope. All slopes which exceed 5%
28

1 are considered ramps and must provide appropriate handrails on
2 both sides of all ramps. Defendants' facilities lack any type of
3 handrails.

4 9. Plaintiff's member personally experienced difficulty with
5 said access barriers at Defendants' ROLBERTO'S TACO SHOP - EL
6 CAJON BOULEVARD, SAN DIEGO facilities. For example, the entrance
7 to the facility fails to have the required disability signage
8 indicating that the entrance is a designated accessible entrance
9 and that the facilities are accessible to and usable by a member
10 of the disability community. A loose mat is located inside the
11 entry door. Mats are required to be secured on all four sides or
12 removed. The food service counter is not accessible since it is
13 50 inches in height rather than the required 34 inches. An
14 accessible alternative to the service counter does not exist and
15 no signage is present that indicates assistance is available.
16 Defendants' facility contains 7 tables with fixed public seating
17 but their facility fails to provide any accessible public seating.
18 The requirement is to provide 5% (five percent) of the tables but
19 in no case less than one of the tables with accessible seating.
20 The interior path of travel is not accessible since the path of
21 travel fails to provide 36 inches in width throughout all customer
22 areas.

23 10. Plaintiff's member personally experienced difficulty with
24 said access barriers at Defendants' 4 Js MINI MART - EL CAJON
25 BOULEVARD, SAN DIEGO facilities. For example, the entrance to the
26 facility fails to have the required disability signage indicating
27 that the entrance is a designated accessible entrance and that the
28

1 facilities are accessible to and usable by a member of the
2 disability community. Additionally, the entry door is not
3 accessible since it lacks the required clear width of 32 inches
4 and fails to provide sufficient interior path of travel clearance
5 of 36 inches inside the entry door due to the presence of
6 newspaper and magazine racks. The service counter is not
7 accessible since it is required to be 36 inches in height for a
8 minimum of 36 inches in length. An accessible alternative to the
9 service counter does not exist and no signage is present that
10 indicates assistance is available. Finally, the interior path of
11 travel is not accessible since the path of travel fails to provide
12 36 inches in width throughout all customer areas.

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

21 12. Plaintiffs believe and herein allege Defendants' facilities
22 have access violations not directly experienced by Plaintiff's
23 Member which preclude or limit access by others with disabilities,
24 including, but not limited to, Space Allowance and Reach Ranges,
25 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
26 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
27 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
28

1 Entrances, Drinking Fountains and Water Coolers, Water Closets,
2 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
3 Handrails, Grab Bars, and Controls and Operating Mechanisms,
4 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
5 Plaintiffs allege Defendants are required to remove all
6 architectural barriers, known or unknown. Also, Plaintiffs allege
7 Defendants are required to utilize the ADA checklist for Readily
8 Achievable Barrier Removal approved by the United States
9 Department of Justice and created by Adaptive Environments.

10 13. Based on these facts, Plaintiffs allege Plaintiff's Member
11 and Plaintiff Theodore A. Pinnock was discriminated against each
12 time he patronized Defendants' establishments. Plaintiff's Member
13 and Plaintiff Theodore A. Pinnock was extremely upset due to
14 Defendants' conduct.

15
16
17 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

18 14. 4 Js MINI MART - EL CAJON BOULEVARD, SAN DIEGO; LATIF K.
19 MAROGY; ROBERTO'S TACO SHOP - EL CAJON BOULEVARD, SAN DIEGO; JUAN
20 GARCIA; ROSALBA OSORIA; FERRANTELLI FAMILY TRUST 01-09-90; PETER
21 J. FERRANTELLI; MARY E. FERRANTELLI; and Does 1 through 10 will be
22 referred to collectively hereinafter as "Defendants."

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

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26
27 ///

28 ///

1 ///

2 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

5
6 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal

7 Access

8 16. Based on the facts plead at ¶¶ 6-13 above and elsewhere in
9 this complaint, Plaintiff's Member was denied full and equal
10 access to Defendants' goods, services, facilities, privileges,
11 advantages, or accommodations. Plaintiffs allege Defendants are a
12 public accommodation owned, leased and/or operated by Defendants.
13 Defendants' existing facilities and/or services failed to provide
14 full and equal access to Defendants' facility as required by 42
15 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
16 discrimination in violation of 42 United States Code
17 12182(b) (2) (A) (iv) and 42 U.S.C. § 12188 because Plaintiff's
18 Member was denied equal access to Defendants' existing facilities.

19 17. Plaintiff's member Theodore A. Pinnock has physical
20 impairments as alleged in ¶ 6 above because his conditions affect
21 one or more of the following body systems: neurological,
22 musculoskeletal, special sense organs, and/or cardiovascular.
23 Further, Plaintiff's member Theodore A. Pinnock's said physical
24 impairments substantially limits one or more of the following
25 major life activities: walking. In addition, Plaintiff's member
26 Theodore A. Pinnock cannot perform one or more of the said major
27 life activities in the manner, speed, and duration when compared
28

1 to the average person. Moreover, Plaintiff's member Theodore A.
2 Pinnock has a history of or has been classified as having a
3 physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

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

20 19. Additionally, the Defendants undertook an alteration that
21 affects or could affect the usability of or access to an area of
22 the facility containing a primary function after January 26, 1992.
23 Defendants further failed to make the alterations in such a manner
24 that, to the maximum extent feasible, the path of travel to the
25 altered area and the bathrooms, telephones, and drinking fountains
26 serving the altered area, are readily accessible to and usable by
27 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).
28

1 20. Pursuant to 42 U.S.C. §12183(a), this failure to make the
2 alterations in a manner that, to the maximum extent feasible, are
3 readily accessible to and usable by individuals with disabilities
4 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
5 Therefore, Defendants discriminated against Plaintiff's Member and
6 Plaintiff THEODORE A. PINNOCK in violation of 42 U.S.C. §
7 12182(a).

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

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

16 22. Based on the facts plead at ¶¶ 6-13 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 within a public accommodation owned,
20 leased, and/or operated by Defendants. Defendants failed to
21 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
22 are informed, believe, and thus allege that architectural barriers
23 which are structural in nature exist within the following physical
24 elements of Defendants' facilities: Space Allowance and Reach
25 Ranges, Accessible Route, Protruding Objects, Ground and Floor
26 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
27 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
28 Doors, Entrances, Drinking Fountains and Water Coolers, Water

1 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
2 Storage, Handrails, Grab Bars, and Controls and Operating
3 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
4 Title III requires places of public accommodation to remove
5 architectural barriers that are structural in nature to existing
6 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
7 Failure to remove such barriers and disparate treatment against a
8 person who has a known association with a person with a disability
9 are forms of discrimination. [See 42 United States Code
10 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
11 discrimination in violation of 42 United States Code
12 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
13 denied equal access to Defendants' existing facilities.
14

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

16 23. Based on the facts plead at ¶¶ 6-13 above and elsewhere in
17 this complaint, Defendants failed and refused to provide a
18 reasonable alternative by modifying its practices, policies and
19 procedures in that they failed to have a scheme, plan, or design
20 to assist Plaintiff's Member and/or others similarly situated in
21 entering and utilizing Defendants' services, as required by 42
22 U.S.C. § 12188(a). Thus, said Member was subjected to
23 discrimination in violation of 42 United States Code
24 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
25 denied equal access to Defendants' existing facilities.
26

27 24. Based on the facts plead at ¶¶ 6-13 above, Claims I, II, and
28 III of Plaintiffs' First Cause Of Action above, and the facts

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

16
17 25. WHEREFORE, Plaintiffs pray for judgment and relief as
18 hereinafter set forth.

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

21 CLAIM I: Denial Of Full And Equal Access

22 26. Based on the facts plead at ¶¶ 6-13 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 as required by Civil Code
27 Sections 54 and 54.1. Defendants' facility violated California's
28 Title 24 Accessible Building Code by failing to provide access to

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

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

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

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

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

25 29. Based on the facts plead at ¶¶ 6-13 above and elsewhere
26 herein this complaint and because Defendants violated the Civil
27 Code § 51 by failing to comply with 42 United States Code §
28

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

21 31. Wherefore, Plaintiffs pray for damages and relief as
22 hereinafter stated.
23

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

26 32. Defendants, each of them respectively, at times prior to and
27 including, the month of July, 2000, and continuing to the present
28 time, knew that persons with physical disabilities were denied

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

1 by law. Further, Defendants', and each of their, refusals on a
2 day-to-day basis to correct these problems evidence despicable
3 conduct in conscious disregard for the rights of Plaintiff's
4 Member THEODORE A. PINNOCK and other members of the public with
5 physical disabilities.

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

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

19
20 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS - Violation of**
21 **Business and Professions Code section 17200 et seq.**

22 36. Plaintiffs incorporate by reference herein the facts plead
23 at ¶¶ 6-13 above and elsewhere in this complaint.

24 37. Business and Professions Code section 17200 defines "unfair
25 competition" and prohibited activities as, ". . . any unlawful,
26 unfair or fraudulent business act or practice and unfair,
27 deceptive, untrue or misleading advertising and any act prohibited
28 by Chapter 1 (commencing with Section 17500) of Part 3 of Division

1 7 of the Business and Professions Code." Defendants' acts and
2 omissions alleged herein are violations of the below-enumerated
3 (¶¶ 38-43) federal and state statutory requirements and public
4 policy and therefore constitute unfair competition and/or
5 prohibited activities as such violations are *unlawful, unfair or*
6 *fraudulent business acts or practices.*

7 38. Pursuant to federal law, Defendants are required to remove
8 barriers to their existing facilities. Title III of the Americans
9 With Disabilities Act requires places of public accommodation to
10 remove architectural barriers that are structural in nature to
11 existing facilities. [42 United States Code 12182(b)(2)(A)(iv).]
12 Failure to remove such barriers and disparate treatment against a
13 person who has a known association with a person with a disability
14 are forms of discrimination. [See 42 United States Code
15 12182(b)(2)(A)(iv)]. Defendants failed to remove obstructions in
16 the disabled parking, paths of travel, and restroom facilities
17 from Defendants' establishment. Thus, Plaintiffs were subjected
18 to discrimination in violation of 42 United States Code
19 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
20 Member was denied equal access to Defendants' existing facilities.
21 Also, Defendants' facilities failed to provide full and equal
22 access to Defendants' facility as required by 42 U.S.C. §
23 12182(a). Thus, Plaintiffs were subjected to discrimination in
24 violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
25 U.S.C. § 12188 because Plaintiff's Member was denied equal access
26 to Defendants' existing facilities. Additionally, as a result of
27 said access barriers, Defendants failed and refused to provide a
28

1 reasonable alternative by modifying its practices, policies and
2 procedures in that they failed to have a scheme, plan, or design
3 to assist Plaintiff's Member and/or others similarly situated in
4 entering and utilizing Defendants' services, as required by 42
5 U.S.C. § 12188(a). Thus, Plaintiffs were subjected to
6 discrimination in violation of 42 United States Code
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
8 Member was denied equal access to Defendants' existing facilities.
9
10 39. Pursuant to California state law, Defendants are also
11 required to remove barriers to their existing facilities.
12 Defendants' failure to remove barriers to their existing
13 facilities denied Plaintiff's Member full and equal access to
14 Defendants' facilities. Thus, Plaintiffs were subjected to
15 discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because
16 Plaintiff's Member was denied full, equal and safe access to
17 Defendants' facility. Further, Defendants' facility, and other
18 goods, services, and/or facilities provided to the public by
19 Defendants are not accessible to and usable by persons with
20 disabilities as required by Health and Safety Code § 19955 which
21 requires private entities to make their facility accessible before
22 and after remodeling, and to remove architectural barriers.
23 Additionally, Defendants failed and refused to provide a
24 reasonable alternative by modifying its practices, policies, and
25 procedures in that they failed to have a scheme, plan, or design
26 to assist Plaintiff's Member and/or others similarly situated in
27 entering and utilizing Defendants' services as required by Civil
28 Code § 54.1. Thus, Plaintiffs were subjected to discrimination in

1 violation of Civil Code § 54.1. Also, under the Unruh Act,
2 Defendants violated Civil Code § 51 by failing to comply with 42
3 United States Code 12182(b)(2)(A)(iv), Defendants did and continue
4 to discriminate against Plaintiffs and persons similarly situated
5 in violation of Civil Code §§ 51, 52, and 54.1. Further,
6 Defendants had actual knowledge of their barrier removal duties
7 under the Americans with Disabilities Act, the California Civil
8 Code, and the California Health & Safety Code before January 26,
9 1992.

10 40. Defendants' alleged unlawful, unfair, or fraudulent business
11 acts or practices are specifically prohibited by the specific
12 introductory language of B&P section 17200 that is stated in the
13 conjunctive. Consequently, Plaintiffs allege that Defendants'
14 acts and omissions constitute a violation specifically of this
15 section 17200 of the Business and Professions Code.

16 41. Plaintiffs seek injunctive relief requiring Defendants to
17 remedy the disabled access violations present at the Defendants'
18 facilities. Ancillary to this injunctive relief, Plaintiffs also
19 request restitution for amounts paid by Plaintiff's Member who
20 attempted to visit and patronize Defendants' facilities during the
21 time period that the subject premises have been in violation of
22 the disabled access laws of the State of California.

23 42. Plaintiffs seek, on behalf of the general public, injunctive
24 relief requiring Defendants to comply with the disabled access
25 laws of the State of California at facilities throughout the State
26 of California built, owned, operated, and/or controlled by
27 Defendants.
28

1 43. WHEREFORE, Plaintiffs pray for judgment and relief as
2 hereinafter set forth.

3
4 PLAINTIFF THEODORE A. PINNOCK'S FOURTH CAUSE OF ACTION AGAINST ALL
5 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

6 44. Based on the facts plead at ¶¶ 6-13 above and elsewhere in
7 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
8 statutory duty to make their facility accessible and owed
9 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
10 Pinnock reasonably safe from known dangers and risks of harm.
11 This said duty arises by virtue of legal duties proscribed by
12 various federal and state statutes including, but not limited to,
13 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
14 California Administrative Code and applicable 1982 Uniform
15 Building Code standards as amended.

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

24 46. Therefore, Defendants engaged in discriminatory conduct in
25 that they failed to comply with known duties under the ADA, ADAAG,
26 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
27 should have known that their acts of nonfeasance would cause
28

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

14 47. Wherefore, Plaintiffs pray for damages and relief as
15 hereinafter stated.
16

17 DEMAND FOR JUDGMENT FOR RELIEF:

- 18 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
19 3281, and 3333;
20
21 B. For \$1,000 in damages pursuant to Cal. Civil Code §§ 52, and
22 54.3 for each and every offense of Civil Code § 51, Title 24 of
23 the California Building Code, ADA, and ADA Accessibility
24 Guidelines;
25
26 C. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
27 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
28 Defendants to remove all architectural barriers in, at, or on

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

9
10 D. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. §
11 12205, and Cal. Civil Code § 55;

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

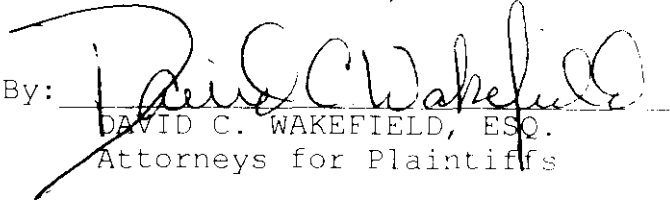
14 F. For Restitution pursuant to Business and Professions § 17200;

15 G. A Jury Trial and;

16 H. For such other further relief as the court deems proper.
17

18
19 Respectfully submitted:
20

21
22 Dated: January 17, 2001

PINNOCK & KELSO, A Law Firm
By: 
DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

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 ASHLANTTS CAUSE, SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS; And THEODORE A. PINNOCK, An Individual

DEFENDANTS

4 JS MINI MART - EL CAJON BOULEVARD, SAN DIEGO; LATIF K. MAROGY; ROBERTO'S TACO SHOP - EL CAJON BOULEVARD, SAN DIEGO; JUAN CARLOS PERALBA GONZALEZ; FERRANTELLI FAMILY TRUST 01-09-90; PETER J. FERRANTELLI; MARY E. FERRANTELLI; and DOBSON THROUGH 10, Inclusive, Plaintiff's County of Residence of First Listed Defendant

FILED
01 JAN 18 AM 9:06
CLERK OF COURT

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

(IN U.S. PLAINTIFF CASES ONLY) San Diego
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE PROPERTY OF LAND INVOLVED 3Y

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David C. Wakefield, Esq. SBN: 185736
Michelle L. Martin-Wakefield, SBN: 200424
Pinnock & Associates: 7966 Arjons Drive, Suite 119
San Diego, CA 92126
Telephone: (858) 689-1750; Facsimile: (858) 689-1950

ATTORNEYS (IF KNOWN)

'01 CV 0100BTM (JFS)

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)

- | | | |
|---|--|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <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 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DRWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (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 Commerce ICC Rates etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions		

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

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

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER FRCP 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 January 17, 2001

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield

#67643 #150-182