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

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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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1  
2  
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 41<sup>st</sup>, 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:

25  
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);

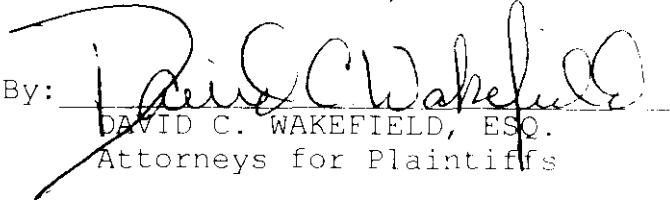
14 F. For Restitution pursuant to Business and Professions § 17200;

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, through 10, Inclusive, COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) San Diego

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)

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)

- Citizen of This State  1
- Citizen of Another State  2
- Citizen or Subject of a Foreign Country  3
- Incorporated or Principal Place of Business in This State  4
- Incorporated and Principal Place of Business in Another State  5
- Foreign Nation  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"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce (CC, Rates etc)
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DRWC/DIWW 405(g)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of information Act
<input type="checkbox"/> 230 Rent Lease & Eiectmant	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 791 Empl Ret Inc	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> Security Act		<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property	<b>PRISONER PETITIONS</b>			
	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)  
 1 Original Proceeding  2 Removal from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER fr c.p. 23 DEMAND \$ To Be Determined At Trial Check YES only if demanded in complaint: JURY DEMAND:  YES  NO

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

DATE January 17, 2001

SIGNATURE OF ATTORNEY OF RECORD  
*David C. Wakefield*

#67643 #150-182