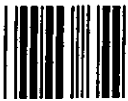


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

Case No.: '04 CV 1308 JM

(JFS)

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

Plaintiffs,

NEGLIGENCE
[CIVIL CODE 1714(a), 2338,
3333; EVIDENCE CODE 669(a)]

v.

NAPA AUTO PARTS; GENUINE
PARTS COMPANY CORPORATION;
NAPA AUTO PARTS CORPORATION;
BRYON F. WHITE 2001 REVOCABLE
TRUST; BYRON F. WHITE,
TRUSTEE OF THE BRYON F. WHITE
2001 REVOCABLE TRUST; And
DOES 1 THROUGH 10, Inclusive

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

Defendants.

INTRODUCTION

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
herein complain, by filing this Civil Complaint in accordance with
rule 8 of the Federal Rules of Civil Procedure in the Judicial
District of the United States District Court of the Southern

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

16 **JURISDICTION AND VENUE**

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

25 **SUPPLEMENTAL JURISDICTION**

26 2. The Judicial District of the United States District Court of
27 the Southern District of California has supplemental jurisdiction
28

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

18
19 NAMED DEFENDANTS AND NAMED PLAINTIFFS

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

23 Defendant NAPA AUTO PARTS is located at 1810 Highland Avenue,
24 National City, California, 91950. Plaintiffs are informed and
25 believe and thereon allege that Defendants GENUINE PARTS COMPANY
26 CORPORATION and/or NAPA AUTO PARTS CORPORATION are the owners,
27 operators, and/or doing business as NAPA AUTO PARTS. Defendant
28 GENUINE PARTS COMPANY CORPORATION is located at 2999 Circle 75

1 Parkway, Atlanta, Georgia, 30339. Defendant NAPA AUTO PARTS
2 CORPORATION is located at 2221 West Mockingbird Lane, Dallas,
3 Texas, 75266. Plaintiffs are informed and believe and thereon
4 allege that Defendant BRYON F. WHITE 2001 REVOCABLE TRUST is the
5 owner, operator, and/or lessor of the property located at 1810-22
6 Highland Avenue, National City, California, 91950, Assessor Parcel
7 Number 560-240-07. Defendant BYRON F. WHITE, TRUSTEE OF THE BRYON
8 F. WHITE 2001 REVOCABLE TRUST is located at 2173 Caminito San
9 Martin, La Jolla, California, 92037. The words "Plaintiffs" and
10 "Plaintiff's Member" as used herein specifically include the
11 organization MANTIC ASHANTI'S CAUSE, its Members, its member
12 Theodore A. Pinnock and persons associated with its Members who
13 accompanied Members to Defendants' facilities, as well as THEODORE
14 A. PINNOCK, An Individual.

15 4. Defendants Does 1 through 10, were at all times relevant
16 herein subsidiaries, employers, employees, agents, of NAPA AUTO
17 PARTS; GENUINE PARTS COMPANY CORPORATION; NAPA AUTO PARTS
18 CORPORATION; BRYON F. WHITE 2001 REVOCABLE TRUST; and BYRON F.
19 WHITE, TRUSTEE OF THE BRYON F. WHITE 2001 REVOCABLE TRUST.

20 Plaintiffs are ignorant of the true names and capacities of
21 Defendants sued herein as Does 1 through 10, inclusive, and
22 therefore sues these Defendants by such fictitious names.

23 Plaintiffs will pray leave of the court to amend this complaint to
24 allege the true names and capacities of the Does when ascertained.

25 5. Plaintiffs are informed and believe, and thereon allege, that
26 Defendants and each of them herein were, at all times relevant to
27 the action, the owner, lessor, lessee, franchiser, franchisee,
28

1 general partner, limited partner, agent, employee, representing
2 partner, or joint venturer of the remaining Defendants and were
3 acting within the course and scope of that relationship.

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

8 CONCISE SET OF FACTS

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

16 7. On March 31, 2004, Plaintiff's member THEODORE A. PINNOCK
17 went to Defendants' NAPA AUTO PARTS facilities to utilize their
18 goods and/or services. When Plaintiff's member patronized
19 Defendants' NAPA AUTO PARTS facilities, he was unable to use
20 and/or had difficulty using the public accommodations' disabled
21 parking, exterior path of travel, entrance, interior path of
22 travel, and counter facilities at Defendants' business
23 establishment because they failed to comply with ADA Access
24 Guidelines For Buildings and Facilities (hereafter referred to as
25 "ADAAG") and/or California's Title 24 Building Code Requirements.
26 Defendants failed to remove access barriers within the disabled
27 parking, exterior path of travel, entrance, interior path of
28

1 travel, counter, ramp, and restroom facilities of Defendants' NAPA
2 AUTO PARTS establishment.

3 8. Plaintiff's member personally experienced difficulty with
4 said access barriers at Defendants' NAPA AUTO PARTS facilities.
5 For example, the front entrance to Defendants establishment is not
6 accessible. The parking facility has a total of 27 parking spaces
7 including one (1) disabled parking space. The existing disabled
8 parking space is a "van accessible" disabled parking space that is
9 inaccessible, as it fails to have the proper disability signage
10 and its colored striping is faded. There are four (4) entrances to
11 the parking lot, all of which fail to have the required signage
12 indicating that anyone illegally parking in a disabled parking
13 space would be towed/fined or both.

14 9. The exterior path of travel fails to be accessible from the
15 public sidewalk to the primary accessible entrance as members of
16 the disability community are forced to traverse through vehicular
17 traffic without the benefit of a marked path of travel. Also the
18 path of travel between the parking spaces and the store is
19 inaccessible, as parking spaces along this path of travel fail to
20 have the required wheel stops.

21 10. The entrance to the defendant's establishment is
22 inaccessible. The front entrance has double doors that are
23 inaccessible, as the opening width of each door is only twenty-
24 five inches (25"), when it is required to be at least thirty-two
25 inches (32"). The signage on the entrance door fails to be
26 compliant because it does not show the required international
27 symbol of accessibility.
28

1 11. The interior path of travel fails to be accessible, as the
2 aisles containing items on both sides of the aisle are only
3 thirty-six inches (36") wide. The aisles should be at least forty-
4 four inches (44") wide if items are displayed on both sides.

5 12. The cashier counter and the service counter are both
6 inaccessible, as they both exceed the maximum height requirement
7 of thirty-four inches (34"). The cashier counter is forty inches
8 (40") high and the service counter is forty-two inches (42") high.

9 13. In addition to the violations personally experienced by
10 Plaintiff's Member THEODORE A. PINNOCK, additional violations of
11 federal and state disability laws exist at Defendants' NAPA AUTO
12 PARTS. For example, the path of travel from the restroom area
13 door to the restroom door is only twenty-four inches (24") wide,
14 when it should be a minimum of thirty-six inches (36") wide. The
15 slope of the ramp at the restroom area door is twenty percent
16 (20%), which exceeds the required maximum of 8.33%.

17 14. The unisex restroom located in the Defendant's establishment
18 is inaccessible. The restroom door fails to have the required
19 disability signage. The clear opening width of the restroom
20 doorway is only twenty-six inches (26") wide, when it is required
21 to be at least thirty-two inches (32") wide. The restroom
22 doorknob fails to be accessible, as it requires tight grasping
23 and/or twisting by the wrist to operate. The stall door fails to
24 have the required self-closing mechanism. The commode is
25 inaccessible, as it is only fifteen inches (15") high, when it
26 should be between seventeen inches and nineteen inches (17"-19")
27 high. The distance from the side edge of the commode to the far
28

1 wall is only twenty-four inches (24"), when it should be at least
2 thirty-two inches (32"). The distance from the front edge of the
3 commode to the front wall is only twenty-nine inches (29"), when
4 it should be at least forty-eight inches (48"). The restroom
5 fails to have the required grab bars around the commode. The
6 distance from the centerline of the commode to the near wall is
7 only fifteen inches (15"), when the required minimum is eighteen
8 inches (18"). The wheelchair turnaround space is only fifty-nine
9 and one half inches by forty-two inches (59 ½" X 42"). The
10 required turnaround space is at least sixty inches (60") in
11 diameter. The paper towel dispenser is inaccessible as it is
12 mounted fifty-seven inches (57") high, which exceeds the maximum
13 height requirement of forty inches (40"). The lavatory is
14 inaccessible, as it is enclosed and fails to have the minimum
15 required knee clearance. The toilet paper dispenser is
16 inaccessible, as it is mounted at thirty-six inches (36") from the
17 front edge of the commode, when it should be no more than twelve
18 inches (12") away from the front edge of the commode. The flush
19 handle on the commode tank is inaccessible, as it is located on
20 the narrow side of the tank, when it is required to be on the wide
21 side of the tank. The soap dispenser fails to be accessible as it
22 is mounted at forty-eight inches (48") above the floor surface,
23 when it should be no more than forty inches (40") high. The
24 lavatory faucets fail to be accessible, as they require tight
25 grasping and/or twisting of the wrist to operate. The small round
26 locking mechanism on the restroom door fails to be accessible, as
27 it requires tight grasping and/or twisting by the wrist to
28

1 operate. The restroom also fails to have the required audible
2 visual alarm system.

3 15. Pursuant to federal and state law, Defendants are required to
4 remove barriers to their existing facilities. Further, Defendants
5 had actual knowledge of their barrier removal duties under the
6 Americans with Disabilities Act and the Civil Code before January
7 26, 1992. Also, Defendants should have known that individuals
8 with disabilities are not required to give notice to a
9 governmental agency before filing suit alleging Defendants failed
10 to remove architectural barriers.

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

27 17. Based on these facts, Plaintiffs allege Plaintiff's Member
28

1 and Plaintiff Theodore A. Pinnock was discriminated against each
2 time he patronized Defendants' establishments. Plaintiff's Member
3 and Plaintiff Theodore A. Pinnock was extremely upset due to
4 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
5 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
6 shoulders and wrists when he attempted to enter, use, and exit
7 Defendants' NAPA AUTO PARTS establishment.

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

9
10 18. NAPA AUTO PARTS; GENUINE PARTS COMPANY CORPORATION; NAPA AUTO
11 PARTS CORPORATION; BRYON F. WHITE 2001 REVOCABLE TRUST; BYRON F.
12 WHITE, TRUSTEE OF THE BRYON F. WHITE 2001 REVOCABLE TRUST; and
13 Does 1 through 10 will be referred to collectively hereinafter as
14 "Defendants."

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

17 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

22 20. Based on the facts plead at ¶¶ 6-17 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. Plaintiffs allege Defendants are a
26 public accommodation owned, leased and/or operated by Defendants.
27 Defendants' existing facilities and/or services failed to provide
28 full and equal access to Defendants' facility as required by 42

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

5 21. Plaintiff's member Theodore A. Pinnock has physical
6 impairments as alleged in ¶ 6 above because his conditions affect
7 one or more of the following body systems: neurological,
8 musculoskeletal, special sense organs, and/or cardiovascular.

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

17
18 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**
19 **Such A Manner That The Altered Portions Of The Facility Are**
20 **Readily Accessible And Usable By Individuals With Disabilities**

21 22. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
22 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
23 full and equal access to Defendants' goods, services, facilities,
24 privileges, advantages, or accommodations within a public
25 accommodation owned, leased, and/or operated by Defendants.
26 Defendants altered their facility in a manner that affects or
27 could affect the usability of the facility or a part of the
28 facility after January 26, 1992. In performing the alteration,
Defendants failed to make the alteration in such a manner that, to

1 the maximum extent feasible, the altered portions of the facility
2 are readily accessible to and usable by individuals with
3 disabilities, including individuals who use wheelchairs, in
4 violation of 42 U.S.C. §12183(a)(2).

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

13 24. Pursuant to 42 U.S.C. §12183(a), this failure to make the
14 alterations in a manner that, to the maximum extent feasible, are
15 readily accessible to and usable by individuals with disabilities
16 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
17 Therefore, Defendants discriminated against Plaintiff's Member
18 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

19 25. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
20 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
21 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
22 Pinnock was denied equal access to Defendants' existing
23 facilities.
24

25 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
26 Architectural Barriers

27 26. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
28 this complaint, Plaintiff's Member was denied full and equal

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

26 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
27 Policies And Procedures

28 27. Based on the facts plead at ¶¶ 6-17 above and elsewhere in

1 this complaint, Defendants failed and refused to provide a
2 reasonable alternative by modifying its practices, policies and
3 procedures in that they failed to have a scheme, plan, or design
4 to assist Plaintiff's Member and/or others similarly situated in
5 entering and utilizing Defendants' services, as required by 42
6 U.S.C. § 12188(a). Thus, said Member was subjected to
7 discrimination in violation of 42 United States Code
8 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
9 denied equal access to Defendants' existing facilities.

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

27 29. WHEREFORE, Plaintiffs pray for judgment and relief as
28

1 hereinafter set forth.

2 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
3 CALIFORNIA ACCESSIBILITY LAWS

4 CLAIM I: Denial Of Full And Equal Access

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

21 31. These violations denied Plaintiff's Member full and equal
22 access to Defendants' facility. Thus, said Member was subjected
23 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
24 because Plaintiff's Member was denied full, equal and safe access
25 to Defendants' facility, causing severe emotional distress.

26 CLAIM II: Failure To Modify Practices, Policies And Procedures

27 32. Based on the facts plead at ¶¶ 6-17 above and elsewhere
28

1 herein this complaint, Defendants failed and refused to provide a
2 reasonable alternative by modifying its practices, policies, and
3 procedures in that they failed to have a scheme, plan, or design
4 to assist Plaintiff's Member and/or others similarly situated in
5 entering and utilizing Defendants' services as required by Civil
6 Code § 54.1. Thus, said Member was subjected to discrimination in
7 violation of Civil Code § 54.1.

8 CLAIM III: Violation Of The Unruh Act

9 33. Based on the facts plead at ¶¶ 6-17 above and elsewhere
10 herein this complaint and because Defendants violated the Civil
11 Code § 51 by failing to comply with 42 United States Code §
12 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
13 continue to discriminate against Plaintiff's Member and persons
14 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

15 34. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
16 III of Plaintiffs' Second Cause Of Action above, and the facts
17 elsewhere herein this complaint, Plaintiffs will suffer
18 irreparable harm unless Defendants are ordered to remove
19 architectural, non-architectural, and communication barriers at
20 Defendants' public accommodation. Plaintiffs allege that
21 Defendants' discriminatory conduct is capable of repetition, and
22 this discriminatory repetition adversely impacts Plaintiffs and a
23 substantial segment of the disability community. Plaintiffs
24 allege there is a state and national public interest in requiring
25 accessibility in places of public accommodation. Plaintiffs have
26 no adequate remedy at law to redress the discriminatory conduct of
27 Defendants. Plaintiff's Member desires to return to Defendants'
28

1 places of business in the immediate future. Accordingly, the
2 Plaintiffs allege that a structural or mandatory injunction is
3 necessary to enjoin compliance with state civil rights laws
4 enacted for the benefit of individuals with disabilities.

5 35. Wherefore, Plaintiffs pray for damages and relief as
6 hereinafter stated.
7

8 Treble Damages Pursuant To Claims I, II, III Under The California
9 Accessibility Laws

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

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

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

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

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

1 hereinafter stated.

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

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

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

22 41. Therefore, Defendants engaged in discriminatory conduct in
23 that they failed to comply with known duties under the ADA, ADAAG,
24 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
25 or should have known that their acts of nonfeasance would cause
26 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
27 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
28

1 bodily injury in this matter because when Plaintiff THEODORE A.
2 PINNOCK attempted to enter, use, and exit Defendants'
3 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
4 his legs, back, arms, shoulders, and wrists. Plaintiffs further
5 allege that such conduct was done in reckless disregard of the
6 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
7 to suffer bodily or personal injury, anger, embarrassment,
8 depression, anxiety, mortification, humiliation, distress, and
9 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
10 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
11 An Individual, to suffer the injuries of mental and emotional
12 distress, including, but not limited to, anger, embarrassment,
13 depression, anxiety, mortification, humiliation, distress, and
14 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
15 Individual, additionally alleges that such conduct caused THEODORE
16 A. PINNOCK, An Individual, to suffer damages as a result of these
17 injuries.

18 42. Wherefore, Plaintiffs pray for damages and relief as
19 hereinafter stated.
20

21 DEMAND FOR JUDGMENT FOR RELIEF:

- 22 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
23 3281, and 3333;
24 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
25 each and every offense of Civil Code § 51, Title 24 of the
26 California Building Code, ADA, and ADA Accessibility Guidelines;
27 C. In the alternative to the damages pursuant to Cal. Civil
28 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to

1 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
2 54.1, Title 24 of the California Building Code, ADA, and ADA
3 Accessibility Guidelines;

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

15 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
16 § 12205, and Cal. Civil Code § 55;

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


19 G. A Jury Trial and;

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

21 Respectfully submitted:

22 PINNOCK & WAKEFIELD, A.P.C.

23
24 Dated: June 29, 2004

25 BY: 
26 MICHELLE L. WAKEFIELD, ESQ.
27 DAVID C. WAKEFIELD, ESQ.
28 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 updating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS
MANTIC ASHANTI'S CAUSE, SUING ON BEHALF OF
THEODORE A. PINNOCK AND ITS MEMBERS; And
THEODORE A. PINNOCK, An Individual

DEFENDANTS NAPA AUTO PARTS; GENUINE PARTS COMPANY
CORPORATION; NAPA AUTO PARTS CORPORATION; BRYON F.
WHITE 2001 REVOCABLE TRUST; BYRON F. WHITE TRUSTEE
OF THE BRYON F. WHITE 2001 REVOCABLE TRUST; And DOES
1 THROUGH 10, Inclusive

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
(IN U.S. PLAINTIFF CASES ONLY) DEPUTY
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Michelle L. Wakefield, Esq. SBN: 200424
David C. Wakefield, Esq. SBN: 185736
Pinnock & Wakefield, A.P.C.
3033 Fifth Avenue, Suite 410, San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'04 CV 1308 JM (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)
(For Diversity Cases Only)

Citizen of This State PT DEF 1 Incorporated or Principal Place of Business in This State PT DEF 4 4
Citizen of Another State PT DEF 2 Incorporated and Principal Place of Business in Another State PT DEF 5 5
Citizen or Subject of a Foreign Country PT DEF 3 3 Foreign Nation PT DEF 6 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"/> Motor 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 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	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 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	<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 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 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/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 990 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	<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 <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 <input type="checkbox"/> 710 Fair Labor Standards Act 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 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/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 990 Other Statutory Actions	

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 June 29, 2004

SIGNATURE OF ATTORNEY OF RECORD

Michelle L. Wakefield

CR 104971 JG 150⁰⁰ 6/30/04