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### The Dismissal of the JAST v. TEJJR Lawsuit –

*“Mission accomplished” or “[he] can’t ‘un-ring’ the TEJJR bell!”*

Because there has been a considerable amount of misunderstanding and misstatement with regard to the above-referenced lawsuit (a remarkable amount of which has been reflected in the news media), the following information is provided to “set the record straight.” This information is provided<sup>1</sup> because some have suggested that the JAST lawsuit was meritless, and/or that some court concluded that it lacked merit; of course, both of these positions are completely false. The complaint was dismissed for only one reason-- because it involved primarily State-law claims, which the Federal courts believe are best decided in State courts (see our reasons for filing the lawsuit as it was, below).

The conduct in question stopped, and has not been repeated, as soon as the Complaint was filed. That’s what everybody wanted, right? If the conduct was inappropriate, we wanted it to stop. Because the conduct stopped, it is unlikely that a judge would have considered it in either a State or Federal court, because both courts are required to devote their very limited resources only to adjudicating “live” or actual controversies.

Judge for yourself-- both the original complaint, as well as the decision dismissing it, have now been posted on the “About the Lawsuit” page of [www.SaveJulian.com](http://www.SaveJulian.com) so that you can decide for yourself. In doing so, please consider the following:

1. **There was never a determination on the merits:** Anyone who suggests that the dismissal of this matter involved some determination of the merits of the underlying claims is absolutely incorrect. The responding parties filed procedural challenges to prevent that sort of consideration.

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<sup>1</sup> Note that the information provided herein and in all accompanying documents does not necessarily constitute the opinion or position of any individual or entity involved in the JAST v. TEJJR lawsuit, but rather, reflects only the personal views of the undersigned.

2. **The dismissal was made because the Federal judge felt that the complaint involved primarily State law claims, best decided by State courts:** Generally, Federal courts think that State courts are the most appropriate forums in which to decide state law; in the same way, State Courts will often defer to questions of Federal law to Federal courts. Despite this, Federal Courts often adjudicate State claims, and vice versa; in fact, nearly all of the financial claims in Mr. Pinnock's Federal lawsuits are based on State law claims.

A Federal judge has discretion in dismissing a case because it contains primarily State law claims. While we hoped that the court in this case would consider the fact that the majority of Mr. Pinnock's lawsuits have been filed in Federal court, we understand why a Federal judge would show appropriate respect to State courts to let them decide their own state's law, especially in a case of "first impression" like this one, with potential statewide impact.

3. **If the conduct was not improper . . .** : The parties responding to the JAST lawsuit had a number of tools available if they honestly felt that their conduct was proper—the demurrer, motion for summary judgment, and FRCP 11 motion might all have been appropriate vehicles, and could have been very profitable if we had incorrectly identified conduct a court concluded was proper in every respect. Instead, the responding parties filed a series of procedural challenges, which operated to keep any judge from considering the subject matter of the complaint on the merits.

If the JAST complaint was "wrong" and the tactics it described were "right," then why not do a quick motion for summary judgment and replicate those same practices all over the State? Many think documenting the conduct in the JAST complaint helped keep it from being repeated— whether by respondents or anyone else.

4. **Why the Julian lawsuit was filed in Federal Court:** While there was little question that most of the claims in the Julian Lawsuit involved questions of State law, the fact was that, at the time, the overwhelming number of Mr. Pinnock's lawsuits were filed in Federal Court, and the greatest likelihood was that the judges in San Diego's Federal court would be the ones who would consider any lawsuits Mr. Pinnock filed in these matters. How would it seem to them, we thought, if we filed the Julian lawsuit in State Court, seeking to regulate the conduct of claims which we knew would almost definitely be made in Federal court? We believed that it would look like we were "forum shopping" to get a State Court judge to tell a Federal Court how to handle the claims Mr. Pinnock was filing; frankly, we didn't think that would be well-received by the various Federal Judges before whom we (and Mr. Pinnock) practice nearly every day.
5. **Mission accomplished:** We wanted the conduct (discussed below) to stop and it did stop; as far as we know, it has not been repeated anywhere in the State of California. The JAST lawsuit would have done no more than that— it didn't seek

money or liability— basically, we wanted a judge to look at the conduct, and if s/he determined that it was inappropriate, then to issue an order stopping it. The fact that the conduct ceased to reoccur after the lawsuit was filed might well have prevented many judges from ruling on the matter, as they might have considered it moot (and it is generally thought that courts should not waste taxpayer dollars in deciding issues which are not active controversies).

I suggest that anyone concerned about this matter read the Julian lawsuit (and especially Exhibits “C”, “E” and “F” attached hereto), all of which are posted on the “About the Lawsuit” page of SaveJulian.com. **I urge you to ask any lawyer, judge or disabled individual** if the conduct the complaint **and especially its exhibits** describes is the sort of conduct that any lawyer should be proud of, or that society should encourage in attorneys.

6. **The Conduct in Question**: Some have forgotten about the tactics which prompted the filing of the JAST lawsuit; some people who have not read the lawsuit seemed to think that the lawsuit was designed to stop Mr. Pinnock from filing ADA/access lawsuits [which it certainly was not], and because he is still filing them in large numbers, the lawsuit did not accomplish its goals. The truth is that the lawsuit had only limited goals; it sought review of the following practices:

- a. **Demanding an “investigation fee.”** Perhaps the biggest concern for those of us closest to this situation was the assertion that an “investigation fee” was somehow due to Mr. Pinnock’s organizational client TEJJR based on identifying disabled access issues at certain properties. Of course, neither the ADA nor California’s various antidiscrimination laws provides for, or make any reference to, anything called, or anything like, an investigation fee. Because we could not find any basis for this in case law (or anywhere else we looked, for that matter), we assumed that it was just ordinary, garden-variety, greed. People ask for things all the time to which they are not entitled, and the legal community is no stranger to such requests.

The problem was that Mr. Pinnock was sending most of these letters to people he had to assume were not attorneys. The State Bar maintains a website with the names and addresses of every attorney in California, so I think that there can be little real doubt that Mr. Pinnock “knew” that he was most likely writing to non-lawyers.

The problem with an attorney making financial demands to individuals he can reasonably expect are not attorneys (particularly in light of the short deadline issue discussed below) is that some non-attorneys might assume that because Mr. Pinnock was an experienced lawyer, there was a legal basis for his demands. If Mr. Pinnock had demanded financial damages for some difficulties he had personally experienced, or even the legal fees in

connection with such claims, that would be one thing. But all the demand letters we saw indicated that an organization (TEJJR) was seeking an "investigation fee," which is something else entirely.

We wanted the judge to tell us whether it is ok for an organization to demand an investigation fee, and we were concerned that if this was "legal" then countless opportunists could set up similar organizations and make claims against every community in California, if not the United States. Mr. Pinnock did, after all, refer to this as "The Julian Experiment."<sup>2</sup>

To the best of our knowledge, neither Mr. Pinnock, Pinnock and Wakefield, APC, nor TEJJR ever demanded another "investigation fee" after the Julian lawsuit was filed. We believe that is a good result.

- b. **Hopelessly short response deadlines:** Exhibit "E" shows a letter which contained a response deadline ***just two days*** after the date it was mailed. Exhibit "F" shows a letter which demanded a \$580 settlement ***the very same day*** it was faxed, to avoid a class-action lawsuit. We were concerned that tactics like these tended to prevent the recipients from getting good legal advice; particularly because many of the structures in Julian are historic, it can be very difficult to get reliable information about what could and could not be done to them.

Thankfully, we have not seen conduct like this repeated.

7. **Would any judge have decided the case once the actions complained of stopped?** If the Julian Complaint had been filed in State court, a judge might similarly have been reluctant to issue a ruling if, by the time the ruling was sought, the challenged conduct had not been repeated. Basically, the judge would need to determine that the party seeking the ruling was justifiably concerned that the conduct in question was about to be repeated. At the time the Julian complaint was filed, I think this was reasonable based on Mr. Pinnock's characterization of it as "The Julian Experiment," but in the 6 to 9 months it might have taken for such a motion to be considered, the fact that the conduct was not repeated would have been highly relevant.

*Your undersigned honestly believes that, but for the JAST complaint, the conduct it describes would have been repeated.*

8. **Where do we go from here?** Mr. Pinnock can never change the fact that he sent those TEJJR letters (like the one at Exhibit "A") and even procured settlements from some recipients. At least one judge has suggested that that the JAST complaint

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<sup>2</sup> See highlighted portion of Exhibit "G."

should be modified as a cross-claim to any lawsuit(s) he decides to advance against any business which received a TEJJR demand in the first place.

Some believe that Mr. Pinnock made a practice of paying for information about properties with disabled access problems, for purposes of filing lawsuits. The attached information from Tania Azevedo (Exhibit "I"), Erik Wyatt (Exhibit "H") and Marisol Perez (Exhibit "J") is difficult to ignore. Of course, it remains a crime to **create** legal controversies (Cal. Penal Code §158).<sup>3</sup>

Some have suggested that TEJJR should be joined as an indispensable party in any current or future lawsuit Mr. Pinnock brings against any business that received one of the original TEJJR letters; I personally think that discovery with regard to TEJJR is essential in any such action(s) because TEJJR may be the "real party in interest" [there are other examples of disabled plaintiffs who sought a payment to an "organization" in which they were involved and then filed discrimination lawsuits when they did not receive them]. The question then becomes whether the claimant was really interested in the products or services the business offered, or simply wanted a lawsuit claim (in which they got exactly what they wanted, and no harm was incurred).

Another matter of very serious concern is that Mantic Ashanti's Cause—the organization in which each of the lawsuits Mr. Pinnock filed against the addressees of the TEJJR letters, and which has, to date, filed more than 200 nearly identical lawsuits locally—was recently shown to have only two members (Mr. Pinnock and his wife). Of course, this is misleading and may not satisfy Federal pleading requirements for organizations; of most serious concern is that many defendants are said to have settled because they believed that Mantic Ashanti's Cause was a large, benevolent organization [perhaps even a non-profit] which benefits large numbers in the disabled community—not just a single husband and wife. Accordingly, Mantic Ashanti's Cause may also be an indispensable party to any such litigation, and may justify (at least) a deposition.

I think the Julian community should be proud that it, for the most part, stood together, when other communities have failed (at considerable cost and consequence) to take a united approach in similar situations. You have a counterclaim if the claims originally described in the TEJJR letters are advanced; even new visits might be evidence of an attempt by TEJJR to get around the initial problems with demanding an "investigation fee" by curing such errors with follow-up visits [there is surprising evidence of this; if this happens to any of you, please contact me personally].

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<sup>3</sup> The difference is as simple as saying "if you took this medication and had problems, give me a call" but it is never acceptable for a lawyer to say, in effect "take this medication and then give me a call so we can file a lawsuit." Of course, we are not suggesting that any attorney did any of these things; rather, this is a matter of intense public debate and each reader is encouraged to draw their own conclusions, after all appropriate research.

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***Important:*** I urge each Julian business that reads this to quickly review the Top 40 list, make all appropriate disabled access improvements, and get inspected, until your business is as accessible as reasonably possible— this law is not going away and Mr. Pinnock is not the only one who files lawsuits under it.

I have been asked if I am willing to represent businesses in Julian if Mr. Pinnock makes new or additional financial claims. I can tell you at this time that I would probably not be willing to provide assistance to any business which did not, in the 18 months since the demand letters were originally sent, make reasonable disabled access improvements; California has over 150,000 attorneys, a growing number of which have extensive ADA experience (a list of some of those is posted at [www.ADALawsuits.com](http://www.ADALawsuits.com)). The JAST complaint is available in Word format to any individual who received a TEJJR letter.

I wish everyone in Julian the very best and urge you to work together to make the town an example of how a community can welcome the disabled, rather than the example it almost became (i.e., a prototype for a systematic plan of wealth redistribution).

Very truly yours,



David W. Peters  
CEO and General Counsel

P.S. Despite the foregoing, some still think that unless and until there is accountability for the tactics described in the lawsuit, justice has not been achieved. Please keep in mind that this is a volunteer effort, for which no charges were ever asserted. Consider also that the tactics keep changing; for example, we are limited in our ability to devote attention to conduct which has not been repeated in 18 months, when this conduct only appears to be one link in a pattern of troubling actions:

- Filed a number of ADA/access lawsuits for the dead; problem— Federal pleading requires plaintiff have a demonstrable intent to return to location sued.
- Filed over 230 lawsuits as Mantic Ashanti's Cause, until it was shown to be just pltf and his wife; then switched to "2150 Sigmourney" association.
- Filed over 140 lawsuits for children's association, including a number against smoke shops, bars and liquor stores, where children may not be allowed to go.
- Filed over 200 class action lawsuits in past six months; settled many without reserve or adjudication of class interest.