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3:04-CV-01463 PINNOCK V. BUCA DI BEPPO

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
Bar #: 20042
Bar #: 185
DEPUTY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 1463

DMS (POR)

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

Plaintiffs,

v.

BUCA DI BEPPO; BUCA
RESTAURANTS 2, INC. d.b.a.
BUCA DI BEPPO; BUCA, INC.
d.b.a. BUCA DI BEPPO; BUCA
RESTAURANTS 2, INC.; BUCA,
INC.; M. H. SHERMAN COMPANY;
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]

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

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

INTRODUCTION

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

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

15 **JURISDICTION AND VENUE**

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

24 **SUPPLEMENTAL JURISDICTION**

25 2. The Judicial District of the United States District Court of
26 the Southern District of California has supplemental jurisdiction
27 over the state claims as alleged in this Complaint pursuant to 28
28

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

17
18 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

19 3. Defendants are, and, at all times mentioned herein, were, a
20 business or corporation or franchise organized and existing and/or
21 doing business under the laws of the State of California.
22 Defendant BUCA DI BEPPO is located at 705 6th Avenue, San Diego,
23 California 92118. Plaintiffs are informed and believe and thereon
24 allege that Defendants BUCA RESTAURANTS 2, INC. and/or BUCA, INC.
25 are the owners, operators, and/or doing business as BUCA DI BEPPO.
26 Defendant BUCA RESTAURANTS 2, INC. is located at 1300 Nicollet
27 Mall, Suite 5003, Minneapolis, Minnesota 55403. Defendant BUCA,
28 INC. is located at 1300 Nicollet Mall, Suite 5003, Minneapolis,

1 Minnesota 55403. Plaintiffs are informed and believe and thereon
2 allege that Defendant M. H. SHERMAN COMPANY is the owner,
3 operator, and/or lessor of the property located at 705 6th Avenue,
4 San Diego, California 92118, Assessor Parcel Number 535-101-03.
5 Defendant M. H. SHERMAN COMPANY is located at P.O. Box 1715,
6 Newport Beach, California 92659. The words "Plaintiffs" and
7 "Plaintiff's Member" as used herein specifically include the
8 organization MANTIC ASHANTI'S CAUSE, its Members, its member
9 Theodore A. Pinnock and persons associated with its Members who
10 accompanied Members to Defendants' facilities, as well as THEODORE
11 A. PINNOCK, An Individual.

12 4. Defendants Does 1 through 10, were at all times relevant
13 herein subsidiaries, employers, employees, agents, of BUCA DI
14 BEPPO; BUCA RESTAURANTS 2, INC. d.b.a. BUCA DI BEPPO; BUCA, INC.
15 d.b.a. BUCA DI BEPPO; BUCA RESTAURANTS 2, INC.; BUCA, INC.; and M.
16 H. SHERMAN COMPANY. Plaintiffs are ignorant of the true names and
17 capacities of Defendants sued herein as Does 1 through 10,
18 inclusive, and therefore sues these Defendants by such fictitious
19 names. Plaintiffs will pray leave of the court to amend this
20 complaint to allege the true names and capacities of the Does when
21 ascertained.

22 5. Plaintiffs are informed and believe, and thereon allege, that
23 Defendants and each of them herein were, at all times relevant to
24 the action, the owner, lessor, lessee, franchiser, franchisee,
25 general partner, limited partner, agent, employee, representing
26 partner, or joint venturer of the remaining Defendants and were
27 acting within the course and scope of that relationship.
28

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

5 CONCISE SET OF FACTS

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

13 7. On May 27, 2004, Plaintiff's member THEODORE A. PINNOCK went
14 to Defendants' BUCA DI BEPPO facilities to utilize their goods
15 and/or services. When Plaintiff's member patronized Defendants'
16 BUCA DI BEPPO facilities, he was unable to use and/or had
17 difficulty using the public accommodations' entrance, public
18 seating, front counter, take-out counter, and restroom facilities
19 at Defendants' business establishment because they failed to
20 comply with ADA Access Guidelines For Buildings and Facilities
21 (hereafter referred to as "ADAAG") and/or California's Title 24
22 Building Code Requirements. Defendants failed to remove access
23 barriers within the entrance, public seating, front counter, take-
24 out counter, and restroom facilities of Defendants' BUCA DI BEPPO
25 establishment.

26
27 8. Plaintiff's member personally experienced difficulty with
28 said access barriers at Defendants' BUCA DI BEPPO facilities. For

1 example, the entrance to the Defendants establishment is
2 inaccessible, as the entrance door fails to have the required
3 smooth and uninterrupted surface on the bottom ten inches (10") of
4 the door that allows the door to be opened with a wheelchair
5 footrest without creating a hazard.

6 9. The public seating at the Defendants' establishment is
7 inaccessible. There are several different seating areas, all of
8 which have seating with a knee clearance depth of only seven
9 inches to fourteen inches (7"- 14"). It is required that five
10 percent (5%) of all seats have a knee clearance depth of at least
11 nineteen inches (19").

12 10. The front counter is inaccessible, as it is forty-three
13 inches (43") high, when it is required to be no more than thirty-
14 four inches (34") high. The take-out counter is also
15 inaccessible, as it is forty inches (40") high, when it is
16 required to be no more than thirty-four inches (34") high.

17 11. The men's restroom located inside the defendants'
18 establishment is inaccessible. The men's restroom door is
19 inaccessible, as it requires twelve pounds (12 lbs.) of pressure
20 to operate. The maximum requirement is five pounds (5 lbs.) of
21 pressure to operate a door like this one. The stall door fails to
22 have the required handles on both sides of the door. The stall
23 door opens inward, when it is required to open outward. The
24 strike clearance of the stall door is a mere three inches (3"),
25 when it is required to be at least eighteen inches (18"). The
26 height of the coat hook is fifty-six inches (56"), when it is
27 required to be no higher than forty-eight inches (48") from the
28

1 floor surface. The height of the urinal lip is eighteen inches
2 (18"), when it is required to be no more than seventeen inches
3 (17") high. The bottom of the mirror is forty-five inches (45")
4 high, when it is required to be no more than forty inches (40")
5 high. The restroom fails to have the required audible and visual
6 alarm system.

7
8 12. Pursuant to federal and state law, Defendants are required to
9 remove barriers to their existing facilities. Further, Defendants
10 had actual knowledge of their barrier removal duties under the
11 Americans with Disabilities Act and the Civil Code before January
12 26, 1992. Also, Defendants should have known that individuals
13 with disabilities are not required to give notice to a
14 governmental agency before filing suit alleging Defendants failed
15 to remove architectural barriers.

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

1 Defendants are required to utilize the ADA checklist for Readily
2 Achievable Barrier Removal approved by the United States
3 Department of Justice and created by Adaptive Environments.

4 14. Based on these facts, Plaintiffs allege Plaintiff's Member
5 and Plaintiff Theodore A. Pinnock was discriminated against each
6 time he patronized Defendants' establishments. Plaintiff's Member
7 and Plaintiff Theodore A. Pinnock was extremely upset due to
8 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
9 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
10 shoulders and wrists when he attempted to enter, use, and exit
11 Defendants' BUCA DI BEPPO establishment.

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

13
14 15. BUCA DI BEPPO; BUCA RESTAURANTS 2, INC. d.b.a. BUCA DI BEPPO;
15 BUCA, INC. d.b.a. BUCA DI BEPPO; BUCA RESTAURANTS 2, INC.; BUCA,
16 INC.; M. H. SHERMAN COMPANY; and Does 1 through 10 will be
17 referred to collectively hereinafter as "Defendants."

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

20 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

23 CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal**
24 **Access**

25 17. Based on the facts plead at ¶¶ 6-14 above and elsewhere in
26 this complaint, Plaintiff's Member was denied full and equal
27 access to Defendants' goods, services, facilities, privileges,
28 advantages, or accommodations. Plaintiffs allege Defendants are a

1 public accommodation owned, leased and/or operated by Defendants.
2 Defendants' existing facilities and/or services failed to provide
3 full and equal access to Defendants' facility as required by 42
4 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
5 discrimination in violation of 42 United States Code
6 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
7 Member was denied equal access to Defendants' existing facilities.

8 18. Plaintiff's member Theodore A. Pinnock has physical
9 impairments as alleged in ¶ 6 above because his conditions affect
10 one or more of the following body systems: neurological,
11 musculoskeletal, special sense organs, and/or cardiovascular.
12 Further, Plaintiff's member Theodore A. Pinnock's said physical
13 impairments substantially limits one or more of the following
14 major life activities: walking. In addition, Plaintiff's member
15 Theodore A. Pinnock cannot perform one or more of the said major
16 life activities in the manner, speed, and duration when compared
17 to the average person. Moreover, Plaintiff's member Theodore A.
18 Pinnock has a history of or has been classified as having a
19 physical impairment as required by 42 U.S.C. § 12102(2)(A).
20

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

24 19. Based on the facts plead at ¶¶ 6-14 above and elsewhere in
25 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
26 full and equal access to Defendants' goods, services, facilities,
27 privileges, advantages, or accommodations within a public
28 accommodation owned, leased, and/or operated by Defendants.
Defendants altered their facility in a manner that affects or

1 could affect the usability of the facility or a part of the
2 facility after January 26, 1992. In performing the alteration,
3 Defendants failed to make the alteration in such a manner that, to
4 the maximum extent feasible, the altered portions of the facility
5 are readily accessible to and usable by individuals with
6 disabilities, including individuals who use wheelchairs, in
7 violation of 42 U.S.C. §12183(a)(2).

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

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

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

27 ///
28 ///

1 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
2 Architectural Barriers

3 23. Based on the facts plead at ¶¶ 6-14 above and elsewhere in
4 this complaint, Plaintiff's Member was denied full and equal
5 access to Defendants' goods, services, facilities, privileges,
6 advantages, or accommodations within a public accommodation owned,
7 leased, and/or operated by Defendants. Defendants failed to
8 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
9 are informed, believe, and thus allege that architectural barriers
10 which are structural in nature exist within the following physical
11 elements of Defendants' facilities: Space Allowance and Reach
12 Ranges, Accessible Route, Protruding Objects, Ground and Floor
13 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
14 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
15 Doors, Entrances, Drinking Fountains and Water Coolers, Water
16 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
17 Storage, Handrails, Grab Bars, and Controls and Operating
18 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
19 Title III requires places of public accommodation to remove
20 architectural barriers that are structural in nature to existing
21 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
22 Failure to remove such barriers and disparate treatment against a
23 person who has a known association with a person with a disability
24 are forms of discrimination. [See 42 United States Code
25 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
26 discrimination in violation of 42 United States Code
27 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
28 denied equal access to Defendants' existing facilities.

1 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
2 Policies And Procedures

3 24. Based on the facts plead at ¶¶ 6-14 above and elsewhere in
4 this complaint, Defendants failed and refused to provide a
5 reasonable alternative by modifying its practices, policies and
6 procedures in that they failed to have a scheme, plan, or design
7 to assist Plaintiff's Member and/or others similarly situated in
8 entering and utilizing Defendants' services, as required by 42
9 U.S.C. § 12188(a). Thus, said Member was subjected to
10 discrimination in violation of 42 United States Code
11 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
12 denied equal access to Defendants' existing facilities.

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

1 necessary to enjoin compliance with federal civil rights laws
2 enacted for the benefit of individuals with disabilities.

3 26. WHEREFORE, Plaintiffs pray for judgment and relief as
4 hereinafter set forth.

5 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
6 CALIFORNIA ACCESSIBILITY LAWS

7 CLAIM I: Denial Of Full And Equal Access

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

24 28. These violations denied Plaintiff's Member full and equal
25 access to Defendants' facility. Thus, said Member was subjected
26 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
27 because Plaintiff's Member was denied full, equal and safe access
28

1 to Defendants' facility, causing severe emotional distress.

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

3 29. Based on the facts plead at ¶¶ 6-14 above and elsewhere
4 herein this complaint, Defendants failed and refused to provide a
5 reasonable alternative by modifying its practices, policies, and
6 procedures in that they failed to have a scheme, plan, or design
7 to assist Plaintiff's Member and/or others similarly situated in
8 entering and utilizing Defendants' services as required by Civil
9 Code § 54.1. Thus, said Member was subjected to discrimination in
10 violation of Civil Code § 54.1.

11 CLAIM III: Violation Of The Unruh Act

12 30. Based on the facts plead at ¶¶ 6-14 above and elsewhere
13 herein this complaint and because Defendants violated the Civil
14 Code § 51 by failing to comply with 42 United States Code §
15 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
16 continue to discriminate against Plaintiff's Member and persons
17 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

18 31. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
19 III of Plaintiffs' Second Cause Of Action above, and the facts
20 elsewhere herein this complaint, Plaintiffs will suffer
21 irreparable harm unless Defendants are ordered to remove
22 architectural, non-architectural, and communication barriers at
23 Defendants' public accommodation. Plaintiffs allege that
24 Defendants' discriminatory conduct is capable of repetition, and
25 this discriminatory repetition adversely impacts Plaintiffs and a
26 substantial segment of the disability community. Plaintiffs
27 allege there is a state and national public interest in requiring
28

1 accessibility in places of public accommodation. Plaintiffs have
2 no adequate remedy at law to redress the discriminatory conduct of
3 Defendants. Plaintiff's Member desires to return to Defendants'
4 places of business in the immediate future. Accordingly, the
5 Plaintiffs allege that a structural or mandatory injunction is
6 necessary to enjoin compliance with state civil rights laws
7 enacted for the benefit of individuals with disabilities.

8 32. Wherefore, Plaintiffs pray for damages and relief as
9 hereinafter stated.

10 Treble Damages Pursuant To Claims I, II, III Under The California
11 Accessibility Laws

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

1 Act Access Guidelines (ADAAG) and Title 24 of the California Code
2 of Regulations (also known as the California Building Code). Such
3 actions and continuing course of conduct by Defendants, and each
4 of them, evidence despicable conduct in conscious disregard of the
5 rights and/or safety of Plaintiff's Member and of other similarly
6 situated persons, justifying an award of treble damages pursuant
7 to sections 52(a) and 54.3(a) of the California Civil Code.

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

19 35. Plaintiffs pray for an award of treble damages against
20 Defendants, and each of them, pursuant to California Civil Code
21 sections 52(a) and 54.3(a), in an amount sufficient to make a more
22 profound example of Defendants and encourage owners, lessors, and
23 operators of other public facilities from willful disregard of the
24 rights of persons with disabilities. Plaintiffs do not know the
25 financial worth of Defendants, or the amount of damages sufficient
26 to accomplish the public purposes of section 52(a) of the
27 California Civil Code and section 54.3 of the California Civil
28

1 Code.

2 36. Wherefore, Plaintiffs pray for damages and relief as
3 hereinafter stated.

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

6 37. Based on the facts plead at ¶¶ 6-14 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 38. 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 39. 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, 54.3, ADAAG, and Title 24, and knew
27 or should have known that their acts of nonfeasance would cause
28

1 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
2 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
3 bodily injury in this matter because when Plaintiff THEODORE A.
4 PINNOCK attempted to enter, use, and exit Defendants'
5 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
6 his legs, back, arms, shoulders, and wrists. Plaintiffs further
7 allege that such conduct was done in reckless disregard of the
8 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
9 to suffer bodily or personal injury, anger, embarrassment,
10 depression, anxiety, mortification, humiliation, distress, and
11 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
12 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
13 An Individual, to suffer the injuries of mental and emotional
14 distress, including, but not limited to, anger, embarrassment,
15 depression, anxiety, mortification, humiliation, distress, and
16 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
17 Individual, additionally alleges that such conduct caused THEODORE
18 A. PINNOCK, An Individual, to suffer damages as a result of these
19 injuries.
20

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

23 DEMAND FOR JUDGMENT FOR RELIEF:

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

1 C. In the alternative to the damages pursuant to Cal. Civil
2 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
3 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
4 54.1, Title 24 of the California Building Code, ADA, and ADA
5 Accessibility Guidelines;

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

17 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
18 § 12205, and Cal. Civil Code § 55;

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

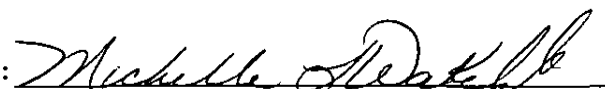
21 G. A Jury Trial and;

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

23 Respectfully submitted:

24 PINNOCK & WAKEFIELD, A.P.C.

25
26 Dated: July 19, 2004

27 By: 
MICHELLE L. WAKEFIELD, ESQ.
28 DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

CIVIL COVER SHEET

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings on other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

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

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

DEFENDANTS
BUCA DI BEPPO; BUCA RESTAURANTS 2, INC. d.b.a. BUCA DI BEPPO; BUCA INC. d.b.a. BUCA DI BEPPO; BUCA RESTAURANTS 2, INC.; BUCA, INC.; M. H. SHERMAN COMPANY; And DOES 1 THROUGH 10, Inclusive

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego (IN U.S. PLAINTIFF CASES ONLY)
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 1463 DMS (POR)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF 1 Incorporated or Principal Place of Business in This State
PT DEF 2 Incorporated and Principal Place of Business in Another State
PT DEF 3 Foreign Nation
PT DEF 4
PT DEF 5
PT DEF 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)

Table with 5 main categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-categories like PERSONAL INJURY, MEDICAL MALPRACTICE, PRODUCT LIABILITY, etc.

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.e.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 July 19, 2004

SIGNATURE OF ATTORNEY OF RECORD

Michelle Wakefield

105629 7/21/04 150