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3:04-CV-02139 PINNOCK V. PB BAR & GRILL

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SOUTHERN DISTRICT OF CALIFORNIA

BY *SD* DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 2139 IEG (NLS)

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

Case No.:

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

Plaintiffs,

v.

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

P B BAR & GRILL a.k.a.
PACIFIC BEACH BAR & GRILL
a.k.a. THE GRILL a.k.a. THE
GRILL AT PACIFIC BEACH; P B
REDELL, INC. d.b.a. P B BAR &
GRILL a.k.a. PACIFIC BEACH
BAR & GRILL a.k.a. THE GRILL
a.k.a. THE GRILL AT PACIFIC
BEACH; BRENDA J. WADDELL
TRUST C; JOHN A.
SCHNEIDMILLER TRUST C; BRENDA
J. WADDELL, TRUSTEE OF THE
BRENDA J. WADDELL TRUST C;
JOHN A. SCHNEIDMILL, TRUSTEE
OF THE JOHN A. SCHNEIDMILLER
TRUST C; 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

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

18 **JURISDICTION AND VENUE**

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

28 **SUPPLEMENTAL JURISDICTION**

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

20
21 NAMED DEFENDANTS AND NAMED PLAINTIFFS

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

25 Defendant P B BAR & GRILL a.k.a. PACIFIC BEACH BAR & GRILL a.k.a.
26 THE GRILL a.k.a. THE GRILL AT PACIFIC BEACH is located at 860
27 Garnet Avenue, San Diego, California 92109. Plaintiffs are
28 informed and believe and thereon allege that Defendant P B REDELL,

1 INC. is the owner, operator, and/or doing business as P B BAR &
2 GRILL a.k.a. PACIFIC BEACH BAR & GRILL a.k.a. THE GRILL a.k.a. THE
3 GRILL AT PACIFIC BEACH. Defendant P B REDELL, INC. is located at
4 860 Garnet Avenue, San Diego, California 92109. Plaintiffs are
5 informed and believe and thereon allege that Defendants BRENDA J.
6 WADDELL TRUST C and/or JOHN A. SCHNEIDMILLER TRUST C are the
7 owners, operators, and/or lessors of the property located at 860
8 Garnet Avenue, San Diego, California 92109, Assessor Parcel Number
9 415-593-14. Defendant JOHN A. SCHNEIDMILL, TRUSTEE OF THE JOHN A.
10 SCHNEIDMILLER TRUST C is located at 10358 El Honcho Place, San
11 Diego, California 92124. The words "Plaintiffs" and "Plaintiff's
12 Member" as used herein specifically include the organization
13 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A.
14 Pinnock and persons associated with its Members who accompanied
15 Members to Defendants' facilities, as well as THEODORE A. PINNOCK,
16 An Individual.

17 4. Defendants Does 1 through 10, were at all times relevant
18 herein subsidiaries, employers, employees, agents, of P B BAR &
19 GRILL a.k.a. PACIFIC BEACH BAR & GRILL a.k.a. THE GRILL a.k.a. THE
20 GRILL AT PACIFIC BEACH; P B REDELL, INC. d.b.a. P B BAR & GRILL
21 a.k.a. PACIFIC BEACH BAR & GRILL a.k.a. THE GRILL a.k.a. THE GRILL
22 AT PACIFIC BEACH; BRENDA J. WADDELL TRUST C; JOHN A. SCHNEIDMILLER
23 TRUST C; BRENDA J. WADDELL, TRUSTEE OF THE BRENDA J. WADDELL TRUST
24 C; and JOHN A. SCHNEIDMILL, TRUSTEE OF THE JOHN A. SCHNEIDMILLER
25 TRUST C. Plaintiffs are ignorant of the true names and capacities
26 of Defendants sued herein as Does 1 through 10, inclusive, and
27 therefore sues these Defendants by such fictitious names.
28

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

3 5. Plaintiffs are informed and believe, and thereon allege, that
4 Defendants and each of them herein were, at all times relevant to
5 the action, the owner, lessor, lessee, franchiser, franchisee,
6 general partner, limited partner, agent, employee, representing
7 partner, or joint venturer of the remaining Defendants and were
8 acting within the course and scope of that relationship.

9 Plaintiffs are further informed and believe, and thereon allege,
10 that each of the Defendants herein gave consent to, ratified,
11 and/or authorized the acts alleged herein to each of the remaining
12 Defendants.

13 CONCISE SET OF FACTS

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

21 7. On August 11, 2004, Plaintiff's member THEODORE A. PINNOCK
22 went to Defendants' P B BAR & GRILL a.k.a. PACIFIC BEACH BAR &
23 GRILL a.k.a. THE GRILL a.k.a. THE GRILL AT PACIFIC BEACH
24 facilities to utilize their goods and/or services. When
25 Plaintiff's member patronized Defendants' P B BAR & GRILL a.k.a.
26 PACIFIC BEACH BAR & GRILL a.k.a. THE GRILL a.k.a. THE GRILL AT
27 PACIFIC BEACH facilities, he was unable to use and/or had
28

1 difficulty using the public accommodations' disabled parking,
2 exterior path of travel, entrance, interior path of travel, public
3 seating, bar counter, and restroom facilities at Defendants'
4 business establishment because they failed to comply with ADA
5 Access Guidelines For Buildings and Facilities (hereafter referred
6 to as "ADAAG") and/or California's Title 24 Building Code
7 Requirements. Defendants failed to remove access barriers within
8 the disabled parking, exterior path of travel, entrance, interior
9 path of travel, public seating, bar counter, public pay telephone,
10 and restroom facilities of Defendants' P B BAR & GRILL a.k.a.
11 PACIFIC BEACH BAR & GRILL a.k.a. THE GRILL a.k.a. THE GRILL AT
12 PACIFIC BEACH establishment.

13
14 8. Plaintiff's member personally experienced difficulty with
15 said access barriers at Defendants' P B BAR & GRILL a.k.a. PACIFIC
16 BEACH BAR & GRILL a.k.a. THE GRILL a.k.a. THE GRILL AT PACIFIC
17 BEACH facilities. For example, the parking facility of
18 Defendants' establishment is inaccessible. The parking facility
19 has a total of twenty-eight (28) parking spaces including two (2)
20 non-complaint disabled parking spaces. Both of the existing
21 disabled parking spaces are a non-complaint "van accessible"
22 disabled parking spaces that are only fifteen feet (15') long and
23 fail to have the appropriate signage. It is required that there
24 is at least one (1) "van accessible" disabled parking space that
25 is eighteen feet (18') long, nine feet (9') wide, has an access
26 aisle on the right hand side that is not encroached upon, and has
27 the appropriate signage. There are two entryways into the
28 defendants' parking lot, both of which fail to have the required

1 signage warning motorists that anyone illegally parking in a
2 disabled parking space would be towed/fined or both.

3 9. The exterior path of travel of the Defendants' establishment
4 is inaccessible. There fails to be a safe and accessible path of
5 travel from the parking lot to the primary accessible entrance, as
6 members of the disability community are forced to traverse through
7 vehicular traffic without the benefit of a marked path of travel.
8 The width of the exterior railings used to form a line in front of
9 the door is only twenty-six inches (26") wide, when it is required
10 to be a minimum of forty-eight inches (48") wide.

11 10. The entrance to the Defendants establishment is inaccessible,
12 as the entrance door fails to have the required disability
13 signage. There are five (5) steps, each step is five inches (5")
14 high, at the front entrance door that fail to have the required
15 ramp. Changes in level greater than one half of an inch (1/2")
16 are required to be ramped.

17 11. The interior path of travel of the Defendants' establishment
18 is inaccessible. The interior path of travel is as narrow as
19 twenty-nine inches (29"), when it is required to be at least
20 thirty-six inches (36").

21 12. The public seating in the Defendants' establishment is
22 inaccessible. There are two hundred and eighty (280) seats, all
23 of which have a knee clearance depth of only five inches to eight
24 inches (5" - 8") and some tables have a height of forty-three
25 inches (43"). It is required that five percent 5% of all seats
26 have a knee clearance depth of at least nineteen inches (19") and
27 tables shall not be higher than thirty-four inches (34") from the
28

1 floor surface.

2 13. The height of the bar located by the front entrance is
3 inaccessible, as it is forty-three inches (43") high, when it is
4 required to be no higher than thirty-four inches (34") high.

5 14. The men's restroom located inside the defendants'
6 establishment is inaccessible. The restroom entrance door fails
7 to have the required disability signage. The strike clearance of
8 the restroom door is only two inches (2"), when it is required to
9 be at least eighteen inches (18"). The slope of the ramp from the
10 entrance door of the restroom to the lavatory, urinal and stall is
11 up to ten percent (10%) and fails to have handrails. It is
12 required that the slope of a ramp does not exceed 8.33%. The
13 stall door fails to have the required handles on both sides of the
14 stall door. The stall door fails to have the required self-
15 closing mechanism. The commode fails to have any of the required
16 grab bars. The distance from the side edge of the commode to the
17 far wall is only twenty-nine inches (29"), when it is required to
18 be at least thirty-two inches (32"). The distance from the front
19 edge of the commode to the front wall is only forty-eight inches
20 (48"), when it is required to be at least sixty inches (60") for a
21 side entry stall like this one. The height of the commode seat
22 cover dispenser is fifty-one inches (51"), when it is required to
23 be no higher than forty-eight inches (48"). The height of the
24 coat hook is sixty-eight inches (68"), when it is required to be
25 no higher than forty-eight inches (48"). The height of the urinal
26 lip is twenty inches (20"), when it is required to be no higher
27 than seventeen inches (17") high. The hot water and drainpipes
28

1 underneath the lavatory fail to have the required covering. The
2 restroom fails to have the required audible and visual alarm
3 system.

4 15. In addition to the violations personally experienced by
5 Plaintiff's member and Plaintiff Theodore A. Pinnock, additional
6 violations of federal and state disability laws exist at
7 Defendants' P B BAR & GRILL a.k.a. PACIFIC BEACH BAR & GRILL
8 a.k.a. THE GRILL a.k.a. THE GRILL AT PACIFIC BEACH establishment.
9 For example, the public pay telephone fails to have the required
10 volume control unit and disability signage.

11 16. The steps that lead patrons from the front entrance door to
12 the exterior dining area fail to have the required contrasting
13 color strips.

14 17. The women's restroom located inside the Defendants'
15 establishment is inaccessible. The restroom entrance door fails
16 to have the required disability signage. The commode fails to
17 have any of the required grab bars. The hot water and drainpipes
18 underneath the lavatory fail to have the required covering. The
19 restroom fails to have the required audible and visual alarm
20 system.

21 18. Pursuant to federal and state law, Defendants are required
22 to remove barriers to their existing facilities. Further,
23 Defendants had actual knowledge of their barrier removal duties
24 under the Americans with Disabilities Act and the Civil Code
25 before January 26, 1992. Also, Defendants should have known that
26 individuals with disabilities are not required to give notice to a
27 governmental agency before filing suit alleging Defendants failed
28

1 to remove architectural barriers.

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

18 20. Based on these facts, Plaintiffs allege Plaintiff's Member
19 and Plaintiff Theodore A. Pinnock was discriminated against each
20 time he patronized Defendants' establishments. Plaintiff's Member
21 and Plaintiff Theodore A. Pinnock was extremely upset due to
22 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
23 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
24 shoulders and wrists when he attempted to enter, use, and exit
25 Defendants' P B BAR & GRILL a.k.a. PACIFIC BEACH BAR & GRILL
26 a.k.a. THE GRILL a.k.a. THE GRILL AT PACIFIC BEACH establishment.

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WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

21. P B BAR & GRILL a.k.a. PACIFIC BEACH BAR & GRILL a.k.a. THE GRILL a.k.a. THE GRILL AT PACIFIC BEACH; P B REDELL, INC. d.b.a. P B BAR & GRILL a.k.a. PACIFIC BEACH BAR & GRILL a.k.a. THE GRILL a.k.a. THE GRILL AT PACIFIC BEACH; BRENDA J. WADDELL TRUST C; JOHN A. SCHNEIDMILLER TRUST C; BRENDA J. WADDELL, TRUSTEE OF THE BRENDA J. WADDELL TRUST C; JOHN A. SCHNEIDMILL, TRUSTEE OF THE JOHN A. SCHNEIDMILLER TRUST C; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

22. Plaintiffs aver that the Defendants are liable for the following claims as alleged below:

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

23. Based on the facts plead at ¶¶ 6-20 above and elsewhere in this complaint, Plaintiff's Member was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to Defendants' existing facilities.

24. Plaintiff's member Theodore A. Pinnock has physical

1 impairments as alleged in ¶ 6 above because his conditions affect
2 one or more of the following body systems: neurological,
3 musculoskeletal, special sense organs, and/or cardiovascular.

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

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

15 25. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
16 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
17 full and equal access to Defendants' goods, services, facilities,
18 privileges, advantages, or accommodations within a public
19 accommodation owned, leased, and/or operated by Defendants.
20 Defendants altered their facility in a manner that affects or
21 could affect the usability of the facility or a part of the
22 facility after January 26, 1992. In performing the alteration,
23 Defendants failed to make the alteration in such a manner that, to
24 the maximum extent feasible, the altered portions of the facility
25 are readily accessible to and usable by individuals with
26 disabilities, including individuals who use wheelchairs, in
27 violation of 42 U.S.C. §12183(a)(2).

28 26. Additionally, the Defendants undertook an alteration that

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

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

14 28. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
15 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
16 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
17 Pinnock was denied equal access to Defendants' existing
18 facilities.

19
20 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural
21 Barriers

22 29. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
23 this complaint, Plaintiff's Member was denied full and equal
24 access to Defendants' goods, services, facilities, privileges,
25 advantages, or accommodations within a public accommodation owned,
26 leased, and/or operated by Defendants. Defendants failed to
27 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
28 are informed, believe, and thus allege that architectural barriers

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

21 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
22 Policies And Procedures

23 30. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
24 this complaint, Defendants failed and refused to provide a
25 reasonable alternative by modifying its practices, policies and
26 procedures in that they failed to have a scheme, plan, or design
27 to assist Plaintiff's Member and/or others similarly situated in
28 entering and utilizing Defendants' services, as required by 42

1 U.S.C. § 12188(a). Thus, said 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 said Member was
4 denied equal access to Defendants' existing facilities.

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

22 32. WHEREFORE, Plaintiffs pray for judgment and relief as
23 hereinafter set forth.
24

25 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
26 CALIFORNIA ACCESSIBILITY LAWS

27 CLAIM I: Denial Of Full And Equal Access

28 33. Based on the facts plead at ¶¶ 6-20 above and elsewhere in

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

16
17 34. These violations denied Plaintiff's Member full and equal
18 access to Defendants' facility. Thus, said Member was subjected
19 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
20 because Plaintiff's Member was denied full, equal and safe access
21 to Defendants' facility, causing severe emotional distress.

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

23 35. Based on the facts plead at ¶¶ 6-20 above and elsewhere
24 herein this complaint, Defendants failed and refused to provide a
25 reasonable alternative by modifying its practices, policies, and
26 procedures in that they failed to have a scheme, plan, or design
27 to assist Plaintiff's Member and/or others similarly situated in
28 entering and utilizing Defendants' services as required by Civil

1 Code § 54.1. Thus, said Member was subjected to discrimination in
2 violation of Civil Code § 54.1.

3 CLAIM III: Violation Of The Unruh Act

4 36. Based on the facts plead at ¶¶ 6-20 above and elsewhere
5 herein this complaint and because Defendants violated the Civil
6 Code § 51 by failing to comply with 42 United States Code §
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
8 continue to discriminate against Plaintiff's Member and persons
9 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

10 37. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
11 III of Plaintiffs' Second 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 state and 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 state civil rights laws
26 enacted for the benefit of individuals with disabilities.

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

1 hereinafter stated.

2 Treble Damages Pursuant To Claims I, II, III Under The California
3 Accessibility Laws

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

1 award of treble damages pursuant to sections 52(a) and 54.3(a) of
2 the California Civil Code.

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

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

24 42. Wherefore, Plaintiffs pray for damages and relief as
25 hereinafter stated.

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

3 43. Based on the facts plead at ¶¶ 6-20 above and elsewhere in
4 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
5 statutory duty to make their facility accessible and owed
6 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
7 Pinnock reasonably safe from known dangers and risks of harm.
8 This said duty arises by virtue of legal duties proscribed by
9 various federal and state statutes including, but not limited to,
10 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
11 California Administrative Code and applicable 1982 Uniform
12 Building Code standards as amended.

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

21 45. Therefore, Defendants engaged in discriminatory conduct in
22 that they failed to comply with known duties under the ADA, ADAAG,
23 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
24 or should have known that their acts of nonfeasance would cause
25 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
26 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
27 bodily injury in this matter because when Plaintiff THEODORE A.
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1 PINNOCK attempted to enter, use, and exit Defendants'
2 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
3 his legs, back, arms, shoulders, and wrists. Plaintiffs further
4 allege that such conduct was done in reckless disregard of the
5 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
6 to suffer bodily or personal injury, anger, embarrassment,
7 depression, anxiety, mortification, humiliation, distress, and
8 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
9 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
10 An Individual, to suffer the injuries of mental and emotional
11 distress, including, but not limited to, anger, embarrassment,
12 depression, anxiety, mortification, humiliation, distress, and
13 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
14 Individual, additionally alleges that such conduct caused THEODORE
15 A. PINNOCK, An Individual, to suffer damages as a result of these
16 injuries.

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

20 DEMAND FOR JUDGMENT FOR RELIEF:

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

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54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

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

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

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

G. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: 10/21/04

By: Michelle L. Wakefield
MICHELLE L. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

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

I (a) PLAINTIFFS
MANTIC 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)

(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

DEFENDANTS
PLEASE SEE ATTACHMENT
04 OCT 26 AM 8:47
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

ATTORNEYS (IF KNOWN)
04 CV 2139 IEG (NLS)

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 1 1 Incorporated or Principal Place of Business in This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 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"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 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 -- 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice. <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

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

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.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 10/21/04 SIGNATURE OF ATTORNEY OF RECORD Michelle L. Wakefield
#108108 \$15900

ATTACHMENT TO CIVIL COVER SHEET

DEFENDANTS:

P B BAR & GRILL a.k.a. PACIFIC BEACH BAR & GRILL a.k.a. THE GRILL
a.k.a. THE GRILL AT PACIFIC BEACH; P B REDELL, INC. d.b.a. P B BAR &
GRILL a.k.a. PACIFIC BEACH BAR & GRILL a.k.a. THE GRILL a.k.a. THE
GRILL AT PACIFIC BEACH; BRENDA J. WADDELL TRUST C; JOHN A.
SCHNEIDMILLER TRUST C; BRENDA J. WADDELL, TRUSTEE OF THE
BRENDA J. WADDELL TRUST C; JOHN A. SCHNEIDMILL, TRUSTEE OF
THE JOHN A. SCHNEIDMILLER TRUST C; And DOES 1 THROUGH 10,
Inclusive