



BJR 5/10/05 11:04

3:05-CV-01006 PINNOCK V. PIPES CAFE INC

1

CMP.

1 PINNOCK & WAKEFIELD, A.P.C.
Michelle L. Wakefield, Esq.
2 David C. Wakefield, Esq.
3033 Fifth Avenue, Suite 410
3 San Diego, CA 92103-5973
Telephone: (619) 858-3671
4 Facsimile: (619) 858-3646

Bar #: 200424
Bar #: 185736

FILED

05 MAY 10 AM 8:38

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *B. Reed* DEPUTY

5 Attorneys for Plaintiffs

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

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

12 Plaintiffs,

13 v.

14 PIPES CAFÉ, INC.; NEBLETT
15 FAMILY TRUST; And DOES 1
THROUGH 10, Inclusive
16 Defendants.

Case No. '05 CV 1006 LAB (LSP)

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE 19995]

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]

19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///

a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JURISDICTION AND VENUE

1. The federal jurisdiction of this action is based on the Americans with Disabilities Act, 42 United States Code 12101-12102, 12181-12183 and 12201, et seq. Venue in the Judicial District of the United States District Court of the Southern District of California is in accordance with 28 U.S.C. § 1391(b)

1 because a substantial part of Plaintiffs' claims arose within the
2 Judicial District of the United States District Court of the
3 Southern District of California.

4 SUPPLEMENTAL JURISDICTION

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

24 NAMED DEFENDANTS AND NAMED PLAINTIFFS

25 3. Defendants are, and, at all times mentioned herein, were, a
26 business or corporation or franchise organized and existing and/or
27 doing business under the laws of the State of California.
28

1 Plaintiffs are informed and believe and thereon allege that
2 Defendant PIPES CAFÉ, INC is the owner, operator, franchiser,
3 and/or doing business as PIPES CAFÉ. Defendant PIPES CAFÉ, INC. is
4 also the owner, operator, franchiser, licensor, and/or lessor of
5 the property located at 121 Liverpool Drive, Cardiff, California,
6 92007, Assessor Parcel number: 261-031-27. PIPES CAFÉ INC. is
7 located at 121 Liverpool Drive, Cardiff, California, 92007.

8 Plaintiffs are informed and believe and thereon allege that in
9 addition to PIPES CAFÉ INC., Defendant NEBLETT FAMILY TRUST is
10 also the owner, operator, licensor, and/or lessor of the property
11 located at 121 Liverpool Drive, Cardiff, California, 92007,
12 Assessor Parcel Number: 261-031-27. Defendant NEBLETT FAMILY TRUST
13 is located at 6950 La Valle Plateada, Rancho Santa Fe, California,
14 92067. The words "Plaintiffs" and "Plaintiff's Member" as used
15 herein specifically include the organization MANTIC ASHANTI'S
16 CAUSE, its Members, its member THEODORE A. PINNOCK and persons
17 associated with its Members who accompanied Members to Defendants'
18 facilities, as well as THEODORE A. PINNOCK, An Individual.

19 4. Defendants Does 1 through 10, were at all times relevant
20 herein subsidiaries, employers, employees, agents, of PIPES CAFÉ,
21 INC.; and NEBLETT FAMILY TRUST. Plaintiffs are ignorant of the
22 true names and capacities of Defendants sued herein as Does 1
23 through 10, inclusive, and therefore sues these Defendants by such
24 fictitious names. Plaintiffs will pray leave of the court to
25 amend this complaint to allege the true names and capacities of
26 the Does when ascertained.

27 5. Plaintiffs are informed and believe, and thereon allege, that
28

1 Defendants and each of them herein were, at all times relevant to
2 the action, the owner, lessor, lessee, franchiser, franchisee,
3 general partner, limited partner, agent, employee, representing
4 partner, or joint venturer of the remaining Defendants and were
5 acting within the course and scope of that relationship.

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

10 CONCISE SET OF FACTS

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

18 7. On April 13, 2005, Plaintiff's Member THEODORE A. PINNOCK
19 went to Defendants' PIPES CAFÉ facilities to utilize their goods
20 and/or services. When Plaintiff's Member and Plaintiff THEODORE
21 A, PINNOCK patronized Defendants' PIPES CAFÉ facilities, he was
22 unable to use and/or had difficulty using the public
23 accommodations' disabled parking, exterior path of travel,
24 entrance, interior path of travel, service counter, public
25 seating, and restroom facilities at Defendants' business
26 establishments because they failed to comply with ADA Access
27 Guidelines For Buildings and Facilities (hereafter referred to as
28

1 "ADAAG") and/or California's Title 24 Building Code Requirements.
2 Defendants failed to remove access barriers within the public
3 accommodations' disabled parking, exterior path of travel,
4 entrance, interior path of travel, service counter, public
5 seating, and restroom facilities of Defendants' PIPES CAFÉ
6 establishment.

7 8. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
8 personally experienced difficulty with said access barriers at
9 Defendants' PIPES CAFÉ facility. For example, the one and only
10 entryway into the parking lot fails to display the required
11 signage warning motorists that any vehicle illegally parking in a
12 designated disabled parking space would be towed, fined, or both.
13 The parking lot fails to have the one (1) required "Van
14 Accessible" parking space. The parking lot has a total of five (5)
15 parking spaces, one (1) of which is a designated disabled parking
16 space. The existing disabled parking space fails to be the
17 required "Van Accessible" disabled parking space. Also, this
18 existing disabled parking space is only fifteen feet (15') long.

19 9. There fails to be a safe and accessible exterior path of
20 travel leading from the parking lot to an accessible entrance, as
21 a member of the disabled community is forced to traverse through
22 vehicular traffic without the benefit of a marked path of travel.
23 The access ramp leading from the parking lot to the main entrance
24 fails to be compliant, as it is uneven and fails to provide an
25 adequate width to allow for safe wheelchair access.

26 10. There fails to be a level landing outside of the main
27 entrance door. The main entrance door fails to provide a smooth
28

1 and uninterrupted surface on the bottom ten inches (10") of the
2 door that allows the door to be opened with a wheelchair footrest
3 without creating a hazard. The main entrance fails to display the
4 required international symbol of accessibility.

5 11. The interior path of travel fails to be accessible, as
6 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK was unable to
7 maneuver through the facility since trash cans, tables, and chairs
8 limited his path of travel. The interior path of travel fails to
9 be compliant, as it is as narrow as twenty-seven inches (27"), due
10 to the public seating arrangement.

11 12. The service counter fails to be accessible, as it is
12 impermissibly thirty-nine inches (39") high.

13 13. There are a total of thirty-six (36) seats located inside the
14 facility, and all fail to be accessible. All thirty-six (36) seats
15 have a knee clearance of a mere seven inches (7"). There are a
16 total of twenty-four (24) seats located outside the facility, and
17 all fail to be accessible. All twenty-four (24) seats have a knee
18 clearance of a mere five inches (5"). Five (5%) percent of all
19 seats are required to provide a knee clearance depth of nineteen
20 inches (19"), a depth of thirty inches (30"), a height of twenty-
21 seven inches (27") minimum, and a table height of thirty-four
22 inches (34") maximum.

23 14. The unisex restroom fails to be accessible, as the restroom
24 door fails to have the required signage displayed. The unisex
25 restroom door fails to be compliant, as it has a strike clearance
26 of a mere two inches (2"). It is required the restroom door
27 provide a minimum of an eighteen-inch (18") strike clearance. The
28

1 unisex restroom fails to provide the required rear grab bar. The
2 side grab bar fails to be compliant, as is it only twenty-four
3 inches (24") long and fails to extend beyond the front edge of the
4 commode. The commode cover dispenser fails to be accessible as, it
5 is located at an impermissible forty-nine inches (49") high. The
6 height of the commode fails to be compliant, as it is a mere
7 fifteen inches (15") high. The toilet paper dispenser also fails
8 to be accessible, as it is located an impermissible twenty-five
9 inches (25") from the front edge of the commode. The flush handle
10 fails to be located in the required location, as it is located on
11 the narrow side of the tank rather than the wide side. The knee
12 clearance of the lavatory fails to be compliant, as it is a mere
13 three inches (3"). The soap dispenser is located at an
14 impermissible height, as it is an impermissible fifty-six inches
15 (56") high. The paper towel dispenser fails to be accessible, as
16 it is mounted an impermissible fifty-six (56") above floor level.
17 The restroom fails to provide adequate wheelchair turnaround
18 space, as the space allotted is a mere sixty inches (60") by
19 thirty-nine inches (39"). The unisex restroom fails to have the
20 required audible and visual alarm system.

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

1 to remove architectural barriers.

2 16. 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 17. Based on these facts, Plaintiffs allege Plaintiff's Member
19 and Plaintiff THEODORE A. PINNOCK was discriminated against each
20 time he patronized Defendants' establishment. 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' establishment.
26

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

18. PIPES CAFÉ, INC.; NEBLETT FAMILY TRUST; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

19. 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

20. Based on the facts plead at ¶¶ 6-17 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.

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

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

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

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

27 23. Additionally, the Defendants undertook an alteration that
28 affects or could affect the usability of or access to an area of
the facility containing a primary function after January 26, 1992.

1 Defendants further failed to make the alterations in such a manner
2 that, to the maximum extent feasible, the path of travel to the
3 altered area and the bathrooms, telephones, and drinking fountains
4 serving the altered area, are readily accessible to and usable by
5 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

6 24. Pursuant to 42 U.S.C. §12183(a), this failure to make the
7 alterations in a manner that, to the maximum extent feasible, are
8 readily accessible to and usable by individuals with disabilities
9 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

10 Therefore, Defendants discriminated against Plaintiff's Member
11 THEODORE A. PINNOCK in violation of 42 U.S.C. § 12182(a).

12 25. Thus, Plaintiff's Member THEODORE A. PINNOCK was subjected to
13 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
14 §12182(a) and 42 U.S.C. §12188 because said Member THEODORE A.
15 PINNOCK was denied equal access to Defendants' existing
16 facilities.

17
18 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
19 Architectural Barriers

20 26. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
21 this complaint, Plaintiff's Member was denied full and equal
22 access to Defendants' goods, services, facilities, privileges,
23 advantages, or accommodations within a public accommodation owned,
24 leased, and/or operated by Defendants. Defendants failed to
25 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
26 are informed, believe, and thus allege that architectural barriers
27 which are structural in nature exist within the following physical
28 elements of Defendants' facilities: Space Allowance and Reach

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

19 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
20 Policies And Procedures

21 27. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
22 this complaint, Defendants failed and refused to provide a
23 reasonable alternative by modifying its practices, policies and
24 procedures in that they failed to have a scheme, plan, or design
25 to assist Plaintiff's Member and/or others similarly situated in
26 entering and utilizing Defendants' services, as required by 42
27 U.S.C. § 12188(a). Thus, said Member was subjected to
28 discrimination in violation of 42 United States Code

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
2 denied equal access to Defendants' existing facilities.

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

20
21 29. WHEREFORE, Plaintiffs pray for judgment and relief as
22 hereinafter set forth.

23 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
24 **CALIFORNIA ACCESSIBILITY LAWS**

25 **CLAIM I: Denial Of Full And Equal Access**

26 30. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
27 this complaint, Plaintiff's Member was denied full and equal
28 access to Defendants' goods, services, facilities, privileges,

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

14
15 31. These violations denied Plaintiff's Member full and equal
16 access to Defendants' facility. Thus, said Member was subjected
17 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
18 because Plaintiff's Member was denied full, equal and safe access
19 to Defendants' facility, causing severe emotional distress.

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

21 32. Based on the facts plead at ¶¶ 6-17 above and elsewhere
22 herein this complaint, Defendants failed and refused to provide a
23 reasonable alternative by modifying its practices, policies, and
24 procedures in that they failed to have a scheme, plan, or design
25 to assist Plaintiff's Member and/or others similarly situated in
26 entering and utilizing Defendants' services as required by Civil
27 Code § 54.1. Thus, said Member was subjected to discrimination in
28 violation of Civil Code § 54.1.

1 CLAIM III: Violation Of The Unruh Act

2 33. Based on the facts plead at ¶¶ 6-17 above and elsewhere
3 herein this complaint and because Defendants violated the Civil
4 Code § 51 by failing to comply with 42 United States Code §
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
6 continue to discriminate against Plaintiff's Member and persons
7 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

25 35. Wherefore, Plaintiffs pray for damages and relief as
26 hereinafter stated.
27
28

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

3 36. Defendants, each of them respectively, at times prior to and
4 including, the month of April, 2005, and continuing to the present
5 time, knew that persons with physical disabilities were denied
6 their rights of equal access to all portions of this public
7 facility. Despite such knowledge, Defendants, and each of them,
8 failed and refused to take steps to comply with the applicable
9 access statutes; and despite knowledge of the resulting problems
10 and denial of civil rights thereby suffered by Plaintiff's Member
11 THEODORE A. PINNOCK and other similarly situated persons with
12 disabilities. Defendants, and each of them, have failed and
13 refused to take action to grant full and equal access to persons
14 with physical disabilities in the respects complained of
15 hereinabove. Defendants, and each of them, have carried out a
16 course of conduct of refusing to respond to, or correct complaints
17 about, denial of disabled access and have refused to comply with
18 their legal obligations to make Defendants' PIPES CAFÉ, INC.; and
19 NEBLETT FAMILY TRUST facilities accessible pursuant to the
20 Americans With Disability Act Access Guidelines (ADAAG) and Title
21 24 of the California Code of Regulations (also known as the
22 California Building Code). Such actions and continuing course of
23 conduct by Defendants, and each of them, evidence despicable
24 conduct in conscious disregard of the rights and/or safety of
25 Plaintiff's Member and of other similarly situated persons,
26 justifying an award of treble damages pursuant to sections 52(a)
27 and 54.3(a) of the California Civil Code.

28 37. Defendants', and each of their, actions have also been

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

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

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

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

26 40. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
27 this complaint, Defendants owed Plaintiff THEODORE A. PINNOCK a
28 statutory duty to make their facility accessible and owed

1 Plaintiff THEODORE A. PINNOCK a duty to keep Plaintiff THEODORE A.
2 PINNOCK reasonably safe from known dangers and risks of harm.

3 This said duty arises by virtue of legal duties proscribed by
4 various federal and state statutes including, but not limited to,
5 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the
6 California Administrative Code and applicable 1982 Uniform
7 Building Code standards as amended.

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

16 42. Therefore, Defendants engaged in discriminatory conduct in
17 that they failed to comply with known duties under the ADA, ADAAG,
18 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
19 or should have known that their acts of nonfeasance would cause
20 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
21 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
22 bodily injury in this matter because when Plaintiff THEODORE A.
23 PINNOCK attempted to enter, use, and exit Defendants'
24 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
25 his legs, back, arms, shoulders, and wrists. Plaintiffs further
26 allege that such conduct was done in reckless disregard of the
27 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
28

1 to suffer bodily or personal injury, anger, embarrassment,
2 depression, anxiety, mortification, humiliation, distress, and
3 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
4 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
5 An Individual, to suffer the injuries of mental and emotional
6 distress, including, but not limited to, anger, embarrassment,
7 depression, anxiety, mortification, humiliation, distress, and
8 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
9 Individual, additionally alleges that such conduct caused THEODORE
10 A. PINNOCK, An Individual, to suffer damages as a result of these
11 injuries.

12 43. Wherefore, Plaintiffs pray for damages and relief as
13 hereinafter stated.
14

15 DEMAND FOR JUDGMENT FOR RELIEF:

- 16 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
17 3281, and 3333;
18 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
19 each and every offense of Civil Code § 51, Title 24 of the
20 California Building Code, ADA, and ADA Accessibility Guidelines;
21 C. In the alternative to the damages pursuant to Cal. Civil
22 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
23 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
24 54.1, Title 24 of the California Building Code, ADA, and ADA
25 Accessibility Guidelines;
26 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
27
28

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

11 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
12 § 12205, and Cal. Civil Code § 55;

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


15 G. A Jury Trial and;

16 H. For such other further relief as the court deems proper.
17

18
19
20 Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C

21
22
23 Dated: May 9, 2005

24 By: 
MICHELLE L. WAKEFIELD, Esq.
25 DAVID C. WAKEFIELD, Esq.
26 Attorneys for Plaintiffs
27
28

JS44
(Rev. 07/89)

CIVIL COVER SHEET

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

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

DEFENDANTS
PIPES CAFE, INC.; NEBLETT FAMILY TRUST; and DOES 1
THROUGH 10 Inclusive

FILED
05 MAY 10 AM 8:42

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

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

'05 CV 1006 LAB (LSP)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases 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)

- | | | | |
|---|----------------------------|--|---|
| | PT DEF | | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 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	<table border="0"> <tr> <td> 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 </td> <td> 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 </td> </tr> </table>	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 Plegs <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/DWW (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 Commercial/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 960 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
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					
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 May 9, 2005

SIGNATURE OF ATTORNEY OF RECORD

#113659 250-MS

