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3:04-CV-01184 PINNOCK V. BUTCHER SHOP STEAK
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Bar #: 2004246 DISTRICT COURT
Bar #: -185736 DISTRICT OF CALIFORNIA

BY *SD*

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

BUTCHER SHOP STEAK HOUSE
a.k.a. BUTCHER SHOP STEAK
SHOP a.k.a. BUTCHER SHOP; PAB
ENTERPRISES, INC. d.b.a.
BUTCHER SHOP STEAK HOUSE
a.k.a. BUTCHER SHOP STEAK
SHOP a.k.a. BUTCHER SHOP; THE
BUTCHER SHOP, INC.; REBERTO
DEPHILIPPIS; REBERTO
DEPHILIPPIS DECLARATION OF
TRUST; And DOES 1 THROUGH 10,
Inclusive

Defendants.

'04 CV 1184
Case No.:

LAB (POR)

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

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.

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SUPPLEMENTAL JURISDICTION

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

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NAMED DEFENDANTS AND NAMED PLAINTIFFS

3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Defendant BUTCHER SHOP STEAK HOUSE a.k.a. BUTCHER SHOP STEAK SHOP a.k.a. BUTCHER SHOP is located at 556 Broadway, Chula Vista, California 91910. Plaintiffs are informed and believe and thereon

1 allege that Defendants PAB ENTERPRISES, INC. and/or THE BUTCHER
2 SHOP, INC. are the owners, operators, and/or doing business as
3 BUTCHER SHOP STEAK HOUSE a.k.a. BUTCHER SHOP STEAK SHOP a.k.a.
4 BUTCHER SHOP. Defendant PAB ENTERPRISES, INC. is located at 556
5 Broadway, Chula Vista, California 91910. Defendant THE BUTCHER
6 SHOP, INC. is located at 556 Broadway, Chula Vista, California
7 91910. Plaintiffs are informed and believe and thereon allege
8 that Defendants REBERTO DEPHILIPPIS and/or REBERTO DEPHILIPPIS
9 DECLARATION OF TRUST are the owners, operators, and/or lessors of
10 the property located at 556 Broadway, Chula Vista, California
11 91910, Assessor Parcel Number 571-050-08. Defendant REBERTO
12 DEPHILIPPIS is located at 556 Broadway, Chula Vista, California
13 91910. The words "Plaintiffs" and "Plaintiff's Member" as used
14 herein specifically include the organization MANTIC ASHANTI'S
15 CAUSE, its Members, its member Theodore A. Pinnock and persons
16 associated with its Members who accompanied Members to Defendants'
17 facilities, as well as THEODORE A. PINNOCK, An Individual.

18 4. Defendants Does 1 through 10, were at all times relevant
19 herein subsidiaries, employers, employees, agents, of BUTCHER SHOP
20 STEAK HOUSE a.k.a. BUTCHER SHOP STEAK SHOP a.k.a. BUTCHER SHOP;
21 PAB ENTERPRISES, INC. d.b.a. BUTCHER SHOP STEAK HOUSE a.k.a.
22 BUTCHER SHOP STEAK SHOP a.k.a. BUTCHER SHOP; THE BUTCHER SHOP,
23 INC.; REBERTO DEPHILIPPIS; and REBERTO DEPHILIPPIS DECLARATION OF
24 TRUST. Plaintiffs are ignorant of the true names and capacities
25 of Defendants sued herein as Does 1 through 10, inclusive, and
26 therefore sues these Defendants by such fictitious names.
27 Plaintiffs will pray leave of the court to amend this complaint to
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1 allege the true names and capacities of the Does when ascertained.

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

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

12 CONCISE SET OF FACTS

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

20 7. On or about May 26, 2004, Plaintiff's member THEODORE A.
21 PINNOCK went to Defendants' BUTCHER SHOP STEAK HOUSE a.k.a.
22 BUTCHER SHOP STEAK SHOP a.k.a. BUTCHER SHOP facilities to utilize
23 their goods and/or services. When Plaintiff's member patronized
24 Defendants' BUTCHER SHOP STEAK HOUSE a.k.a. BUTCHER SHOP STEAK
25 SHOP a.k.a. BUTCHER SHOP facilities, he was unable to use and/or
26 had difficulty using the public accommodations' disabled parking,
27 exterior path of travel, entrance, interior path of travel, public
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1 bar seating, public main dinning area seating, and bathroom
2 facilities at Defendants' business establishment because they
3 failed to comply with ADA Access Guidelines For Buildings and
4 Facilities (hereafter referred to as "ADAAG") and/or California's
5 Title 24 Building Code Requirements. Defendants failed to remove
6 access barriers within the disabled parking, exterior path of
7 travel, entrance, interior path of travel, public bar seating,
8 public main dinning area seating, public pay telephone, and
9 bathroom facilities of Defendants' BUTCHER SHOP STEAK HOUSE a.k.a.
10 BUTCHER SHOP STEAK SHOP a.k.a. BUTCHER SHOP establishment.

11 8. Plaintiff's member personally experienced difficulty with
12 said access barriers at Defendants' BUTCHER SHOP STEAK HOUSE
13 a.k.a. BUTCHER SHOP STEAK SHOP a.k.a. BUTCHER SHOP facilities.
14 For example, the parking facility of Defendants' establishment is
15 inaccessible. The one (1) entryway into the parking lot fails to
16 have the required signage warning motorists that anyone illegally
17 parking in a disabled parking space would be towed/fined or both.
18 The parking facility has a total of fifty (50) parking spaces,
19 including two (2) disabled parking spaces. One (1) of the
20 disabled parking spaces is a "regular" disabled parking space and
21 the other space is a "van accessible" disabled parking space,
22 however neither space is compliant. Both disabled parking spaces
23 are only fifteen feet (15') long, when they are required to be
24 eighteen feet (18') long.

25 9. The exterior path of travel of the Defendants' establishment
26 is inaccessible. There fails to be a safe and accessible path of
27 travel from the parking lot to the primary accessible entrance, as
28

1 members of the disability community are forced to traverse through
2 vehicular traffic without the benefit of a marked path of travel.

3 10. The entrance to the Defendants establishment is inaccessible,
4 as the entrance door fails to have the required smooth and
5 uninterrupted surface on the bottom ten inches (10") of the door
6 that allows the door to be opened with a wheelchair footrest
7 without creating a hazard. The front entrance door also fails to
8 have the required disability signage.

9 11. The interior path of travel is inaccessible, as the interior
10 path of travel is only thirty-two inches (32") wide. The interior
11 path of travel is required to be at least thirty-six (36") wide.

12 12. The bar is inaccessible, as its counter is forty-two inches
13 (42") high. The bar counter is required to be no higher than
14 thirty-four inches (34").

15 13. The seating in the bar area is inaccessible. There are
16 twenty-eight (28) seats located in the bar area, including one (1)
17 accessible seat. It is required that five percent 5% of all seats
18 (or two (2) seats in this case) are accessible. The required knee
19 clearance depth is nineteen inches (19").

20 14. The seating in the main dinning area is inaccessible. There
21 are ninety-two (92) seats located in the main dinning area,
22 including two (2) accessible seats. It is required that five
23 percent 5% of all seats (or five (5) seats in this case) are
24 accessible. The required knee clearance depth is nineteen inches
25 (19").

26 15. The men's restroom located inside the defendants'
27 establishment is inaccessible. The men's restroom door fails to
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1 have the required disability signage. The men's restroom door is
2 inaccessible, as it requires nine pounds (9 lbs.) of pressure to
3 operate. The maximum requirement is five pounds (5 lbs.) of
4 pressure to operate a door like this one. The wheelchair turn
5 around space in the restroom is only thirty-nine inches by sixty
6 inches (39"X60"), when it is required to be at least sixty inches
7 (60") in diameter. The stall door fails to have the required
8 handles on both sides of the door. The path of travel to the
9 commode cover is a mere twenty-one inches (21"), when it is
10 required to be at least thirty-six inches (36"). The commode does
11 not have the required rear grab bar. The distance from the side
12 edge of the commode to the far wall is only twenty-one inches
13 (21"), when it is required to be at least thirty-two inches (32").
14 The distance from the front edge of the commode to the front wall
15 is only forty-eight inches (48"), when it is required to be at
16 least sixty inches (60"). The height of the urinal lip is twenty-
17 four inches (24"), when it is required to be no more than
18 seventeen inches (17") high. The restroom fails to have the
19 required audible and visual alarm system.
20

21 16. In addition to the violations personally experienced by
22 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
23 violations of federal and state disability laws exist at
24 Defendants' BUTCHER SHOP STEAK HOUSE a.k.a. BUTCHER SHOP STEAK
25 SHOP a.k.a. BUTCHER SHOP. For example, the public pay telephone
26 is inaccessible, as it fails to have the required volume control
27 unit and the required signage.

28 17. Pursuant to federal and state law, Defendants are required to

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

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

24 19. Based on these facts, Plaintiffs allege Plaintiff's Member
25 and Plaintiff Theodore A. Pinnock was discriminated against each
26 time he patronized Defendants' establishments. Plaintiff's Member
27 and Plaintiff Theodore A. Pinnock was extremely upset due to
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1 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
2 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
3 shoulders and wrists when he attempted to enter, use, and exit
4 Defendants' BUTCHER SHOP STEAK HOUSE a.k.a. BUTCHER SHOP STEAK
5 SHOP a.k.a. BUTCHER SHOP establishment.

6 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**
7

8 20. BUTCHER SHOP STEAK HOUSE a.k.a. BUTCHER SHOP STEAK SHOP
9 a.k.a. BUTCHER SHOP; PAB ENTERPRISES, INC. d.b.a. BUTCHER SHOP
10 STEAK HOUSE a.k.a. BUTCHER SHOP STEAK SHOP a.k.a. BUTCHER SHOP;
11 THE BUTCHER SHOP, INC.; REBERTO DEPHILIPPIS; REBERTO DEPHILIPPIS
12 DECLARATION OF TRUST; and Does 1 through 10 will be referred to
13 collectively hereinafter as "Defendants."

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

16 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

19 CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal**

20 **Access**

21 22. Based on the facts plead at ¶¶ 6-19 above and elsewhere in
22 this complaint, Plaintiff's Member was denied full and equal
23 access to Defendants' goods, services, facilities, privileges,
24 advantages, or accommodations. Plaintiffs allege Defendants are a
25 public accommodation owned, leased and/or operated by Defendants.
26 Defendants' existing facilities and/or services failed to provide
27 full and equal access to Defendants' facility as required by 42
28 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to

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

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

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

20 24. Based on the facts plead at ¶¶ 6-19 above and elsewhere in
21 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
22 full and equal access to Defendants' goods, services, facilities,
23 privileges, advantages, or accommodations within a public
24 accommodation owned, leased, and/or operated by Defendants.
25 Defendants altered their facility in a manner that affects or
26 could affect the usability of the facility or a part of the
27 facility after January 26, 1992. In performing the alteration,
28 Defendants failed to make the alteration in such a manner that, to
the maximum extent feasible, the altered portions of the facility

1 are readily accessible to and usable by individuals with
2 disabilities, including individuals who use wheelchairs, in
3 violation of 42 U.S.C. §12183(a)(2).

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

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

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

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

26 28. Based on the facts plead at ¶¶ 6-19 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. Defendants failed to
3 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
4 are informed, believe, and thus allege that architectural barriers
5 which are structural in nature exist within the following physical
6 elements of Defendants' facilities: Space Allowance and Reach
7 Ranges, Accessible Route, Protruding Objects, Ground and Floor
8 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
9 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
10 Doors, Entrances, Drinking Fountains and Water Coolers, Water
11 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
12 Storage, Handrails, Grab Bars, and Controls and Operating
13 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

14 Title III requires places of public accommodation to remove
15 architectural barriers that are structural in nature to existing
16 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]

17 Failure to remove such barriers and disparate treatment against a
18 person who has a known association with a person with a disability
19 are forms of discrimination. [See 42 United States Code
20 12182(b)(2)(A)(iv).]

21 Thus, Plaintiff's Member was subjected to
22 discrimination in violation of 42 United States Code
23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
24 denied equal access to Defendants' existing facilities.

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

27 29. Based on the facts plead at ¶¶ 6-19 above and elsewhere in
28 this complaint, Defendants failed and refused to provide a

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

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

26 31. WHEREFORE, Plaintiffs pray for judgment and relief as
27 hereinafter set forth.
28

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

3 CLAIM I: Denial Of Full And Equal Access

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

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

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

26 34. Based on the facts plead at ¶¶ 6-19 above and elsewhere
27 herein this complaint, Defendants failed and refused to provide a
28 reasonable alternative by modifying its practices, policies, and

1 procedures in that they failed to have a scheme, plan, or design
2 to assist Plaintiff's Member and/or others similarly situated in
3 entering and utilizing Defendants' services as required by Civil
4 Code § 54.1. Thus, said Member was subjected to discrimination in
5 violation of Civil Code § 54.1.

6 CLAIM III: Violation Of The Unruh Act

7 35. Based on the facts plead at ¶¶ 6-19 above and elsewhere
8 herein this complaint and because Defendants violated the Civil
9 Code § 51 by failing to comply with 42 United States Code §
10 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
11 continue to discriminate against Plaintiff's Member and persons
12 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

3 37. Wherefore, Plaintiffs pray for damages and relief as
4 hereinafter stated.

5 Treble Damages Pursuant To Claims I, II, III Under The California
6 Accessibility Laws

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

1 rights and/or safety of Plaintiff's Member and of other similarly
2 situated persons, justifying an award of treble damages pursuant
3 to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

25 41. Wherefore, Plaintiffs pray for damages and relief as
26 hereinafter stated.

27
28 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL

1 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

2 42. Based on the facts plead at ¶¶ 6-19 above and elsewhere in
3 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
4 statutory duty to make their facility accessible and owed
5 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
6 Pinnock reasonably safe from known dangers and risks of harm.
7 This said duty arises by virtue of legal duties proscribed by
8 various federal and state statutes including, but not limited to,
9 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
10 California Administrative Code and applicable 1982 Uniform
11 Building Code standards as amended.

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

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

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

16 45. Wherefore, Plaintiffs pray for damages and relief as
17 hereinafter stated.

18 DEMAND FOR JUDGMENT FOR RELIEF:

19 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
20 3281, and 3333;

21 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
22 each and every offense of Civil Code § 51, Title 24 of the
23 California Building Code, ADA, and ADA Accessibility Guidelines;

24 C. In the alternative to the damages pursuant to Cal. Civil
25 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
26 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
27 54.1, Title 24 of the California Building Code, ADA, and ADA
28 Accessibility Guidelines;

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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: June 3, 2004

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

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of 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 BUTCHER SHOP STEAK HOUSE a.k.a. BUTCHER SHOP
STEAK SHOP a.k.a. BUTCHER SHOP; PAB ENTERPRISES, INC.
d.b.a. BUTCHER SHOP STEAK HOUSE; a.k.a. BUTCHER SHOP STEAK
SHOP a.k.a. BUTCHER SHOP; THE BUTCHER SHOP, INC.; REBERTO
DEPHILIPPIS; REBERTO DEPHILIPPIS DECLARATION OF TRUST; And
DOES 1 THROUGH 10, Inclusive

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

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

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 1184 LAB (POR)

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 | <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	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 810 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 820 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 825 Drug Related Seizure Of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 830 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 840 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DMV/DWV (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 864 SSID Tide XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<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.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 June 10, 2004

SIGNATURE OF ATTORNEY OF RECORD

104481 6/14/04

Michelle L. Wakefield
150⁰⁰ JH