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3:03-CV-02535 PINNOCK V. BULLYS CORPORATION

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

BY:

DEPUTY

Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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

15 Plaintiffs,

16 v.

17 BULLYS CORPORATION d.b.a.
18 BULLYS a.k.a. BULLY'S LA
19 JOLLA; BULLYS CORPORATION;
20 HELEN F. COMPTON TRUST; HELEN
21 F. COMPTON, TRUSTEE OF THE
22 HELEN F. COMPTON TRUST;
23 And

24 DOES 1 THROUGH 10, Inclusive

25 Defendants.

Case No. 03 CV 2535 L (LSP)

03 CV 2535 L (LSP)

26 CIVIL COMPLAINT:
27 DISCRIMINATORY PRACTICES IN
28 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]

29 INTRODUCTION

30 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
31 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
32 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
19 **JURISDICTION AND VENUE**

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. BULLYS
25 a.k.a. BULLY'S LA JOLLA, which is the subject of this civil
26 complaint, is located at 5755 La Jolla Blvd., La Jolla,
27 California, 92037. Plaintiffs are informed and believe and
28 thereon allege that Defendant BULLYS CORPORATION, is the owner,

1 operator, and/or doing business as BULLYS a.k.a. BULLY'S LA JOLLA.
2 Defendant BULLYS CORPORATION is located at 1404 Camino Del Mar,
3 Del Mar, California 92014. Plaintiffs are informed and believe
4 and thereon allege that Defendants HELEN F. COMPTON TRUST and
5 HELEN F. COMPTON, TRUSTEE OF THE HELEN F. COMPTON TRUST are the
6 owners, operators, and/or lessors of the property located at 5755
7 La Jolla Blvd., La Jolla, California, 92037, Assessor Parcel
8 Number 357-367-04. Defendant HELEN F. COMPTON, TURSTEE OF THE
9 HELEN F. COMPTON TRUST, is located at 1350 Cedar Court Rd,
10 Glendale, California 91207. The words Plaintiffs" and
11 "Plaintiff's Member" as used herein specifically include the
12 organization MANTIC ASHANTI'S CAUSE, its Members, its member
13 Theodore A. Pinnock and persons associated with its Members who
14 accompanied Members to Defendants' facilities, as well as THEODORE
15 A. PINNOCK, An Individual.

16 4. Defendants Does 1 through 10, were at all times relevant
17 herein subsidiaries, employers, employees, agents, of BULLYS
18 CORPORATION d.b.a. BULLYS a.k.a. BULLY'S LA JOLLA; BULLYS
19 CORPORATION; HELEN F. COMPTON TRUST; HELEN F. COMPTON, TRUSTEE OF
20 THE HELEN F. COMPTON TRUST. Plaintiffs are ignorant of the true
21 names and capacities of Defendants sued herein as Does 1 through
22 10, inclusive, and therefore sues these Defendants by such
23 fictitious names. Plaintiffs will pray leave of the court to
24 amend this complaint to allege the true names and capacities of
25 the Does when ascertained.

26 5. Plaintiffs are informed and believe, and thereon allege, that
27 Defendants and each of them herein were, at all times relevant to
28

1 the action, the owner, lessor, lessee, franchiser, franchisee,
2 general partner, limited partner, agent, employee, representing
3 partner, or joint venturer of the remaining Defendants and were
4 acting within the course and scope of that relationship.

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

9
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 March 4, 2003, Plaintiff's member THEODORE A. PINNOCK went
19 to Defendants' BULLYS CORPORATION d.b.a. BULLYS a.k.a. BULLY'S LA
20 JOLLA facilities to utilize their goods and/or services. When
21 Plaintiff's member patronized Defendants' BULLYS CORPORATION
22 d.b.a. BULLYS a.k.a. BULLY'S LA JOLLA facilities, he was unable to
23 use and/or had difficulty using the public accommodations'
24 exterior path of travel, entrance, interior path of travel, bar,
25 public seating, and restroom facilities at Defendants' business
26 establishment because they failed to comply with ADA Access
27 Guidelines For Buildings and Facilities (hereafter referred to as
28 "ADAAG") and/or California's Title 24 Building Code Requirements.

1 Defendants failed to remove access barriers within the exterior
2 path of travel, entrance, interior path of travel, bar, public
3 seating, restroom, and public pay telephone facilities of
4 Defendants' BULLYS CORPORATION d.b.a. BULLYS a.k.a. BULLY'S LA
5 JOLLA establishment.

6 8. Plaintiff's member personally experienced difficulty with
7 said access barriers at Defendants' BULLYS CORPORATION d.b.a.
8 BULLYS a.k.a. BULLY'S LA JOLLA facilities. For example, the
9 exterior path of travel is inaccessible. There are three (3)
10 steps, each six inches (6") high, at the front entrance door, and
11 must be traversed to enter the restaurant. The entrance area
12 fails to have an access ramp. The slope of an access ramp cannot
13 exceed 8.33%, and a ramp with a slope of 5%-8.33% is required to
14 have handrails. The steps that lead from the front entrance door
15 to the public sidewalk do not have the required contrasting color
16 strips. At the upper approach and at all treads of exterior
17 stairs must be marked with a strip of clearly contrasting color a
18 minimum of two inches (2") in width a maximum of one inch (1")
19 from the tread nose or landing.

20 9. The front entrance to Defendants' establishment is
21 inaccessible. The front entrance door does not have the required
22 kick plate. There should be a ten-inch (10") high abrasion
23 resistant plate affixed on the bottom portion of the door to
24 prevent a trap condition. The entrance to the restaurant also
25 fails to have the required disability signage.

26 10. The interior path of travel within the restaurant fails to be
27 accessible, as the interior path of travel is as narrow as thirty-
28

1 two inches (32"). The minimum width requirement for an interior
2 path of travel is thirty-six inches (36").

3 11. The cashier counter/bar is inaccessible. The height of the
4 cashier counter/bar is forty-two inches (42") high, which exceeds
5 the maximum allowable height of thirty-four inches (34"). The
6 minimum requirement is that there be at least a three-foot (3')
7 section that is no higher than thirty-four inches (34").

8 12. The Men's Restroom at Defendants' establishment is
9 inaccessible. The doorknob on the restroom area door and the
10 doorknob on the restroom door are not compliant. It is required
11 that there should be a doorknob that does not require grasping or
12 twisting by the wrist to operate it. The restroom area door and
13 the restroom door do not have the required kick plate. There
14 should be a ten-inch (10") high abrasion resistant plate affixed
15 on the bottom of the door to prevent a trap condition. The
16 restroom door does not have the required disability signage. The
17 restroom doorway is inaccessible, as its clear opening width is
18 only twenty-two inches (22"), which fails to meet the minimum
19 width requirement of thirty-two inches (32"). The wheelchair
20 turn-around space inside the restroom is a mere 12"X48", and is
21 inaccessible. The minimum requirement of turn-around space is
22 sixty inches (60") in diameter. There are no grab bars around the
23 commode, therefore making it inaccessible. The requirement is to
24 have two (2) compliant grab bars either one (1) on either side of
25 the commode or one (1) on one side of the commode and one behind
26 the commode mounted at thirty-three inches (33") from the floor
27 surface. Side grab bars should be a minimum of forty-two inches
28

1 (42") long and extend a minimum of twenty-four inches (24") beyond
2 the front of the commode and rear grab bars should be a minimum of
3 thirty-six inches (36") long and be attached a maximum of six
4 inches (6") from the corner of the wall on the toilet seat. The
5 distance from the front edge of the commode to the front wall is
6 only twelve inches (12"). The requirement is that the distance be
7 no less than forty-eight inches (48"). The height of the commode
8 is only sixteen inches (16"), which fails to meet the requirement
9 that it should be between seventeen inches and nineteen inches
10 (17"-19") high. The distance from the side edge of the commode to
11 the far wall is a mere ten inches (10"), which fails to meet the
12 minimum requirement of thirty-two inches (32"). The distance from
13 the side edge of the commode to the near wall is only fourteen
14 inches (14"), which fails to meet the minimum requirement of
15 eighteen inches (18"). The height of the commode seat cover
16 dispenser is fifty-one inches (51") and is mounted behind the
17 commode, which makes it inaccessible. The commode seat cover
18 dispenser is required to be no higher than forty inches (40"), and
19 it must be mounted in a clear place. The lavatory faucet handles
20 fail to meet the requirement that they do not require grasping or
21 twisting by the wrist in order to operate them. The soap
22 dispenser is mounted a forty-nine inches (49") and is
23 inaccessible, as the maximum height requirement is forty inches
24 (40"). The distance from the centerline of the lavatory to the
25 adjacent wall is only thirteen inches (13"), which is less than
26 the minimum requirement of eighteen inches (18"). The hot water
27 drainpipes under the lavatory fail to meet the requirement that
28

1 they be covered and insulated. The height of the paper towel
2 dispenser is mounted at fifty-one inches (51") and is
3 inaccessible, as it exceeds the maximum allowable height of forty
4 inches (40"). The required audible visual alarm system is not
5 installed.

6 13. The seating inside the Defendants' establishment is
7 inaccessible. The seating inside the restaurant is inaccessible
8 because there are no designated "accessible" seats. There are
9 forty-eight (48) seats located inside the restaurant with a knee
10 clearance of only five to fifteen inches (5"-15"). It is required
11 that 5% of all seats must have a knee clearance depth of nineteen
12 inches (19") a width of thirty inches (30") and a height of
13 twenty-seven inches (27") minimum, which in this case is three (3)
14 seats.

15 14. In addition to the violations not personally experienced by
16 Plaintiff's member and Plaintiff Theodore A. Pinnock, additional
17 violations of federal and state disability laws exist at
18 Defendants' BULLYS CORPORATION d.b.a. BULLYS a.k.a. BULLY'S LA
19 JOLLA establishment. For example, the clear opening width of the
20 exterior seating doorway is only twenty-eight inches (28"), which
21 does not meet the minimum width requirement of thirty-two inches
22 (32") and is inaccessible. There is a ramp that leads to the
23 exterior seating at Defendants' establishment with a slope of
24 fifteen percent (15%). The slope of a ramp cannot exceed 8.33%,
25 and a ramp with a slope of 5%-8.33% is required to have handrails.

26 15. The seating located outside the restaurant is also
27 inaccessible because there are no designated "accessible" seats.
28

1 There are twelve (12) seats located outside of the restaurant with
2 a knee clearance depth of only (7"), and ten (10) seats with a
3 table height of forty-two inches (42"). It is required that 5% of
4 all seats must have a knee clearance depth of nineteen inches
5 (19") a width of thirty inches (30") and a height of twenty-seven
6 inches (27") minimum, which in this case is two (2) seats. The
7 public pay telephone does have the required signage.

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

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

1 architectural barriers, known or unknown. Also, Plaintiffs allege
2 Defendants are required to utilize the ADA checklist for Readily
3 Achievable Barrier Removal approved by the United States
4 Department of Justice and created by Adaptive Environments.

5 18. Based on these facts, Plaintiffs allege Plaintiff's Member
6 and Plaintiff Theodore A. Pinnock was discriminated against each
7 time he patronized Defendants' establishments. Plaintiff's Member
8 and Plaintiff Theodore A. Pinnock was extremely upset due to
9 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
10 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
11 shoulders and wrists when he attempted to enter, use, and exit
12 Defendants' BULLYS CORPORATION d.b.a. BULLYS a.k.a. BULLY'S LA
13 JOLLA establishment.
14

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

16 19. BULLYS CORPORATION d.b.a. BULLYS a.k.a. BULLY'S LA JOLLA;
17 BULLYS CORPORATION; HELEN F. COMPTON TRUST; HELEN F. COMPTON,
18 TRUSTEE OF THE HELEN F. COMPTON TRUST; and Does 1 through 10 will
19 be referred to collectively hereinafter as "Defendants."
20

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

23 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

26 ///

27 ///

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

2 Access

3 21. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
4 this complaint, Plaintiff's Member was denied full and equal
5 access to Defendants' goods, services, facilities, privileges,
6 advantages, or accommodations. Plaintiffs allege Defendants are a
7 public accommodation owned, leased and/or operated by Defendants.
8 Defendants' existing facilities and/or services failed to provide
9 full and equal access to Defendants' facility as required by 42
10 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
11 discrimination in violation of 42 United States Code
12 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
13 Member was denied equal access to Defendants' existing facilities.

14 22. Plaintiff's member Theodore A. Pinnock has physical
15 impairments as alleged in ¶ 6 above because his conditions affect
16 one or more of the following body systems: neurological,
17 musculoskeletal, special sense organs, and/or cardiovascular.
18 Further, Plaintiff's member Theodore A. Pinnock's said physical
19 impairments substantially limits one or more of the following
20 major life activities: walking. In addition, Plaintiff's member
21 Theodore A. Pinnock cannot perform one or more of the said major
22 life activities in the manner, speed, and duration when compared
23 to the average person. Moreover, Plaintiff's member Theodore A.
24 Pinnock has a history of or has been classified as having a
25 physical impairment as required by 42 U.S.C. § 12102(2)(A).
26

27 CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In
28 Such A Manner That The Altered Portions Of The Facility Are

1 Readily Accessible And Usable By Individuals With Disabilities

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

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

23 25. Pursuant to 42 U.S.C. §12183(a), this failure to make the
24 alterations in a manner that, to the maximum extent feasible, are
25 readily accessible to and usable by individuals with disabilities
26 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
27 Therefore, Defendants discriminated against Plaintiff's Member
28

1 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

2 26. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
3 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
4 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
5 Pinnock was denied equal access to Defendants' existing
6 facilities.

7 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
8 Architectural Barriers

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

1 person who has a known association with a person with a disability
2 are forms of discrimination. [See 42 United States Code
3 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
4 discrimination in violation of 42 United States Code
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
6 denied equal access to Defendants' existing facilities.
7

8 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,**
9 **Policies And Procedures**

10 28. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
11 this complaint, Defendants failed and refused to provide a
12 reasonable alternative by modifying its practices, policies and
13 procedures in that they failed to have a scheme, plan, or design
14 to assist Plaintiff's Member and/or others similarly situated in
15 entering and utilizing Defendants' services, as required by 42
16 U.S.C. § 12188(a). Thus, said 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 29. Based on the facts plead at ¶¶ 6-18 above, Claims I, II, and
21 III of Plaintiffs' First Cause Of Action above, and the facts
22 elsewhere herein this complaint, Plaintiffs will suffer
23 irreparable harm unless Defendants are ordered to remove
24 architectural, non-architectural, and communication barriers at
25 Defendants' public accommodation. Plaintiffs allege that
26 Defendants' discriminatory conduct is capable of repetition, and
27 this discriminatory repetition adversely impacts Plaintiffs and a
28 substantial segment of the disability community. Plaintiffs

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

9 30. WHEREFORE, Plaintiffs pray for judgment and relief as
10 hereinafter set forth.

11
12 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
CALIFORNIA ACCESSIBILITY LAWS

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

14 31. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
15 this complaint, Plaintiff's Member was denied full and equal
16 access to Defendants' goods, services, facilities, privileges,
17 advantages, or accommodations within a public accommodation owned,
18 leased, and/or operated by Defendants as required by Civil Code
19 Sections 54 and 54.1. Defendants' facility violated California's
20 Title 24 Accessible Building Code by failing to provide access to
21 Defendants' facilities due to violations pertaining to the Space
22 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
23 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
24 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
25 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
26 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
27 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
28

1 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
2 Telephones.

3 32. These violations denied Plaintiff's Member full and equal
4 access to Defendants' facility. Thus, said Member was subjected
5 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
6 because Plaintiff's Member was denied full, equal and safe access
7 to Defendants' facility, causing severe emotional distress.

8 CLAIM II: Failure To Modify Practices, Policies And
9 Procedures

10 33. Based on the facts plead at ¶¶ 6-18 above and elsewhere
11 herein this complaint, Defendants failed and refused to provide a
12 reasonable alternative by modifying its practices, policies, and
13 procedures in that they failed to have a scheme, plan, or design
14 to assist Plaintiff's Member and/or others similarly situated in
15 entering and utilizing Defendants' services as required by Civil
16 Code § 54.1. Thus, said Member was subjected to discrimination in
17 violation of Civil Code § 54.1.

18 CLAIM III: Violation Of The Unruh Act

19 34. Based on the facts plead at ¶¶ 6-18 above and elsewhere
20 herein this complaint and because Defendants violated the Civil
21 Code § 51 by failing to comply with 42 United States Code §
22 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
23 continue to discriminate against Plaintiff's Member and persons
24 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

25 35. Based on the facts plead at ¶¶ 6-18 above, Claims I, II, and
26 III of Plaintiffs' Second Cause Of Action above, and the facts
27 elsewhere herein this complaint, Plaintiffs will suffer
28

1 irreparable harm unless Defendants are ordered to remove
2 architectural, non-architectural, and communication barriers at
3 Defendants' public accommodation. Plaintiffs allege that
4 Defendants' discriminatory conduct is capable of repetition, and
5 this discriminatory repetition adversely impacts Plaintiffs and a
6 substantial segment of the disability community. Plaintiffs
7 allege there is a state and national public interest in requiring
8 accessibility in places of public accommodation. Plaintiffs have
9 no adequate remedy at law to redress the discriminatory conduct of
10 Defendants. Plaintiff's Member desires to return to Defendants'
11 places of business in the immediate future. Accordingly, the
12 Plaintiffs allege that a structural or mandatory injunction is
13 necessary to enjoin compliance with state civil rights laws
14 enacted for the benefit of individuals with disabilities.
15 36. Wherefore, Plaintiffs pray for damages and relief as
16 hereinafter stated.
17

18 **Treble Damages Pursuant To Claims I, II, III Under The California**
19 **Accessibility Laws**

20 37. Defendants, each of them respectively, at times prior to and
21 including, the month of March, 2003, and continuing to the present
22 time, knew that persons with physical disabilities were denied
23 their rights of equal access to all portions of this public
24 facility. Despite such knowledge, Defendants, and each of them,
25 failed and refused to take steps to comply with the applicable
26 access statutes; and despite knowledge of the resulting problems
27 and denial of civil rights thereby suffered by Plaintiff's Member
28 THEODORE A. PINNOCK and other similarly situated persons with

1 disabilities. Defendants, and each of them, have failed and
2 refused to take action to grant full and equal access to persons
3 with physical disabilities in the respects complained of
4 hereinabove. Defendants, and each of them, have carried out a
5 course of conduct of refusing to respond to, or correct complaints
6 about, denial of disabled access and have refused to comply with
7 their legal obligations to make Defendants' BULLYS CORPORATION
8 d.b.a. BULLYS a.k.a. BULLY'S LA JOLLA facilities accessible
9 pursuant to the Americans With Disability Act Access Guidelines
10 (ADAAG) and Title 24 of the California Code of Regulations (also
11 known as the California Building Code). Such actions and
12 continuing course of conduct by Defendants, and each of them,
13 evidence despicable conduct in conscious disregard of the rights
14 and/or safety of Plaintiff's Member and of other similarly
15 situated persons, justifying an award of treble damages pursuant
16 to sections 52(a) and 54.3(a) of the California Civil Code.
17 38. Defendants', and each of their, actions have also been
18 oppressive to persons with physical disabilities and of other
19 members of the public, and have evidenced actual or implied
20 malicious intent toward those members of the public, such as
21 Plaintiff's Member and other persons with physical disabilities
22 who have been denied the proper access to which they are entitled
23 by law. Further, Defendants', and each of their, refusals on a
24 day-to-day basis to correct these problems evidence despicable
25 conduct in conscious disregard for the rights of Plaintiff's
26 Member THEODORE A. PINNOCK and other members of the public with
27 physical disabilities.
28

1 39. Plaintiffs pray for an award of treble damages against
2 Defendants, and each of them, pursuant to California Civil Code
3 sections 52(a) and 54.3(a), in an amount sufficient to make a more
4 profound example of Defendants and encourage owners, lessors, and
5 operators of other public facilities from willful disregard of the
6 rights of persons with disabilities. Plaintiffs do not know the
7 financial worth of Defendants, or the amount of damages sufficient
8 to accomplish the public purposes of section 52(a) of the
9 California Civil Code and section 54.3 of the California Civil
10 Code.

11 40. Wherefore, Plaintiffs pray for damages and relief as
12 hereinafter stated.
13

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

16 41. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
17 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
18 statutory duty to make their facility accessible and owed
19 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
20 Pinnock reasonably safe from known dangers and risks of harm.
21 This said duty arises by virtue of legal duties proscribed by
22 various federal and state statutes including, but not limited to,
23 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
24 California Administrative Code and applicable 1982 Uniform
25 Building Code standards as amended.
26

27 42. Title III of the ADA mandates removal of architectural
28 barriers and prohibits disability discrimination. As well,

1 Defendants' facility, and other goods, services, and/or facilities
2 provided to the public by Defendants are not accessible to and
3 usable by persons with disabilities as required by Health and
4 Safety Code § 19955 which requires private entities to make their
5 facility accessible before and after remodeling, and to remove
6 architectural barriers.

7 43. Therefore, Defendants engaged in discriminatory conduct in
8 that they failed to comply with known duties under the ADA, ADAAG,
9 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
10 should have known that their acts of nonfeasance would cause
11 Plaintiff Theodore A. Pinnock emotional, bodily and personal
12 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
13 bodily injury in this matter because when Plaintiff THEODORE A.
14 PINNOCK attempted to enter, use, and exit Defendants'
15 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
16 his legs, back, arms, shoulders, and wrists. Plaintiffs further
17 allege that such conduct was done in reckless disregard of the
18 probability of said conduct causing Plaintiff Theodore A. Pinnock
19 to suffer bodily or personal injury, anger, embarrassment,
20 depression, anxiety, mortification, humiliation, distress, and
21 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
22 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
23 An Individual, to suffer the injuries of mental and emotional
24 distress, including, but not limited to, anger, embarrassment,
25 depression, anxiety, mortification, humiliation, distress, and
26 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
27 Individual, additionally alleges that such conduct caused THEODORE
28

1 A. PINNOCK, An Individual, to suffer damages as a result of these
2 injuries.

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

5
6 DEMAND FOR JUDGMENT FOR RELIEF:

7 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
8 3281, and 3333;

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

12 C. In the alternative to the damages pursuant to Cal. Civil
13 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
14 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
15 54.1, Title 24 of the California Building Code, ADA, and ADA
16 Accessibility Guidelines;

17 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
18 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
19 Defendants to remove all architectural barriers in, at, or on
20 their facilities related to the following: Space Allowance and
21 Reach Ranges, Accessible Route, Protruding Objects, Ground and
22 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
23 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
24 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
25 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
26 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
27 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
28

1 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
2 § 12205, and Cal. Civil Code § 55;

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

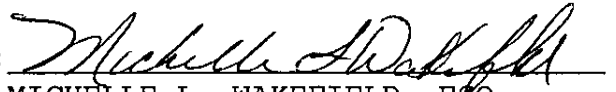
5 G. A Jury Trial and;

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

7 Respectfully submitted:
8

9
10 PINNOCK & WAKEFIELD

11 Dated: December 17, 2003

12 By: 
13 MICHELLE L. WAKEFIELD, ESQ.
14 DAVID C. WAKEFIELD, ESQ.
15 Attorneys for Plaintiffs
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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

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

DEFENDANTS

BULLYS CORPORATION d.b.a. BULLYS, a.k.a. BULLYS & JOLLA; BULLYS CORPORATION; HELEN F. COMPTON TRUST; HELEN F. COMPTON, TRUSTEE OF THE HELEN F. COMPTON TRUST; And DOES 1 THROUGH 10, Inclusive

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

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; 3033 Fifth Avenue, Suite 410 San Diego, CA 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'03 CV 2535 L (LSP)

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PT DEF 1 Incorporated or Principal Place of Business in This State
PT DEF 2 Incorporated and Principal Place of Business in Another State
PT DEF 3 Foreign Nation
PT DEF 4
PT DEF 5
PT DEF 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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 X NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE December 17, 2003

SIGNATURE OF ATTORNEY OF RECORD

Signature of Michelle L. Wakefield

Handwritten notes: 99614, 150, and other markings.