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U.S. DISTRICT COURT
Bar #: 200424
Bar #: 185735
BY:  DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 1435 W

(RBB)

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

Plaintiffs,

v.

EMBERS GRILLE; MILK MONEY,
INC. d.b.a. EMBERS GRILLE;
MILK MONEY, INC.; LONGS DRUG
STORES CALIFORNIA, INC.;
MIDWAY TOWNE CENTER, LLC; And
DOES 1 THROUGH 10, Inclusive

Defendants.

Case No.:

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

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

NEGLIGENCE

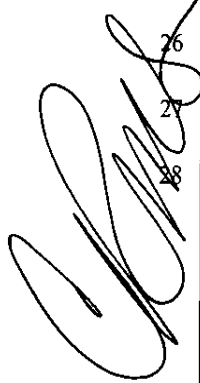
[CIVIL CODE 1714(a), 2338,
3333; EVIDENCE CODE 669(a)]

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

INTRODUCTION

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



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

15 **JURISDICTION AND VENUE**

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

24 **SUPPLEMENTAL JURISDICTION**

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

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

17 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

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

21 Defendant EMBERS GRILLE is located at 3924 West Point Loma
22 Boulevard, San Diego, California 92110. Plaintiffs are informed
23 and believe and thereon allege that Defendant MILK MONEY, INC. is
24 the owner, operator, and/or doing business as EMBERS GRILLE.

25 Defendant MILK MONEY, INC. is located at 3924 West Point Loma
26 Boulevard, San Diego, California 92110. Plaintiffs are informed
27 and believe and thereon allege that Defendants LONGS DRUG STORES
28

1 CALIFORNIA, INC. and/or MIDWAY TOWNE CENTER, LLC are the owners,
2 operators, and/or lessors of the property located at 3920 West
3 Point Loma Boulevard, San Diego, California 92110, Assessor Parcel
4 Number 441-160-24. Plaintiffs are informed and believe and thereon
5 allege that the property address 3920 West Point Loma Boulevard,
6 San Diego, California 92110, Assessor Parcel Number 441-160-24, is
7 inclusive of the address of 3924 West Point Loma Boulevard, San
8 Diego, California 92110, wherein the Defendants' EMBERS GRILLE is
9 located. Defendant LONGS DRUG STORES CALIFORNIA, INC. is located
10 at P.O. Box 5222, Walnut Creek, California 94956. Defendant
11 MIDWAY TOWNE CENTER, LLC is located at 3910 Chapman Street, Suite
12 A, San Diego, California 92110. The words "Plaintiffs" and
13 "Plaintiff's Member" as used herein specifically include the
14 organization MANTIC ASHANTI'S CAUSE, its Members, its member
15 Theodore A. Pinnock and persons associated with its Members who
16 accompanied Members to Defendants' facilities, as well as THEODORE
17 A. PINNOCK, An Individual.

18 4. Defendants Does 1 through 10, were at all times relevant
19 herein subsidiaries, employers, employees, agents, of EMBERS
20 GRILLE; MILK MONEY, INC. d.b.a. EMBERS GRILLE; MILK MONEY, INC.;
21 LONGS DRUG STORES CALIFORNIA, INC.; and MIDWAY TOWNE CENTER, LLC.
22 Plaintiffs are ignorant of the true names and capacities of
23 Defendants sued herein as Does 1 through 10, inclusive, and
24 therefore sues these Defendants by such fictitious names.
25 Plaintiffs will pray leave of the court to amend this complaint to
26 allege the true names and capacities of 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 May 20, 2004, Plaintiff's member THEODORE A. PINNOCK went
19 to Defendants' EMBERS GRILLE facilities to utilize their goods
20 and/or services. When Plaintiff's member patronized Defendants'
21 EMBERS GRILLE facilities, he was unable to use and/or had
22 difficulty using the public accommodations' disabled parking,
23 exterior path of travel, entrance, bar/cashier counter, public bar
24 area seating, public main dining area seating, public patio area
25 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

1 "ADAAG") and/or California's Title 24 Building Code Requirements.
2 Defendants failed to remove access barriers within the disabled
3 parking, exterior path of travel, entrance, bar/cashier counter,
4 public bar area seating, public main dining area seating, public
5 patio area seating, stairs, and restroom facilities of Defendants'
6 EMBERS GRILLE establishment.

7 8. Plaintiff's member personally experienced difficulty with
8 said access barriers at Defendants' EMBERS GRILLE facilities. For
9 example, the parking facility of Defendants' establishment is
10 inaccessible. The parking facility has a total of three hundred
11 and eight (308) parking spaces, including seven (7) disabled
12 parking spaces. Five (5) of the seven (7) existing disabled
13 parking spaces are "van accessible" disabled parking spaces. One
14 (1) of the "van accessible" disabled parking spaces (located by
15 Curves for Women) has encroachment of a ramp into the access
16 aisle. One (1) of the remaining other two (2) disabled parking
17 space is a 16' long "regular" disabled parking space (located by
18 Wahoo's Fish Tacos), the other "regular" disabled parking space
19 (located by Blockbuster Videos) has encroachment of a ramp into
20 the access aisle. It is required that there is at least one (1)
21 compliant eighteen foot (18') long "van accessible" disabled
22 parking space that is nine feet (9') wide, has an eight foot (8')
23 wide access aisle on the right hand side, and does not have an
24 encroachment of a ramp into the access aisle. It is also required
25 that there are at least seven (7) compliant eighteen foot (18')
26 long "regular" disabled parking spaces with a five foot (5') wide
27 access aisle on the right hand side, without encroachment of a
28

1 ramp into the access aisle.

2 9. The exterior path of travel of the Defendants' establishment
3 is inaccessible. There fails to be a safe and accessible path of
4 travel from three (3) of the seven (7) disabled parking spaces and
5 from the public sidewalk to the primary accessible entrance, as
6 members of the disability community are forced to traverse through
7 vehicular traffic without the benefit of a marked path of travel.

8 10. The entrance to the Defendants establishment is inaccessible,
9 as the entrance door fails to have the required smooth and
10 uninterrupted surface on the bottom ten inches (10") of the door
11 that allows the door to be opened with a wheelchair footrest
12 without creating a hazard. The entrance door also fails to have
13 the required five foot by five foot (5'x 5') level landing in
14 front of the door. The front entrance door also fails to have the
15 required disability signage.

16 11. The bar/cashier counter is inaccessible, as it is forty-three
17 inches (43") high, when it is required to be no higher than
18 thirty-four inches (34").

19 12. The public seating in the bar area is inaccessible. There
20 are twenty-four (24) seats located in the bar area, all of which
21 have a knee clearance depth of only five inches to eight inches
22 (5"- 8"). It is required that five percent (5%) of all seats have
23 a knee clearance depth of at least nineteen inches (19"). The
24 public seating in the main dining area is inaccessible, as there
25 are a total of one hundred and twelve (112) seats, all of which
26 have a knee clearance depth of only five inches to eight inches
27 (5"- 8"). It is required that five percent (5%) of all seats have
28

1 a knee clearance depth of at least nineteen inches (19"). The
2 public seating in the outside patio area is inaccessible, as there
3 are a total of forty-eight (48) seats, all of which have a knee
4 clearance depth of only five inches to eight inches (5" - 8"). It
5 is required that five percent (5%) of all seats have a knee
6 clearance depth of at least nineteen inches (19").

7 13. The men's restroom located inside the defendants'
8 establishment is inaccessible. The clear opening width of the
9 restroom area doorway is only thirty inches (30"), when it is
10 required to be at least thirty-two inches (32"). The men's
11 restroom door fails to have the required disability signage. The
12 men's restroom door is inaccessible, as it requires eleven pounds
13 (11 lbs.) of pressure to open. The maximum requirement is five
14 pounds (5 lbs.) of pressure to open a door like this one. The
15 stall door opens inward, when it is required to open outward. The
16 stall door fails to have the required self-closing mechanism.
17 The height of the commode is only fifteen inches (15"), when it is
18 required to be between seventeen and nineteen inches (17" - 19").
19 The flush mechanism on the commode tank is on the narrow side,
20 when it is required to be located on the wide side. The height of
21 the coat hook is fifty-six inches (56"), when it is required to be
22 no more than forty-eight inches (48") high. The restroom fails to
23 have the required audible and visual alarm system.

24
25 14. In addition to the violations personally experienced by
26 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
27 violations of federal and state disability laws exist at
28 Defendants' EMBERS GRILLE. For example, the stairs that lead

1 patrons from the public sidewalk to the front entrance of the
2 Defendants' establishment fail to have the required contrasting
3 color striping.

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

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

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

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

10
11 18. EMBERS GRILLE; MILK MONEY, INC. d.b.a. EMBERS GRILLE; MILK
12 MONEY, INC.; LONGS DRUG STORES CALIFORNIA, INC.; MIDWAY TOWNE
13 CENTER, LLC; and Does 1 through 10 will be referred to
14 collectively hereinafter as "Defendants."

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

17 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

22 20. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
23 this complaint, Plaintiff's Member was denied full and equal
24 access to Defendants' goods, services, facilities, privileges,
25 advantages, or accommodations. Plaintiffs allege Defendants are a
26 public accommodation owned, leased and/or operated by Defendants.
27 Defendants' existing facilities and/or services failed to provide
28 full and equal access to Defendants' facility as required by 42

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

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

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

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

21 22. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
22 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
23 full and equal access to Defendants' goods, services, facilities,
24 privileges, advantages, or accommodations within a public
25 accommodation owned, leased, and/or operated by Defendants.
26 Defendants altered their facility in a manner that affects or
27 could affect the usability of the facility or a part of the
28 facility after January 26, 1992. In performing the alteration,
Defendants failed to make the alteration in such a manner that, to

1 the maximum extent feasible, the altered portions of the facility
2 are readily accessible to and usable by individuals with
3 disabilities, including individuals who use wheelchairs, in
4 violation of 42 U.S.C. §12183(a)(2).

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

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

19 25. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
20 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
21 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
22 Pinnock was denied equal access to Defendants' existing
23 facilities.
24

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

27 26. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
28 this complaint, Plaintiff's Member was denied full and equal

1 access to Defendants' goods, services, facilities, privileges,
2 advantages, or accommodations within a public accommodation owned,
3 leased, and/or operated by Defendants. Defendants failed to
4 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
5 are informed, believe, and thus allege that architectural barriers
6 which are structural in nature exist within the following physical
7 elements of Defendants' facilities: Space Allowance and Reach
8 Ranges, Accessible Route, Protruding Objects, Ground and Floor
9 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
10 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
11 Doors, Entrances, Drinking Fountains and Water Coolers, Water
12 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
13 Storage, Handrails, Grab Bars, and Controls and Operating
14 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
15 Title III requires places of public accommodation to remove
16 architectural barriers that are structural in nature to existing
17 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
18 Failure to remove such barriers and disparate treatment against a
19 person who has a known association with a person with a disability
20 are forms of discrimination. [See 42 United States Code
21 12182(b)(2)(A)(iv).] 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
26 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
27 Policies And Procedures

28 27. Based on the facts plead at ¶¶ 6-17 above and elsewhere in

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

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

27
28 29. WHEREFORE, Plaintiffs pray for judgment and relief as

1 hereinafter set forth.

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

4 CLAIM I: Denial Of Full And Equal Access

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

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

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

27 32. Based on the facts plead at ¶¶ 6-17 above and elsewhere
28

1 herein this complaint, Defendants failed and refused to provide a
2 reasonable alternative by modifying its practices, policies, and
3 procedures in that they failed to have a scheme, plan, or design
4 to assist Plaintiff's Member and/or others similarly situated in
5 entering and utilizing Defendants' services as required by Civil
6 Code § 54.1. Thus, said Member was subjected to discrimination in
7 violation of Civil Code § 54.1.

8 CLAIM III: Violation Of The Unruh Act

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

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

1 places of business in the immediate future. Accordingly, the
2 Plaintiffs allege that a structural or mandatory injunction is
3 necessary to enjoin compliance with state civil rights laws
4 enacted for the benefit of individuals with disabilities.

5 35. Wherefore, Plaintiffs pray for damages and relief as
6 hereinafter stated.

7 **Treble Damages Pursuant To Claims I, II, III Under The California**
8 **Accessibility Laws**

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

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

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

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

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

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

3 40. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
4 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
5 statutory duty to make their facility accessible and owed
6 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
7 Pinnock reasonably safe from known dangers and risks of harm.
8 This said duty arises by virtue of legal duties proscribed by
9 various federal and state statutes including, but not limited to,
10 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
11 California Administrative Code and applicable 1982 Uniform
12 Building Code standards as amended.

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

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

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

17 43. Wherefore, Plaintiffs pray for damages and relief as
18 hereinafter stated.

19 DEMAND FOR JUDGMENT FOR RELIEF:

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

1 54.1, Title 24 of the California Building Code, ADA, and ADA
2 Accessibility Guidelines;

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

14 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
15 § 12205, and Cal. Civil Code § 55;

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

18 G. A Jury Trial and;

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

20 Respectfully submitted:

21 PINNOCK & WAKEFIELD, A.P.C.

22
23 Dated: July 16, 2004

24 By: 

25 MICHELLE L. WAKEFIELD, ESQ.
26 DAVID C. WAKEFIELD, ESQ.
27 Attorneys for Plaintiffs
28

(Rev. 07/89)

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

EMBERS GRILLE; MILK MONEY, INC. d.b.a. EMBERS GRILLE; MILK MONEY, INC. - 36 SONGS DRUG STORES CALIFORNIA, INC. - 19 MIDWAY TOWNE CENTER, LLC; And DOES 1 THROUGH 10, Inclusive, COURT

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 BY:

(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 1435 W (RBB)

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)

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/CC Rates/etc.
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 861 HIA (1395B)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> LABOR	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<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"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 280 All Other Real Property				
	<input type="checkbox"/> 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 July 16, 2004

SIGNATURE OF ATTORNEY OF RECORD

Michelle L. Wakefield

105504 7/19/04 150