

USDC SCAN INDEX SHEET



NMC 7/22/04 11:12
3:04-CV-01460 PINNOCK V. NUNUS BAR
1
CMP.

FILED

04 JUL 21 PM 4:04

PINNOCK & WAKEFIELD

A Professional Corporation
Michelle L. Wakefield, Esq.
David C. Wakefield, Esq.
3033 Fifth Ave., Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671
Facsimile: (619) 858-3646

Bar #: 200424
Bar #: 185736

COURT U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

[Signature]
DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 1460 W (AJB)

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

Plaintiffs,

v.

NUNU'S BAR & RESTAURANT;
HEATHER-HUT, INC. d.b.a.
NUNU'S BAR & RESTAURANT;
HEATHER-HUT, INC.; ARTHUR J.
SISK; MARTHA A. EISELE-SISK;
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
16 **JURISDICTION AND VENUE**

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

25 **SUPPLEMENTAL JURISDICTION**

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

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

22 Defendant NUNU'S BAR & RESTAURANT is located at 3537 Fifth Avenue,
23 San Diego, California 92103. Plaintiffs are informed and believe
24 and thereon allege that Defendant HEATHER-HUT, INC. is the owner,
25 operator, and/or doing business as NUNU'S BAR & RESTAURANT.

26 Defendant HEATHER-HUT, INC. is located at 3537 Fifth Avenue, San
27 Diego, California 92103. Plaintiffs are informed and believe and
28 thereon allege that Defendants ARTHUR J. SISK and MARTHA A.

1 EISELE-SISK are the owners, operators, and/or lessors of the
2 property located at 3537 Fifth Avenue, San Diego, California
3 92103, Assessor Parcel Number 452-407-07. Defendants RTHUR J. SISK
4 and MARTHA A. EISELE-SISK are located at 73143 Segura Court, Palm
5 Desert, California 92260. The words "Plaintiffs" and "Plaintiff's
6 Member" as used herein specifically include the organization
7 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A.
8 Pinnock and persons associated with its Members who accompanied
9 Members to Defendants' facilities, as well as THEODORE A. PINNOCK,
10 An Individual.

11 4. Defendants Does 1 through 10, were at all times relevant
12 herein subsidiaries, employers, employees, agents, of NUNU'S BAR &
13 RESTAURANT; HEATHER-HUT, INC. d.b.a. NUNU'S BAR & RESTAURANT;
14 HEATHER-HUT, INC.; ARTHUR J. SISK; and MARTHA A. EISELE-SISK.
15 Plaintiffs are ignorant of the true names and capacities of
16 Defendants sued herein as Does 1 through 10, inclusive, and
17 therefore sues these Defendants by such fictitious names.

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

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

26 Plaintiffs are further informed and believe, and thereon allege,
27 that each of the Defendants herein gave consent to, ratified,
28

1 and/or authorized the acts alleged herein to each of the remaining
2 Defendants.

3 CONCISE SET OF FACTS

4 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that
5 advocates on the behalf of its members with disabilities when
6 their civil rights and liberties have been violated. Plaintiff's
7 member THEODORE A. PINNOCK is a member of Plaintiff Organization
8 and has an impairment in that he has Cerebral Palsy and due to
9 this impairment he has learned to successfully operate a
10 wheelchair.

11 7. On May 29, 2004, Plaintiff's member THEODORE A. PINNOCK went
12 to Defendants' NUNU'S BAR & RESTAURANT facilities to utilize their
13 goods and/or services. When Plaintiff's member patronized
14 Defendants' NUNU'S BAR & RESTAURANT facilities, he was unable to
15 use and/or had difficulty using the public accommodations'
16 entrance, path of travel, public seating, cashier counter/bar, and
17 restroom facilities at Defendants' business establishment because
18 they failed to comply with ADA Access Guidelines For Buildings and
19 Facilities (hereafter referred to as "ADAAG") and/or California's
20 Title 24 Building Code Requirements. Defendants failed to remove
21 access barriers within the entrance, path of travel, public
22 seating, cashier counter/bar, public pay telephone, and restroom
23 facilities of Defendants' NUNU'S BAR & RESTAURANT establishment.

24 8. Plaintiff's member personally experienced difficulty with
25 said access barriers at Defendants' NUNU'S BAR & RESTAURANT
26 facilities. For example, the entrance to the Defendants
27 establishment is inaccessible, as the front entrance door fails to
28

1 have the required smooth and uninterrupted surface on the bottom
2 ten inches (10") of the door that allows the door to be opened
3 with a wheelchair footrest without creating a hazard. The front
4 entrance door has an impermissible threshold of three inches (3")
5 and fails to have the required access ramp. Changes in level
6 greater than one half of an inch (1/2") are required to be ramped.
7 The front entrance door fails to have the required disability
8 signage.

9 9. The path of travel to the smoking area is inaccessible, as
10 there is a five inch (5") step that fails to have the required
11 access ramp. Changes in level greater than one half of an inch
12 (1/2") are required to be ramped.

13 10. The public seating located in the smoking area of the
14 Defendants' establishment is inaccessible, as there are a total of
15 eight (8) seats, all with a table height of forty inches (40").
16 The required maximum table height is thirty-four inches (34").
17 The public seating located inside the restaurant/bar is
18 inaccessible, as there are ten (10) booths, seating approximately
19 six (6) people each booth, all with a knee clearance depth of only
20 eight inches to ten inches (8" - 10") and twenty (20) seats located
21 around the bar area, all with a knee clearance depth of only five
22 inches (5") and a table height of thirty-eight inches (38"). It
23 is required that five percent (5%) of all seats have a knee
24 clearance depth of at least nineteen inches (19") and a maximum
25 table height of thirty-four inches (34").

26 11. The cashier counter/bar located inside that Defendants'
27 establishment is inaccessible, as it is thirty-eight inches (38")
28

1 high, when it is required to be no higher than thirty-four inches
2 (34").

3 12. The men's restroom located inside the Defendants'
4 establishment is inaccessible. The men's restroom fails to have
5 the required disability signage. The clear opening width of the
6 men's restroom doorway is only twenty-two inches (22"), when it is
7 required to be at least thirty-two inches (32"). The strike
8 clearance of the restroom doorway is a mere three inches (3"),
9 when it is required to be at least eighteen inches (18"). The
10 distance between the stall door and the restroom door is only
11 eighteen inches (18"), when it is required that the space between
12 two hinged or pivoted doors in a series is a minimum of forty-
13 eight inches (48") plus the width of any door swinging into the
14 space. Doors in a series shall either swing in the same direction
15 or away from the space between the doors. The stall door fails to
16 have the required handles on both sides. The clear opening width
17 of the stall doorway is only twenty-two inches (22"), when it is
18 required to be at least thirty-two inches (32"). The stall door
19 fails to have the required self-closing mechanism. The wheelchair
20 turn-around space in the restroom is only twenty-seven inches by
21 twenty-five inches (27"x 25"), when it is required to be at least
22 sixty inches (60") in diameter. The distance from the centerline
23 of the commode to the near wall is only six inches (6"), when it
24 is required to be at least eighteen inches (18"). The distance
25 from the front edge of the commode to the front wall is only
26 twenty-seven inches (27"), when it is required to be at least
27 forty-eight inches (48"). The distance from the side edge of the
28

1 commode to the far wall is only twenty-two inches (22"), when it
2 is required to be at least thirty-two inches (32"). The commode
3 is fifteen inches (15") high, when it is required to be between
4 seventeen inches and nineteen inches (17"- 19") high. The commode
5 fails to have any of the required grab bars. The height of the
6 urinal lip is twenty-five inches (25"), when it is required to be
7 no higher than seventeen inches (17"). The height of the bottom
8 of the mirror is mounted at forty-eight inches (48"), when it is
9 required to be mounted no higher than forty inches (40") from the
10 floor surface. The distance from the centerline of the lavatory
11 to the adjacent wall is only sixteen inches (16"), when it is
12 required to be at least eighteen inches (18"). The hot water and
13 drainpipes underneath the lavatory fail to have the required
14 covering. The paper towel dispenser is inaccessible, as it is
15 mounted at an impermissible seventy inches (70") high, when it is
16 required to be mounted no higher than forty inches (40") high.
17 The restroom fails to have the required audible and visual alarm
18 system.

19
20 13. In addition to the violations personally experienced by
21 Plaintiff's member THEODORE A. PINNOCK, additional violations of
22 federal and state disability laws exist at the Defendants' NUNU'S
23 BAR & RESTAURANT establishment. For example, the public pay
24 telephone is inaccessible, as it fails to have the required volume
25 control unit and the proper signage. The public pay telephone is
26 also inaccessible, as the height of the coin drop on the pay
27 telephone is sixty-seven inches (67") high, when it is required to
28 be no higher than forty-eight inches (48").

1 14. The women's restroom located at the Defendants' establishment
2 is inaccessible. There are two (2) steps, each step is five
3 inches (5") high, leading to the women's restroom that fail to
4 have the required access ramp. Changes in level greater than one
5 half of an inch (1/2") are required to be ramped. The clear
6 opening width of the women's restroom doorway is only twenty-two
7 inches (22"), when it is required to be at least thirty-two inches
8 (32").

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

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

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

6 17. Based on these facts, Plaintiffs allege Plaintiff's Member
7 and Plaintiff Theodore A. Pinnock was discriminated against each
8 time he patronized Defendants' establishments. Plaintiff's Member
9 and Plaintiff Theodore A. Pinnock was extremely upset due to
10 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
11 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
12 shoulders and wrists when he attempted to enter, use, and exit
13 Defendants' NUNU'S BAR & RESTAURANT establishment.

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

15 18. NUNU'S BAR & RESTAURANT; HEATHER-HUT, INC. d.b.a. NUNU'S BAR
16 & RESTAURANT; HEATHER-HUT, INC.; ARTHUR J. SISK; MARTHA A. EISELE-
17 SISK; and Does 1 through 10 will be referred to collectively
18 hereinafter as "Defendants."

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

21 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

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

1 access to Defendants' goods, services, facilities, privileges,
2 advantages, or accommodations. Plaintiffs allege Defendants are a
3 public accommodation owned, leased and/or operated by Defendants.
4 Defendants' existing facilities and/or services failed to provide
5 full and equal access to Defendants' facility as required by 42
6 U.S.C. § 12182(a). Thus, Plaintiff's 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 Plaintiff's
9 Member was denied equal access to Defendants' existing facilities.

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

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

25 22. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
26 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
27 full and equal access to Defendants' goods, services, facilities,
28 privileges, advantages, or accommodations within a public

1 accommodation owned, leased, and/or operated by Defendants.
2 Defendants altered their facility in a manner that affects or
3 could affect the usability of the facility or a part of the
4 facility after January 26, 1992. In performing the alteration,
5 Defendants failed to make the alteration in such a manner that, to
6 the maximum extent feasible, the altered portions of the facility
7 are readily accessible to and usable by individuals with
8 disabilities, including individuals who use wheelchairs, in
9 violation of 42 U.S.C. §12183(a)(2).

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

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

22 Therefore, Defendants discriminated against Plaintiff's Member
23 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

24 25. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
25 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
26 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
27 Pinnock was denied equal access to Defendants' existing
28

1 facilities.

2 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
3 Architectural Barriers

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

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

3 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
4 Policies And Procedures

5 27. Based on the facts plead at ¶¶ 6-17 above and elsewhere in
6 this complaint, Defendants failed and refused to provide a
7 reasonable alternative by modifying its practices, policies and
8 procedures in that they failed to have a scheme, plan, or design
9 to assist Plaintiff's Member and/or others similarly situated in
10 entering and utilizing Defendants' services, as required by 42
11 U.S.C. § 12188(a). Thus, said Member was subjected to
12 discrimination in violation of 42 United States Code
13 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
14 denied equal access to Defendants' existing facilities.

15 28. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
16 III of Plaintiffs' First 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 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 federal civil rights laws
4 enacted for the benefit of individuals with disabilities.

5 29. WHEREFORE, Plaintiffs pray for judgment and relief as
6 hereinafter set forth.

7
8 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
9 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

27 31. These violations denied Plaintiff's Member full and equal
28 access to Defendants' facility. Thus, said Member was subjected

1 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
2 because Plaintiff's Member was denied full, equal and safe access
3 to Defendants' facility, causing severe emotional distress.

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

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

13 CLAIM III: Violation Of The Unruh Act

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

20 34. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
21 III of Plaintiffs' Second 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

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

10 35. Wherefore, Plaintiffs pray for damages and relief as
11 hereinafter stated.

12 **Treble Damages Pursuant To Claims I, II, III Under The California**
13 **Accessibility Laws**

14 36. Defendants, each of them respectively, at times prior to and
15 including, the month of May, 2004, and continuing to the present
16 time, knew that persons with physical disabilities were denied
17 their rights of equal access to all portions of this public
18 facility. Despite such knowledge, Defendants, and each of them,
19 failed and refused to take steps to comply with the applicable
20 access statutes; and despite knowledge of the resulting problems
21 and denial of civil rights thereby suffered by Plaintiff's Member
22 THEODORE A. PINNOCK and other similarly situated persons with
23 disabilities. Defendants, and each of them, have failed and
24 refused to take action to grant full and equal access to persons
25 with physical disabilities in the respects complained of
26 hereinabove. Defendants, and each of them, have carried out a
27 course of conduct of refusing to respond to, or correct complaints
28 about, denial of disabled access and have refused to comply with

1 their legal obligations to make Defendants' NUNU'S BAR &
2 RESTAURANT facilities accessible pursuant to the Americans With
3 Disability Act Access Guidelines (ADAAG) and Title 24 of the
4 California Code of Regulations (also known as the California
5 Building Code). Such actions and continuing course of conduct by
6 Defendants, and each of them, evidence despicable conduct in
7 conscious disregard of the rights and/or safety of Plaintiff's
8 Member and of other similarly situated persons, justifying an
9 award of treble damages pursuant to sections 52(a) and 54.3(a) of
10 the California Civil Code.

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

22 38. Plaintiffs pray for an award of treble damages against
23 Defendants, and each of them, pursuant to California Civil Code
24 sections 52(a) and 54.3(a), in an amount sufficient to make a more
25 profound example of Defendants and encourage owners, lessors, and
26 operators of other public facilities from willful disregard of the
27 rights of persons with disabilities. Plaintiffs do not know the
28

1 financial worth of Defendants, or the amount of damages sufficient
2 to accomplish the public purposes of section 52(a) of the
3 California Civil Code and section 54.3 of the California Civil
4 Code.

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

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

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

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

27 42. Therefore, Defendants engaged in discriminatory conduct in
28

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

23
24 43. Wherefore, Plaintiffs pray for damages and relief as
25 hereinafter stated.

26 DEMAND FOR JUDGMENT FOR RELIEF:

27 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
28 3281, and 3333;

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

4 C. In the alternative to the damages pursuant to Cal. Civil
5 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
6 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
7 54.1, Title 24 of the California Building Code, ADA, and ADA
8 Accessibility Guidelines;

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

20 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
21 § 12205, and Cal. Civil Code § 55;

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

24 ///

25 ///

26 ///

27 ///

28 ///

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

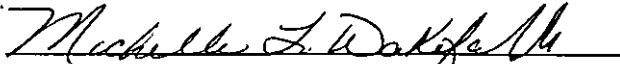
G. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: July 20, 2004

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

