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3:04-CV-01723 PINNOCK V. HARBOR FISH CAFE

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

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8 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

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

13 Plaintiffs,

14 v.

15 **HARBOR FISH CAFÉ; OCEANSIDE**
16 **SEAFOODS, INC. d.b.a. HARBOR**
17 **FISH CAFÉ; WARD FAMILY TRUST;**
18 **CLIFFORD D. WARD, JR., TRUSTEE**
OF THE WARD FAMILY TRUST; And
19 **DOES 1 THROUGH 10, Inclusive**

Defendants.

Case No: CV 1723

WQH (AJB)

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]

20 **INTRODUCTION**

21 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE A.
22 PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual, herein
23 complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil
24 Procedure in the Judicial District of the United States District Court of the Southern District of
25 California, that Defendants have in the past, and presently are, engaging in discriminatory practices
26 against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs
27 allege this civil action and others substantial similar thereto are necessary to compel access
28 compliance because empirical research on the effectiveness of Title III of the Americans with

1 Disabilities Act indicates this Title has failed to achieve full and equal access simply by the
2 executive branch of the Federal Government funding and promoting voluntary compliance efforts.
3 Further, empirical research shows when individuals with disabilities give actual notice of potential
4 access problems to places of public accommodation without a federal civil rights action, the public
5 accommodations do not remove the access barriers. Therefore, Plaintiffs make the following
6 allegations in this federal civil rights action:

7
8 **JURISDICTION AND VENUE**

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

14 **SUPPLEMENTAL JURISDICTION**

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

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NAMED DEFENDANTS AND NAMED PLAINTIFFS

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2 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
3 franchise organized and existing and/or doing business under the laws of the State of California.
4 Defendant HARBOR FISH CAFÉ is located at 3179 Carlsbad Boulevard, Carlsbad, California
5 92008. Plaintiffs are informed and believe and thereon allege that Defendant OCEANSIDE
6 SEAFOODS, INC. is the owner, operator, and/or doing business as HARBOR FISH CAFÉ.
7 Defendant OCEANSIDE SEAFOODS, INC. is located at 2790 Loker Avenue, Suite 115, Carlsbad,
8 California 92008. Plaintiffs are informed and believe and thereon allege that Defendant WARD
9 FAMILY TRUST is the owner, operator, and/or lessor of the property located at 3179 Carlsbad
10 Boulevard, Carlsbad, California 92008, Assessor Parcel Number 203-250-16. Defendant
11 CLIFFORD D. WARD, JR., TRUSTEE OF THE WARD FAMILY TRUST is located at 945 South
12 Orange Grove Boulevard, #D, Pasadena, California 91105. The words "Plaintiffs" and "Plaintiff's
13 Member" as used herein specifically include the organization MANTIC ASHANTI'S CAUSE, its
14 Members, its member Theodore A. Pinnock and persons associated with its Members who
15 accompanied Members to Defendants' facilities, as well as THEODORE A. PINNOCK, An
16 Individual.

17 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
18 employees, agents, of HARBOR FISH CAFÉ; OCEANSIDE SEAFOODS, INC. d.b.a. HARBOR
19 FISH CAFÉ; WARD FAMILY TRUST; and CLIFFORD D. WARD, JR., TRUSTEE OF THE
20 WARD FAMILY TRUST. Plaintiffs are ignorant of the true names and capacities of Defendants
21 sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious
22 names. Plaintiffs will pray leave of the court to amend this complaint to allege the true names and
23 capacities of the Does when ascertained.

24 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them
25 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
26 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
27 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs
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1 are further informed and believe, and thereon allege, that each of the Defendants herein gave
2 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

3 **CONCISE SET OF FACTS**

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

9 7. On August 3, 2004, Plaintiff's member THEODORE A. PINNOCK went to Defendants'
10 HARBOR FISH CAFÉ facilities to utilize their goods and/or services. When Plaintiff's member
11 patronized Defendants' HARBOR FISH CAFÉ facilities, he was unable to use and/or had difficulty
12 using the public accommodations' disabled parking, exterior path of travel, entrance, interior path
13 of travel, public seating, and restroom facilities at Defendants' business establishment because they
14 failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as
15 "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants failed to remove
16 access barriers within the disabled parking, exterior path of travel, entrance, interior path of travel,
17 public seating, restroom, and public pay telephone facilities of Defendants' HARBOR FISH CAFÉ
18 establishment.

19 8. Plaintiff's member personally experienced difficulty with said access barriers at
20 Defendants' HARBOR FISH CAFÉ facilities. For example, the parking facility of Defendants'
21 establishment is inaccessible. The parking facility has a total of six (6) parking spaces, including
22 one (1) "van accessible" disabled parking space. The existing disabled parking space fails to have
23 the required disability signage.

24 9. The exterior path of travel of the Defendants' establishment is inaccessible, as the path of
25 travel from the parking lot to the entrance is as narrow as thirty-two inches (32"), when it is
26 required to be at least forty-eight inches (48") wide.

27 10. The entrance to the Defendants establishment is inaccessible, as the front entrance door fails
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1 to have the required disability signage.

2 11. The interior path of travel is inaccessible, as the interior path of travel is only twenty-two
3 inches (22") wide. The interior path of travel is required to be at least thirty-six (36") wide. There
4 is a one half inch to three quarters of an inch ($1/2'' - 3/4''$) step up from the entrance door to the
5 exterior dining area that fails to have the required ramp. Changes in level greater than one half of
6 an inch ($1/2''$) are required to be ramped. The width of the path of travel to the restroom is
7 inaccessible, as it is as narrow as twenty-eight inches (28"), when it is required to be at least thirty-
8 six inches (36"). The slope of the ramp to the restroom door is up to an impermissible twenty-five
9 percent (25%), when it is required to be no more than 8.33%.

10 12. The public seating located inside the Defendants' establishment is inaccessible, as there are
11 a total of thirty-six (36) seats located inside of the Defendants' restaurant, all with a knee clearance
12 depth of only fifteen inches to seventeen inches (15"- 17"). It is required that five percent (5%) of
13 all seats must have a knee clearance depth of at least nineteen inches (19"). There are a total of
14 fifty (50) seats located outside of the Defendants' restaurant, all with a knee clearance depth of only
15 fifteen inches to seventeen inches (15"- 17"). It is required that five percent (5%) of all seats must
16 have a knee clearance depth of at least nineteen inches (19").

17 13. The men's restroom located inside the Defendants' establishment is inaccessible. The
18 restroom fails to have the required disability signage. The clear opening width of the restroom
19 doorway is only twenty-five inches (25"), when it is required to be at least thirty-two inches (32").
20 The height of the locking mechanism on the restroom door is mounted at fifty-four inches (54"),
21 when it is required to be between thirty inches and forty-four inches (30"- 44") from the floor
22 surface. The distance from the side edge of the commode to the near wall is only thirteen inches
23 (13"), when it is required to be at least eighteen inches (18"). The distance from the front edge of
24 the commode to the front wall is only nineteen inches (19"), when it is required to be at least forty-
25 eight inches (48"). The lengths of the rear and side grab bars are only twenty-four inches (24").
26 Side grab bars are required to be at least forty-two inches (42") long and extend a minimum of
27 twenty-four inches (24") beyond the front edge of the commode. Rear grab bars are required to be
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1 at least thirty-six inches (36") long. The height of the commode is only fifteen inches (15"), when
2 it is required to be between seventeen inches and nineteen inches (17" – 19") high. The commode
3 seat cover dispenser is inaccessible, as it is mounted sixty inches (60") high, when it is required to
4 be no higher than forty inches (40"). The height of the bottom of the mirror is forty-five inches
5 (45") high, when it is required to be no higher than forty inches (40"). The lavatory faucet handles
6 are inaccessible, as they require tight grasping and/or twisting of the wrist to operate. The hot
7 water and drainpipes underneath the lavatory fail to have the required covering. The paper towel
8 dispenser is inaccessible, as it is mounted at fifty-five inches (55") high, when it is required to be
9 mounted no higher than forty inches (40") high. The restroom fails to have the required audible
10 and visual alarm system.

11 14. In addition to the violations personally experienced by Plaintiff's member THEODORE A.
12 PINNOCK, additional violations of federal and state disability laws exist at the Defendants'
13 HARBOR FISH CAFÉ establishment. For example, the public pay telephone is inaccessible, as it
14 fails to have the required volume control unit and the proper signage.

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

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

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

10 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
11 **DEFENDANT**

12 18. HARBOR FISH CAFÉ; OCEANSIDE SEAFOODS, INC. d.b.a. HARBOR FISH CAFÉ;
13 WARD FAMILY TRUST; CLIFFORD D. WARD, JR., TRUSTEE OF THE WARD FAMILY
14 TRUST; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

16 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

20 20. Based on the facts plead at ¶¶ 6-17 above and elsewhere in this complaint, Plaintiff's
21 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
22 advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned,
23 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to
24 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,
25 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code
26 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to
27 Defendants' existing facilities.
28

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

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

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

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

27 24. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the
28 maximum extent feasible, are readily accessible to and usable by individuals with disabilities

1 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
2 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §
3 12182(a).

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

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

9 26. Based on the facts plead at ¶¶ 6-17 above and elsewhere in this complaint, Plaintiff's
10 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
11 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
12 Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
13 are informed, believe, and thus allege that architectural barriers which are structural in nature exist
14 within the following physical elements of Defendants' facilities: Space Allowance and Reach
15 Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger
16 Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
17 Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls,
18 Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
19 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III requires places of
20 public accommodation to remove architectural barriers that are structural in nature to existing
21 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to remove such barriers and
22 disparate treatment against a person who has a known association with a person with a disability
23 are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's
24 Member was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv)
25 and 42 U.S.C. § 12188 because said Member was denied equal access to Defendants' existing
26 facilities.

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1 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And
2 Procedures

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

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

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

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

24 CLAIM I: Denial Of Full And Equal Access

25 30. Based on the facts plead at ¶¶ 6-17 above and elsewhere in this complaint, Plaintiff's
26 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
27 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
28 Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated

1 California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities
2 due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
3 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
4 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
5 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
6 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
7 Detectable Warnings, Signage, and Telephones.

8 31. These violations denied Plaintiff's Member full and equal access to Defendants' facility.
9 Thus, said Member was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
10 because Plaintiff's Member was denied full, equal and safe access to Defendants' facility, causing
11 severe emotional distress.

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

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

18 **CLAIM III: Violation Of The Unruh Act**

19 33. Based on the facts plead at ¶¶ 6-17 above and elsewhere herein this complaint and because
20 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
21 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
22 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
23 54.1.

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

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

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

10 36. Defendants, each of them respectively, at times prior to and including, the month of August,
11 2004, and continuing to the present time, knew that persons with physical disabilities were denied
12 their rights of equal access to all portions of this public facility. Despite such knowledge,
13 Defendants, and each of them, failed and refused to take steps to comply with the applicable access
14 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered
15 by Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons with
16 disabilities. Defendants, and each of them, have failed and refused to take action to grant full and
17 equal access to persons with physical disabilities in the respects complained of hereinabove.
18 Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or
19 correct complaints about, denial of disabled access and have refused to comply with their legal
20 obligations to make Defendants' HARBOR FISH CAFÉ facilities accessible pursuant to the
21 Americans With Disability Act Access Guidelines (ADAAG) and Title 24 of the California Code
22 of Regulations (also known as the California Building Code). Such actions and continuing course
23 of conduct by Defendants, and each of them, evidence despicable conduct in conscious disregard of
24 the rights and/or safety of Plaintiff's Member and of other similarly situated persons, justifying an
25 award of treble damages pursuant to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

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

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

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

23 41. Title III of the ADA mandates removal of architectural barriers and prohibits disability
24 discrimination. As well, Defendants' facility, and other goods, services, and/or facilities provided
25 to the public by Defendants are not accessible to and usable by persons with disabilities as required
26 by Health and Safety Code § 19955 which requires private entities to make their facility accessible
27 before and after remodeling, and to remove architectural barriers.
28

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

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

18 DEMAND FOR JUDGMENT FOR RELIEF:

- 19 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and 3333;
 20 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
 21 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
 22 Guidelines;
 23 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above,
 24 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code
 25 § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
 26 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs
 27 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities
 28 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding

1 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
2 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking
3 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
4 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable
5 Warnings, Signage, and Telephones.

6 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
7 § 55;

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

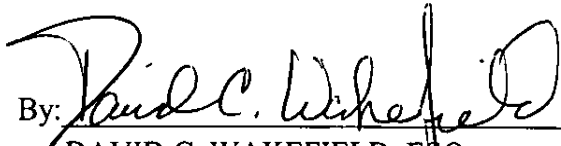
9 G. A Jury Trial and;

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

11 Respectfully submitted:

12 **PINNOCK & WAKEFIELD, A.P.C.**

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14 Dated: August 20, 2004

15 By: 
16 DAVID C. WAKEFIELD, ESQ.
17 Attorneys for Plaintiffs
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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

DEFENDANT
HARBOR FISH CAFE - OCEANSIDE SEAFOODS, INC. d.b.a. HARBOR FISH CAFE; WARD FAMILY TRUST; CLIFFORD D. WARD, JR. TRUSTEE OF THE WARD FAMILY TRUST; And DOES 1 THROUGH 10, Inclusive
AUG 25 PM 4:11
'04 CV 1723 WQH (AJB)

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

U.S. DISTRICT COURT
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David C. Wakefield, Esq. SBN: 185736
Michelle L. Wakefield, Esq. SBN: 200424
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)

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

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

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

- | | | |
|---|--|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

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

JUDGE

Docket Number

DATE August 23, 2004

SIGNATURE OF ATTORNEY OF RECORD

#106912 150-MS