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3:04-CV-02141 PINNOCK V. SUSHI FIX
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CMP.

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

'04 CV 2141

LAB (WMC)

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

Plaintiffs,

v.

SUSHI FIX; SUSHI FIX, INC.
d.b.a. SUSHI FIX; AZURE
INVESTORS, 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
presently are, engaging in discriminatory practices against
individuals with disabilities, specifically including minorities

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

13
14 **JURISDICTION AND VENUE**

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

23 **SUPPLEMENTAL JURISDICTION**

24 2. The Judicial District of the United States District Court of
25 the Southern District of California has supplemental jurisdiction
26 over the state claims as alleged in this Complaint pursuant to 28
27 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
28 in this action is because all the causes of action or claims

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

15 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

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

19 Defendant SUSHI FIX is located at 7720 El Camino Real, Suite B,
20 Carlsbad, California 92009. Plaintiffs are informed and believe
21 and thereon allege that Defendant SUSHI FIX, INC. is the owner,
22 operator, and/or doing business as SUSHI FIX. Defendant SUSHI
23 FIX, INC. is located at 7602 Nueva Castilla Way, Carlsbad,
24 California 92009. Plaintiffs are informed and believe and thereon
25 allege that Defendant AZURE INVESTORS, LLC is the owner, operator,
26 and/or lessor of the property located at 7710 El Camino Real,
27 Suite B, Carlsbad, California 92009, Assessor Parcel Number 216-
28

1 124-17, Plaintiffs' are informed and believe and thereon allege
2 that the address 7720 El Camino Real, Carlsbad, California 92009
3 is also known as 7710 El Camino Real, Carlsbad, California 92009.
4 Defendant AZURE INVESTORS, LLC is located at 225 South Meramec
5 Avenue, Suite 411, St. Louis, Missouri 63105. The words
6 "Plaintiffs" and "Plaintiff's Member" as used herein specifically
7 include the organization MANTIC ASHANTI'S CAUSE, its Members, its
8 member Theodore A. Pinnock and persons associated with its Members
9 who accompanied Members to Defendants' facilities, as well as
10 THEODORE A. PINNOCK, An Individual.

11 4. Defendants Does 1 through 10, were at all times relevant
12 herein subsidiaries, employers, employees, agents, of SUSHI FIX;
13 SUSHI FIX, INC. d.b.a. SUSHI FIX; and AZURE INVESTORS, LLC.

14 Plaintiffs are ignorant of the true names and capacities of
15 Defendants sued herein as Does 1 through 10, inclusive, and
16 therefore sues these Defendants by such fictitious names.

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

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

25 Plaintiffs are further informed and believe, and thereon allege,
26 that each of the Defendants herein gave consent to, ratified,
27 and/or authorized the acts alleged herein to each of the remaining
28

1 Defendants.

2 CONCISE SET OF FACTS

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

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

24 8. Plaintiff's member personally experienced difficulty with
25 said access barriers at Defendants' SUSHI FIX facilities. For
26 example, the parking facility of Defendants' establishment is
27 inaccessible. The parking facility has a total of one hundred and
28

1 sixty (160) parking spaces, including four (4) non-complaint
2 disabled parking spaces. One (1) of the four (4) existing
3 disabled parking spaces, located by Hausiers, is a non-complaint
4 "van accessible" disabled parking space that is only sixteen feet
5 (16') long, has an impermissible encroachment of a ramp into its
6 access aisle, and fails to have the appropriate signage. One (1)
7 of the remaining three (3) existing disabled parking spaces,
8 located by Raphael's, is a non-complaint "van accessible" disabled
9 parking space that is only sixteen feet (16') long and has an
10 impermissible encroachment of a ramp into its access aisle, which
11 is located on the left hand side of the disabled parking space.
12 One (1) of the remaining two (2) existing disabled parking spaces,
13 located by Edward Johns, is a non-compliant "regular" disabled
14 parking space that is only fifteen feet (15') long, has the access
15 aisle on the left hand side of the disabled parking space, and is
16 only eight feet (8') wide. The remaining existing disabled
17 parking space, located by Dawney Savings, is a non-compliant
18 "regular" disabled parking space that is only sixteen feet (16')
19 long, has an impermissible encroachment of a ramp into its access
20 aisle, and is only eight feet (8') wide. It is required that
21 there is at least one (1) "van accessible" disabled parking space
22 that is eighteen feet (18') long, nine feet (9') wide, has an
23 access aisle on the right hand side that is not encroached upon,
24 and has the appropriate signage. It is also required that there
25 are at least five (5) "regular" disabled parking spaces that are
26 eighteen feet (18') long, nine feet (9') wide and have an access
27 aisle on the right hand side that is not encroached upon. All
28

1 disabled parking spaces must have the proper signage.

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 the public sidewalk to the primary accessible
5 entrance, as members of the disability community are forced to
6 traverse through vehicular traffic without the benefit of a marked
7 path of travel. The exterior path of travel is only thirty-inches
8 (30") wide due to plants, seats and pillars. It is required that
9 the exterior path of travel is a minimum of forty-eight inches
10 (48") wide.

11 10. The entrance to the Defendants establishment is inaccessible,
12 as the entrance door fails to have the required disability
13 signage. The front entrance door fails to have the required
14 smooth and uninterrupted surface on the bottom ten inches (10") of
15 the door that allows the door to be opened with a wheelchair
16 footrest without creating a hazard. The pressure that is required
17 to open the front entrance door is an impermissible fourteen
18 pounds (14 lbs.), when it is required to be no more than eight and
19 one half pounds (8 ½ lbs.).

20 11. The public seating located on the inside of the Defendants'
21 establishment is inaccessible. There are thirty-two (32) seats
22 located inside, all of which have a knee clearance depth of only
23 five inches to eight inches (5" - 8"). It is required that five
24 percent 5% of all seats have a knee clearance depth of at least
25 nineteen inches (19"). The public seating located on the outside
26 of the Defendants' establishment is inaccessible. There are nine
27 (9) seats located outside, all of which have a knee clearance
28

1 depth of only five inches to eight inches (5" - 8"). It is
2 required that five percent 5% of all seats have a knee clearance
3 depth of at least nineteen inches (19").

4 12. The men's restroom located inside the defendants'
5 establishment is inaccessible. The pressure that is required to
6 open the restroom door is ten pounds (10 lbs.), when it is
7 required to be no more than five pounds (5 lbs.). The side grab
8 bar of the commode extends only twenty-one inches (21") beyond the
9 front edge of the commode. It is required that the side grab bar
10 is at least forty-two inches (42") long and extends a minimum of
11 twenty-four inches (24") beyond the front edge of the commode.
12 The flush mechanism on the commode tank is located on the narrow
13 side, when it is required to be located on the wide side of the
14 tank. The height of the bottom of the mirror is fifty inches
15 (50"), when it is required to be no more than forty inches (40")
16 from the floor surface. The soap dispenser is fifty inches (50")
17 high, when it is required to be no more than forty inches (40")
18 high. The height of the paper towel dispenser is fifty inches
19 (50") high, when it is required to be no higher than forty inches
20 (40") high. The restroom fails to have the required audible and
21 visual alarm system.

22
23 13. Pursuant to federal and state law, Defendants are required to
24 remove barriers to their existing facilities. Further, Defendants
25 had actual knowledge of their barrier removal duties under the
26 Americans with Disabilities Act and the Civil Code before January
27 26, 1992. Also, Defendants should have known that individuals
28 with disabilities are not required to give notice to a

1 governmental agency before filing suit alleging Defendants failed
2 to remove architectural barriers.

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

19 15. Based on these facts, Plaintiffs allege Plaintiff's Member
20 and Plaintiff Theodore A. Pinnock was discriminated against each
21 time he patronized Defendants' establishments. Plaintiff's Member
22 and Plaintiff Theodore A. Pinnock was extremely upset due to
23 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
24 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
25 shoulders and wrists when he attempted to enter, use, and exit
26 Defendants' SUSHI FIX establishment.
27
28

WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

16. SUSHI FIX; SUSHI FIX, INC. d.b.a. SUSHI FIX; AZURE INVESTORS, LLC; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

18. Based on the facts plead at ¶¶ 6-15 above and elsewhere in this complaint, Plaintiff's Member was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to discrimination in violation of 42 United States Code 12182(b) (2) (A) (iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to Defendants' existing facilities.

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

1 major life activities: walking. In addition, Plaintiff's member
2 Theodore A. Pinnock cannot perform one or more of the said major
3 life activities in the manner, speed, and duration when compared
4 to the average person. Moreover, Plaintiff's member Theodore A.
5 Pinnock has a history of or has been classified as having a
6 physical impairment as required by 42 U.S.C. § 12102(2)(A).

7
8 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**
9 **Such A Manner That The Altered Portions Of The Facility Are**
10 **Readily Accessible And Usable By Individuals With Disabilities**

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

24 21. Additionally, the Defendants undertook an alteration that
25 affects or could affect the usability of or access to an area of
26 the facility containing a primary function after January 26, 1992.
27 Defendants further failed to make the alterations in such a manner
28 that, to the maximum extent feasible, the path of travel to the
altered area and the bathrooms, telephones, and drinking fountains

1 serving the altered area, are readily accessible to and usable by
2 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

3 22. Pursuant to 42 U.S.C. §12183(a), this failure to make the
4 alterations in a manner that, to the maximum extent feasible, are
5 readily accessible to and usable by individuals with disabilities
6 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

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

9 23. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
10 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
11 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
12 Pinnock was denied equal access to Defendants' existing
13 facilities.

14
15 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove Architectural
16 Barriers

17 24. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
18 this complaint, Plaintiff's Member was denied full and equal
19 access to Defendants' goods, services, facilities, privileges,
20 advantages, or accommodations within a public accommodation owned,
21 leased, and/or operated by Defendants. Defendants failed to
22 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
23 are informed, believe, and thus allege that architectural barriers
24 which are structural in nature exist within the following physical
25 elements of Defendants' facilities: Space Allowance and Reach
26 Ranges, Accessible Route, Protruding Objects, Ground and Floor
27 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
28 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,

1 Doors, Entrances, Drinking Fountains and Water Coolers, Water
2 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
3 Storage, Handrails, Grab Bars, and Controls and Operating
4 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
5 Title III requires places of public accommodation to remove
6 architectural barriers that are structural in nature to existing
7 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
8 Failure to remove such barriers and disparate treatment against a
9 person who has a known association with a person with a disability
10 are forms of discrimination. [See 42 United States Code
11 12182(b)(2)(A)(iv).] Thus, Plaintiff's 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
16 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
Policies And Procedures

17 25. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
18 this complaint, Defendants failed and refused to provide a
19 reasonable alternative by modifying its practices, policies and
20 procedures in that they failed to have a scheme, plan, or design
21 to assist Plaintiff's Member and/or others similarly situated in
22 entering and utilizing Defendants' services, as required by 42
23 U.S.C. § 12188(a). Thus, said Member was subjected to
24 discrimination in violation of 42 United States Code
25 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
26 denied equal access to Defendants' existing facilities.

27 26. Based on the facts plead at ¶¶ 6-15 above, Claims I, II, and
28

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

17 27. WHEREFORE, Plaintiffs pray for judgment and relief as
18 hereinafter set forth.
19

20 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER
21 CALIFORNIA ACCESSIBILITY LAWS

22 CLAIM I: Denial Of Full And Equal Access

23 28. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
24 this complaint, Plaintiff's Member was denied full and equal
25 access to Defendants' goods, services, facilities, privileges,
26 advantages, or accommodations within a public accommodation owned,
27 leased, and/or operated by Defendants as required by Civil Code
28 Sections 54 and 54.1. Defendants' facility violated California's

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

11 29. These violations denied Plaintiff's Member full and equal
12 access to Defendants' facility. Thus, said Member was subjected
13 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
14 because Plaintiff's Member was denied full, equal and safe access
15 to Defendants' facility, causing severe emotional distress.

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

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

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

26 31. Based on the facts plead at ¶¶ 6-15 above and elsewhere
27 herein this complaint and because Defendants violated the Civil
28

1 Code § 51 by failing to comply with 42 United States Code §
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
3 continue to discriminate against Plaintiff's Member and persons
4 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
5 32. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
6 III of Plaintiffs' Second Cause Of Action above, and the facts
7 elsewhere herein this complaint, Plaintiffs will suffer
8 irreparable harm unless Defendants are ordered to remove
9 architectural, non-architectural, and communication barriers at
10 Defendants' public accommodation. Plaintiffs allege that
11 Defendants' discriminatory conduct is capable of repetition, and
12 this discriminatory repetition adversely impacts Plaintiffs and a
13 substantial segment of the disability community. Plaintiffs
14 allege there is a state and national public interest in requiring
15 accessibility in places of public accommodation. Plaintiffs have
16 no adequate remedy at law to redress the discriminatory conduct of
17 Defendants. Plaintiff's Member desires to return to Defendants'
18 places of business in the immediate future. Accordingly, the
19 Plaintiffs allege that a structural or mandatory injunction is
20 necessary to enjoin compliance with state civil rights laws
21 enacted for the benefit of individuals with disabilities.
22 33. Wherefore, Plaintiffs pray for damages and relief as
23 hereinafter stated.
24

25 Treble Damages Pursuant To Claims I, II, III Under The California
26 Accessibility Laws

27 34. Defendants, each of them respectively, at times prior to and
28 including, the month of June, 2004, and continuing to the present

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

23
24 35. Defendants', and each of their, actions have also been
25 oppressive to persons with physical disabilities and of other
26 members of the public, and have evidenced actual or implied
27 malicious intent toward those members of the public, such as
28 Plaintiff's Member and other persons with physical disabilities

1 who have been denied the proper access to which they are entitled
2 by law. Further, Defendants', and each of their, refusals on a
3 day-to-day basis to correct these problems evidence despicable
4 conduct in conscious disregard for the rights of Plaintiff's
5 Member THEODORE A. PINNOCK and other members of the public with
6 physical disabilities.

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

18 37. Wherefore, Plaintiffs pray for damages and relief as
19 hereinafter stated.

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

22 38. Based on the facts plead at ¶¶ 6-15 above and elsewhere in
23 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
24 statutory duty to make their facility accessible and owed
25 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
26 Pinnock reasonably safe from known dangers and risks of harm.
27 This said duty arises by virtue of legal duties proscribed by
28 various federal and state statutes including, but not limited to,

1 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
2 California Administrative Code and applicable 1982 Uniform
3 Building Code standards as amended.

4 39. Title III of the ADA mandates removal of architectural
5 barriers and prohibits disability discrimination. As well,
6 Defendants' facility, and other goods, services, and/or facilities
7 provided to the public by Defendants are not accessible to and
8 usable by persons with disabilities as required by Health and
9 Safety Code § 19955 which requires private entities to make their
10 facility accessible before and after remodeling, and to remove
11 architectural barriers.

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

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

10 DEMAND FOR JUDGMENT FOR RELIEF:

11 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
12 3281, and 3333;

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

16 C. In the alternative to the damages pursuant to Cal. Civil
17 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
18 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
19 54.1, Title 24 of the California Building Code, ADA, and ADA
20 Accessibility Guidelines;

21 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
22 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
23 Defendants to remove all architectural barriers in, at, or on
24 their facilities related to the following: Space Allowance and
25 Reach Ranges, Accessible Route, Protruding Objects, Ground and
26 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
27 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
28 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,

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Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

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

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

G. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: 10/20/04

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

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

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

DEFENDANTS

SUSHI FIX; SUSHI FIX, INC. d.b.a. SUSHI FIX; AZURE INVESTORS LLC AND DOES 1 THROUGH 10, Inclusive

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego

(IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

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

Michelle L. Wakefield, Esq. SBN: 200424 David C. Wakefield, Esq. SBN: 185736 Pinnock & Wakefield, A.P.C.; 3033 Fifth Avenue, Suite 410 San Diego, CA 92103 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'04 CV 2141 LAB (WMC)

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

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

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
1 Incorporated or Principal Place of Business in This State
2 Incorporated and Principal Place of Business in Another State
3 Foreign Nation
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IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

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

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SECURITY ACT, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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

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

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$ To Be Determined At Trial

Check YES only if demanded in complaint: JURY DEMAND: YES NO

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

Docket Number

DATE

10/20/04

SIGNATURE OF ATTORNEY OF RECORD

#108114 \$150,000.00

Michelle L. Wakefield