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3:04-CV-00297 PINNOCK V. BERDESKI

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6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

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

12 Plaintiffs,

13
14 v.

15 PHILLIP R. BERDESKI d.b.a.
BONITA VILLAGE CENTER; NINA
16 E. BERDESKI d.b.a. BONITA
VILLAGE CENTER; ITABELLA,
17 INC. d.b.a. BUON GIORNO
RESTAURANT a.k.a BUONGIORNO
18 RESTORANTE; ITABELLA, INC.;
BONITA BAJA LOBSTER GROUP,
19 INC., d.b.a. ROCKIN BAJA
LOBSTER f.k.a. OLD BONITA
20 STORE RESTAURANT; BONITA BAJA
LOBSTER GROUP, INC.; PHILLIP
21 R. BERDESKI d.b.a. BONITA
MICHIGAN PROPERTIES; NINA E.
22 BERDESKI d.b.a. BONITA
MICHIGAN PROPERTIES; PHILLIP
23 R. BERDESKI; NINA E.
24 BERDESKI; And DOES 1 THROUGH
10, Inclusive,

25 Defendants.

Case No. 04 CV 0297 JM (BLM)

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]

26 ///

27 ///

28 INTRODUCTION

cl

1
2 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
3 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
4 herein complain, by filing this Civil Complaint in accordance with
5 rule 8 of the Federal Rules of Civil Procedure in the Judicial
6 District of the United States District Court of the Southern
7 District of California, that Defendants have in the past, and
8 presently are, engaging in discriminatory practices against
9 individuals with disabilities, specifically including minorities
10 with disabilities. Plaintiffs allege this civil action and others
11 substantial similar thereto are necessary to compel access
12 compliance because empirical research on the effectiveness of
13 Title III of the Americans with Disabilities Act indicates this
14 Title has failed to achieve full and equal access simply by the
15 executive branch of the Federal Government funding and promoting
16 voluntary compliance efforts. Further, empirical research shows
17 when individuals with disabilities give actual notice of potential
18 access problems to places of public accommodation without a
19 federal civil rights action, the public accommodations do not
20 remove the access barriers. Therefore, Plaintiffs make the
21 following allegations in this federal civil rights action:

22 **JURISDICTION AND VENUE**

23 1. The federal jurisdiction of this action is based on the
24 Americans with Disabilities Act, 42 United States Code 12101-
25 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
26 District of the United States District Court of the Southern
27 District of California is in accordance with 28 U.S.C. § 1391(b)
28 because a substantial part of Plaintiffs' claims arose within the

1 Judicial District of the United States District Court of the
2 Southern District of California.

3 SUPPLEMENTAL JURISDICTION

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

23 NAMED DEFENDANTS AND NAMED PLAINTIFFS

24 3. Defendants are, and, at all times mentioned herein, were, a
25 business or corporation or franchise organized and existing and/or
26 doing business under the laws of the State of California.
27 Plaintiffs are informed and believe and thereon allege that
28

1 Defendants PHILLIP R. BERDESKI and NINA E. BERDESKI are the
2 owners, operators, and/or doing business as BONITA VILLAGE CENTER.
3 Defendant ITABELLA, INC. d.b.a. BUON GIORNO RESTAURANT a.k.a.
4 BUONGIORNO RESTORANTE is located at 4110 Bonita Road, Bonita,
5 California 91902. Defendant ITABELLA, INC. is located at 4110
6 Bonita Road, Bonita, California 91902. Defendant BONITA BAJA
7 LOBSTER GROUP, INC. d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD BONITA
8 STORE RESTAURANT is located at 4014 Bonita Road, Bonita,
9 California 92110. Defendant BONITA BAJA LOBSTER GROUP, INC. is
10 located at 13301 Old Winemaster Court, Poway, California 92064.
11 Plaintiffs are informed and believe and thereon allege that
12 Defendants PHILLIP R. BERDESKI d.b.a. BONITA MICHIGAN PROPERTIES
13 and NINA E. BERDESKI d.b.a. BONITA MICHIGAN PROPERTIES, are the
14 owners, operators, and/or lessors of the property located at 4110
15 Bonita Road, Bonita, California 91902, Assessor's Parcel 591-252-
16 28 or 591-252-29. Plaintiffs are informed and believe and thereon
17 allege that Defendants PHILLIP R. BERDESKI d.b.a. BONITA MICHIGAN
18 PROPERTIES and NINA E. BERDESKI d.b.a. BONITA MICHIGAN PROPERTIES,
19 are also the owners, operators, and/or lessors of the property
20 located at 4014 Bonita Road, Bonita, California 91902, Assessor's
21 Parcel 591-252-26 or 591-252-23. Further, Plaintiffs are informed
22 and believe and hereon allege that the properties located at 4110
23 Bonita Road, Bonita, California 91902 and 4014 Bonita Road,
24 Bonita, California 91902 are a part of a single commercial
25 complex, the BONITA VILLAGE CENTER. Defendants PHILLIP R.
26 BERDESKI and NINA E. BERDESKI, are located at 3620 Cienega Dr.,
27 Bonita, California 91902 or 270 Bonita Glen Dr., Chula Vista,
28

1 California 91910. The words "Plaintiffs" and "Plaintiff's Member"
2 as used herein specifically include the organization MANTIC
3 ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and
4 persons associated with its Members who accompanied Members to
5 Defendants' facilities, as well as THEODORE A. PINNOCK, An
6 Individual.

7 4. Defendants Does 1 through 10, were at all times relevant
8 herein subsidiaries, employers, employees, agents, of PHILLIP R.
9 BERDESKI d.b.a. BONITA VILLAGE CENTER; NINA E. BERDESKI d.b.a.
10 BONITA VILLAGE CENTER; ITABELLA, INC. d.b.a. BUON GIORNO
11 RESTAURANT a.k.a BUONGIORNO RESTORANTE; ITABELLA, INC.; BONITA
12 BAJA LOBSTER GROUP, INC., d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD
13 BONITA STORE RESTAURANT; BONITA BAJA LOBSTER GROUP, INC.; PHILLIP
14 R. BERDESKI d.b.a. BONITA MICHIGAN PROPERTIES; NINA E. BERDESKI
15 d.b.a. BONITA MICHIGAN PROPERTIES; PHILLIP R. BERDESKI; NINA E.
16 BERDESKI. Plaintiffs are ignorant of the true names and
17 capacities of Defendants sued herein as Does 1 through 10,
18 inclusive, and therefore sues these Defendants by such fictitious
19 names. Plaintiffs will pray leave of the court to amend this
20 complaint to allege the true names and capacities of the Does when
21 ascertained.

22 5. Plaintiffs are informed and believe, and thereon allege, that
23 Defendants and each of them herein were, at all times relevant to
24 the action, the owner, lessor, lessee, franchiser, franchisee,
25 general partner, limited partner, agent, employee, representing
26 partner, or joint venturer of the remaining Defendants and were
27 acting within the course and scope of that relationship.
28

1 Plaintiffs are further informed and believe, and thereon allege,
2 that each of the Defendants herein gave consent to, ratified,
3 and/or authorized the acts alleged herein to each of the remaining
4 Defendants.

5 CONCISE SET OF FACTS

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

13 7. On June 27, 2003, Plaintiff's Member THEODORE A. PINNOCK went
14 to Defendants' ITABELLA, INC. d.b.a. BUON GIORNO RESTAURANT a.k.a
15 BUONGIORNO RESTORANTE facilities located at 4110 Bonita Road,
16 Bonita, California, 91902, in the BONITA VILLAGE CENTER, to
17 utilize their goods and/or services. On June 26, 2003, Plaintiff's
18 Member THEODORE A. PINNOCK went to Defendants' BONITA BAJA LOBSTER
19 GROUP, INC. d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD BONITA STORE
20 RESTAURANT facilities located at 4014 Bonita Road, Bonita,
21 California, 91902, in the BONITA VILLAGE CENTER, to utilize their
22 goods and/or services. When Plaintiff's Member and Plaintiff
23 THEODORE A, PINNOCK patronized Defendants' ITABELLA, INC. d.b.a.
24 BUON GIORNO RESTAURANT a.k.a BUONGIORNO RESTORANTE and BONITA BAJA
25 LOBSTER GROUP, INC. d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD BONITA
26 STORE RESTAURANT facilities, he was unable to use and/or had
27 difficulty using the common areas of the commercial complex, known
28

1 as BONITA VILLAGE CENTER, in which defendants ITABELLA, INC.
2 d.b.a. BUON GIORNO RESTAURANT a.k.a BUONGIORNO RESTORANTE and
3 BONITA BAJA LOBSTER GROUP, INC. d.b.a. ROCKIN BAJA LOBSTER f.k.a.
4 OLD BONITA STORE RESTAURANT are located, such as the disabled
5 parking and exterior path of travel facilities at Defendants'
6 business establishments because they failed to comply with ADA
7 Access Guidelines For Buildings and Facilities (hereafter referred
8 to as "ADAAG") and/or California's Title 24 Building Code
9 Requirements. Defendants failed to remove access barriers within
10 the public accommodations' disabled parking and exterior path of
11 travel facilities of the commercial complex in which defendants
12 ITABELLA, INC. d.b.a. BUON GIORNO RESTAURANT a.k.a BUONGIORNO
13 RESTORANTE and BONITA BAJA LOBSTER GROUP, INC. d.b.a. ROCKIN BAJA
14 LOBSTER f.k.a. OLD BONITA STORE RESTAURANT establishments are
15 located.

16
17 8. Plaintiff's member personally experienced difficulty with
18 said access barriers in the common areas of the commercial
19 complex, known as BONITA VILLAGE CENTER, in which defendants
20 ITABELLA, INC. d.b.a. BUON GIORNO RESTAURANT a.k.a BUONGIORNO
21 RESTORANTE and BONITA BAJA LOBSTER GROUP, INC. d.b.a. ROCKIN BAJA
22 LOBSTER f.k.a. OLD BONITA STORE RESTAURANT are located. The
23 parking area nearest to defendants' ITABELLA, INC. d.b.a. BUON
24 GIORNO RESTAURANT a.k.a BUONGIORNO RESTORANTE establishment is
25 inaccessible, as neither of the two (2) entrances to the parking
26 area has the required disability signage informing patrons they
27 may be fined or their vehicle may be towed if they unlawfully park
28 in a disabled parking space. The parking facility is comprised of

1 ninety-five (95) parking spaces, only three (3) of which are
2 designated as disabled parking spaces. The parking facilities
3 fail to have the required "Van Accessible" disabled parking space.
4 There should be a total of four (4) disabled parking spaces, one
5 (1) of which must be a "Van Accessible" disabled parking space.
6 The existing three (3) disabled parking spaces are not compliant,
7 as they fail to have the proper dimensions and the required access
8 aisles. The current access aisles are not compliant, as they are
9 located on the wrong side of the parking space, are impermissibly
10 encroached upon by a ramp, and are rough and uneven with changes
11 in level of up to two inches (2"). It is required that the access
12 aisles of the disabled parking spaces have a smooth and slip-
13 resistant surface with no changes in level. Furthermore, the
14 disabled parking spaces fail to meet the requirement that they are
15 to be dispersed evenly throughout the facility.

16
17 9. The parking area nearest to defendants' BONITA BAJA LOBSTER
18 GROUP, INC. d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD BONITA STORE
19 RESTAURANT establishment is inaccessible, as neither of the two
20 (2) entrances to the parking area has the required disability
21 signage informing patrons they may be fined or their vehicle may
22 be towed if they unlawfully park in a disabled parking space. The
23 parking facility is comprised of ten (10) parking spaces, only one
24 (1) of which is designated as disabled parking spaces. The
25 parking facilities fail to have the required "Van Accessible"
26 disabled parking space. There should be at least one (1) "Van
27 Accessible" disabled parking space with the proper markings on the
28 parking stall and the with the proper access aisle.

1 10. There fails to be a safe and accessible path of travel from
2 two (2) of the three (3) parking spaces and the public sidewalk to
3 the defendants' ITABELLA, INC. d.b.a. BUON GIORNO RESTAURANT a.k.a
4 BUONGIORNO RESTORANTE entrance, as members of the disability
5 community are forced to traverse through vehicular traffic without
6 the benefit of a marked path of travel. The slope of the ramp
7 from the public parking lot to the accessible walkway is
8 inaccessible, as it is up to eleven percent (11%). The slope of a
9 ramp cannot exceed 8.33%.

10 11. The exterior path of travel nearest to defendants' BONITA
11 BAJA LOBSTER GROUP, INC. d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD
12 BONITA STORE RESTAURANT establishment is inaccessible. There
13 fails to be a safe and accessible path of travel from the public
14 sidewalk to the restaurant entrance, as members of the disability
15 community are forced to traverse through vehicular traffic without
16 the benefit of a marked path of travel

17 12. On June 27, 2003, Plaintiff's Member THEODORE A. PINNOCK went
18 to Defendants' ITABELLA, INC. d.b.a. BUON GIORNO RESTAURANT a.k.a
19 BUONGIORNO RESTORANTE facilities located at 4110 Bonita Road,
20 Bonita, California, 91902, to utilize their goods and/or services.
21 When Plaintiff's Member and Plaintiff THEODORE A, PINNOCK
22 patronized Defendants' ITABELLA, INC. d.b.a. BUON GIORNO
23 RESTAURANT a.k.a BUONGIORNO RESTORANTE facilities, he was unable
24 to use and/or had difficulty using the public accommodations'
25 entrance, interior path of travel, public seating, counters, men's
26 restroom, and public pay telephone facilities at Defendants'
27 business establishments because they failed to comply with ADA
28

1 Access Guidelines For Buildings and Facilities (hereafter referred
2 to as "ADAAG") and/or California's Title 24 Building Code
3 Requirements. Defendants failed to remove access barriers within
4 the public accommodations' entrance, interior path of travel,
5 public seating, counters, men's restroom, and public pay telephone
6 facilities of Defendants' ITABELLA, INC. d.b.a. BUON GIORNO
7 RESTAURANT a.k.a BUONGIORNO RESTORANTE establishment.

8 13. Plaintiff's member personally experienced difficulty with
9 said access barriers at Defendants' ITABELLA, INC. d.b.a. BUON
10 GIORNO RESTAURANT a.k.a BUONGIORNO RESTORANTE facility. For
11 example, the entrance to the restaurant is inaccessible. The
12 front entrance door has an impermissible two-inch (2") threshold.
13 Also, the entrance to the restaurant fails to have the required
14 disabled signage.

15 14. The interior path of travel within the restaurant fails to
16 accessible. The interior path of travel is as narrow as thirty-
17 two inches (32"), which fails to meet the minimum width
18 requirement of thirty-six inches (36").

19 15. There fails to be any accessible public seating located
20 outside of the restaurant, as the knee clearance depth of the
21 existing tables located outside are a mere five inches (5").
22 There are thirty-six (36) public seats located outside of the
23 restaurant, two (2) of which should be accessible, and provide the
24 required knee clearance depth. The knee clearance depth should be
25 a minimum of nineteen inches (19"). There fails to be any
26 accessible public seating located inside of the restaurant, as the
27 knee clearance depth of the existing tables located inside are a
28

1 mere eight to twelve inches (8"-12"). There are seventy-six (76)
2 public seats located outside of the restaurant, four (4) of which
3 should be accessible, and provide the required knee clearance
4 depth. The knee clearance depth should be a minimum of nineteen
5 inches (19").

6 16. The service counter/bar and the public pay telephone are both
7 inaccessible. The service counter/bar is forty-three inches (43")
8 high, which fails to meet the requirement that it should be no
9 more than thirty-four inches (34") high or have a three-foot (3')
10 section that is thirty-four inches (34") high. The public pay
11 telephone fails to have the required disability signage.

12 17. At the men's restroom within the restaurant, the restroom
13 foyer door requires too much pressure to operate, as it requires
14 seven pounds (7 lbs.) of pressure to open. The strike clearance
15 inside the restroom area door is a mere three inches (3"), which
16 does not meet the minimum width requirement of eighteen inches
17 (18"). The men's restroom entrance door requires too much
18 pressure to operate, as it requires eight pounds (8 lbs.) of
19 pressure to open. The strike clearance inside the restroom door is
20 only fifteen inches (15"), which does not meet the minimum width
21 requirement of eighteen inches (18"). The restroom door also does
22 not have the required smooth and uninterrupted surface on the
23 bottom ten-inches (10") of the door that allows the door to be
24 opened with a wheelchair footrest without creating a trap
25 condition. The wheelchair turn-around space inside the restroom
26 is only 42"X59" due to the stall door swinging into the turn-
27 around space. The requirement is that there should be at least
28

1 sixty inches (60") is diameter for wheelchair turn-around space.
2 The stall does not have the required self-closing mechanism, and
3 also fails to have the required handles on each side of the door.
4 The clear opening width of the stall doorway is only thirty inches
5 (30"), which fails to meet the minimum requirement of thirty-two
6 inches (32"). The distance from the front edge of the commode to
7 the front wall is only forty inches (40"); it should be at least
8 forty-eight inches (48"). The distance from the side edge of the
9 commode to the far wall is only nineteen inches (19"); it should
10 be at least thirty-two inches (32"). The commode seat protective
11 cover dispenser is mounted too high, as it is mounted fifty-six
12 inches (56") above the finished floor, which fails to meet the
13 maximum height requirement of forty inches (40"). The length of
14 the rear grab bar behind the commode is only twenty-four inches
15 (24") and the side grab bar extends only seventeen inches (17")
16 beyond the front edge of the commode. There should be two (2)
17 compliant grab bars either one on either side of the commode or
18 one on one side of the commode and one behind the commode mounted
19 at thirty-three inches (33") from the floor surface. Side grab
20 bars should be a minimum of forty-two inches (42") long and extend
21 a minimum of twenty-four inches (24") beyond the front of the
22 commode and rear grab bars should be a minimum of thirty-six
23 inches (36") long and should be attached a maximum of six inches
24 (6") from the corner of the wall on the toilet seat. The flush
25 mechanism on the commode is located on the narrow side when it
26 should be located on the wide side of the commode. The toilet
27 paper dispenser is mounted twenty-four inches (24") from the front
28

1 edge of the commode, when it should be mounted no more than twelve
2 inches (12") from the front edge of the commode.

3 18. Within the men's restroom, the area beneath the lavatory is
4 enclosed and there fails to be any of the required knee clearance.

5 The lavatory is required to have a twenty-nine inch (29")
6 clearance from the bottom of the apron to the floor. Knee
7 clearance under the lavatory should be a minimum of twenty-seven
8 inches (27") high, thirty inches (30") wide, and extends a minimum
9 of eight inches (8") in depth from the front of the lavatory. The
10 toe clearance under the lavatory is required to be nine inches
11 (9") high and should extend a minimum of seventeen inches (17") in
12 depth from the front of the lavatory. The pressure that is
13 required to operate the lavatory faucet handles is excessive, as
14 it requires seven pounds (7 lbs.) of pressure, which exceeds the
15 maximum of five pounds (5 lbs.) of pressure. The operable parts
16 of the soap dispenser, paper towel dispenser, and the bottom edge
17 of the mirror are mounted too high to be accessible, as the
18 operable parts of the soap dispenser are mounted fifty-two inches
19 (52") high, the paper towel dispenser is mounted at fifty-four
20 inches (54") high, and the bottom edge of the mirror is mounted
21 forty-three inches (43") high. The men's restroom fails to have
22 the required audible and visual alarm system.

23
24 19. On June 26, 2003, Plaintiff's Member THEODORE A. PINNOCK went
25 to Defendants' BONITA BAJA LOBSTER GROUP, INC. d.b.a. ROCKIN BAJA
26 LOBSTER f.k.a. OLD BONITA STORE RESTAURANT facilities located at
27 4014 Bonita Road, Bonita, California, 91902, to utilize their
28 goods and/or services. When Plaintiff's Member and Plaintiff

1 THEODORE A, PINNOCK patronized Defendants' BONITA BAJA LOBSTER
2 GROUP, INC. d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD BONITA STORE
3 RESTAURANT facilities, he was unable to use and/or had difficulty
4 using the public accommodations' entrance, interior path of
5 travel, public seating, front counter, bar, and men's restroom
6 facilities at Defendants' business establishments because they
7 failed to comply with ADA Access Guidelines For Buildings and
8 Facilities (hereafter referred to as "ADAAG") and/or California's
9 Title 24 Building Code Requirements. Defendants failed to remove
10 access barriers within the public accommodations' entrance,
11 interior path of travel, public seating, counters, men's restroom,
12 and public pay telephone facilities of Defendants' BONITA BAJA
13 LOBSTER GROUP, INC. d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD BONITA
14 STORE RESTAURANT establishment.

15 20. Plaintiff's member personally experienced difficulty with
16 said access barriers at Defendants' BONITA BAJA LOBSTER GROUP,
17 INC. d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD BONITA STORE RESTAURANT
18 facility. For example, the entrance to the restaurant is
19 inaccessible, as the entrance's threshold fails to be beveled.
20 Changes in level between one quarter of an inch (1/4") and one
21 half of an inch (1/2") are required to have a bevel of up to 2/1.
22 The entrance also fails to have the required disability signage.

23 21. The interior path of travel and the public seating of the
24 restaurant fail to accessible. The "karaoke and Juke-box" area is
25 inaccessible as there are two (2) steps, five inches (5") each
26 step, leading to the "karaoke and Juke-box" seating area. Changes
27 in level that are greater than one half of an inch (1/2") must be
28

1 ramped or install a lift or elevator. There fails to be any
2 accessible public seating located outside of the restaurant.

3 22. The front counter and bar are inaccessible, as they are both
4 forty inches (40") high and exceed the maximum height requirement
5 of thirty-four inches (34").

6 23. The men's restroom within the restaurant is inaccessible.

7 The slope of the ramp at the restroom area door is up to an
8 impermissible fourteen percent (14%). The slope of a ramp cannot
9 exceed 8.33%. The restroom door does not have the required
10 disability signage. The restroom door also does not have the
11 required smooth and uninterrupted surface on the bottom ten-inches
12 (10") of the door that allows the door to be opened with a
13 wheelchair footrest without creating a trap condition. The clear
14 opening width of the restroom doorway is too narrow, as it is only
15 thirty inches (30"), which fails to meet the minimum requirement
16 of thirty-two inches (32"). The height of the urinal lip is
17 nineteen inches (19"), and fails to meet the maximum height
18 requirement of seventeen inches (17"). The clear opening width of
19 the stall doorway is only twenty-nine inches (29"), which fails to
20 meet the minimum requirement of thirty-two inches (32"). The
21 stall door fails to have the required handles on both sides of the
22 door. The stall door also fails to have the required self-closing
23 mechanism and a locking mechanism that does not required tight
24 grasping or twisting of the wrist to operate. The commode seat
25 protective cover dispenser is mounted too high, as it is mounted
26 forty-five inches (45") above the finished floor, which fails to
27 meet the maximum height requirement of forty inches (40"). The
28

1 distance from the side edge of the commode to the far wall is only
2 sixteen inches (16"); it should be at least thirty-two inches
3 (32"). The toilet paper dispenser is mounted twenty-two inches
4 (22") from the front edge of the commode, when it should be
5 mounted no more than twelve inches (12") from the front edge of
6 the commode. The soap dispenser is mounted at forty-seven inches
7 (47") high and exceeds the maximum height requirement of forty
8 inches (40"). The men's restroom fails to have the required
9 audible and visual alarm system.

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

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

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

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

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

16 27. PHILLIP R. BERDESKI d.b.a. BONITA VILLAGE CENTER; NINA E.
17 BERDESKI d.b.a. BONITA VILLAGE CENTER; ITABELLA, INC. d.b.a. BUON
18 GIORNO RESTAURANT a.k.a BUONGIORNO RESTORANTE; ITABELLA, INC.;
19 BONITA BAJA LOBSTER GROUP, INC., d.b.a. ROCKIN BAJA LOBSTER f.k.a.
20 OLD BONITA STORE RESTAURANT; BONITA BAJA LOBSTER GROUP, INC.;
21 PHILLIP R. BERDESKI d.b.a. BONITA MICHIGAN PROPERTIES; NINA E.
22 BERDESKI d.b.a. BONITA MICHIGAN PROPERTIES; PHILLIP R. BERDESKI;
23 NINA E. BERDESKI; and Does 1 through 10 will be referred to
24 collectively hereinafter as "Defendants."

25 28. Plaintiffs aver that the Defendants are liable for the
26 following claims as alleged below:

27 ///
28

1 physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

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

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

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

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

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

9
10 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
11 Architectural Barriers

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

1 architectural barriers that are structural in nature to existing
2 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
3 Failure to remove such barriers and disparate treatment against a
4 person who has a known association with a person with a disability
5 are forms of discrimination. [See 42 United States Code
6 12182(b)(2)(A)(iv).] 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 said Member was
9 denied equal access to Defendants' existing facilities.

10
11 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,**
Policies And Procedures

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

22 37. Based on the facts plead at ¶¶ 6-26 above, Claims I, II, and
23 III of Plaintiffs' First Cause Of Action above, and the facts
24 elsewhere herein this complaint, Plaintiffs will suffer
25 irreparable harm unless Defendants are ordered to remove
26 architectural, non-architectural, and communication barriers at
27 Defendants' public accommodation. Plaintiffs allege that
28

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

12 38. WHEREFORE, Plaintiffs pray for judgment and relief as
13 hereinafter set forth.
14

15 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
16 **CALIFORNIA ACCESSIBILITY LAWS**

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

18 39. Based on the facts plead at ¶¶ 6-26 above and elsewhere in
19 this complaint, Plaintiff's Member was denied full and equal
20 access to Defendants' goods, services, facilities, privileges,
21 advantages, or accommodations within a public accommodation owned,
22 leased, and/or operated by Defendants as required by Civil Code
23 Sections 54 and 54.1. Defendants' facility violated California's
24 Title 24 Accessible Building Code by failing to provide access to
25 Defendants' facilities due to violations pertaining to the Space
26 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
27 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
28 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair

1 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
2 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
3 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
4 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
5 Telephones.

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

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

13 41. Based on the facts plead at ¶¶ 6-26 above and elsewhere
14 herein this complaint, Defendants failed and refused to provide a
15 reasonable alternative by modifying its practices, policies, and
16 procedures in that they failed to have a scheme, plan, or design
17 to assist Plaintiff's Member and/or others similarly situated in
18 entering and utilizing Defendants' services as required by Civil
19 Code § 54.1. Thus, said Member was subjected to discrimination in
20 violation of Civil Code § 54.1.

21 CLAIM III: Violation Of The Unruh Act

22 42. Based on the facts plead at ¶¶ 6-26 above and elsewhere
23 herein this complaint and because Defendants violated the Civil
24 Code § 51 by failing to comply with 42 United States Code §
25 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
26 continue to discriminate against Plaintiff's Member and persons
27 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
28

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

18 44. Wherefore, Plaintiffs pray for damages and relief as
19 hereinafter stated.
20

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

23 45. Defendants, each of them respectively, at times prior to and
24 including, the month of June, 2003, and continuing to the present
25 time, knew that persons with physical disabilities were denied
26 their rights of equal access to all portions of this public
27 facility. Despite such knowledge, Defendants, and each of them,
28 failed and refused to take steps to comply with the applicable

1 access statutes; and despite knowledge of the resulting problems
2 and denial of civil rights thereby suffered by Plaintiff's Member
3 THEODORE A. PINNOCK and other similarly-situated persons with
4 disabilities. Defendants, and each of them, have failed and
5 refused to take action to grant full and equal access to persons
6 with physical disabilities in the respects complained of
7 hereinabove. Defendants, and each of them, have carried out a
8 course of conduct of refusing to respond to, or correct complaints
9 about, denial of disabled access and have refused to comply with
10 their legal obligations to make Defendants' PHILLIP R. BERDESKI
11 d.b.a. BONITA VILLAGE CENTER; NINA E. BERDESKI d.b.a. BONITA
12 VILLAGE CENTER; ITABELLA, INC. d.b.a. BUON GIORNO RESTAURANT a.k.a
13 BUONGIORNO RESTORANTE; and BONITA BAJA LOBSTER GROUP, INC. d.b.a.
14 ROCKIN BAJA LOBSTER f.k.a. OLD BONITA STORE RESTAURANT 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 46. 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 47. Plaintiffs pray for an award of treble damages against
8 Defendants, and each of them, pursuant to California Civil Code
9 sections 52(a) and 54.3(a), in an amount sufficient to make a more
10 profound example of Defendants and encourage owners, lessors, and
11 operators of other public facilities from willful disregard of the
12 rights of persons with disabilities. Plaintiffs do not know the
13 financial worth of Defendants, or the amount of damages sufficient
14 to accomplish the public purposes of section 52(a) of the
15 California Civil Code and section 54.3 of the California Civil
16 Code.

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

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

23 49. Based on the facts plead at ¶¶ 6-26 above and elsewhere in
24 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
25 statutory duty to make their facility accessible and owed
26 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
27 Pinnock reasonably safe from known dangers and risks of harm.
28 This said duty arises by virtue of legal duties proscribed by

1 various federal and state statutes including, but not limited to,
2 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the
3 California Administrative Code and applicable 1982 Uniform
4 Building Code standards as amended.

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

13 51. Therefore, Defendants engaged in discriminatory conduct in
14 that they failed to comply with known duties under the ADA, ADAAG,
15 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
16 or should have known that their acts of nonfeasance would cause
17 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
18 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
19 bodily injury in this matter because when Plaintiff THEODORE A.
20 PINNOCK attempted to enter, use, and exit Defendants'
21 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
22 his legs, back, arms, shoulders, and wrists. Plaintiffs further
23 allege that such conduct was done in reckless disregard of the
24 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
25 to suffer bodily or personal injury, anger, embarrassment,
26 depression, anxiety, mortification, humiliation, distress, and
27 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
28

1 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
2 An Individual, to suffer the injuries of mental and emotional
3 distress, including, but not limited to, anger, embarrassment,
4 depression, anxiety, mortification, humiliation, distress, and
5 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
6 Individual, additionally alleges that such conduct caused THEODORE
7 A. PINNOCK, An Individual, to suffer damages as a result of these
8 injuries.

9 52. Wherefore, Plaintiffs pray for damages and relief as
10 hereinafter stated.

11
12 DEMAND FOR JUDGMENT FOR RELIEF:

13 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
14 3281, and 3333;

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

18 C. In the alternative to the damages pursuant to Cal. Civil
19 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
20 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
21 54.1, Title 24 of the California Building Code, ADA, and ADA
22 Accessibility Guidelines;

23 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
24 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
25 Defendants to remove all architectural barriers in, at, or on
26 their facilities related to the following: Space Allowance and
27
28

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

8
9 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
10 § 12205, and Cal. Civil Code § 55;

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

13 G. A Jury Trial and;

14 H. For such other further relief as the court deems proper.
15

16 Respectfully submitted:
17

18
19 PINNOCK & WAKEFIELD

20 Dated: February 11, 2004

21 By: 
22 MICHELLE L. WAKEFIELD, ESQ.
23 Attorneys for Plaintiffs
24
25
26
27
28

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.)

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

DEFENDANTS

PLEASE SEE ATTACHMENT

04 FEB 12 AM 8:48

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

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

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

San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Michelle L. Wakefield, Esq. SBN: 200424
David C. Wakefield, Esq. SBN: 185736
Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'04 CV 0297 JM (BLM)

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

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

- 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)

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

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

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

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 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 RSJ (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/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 fr.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 February 11, 2004

SIGNATURE OF ATTORNEY OF RECORD

Michelle L. Wakefield

PO \$150.00 2/12/04 # 101073 VO

Attachment to Civil Cover Sheet

PHILLIP R. BERDESKI d.b.a. BONITA VILLAGE CENTER; NINA E. BERDESKI d.b.a. BONITA VILLAGE CENTER; ITABELLA, INC. d.b.a. BUON GIORNO RESTAURANT a.k.a BUONGIORNO RESTORANTE; ITABELLA, INC.; BONITA BAJA LOBSTER GROUP, INC., d.b.a. ROCKIN BAJA LOBSTER f.k.a. OLD BONITA STORE RESTAURANT; BONITA BAJA LOBSTER GROUP, INC.; PHILLIP R. BERDESKI d.b.a. BONITA MICHIGAN PROPERTIES; NINA E. BERDESKI d.b.a. BONITA MICHIGAN PROPERTIES; PHILLIP R. BERDESKI; NINA E. BERDESKI; And DOES 1 THROUGH 10, Inclusive,