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3:05-CV-00071 PINNOCK V. CHARO CHICKEN 15

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

BY: *JAP*

DEPUTY

Attorneys for Plaintiffs

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

Case No. **05 CV 0071** **WQH (WMC)**

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

Plaintiffs,

14 v.

15 **CHARO CHICKEN #15;**
16 **HAMPRESTON GROUP, LLC d.b.a.**
17 **CHARO CHICKEN #15; AMERICAN**
18 **STORES PROPERTIES, INC.; GRANT**
19 **TUCKER PROPERTIES; And DOES 1**
20 **THROUGH 10, Inclusive**

Defendants.

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

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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 **JURISDICTION AND VENUE**

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

13 **SUPPLEMENTAL JURISDICTION**

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

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NAMED DEFENDANTS AND NAMED PLAINTIFFS

3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Defendant CHARO CHICKEN #15 is located at 7680 El Camino Real, Suite 103, Carlsbad, California 92009. Plaintiffs are informed and believe and thereon allege that Defendant HAMPRESTON GROUP, LLC is the owner, operator, and/or doing business as CHARO CHICKEN #15. Defendant HAMPRESTON GROUP, LLC is located at 345 West I Street, Encinitas, California 92024. Plaintiffs are informed and believe and thereon allege that Defendant AMERICAN STORES PROPERTIES, INC. and/or GRANT TUCKER PROPERTIES is the owner, operator, and/or lessor of the property located at 7680 El Camino Real, Carlsbad, California 92009, Assessor Parcel Number 216-580-04 or 216-580-03. Defendant AMERICAN STORES PROPERTIES, INC. is located at Corporate Secretary Department, 250 Parkcenter Boulevard, P.O. Box 20, Boise, Idaho 83726. Defendant GRANT TUCKER PROPERTIES is located at 1 Upper Newport Plaza Drive, Newport Beach, California 92660. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and persons associated with its Members who accompanied Members to Defendants' facilities, as well as THEODORE A. PINNOCK, An Individual.

4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers, employees, agents, of CHARO CHICKEN #15; HAMPRESTON GROUP, LLC d.b.a. CHARO CHICKEN #15; AMERICAN STORES PROPERTIES, INC.; and GRANT TUCKER PROPERTIES. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint to allege the true names and capacities of the Does when ascertained.

5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,

1 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
2 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs
3 are further informed and believe, and thereon allege, that each of the Defendants herein gave
4 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.
5

6 CONCISE SET OF FACTS

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

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

21 8. Plaintiff's member personally experienced difficulty with said access barriers at
22 Defendants' CHARO CHICKEN #15 facilities. For example, the parking facility of Defendants'
23 establishment is inaccessible. The parking facility has a total of three hundred and twenty three
24 (323) parking spaces, including ten (10) disabled parking spaces. Two (2) of the existing disabled
25 parking spaces, located by Albertsons, are "van accessible" disabled parking spaces that fail to
26 have the required disability signage. Two (2) of the remaining disabled parking spaces, located by
27 First National Bank, are "regular" disabled parking spaces that are only seventeen feet (17') long
28 and have a slope of up to five percent (5%). It is required that all disabled parking spaces are at

1 least eighteen feet (18') long, have a slope that is no greater than two percent (2%), and have the
2 required disability signage. Disabled parking spaces are required to be dispersed evenly throughout
3 the shopping center.

4 9. The exterior path of travel of the Defendants' establishment is inaccessible. There fails to
5 be a safe and accessible path of travel from the public sidewalk to the primary accessible entrance,
6 as members of the disability community are forced to traverse through vehicular traffic without the
7 benefit of a marked path of travel. The ramp from the parking lot to the entrance door of the
8 Defendants' CHARO CHICKEN #15 establishment has a one-half inch (1/2") high lip. Changes in
9 level between one-quarter of an inch (1/4") and one-half of an inch (1/2") are required to have a
10 bevel. The path of travel through the exterior dining area is inaccessible, as it is as narrow as
11 twenty-nine inches (29"), when it is required to be at least forty-eight inches (48") wide.

12 10. The entrance to the Defendants establishment is inaccessible, as the front entrance door
13 requires an impermissible twelve pounds (12 lbs.) of pressure to operate, when it is required to be
14 no more than eight and one half pounds (8 1/2 lbs.). The front entrance door also fails to have the
15 required disability signage. There is a loose doormat at the front entrance that fails to meet the
16 requirement that it is anchored securely or recessed onto the door landing.

17 11. The public seating located inside the Defendants' establishment is inaccessible, as there are
18 a total of twenty-four (24) seats located inside of the Defendants' restaurant, twelve (12) of which
19 have a knee clearance depth of only four inches (4"), eight (8) of the remaining public seats have a
20 table height of forty one inches (41"), and the remaining four (4) seats have a knee clearance width
21 of only twenty-four inches (24"). It is required that five percent (5%) of all seats must have a knee
22 clearance depth of at least nineteen inches (19"), a width of at least thirty inches (30"), and a table
23 no higher than thirty-four inches (34") high.

24 12. The public seating located in the outside seating area of the Defendants' establishment is
25 inaccessible, as there are a total of twenty-four (24) seats, all of which have a knee clearance depth
26 of only four inches (4"). It is required that five percent (5%) of all seats must have a knee clearance
27 depth of at least nineteen inches (19").
28

1 13. The men's restroom located inside the Defendants' establishment is inaccessible. The
2 pressure required to open the restroom door is an impermissibly twelve pounds (12 lbs.) of
3 pressure, when it is required to be no more than five pounds (5 lbs.) of pressure. The height of the
4 threshold at the entrance door is one-half of an inch (1/2"). Changes in level between one-quarter
5 of an inch (1/4") and one-half of an inch (1/2") are required to have a bevel. The wheelchair
6 turnaround space inside the restroom is only fifty-eight inches by fifty-five inches (58" x 55"),
7 when it is required to be at least sixty inches (60") in diameter. The height of the commode seat
8 cover dispenser is forty-two inches (42"), when it is required to be no higher than forty inches (40")
9 high. The distance from the front edge of the commode to the front wall is only thirty-nine inches
10 (39"), when it is required to be at least forty-eight inches (48"). The height of the bottom of the
11 mirror is forty-six inches (46") high, when it is required to be no higher than forty inches (40").
12 The paper towel dispenser is inaccessible, as it is mounted at forty-seven inches (47") high, when it
13 is required to be mounted no higher than forty inches (40") high. The restroom fails to have the
14 required audible and visual alarm system.

15 14. In addition to the violations personally experienced by Plaintiff's member THEODORE A.
16 PINNOCK, additional violations of federal and state disability laws exist at the Defendants'
17 CHARO CHICKEN #15 establishment. For example, the women's restroom is inaccessible. The
18 pressure required to open the women's restroom door is an impermissibly twelve pounds (12 lbs.)
19 of pressure, when it is required to be no more than five pounds (5 lbs.) of pressure. The height of
20 the threshold at the entrance door is one-half of an inch (1/2"). Changes in level between one-
21 quarter of an inch (1/4") and one-half of an inch (1/2") are required to have a bevel.

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

27 16. Plaintiffs believe and herein allege Defendants' facilities have access violations not
28

1 directly experienced by Plaintiff's Member which preclude or limit access by others with
2 disabilities, including, but not limited to, 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. Accordingly, Plaintiffs allege Defendants are
8 required to remove all architectural barriers, known or unknown. Also, Plaintiffs allege Defendants
9 are required to utilize the ADA checklist for Readily Achievable Barrier Removal approved by the
10 United States Department of Justice and created by Adaptive Environments.

11 17. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock
12 was discriminated against each time he patronized Defendants' establishments. Plaintiff's Member
13 and Plaintiff Theodore A. Pinnock was extremely upset due to Defendants' conduct. Further,
14 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back,
15 arms, shoulders and wrists when he attempted to enter, use, and exit Defendants' CHARO
16 CHICKEN #15 establishment.

17
18 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
19 **DEFENDANT**

20 18. CHARO CHICKEN #15; HAMPRESTON GROUP, LLC d.b.a. CHARO CHICKEN #15;
21 AMERICAN STORES PROPERTIES, INC.; GRANT TUCKER PROPERTIES; and Does 1
22 through 10 will be referred to collectively hereinafter as "Defendants."

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

24 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

28 20. Based on the facts plead at ¶¶ 6-18 above and elsewhere in this complaint, Plaintiff's

1 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
2 advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned,
3 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to
4 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,
5 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code
6 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to
7 Defendants' existing facilities.

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

16
17 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In Such A Manner**
18 **That The Altered Portions Of The Facility Are Readily Accessible And Usable By Individuals**
19 **With Disabilities**

20 22. Based on the facts plead at ¶¶ 6-18 above and elsewhere in this complaint, Plaintiff's
21 Member Theodore A. Pinnock was denied full and equal access to Defendants' goods, services,
22 facilities, privileges, advantages, or accommodations within a public accommodation owned,
23 leased, and/or operated by Defendants. Defendants altered their facility in a manner that affects or
24 could affect the usability of the facility or a part of the facility after January 26, 1992. In performing
25 the alteration, Defendants failed to make the alteration in such a manner that, to the maximum
26 extent feasible, the altered portions of the facility are readily accessible to and usable by individuals
27 with disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C.
28 §12183(a)(2).

23. Additionally, the Defendants undertook an alteration that affects or could affect the usability

1 of or access to an area of the facility containing a primary function after January 26, 1992.

2 Defendants further failed to make the alterations in such a manner that, to the maximum extent
3 feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains
4 serving the altered area, are readily accessible to and usable by individuals with disabilities in
5 violation 42 U.S.C. §12183(a)(2).

6 24. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the
7 maximum extent feasible, are readily accessible to and usable by individuals with disabilities
8 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
9 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §
10 12182(a).

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

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

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

1 disparate treatment against a person who has a known association with a person with a disability
2 are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's
3 Member was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv)
4 and 42 U.S.C. § 12188 because said Member was denied equal access to Defendants' existing
5 facilities.

6 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices, Policies And**
7 **Procedures**

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

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

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

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

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

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

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

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

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

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

27 33. Based on the facts plead at ¶¶ 6-18 above and elsewhere herein this complaint and because
28 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
2 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
3 54.1.

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

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

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

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

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

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

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

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

24 40. Based on the facts plead at ¶¶ 6-18 above and elsewhere in this complaint, Defendants owed
25 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
26 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
27 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
28 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1

1 and Title 24 of the California Administrative Code and applicable 1982 Uniform Building Code
2 standards as amended.

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

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

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

25
26 DEMAND FOR JUDGMENT FOR RELIEF:

- 27 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and 3333;
28 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of

1 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
2 Guidelines;

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

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

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

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

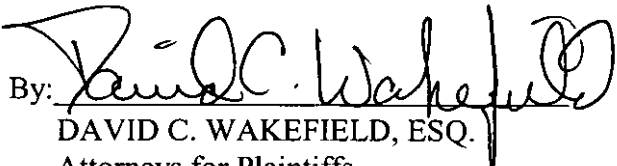
17 G. A Jury Trial and;

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

19 Respectfully submitted:

20
21 Dated: 1/13/05

PINNOCK & WAKEFIELD, A.P.C.

22 By: 
23 DAVID C. WAKEFIELD, ESQ.
24 Attorneys for Plaintiffs
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.)

I (a) PLAINTIFFS

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

DEFENDANTS

CHARO CHICKEN #15; HAMPRESTON GROUP, LLC d.b.a. CHARO CHICKEN #15; AMERICAN STORES PROPERTIES, INC.; GRANT TUCKER PROPERTIES; And DOES 1 THROUGH 10, Inclusive; And DOES 1 THROUGH 10, Inclusive

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

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)

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)

05 CV 0071 **WQH (WMC)**

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)
- | | | | | |
|---|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 2 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 | <input type="checkbox"/> 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 | <input type="checkbox"/> 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	PERSONAL INJURY		<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	PERSONAL INJURY	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	PROPERTY RIGHTS	
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 640 FRR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	SOCIAL SECURITY	
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 180 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR		<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability	CIVIL RIGHTS		<input type="checkbox"/> 710 Fair Labor Standards Act 720 Labor/Mgmt Relations	<input type="checkbox"/> 863 DWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC
REAL PROPERTY	<input type="checkbox"/> 441 Voting	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSJ (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Tort to Land	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability		<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prisoner Conditions			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State
					<input type="checkbox"/> 990 Other Statutory Actions

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

1/13/05

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield

Pl #150.00 1/14/05 #110237