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Bar #: 200424
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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
[Signature]
DEPUTY

Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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,

15 v.

16 JADE HOUSE a.k.a JADE HOUSE
17 CHINESE RESTAURANT & BAR; ANA
18 YU d.b.a. JADE HOUSE; HO FAT
19 YU d.b.a. JADE HOUSE; JOHN J.
20 HARRIS; And DOES 1 THROUGH
21 10, Inclusive

Defendants.

Case No. '04 CV 1393 H

(AJB)

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

NEGLIGENCE
[CIVIL CODE 1714(a), 2338,
3333; EVIDENCE CODE 669(a)]

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

22 INTRODUCTION

23 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
24 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
25 herein complain, by filing this Civil Complaint in accordance with
26 rule 8 of the Federal Rules of Civil Procedure in the Judicial
27 District of the United States District Court of the Southern
28 District of California, that Defendants have in the past, and
presently are, engaging in discriminatory practices against

CR

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

14
15 **JURISDICTION AND VENUE**

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

24 **SUPPLEMENTAL JURISDICTION**

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

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

16
17 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

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

21 Defendant JADE HOUSE a.k.a JADE HOUSE CHINESE RESTAURANT & BAR is
22 located at 569 H Street, Chula Vista, California 91910. Plaintiffs
23 are informed and believe and thereon allege that Defendants ANA YU
24 and HO FAT YU are the owners, operators, and/or doing business as
25 JADE HOUSE. Defendants ANA YU and HO FAT YU are located at 508
26 Paseo Rosal, Chula Vista, California 91910. Plaintiffs are
27 informed and believe and thereon allege that Defendant JOHN J.
28 HARRIS is the owner, operator, and/or lessor of the property

1 located at 563-567-571 H Street, Chula Vista, California 91910,
2 Assessor Parcel Number 567-232-11. Defendant JOHN J. HARRIS is
3 located at 6043 Lancaster Drive, San Diego, California 92120. The
4 words "Plaintiffs" and "Plaintiff's Member" as used herein
5 specifically include the organization MANTIC ASHANTI'S CAUSE, its
6 Members, its member Theodore A. Pinnock and persons associated
7 with its Members who accompanied Members to Defendants'
8 facilities, as well as THEODORE A. PINNOCK, An Individual.

9 4. Defendants Does 1 through 10, were at all times relevant
10 herein subsidiaries, employers, employees, agents, of JADE HOUSE
11 a.k.a JADE HOUSE CHINESE RESTAURANT & BAR; ANA YU d.b.a. JADE
12 HOUSE; HO FAT YU d.b.a. JADE HOUSE; and JOHN J. HARRIS.

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

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

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

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

CONCISE SET OF FACTS

1
2 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that
3 advocates on the behalf of its members with disabilities when
4 their civil rights and liberties have been violated. Plaintiff's
5 member THEODORE A. PINNOCK is a member of Plaintiff Organization
6 and has an impairment in that he has Cerebral Palsy and due to
7 this impairment he has learned to successfully operate a
8 wheelchair.

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

24
25 8. Plaintiff's member personally experienced difficulty with
26 said access barriers at Defendants' JADE HOUSE facilities. For
27 example, the parking facility of Defendants' establishment is
28 inaccessible. There are three (3) entryways into the parking lot,

1 all of which fail to have the required signage warning motorists
2 that anyone illegally parking in a disabled parking space would be
3 towed/fined or both. The parking facility has a total of forty
4 (40) parking spaces, two (2) of which are disabled parking spaces.
5 Both of the existing disabled parking spaces are inaccessible, as
6 they are only fifteen feet (15') long and share the same access
7 aisle. Both existing disabled parking spaces are "van accessible"
8 disabled parking spaces, however one (1) of the spaces has
9 "regular" disabled parking signage. It is required that there is
10 at least One (1) "van accessible" disabled parking space that is
11 at least eighteen feet (18') long with an eight foot (8') wide
12 access aisle on the right hand side of the parking space. It is
13 also required that there is at least one (1) "regular" disabled
14 parking space that is at least eighteen feet (18') long with a
15 five foot (5') wide access aisle on the right hand side of the
16 parking space.

17
18 9. The exterior path of travel of the Defendants' establishment
19 is inaccessible. The width of the walkway from the parking lot to
20 the entrance of the Defendants' establishment is only forty inches
21 (40") wide, when it is required to be no less than forty-eight
22 inches (48") wide. The ramp to the rear entrance door fails to
23 have the required side flares.

24 10. The entrance to the Defendants establishment is inaccessible.
25 The front entrance door fails to have the required smooth and
26 uninterrupted surface on the bottom ten inches (10") of the door
27 that allows the door to be opened with a wheelchair footrest
28 without creating a hazard. The pressure that is required to open

1 the front entrance door is fifteen pounds (15 lbs.), when the
2 maximum requirement is eight and one half pounds (8 ½ lbs.) of
3 pressure to operate a door like this one. The clear opening width
4 of each of the double doors at the front entrance is only twenty-
5 five inches (25"), when the minimum requirement is thirty-two
6 inches (32"). The front entrance door fails to have the required
7 disability signage. The rear entrance fails to have the required
8 five-foot by five-foot (5'x 5') level landing in front of the
9 entrance door.

10 11. The interior path of travel of the Defendants' establishment
11 is inaccessible, as the slope of the ramp from the front entrance
12 to the bar area is at ten percent (10%), when it is required to be
13 no more than 8.33%.

14 12. The front cashier counter is inaccessible, as it is forty-two
15 inches (42") high, when it is required to be no higher than
16 thirty-four inches (34") high. The bar/cashier counter is
17 inaccessible, as it is forty-one inches (41") high, when it is
18 required to be no higher than thirty-four inches (34") high.

19 13. The public seating in the main dining area of the Defendants'
20 establishment is inaccessible, as there are a total of forty (40)
21 seats, all with a knee clearance depth of a only fourteen to
22 fifteen inches (14"- 15"). It is required that five percent (5%)
23 of all seats, or at least two (2) in this case, have a knee
24 clearance depth of at least nineteen inches (19"). The public
25 seating by the window area is inaccessible, as there is a five-
26 inch (5") step without the required access ramp. Changes in level
27 greater than one half of an inch (1/2") are required to be ramped.
28

1 The public seating in the bar area of the Defendants'
2 establishment is inaccessible, as there are a total of twenty (20)
3 seats, all with a knee clearance depth of a only five to fifteen
4 inches (5" - 15"). It is required that five percent (5%) of all
5 seats, or at least one (1) in this case, have a knee clearance
6 depth of at least nineteen inches (19").

7 14. The men's restroom located in the Defendants' establishment
8 is inaccessible. There are two (2) steps, each five inches (5")
9 high, to the restroom that fail to have the required access ramp.
10 Changes in level greater than one half of an inch (1/2") are
11 required to be ramped. The restroom doorknob fails to be
12 accessible, as it requires tight grasping and/or twisting of the
13 wrist to operate. The round locking mechanism on the stall door
14 fails to be accessible, as it requires tight grasping and/or
15 twisting of the wrist to operate. The distance from the side edge
16 of the commode to the far wall is only thirteen inches (13"), when
17 it is required to be at least thirty-two inches (32"). The
18 distance from the front edge of the commode to the front wall is
19 only thirty-two inches (32"), when it is required to be at least
20 forty-eight inches (48"). The length of the rear grab bar of the
21 commode is only twenty-four inches (24"), when it is required to
22 be at least thirty-six inches (36") long. The side grab bar of
23 the commode extends only eighteen inches (18") beyond the front
24 edge of the commode, when it is required to extend at least
25 twenty-four inches (24") beyond the front edge of the commode.
26 The coat hook is inaccessible, as it is mounted at seventy inches
27 (70") high, when it is required to be no higher than forty-eight
28

1 inches (48"). The hot water and drainpipes under the lavatory
2 fail to have the required covering. The soap dispenser is
3 inaccessible, as it is mounted at forty-three inches (43") high,
4 when it is required to be no higher than forty inches (40") high.

5 The paper towel dispenser is inaccessible, as it is mounted at
6 fifty inches (50") high, when it is required to be mounted no
7 higher than forty inches (40") high. The men's restroom fails to
8 have the required audible and visual alarm system.

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

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

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

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

14 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

15
16 18. JADE HOUSE a.k.a JADE HOUSE CHINESE RESTAURANT & BAR; ANA YU
17 d.b.a. JADE HOUSE; HO FAT YU d.b.a. JADE HOUSE; JOHN J. HARRIS;
18 and Does 1 through 10 will be referred to collectively hereinafter
19 as "Defendants."

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

22 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

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

1 access to Defendants' goods, services, facilities, privileges,
2 advantages, or accommodations. Plaintiffs allege Defendants are a
3 public accommodation owned, leased and/or operated by Defendants.
4 Defendants' existing facilities and/or services failed to provide
5 full and equal access to Defendants' facility as required by 42
6 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
7 discrimination in violation of 42 United States Code
8 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
9 Member was denied equal access to Defendants' existing facilities.

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

22
23 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**
24 **Such A Manner That The Altered Portions Of The Facility Are**
Readily Accessible And Usable By Individuals With Disabilities

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

1 accommodation owned, leased, and/or operated by Defendants.

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

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

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

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

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

1 facilities.

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

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

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

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

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

15 28. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
16 III of Plaintiffs' First Cause Of Action above, and the facts
17 elsewhere herein this complaint, Plaintiffs will suffer
18 irreparable harm unless Defendants are ordered to remove
19 architectural, non-architectural, and communication barriers at
20 Defendants' public accommodation. Plaintiffs allege that
21 Defendants' discriminatory conduct is capable of repetition, and
22 this discriminatory repetition adversely impacts Plaintiffs and a
23 substantial segment of the disability community. Plaintiffs
24 allege there is a national public interest in requiring
25 accessibility in places of public accommodation. Plaintiffs have
26 no adequate remedy at law to redress the discriminatory conduct of
27 Defendants. Plaintiff's Member desires to return to Defendants'
28

1 places of business in the immediate future. Accordingly, the
2 Plaintiffs allege that a structural or mandatory injunction is
3 necessary to enjoin compliance with federal civil rights laws
4 enacted for the benefit of individuals with disabilities.

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

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

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

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

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

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

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

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

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

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

20 34. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
21 III of Plaintiffs' Second Cause Of Action above, and the facts
22 elsewhere herein this complaint, Plaintiffs will suffer
23 irreparable harm unless Defendants are ordered to remove
24 architectural, non-architectural, and communication barriers at
25 Defendants' public accommodation. Plaintiffs allege that
26 Defendants' discriminatory conduct is capable of repetition, and
27 this discriminatory repetition adversely impacts Plaintiffs and a
28

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

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

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

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

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

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

21
22 38. Plaintiffs pray for an award of treble damages against
23 Defendants, and each of them, pursuant to California Civil Code
24 sections 52(a) and 54.3(a), in an amount sufficient to make a more
25 profound example of Defendants and encourage owners, lessors, and
26 operators of other public facilities from willful disregard of the
27 rights of persons with disabilities. Plaintiffs do not know the
28 financial worth of Defendants, or the amount of damages sufficient

1 to accomplish the public purposes of section 52(a) of the
2 California Civil Code and section 54.3 of the California Civil
3 Code.

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

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

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

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

27 42. Therefore, Defendants engaged in discriminatory conduct in
28 that they failed to comply with known duties under the ADA, ADAAG,

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

22
23 43. Wherefore, Plaintiffs pray for damages and relief as
24 hereinafter stated.

25 DEMAND FOR JUDGMENT FOR RELIEF:

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

1 each and every offense of Civil Code § 51, Title 24 of the
2 California Building Code, ADA, and ADA Accessibility Guidelines;
3 C. In the alternative to the damages pursuant to Cal. Civil
4 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
5 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
6 54.1, Title 24 of the California Building Code, ADA, and ADA
7 Accessibility Guidelines;

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

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

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

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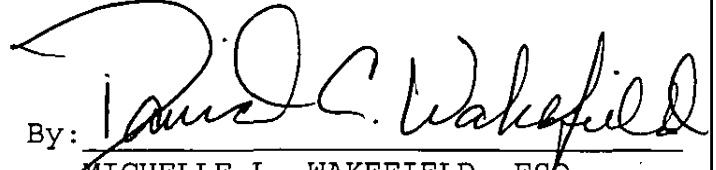
G. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

Dated: July 6, 2004

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

CIVIL COVER SHEET

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

I (a) PLAINTIFFS

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

DEFENDANTS JADE HOUSE a.k.a JADE HOUSE CHINESE RESTAURANT & BAR; ANA YU d.b.a. JADE HOUSE; HO FAT YU d.b.a. JADE HOUSE; JOHN HARRIS; AND DOES 1 THROUGH 10, Inclusive

CLERK U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

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

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

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

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

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

ATTORNEYS (IF KNOWN)

'04 CV 1393 H (AJB)

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

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

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

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

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

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

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

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

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

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

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

JUDGE

Docket Number

DATE July 6, 2004

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of David C. Wakefield

Handwritten notes: 105298 150.00 7/12/04