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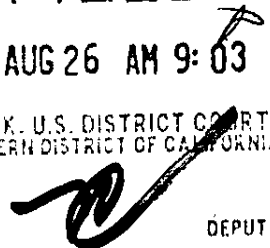
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:



DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

MARISCOS MAZATLAN SEAFOOD;
DALIA R. MURRIETA d.b.a.
MARISCOS MAZATLAN SEAFOOD;
DALIA R. MURRIETA; And DOES 1
THROUGH 10, Inclusive

Defendants.

Case No. **04 CV 1725**

LAB (JMA)

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

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

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

INTRODUCTION

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



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 **JURISDICTION AND VENUE**

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

23 **SUPPLEMENTAL JURISDICTION**

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

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 MARISCOS MAZATLAN SEAFOOD is located at 21287 3rd Avenue,
22 Chula Vista, California 91911. Plaintiffs are informed and
23 believe and thereon allege that Defendant DALIA R. MURRIETA is the
24 owner, operator, and/or doing business as MARISCOS MAZATLAN
25 SEAFOOD. Plaintiffs are informed and believe and thereon allege
26 that Defendant DALIA R. MURRIETA is also the owner, operator,
27 and/or lessor of the property located at 1287 3rd Avenue, Chula
28 Vista, California 91911, Assessor Parcel Number 619-222-19.

1 Defendant DALIA R. MURRIETA is located at 1904 Via Las Palmas #7,
2 National City, California 91950. The words "Plaintiffs" and
3 "Plaintiff's Member" as used herein specifically include the
4 organization MANTIC ASHANTI'S CAUSE, its Members, its member
5 Theodore A. Pinnock and persons associated with its Members who
6 accompanied Members to Defendants' facilities, as well as THEODORE
7 A. PINNOCK, An Individual.

8 4. Defendants Does 1 through 10, were at all times relevant
9 herein subsidiaries, employers, employees, agents, of MARISCOS
10 MAZATLAN SEAFOOD; DALIA R. MURRIETA d.b.a. MARISCOS MAZATLAN
11 SEAFOOD; and DALIA R. MURRIETA. Plaintiffs are ignorant of the
12 true names and capacities of Defendants sued herein as Does 1
13 through 10, inclusive, and therefore sues these Defendants by such
14 fictitious names. Plaintiffs will pray leave of the court to
15 amend this complaint to allege the true names and capacities of
16 the Does when ascertained.

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

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

27 ///
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 29, 2004, Plaintiff's member THEODORE A. PINNOCK went
10 to Defendants' MARISCOS MAZATLAN SEAFOOD facilities to utilize
11 their goods and/or services. When Plaintiff's member patronized
12 Defendants' MARISCOS MAZATLAN SEAFOOD facilities, he was unable to
13 use and/or had difficulty using the public accommodations'
14 disabled parking, exterior path of travel, entrance, interior path
15 of travel, outside public seating area, inside public seating
16 area, cashier counter, and restroom facilities at Defendants'
17 business establishment because they failed to comply with ADA
18 Access Guidelines For Buildings and Facilities (hereafter referred
19 to as "ADAAG") and/or California's Title 24 Building Code
20 Requirements. Defendants failed to remove access barriers within
21 the disabled parking, exterior path of travel, entrance, interior
22 path of travel, outside public seating area, inside public seating
23 area, cashier counter, and restroom facilities of Defendants'
24 MARISCOS MAZATLAN SEAFOOD establishment.

25
26 8. Plaintiff's member personally experienced difficulty with
27 said access barriers at Defendants' MARISCOS MAZATLAN SEAFOOD
28 facilities. For example, the Defendants' establishment is located

1 in a shopping strip that has two (2) separate parking lots, one
2 (1) located in the front of the building where the Defendants
3 establishment is located and the other is located behind the
4 building where the Defendants establishment is located. The
5 entryways into both parking lots fail to have the required signage
6 warning motorists that anyone illegally parking in a disabled
7 parking space would be towed/fined or both. The front parking lot
8 facility has a total of sixteen (16) parking spaces, including one
9 (1) disabled parking space that fails to be accessible. The
10 existing disabled parking space is a "van accessible" disabled
11 parking space that is only fifteen feet (15') long, has an access
12 aisle on the left hand side of the parking space, has a slope of
13 up to four percent (4%), and fails to have the appropriate
14 disability signage. It is required that there is at least one (1)
15 "van accessible" disabled parking space that is eighteen feet
16 (18') long, with an access aisle on the right hand side of the
17 disabled parking space that is eight feet (8') wide, has a slope
18 that is not greater than two percent (2%), and has the required
19 disability signage. The rear parking lot has a total of nine (9)
20 parking spaces, including one (1) disabled parking space that
21 fails to be accessible. The existing disabled parking space is a
22 seventeen foot (17') long "van accessible" disabled parking space
23 that is not clearly visible and fails to have the required
24 disability signage. It is required that there is at least one (1)
25 "van accessible" disabled parking space that is eighteen feet
26 (18') long, with an access aisle on the right hand side of the
27 disabled parking space that is eight feet (8') wide, has a slope
28

1 that is not greater than two percent (2%), and has the required
2 disability signage.

3 9. The exterior path of travel of the Defendants' establishment
4 is inaccessible. There fails to be a safe and accessible path of
5 travel from the public sidewalk to the primary accessible
6 entrance, as members of the disability community are forced to
7 traverse through vehicular traffic without the benefit of a marked
8 path of travel. The path of travel from the rear parking lot to
9 the front entrance of the defendants' establishment is completely
10 inaccessible, as it consists of a flight of stairs, therefore
11 making it impossible for disabled patrons in wheelchairs to access
12 the Defendants' establishment from the rear parking lot.

13 10. The entrance to the Defendants establishment is inaccessible,
14 as the front entrance door fails to have the required level
15 landing. It is required that there is at least five feet by five
16 feet (5'x 5') of flat surface in front of every entrance door.
17 The doorknob on the front entrance door is inaccessible, as it
18 requires tight grasping and/or twisting of the wrist to operate.
19 The height of the threshold at the front entrance door is one inch
20 (1") high and fails to have the required ramp. Changes in level
21 greater than one half of an inch (1/2") are required to be ramped.
22 The front entrance door fails to have the required smooth and
23 uninterrupted ten inches (10") on the bottom of the door that
24 allows for the door to be opened with a wheelchair footrest
25 without creating a hazard. The front entrance door fails to have
26 the required disability signage. There is a loose doormat at the
27 front entrance that fails to meet the requirement that all
28

1 doormats are to be anchored securely and/or recessed onto the door
2 landing.

3 11. The interior path of travel is inaccessible, as the interior
4 path of travel is only thirty inches (30") wide. The interior
5 path of travel is required to be at least thirty-six (36") wide.
6 There is an impermissible five inch (5") step up to one (1) of the
7 exterior public seating sections. Changes in level greater than
8 one half of an inch (1/2") are required to be ramped. There is
9 another impermissible two inch (2") step up to another section of
10 the exterior public seating. Changes in level greater than one
11 half of an inch (1/2") are required to be ramped.

12 12. The public seating located inside the Defendants'
13 establishment is inaccessible, as there are a total of fifty-nine
14 (59) seats, all with a knee clearance depth of only five inches to
15 eight inches (5" - 8"). It is required that five percent (5%) of
16 all seats must have a knee clearance depth of at least nineteen
17 inches (19"). The public seating located outside at the
18 Defendants' establishment is inaccessible, as there are a total of
19 thirty-three (33) seats, all with a knee clearance depth of only
20 five inches to eight inches (5" - 8"). It is required that five
21 percent (5%) of all seats must have a knee clearance depth of at
22 least nineteen inches (19").

23 13. The cashier counter located inside that Defendants'
24 establishment is inaccessible, as it is forty inches (40") high,
25 when it is required to be no higher than thirty-four inches (34").

26 14. The men's restroom located inside the Defendants'
27 establishment is inaccessible. The strike clearance of the
28

1 restroom area door is a mere one inch (1"), when it is required to
2 be at least eighteen inches (18"). The men's restroom door fails
3 to have the required disability signage. The restroom doorknob is
4 inaccessible, as it requires tight grasping and/or twisting of the
5 wrist to operate. The locking mechanism on the restroom door is
6 inaccessible, as it requires tight grasping and/or twisting of the
7 wrist to operate. The length of the side grab bar of the commode
8 extends only twenty inches (20") beyond the front edge of the
9 commode, when it is required to extend a minimum of twenty-four
10 inches (24") beyond the front edge of the commode. The height of
11 the commode is only fifteen inches (15"), when it is required to
12 be between seventeen inches and nineteen inches (17"-19") high.
13 The commode seat cover dispenser is inaccessible, as it is mounted
14 forty-seven inches (47") high, when it is required to be no higher
15 than forty inches (40"). The distance from the front edge of the
16 commode to the front wall is only forty-seven inches (47"), when
17 it is required to be at least forty-eight inches (48"). The
18 height of the urinal lip is twenty-four inches (24") high, when it
19 is required to be no more than seventeen inches (17") high. The
20 distance from the centerline of the lavatory to the adjacent wall
21 is only twelve inches (12"), when it is required to be at least
22 eighteen inches (18"). The hot water and drainpipes under the
23 lavatory fail to have the required covering. The height of the
24 bottom of the mirror is fifty-seven inches (57"), when it is
25 required to be no more than forty inches (40") above the floor
26 surface. The lavatory faucet handles are inaccessible, as they
27 require tight grasping and/or twisting of the wrist to operate.
28

1 The paper towel dispenser is inaccessible since it is mounted at
2 sixty four inches (64") when it is required not to be mounted
3 higher than forty inches (40"). The restroom fails to have the
4 required audible and visual alarm system.

5 15. In addition to the violations personally experienced by
6 Plaintiff's member THEODORE A. PINNOCK, additional violations of
7 federal and state disability laws exist at the Defendants'
8 MARISCOS MAZATLAN SEAFOOD establishment. For example, women's
9 restroom is inaccessible. The women's restroom door fails to have
10 the required disability signage. The doorknob on the women's
11 restroom door is inaccessible, as it requires tight grasping
12 and/or twisting of the wrist to operate. The locking mechanism on
13 the women's restroom door is inaccessible, as it requires tight
14 grasping and/or twisting of the wrist to operate. The diaper
15 changing counter is inaccessible, as it is mounted at forty inches
16 (40") high, when it is required to be mounted no higher than
17 thirty-four inches (34"). The hot water and drainpipes underneath
18 the lavatory fail to have the required covering.

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

27 17. Plaintiffs believe and herein allege Defendants' facilities
28

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

16
17 18. Based on these facts, Plaintiffs allege Plaintiff's Member
18 and Plaintiff Theodore A. Pinnock was discriminated against each
19 time he patronized Defendants' establishments. Plaintiff's Member
20 and Plaintiff Theodore A. Pinnock was extremely upset due to
21 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
22 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
23 shoulders and wrists when he attempted to enter, use, and exit
24 Defendants' MARISCOS MAZATLAN SEAFOOD establishment.

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

26 19. MARISCOS MAZATLAN SEAFOOD; DALIA R. MURRIETA d.b.a. MARISCOS
27 MAZATLAN SEAFOOD; DALIA R. MURRIETA; and Does 1 through 10 will be
28 referred to collectively hereinafter as "Defendants."

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

3 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

8 21. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
9 this complaint, Plaintiff's Member was denied full and equal
10 access to Defendants' goods, services, facilities, privileges,
11 advantages, or accommodations. Plaintiffs allege Defendants are a
12 public accommodation owned, leased and/or operated by Defendants.
13 Defendants' existing facilities and/or services failed to provide
14 full and equal access to Defendants' facility as required by 42
15 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
16 discrimination in violation of 42 United States Code
17 12182(b) (2) (A) (iv) and 42 U.S.C. § 12188 because Plaintiff's
18 Member was denied equal access to Defendants' existing facilities.

19 22. Plaintiff's member Theodore A. Pinnock has physical
20 impairments as alleged in ¶ 6 above because his conditions affect
21 one or more of the following body systems: neurological,
22 musculoskeletal, special sense organs, and/or cardiovascular.
23 Further, Plaintiff's member Theodore A. Pinnock's said physical
24 impairments substantially limits one or more of the following
25 major life activities: walking. In addition, Plaintiff's member
26 Theodore A. Pinnock cannot perform one or more of the said major
27 life activities in the manner, speed, and duration when compared
28

1 to the average person. Moreover, Plaintiff's member Theodore A.
2 Pinnock has a history of or has been classified as having a
3 physical impairment as required by 42 U.S.C. § 12102(2)(A).
4

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

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

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

28 25. Pursuant to 42 U.S.C. §12183(a), this failure to make the

1 alterations in a manner that, to the maximum extent feasible, are
2 readily accessible to and usable by individuals with disabilities
3 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
4 Therefore, Defendants discriminated against Plaintiff's Member
5 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

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

11
12 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove**
Architectural Barriers

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

1 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
2 Title III requires places of public accommodation to remove
3 architectural barriers that are structural in nature to existing
4 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
5 Failure to remove such barriers and disparate treatment against a
6 person who has a known association with a person with a disability
7 are forms of discrimination. [See 42 United States Code
8 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
9 discrimination in violation of 42 United States Code
10 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
11 denied equal access to Defendants' existing facilities.

12
13 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,**
Policies And Procedures

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

24 29. Based on the facts plead at ¶¶ 6-18 above, Claims I, II, and
25 III of Plaintiffs' First Cause Of Action above, and the facts
26 elsewhere herein this complaint, Plaintiffs will suffer
27 irreparable harm unless Defendants are ordered to remove
28

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

14 30. WHEREFORE, Plaintiffs pray for judgment and relief as
15 hereinafter set forth.

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

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

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

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

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

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

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

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

23 34. Based on the facts plead at ¶¶ 6-18 above and elsewhere
24 herein this complaint and because Defendants violated the Civil
25 Code § 51 by failing to comply with 42 United States Code §
26 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
27 continue to discriminate against Plaintiff's Member and persons
28

1 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
2 35. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
3 III of Plaintiffs' Second Cause Of Action above, and the facts
4 elsewhere herein this complaint, Plaintiffs will suffer
5 irreparable harm unless Defendants are ordered to remove
6 architectural, non-architectural, and communication barriers at
7 Defendants' public accommodation. Plaintiffs allege that
8 Defendants' discriminatory conduct is capable of repetition, and
9 this discriminatory repetition adversely impacts Plaintiffs and a
10 substantial segment of the disability community. Plaintiffs
11 allege there is a state and national public interest in requiring
12 accessibility in places of public accommodation. Plaintiffs have
13 no adequate remedy at law to redress the discriminatory conduct of
14 Defendants. Plaintiff's Member desires to return to Defendants'
15 places of business in the immediate future. Accordingly, the
16 Plaintiffs allege that a structural or mandatory injunction is
17 necessary to enjoin compliance with state civil rights laws
18 enacted for the benefit of individuals with disabilities.

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

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

23 37. Defendants, each of them respectively, at times prior to and
24 including, the month of June, 2004, 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' MARISCOS MAZATLAN
11 SEAFOOD facilities accessible pursuant to the Americans With
12 Disability Act Access Guidelines (ADAAG) and Title 24 of the
13 California Code of Regulations (also known as the California
14 Building Code). Such actions and continuing course of conduct by
15 Defendants, and each of them, evidence despicable conduct in
16 conscious disregard of the rights and/or safety of Plaintiff's
17 Member and of other similarly situated persons, justifying an
18 award of treble damages pursuant to sections 52(a) and 54.3(a) of
19 the California Civil Code.

20
21 38. Defendants', and each of their, actions have also been
22 oppressive to persons with physical disabilities and of other
23 members of the public, and have evidenced actual or implied
24 malicious intent toward those members of the public, such as
25 Plaintiff's Member and other persons with physical disabilities
26 who have been denied the proper access to which they are entitled
27 by law. Further, Defendants', and each of their, refusals on a
28 day-to-day basis to correct these problems evidence despicable

1 conduct in conscious disregard for the rights of Plaintiff's
2 Member THEODORE A. PINNOCK and other members of the public with
3 physical disabilities.

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

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

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

18 41. Based on the facts plead at ¶¶ 6-18 above and elsewhere in
19 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
20 statutory duty to make their facility accessible and owed
21 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
22 Pinnock reasonably safe from known dangers and risks of harm.
23 This said duty arises by virtue of legal duties proscribed by
24 various federal and state statutes including, but not limited to,
25 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
26 California Administrative Code and applicable 1982 Uniform
27 Building Code standards as amended.
28

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

9 43. Therefore, Defendants engaged in discriminatory conduct in
10 that they failed to comply with known duties under the ADA, ADAAG,
11 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
12 or should have known that their acts of nonfeasance would cause
13 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
14 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
15 bodily injury in this matter because when Plaintiff THEODORE A.
16 PINNOCK attempted to enter, use, and exit Defendants'
17 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
18 his legs, back, arms, shoulders, and wrists. Plaintiffs further
19 allege that such conduct was done in reckless disregard of the
20 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
21 to suffer bodily or personal injury, anger, embarrassment,
22 depression, anxiety, mortification, humiliation, distress, and
23 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
24 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
25 An Individual, to suffer the injuries of mental and emotional
26 distress, including, but not limited to, anger, embarrassment,
27 depression, anxiety, mortification, humiliation, distress, and
28

1 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
2 Individual, additionally alleges that such conduct caused THEODORE
3 A. PINNOCK, An Individual, to suffer damages as a result of these
4 injuries.

5 44. Wherefore, Plaintiffs pray for damages and relief as
6 hereinafter stated.

7 DEMAND FOR JUDGMENT FOR RELIEF:

8 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
9 3281, and 3333;

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

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

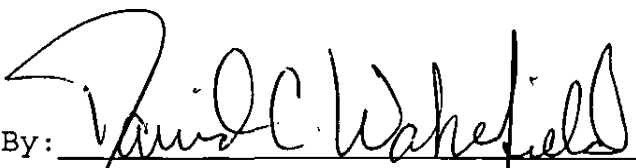
18 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
19 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
20 Defendants to remove all architectural barriers in, at, or on
21 their facilities related to the following: Space Allowance and
22 Reach Ranges, Accessible Route, Protruding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

- 1 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
- 2 § 12205, and Cal. Civil Code § 55;
- 3 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
- 4 and 54.3(a);
- 5 G. A Jury Trial and;
- 6 H. For such other further relief as the court deems proper.

7 Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

8
9
10 Dated: August 20, 2004

11 By: 
12 DAVID C. WAKEFIELD, ESQ.
13 Attorneys for Plaintiffs
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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

MARISCOS MAZATLAN SEAFOOD; DALIA R. MURRIETA d.b.a. MARISCOS MAZATLAN SEAFOOD; DALIA R. MURRIETA; And DOES 1 THROUGH 10, Including

FILED 04 AUG 26 AM 9:05

(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

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

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

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

ATTORNEYS (IF KNOWN)

'04 CV 1725 LAB (JMA)

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)

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, 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 August 2, 2004

SIGNATURE OF ATTORNEY OF RECORD

Signature of David C. Wakefield

#106518 150- MS