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SOUTHERN DISTRICT OF CALIFORNIA

BY:



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**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.

**CHINA TOWN RESTAURANT;
QIANG GUAN d.b.a. CHINA TOWN
RESTAURANT; QIZHUAN GUAN
d.b.a. CHINA TOWN RESTAURANT;
QIANG GUAN; QIZHUAN GUAN;
ERNIES CORNER, LLC; And DOES 1
THROUGH 10, Inclusive**

Defendants.

Case No. **04 CV 1724 IEG** (LSP)

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

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

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

INTRODUCTION

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual, herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial District of the United States District Court of the Southern District of California, that Defendants have in the past, and presently are, engaging in discriminatory practices against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to compel access



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

8 **JURISDICTION AND VENUE**

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

14 **SUPPLEMENTAL JURISDICTION**

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

NAMED DEFENDANTS AND NAMED PLAINTIFFS

1
2 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
3 franchise organized and existing and/or doing business under the laws of the State of California.
4 Defendant CHINA TOWN RESTAURANT is located at 118 Leucadia Boulevard, Encinitas,
5 California 92024. Plaintiffs are informed and believe and thereon allege that Defendants QIANG
6 GUAN and QIZHUAN GUAN are the owners, operators, and/or doing business as CHINA TOWN
7 RESTAURANT. Defendant QIANG GUAN is located at 1585 Laurel Circle, Vista, California
8 92083. Plaintiffs are informed and believe and thereon allege that Defendant ERNIES CORNER,
9 LLC is the owner, operator, and/or lessor of the property located at 118 Leucadia Boulevard,
10 Encinitas, California 920248, Assessor Parcel Number 254-324-29. Defendant ERNIES CORNER,
11 LLC is located at 9419 Pebble Beach Drive, Santee, California 92071. The words "Plaintiffs" and
12 "Plaintiff's Member" as used herein specifically include the organization MANTIC ASHANTI'S
13 CAUSE, its Members, its member Theodore A. Pinnock and persons associated with its Members
14 who accompanied Members to Defendants' facilities, as well as THEODORE A. PINNOCK, An
15 Individual.

16 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
17 employees, agents, of CHINA TOWN RESTAURANT; QIANG GUAN d.b.a. CHINA TOWN
18 RESTAURANT; QIZHUAN GUAN d.b.a. CHINA TOWN RESTAURANT; QIANG GUAN;
19 QIZHUAN GUAN; and ERNIES CORNER, LLC. Plaintiffs are ignorant of the true names and
20 capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these
21 Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint
22 to allege the true names and capacities of the Does when ascertained.

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

1 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

2 **CONCISE SET OF FACTS**

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

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

18 8. Plaintiff's member personally experienced difficulty with said access barriers at
19 Defendants' CHINA TOWN RESTAURANT facilities. For example, the parking facility of
20 Defendants' establishment is inaccessible. The parking facility has a total of forty-nine (49)
21 parking spaces, including two (2) non-compliant disabled parking spaces. One (1) of the two (2)
22 existing disabled parking spaces is a non-compliant "regular" disabled parking space, which is
23 located in front of the CHINA TOWN RESTAURANT, and is only fifteen feet (15') long, has an
24 impermissible encroachment of a ramp into its access aisle and fails to have the required disability
25 signage. The other existing disabled parking space is a "van accessible" disabled parking space
26 that is located in front of the 7-Eleven store, which is located in the same shopping strip as CHINA
27 TOWN RESTAURANT, and is only fifteen (15') long. It is required that all disabled parking
28

1 spaces are at least eighteen feet (18') long, have the appropriate access aisle that is not encroached
2 upon and has the required disability signage.

3 9. The exterior path of travel of the Defendants' establishment is inaccessible. There fails to
4 be a safe and accessible path of travel from the public sidewalk to the primary accessible entrance,
5 as members of the disability community are forced to traverse through vehicular traffic without the
6 benefit of a marked path of travel. The path of travel to the CHINA TOWN RESTAURANT from
7 the non-compliant "van accessible" disabled parking space in front of the 7-Eleven store is
8 inaccessible, as it consists of a flight of stairs, therefore forcing disabled patrons in wheelchairs to
9 traverse through vehicular traffic in order to access the CHINA TOWN RESTAURANT.

10 10. The entrance to the Defendants establishment is inaccessible, as the front entrance door fails
11 to have the required smooth and uninterrupted surface on the bottom ten inches (10") of the door,
12 which allows the door to be opened with a wheelchair footrest without creating a hazard. The front
13 entrance door also fails to have the required disability signage.

14 11. The cashier counter/bar is inaccessible, as it is forty-two inches (42") high, when it is
15 required to be no more than thirty-four inches (34") high or have a three foot (3') section that is no
16 higher than thirty-four inches (34") high.

17 12. The public seating located inside the Defendants' establishment is inaccessible, as there are
18 a total of forty-three (43) seats located inside of the Defendants' restaurant, including one (1)
19 accessible seat which fails to have the required disability signage. All of the remaining public
20 seating has a knee clearance depth of only five inches to eight inches (5"- 8"). It is required that
21 five percent (5%) of all seats must have a knee clearance depth of at least nineteen inches (19").

22 13. The men's restroom located inside the Defendants' establishment is inaccessible. The clear
23 opening width of the restroom area doorway is only twenty-six inches (26"), when it is required to
24 be at least thirty-two inches (32"). The strike clearance of the restroom area doorway is a mere
25 three inches (3"), when it is required to be at least eighteen inches (18"). The restroom fails to have
26 the required disability signage. The clear opening width of the restroom doorway is only twenty-
27 five inches (25"), when it is required to be at least thirty-two inches (32"). The commode fails to
28

1 have any of the required grab bars. The distance from the side edge of the commode to the near
2 wall is only thirteen inches (13"), when it is required to be at least eighteen inches (18"). The
3 distance from the front edge of the commode to the front wall is only thirty-two inches (32"), when
4 it is required to be at least forty-eight inches (48"). The distance from the side edge of the
5 commode to the far wall is only twenty inches (20"), when it is required to be at least thirty-two
6 inches (32"). The distance from the side edge of the commode to the near wall is only sixteen
7 inches (16"), when it is required to be at least eighteen inches (18"). The flush mechanism on the
8 commode tank is located on the narrow side, when it is required to be located on the wide side of
9 the tank. The height of the commode is only fifteen inches (15"), when it is required to be between
10 seventeen inches and nineteen inches (17" – 19") high. The height of the urinal flush mechanism is
11 fifty inches (50") high, when it is required to be no higher than forty-four inches (44") high. The
12 height of the urinal lip is twenty-four inches (24"), when it is required to be no more than seventeen
13 inches (17") high. The clear floor space in front of the urinal is only twenty-nine inches by sixty
14 inches (29" X 60"), when it is required to be at least thirty inches by forty-eight inches (30" X 48").
15 The area beneath the lavatory is enclosed and fails to provide the required knee clearance. The
16 distance from the centerline of the lavatory to the adjacent wall is only twelve inches (12"), when it
17 is required to be at least eighteen inches (18"). The height of the bottom of the mirror is fifty
18 inches (50") high, when it is required to be no higher than forty inches (40"). The paper towel
19 dispenser is inaccessible, as it is mounted at fifty-eight inches (58") high, when it is required to be
20 mounted no higher than forty inches (40") high. The restroom fails to have the required audible
21 and visual alarm system.

22
23 14. In addition to the violations personally experienced by Plaintiff's member THEODORE A.
24 PINNOCK, additional violations of federal and state disability laws exist at the Defendants'
25 CHINA TOWN RESTAURANT establishment. For example, the public pay telephone is
26 inaccessible, as it fails to have the required volume control unit and the proper signage.

27 15. The stairs in the path of travel that lead patrons to the CHINA TOWN RESTAURANT
28 from the 7-Eleven fail to have the required handrails and the required color contrasting striping.

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

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

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

23 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**

24 **DEFENDANT**

25 19. CHINA TOWN RESTAURANT; QIANG GUAN d.b.a. CHINA TOWN RESTAURANT;
26 QIZHUAN GUAN d.b.a. CHINA TOWN RESTAURANT; QIANG GUAN; QIZHUAN GUAN;
27 ERNIES CORNER, LLC; and Does 1 through 10 will be referred to collectively hereinafter as
28

1 "Defendants."

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

3 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

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

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

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

26 23. Based on the facts plead at ¶¶ 6-18 above and elsewhere in this complaint, Plaintiff's
27 Member Theodore A. Pinnock was denied full and equal access to Defendants' goods, services,
28 facilities, privileges, advantages, or accommodations within a public accommodation owned,

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

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

13 25. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the
14 maximum extent feasible, are readily accessible to and usable by individuals with disabilities
15 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
16 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §
17 12182(a).

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

21
22 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural Barriers**

23 27. Based on the facts plead at ¶¶ 6-18 above and elsewhere in this complaint, Plaintiff's
24 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
25 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
26 Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
27 are informed, believe, and thus allege that architectural barriers which are structural in nature exist
28 within the following physical elements of Defendants' facilities: Space Allowance and Reach

1 Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger
2 Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
3 Windows, Doors, Entrances, Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls,
4 Urinals, Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
5 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones. Title III requires places of
6 public accommodation to remove architectural barriers that are structural in nature to existing
7 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to remove such barriers and
8 disparate treatment against a person who has a known association with a person with a disability
9 are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's
10 Member was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv)
11 and 42 U.S.C. § 12188 because said Member was denied equal access to Defendants' existing
12 facilities.

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

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

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

1 remedy at law to redress the discriminatory conduct of Defendants. Plaintiff's Member desires to
2 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege
3 that a structural or mandatory injunction is necessary to enjoin compliance with federal civil rights
4 laws enacted for the benefit of individuals with disabilities.

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

6
7 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
8 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

21 32. These violations denied Plaintiff's Member full and equal access to Defendants' facility.
22 Thus, said Member was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
23 because Plaintiff's Member was denied full, equal and safe access to Defendants' facility, causing
24 severe emotional distress.

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

26 33. Based on the facts plead at ¶¶ 6-18 above and elsewhere herein this complaint, Defendants
27 failed and refused to provide a reasonable alternative by modifying its practices, policies, and
28 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or

1 others similarly situated in entering and utilizing Defendants' services as required by Civil
2 Code § 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.

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

4 34. Based on the facts plead at ¶¶ 6-18 above and elsewhere herein this complaint and because
5 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
6 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
7 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
8 54.1.

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

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

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

23 37. Defendants, each of them respectively, at times prior to and including, the month of August,
24 2004, and continuing to the present time, knew that persons with physical disabilities were denied
25 their rights of equal access to all portions of this public facility. Despite such knowledge,
26 Defendants, and each of them, failed and refused to take steps to comply with the applicable access
27 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered
28 by Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons with

1 disabilities. Defendants, and each of them, have failed and refused to take action to grant full and
2 equal access to persons with physical disabilities in the respects complained of hereinabove.
3 Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or
4 correct complaints about, denial of disabled access and have refused to comply with their legal
5 obligations to make Defendants' CHINA TOWN RESTAURANT facilities accessible pursuant to
6 the Americans With Disability Act Access Guidelines (ADAAG) and Title 24 of the California
7 Code of Regulations (also known as the California Building Code). Such actions and continuing
8 course of conduct by Defendants, and each of them, evidence despicable conduct in conscious
9 disregard of the rights and/or safety of Plaintiff's Member and of other similarly situated persons,
10 justifying an award of treble damages pursuant to sections 52(a) and 54.3(a) of the California Civil
11 Code.

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

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

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

27 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
28

1 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

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

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

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

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

3
4 DEMAND FOR JUDGMENT FOR RELIEF:

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

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

9 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above,
10 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code
11 § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

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

20 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
21 § 55;

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

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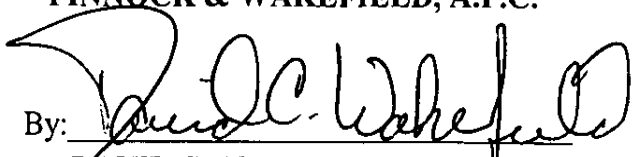
G. A Jury Trial and;

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

Respectfully submitted:

Dated: August 23, 2004

PINNOCK & WAKEFIELD, A.P.C.

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

