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

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\*CMP.\*

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

BY: *[Signature]*

DEPUTY

Attorneys for Plaintiffs

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

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

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

Plaintiffs,

14 v.

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

Defendants.

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

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

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

20 **INTRODUCTION**

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

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

7 **JURISDICTION AND VENUE**

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

13 **SUPPLEMENTAL JURISDICTION**

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

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**NAMED DEFENDANTS AND NAMED PLAINTIFFS**

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

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

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

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

#### 6 CONCISE SET OF FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1  
2 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**  
3 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25  
26 DEMAND FOR JUDGMENT FOR RELIEF:

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

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

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

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

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

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

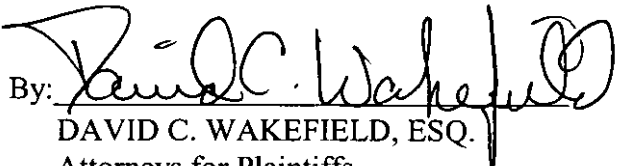
17 G. A Jury Trial and;

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

19 Respectfully submitted:

20  
21 Dated: 1/13/05

**PINNOCK & WAKEFIELD, A.P.C.**

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