US DISTRICT COURT INDEX SHEET

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00583 WQH (LSP)

MANTIC ASHANTI'S CAUSE, SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS; and THEODORE A. PINNOCK, An Individual, Plaintiffs, **v.** **YUNG FU LIN d.b.a. ROYAL VISTA INN; MEI YUEH LIN d.b.a. ROYAL VISTA INN; YUNG FU LIN; MEI YUEH LIN; And DOES 1 THROUGH 10, Inclusive** Defendants.	Case No.: **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 compliance because empirical research on the effectiveness of Title III of the Americans with Disabilities Act indicates this Title has failed to achieve full and equal access simply by the executive branch of the Federal Government funding and promoting voluntary compliance efforts. Further, empirical research shows when individuals with disabilities give actual notice of potential access problems to places of public accommodation without a federal civil rights action, the public accommodations do not remove the access barriers. Therefore, Plaintiffs make the following allegations in this federal civil rights action:

JURISDICTION AND VENUE

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

SUPPLEMENTAL JURISDICTION

2. The Judicial District of the United States District Court of the Southern District of California has supplemental jurisdiction over the state claims as alleged in this Complaint pursuant to 28

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

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. Defendants YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN d.b.a. ROYAL VISTA INN are located at 632 E Street, Chula Vista, California 91910. Plaintiffs are informed and believe and thereon allege that Defendants YUNG FU LIN and MEI YUEH LIN is the owners, operators, and/or doing business as ROYAL VISTA INN. Plaintiffs are informed and believe and thereon allege that Defendants YUNG FU LIN and MEI YUEH LIN are also the owners, operators, and/or

lessors of the property located at 632 E Street, Chula Vista, California 91910, Assessor Parcel Number 567-032-10. Defendants YUNG FU LIN and MEI YUEH LIN are located at 583 Padrone Road, Chula Vista, California 91910. 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 YUNG FU LIN d.b.a. *ROYAL VISTA INN; MEI YUEH LIN* d.b.a. *ROYAL VISTA INN; YUNG* FU LIN; MEI YUEH LIN. 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, general partner, limited partner, agent, employee, representing partner, or joint venturer of the remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs are further informed and believe, and thereon allege, that each of the Defendants herein gave consent to, ratified, and/or authorized the acts alleged herein to each of the remaining

Defendants.

CONCISE SET OF FACTS

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

7. On or about December 22, 2003, Plaintiff's member THEODORE A. PINNOCK went to Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN d.b.a. ROYAL VISTA INN facilities to utilize their goods and/or services. When Plaintiff's member patronized Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN d.b.a. ROYAL VISTA INN facilities, he was unable to use and/or had difficulty using the public accommodations' disabled parking, exterior path of travel, access ramp, entrance, pool, spa, lobby desk, guestroom, guestroom entrance, guestroom closet, and guestroom bathroom facilities at Defendants' business establishment because they failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants failed to remove access barriers within the disabled parking, exterior path of travel, access ramp, entrance, pool, spa, lobby desk, men's restroom located in the lobby, guestroom, guestroom entrance, guestroom closet, and guestroom bathroom facilities of Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and

MEI YUEH LIN d.b.a. ROYAL VISTA INN establishment.

8. Plaintiff's member personally experienced difficulty with said access barriers at Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN d.b.a. ROYAL VISTA INN facilities. For example, the parking facility of Defendants' establishment is inaccessible. The entryway into the parking lot fails to have the required signage warning motorists that anyone illegally parking in a disabled parking space would be towed/fined or both. The parking facility has a total of ninety (90) parking spaces including four (4) disabled parking spaces, none of which are compliant. The parking facility fails to have the required "Van Accessible" disabled parking space. All four (4) of the disabled spaces are regular parking spaces and are only fifteen to sixteen feet (15'-16') long. It is required that there is at least one (1) compliant "van accessible" disabled parking space, that is at least eighteen feet (18') long, with an eight foot (8') wide access aisle and the proper signage. There also should be at least three (3) compliant "regular" parking spaces, that are at least eighteen feet (18') long and have the proper signage.

9. The exterior path of travel of the Defendants' establishment is inaccessible. There fails to be a safe and accessible path of travel from the public sidewalk and from two (2) of the four (4) disabled parking spaces to the restaurant entrance, as members of the disability community are forced to traverse through vehicular traffic and behind parked vehicles other than their own without the benefit of a marked path of travel.

10. The access ramp at the front parking lot is inaccessible, as

it has a side slope of up to sixteen percent (16%). A side slope of an access ramp should be no more than ten percent (10%). The ramp at the front entrance door is also inaccessible, as it has a slope of up to ten percent (10%). The slope of a ramp cannot exceed 8.33%.

11. The front and rear entrances to the Defendants establishment are inaccessible. The front entrance and the rear entrance both fail to have the required smooth and uninterrupted surface on the bottom ten inches (10") of the door that allows a door to be opened with a wheelchair footrest without creating a hazard. The rear entrance fails to have the required five-foot by five-foot (5'X5') level landing. The front and rear entrances doors of the office fail to have the required disability signage.

12. The front desk in the lobby is inaccessible, as it is forty-two inches high (42"). The maximum height requirement is thirty-four inches (34").

13. The Defendants' establishment has seventy-five (75) guestrooms. Defendants' hotel fails to have any accessible guestrooms. If a hotel has between fifty-one and seventy-five (51 and 75) guestrooms, the hotel shall provide three (3) accessible guestrooms, plus one (1) additional accessible guestroom with a roll-in shower. If a hotel has between fifty-one and seventy-five (51 and 75) guestrooms, the hotel shall provide three (3) accessible guestrooms for members of the disability community who are hearing impaired. The accessible guestrooms must be dispersed among the various classes of sleeping accommodations, providing a range of options applicable to room sizes, costs, amenities

provided, and the number of beds provided. Defendants' hotel fails to have the required accessible guestrooms.

14. The guestroom given to Plaintiff's member Theodore A. Pinnock, guestroom 405, is completely inaccessible. The doorknob on the entrance door is inaccessible, as it requires tight grasping and/or twisting by the wrist to operate. The closet rail is too high to be accessible. The bathroom is inaccessible, as the entrance to the bathroom is less than thirty-two inches (32") in width. The bathroom fails to have the required grab bars around the commode and also fails to have the required grab bars in the shower.

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

16. The pool and the spa are both inaccessible, as neither of them have the required device to help disabled patrons in and out of the water.

17. In addition to the violations personally experienced by Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional violations of federal and state disability laws exist at Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN d.b.a. ROYAL VISTA INN. For example, the steps that lead patrons

from the rear entrance door to the rear parking lot fail to have the required contrasting color strips.

18. The Men's restroom located in the lobby of the Defendants' establishment is inaccessible. The restroom door fails to have the required disability signage. The clear opening width of one (1) of the double doors from the lobby to the restroom is only twenty-eight inches (28"), when it should be at least thirty-two inches (32") wide. The restroom doorknob is fails to be accessible, as it requires tight grasping and/or twisting by the wrist to operate. The height of the urinal lip is twenty-three inches (23"), and is inaccessible, as it exceeds the maximum height requirement of seventeen inches (17"). The flush mechanism on the urinal is located a fifty-one inches (51") high, and is inaccessible, as it exceeds the maximum height requirement of forty-four inches (44"). The stall door is inaccessible as it fails to meet the requirement that it opens outward. The stall fails to have the required handles on both sides of the door. The stall fails to have the required self-closing mechanism. The locking mechanism on the stall door fails to be accessible, as it requires tight grasping and/or twisting by the wrist to operate. The commode seat cover dispenser is located at an impermissible height of fifty inches (50"). The commode is inaccessible, as it is only fifteen inches (15") high. The distance from the lavatory to the adjacent wall is only fourteen inches (14"), when it is required to be at least eighteen inches (18"). The knee clearance under the lavatory is only twenty-five inches (25"), and is inaccessible. The hot water and drainage pipes under the lavatory

sink fail to have the required insulation. The mirror is inaccessible as the height of the bottom edge is forty-five inches (45"), when it is required to be no more than forty inches (40"). The paper towel dispenser also fails to be accessible as it is mounted at fifty-six inches (56") above the floor surface. The restroom fails to have the required audible visual alarm system.

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

20. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock was discriminated against each time he patronized Defendants' establishments. Plaintiff's Member and Plaintiff Theodore A. Pinnock was extremely upset due to Defendants' conduct. Further, Plaintiff's Member and Plaintiff

THEODORE A. PINNOCK experienced pain in his legs, back, arms, shoulders and wrists when he attempted to enter, use, and exit Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN d.b.a. ROYAL VISTA INN establishment.

WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

21. YUNG FU LIN d.b.a. ROYAL VISTA INN; MEI YUEH LIN d.b.a. ROYAL VISTA INN; YUNG FU LIN; MEI YUEH LIN; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

23. Based on the facts plead at ¶¶ 6-20 above and elsewhere in this complaint, Plaintiff's Member was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned, leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to Defendants' existing facilities.

24. Plaintiff's member Theodore A. Pinnock has physical

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

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

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

26. Additionally, the Defendants undertook an alteration that

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

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

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

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

29. Based on the facts plead at ¶¶ 6-20 above and elsewhere in this complaint, Plaintiff's Member was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs are informed, believe, and thus allege that architectural barriers

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

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

30. Based on the facts plead at ¶¶ 6-20 above and elsewhere in this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies and procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or others similarly situated in entering and utilizing Defendants' services, as required by 42

U.S.C. § 12188(a). Thus, said Member was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal access to Defendants' existing facilities.

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

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

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

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

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

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

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

35. Based on the facts plead at ¶¶ 6-20 above and elsewhere herein this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies, and

procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or others similarly situated in entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.

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

36. Based on the facts plead at ¶¶ 6-20 above and elsewhere herein this complaint and because Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

37. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and III of Plaintiffs' Second Cause Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm unless Defendants are ordered to remove architectural, non-architectural, and communication barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and a substantial segment of the disability community. Plaintiffs allege there is a state and national public interest in requiring accessibility in places of public accommodation. Plaintiffs have no adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff's Member desires to return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege that a structural or mandatory injunction is

necessary to enjoin compliance with state civil rights laws enacted for the benefit of individuals with disabilities.

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

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

39. Defendants, each of them respectively, at times prior to and including, the month of December, 2003, and continuing to the present time, knew that persons with physical disabilities were denied their rights of equal access to all potions of this public facility. Despite such knowledge, Defendants, and each of them, failed and refused to take steps to comply with the applicable access statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered by Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons with disabilities. Defendants, and each of them, have failed and refused to take action to grant full and equal access to persons with physical disabilities in the respects complained of hereinabove. Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or correct complaints about, denial of disabled access and have refused to comply with their legal obligations to make Defendants' YUNG FU LIN d.b.a. ROYAL VISTA INN and MEI YUEH LIN d.b.a. ROYAL VISTA INN facilities accessible pursuant to the Americans With Disability Act Access Guidelines (ADAAG) and Title 24 of the California Code of Regulations (also known as the California Building Code). Such actions and continuing course of conduct by Defendants, and each of them, evidence despicable conduct in conscious disregard of the

rights and/or safety of Plaintiff's Member and of other similarly situated persons, justifying an award of treble damages pursuant to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

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

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

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

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

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

45. Therefore, Defendants engaged in discriminatory conduct in that they failed to comply with known duties under the ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew or should have known that their acts of nonfeasance would cause Plaintiff THEODORE A. PINNOCK emotional, bodily and personal injury. Plaintiff THEODORE A. PINNOCK alleges that there was bodily injury in this matter because when Plaintiff THEODORE A. PINNOCK attempted to enter, use, and exit Defendants'

establishment, Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back, arms, shoulders, and wrists. Plaintiffs further allege that such conduct was done in reckless disregard of the probability of said conduct causing Plaintiff THEODORE A. PINNOCK to suffer bodily or personal injury, anger, embarrassment, depression, anxiety, mortification, humiliation, distress, and fear of physical injury. Plaintiff THEODORE A. PINNOCK, An Individual, alleges that such conduct caused THEODORE A. PINNOCK, An Individual, to suffer the injuries of mental and emotional distress, including, but not limited to, anger, embarrassment, depression, anxiety, mortification, humiliation, distress, and fear of physical injury. Plaintiff THEODORE A. PINNOCK, An Individual, additionally alleges that such conduct caused THEODORE A. PINNOCK, An Individual, to suffer damages as a result of these injuries.

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

DEMAND FOR JUDGMENT FOR RELIEF:

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

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

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

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

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

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

G. A Jury Trial and;

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

Respectfully submitted:

PINNOCK & WAKEFIELD

Dated: March 18, 2004

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

JS44
(Rev. 07/89)

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

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

DEFENDANTS
YUNG FU LIN d.b.a. ROYAL VISTA INN; MEI YUEH LIN d.b.a. ROYAL VISTA INN; YUNG FU LIN; MEI YUEH LIN; And DOES 1 THROUGH 10, Inclusive

04 MAR 19 AM 9:47
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San-Diego
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Michelle L. Wakefield, Esq. SBN: 200424
David C. Wakefield, Esq. SBN: 185736
Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)
'04 CV 00583 WQH (LSP)

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

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

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

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

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

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ Marine	☐ 310 Airplane	☐ 362 Personal Injury-Medical Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure Of Property 21 USC 881	PROPERTY RIGHTS	☐ 430 Banks and Banking
☐ Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	☐ 820 Copyrights	☐ 450 Commerce/ICC Rates/etc.
☐ 150 Recovery of overpayment &Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 RR & Truck	☐ 830 Patent	☐ 460 Deportation
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs	☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health	SOCIAL SECURITY	☐ 810 Selective Service
☐ 153 Recovery of Overpayment of Veterans Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities Exchange
☐ 160 Stockholders Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	LABOR	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC
☐ Other Contract	☐ 360 Other Personal Injury		☐ 710 Fair Labor Standards Act	☐ 863 DIWC/DIWW (405(g))	☐ 891 Agricultural Acts
☐ 195 Contract Product Liability			☐ 720 Labor/Mgmt Relations	☐ 864 SSID Title XVI	☐ 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 730 Labor/Mgmt. Reporting & Disclosure Act	☐ 865 RSI (405(g))	☐ 893 Environmental Matters
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence Habeas Corpus	☐ 740 Railway Labor Act	FEDERAL TAX SUITS	☐ 894 Energy Allocation Act
☐ 220 Foreclosure	☐ 442 Employment	☐ 530 General	☐ 790 Other Labor Litigation	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/Accommodations	☐ 535 Death Penalty	☐ 791 Empl. Ret. Inc. Security Act	☐ 871 IRS - Third Party 26 USC 7609	☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 240 Tort to Land	☐ 444 Welfare	☐ 540 Mandamus & Other			☐ 950 Constitutionality of State
☐ 245 Tort Product Liability	☒ 440 Other Civil Rights	☐ 550 Civil Rights			☐ 890 Other Statutory Actions
☐ 290 All Other Real Property		☐ 555 Prisoner Conditions			

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 MARCH 12, 2004

SIGNATURE OF ATTORNEY OF RECORD Michelle L. Wakefield

#102049 MS 150