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

DEPUTY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 00584 WQH (JFS)

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

Plaintiffs,

v.

SULANA B. SAE-ONGE d.b.a. LES
ARTISTES INN OF DEL MAR
a.k.a. VILLAGE MOTEL; SULANA
B. SAE-ONGE; 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

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

15 JURISDICTION AND VENUE

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

25 SUPPLEMENTAL JURISDICTION

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

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

17
18 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

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

22 Defendant SULANA B. SAE-ONGE d.b.a. LES ARTISTES INN OF DEL MAR
23 a.k.a. VILLAGE MOTEL is located at 944 Camino Del Mar, Del Mar,
24 California 92014. Plaintiffs are informed and believe and thereon
25 allege that Defendant SULANA B. SAE-ONGE is the owner, operator,
26 and/or doing business as LES ARTISTES INN OF DEL MAR a.k.a.
27 VILLAGE MOTEL. Plaintiffs are informed and believe and thereon
28 allege that Defendant SULANA B. SAE-ONGE is also the owner,

1 operator, and/or lessor of the property located at 944 Camino Del
2 Mar, Del Mar, California 92014, Assessor Parcel Number 300-172-04.
3 Defendant SULANA B. SAE-ONGE is located at 7316 Cadencia Street,
4 Carlsbad, California 92009. The words "Plaintiffs" and
5 "Plaintiff's Member" as used herein specifically include the
6 organization MANTIC ASHANTI'S CAUSE, its Members, its member
7 Theodore A. Pinnock and persons associated with its Members who
8 accompanied Members to Defendants' facilities, as well as THEODORE
9 A. PINNOCK, An Individual.

10 4. Defendants Does 1 through 10, were at all times relevant
11 herein subsidiaries, employers, employees, agents, of SULANA B.
12 SAE-ONGE d.b.a. LES ARTISTES INN OF DEL MAR a.k.a. VILLAGE MOTEL;
13 and SULANA B. SAE-ONGE. Plaintiffs are ignorant of the true names
14 and capacities of Defendants sued herein as Does 1 through 10,
15 inclusive, and therefore sues these Defendants by such fictitious
16 names. Plaintiffs will pray leave of the court to amend this
17 complaint to allege the true names and capacities of the Does when
18 ascertained.

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

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

1 Defendants.

2 CONCISE SET OF FACTS

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

10 7. On or about February 20, 2004, Plaintiff's member THEODORE A.
11 PINNOCK went to Defendants' SULANA B. SAE-ONGE d.b.a. LES ARTISTES
12 INN OF DEL MAR a.k.a. VILLAGE MOTEL facilities to utilize their
13 goods and/or services. When Plaintiff's member patronized
14 Defendants' SULANA B. SAE-ONGE d.b.a. LES ARTISTES INN OF DEL MAR
15 a.k.a. VILLAGE MOTEL facilities, he was unable to use and/or had
16 difficulty using the public accommodations' disabled parking,
17 exterior path of travel, entrance, interior path of travel,
18 customer/registration counter, guestroom, guestroom operable
19 controls, guestroom closet, guestroom entrance, guestroom bathroom
20 facilities at Defendants' business establishment because they
21 failed to comply with ADA Access Guidelines For Buildings and
22 Facilities (hereafter referred to as "ADAAG") and/or California's
23 Title 24 Building Code Requirements. Defendants failed to remove
24 access barriers within the disabled parking, exterior path of
25 travel, stairs, entrance, interior path of travel,
26 customer/registration counter, guestroom, guestroom operable
27 controls, guestroom closet, guestroom entrance, guestroom bathroom
28

1 facilities of Defendants' SULANA B. SAE-ONGE d.b.a. LES ARTISTES
2 INN OF DEL MAR a.k.a. VILLAGE MOTEL establishment.

3 8. Plaintiff's member personally experienced difficulty with
4 said access barriers at Defendants' SULANA B. SAE-ONGE d.b.a. LES
5 ARTISTES INN OF DEL MAR a.k.a. VILLAGE MOTEL facilities. For
6 example, the parking facility of Defendants' establishment is
7 inaccessible. The one (1) entryway into the parking lot fails to
8 have the required signage warning motorists that anyone illegally
9 parking in a disabled parking space would be towed/fined or both.
10 The parking facility has a total of seventeen (17) parking spaces
11 including one (1) van accessible disabled parking spaces. The van
12 accessible disabled parking space does not have the required
13 signage. It is required that there is at least one (1) compliant
14 "van accessible" disabled parking space, that is at least eighteen
15 feet (18') long, with an eight foot (8') wide access aisle and the
16 proper signage.

17 9. The exterior path of travel of the Defendants' establishment
18 fails to be accessible, as the exterior path of travel is less
19 than thirty-two inches (32") in some areas. An accessible exterior
20 path of travel should be a minimum width of thirty-six inches
21 (36").

22 10. The entrance to the lobby of the Defendants establishment is
23 inaccessible. The entrance has double doors and each door is only
24 twenty-two inches (22") wide. As one door is locked, this causes
25 the clear width of the entrance door to be a mere twenty-two
26 inches (22") side, when it is required to be thirty-two inches
27 (32") wide. The entrance door to the lobby fails to have the
28

1 required disability signage. The handles on the entrance door
2 fail to be accessible, as they require tight grasping or twisting
3 by the wrist to operate. The entrance door also fails to have the
4 required smooth and uninterrupted surface on the bottom ten inches
5 (10") of the door that allows the door to be opened with a
6 wheelchair footrest without creating a hazard.

7 11. The interior path of travel of the lobby is inaccessible, as
8 there is insufficient clear floor space for a wheelchair, as the
9 interior path of travel is only twenty-four inches (24") long.

10 This space between the entrance door and the customer/registration
11 counter fails to meet the minimum requirement of thirty inches by
12 forty-eight inches (30"X48") of clear space for a wheelchair.

13 12. The customer/registration counter is inaccessible, as it is
14 an impermissible fifty inches (50") from the floor surface.

15 13. The Defendants' establishment has nine (9) guestrooms. If a
16 hotel has between one and twenty-five (1 and 25) guestrooms, the
17 hotel shall provide one (1) accessible guestrooms. If a hotel has
18 between one and twenty-five (1 and 25) guestrooms, the hotel shall
19 provide one (1) accessible guestrooms for members of the
20 disability community who are hearing impaired.

21 14. Plaintiff's member THEODORE A. PINNOCK was given the
22 designated accessible guestroom, Guestroom 1, that was
23 inaccessible. The entrance to guestroom 1 is inaccessible, as the
24 doorknob requires grasping and/or twisting by the wrist to
25 operate. The entrance to the patio is inaccessible, as there is
26 an impermissible one-inch (1") threshold.

27 15. The bathroom in guestroom 1 is inaccessible. The faucet
28

1 handles on the lavatory sink in the bathroom are inaccessible, as
2 they require tight grasping and/or twisting by the wrist to
3 operate. The grab bar at the rear of the commode is only twenty-
4 four and one half (24½") inches long. The side grab bar inside of
5 the tub area is only forty-three (43") inches long, and fails to
6 be accessible. The mirror fails to be accessible as it is mounted
7 at an impermissible fifty-four and one half inches (54 ½") above
8 the floor surface. The shelves in the bathroom fail to be
9 accessible, as they mounted at fifty-three and one half inches
10 (53½") high. The electrical outlet in the bathroom is inaccessible
11 as it is mounted more than forty-one and one half inches (41½)
12 high. The height of the commode is only fifteen (15") inches high.
13 The flush mechanism on the toilet fails to be located the right
14 side of the commode.

15 16. The television located inside guestroom 1 is inaccessible, as
16 the operable parts of the controls are forty-nine inches (49")
17 high and the control knobs require tight grasping and/or twisting
18 by the wrist to operate.

19 17. The closet dowel is inaccessible, as it is mounted more than
20 seventy-three inches (73") from the floor surface.

21 18. In addition to the violations personally experienced by
22 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
23 violations of federal and state disability laws exist at
24 Defendants' SULANA B. SAE-ONGE d.b.a. LES ARTISTES INN OF DEL MAR
25 a.k.a. VILLAGE MOTEL. For example, the exterior stairs are
26 inaccessible, as they fail to have the uniform riser heights and
27 the uniform tread widths. There are also four (4) steps leading
28

1 to the back of the motel that lead to the ocean that are also
2 inaccessible, as they fail to have the required handrails and the
3 required slip resistant treads.

4 19. Pursuant to federal and state law, Defendants are required to
5 remove barriers to their existing facilities. Further, Defendants
6 had actual knowledge of their barrier removal duties under the
7 Americans with Disabilities Act and the Civil Code before January
8 26, 1992. Also, Defendants should have known that individuals
9 with disabilities are not required to give notice to a
10 governmental agency before filing suit alleging Defendants failed
11 to remove architectural barriers.

12 20. Plaintiffs believe and herein allege Defendants' facilities
13 have access violations not directly experienced by Plaintiff's
14 Member which preclude or limit access by others with disabilities,
15 including, but not limited to, Space Allowance and Reach Ranges,
16 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
17 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
18 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
19 Entrances, Drinking Fountains and Water Coolers, Water Closets,
20 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
21 Handrails, Grab Bars, and Controls and Operating Mechanisms,
22 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
23 Plaintiffs allege Defendants are required to remove all
24 architectural barriers, known or unknown. Also, Plaintiffs allege
25 Defendants are required to utilize the ADA checklist for Readily
26 Achievable Barrier Removal approved by the United States
27 Department of Justice and created by Adaptive Environments.
28

1 21. Based on these facts, Plaintiffs allege Plaintiff's Member
2 and Plaintiff Theodore A. Pinnock was discriminated against each
3 time he patronized Defendants' establishments. Plaintiff's Member
4 and Plaintiff Theodore A. Pinnock was extremely upset due to
5 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
6 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
7 shoulders and wrists when he attempted to enter, use, and exit
8 Defendants' SULANA B. SAE-ONGE d.b.a. LES ARTISTES INN OF DEL MAR
9 a.k.a. VILLAGE MOTEL establishment.

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

11
12 22. SULANA B. SAE-ONGE d.b.a. LES ARTISTES INN OF DEL MAR a.k.a.
13 VILLAGE MOTEL; SULANA B. SAE-ONGE; and Does 1 through 10 will be
14 referred to collectively hereinafter as "Defendants."

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

17 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

22 24. Based on the facts plead at ¶¶ 6-21 above and elsewhere in
23 this complaint, Plaintiff's Member was denied full and equal
24 access to Defendants' goods, services, facilities, privileges,
25 advantages, or accommodations. Plaintiffs allege Defendants are a
26 public accommodation owned, leased and/or operated by Defendants.
27 Defendants' existing facilities and/or services failed to provide
28 full and equal access to Defendants' facility as required by 42

1 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
2 discrimination in violation of 42 United States Code
3 12182(b) (2) (A) (iv) and 42 U.S.C. § 12188 because Plaintiff's
4 Member was denied equal access to Defendants' existing facilities.

5 25. Plaintiff's member Theodore A. Pinnock has physical
6 impairments as alleged in ¶ 6 above because his conditions affect
7 one or more of the following body systems: neurological,
8 musculoskeletal, special sense organs, and/or cardiovascular.

9 Further, Plaintiff's member Theodore A. Pinnock's said physical
10 impairments substantially limits one or more of the following
11 major life activities: walking. In addition, Plaintiff's member
12 Theodore A. Pinnock cannot perform one or more of the said major
13 life activities in the manner, speed, and duration when compared
14 to the average person. Moreover, Plaintiff's member Theodore A.
15 Pinnock has a history of or has been classified as having a
16 physical impairment as required by 42 U.S.C. § 12102(2) (A).
17

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

21 26. Based on the facts plead at ¶¶ 6-21 above and elsewhere in
22 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
23 full and equal access to Defendants' goods, services, facilities,
24 privileges, advantages, or accommodations within a public
25 accommodation owned, leased, and/or operated by Defendants.
26 Defendants altered their facility in a manner that affects or
27 could affect the usability of the facility or a part of the
28 facility after January 26, 1992. In performing the alteration,
Defendants failed to make the alteration in such a manner that, to

1 the maximum extent feasible, the altered portions of the facility
2 are readily accessible to and usable by individuals with
3 disabilities, including individuals who use wheelchairs, in
4 violation of 42 U.S.C. §12183(a)(2).

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

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

19 29. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
20 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
21 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
22 Pinnock was denied equal access to Defendants' existing
23 facilities.

24
25 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
26 Architectural Barriers

27 30. Based on the facts plead at ¶¶ 6-21 above and elsewhere in
28 this complaint, Plaintiff's Member was denied full and equal

1 access to Defendants' goods, services, facilities, privileges,
2 advantages, or accommodations within a public accommodation owned,
3 leased, and/or operated by Defendants. Defendants failed to
4 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
5 are informed, believe, and thus allege that architectural barriers
6 which are structural in nature exist within the following physical
7 elements of Defendants' facilities: Space Allowance and Reach
8 Ranges, Accessible Route, Protruding Objects, Ground and Floor
9 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
10 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
11 Doors, Entrances, Drinking Fountains and Water Coolers, Water
12 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
13 Storage, Handrails, Grab Bars, and Controls and Operating
14 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
15 Title III requires places of public accommodation to remove
16 architectural barriers that are structural in nature to existing
17 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
18 Failure to remove such barriers and disparate treatment against a
19 person who has a known association with a person with a disability
20 are forms of discrimination. [See 42 United States Code
21 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
22 discrimination in violation of 42 United States Code
23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
24 denied equal access to Defendants' existing facilities.
25

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

28 31. Based on the facts plead at ¶¶ 6-21 above and elsewhere in

1 this complaint, Defendants failed and refused to provide a
2 reasonable alternative by modifying its practices, policies and
3 procedures in that they failed to have a scheme, plan, or design
4 to assist Plaintiff's Member and/or others similarly situated in
5 entering and utilizing Defendants' services, as required by 42
6 U.S.C. § 12188(a). Thus, said Member was subjected to
7 discrimination in violation of 42 United States Code
8 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
9 denied equal access to Defendants' existing facilities.

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

27
28 33. WHEREFORE, Plaintiffs pray for judgment and relief as

1 hereinafter set forth.

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

4 CLAIM I: Denial Of Full And Equal Access

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

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

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

27 36. Based on the facts plead at ¶¶ 6-21 above and elsewhere
28

1 herein this complaint, Defendants failed and refused to provide a
2 reasonable alternative by modifying its practices, policies, and
3 procedures in that they failed to have a scheme, plan, or design
4 to assist Plaintiff's Member and/or others similarly situated in
5 entering and utilizing Defendants' services as required by Civil
6 Code § 54.1. Thus, said Member was subjected to discrimination in
7 violation of Civil Code § 54.1.

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

9 37. Based on the facts plead at ¶¶ 6-21 above and elsewhere
10 herein this complaint and because Defendants violated the Civil
11 Code § 51 by failing to comply with 42 United States Code §
12 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
13 continue to discriminate against Plaintiff's Member and persons
14 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

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

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

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

9 40. Defendants, each of them respectively, at times prior to and
10 including, the month of February, 2004, and continuing to the
11 present time, knew that persons with physical disabilities were
12 denied their rights of equal access to all portions of this public
13 facility. Despite such knowledge, Defendants, and each of them,
14 failed and refused to take steps to comply with the applicable
15 access statutes; and despite knowledge of the resulting problems
16 and denial of civil rights thereby suffered by Plaintiff's Member
17 THEODORE A. PINNOCK and other similarly situated persons with
18 disabilities. Defendants, and each of them, have failed and
19 refused to take action to grant full and equal access to persons
20 with physical disabilities in the respects complained of
21 hereinabove. Defendants, and each of them, have carried out a
22 course of conduct of refusing to respond to, or correct complaints
23 about, denial of disabled access and have refused to comply with
24 their legal obligations to make Defendants' SULANA B. SAE-ONGE
25 d.b.a. LES ARTISTES INN OF DEL MAR a.k.a. VILLAGE MOTEL facilities
26 accessible pursuant to the Americans With Disability Act Access
27 Guidelines (ADAAG) and Title 24 of the California Code of
28 Regulations (also known as the California Building Code). Such

1 actions and continuing course of conduct by Defendants, and each
2 of them, evidence despicable conduct in conscious disregard of the
3 rights and/or safety of Plaintiff's Member and of other similarly
4 situated persons, justifying an award of treble damages pursuant
5 to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

28 43. Wherefore, Plaintiffs pray for damages and relief as

1 hereinafter stated.

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

4 44. Based on the facts plead at ¶¶ 6-21 above and elsewhere in
5 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
6 statutory duty to make their facility accessible and owed
7 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
8 Pinnock reasonably safe from known dangers and risks of harm.
9 This said duty arises by virtue of legal duties proscribed by
10 various federal and state statutes including, but not limited to,
11 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
12 California Administrative Code and applicable 1982 Uniform
13 Building Code standards as amended.

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

22 46. Therefore, Defendants engaged in discriminatory conduct in
23 that they failed to comply with known duties under the ADA, ADAAG,
24 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
25 or should have known that their acts of nonfeasance would cause
26 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
27 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
28

1 bodily injury in this matter because when Plaintiff THEODORE A.
2 PINNOCK attempted to enter, use, and exit Defendants'
3 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
4 his legs, back, arms, shoulders, and wrists. Plaintiffs further
5 allege that such conduct was done in reckless disregard of the
6 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
7 to suffer bodily or personal injury, anger, embarrassment,
8 depression, anxiety, mortification, humiliation, distress, and
9 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
10 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
11 An Individual, to suffer the injuries of mental and emotional
12 distress, including, but not limited to, anger, embarrassment,
13 depression, anxiety, mortification, humiliation, distress, and
14 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
15 Individual, additionally alleges that such conduct caused THEODORE
16 A. PINNOCK, An Individual, to suffer damages as a result of these
17 injuries.

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

21 DEMAND FOR JUDGMENT FOR RELIEF:

- 22 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
23 3281, and 3333;
24 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
25 each and every offense of Civil Code § 51, Title 24 of the
26 California Building Code, ADA, and ADA Accessibility Guidelines;
27 C. In the alternative to the damages pursuant to Cal. Civil
28 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to

1 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
2 54.1, Title 24 of the California Building Code, ADA, and ADA
3 Accessibility Guidelines;

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

15 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
16 § 12205, and Cal. Civil Code § 55;

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

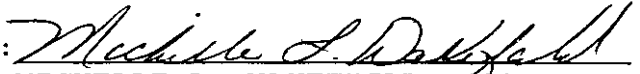
19 G. A Jury Trial and;

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

21 Respectfully submitted:

22 PINNOCK & WAKEFIELD

23
24 Dated: March 18, 2004

25 By: 
26 MICHELLE L. WAKEFIELD, ESQ.
27 DAVID C. WAKEFIELD, ESQ.
28 Attorneys for Plaintiffs

CIVIL COVER SHEET

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

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

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

(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

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

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

DEFENDANTS
SULANA B. SAE-ONGE d.b.a. LES ARTISTES INN OF DEL MAR a.k.a. VILLAGE MOTEL; SULANA B. SAE-ONGE; And DOES 1 THROUGH 10, Inclusive

04 MAR 19 AM 9:48

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

ATTORNEYS (IF KNOWN)

'04 CV 00584 WQH (JFS)

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

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

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

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

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

Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

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 18, 2004

SIGNATURE OF ATTORNEY OF RECORD

#102050 MS 150-

Michelle L. Wakefield