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3:04-CV-02047 PINNOCK V. HILTON GARDEN INN

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SOUTHERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiffs

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

'04 CV 2 047

BEN (WMC)

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

Plaintiffs,

v.

**HILTON GARDEN INN CARLSBAD
BEACH; WAVE CREST RESORTS,
LLC d.b.a. HILTON GARDEN INN
CARLSBAD BEACH; CAPTSTAR
CALIFORNIA BEVERAGE
CORPORATION d.b.a. HILTON
GARDEN INN CARLSBAD BEACH;
WAVE CREST RESORTS, LLC; 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

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

8 **JURISDICTION AND VENUE**

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

14 **SUPPLEMENTAL JURISDICTION**

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

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2 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
3 franchise organized and existing and/or doing business under the laws of the State of California.
4 Defendant HILTON GARDEN INN CARLSBAD BEACH is located at 6450 Carlsbad Boulevard,
5 Carlsbad, California 92008. Plaintiffs are informed and believe and thereon allege that Defendants
6 WAVE CREST RESORTS, LLC and/or CAPTSTAR CALIFORNIA BEVERAGE
7 CORPORATION are the owners, operators, and/or doing business as HILTON GARDEN INN
8 CARLSBAD BEACH. Defendant WAVE CREST RESORTS, LLC is located at 829 Second
9 Street, Suite A, Encinitas, California 92024. Defendant CAPTSTAR CALIFORNIA BEVERAGE
10 CORPORATION is located at 1010 Wisconsin Avenue, Suite 650, Washington, DC 20007.
11 Plaintiffs are informed and believe and thereon allege that Defendants WAVE CREST RESORTS,
12 LLC is the owner, operator, and/or lessor of the property located at 6450 Carlsbad Boulevard,
13 Carlsbad, California 92008, Assessor Parcel number 210-100-19. The words Plaintiffs” and
14 "Plaintiff's Member" as used herein specifically include the organization MANTIC ASHANTI'S
15 CAUSE, its Members, its member Theodore A. Pinnock and persons associated with its Members
16 who accompanied Members to Defendants’ facilities, as well as THEODORE A. PINNOCK, An
17 Individual.

18 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
19 employees, agents, of HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST
20 RESORTS, LLC d.b.a. HILTON GARDEN INN CARLSBAD BEACH; CAPTSTAR
21 CALIFORNIA BEVERAGE CORPORATION d.b.a. HILTON GARDEN INN CARLSBAD
22 BEACH; and WAVE CREST RESORTS, LLC. Plaintiffs are ignorant of the true names and
23 capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these
24 Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint
25 to allege the true names and capacities of the Does when ascertained.

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

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

11 7. On August 16, 2004, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK went to
12 Defendants' HILTON GARDEN INN CARLSBAD BEACH facilities to utilize their goods and/or
13 services. When Plaintiff's Member and Plaintiff THEODORE A. PINNOCK patronized
14 Defendants' HILTON GARDEN INN CARLSBAD BEACH facilities, he was unable to use and/or
15 had difficulty using the public accommodations' disabled parking, entrance, cashier counter, pool
16 area entrance, pool, spa, restaurant exterior dining entrance, restaurant public seating, lobby
17 restroom, guestroom, guestroom entrance, guestroom interior path of travel, guestroom operable
18 controls, and guestroom bathroom facilities at Defendants' business establishments because they
19 failed to comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as
20 "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants failed to remove
21 access barriers within the public accommodations' disabled parking, entrance, cashier counter, pool
22 area entrance, pool, spa, restaurant exterior dining entrance, restaurant public seating, exercise
23 room entrance, lobby restroom, exercise restroom, guestroom, guestroom entrance, guestroom
24 interior path of travel, guestroom operable controls, and guestroom bathroom facilities of
25 Defendants' HILTON GARDEN INN CARLSBAD BEACH establishment.

26 8. Plaintiff's member personally experienced difficulty with said access barriers at
27 Defendants' HILTON GARDEN INN CARLSBAD BEACH facility. For example, the parking
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1 facility is comprised of two hundred and twenty nine (229) parking spaces, seven (7) of which are
2 designated as disabled parking spaces. One (1) of the seven (7) disabled parking spaces is a non-
3 compliant "regular" disabled parking space that is only seventeen feet (17') long. Three (3) of the
4 remaining ~~six~~^{Six} (6) disabled parking spaces are non-complaint "van accessible" disabled parking
5 spaces that are only sixteen feet to seventeen feet (16'-17') long and two (2) of which have an
6 impermissible slope of up to four percent (4%). It is required that all disabled parking spaces are at
7 least eighteen feet (18') long and have a slope that is no greater than two percent (2%).

8 9. The front entrance door fails to have the required disability signage. There is a loose
9 doormat at the front entrance that fails to meet the requirement that all doormats are anchored
10 securely or recessed onto the door landing.

11 10. The cashier counter is inaccessible, as it is forty-four inches (44") high, when it is required
12 to be no higher than thirty-four inches (34").

13 11. The pool is inaccessible. The entrance door to the pool fails to have the required smooth
14 uninterrupted surface on the bottom ten inches (10") of all doors that allows for a door to be opened
15 with a wheelchair footrest without creating a hazard. The pool also does not have the required
16 device to assist disabled patrons in and out of the pool.

17 12. The spa does not have the required device to assist disabled patrons in and out of the water.

18 13. The restaurant exterior dining is inaccessible. The strike clearance of the exterior dining
19 area door is only twelve to fifteen inches (12"-15"), when it is required to be at least eighteen
20 inches (18"). The pressure that is required to open the exterior dining area door is eleven pounds
21 (11 lbs.), when it is required to be no more than five pounds (5 lbs.).

22 14. The public seating located inside the restaurant at the Defendants' establishment is
23 inaccessible. There are a total of forty-four (44) seats located inside the restaurant, all of which
24 have a knee clearance depth of a mere three inches (3"). It is required that five percent (5%) of all
25 seats have a knee clearance depth of at least nineteen inches (19"). There are a total of fifty (50)
26 seat located in the outside area of the restaurant, all of which have a knee clearance depth of a mere
27 three inches (3"). It is required that five percent (5%) of all seats have a knee clearance depth of at
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1 least nineteen inches (19”).

2 15. The lobby area Men’s restroom is inaccessible. The pressure that is required to open the
3 restroom area door is eleven pounds (11 lbs.), when it is required to be no more than five pounds (5
4 lbs.). The pressure that is required to open the restroom door is eleven pounds (11 lbs.), when it is
5 required to be no more than five pounds (5 lbs.). The stall fails to have the required handles on
6 both sides of the door. The small round radio control switch is inaccessible, as it requires tight
7 grasping and/or twisting of the wrist to operate. The height of the bottom of the mirror is forty-
8 three inches (43”), when it is required to be no more than forty inches (40”) from the floor surface.
9 The height of the soap dispenser is fifty-one inches (51”), when it is required to be no higher than
10 forty inches (40”) high.

11 16. The Defendants’ establishment has a total of one hundred and sixty one (161) guestrooms,
12 including six (6) “accessible” guestrooms and two (2) “accessible” guestrooms with roll-in showers
13 that are non-compliant. If a hotel has between one hundred and fifty one and two hundred (151 and
14 200) guestrooms, the hotel shall provide at least six (6) fully accessible rooms, and two (2)
15 additional accessible guestrooms with a roll-in shower. If a hotel has between one hundred and
16 fifty one and two hundred (151 and 200) guestrooms, the hotel shall provide six (6) accessible
17 guestrooms for members of the disability community who are hearing impaired. The accessible
18 guestrooms must be dispersed among the various classes of sleeping accommodations, providing a
19 range of options applicable to room sizes, costs, amenities provided, and the number of beds
20 provided. Defendants’ hotel fails to have the required accessible guestrooms.

21 17. Plaintiff’s member and Plaintiff Theodore A. Pinnock requested a room with a roll-in
22 shower, however Plaintiff’s member and Plaintiff Theodore A. Pinnock was given a designated
23 accessible guestroom without a roll-in shower, which was also inaccessible.

24 18. In addition to the violations personally experienced by Plaintiff’s member and Plaintiff
25 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants’
26 HILTON GARDEN INN CARLSBAD BEACH establishment. For example Guestroom 142, a
27 designated “accessible” room, located in the Defendants’ hotel is inaccessible. The entrance door
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1 to guestroom 142 is inaccessible, as it requires eight pounds (8 lbs.) of pressure to operate, when it
2 is required to be no more than five pounds (5 lbs.). The round locking mechanism on the
3 guestroom entrance door is inaccessible, as it requires tight grasping and/or twisting of the wrist to
4 operate. The clear floor space between the beds is only twenty-nine inches (29"), when it is
5 required to be at least thirty-six inches (36"). The game controller is located on top of the
6 television at sixty-one inches (61") high, when it is required to be located no higher than forty-eight
7 inches (48") high.

8 19. The bathroom located inside Guestroom 142 is inaccessible. The shower seat is not the
9 required folding type. The mixing valve located in the shower is located forty-one inches (41")
10 from the shower seat, when it is required to be located between seventeen inches to twenty-four
11 inches (17"-24") from seat mounting wall.

12 20. The exercise room located at the Defendants' establishment is inaccessible, as the pressure
13 that is required to open the front entrance door to the exercise room is eleven pounds (11 lbs.),
14 when it is required to be no more than five pounds (5 lbs.).

15 21. The men's restroom located in the exercise room is inaccessible, as the pressure that is
16 required to open the restroom door is eleven pounds (11 lbs.), when it is required to be no more
17 than five pounds (5 lbs.).

18 22. The women's restroom located in the exercise room is inaccessible, as the pressure that is
19 required to open the restroom area door is eleven pounds (11 lbs.), when it is required to be no
20 more than five pounds (5 lbs.). The pressure that is required to open the restroom door is eleven
21 pounds (11 lbs.), when it is required to be no more than five pounds (5 lbs.).

22 23. 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 24. Plaintiffs believe and herein allege Defendants' facilities have access violations not
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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 25. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock
12 was discriminated against each time he patronized Defendants' establishment. 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' establishment.

16 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED**
17 **DEFENDANT**

18 26. HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST RESORTS, LLC d.b.a.
19 HILTON GARDEN INN CARLSBAD BEACH; CAPTSTAR CALIFORNIA BEVERAGE
20 CORPORATION d.b.a. HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST
21 RESORTS, LLC; and Does 1 through 10 will be referred to collectively hereinafter as
22 "Defendants."
23

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

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

5 31. Additionally, the Defendants undertook an alteration that affects or could affect the usability
6 of or access to an area of the facility containing a primary function after January 26, 1992.

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

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

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

19
20 CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural Barriers**

21 34. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Plaintiff's
22 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
23 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
24 Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
25 are informed, believe, and thus allege that architectural barriers which are structural in nature exist
26 within the following physical elements of Defendants' facilities: Space Allowance and Reach
27 Ranges, Accessible Route, Protruding Objects, Ground and Floor Surfaces, Parking and Passenger
28 Loading Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),

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

11
12 **CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices, Policies And**
13 **Procedures**

14 35. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Defendants
15 failed and refused to provide a reasonable alternative by modifying its practices, policies and
16 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
17 others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
18 12188(a). Thus, said Member was subjected to discrimination in violation of 42 United States
19 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal access to
20 Defendants' existing facilities.

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

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

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

5
6 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
7 **CALIFORNIA ACCESSIBILITY LAWS**

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

9 38. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Plaintiff's
10 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
11 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
12 Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated
13 California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities
14 due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
15 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
16 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
17 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
18 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
19 Detectable Warnings, Signage, and Telephones.

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

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

25 40. Based on the facts plead at ¶¶ 6-25 above and elsewhere herein this complaint, Defendants
26 failed and refused to provide a reasonable alternative by modifying its practices, policies, and
27 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
28 others similarly situated in entering and utilizing Defendants' services as required by Civil

1 Code § 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.

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

3 41. Based on the facts plead at ¶¶ 6-25 above and elsewhere herein this complaint and because
4 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
5 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
6 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
7 54.1.

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

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

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

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

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

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

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

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

3 48. Based on the facts plead at ¶¶ 6-25 above and elsewhere in this complaint, Defendants owed
4 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
5 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
6 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
7 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1,
8 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building
9 Code standards as amended.

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

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

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

3 51. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
4

5 DEMAND FOR JUDGMENT FOR RELIEF:

6 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and 3333;
7

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

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

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

23 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
24 § 55;
25

26 F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and 54.3(a);
27
28

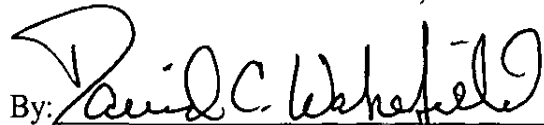
1 G. A Jury Trial and;

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

3 Respectfully submitted:

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6 Dated: 10/12/04

PINNOCK & WAKEFIELD, A.P.C.

By: 

DAVID C. WAKEFIELD, ESQ.

Attorneys for Plaintiffs

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CIVIL COVER SHEET

(Rev. 07/89)

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 infirmating the civil docket sheet (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

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

DEFENDANTS HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST RESORTS, LLC d.b.a. HILTON GARDEN INN CARLSBAD BEACH; CAPTSTAR CALIFORNIA BEVERAGE CORPORATION d.b.a. HILTON GARDEN INN CARLSBAD BEACH; WAVE CREST RESORTS, LLC; And DOES 1; THROUGH 10, Inclusive

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

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)

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

ATTORNEYS (IF KNOWN)

04 CV 2047 BEN (WMC)

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX 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 4 5 6

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

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

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SECURITY ACT, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 10/12/04

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield

107708 \$150.00