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3:04-CV-02049 PINNOCK V. BEST WESTERN BEACH

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Attorneys for Plaintiffs

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

'04 CV 2049 BEN (NLS)

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

Plaintiffs,

v.

**BEST WESTERN BEACH VIEW
LODGE; ROBERT DAVIS d.b.a. BEST
WESTERN BEACH VIEW LODGE;
TOBO INVESTMENTS; AT HOWARD
JONES TRUST UDT 3, A General
Partner; JOAN M. DAVIS, A General
Partner; ROBERT M. DAVIS, A
General Partner; MARJORIE
HOWARD JONES, A General Partner;
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

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

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10 **JURISDICTION AND VENUE**

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

16 **SUPPLEMENTAL JURISDICTION**

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

1 judicial proceeding.

2 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

3 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or
4 franchise organized and existing and/or doing business under the laws of the State of California.
5 Defendant BEST WESTERN BEACH VIEW LODGE is located at 3180 Carlsbad Boulevard,
6 Carlsbad, California 92008. Plaintiffs are informed and believe and thereon allege that Defendant
7 ROBERT DAVIS is the owner, operator, and/or doing business as BEST WESTERN BEACH
8 VIEW LODGE. Defendant ROBERT DAVIS is located at 8460 Laurel Lane, Granite Bay,
9 California 95746. Plaintiffs are informed and believe and thereon allege that Defendant TOBO
10 INVESTMENTS is the owner, operator, and/or lessor of the property located at 3180 Carlsbad
11 Boulevard, Carlsbad, California 92008, Assessor Parcel number 203-250-25. Defendant TOBO
12 INVESTMENTS is located at 2785 Roosevelt Street, Carlsbad, California 92008. Plaintiffs are
13 informed and believe and thereon allege that Defendants AT HOWARD JONES TRUST UDT 3,
14 JOAN M. DAVIS, ROBERT M. DAVIS, and MARJORIE HOWARD JONES are General
15 Partners of TOBO INVESTMENTS. Defendant MARJORIE HOWARD JONES is located at 4823
16 Argosy Lane, Carlsbad, California 92008 or 3014 Via Denise, Carlsbad, California 92008.
17 Defendant JOAN M. DAVIS is located at 8460 Laurel Lane, Granite Bay, California 95746. The
18 words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization
19 MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and persons
20 associated with its Members who accompanied Members to Defendants' facilities, as well as
21 THEODORE A. PINNOCK, An Individual.

22 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
23 employees, agents, of BEST WESTERN BEACH VIEW LODGE; ROBERT DAVIS d.b.a. BEST
24 WESTERN BEACH VIEW LODGE; TOBO INVESTMENTS; AT HOWARD JONES TRUST
25 UDT 3, A General Partner; JOAN M. DAVIS, A General Partner; ROBERT M. DAVIS, A General
26 Partner; and MARJORIE HOWARD JONES, A General Partner. Plaintiffs are ignorant of the true
27 names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues
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1 these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this
2 complaint to allege the true names and capacities of the Does when ascertained.

3 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them
4 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,
5 general partner, limited partner, agent, employee, representing partner, or joint venturer of the
6 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs
7 are further informed and believe, and thereon allege, that each of the Defendants herein gave
8 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

9 **CONCISE SET OF FACTS**

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

15 7. On August 18, 2004, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK went to
16 Defendants' BEST WESTERN BEACH VIEW LODGE facilities to utilize their goods and/or
17 services. When Plaintiff's Member and Plaintiff THEODORE A. PINNOCK patronized
18 Defendants' BEST WESTERN BEACH VIEW LODGE facilities, he was unable to use and/or had
19 difficulty using the public accommodations' disabled parking, exterior path of travel, entrance,
20 lobby public seating, entrance to pool/spa area and Guestrooms, pool, spa, guestroom, guestroom
21 entrance, guestroom reach ranges, guestroom operable controls, guestroom kitchen sink, and
22 guestroom bathroom facilities at Defendants' business establishments because they failed to
23 comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as
24 "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants failed to remove
25 access barriers within the public accommodations' disabled parking, exterior path of travel,
26 entrance, lobby public seating, entrance to pool/spa and Guestrooms, pool, spa, shower located in
27 the pool/spa area, pool/spa area restroom, vending machines, guestroom, guestroom entrance,
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1 guestroom reach ranges, guestroom operable controls, guestroom kitchen sink, and guestroom
2 bathroom facilities of Defendants' BEST WESTERN BEACH VIEW LODGE establishment.

3 8. Plaintiff's member personally experienced difficulty with said access barriers at
4 Defendants' BEST WESTERN BEACH VIEW LODGE facility. For example, the parking facility
5 is comprised of thirty-eight (38) parking spaces, none of which are designated as disabled parking.
6 It is required that there is at least one (1) "van accessible" disabled parking space that is eighteen
7 feet (18') long, nine feet (9') wide, and has an access aisle that is eight feet (8') wide on the right
8 hand side of the disabled parking space. It is also required that there is at least one (1) "regular"
9 disabled parking space that is eighteen feet (18') long, nine feet (9') wide and has an access isle that
10 is at least five feet (5') wide on the right hand side of the disabled parking space. There are two (2)
11 entryways into the parking lot, both of which fail to have the required signage warning motorists
12 that anyone illegally parking in a disabled parking space would be towed/fined or both.

13 9. The exterior path of travel of the Defendants' establishment is inaccessible. The path of
14 travel from the public sidewalk to the primary accessible entrance fails to be accessible as it forces
15 members of the disability community to traverse through vehicular traffic without the benefit of a
16 marked path of travel. The exterior path of travel from the accessible Guestrooms to the lobby of
17 the Defendants' establishment is as narrow as thirty-three inches (33"), when it is required to be at
18 least forty-eight inches (48").

19 10. The front entrance to the Defendants' establishment is inaccessible, as it fails to have the
20 required disability signage. The entrance door from the lobby to the Guestrooms and pool/spa area
21 fails to have the required smooth and uninterrupted surface on the bottom ten inches (10") of the
22 door that allows the door to be opened with a wheelchair footrest without creating a hazard.

23 11. The public seating located in the lobby of the Defendants' establishment is inaccessible.
24 There are a total of twelve (12) seats located in the lobby, all of which have a knee clearance depth
25 of a mere three inches (3"). It is required that five percent (5%) of all seats must have a knee
26 clearance depth of at least nineteen inches (19").

27 12. The pool is inaccessible as it fails to have the required device to assist disabled patrons in
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1 and out of the pool. The spa is also inaccessible as it fails to have the required device to assist
2 disabled patrons in and out of the spa.

3 13. The Defendants' establishment has a total of forty-one (41) Guestrooms. If a hotel has
4 between twenty-six and fifty (26 and 50) guestrooms, the hotel shall provide at least two (2) fully
5 accessible rooms. If a hotel has between twenty-six and fifty (26 and 50) guestrooms, the hotel
6 shall provide two (2) accessible guestrooms for members of the disability community who are
7 hearing impaired. The accessible guestrooms must be dispersed among the various classes of
8 sleeping accommodations, providing a range of options applicable to room sizes, costs, amenities
9 provided, and the number of beds provided. Defendants' hotel fails to have the required accessible
10 guestrooms.

11 14. Plaintiff's member and Plaintiff Theodore A. Pinnock was given Guestroom 44, a
12 designated "accessible" guestroom, which was not accessible. The height of the threshold at the
13 Guestroom entrance door is one inch (1") and fails to have the required ramp. Changes in level
14 greater than one half of an inch (1/2") are required to be ramped. The doorknob to the bedroom of
15 Guestroom 44 is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate.
16 The small round lamp switches are inaccessible, as they require tight grasping and/or twisting by
17 the wrist to operate. The control switch on the air-conditioning unit is inaccessible, as it is located
18 too low and requires tight grasping and/or twisting by the wrist to operate. The coat hanger in the
19 foyer area of the Guestroom is too high and is inaccessible. The height of the clothes hanger inside
20 the closet is too high and is inaccessible. The area beneath the sink is enclosed and fails to have the
21 required knee clearance. The control switch on the toaster is inaccessible, as it requires tight
22 grasping and/or twisting of the wrist to operate.

23 15. The bathroom located inside Guestroom 44 is inaccessible. The bathroom doorknob is
24 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The commode
25 fails to have the required grab bars. The commode fails to have the required clear floor space. The
26 sink fails to have the required knee clearance. The hair dryer is mounted too high and is
27 inaccessible. The bathtub faucet is inaccessible, as it requires tight grasping and/or twisting of the
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1 wrist to operate.

2 16. In addition to the violations personally experienced by Plaintiff's member and Plaintiff
3 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants'
4 BEST WESTERN BEACH VIEW LODGE establishment. For example, the vending machines are
5 inaccessible, as there is a five inch (5") step that fails to have the required ramp. Changes in level
6 greater than one half of an inch (1/2") are required to be ramped.

7 17. The shower located by the pool is inaccessible. The shower fails to have the required grab
8 bars. The shower fails to have the required seat. The round mixing valve on the shower is
9 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The shower fails to
10 have the required handheld shower sprayer.

11 18. The unisex restroom located in the pool area of the Defendants' establishment is
12 inaccessible. The restroom entrance fails to have the required disability signage. The height of the
13 threshold at the restroom entrance door is five inches (5") and fails to have the required ramp.
14 Changes in level greater than one half of an inch (1/2") are required to be ramped. The restroom
15 entrance door fails to have the required smooth and uninterrupted surface on the bottom ten inches
16 (10") of the door that allows the door to be opened with a wheelchair footrest without creating a
17 hazard. The clear opening width of the restroom entrance door is only twenty-seven inches (27"),
18 when it is required to be at least thirty-two inches (32"). The round locking mechanism on the
19 restroom door is inaccessible, as it requires tight grasping and/or twisting by the wrist to operate.
20 The wheelchair turn around space inside the restroom is only forty inches by forty-five inches (40"x
21 45"), when it is required to be at least sixty inches (60") in diameter. The height of the coat hook is
22 sixty-one inches (61") high, when it is required to be no more than forty-eight inches (48") high.
23 The commode fails to have the required grab bars. The height of the commode seat cover dispenser
24 is forty-four inches (44"), when it is required to be no higher than forty inches (40") high. The
25 height of the commode is fifteen inches (15"), when it is required to be between seventeen inches
26 and nineteen inches (17"- 19") high. The distance from the front edge of the commode to the front
27 wall is only seventeen inches (17"), when it is required to be at least forty-eight inches (48"). The
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1 distance from the side edge of the commode to the far wall is only fifteen inches (15"), when it is
2 required to be at least thirty-two inches (32"). The depth of the lavatory knee clearance is only
3 three inches (3"), when it is required to be at least eight inches (8"). The hot water and drainpipes
4 underneath the lavatory fail to have the required covering. The height of the paper towel dispenser
5 is fifty-one inches (51"), when it is required to be no higher than forty inches (40") high. The
6 restroom fails to have the required audible and visual alarm system.

7 19. Guestroom 20, a designated "accessible" Guestroom, is also inaccessible. The Guestroom
8 entrance door fails to have the required smooth and uninterrupted surface on the bottom ten inches
9 (10") of the door that allows the door to be opened with a wheelchair footrest without creating a
10 hazard. The height of the threshold at the Guestroom entrance door is one inch (1") and fails to
11 have the required ramp. Changes in level greater than one half of an inch (1/2") are required to be
12 ramped. The height of the peep hole on the Guestroom entrance door is fifty-nine inches (59"),
13 when it is required to be between forty inches and forty-four inches (40"- 44") high. The small
14 round lamp switches are inaccessible, as they require tight grasping and/or twisting by the wrist to
15 operate. The control switch on the air-conditioning unit is inaccessible, as they require tight
16 grasping and/or twisting by the wrist to operate. The clear floor space between the bed and the wall
17 is only thirty-three inches (33"), when it is required to be at least thirty-six inches (36"). The round
18 knob on the closet door is inaccessible, as it requires tight grasping and/or twisting of the wrist to
19 operate. The clear opening width of the closet doorway is only twenty-six inches (26"), when it is
20 required to be at least thirty-two inches (32"). The height of the shelf inside the closet is seventy
21 inches (70"), when it is required to be no higher than forty-eight inches (48"). The height of the
22 clothes hanger inside the closet is sixty-five inches (65"), when it is required to be no higher than
23 forty-eight inches (48"). The knee clearance depth underneath the desk located inside the
24 Guestroom is only five inches (5"), when it is required to be at least nineteen inches (19"). The
25 path of travel from the Guestroom entrance door to the kitchen is as narrow as twenty-nine inches
26 (29"), when it is required to be at least thirty-six inches (36"). The area beneath the sink is
27 enclosed and fails to have the required knee clearance. The control switch on the microwave is
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1 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The control switch
2 on the toaster is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate.

3 20. The bathroom located inside Guestroom 20 is inaccessible. The bathroom doorknob is
4 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The commode
5 fails to have any of the required grab bars. The distance from the front edge of the commode to the
6 front wall is only twenty-nine inches (29"), when it is required to be at least forty-eight inches
7 (48"). The height of the threshold at the shower is an impermissible three inches (3"), when the
8 maximum height is required to be one half of an inch (1/2") with a bevel of up to a 1:1 gradient.
9 The grab bars located inside the shower are not compliant. The shower fails to have the required
10 seat. The height of the handheld shower sprayer is sixty-seven inches (67"), when it is required to
11 be no higher than forty-eight inches (48"). The hot water and drainpipes underneath the sink fail to
12 have the required covering. The height of the hair dryer is fifty-nine inches (59"), when it is
13 required to be no higher than forty-eight inches (48"). The bathroom fails to have the required
14 audible and visual alarm system.

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

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

4 23. Based on these facts, Plaintiffs allege Plaintiff's Member and Plaintiff Theodore A. Pinnock
5 was discriminated against each time he patronized Defendants' establishment. Plaintiff's Member
6 and Plaintiff Theodore A. Pinnock was extremely upset due to Defendants' conduct. Further,
7 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK experienced pain in his legs, back,
8 arms, shoulders and wrists when he attempted to enter, use, and exit Defendants' establishment.

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

11 24. BEST WESTERN BEACH VIEW LODGE; ROBERT DAVIS d.b.a. BEST WESTERN
12 BEACH VIEW LODGE; TOBO INVESTMENTS; AT HOWARD JONES TRUST UDT 3, A
13 General Partner; JOAN M. DAVIS, A General Partner; ROBERT M. DAVIS, A General Partner;
14 MARJORIE HOWARD JONES, A General Partner; and Does 1 through 10 will be referred to
15 collectively hereinafter as "Defendants."

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

17 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

21 26. Based on the facts plead at ¶¶ 6-23 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. Plaintiffs allege Defendants are a public accommodation owned,
24 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to
25 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,
26 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code
27 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to
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1 Defendants' existing facilities.

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

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

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

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

27 30. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the
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1 maximum extent feasible, are readily accessible to and usable by individuals with disabilities
2 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
3 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §
4 12182(a).

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

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

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

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

33. Based on the facts plead at ¶¶ 6-23 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.

34. Based on the facts plead at ¶¶ 6-23 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.

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

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

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

36. Based on the facts plead at ¶¶ 6-23 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

1 Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated
2 California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities
3 due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
4 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
5 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
6 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
7 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
8 Detectable Warnings, Signage, and Telephones.

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

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

14 38. Based on the facts plead at ¶¶ 6-23 above and elsewhere herein 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 Civil
18 Code § 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.
19

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

21 39. Based on the facts plead at ¶¶ 6-23 above and elsewhere herein this complaint and because
22 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
24 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
25 54.1.

26 40. Based on the facts plead at ¶¶ 6-23 above, Claims I, II, and III of Plaintiffs' Second Cause
27 Of Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable
28 harm unless Defendants are ordered to remove architectural, non-architectural, and communication

1 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory
2 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and
3 a substantial segment of the disability community. Plaintiffs allege there is a state and national
4 public interest in requiring accessibility in places of public accommodation. Plaintiffs have no
5 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff's Member
6 desires to return to Defendants' places of business in the immediate future. Accordingly, the
7 Plaintiffs allege that a structural or mandatory injunction is necessary to enjoin compliance with
8 state civil rights laws enacted for the benefit of individuals with disabilities.

9 41. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
10

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

12 42. Defendants, each of them respectively, at times prior to and including, the month of August,
13 2004, and continuing to the present time, knew that persons with physical disabilities were denied
14 their rights of equal access to all portions of this public facility. Despite such knowledge,
15 Defendants, and each of them, failed and refused to take steps to comply with the applicable access
16 statutes; and despite knowledge of the resulting problems and denial of civil rights thereby suffered
17 by Plaintiff's Member THEODORE A. PINNOCK and other similarly situated persons with
18 disabilities. Defendants, and each of them, have failed and refused to take action to grant full and
19 equal access to persons with physical disabilities in the respects complained of hereinabove.
20 Defendants, and each of them, have carried out a course of conduct of refusing to respond to, or
21 correct complaints about, denial of disabled access and have refused to comply with their legal
22 obligations to make Defendants' BEST WESTERN BEACH VIEW LODGE facility accessible
23 pursuant to the Americans With Disability Act Access Guidelines (ADAAG) and Title 24 of the
24 California Code of Regulations (also known as the California Building Code). Such actions and
25 continuing course of conduct by Defendants, and each of them, evidence despicable conduct in
26 conscious disregard of the rights and/or safety of Plaintiff's Member and of other similarly situated
27 persons, justifying an award of treble damages pursuant to sections 52(a) and 54.3(a) of the
28

1 California Civil Code.

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

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

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

17
18 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
19 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

20 46. Based on the facts plead at ¶¶ 6-23 above and elsewhere in this complaint, Defendants owed
21 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
22 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
23 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
24 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1,
25 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building
26 Code standards as amended.

27 47. Title III of the ADA mandates removal of architectural barriers and prohibits disability
28 discrimination. As well, Defendants' facility, and other goods, services, and/or facilities provided

1 to the public by Defendants are not accessible to and usable by persons with disabilities as required
2 by Health and Safety Code § 19955 which requires private entities to make their facility accessible
3 before and after remodeling, and to remove architectural barriers.

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

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

21 DEMAND FOR JUDGMENT FOR RELIEF:

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

1 for \$1,000 in damages pursuant to 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 Accessibility Guidelines;

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

12
13 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
14 § 55;

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

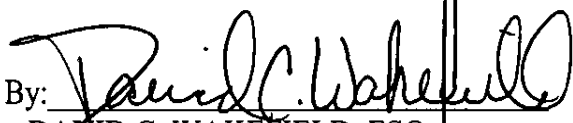
16 G. A Jury Trial and;

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

19 Respectfully submitted:

20
21
22 Dated: 10/12/04

PINNOCK & WAKEFIELD, A.P.C.

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

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

DEFENDANTS

BEST WESTERN BEACH VIEW LODGE; ROBERT DAVIS, A General Partner; BEST WESTERN BEACH VIEW LODGE; TOBO INVESTMENTS; AT HOWARD JONES TRUST UDT 3, A General Partner; JOAN M. DAVIS, A General Partner; ROBERT M. DAVIS, A General Partner; MARJORIE HOWARD JONES, A General Partner; 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 DEPUTY
(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 2049 BEN (NLS)

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)

- | | | |
|---|---|---|
| | PTDEF | PTDEF |
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 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
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395B) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWQ/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 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

Packet Number

DATE 10/12/04

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield

* #107706 \$150.00