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3:04-CV-02046 PINNOCK V. OCEAN PALM BEACH

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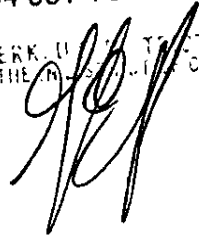
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:



DEPUTY

Attorneys for Plaintiffs

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

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(JMA)

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

Plaintiffs,

v.

**OCEAN PALM BEACH RESORT;
BEAR TER PARTNERS, INC. d.b.a.
OCEAN PALM BEACH RESORT;
CARLSBAD BEACH PARTNERS, LP;
CARLSBAD BEACH INVESTORS,
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 compliance because empirical research on the effectiveness of Title III of the Americans with

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

7
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 OCEAN PALM BEACH RESORT is located at 2950 Ocean Street, Carlsbad, California
5 92008. Plaintiffs are informed and believe and thereon allege that Defendant BEAR TER
6 PARTNERS, INC. is the owner, operator, and/or doing business as OCEAN PALM BEACH
7 RESORT. Defendant BEAR TER PARTNERS, INC. is located at 2950 Ocean Street, Carlsbad,
8 California 92008. Plaintiffs are informed and believe and thereon allege that Defendant
9 CARLSBAD BEACH PARTNERS, LP is the owner, operator, and/or lessor of the property located
10 at 2950 Ocean Street, Carlsbad, California 92008, Assessor Parcel number 203-233-03. Defendant
11 CARLSBAD BEACH PARTNERS, LP is located at 16250 Dallas Parkway, Suite 201, Dallas,
12 Texas 75248. Plaintiffs are informed and believe and thereon allege that Defendant CARLSBAD
13 BEACH INVESTORS, LLC is a General Partner of the CARLSBAD BEACH PARTNERS, LP.
14 Defendant CARLSBAD BEACH INVESTORS, LLC is located at 16250 Dallas Parkway, Suite
15 201, Dallas, Texas 75248. The words "Plaintiffs" and "Plaintiff's Member" as used herein
16 specifically include the organization MANTIC ASHANTI'S CAUSE, its Members, its member
17 Theodore A. Pinnock and persons associated with its Members who accompanied Members to
18 Defendants' facilities, as well as THEODORE A. PINNOCK, An Individual.

19 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,
20 employees, agents, of OCEAN PALM BEACH RESORT; BEAR TER PARTNERS, INC. d.b.a.
21 OCEAN PALM BEACH RESORT; CARLSBAD BEACH PARTNERS, LP; and CARLSBAD
22 BEACH INVESTORS, LLC. Plaintiffs are ignorant of the true names and capacities of Defendants
23 sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious
24 names. Plaintiffs will pray leave of the court to amend this complaint to allege the true names and
25 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 ASHANTT'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 23, 2004, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK went to
12 Defendants' OCEAN PALM BEACH RESORT facilities to utilize their goods and/or services.
13 When Plaintiff's Member and Plaintiff THEODORE A. PINNOCK patronized Defendants'
14 OCEAN PALM BEACH RESORT facilities, he was unable to use and/or had difficulty using the
15 public accommodations' disabled parking, exterior path of travel, entrance, cashier counter, office
16 entrance, vending machines, guestroom, guestroom entrance, guestroom interior path of travel,
17 guestroom operable controls, guestroom closet, guestroom sink, guestroom table, and guestroom
18 bathroom facilities at Defendants' business establishments because they failed to comply with
19 ADA Access Guidelines For Buildings and Facilities (hereafter referred to as "ADAAG") and/or
20 California's Title 24 Building Code Requirements. Defendants failed to remove access barriers
21 within the public accommodations' disabled parking, exterior path of travel, entrance, cashier
22 counter, office entrance, pool/spa area entrance, pool, spa, pool area public seating, vending
23 machines, guestroom, guestroom entrance, guestroom interior path of travel, guestroom operable
24 controls, guestroom closet, guestroom sink, guestroom table, and guestroom bathroom facilities of
25 Defendants' OCEAN PALM BEACH RESORT establishment.

26 8. Plaintiff's member personally experienced difficulty with said access barriers at
27 Defendants' OCEAN PALM BEACH RESORT facility. For example, the parking facility is not
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1 accessible. The parking facilities have seventy-one (71) parking spaces, none of which are a
2 disabled parking space. It is required that there is at least one (1) compliant "van accessible"
3 disabled parking space and two (2) compliant "regular" disabled parking spaces. The Defendants'
4 establishment fails to have the required amount of disabled parking spaces. There is one (1)
5 entryway into the parking lot and fails to have the required signage warning motorists that anyone
6 illegally parking in a disabled parking space will be towed/fined or both.

7 9. The exterior path of travel is inaccessible. The path of travel from the public sidewalk,
8 parking lot and the accessible guestrooms to the primary accessible entrance fails to be accessible
9 as it forces members of the disability community to traverse through vehicular traffic without the
10 benefit of a marked path of travel.

11 10. The front entrance to the Defendants' establishment is inaccessible, as it fails to have the
12 required disability signage. The lobby entrance is inaccessible, as it has an impermissible five inch
13 (5") step and fails to have the required ramp. Changes in level greater than one half of an inch
14 (1/2") are required to be ramped.

15 11. The cashier counter located in the lobby is inaccessible, as it is forty inches (40") high,
16 when it is required to be no higher than thirty-four inches (34").

17 12. The office entrance is inaccessible, as there is an impermissible seven-inch (7") high step
18 that fails to have the required ramp. Changes in level greater than one half of an inch (1/2") are
19 required to be ramped.

20 13. The newspaper stands and vending machines located at the Defendants' establishment are
21 inaccessible, as there is an impermissible three-inch (3") step up to the stands and machines.
22 Changes in level greater than one half of an inch (1/2") are required to be ramped.

23 14. The Defendants' establishment has a total of forty-eight (48) rooms, including two (2)
24 designated "accessible" guestrooms that are not accessible. If a hotel has between twenty-six and
25 fifty (26 and 50) guestrooms, the hotel shall provide at least two (2) fully accessible rooms. If a
26 hotel has between twenty-six and fifty (26 and 50) guestrooms, the hotel shall provide two (2)
27 accessible guestrooms for members of the disability community who are hearing impaired. The
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1 guestrooms must be dispersed among the various classes of sleeping accommodations, providing a
2 range of options applicable to room sizes, costs, amenities provided, and the number of beds
3 provided. Defendants' hotel fails to have the required accessible guestrooms.

4 15. Plaintiff's member and Plaintiff Theodore A. Pinnock was given Guestroom 123, a
5 designated accessible guestroom, which was not accessible. The lamp switches are inaccessible, as
6 they require tight grasping and/or twisting by the wrist to operate. The kitchen cabinets are located
7 too high and are inaccessible. The bathroom of Guestroom 123 is also inaccessible, as the
8 commode fails to have any of the required grab bars. The shower entrance is too narrow to be
9 accessible. There is an impermissible five inch (5") step to get into the shower. The shower faucet
10 handles are inaccessible, as they are located too high. The hot water and drainpipes underneath the
11 lavatory fail to have the required covering.

12 16. In addition to the violations personally experienced by Plaintiff's member and Plaintiff
13 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants'
14 OCEAN PALM BEACH RESORT establishment. For example, the entrance door to the pool/spa
15 area fails to have the required smooth uninterrupted surface on the bottom ten inches (10") that
16 allows for a door to be opened with a wheelchair footrest without creating a hazard.

17 17. The pool is inaccessible, as it fails to have the required device to assist disabled patrons in
18 and out of the pool.

19 18. The spa is inaccessible, as it fails to have the required device to assist disabled patrons in
20 and out of the pool.

21 19. The public seating located by the pool is inaccessible. There are a total of twenty (20) seats
22 located around the pool, all of which have a knee clearance depth of only five inches (5"). It is
23 required that five percent (5%) of all seats have a knee clearance depth of at least nineteen inches
24 (19").

25 20. Also, Guestroom 120, a designated "accessible" room, located in the Defendants' hotel is
26 inaccessible. The entrance door to guestroom 120 is inaccessible, as it fails to have the required
27 smooth uninterrupted surface on the bottom ten inches (10") of all doors that allows for a door to
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1 be opened with a wheelchair footrest without creating a hazard. The height of the threshold at the
2 entrance door to the room is one half of an inch (1/2"), and fails to be beveled. The peep-hole on
3 the Guestroom entrance door is inaccessible, as it is fifty-eight inches (58") high, when it is
4 required to be between forty inches and forty-four inches (40"-44") high. The small round lamp-
5 switches are inaccessible, as they require tight grasping and/or twisting of the wrist to operate. The
6 clear floor space within the room is only thirty-two inches to thirty-three inches (32"-33"), when it
7 is required to be at least thirty-six inches (36"). The clear floor space between the beds is only
8 thirty inches (30"), when it is required to be at least thirty-six inches (36"). The control switch on
9 the air conditioning unit is inaccessible, as it requires tight grasping and/or twisting of the wrist to
10 operate. The doorknob on the bedroom door is inaccessible, as it requires tight grasping and/or
11 twisting of the wrist to operate. The knee clearance depth of the dining room table is only five
12 inches (5"), when it is required to be at least nineteen inches (19"). The sink is inaccessible, as it
13 fails to have any of the required knee clearance. The round doorknob on the closet door is
14 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The height of the
15 cloths hanger in the closet is sixty-five inches (65"), when it is required to be no higher than forty-
16 eight inches (48") high. The height of the shelf in the closet is an impermissible seventy inches
17 (70") high, when it is required to be no higher than forty-eight inches (48") high. The round
18 switches on the stove are inaccessible, as they tight grasping and/or twisting of the wrist to operate.
19 The Guestroom fails to have the required audible and visual alarm system.

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21 21. The bathroom located inside Guestroom 120 is inaccessible. The doorknob is inaccessible,
22 as it requires tight grasping and/or twisting of the wrist to operate. The restroom fails to have the
23 required clear floor space. It is required that there is at least sixty inches (60") in diameter of clear
24 floor space. The commode fails to have any of the required grab bars. The clear opening width fo
25 the shower doorway is only fifteen inches (15"), when it is required to be at least thirty-six inches
26 (36"). The shower stall is only thirty inches by thirty inches (30"x 30"), when it is required to be at
27 least thirty inches by sixty inches (30"x 60"). The height of the threshold at the shower is an
28 impermissible five inches (5"), when the maximum height is one half of an inch (1/2") with a bevel

1 of up to 1:1 gradient. The shower fails to have the required grab bars. The shower fails to have the
2 required seat. The shower fails to have the required hand held shower sprayer. The hot water and
3 drainpipes underneath the lavatory fail to have the required covering. The bathroom fails to have
4 the required audible and visual alarm system.

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

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

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

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

25. OCEAN PALM BEACH RESORT; BEAR TER PARTNERS, INC. d.b.a. OCEAN PALM BEACH RESORT; CARLSBAD BEACH PARTNERS, LP; CARLSBAD BEACH INVESTORS, LLC; and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

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

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

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

4 29. Based on the facts plead at ¶¶ 6-24 above and elsewhere in this complaint, Plaintiff's
5 Member Theodore A. Pinnock was denied full and equal access to Defendants' goods, services,
6 facilities, privileges, advantages, or accommodations within a public accommodation owned,
7 leased, and/or operated by Defendants. Defendants altered their facility in a manner that affects or
8 could affect the usability of the facility or a part of the facility after January 26, 1992. In performing
9 the alteration, Defendants failed to make the alteration in such a manner that, to the maximum
10 extent feasible, the altered portions of the facility are readily accessible to and usable by individuals
11 with disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C.
12 §12183(a)(2).

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

19 31. Pursuant to 42 U.S.C. §12183(a), this failure to make the alterations in a manner that, to the
20 maximum extent feasible, are readily accessible to and usable by individuals with disabilities
21 constitutes discrimination for purposes of 42 U.S.C. §12183(a). Therefore, Defendants
22 discriminated against Plaintiff's Member Theodore A. Pinnock in violation of 42 U.S.C. §
23 12182(a).

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

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

28 33. Based on the facts plead at ¶¶ 6-24 above and elsewhere in this complaint, Plaintiff's

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

18
19 CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices, Policies And**
20 **Procedures**

21 34. Based on the facts plead at ¶¶ 6-24 above and elsewhere in this complaint, Defendants
22 failed and refused to provide a reasonable alternative by modifying its practices, policies and
23 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
24 others similarly situated in entering and utilizing Defendants' services, as required by 42 U.S.C. §
25 12188(a). Thus, said Member was subjected to discrimination in violation of 42 United States
26 Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was denied equal access to
27 Defendants' existing facilities.

28 35. Based on the facts plead at ¶¶ 6-24 above, Claims I, II, and III of Plaintiffs' First Cause Of

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

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

12
13 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
14 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

27 38. These violations denied Plaintiff's Member full and equal access to Defendants' facility.
28 Thus, said Member was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1

1 because Plaintiff's Member was denied full, equal and safe access to Defendants' facility, causing
2 severe emotional distress.

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

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

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

10 40. Based on the facts plead at ¶¶ 6-24 above and elsewhere herein this complaint and because
11 Defendants violated the Civil 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 continue to discriminate
13 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
14 54.1.

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

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

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

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

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

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

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

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

9 47. Based on the facts plead at ¶¶ 6-24 above and elsewhere in this complaint, Defendants owed
10 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
11 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
12 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
13 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1,
14 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building
15 Code standards as amended.

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

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

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

10
11 DEMAND FOR JUDGMENT FOR RELIEF:

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

13 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
14 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
15 Guidelines;
16

17 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above,
18 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code
19 § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

20 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs
21 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities
22 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding
23 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
24 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking
25 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
26
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1 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable
2 Warnings, Signage, and Telephones.

3 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
4 § 55;

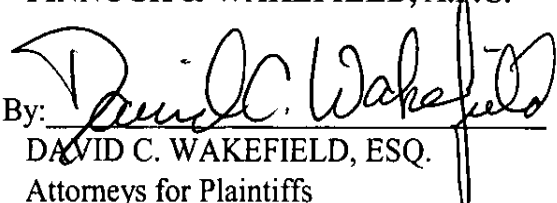
5 F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and 54.3(a);

6 G. A Jury Trial and;

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

8
9 Respectfully submitted:

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12 Dated: 10/12/04

PINNOCK & WAKEFIELD, A.P.C.
By: 
DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

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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 OCEAN PALM BEACH RESORT; BEAR TER PARTNERS,
INC. d.b.a. OCEAN PALM BEACH RESORT; CARLSBAD BEACH
PARTNERS, LP; CARLSBAD BEACH INVESTORS, LLC; And
DOES 1 THROUGH 10, Inclusive

09 OCT 13 AM 8:46

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

(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) v.
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 2046 IEG (JMA)

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

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

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

- | | | |
|---|---|---|
| | PT/DEF | PT/DEF |
| Citizen of This State | <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 RR & 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 29 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 DWC/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/ICC 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 fr.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 9/22/04

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield

#107709 \$50.00