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3:04-CV-02048 PINNOCK V. BEST WESTERN BEACH

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
04 CV 2048 WQH (JMA)

**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 TERRACE
INN; ROBERT DAVIS d.b.a. BEST
WESTERN BEACH TERRACE INN;
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:

9
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 TERRACE INN is located at 2775 Ocean Street, Carlsbad,
6 California 92008. Plaintiffs are informed and believe and thereon allege that Defendant ROBERT
7 DAVIS is the owner, operator, and/or doing business as BEST WESTERN BEACH TERRACE
8 INN. Defendant ROBERT DAVIS is located at 8460 Laurel Lane, Granite Bay, California 95746.
9 Plaintiffs are informed and believe and thereon allege that Defendant TOBO INVESTMENTS is
10 the owner, operator, and/or lessor of the property located at 2775 Ocean Street, Carlsbad, California
11 92008, Assessor Parcel number 035-092-034. Defendant TOBO INVESTMENTS is located at
12 2785 Roosevelt Street, Carlsbad, California 92008. Plaintiffs are informed and believe and thereon
13 allege that Defendants AT HOWARD JONES TRUST UDT 3, JOAN M. DAVIS, ROBERT M.
14 DAVIS, and MARJORIE HOWARD JONES are General Partners of TOBO INVESTMENTS.
15 Defendant MARJORIE HOWARD JONES is located at 4823 Argosy Lane, Carlsbad, California
16 92008 or 3014 Via Denise, Carlsbad, California 92008. Defendant JOAN M. DAVIS is located at
17 8460 Laurel Lane, Granite Bay, California 95746. The words "Plaintiffs" and "Plaintiff's Member"
18 as used herein specifically include the organization MANTIC ASHANTI'S CAUSE, its Members,
19 its member Theodore A. Pinnock and persons associated with its Members who accompanied
20 Members to Defendants' facilities, as well as THEODORE A. PINNOCK, An Individual.

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

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

8 **CONCISE SET OF FACTS**

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

14 7. On August 26, 2004, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK went to
15 Defendants' BEST WESTERN BEACH TERRACE INN facilities to utilize their goods and/or
16 services. When Plaintiff's Member and Plaintiff THEODORE A. PINNOCK patronized
17 Defendants' BEST WESTERN BEACH TERRACE INN facilities, he was unable to use and/or
18 had difficulty using the public accommodations' disabled parking, entrance, lobby cashier counter,
19 pool/spa area entrance, pool, spa, guestroom, guestroom entrance, guestroom reach ranges,
20 guestroom operable controls, and guestroom bathroom facilities at Defendants' business
21 establishments because they failed to comply with ADA Access Guidelines For Buildings and
22 Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code
23 Requirements. Defendants failed to remove access barriers within the public accommodations'
24 disabled parking, entrance, lobby cashier counter, pool/spa area entrance, pool, spa, lounge area
25 sink, pool area restroom, guestroom, guestroom entrance, guestroom reach ranges, guestroom
26 operable controls, and guestroom bathroom facilities of Defendants' BEST WESTERN BEACH
27 TERRACE INN establishment.
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1 8. Plaintiff's member personally experienced difficulty with said access barriers at
2 Defendants' BEST WESTERN BEACH TERRACE INN facility. For example, the parking facility
3 is comprised of forty-six (46) parking spaces, two (2) of which are designated as disabled parking
4 spaces that are not compliant. Both of the existing disabled parking spaces are non-compliant
5 "regular" disabled parking spaces that are only seven feet (7') wide and have an access aisle located
6 in front of the disabled parking spaces that is only seven feet by seven feet (7'x 7'). It is required
7 that there is at least one "van accessible" disabled parking space that is eighteen feet (18') long,
8 nine feet (9') wide, and has an access aisle that is eight feet (8') wide on the right hand side of the
9 disabled parking space. It is required that all "regular" disabled parking spaces are eighteen feet
10 (18') long, are at least nine feet (9') wide and have an access aisle that is at least five feet (5') wide
11 on the right hand side of the disabled parking space. There are two (2) entryways into the parking
12 lot, both of which fail to have the required signage warning motorists that anyone illegally parking
13 in a disabled parking space would be towed/fined or both.

14 9. The front entrance to the Defendants' establishment is inaccessible. The front entrance
15 door fails to have the required smooth and uninterrupted surface on the bottom ten inches (10") of
16 the door that allows the door to be opened with a wheelchair footrest without creating a hazard.
17 The front entrance door fails to have the required disability signage. The height of the threshold at
18 the balcony door located by the lobby is an impermissible two inches (2") and fails to have the
19 required ramp. Changes in level greater than one half of an inch (1/2") are required to be ramped.
20

21 10. The lobby cashier counter is inaccessible, as it is forty-three inches (43") high, when it is
22 required to be no higher than thirty-four inches (34").

23 11. The path of travel from the lobby and the Guestrooms to the pool/spa area is inaccessible
24 and/or there fails to be the required signage directing disabled patrons to an accessible path of
25 travel to the pool/spa area. The pool fails to have the required device to assist disabled patrons in
26 and out of the pool. The spa fails to have the required device to assist disabled patrons in and out of
27 the spa.

28 12. The Defendants' establishment has a total of forty-nine (49) Guestrooms, including two (2)

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

8 13. Plaintiff’s member and Plaintiff Theodore A. Pinnock was given Guestroom 57, a
9 designated accessible guestroom, which was not accessible. The Guestroom entrance door fails to
10 have the required smooth and uninterrupted surface on the bottom ten inches (10”) of the door that
11 allows the door to be opened with a wheelchair footrest without creating a hazard. The height of
12 the threshold at the Guestroom entrance door is one inch (1”) and fails to have the required ramp.
13 Changes in level greater than one half of an inch (1/2”) are required to be ramped. The locking
14 mechanism on the entrance door is inaccessible, as it requires tight grasping and/or twisting of the
15 wrist to operate. The small round lamp switches are inaccessible, as they require tight grasping
16 and/or twisting by the wrist to operate. The control switch on the air-conditioning unit is
17 inaccessible, as they require tight grasping and/or twisting by the wrist to operate. The height of
18 the shelf is sixty-nine inches (69”), when it is required to be no higher than forty-eight inches (48”).
19 The height of the clothes hanger is sixty-three inches (63”), when it is required to be no higher than
20 forty-eight inches (48”). The Guestroom fails to have the required audible and visual alarm system.

21 14. The bathroom located inside Guestroom 57 is inaccessible. The bathroom doorknob is
22 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The commode
23 fails to have any of the required grab bars. The grab bars located inside the bathtub are non-
24 compliant. The towels are fifty-five inches (55”) high, when they are required to be no higher than
25 forty-eight inches (48”). The bathroom fails to have the required audible and visual alarm system.

26 15. In addition to the violations personally experienced by Plaintiff’s member and Plaintiff
27 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants’
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1 BEST WESTERN BEACH TERRACE INN establishment. For example, the sink located in the
2 lounge area is inaccessible, as the area beneath the sink is enclosed and fails to provide the required
3 knee clearance.

4 16. The unisex restroom located in the pool/spa area of the Defendants' establishment is
5 inaccessible. The restroom entrance fails to have the required disability signage. The clear opening
6 width of the restroom entrance door is only twenty-seven inches (27"), when it is required to be at
7 least thirty-two inches (32"). The height of the threshold at the restroom entrance door is four
8 inches (4") and fails to have the required ramp. Changes in level greater than one half of an inch
9 (1/2") are required to be ramped. The round locking mechanism on the restroom door is
10 inaccessible, as it requires tight grasping and/or twisting by the wrist to operate. The height of the
11 locking mechanism is an impermissible sixty-one inches (61") high, when it is required to be
12 between thirty inches and forty-four inches (30"- 44") high. The wheelchair turn-around space
13 inside the restroom is only fifty-one inches by sixty inches (51" x 60"), when it is required to be at
14 least sixty inches (60") in diameter. The commode fails to have the required grab bars. The height
15 of the commode is fifteen and three quarter inches (15 3/4"), when it is required to be between
16 seventeen inches and nineteen inches (17"- 19") high. The distance from the front edge of the
17 commode to the front wall is only forty-six inches (46"), when it is required to be at least forty-
18 eight inches (48"). The distance from the side edge of the commode to the far wall is only eight
19 inches (8"), when it is required to be at least thirty-two inches (32"). The distance from the
20 centerline of the commode to the near wall is only fifteen inches (15"), when it is required to be at
21 least eighteen inches (18"). The commode seat cover dispenser is mounted at forty-five inches
22 (45") high, when it is required to be no higher than forty inches (40") high. The height of the
23 lavatory knee clearance is only twenty-three inches (23"), when it is required to be at least twenty-
24 seven inches (27") high. The distance from the centerline of the lavatory to the adjacent wall is
25 sixteen inches (16"), when it is required to be at least eighteen inches (18"). The hot water and
26 drainpipes underneath the lavatory fail to have the required covering. The restroom fails to have
27 the required audible and visual alarm system.
28

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

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

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

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

24 20. BEST WESTERN BEACH TERRACE INN; ROBERT DAVIS d.b.a. BEST WESTERN
25 BEACH TERRACE INN; TOBO INVESTMENTS; AT HOWARD JONES TRUST UDT 3, A
26 General Partner; JOAN M. DAVIS, A General Partner; ROBERT M. DAVIS, A General Partner;
27 MARJORIE HOWARD JONES, A General Partner; and Does 1 through 10 will be referred to
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1 collectively hereinafter as "Defendants."

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

3 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

4 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The Americans**

5 **With Disabilities Act Of 1990**

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

7 22. Based on the facts plead at ¶¶ 6-19 above and elsewhere in this complaint, Plaintiff's
8 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
9 advantages, or accommodations. Plaintiffs allege Defendants are a public accommodation owned,
10 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to
11 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,
12 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code
13 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to
14 Defendants' existing facilities.

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

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

26 24. Based on the facts plead at ¶¶ 6-19 above and elsewhere in this complaint, Plaintiff's
27 Member Theodore A. Pinnock was denied full and equal access to Defendants' goods, services,
28 facilities, privileges, advantages, or accommodations within a public accommodation owned,

1 leased, and/or operated by Defendants. Defendants altered their facility in a manner that affects or
2 could affect the usability of the facility or a part of the facility after January 26, 1992. In performing
3 the alteration, Defendants failed to make the alteration in such a manner that, to the maximum
4 extent feasible, the altered portions of the facility are readily accessible to and usable by individuals
5 with disabilities, including individuals who use wheelchairs, in violation of 42 U.S.C.
6 §12183(a)(2).

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

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

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

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

23 28. Based on the facts plead at ¶¶ 6-19 above and elsewhere in this complaint, Plaintiff's
24 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,
25 advantages, or accommodations within a public accommodation owned, leased, and/or operated by
26 Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
27 are informed, believe, and thus allege that architectural barriers which are structural in nature exist
28 within the following physical elements of Defendants' facilities: Space Allowance and Reach

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

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

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

23 30. Based on the facts plead at ¶¶ 6-19 above, Claims I, II, and III of Plaintiffs' First Cause Of
24 Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm
25 unless Defendants are ordered to remove architectural, non-architectural, and communication
26 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory
27 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiffs and
28 a substantial segment of the disability community. Plaintiffs allege there is a national public

1 interest in requiring accessibility in places of public accommodation. Plaintiffs have no adequate
2 remedy at law to redress the discriminatory conduct of Defendants. Plaintiff's Member desires to
3 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiffs allege
4 that a structural or mandatory injunction is necessary to enjoin compliance with federal civil rights
5 laws enacted for the benefit of individuals with disabilities.

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

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

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

10 32. Based on the facts plead at ¶¶ 6-19 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 as required by Civil Code Sections 54 and 54.1. Defendants' facility violated
14 California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities
15 due to violations pertaining to the Space Allowance and Reach Ranges, Accessible Route,
16 Protruding Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb
17 Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,
18 Drinking Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
19 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms,
20 Detectable Warnings, Signage, and Telephones.

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

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

26 34. Based on the facts plead at ¶¶ 6-19 above and elsewhere herein this complaint, Defendants
27 failed and refused to provide a reasonable alternative by modifying its practices, policies, and
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1 procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or
2 others similarly situated in entering and utilizing Defendants' services as required by Civil
3 Code § 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.

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

5 35. Based on the facts plead at ¶¶ 6-19 above and elsewhere herein this complaint and because
6 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate
8 against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and
9 54.1.

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

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

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

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

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

21 40. Plaintiffs pray for an award of treble damages against Defendants, and each of them,
22 pursuant to California Civil Code sections 52(a) and 54.3(a), in an amount sufficient to make a
23 more profound example of Defendants and encourage owners, lessors, and operators of other public
24 facilities from willful disregard of the rights of persons with disabilities. Plaintiffs do not know the
25 financial worth of Defendants, or the amount of damages sufficient to accomplish the public
26 purposes of section 52(a) of the California Civil Code and section 54.3 of the California Civil
27 Code.
28

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

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

4 42. Based on the facts plead at ¶¶ 6-19 above and elsewhere in this complaint, Defendants owed
5 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff
6 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known
7 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various
8 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1,
9 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building
10 Code standards as amended.

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

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

1 anger, embarrassment, depression, anxiety, mortification, humiliation, distress, and fear of physical
2 injury. Plaintiff THEODORE A. PINNOCK, An Individual, additionally alleges that such conduct
3 caused THEODORE A. PINNOCK, An Individual, to suffer damages as a result of these injuries.

4 45. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
5

6 DEMAND FOR JUDGMENT FOR RELIEF:

7 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3, 3281, and 3333;
8

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

12 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above,
13 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code
14 § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

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

24 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
25 § 55;
26

27 F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and 54.3(a);
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1 G. A Jury Trial and;

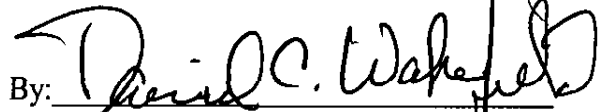
2 H. For such other further relief as the court deems proper.

3 Respectfully submitted:

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Dated: 10/12/04

PINNOCK & WAKEFIELD, A.P.C.

By: 

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

CIVIL COVER SHEET

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

I (a) PLAINTIFFS

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

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

DEFENDANTS

BEST WESTERN BEACH TERRACE INN; ROBERT DAVIS d.b.a. BEST WESTERN BEACH TERRACE INN; 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, SOUTHERN DISTRICT OF CALIFORNIA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) San Diego

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 2048 - WQH (JMA)

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

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

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

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

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

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

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 362 Personal Injury-Medical Malpractice, etc.

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

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

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

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

JUDGE

Docket Number

DATE 10/12/04

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of David C. Wakefield

Handwritten notes: #107707 \$100,000 BLD