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3:05-CV-00968 PINNOCK V. EBB TIDE INN  
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\*CMP.\*



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3 **INTRODUCTION**

4 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE  
5 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,  
6 herein complain, by filing this Civil Complaint in accordance with  
7 rule 8 of the Federal Rules of Civil Procedure in the Judicial  
8 District of the United States District Court of the Southern  
9 District of California, that Defendants have in the past, and  
10 presently are, engaging in discriminatory practices against  
11 individuals with disabilities, specifically including minorities  
12 with disabilities. Plaintiffs allege this civil action and others  
13 substantial similar thereto are necessary to compel access  
14 compliance because empirical research on the effectiveness of  
15 Title III of the Americans with Disabilities Act indicates this  
16 Title has failed to achieve full and equal access simply by the  
17 executive branch of the Federal Government funding and promoting  
18 voluntary compliance efforts. Further, empirical research shows  
19 when individuals with disabilities give actual notice of potential  
20 access problems to places of public accommodation without a  
21 federal civil rights action, the public accommodations do not  
22 remove the access barriers. Therefore, Plaintiffs make the  
23 following allegations in this federal civil rights action:

24 **JURISDICTION AND VENUE**

25 1. The federal jurisdiction of this action is based on the  
26 Americans with Disabilities Act, 42 United States Code 12101-  
27 12102, 12181-12183 and 12201, et seq. Venue in the Judicial  
28 District of the United States District Court of the Southern  
District of California is in accordance with 28 U.S.C. § 1391(b)

1 because a substantial part of Plaintiffs' claims arose within the  
2 Judicial District of the United States District Court of the  
3 Southern District of California.

4 **SUPPLEMENTAL JURISDICTION**

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

24 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

25 3. Defendants are, and, at all times mentioned herein, were, a  
26 business or corporation or franchise organized and existing and/or  
27 doing business under the laws of the State of California.  
28

1 Defendant THE EBB TIDE INN is located at 2645 Carlsbad Blvd.,  
2 Carlsbad, California, 92008. Plaintiffs are informed and believe  
3 and thereon allege that JACK D. PHILLIPS is the owner, operator,  
4 franchiser, licensor, and/ or lessor of THE EBB TIDE INN.

5 Plaintiffs are informed and believe and hereon allege that JACK D.  
6 PHILLIPS is also the owner, operator, franchiser, licensor, and/or  
7 lessor of the property located at 2645 Carlsbad Blvd., Carlsbad,  
8 California, 92008, Assessor Parcel number: 203-142-02. Defendant  
9 JACK D. PHILLIPS is located at 2667 Ocean Street, Carlsbad,  
10 California, 92008. The words "Plaintiffs" and "Plaintiff's Member"  
11 as used herein specifically include the organization MANTIC  
12 ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and  
13 persons associated with its Members who accompanied Members to  
14 Defendants' facilities, as well as THEODORE A. PINNOCK, An  
15 Individual.

16 4. Defendants Does 1 through 10, were at all times relevant  
17 herein subsidiaries, employers, employees, agents, of THE EBB TIDE  
18 INN; and JACK D. PHILLIPS. Plaintiffs are ignorant of the true  
19 names and capacities of Defendants sued herein as Does 1 through  
20 10, inclusive, and therefore sues these Defendants by such  
21 fictitious names. Plaintiffs will pray leave of the court to  
22 amend this complaint to allege the true names and capacities of  
23 the Does when ascertained.

24 5. Plaintiffs are informed and believe, and thereon allege, that  
25 Defendants and each of them herein were, at all times relevant to  
26 the action, the owner, lessor, lessee, franchiser, franchisee,  
27 general partner, limited partner, agent, employee, representing  
28

1 partner, or joint venturer of the remaining Defendants and were  
2 acting within the course and scope of that relationship.  
3 Plaintiffs are further informed and believe, and thereon allege,  
4 that each of the Defendants herein gave consent to, ratified,  
5 and/or authorized the acts alleged herein to each of the remaining  
6 Defendants.

7  
8 CONCISE SET OF FACTS

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

16 7. On November 09, 2004, Plaintiff's Member THEODORE A. PINNOCK  
17 went to Defendants' THE EBB TIDE INN facilities to utilize their  
18 goods and/or services. When Plaintiff's Member and Plaintiff  
19 THEODORE A. PINNOCK patronized Defendants' THE EBB TIDE INN  
20 facilities, he was unable to use and/or had difficulty using the  
21 public accommodations' disabled parking, exterior path of travel,  
22 and accessible lodging facilities at Defendants' business  
23 establishments because they failed to comply with ADA Access  
24 Guidelines For Buildings and Facilities (hereafter referred to as  
25 "ADAAG") and/or California's Title 24 Building Code Requirements.  
26 Defendants failed to remove access barriers within the public  
27 accommodations' disabled parking, exterior path of travel,  
28 accessible lodging, guestroom door, guestroom entrance, cashier

1 window, and cashier counter facilities of Defendants' THE EBB TIDE  
2 INN establishment.

3 8. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK  
4 personally experienced difficulty with said access barriers at  
5 Defendants' THE EBB TIDE INN facility. For example, the entryway  
6 into the parking lot fails to have the required signage warning  
7 motorists that anyone illegally parking in a disabled parking  
8 space would be towed and/or fined. This facility has a total of  
9 eight (8) parking spaces and fails to provide any disabled parking  
10 spaces. This facility is required to provide at least one (1)  
11 compliant "Van Accessible" parking space.

12 9. The width of the public walkway fails to be compliant, as it  
13 is as narrow as thirty-three inches (33") wide.

14 10. Plaintiff's Member and Plaintiff Theodore A. Pinnock was  
15 completely denied access to Defendant's hotel. This is due to the  
16 fact that two (2), five-inch (5") steps obstruct the path of  
17 travel to the entrance. As Plaintiff's Member and Plaintiff  
18 Theodore A. Pinnock desired to stay in Defendant's hotel, his  
19 assistant, Anna Wiggins, set out to inquire of the hotel's  
20 accommodations on his behalf. Defendant's hotel staff informed  
21 Anna Wiggins that Defendant's hotel fails to provide any fully  
22 accessible guestrooms. Therefore, Plaintiff's member and Plaintiff  
23 was completely denied access to Defendant's hotel facility.

24 11. This motel has a total of nine (9) guestrooms and fails to  
25 provide any accessible guestrooms. If a motel has between one (1)  
26 to twenty-five (25) guestrooms, the motel shall provide one (1)  
27 accessible guestroom.  
28

1 12. In addition to the violations personally experienced by  
2 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional  
3 violations of federal and state disability laws exist at  
4 Defendants' THE EBB TIDE INN establishment. For example, the  
5 front entrance to the motel fails to show the required  
6 international symbol of accessibility. The doorknob on the office  
7 entrance door is not compliant, as it requires tight grasping  
8 and/or twisting of the wrist to operate. The strike clearance of  
9 the office door is a mere six inches (6") inches, when it is  
10 required to be at least eighteen inches (18"). The height of the  
11 threshold of the office door exceeds the required height, as it is  
12 four (4") inches. Changes in levels between a quarter-inch (1/4")  
13 to a half-inch (1/2") are required to have a bevel of up to two to  
14 one (2/1).

15 13. The small round key, which is required to open the guestroom  
16 door, fails to be compliant, as it requires tight grasping and/or  
17 twisting of the wrist to operate. The doorknob of the guestroom  
18 entrance door fails to be compliant, as it requires tight grasping  
19 and/or twisting of the wrist to operate. The threshold of the  
20 guestroom entrance exceeds the required height, as is five inches  
21 (5") high. Changes in levels between a quarter-inch (1/4") to a  
22 half-inch (1/2") are required to have a bevel of up to two to one  
23 (2/1). The height of the cashier window is in accessible, as it is  
24 forty-five inches (45") high. The height of the cashier counter is  
25 inaccessible, as it is forty inches (40") high.

26 14. Pursuant to federal and state law, Defendants are required to  
27 remove barriers to their existing facilities. Further, Defendants  
28

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

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

23 16. Based on these facts, Plaintiffs allege Plaintiff's Member  
24 and Plaintiff Theodore A. Pinnock was discriminated against each  
25 time he patronized Defendants' establishment. Plaintiff's Member  
26 and Plaintiff Theodore A. Pinnock was extremely upset due to  
27 Defendants' conduct. Further, Plaintiff's Member and Plaintiff  
28

1 THEODORE A. PINNOCK experienced pain in his legs, back, arms,  
2 shoulders and wrists when he attempted to enter, use, and exit  
3 Defendants' establishment.

4 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

5  
6 17. THE EBB TIDE INN; JACK D. PHLLIPS; and Does 1 through 10 will  
7 be referred to collectively hereinafter as "Defendants."

8 18. Plaintiffs aver that the Defendants are liable for the  
9 following claims as alleged below:

10  
11 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

14  
15 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal  
16 Access

17 19. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
18 this complaint, Plaintiff's Member was denied full and equal  
19 access to Defendants' goods, services, facilities, privileges,  
20 advantages, or accommodations. Plaintiffs allege Defendants are a  
21 public accommodation owned, leased and/or operated by Defendants.  
22 Defendants' existing facilities and/or services failed to provide  
23 full and equal access to Defendants' facility as required by 42  
24 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to  
25 discrimination in violation of 42 United States Code  
26 12182(b) (2) (A) (iv) and 42 U.S.C. § 12188 because Plaintiff's  
27 Member was denied equal access to Defendants' existing facilities.

28 20. Plaintiff's member Theodore A. Pinnock has physical

1 impairments as alleged in ¶ 6 above because his conditions affect  
2 one or more of the following body systems: neurological,  
3 musculoskeletal, special sense organs, and/or cardiovascular.

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

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

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

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

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

15 24. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to  
16 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.  
17 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.  
18 Pinnock was denied equal access to Defendants' existing  
19 facilities.  
20

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

23 25. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
24 this complaint, Plaintiff's Member was denied full and equal  
25 access to Defendants' goods, services, facilities, privileges,  
26 advantages, or accommodations within a public accommodation owned,  
27 leased, and/or operated by Defendants. Defendants failed to  
28 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs

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

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

24 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
25 this complaint, Defendants failed and refused to provide a  
26 reasonable alternative by modifying its practices, policies and  
27 procedures in that they failed to have a scheme, plan, or design  
28 to assist Plaintiff's Member and/or others similarly situated in

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

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

23  
24 28. WHEREFORE, Plaintiffs pray for judgment and relief as  
25 hereinafter set forth.

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

3 CLAIM I: Denial Of Full And Equal Access

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

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

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

26 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere  
27 herein this complaint, Defendants failed and refused to provide a  
28 reasonable alternative by modifying its practices, policies, and

1 procedures in that they failed to have a scheme, plan, or design  
2 to assist Plaintiff's Member and/or others similarly situated in  
3 entering and utilizing Defendants' services as required by Civil  
4 Code § 54.1. Thus, said Member was subjected to discrimination in  
5 violation of Civil Code § 54.1.

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

7 32. Based on the facts plead at ¶¶ 6-16 above and elsewhere  
8 herein this complaint and because Defendants violated the Civil  
9 Code § 51 by failing to comply with 42 United States Code §  
10 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and  
11 continue to discriminate against Plaintiff's Member and persons  
12 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

1 necessary to enjoin compliance with state civil rights laws  
2 enacted for the benefit of individuals with disabilities.

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

5  
6 **Treble Damages Pursuant To Claims I, II, III Under The California**  
7 **Accessibility Laws**

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

1 rights and/or safety of Plaintiff's Member and of other similarly  
2 situated persons, justifying an award of treble damages pursuant  
3 to sections 52(a) and 54.3(a) of the California Civil Code.

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

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

25 38. Wherefore, Plaintiffs pray for damages and relief as  
26 hereinafter stated.  
27  
28

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

3 39. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
4 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a  
5 statutory duty to make their facility accessible and owed  
6 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.  
7 Pinnock reasonably safe from known dangers and risks of harm.  
8 This said duty arises by virtue of legal duties proscribed by  
9 various federal and state statutes including, but not limited to,  
10 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the  
11 California Administrative Code and applicable 1982 Uniform  
12 Building Code standards as amended.

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

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

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

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

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1 DEMAND FOR JUDGMENT FOR RELIEF:

2 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
3 3281, and 3333;

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

7 C. In the alternative to the damages pursuant to Cal. Civil  
8 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to  
9 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
10 54.1, Title 24 of the California Building Code, ADA, and ADA  
11 Accessibility Guidelines;

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

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

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

1 and 54.3(a);

2 G. A Jury Trial and;

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

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5 Respectfully submitted:


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PINNOCK & WAKEFIELD, A.P.C

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9 Dated: April 19, 2005

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

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JS44  
(Rev. 07/89)

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

DEFENDANTS

THE EBB TIDE INN; JACK D. PHILLIPS; And DOES 1 THROUGH 10, Inclusive

FILED  
05 MAY -5 AM 9:23  
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 (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)

Michelle L. Wakefield, Esq. SBN: 200424  
David C. Wakefield, Esq. SBN: 185736  
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)

05 CV 0968 L - 26F (BLM)

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)

- |   |   |
|---|---|
| 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 Infrument <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	<b>PERSONAL INJURY</b> <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  <b>CIVIL RIGHTS</b> <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	<b>PERSONAL INJURY</b> <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  <b>PERSONAL PROPERTY</b> <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  <b>PRISONER PETITIONS</b> <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	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 88 I <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  <b>LABOR</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <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
<b>REAL PROPERTY</b> <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					

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 April 22, 2005

SIGNATURE OF ATTORNEY OF RECORD

CR #113518 250-MS

*Michelle L. Wakefield*