

SWD 3/29/05 15:11

3:05-CV-00617 PINNOCK V. OCEANSIDE INN

\*1\*

\*CMP.\*

**PINNOCK & WAKEFIELD**

A Professional Corporation  
David C. Wakefield, Esq.  
Michelle L. Wakefield, Esq.  
3033 Fifth Avenue, Suite 410  
San Diego, CA 92103-5973  
Telephone: (619) 858-3671  
Facsimile: (619) 858-3646

Bar #: 185736  
Bar #: 200424

FILED

MAR 29 AM 8:46

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

BY: *[Signature]* DEPUTY

Attorneys for Plaintiffs

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

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

Plaintiffs,

v.

**OCEANSIDE INN & SUITES; DIPAK  
T. PATEL d.b.a. OCEANSIDE INN &  
SUITES; ANJALI D. PATEL d.b.a.  
OCEANSIDE INN & SUITES;  
DHIREN K. SUTARIA d.b.a.  
OCEANSIDE INN & SUITES;  
MAMATA D. SUTARIA d.b.a.  
OCEANSIDE INN & SUITES; DIPAK  
T. PATEL; ANJALI D. PATEL;  
DHIREN K. SUTARIA; MAMATA D.  
SUTARIA; And DOES 1 THROUGH  
10, Inclusive**

Defendants.

Case No. **05 CV 0617 JM** (JFS)

**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

*[Handwritten mark]*

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

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

1 part of the same case or controversy and the actions would ordinarily be expected to be tried in one  
2 judicial proceeding.

3 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

4 3. Defendants are, and, at all times mentioned herein, were, a business or corporation or  
5 franchise organized and existing and/or doing business under the laws of the State of California.  
6 Defendant OCEANSIDE INN & SUITES is located at 1820 S. Coast Highway, Oceanside,  
7 California 92054. Plaintiffs are informed and believe and thereon allege that Defendants DIPAK T.  
8 PATEL, ANJALI D. PATEL, DHIREN K. SUTARIA, and MAMATA D. SUTARIA are the  
9 owners, operators, and/or doing business as OCEANSIDE INN & SUITES. Defendant DIPAK T.  
10 PATEL is located at 2364 Pacific Coast Highway, Lomita, California 90717. Plaintiffs are  
11 informed and believe and thereon allege that Defendants DIPAK T. PATEL, ANJALI D. PATEL,  
12 DHIREN K. SUTARIA, and MAMATA D. SUTARIA are also the owners, operators, and/or  
13 lessors of the property located at 1820 S. Coast Highway, Oceanside, California 92054, Assessor  
14 Parcel number 153-272-12. The words "Plaintiffs" and "Plaintiff's Member" as used herein  
15 specifically include the organization MANTIC ASHANTI'S CAUSE, its Members, its member  
16 Theodore A. Pinnock and persons associated with its Members who accompanied Members to  
17 Defendants' facilities, as well as THEODORE A. PINNOCK, An Individual.

18 4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
19 employees, agents, of OCEANSIDE INN & SUITES; DIPAK T. PATEL d.b.a. OCEANSIDE INN  
20 & SUITES; ANJALI D. PATEL d.b.a. OCEANSIDE INN & SUITES; DHIREN K. SUTARIA  
21 d.b.a. OCEANSIDE INN & SUITES; MAMATA D. SUTARIA d.b.a. OCEANSIDE INN &  
22 SUITES; DIPAK T. PATEL; ANJALI D. PATEL; DHIREN K. SUTARIA; and MAMATA D.  
23 SUTARIA. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as  
24 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.  
25 Plaintiffs will pray leave of the court to amend this complaint to allege the true names and  
26 capacities of the Does when ascertained.

27 5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them  
28

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

6 **CONCISE SET OF FACTS**

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

12 7. On November 9, 2004, Plaintiff's Member and Plaintiff THEODORE A. PINNOCK went  
13 to Defendants' OCEANSIDE INN & SUITES facilities to utilize their goods and/or services.  
14 When Plaintiff's Member and Plaintiff THEODORE A. PINNOCK patronized Defendants'  
15 OCEANSIDE INN & SUITES facilities, he was unable to use and/or had difficulty using the public  
16 accommodations' disabled parking, exterior path of travel, entrance, cashier counter, guestroom,  
17 and guestroom entrance facilities at Defendants' business establishments because they failed to  
18 comply with ADA Access Guidelines For Buildings and Facilities (hereafter referred to as  
19 "ADAAG") and/or California's Title 24 Building Code Requirements. Defendants failed to remove  
20 access barriers within the public accommodations' disabled parking, exterior path of travel,  
21 entrance, cashier counter, guestroom, guestroom entrance, guestroom reach ranges, guestroom  
22 operable controls, and guestroom bathroom facilities of Defendants' OCEANSIDE INN & SUITES  
23 establishment.

24 8. Plaintiff's member personally experienced difficulty with said access barriers at  
25 Defendants' OCEANSIDE INN & SUITES facility. For example, the parking facility is comprised  
26 of twenty-two (22) parking spaces, one (1) of which is designated as a disabled parking space that  
27 fails to be compliant. The existing disabled parking space is a non-compliant "regular" disabled  
28

1 parking space that is only fourteen feet (14') long, fails to have the required access aisle, and fails  
2 to have the required signage. It is required that there is at least one "van accessible" disabled  
3 parking space that is eighteen feet (18') long, nine feet (9') wide, and has an access aisle that is  
4 eight feet (8') wide on the right hand side of the disabled parking space. There is one (1) entryway  
5 into the parking lot, which fails to have the required signage warning motorists that anyone illegally  
6 parking in a disabled parking space would be towed/fined or both.

7 9. The exterior path of travel of the Defendants' establishment is inaccessible. There fails to  
8 be a safe and accessible path of travel from the public sidewalk to the primary accessible entrance,  
9 as members of the disability community are forced to traverse through vehicular traffic without the  
10 benefit of a marked path of travel. The slope of the ramp at the entrance door of the office is up to  
11 eleven percent (11%), when it is required to be no greater than 8.33%.

12 10. The front entrance to the Defendants' establishment is inaccessible. The height of the  
13 threshold at the entrance door of the office is one inch (1") high and fails to have the required ramp.  
14 Changes in level greater than one half of an inch (1/2") are required to be ramped. The front  
15 entrance door fails to have the required disability signage.

16 11. The cashier counter is inaccessible, as it is forty-five inches (45") high, when it is required  
17 to be no higher than thirty-four inches (34").

18 12. The Defendants' establishment has a total of twenty (20) Guestrooms, none of which are  
19 accessible. If a hotel has between one and twenty-five (1 and 25) guestrooms, the hotel shall  
20 provide at least one (1) fully accessible guestroom. If a hotel has between one and twenty-five (1  
21 and 25) guestrooms, the hotel shall provide one (1) accessible guestroom for members of the  
22 disability community who are hearing impaired. The accessible guestrooms must be dispersed  
23 among the various classes of sleeping accommodations, providing a range of options applicable to  
24 room sizes, costs, amenities provided, and the number of beds provided. Defendants' hotel fails to  
25 have the required accessible guestrooms.

26 13. Plaintiff's member and Plaintiff Theodore A. Pinnock was completely denied access to all  
27 of the guestrooms at the Defendants' establishment, due to the fact that every guestroom entrance  
28

1 has three (3) steps, each step is five inches (5") high, and their fails to be a ramps. It is required  
2 that changes in level greater than one half of an inch (1/2") are required to be ramped.

3 14. In addition to the violations personally experienced by Plaintiff's member and Plaintiff  
4 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants'  
5 OCEANSIDE INN & SUITES establishment. For example, guestroom 121 is inaccessible. The  
6 guestroom entrance has three (3) steps, each step is five inches (5") high, and their fails to be a  
7 ramps. It is required that changes in level greater than one half of an inch (1/2") are required to be  
8 ramped. The small round metal key that is required to open the guestroom door is inaccessible, as  
9 it requires tight grasping and/or twisting of the wrist to operate. The doorknob on the entrance door  
10 is inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The small round  
11 lamp switches inside the guestroom are inaccessible, as they require tight grasping and/or twisting  
12 of the wrist to operate. The clear opening width of the bedroom doorway is only twenty-nine  
13 inches (29") wide, when it is required to be at least thirty-two inches (32"). The clear floor space  
14 between the bed and the wall is only thirty-three inches (33"), when it is required to be at least  
15 thirty-six inches (36"). Guestroom 121 fails to have the required audible and visual alarm system.

16 15. The bathroom located inside guestroom 121 is inaccessible. The clear opening width of the  
17 bathroom entrance door is only twenty-one inches (21"), when it is required to be at least thirty-two  
18 inches (32"). The doorknob is inaccessible, as it requires tight grasping and/or twisting of the wrist  
19 to operate. The bathroom fails to provide the required clear floor space of at least sixty inches  
20 (60") in diameter. The commode fails to have any of the required grab bars. The height of the  
21 commode is fifteen inches (15"), when it is required to be between seventeen inches and nineteen  
22 inches (17"- 19") high. The shower fails to have any of the required grab bars. The height of  
23 shower threshold is seven inches (7"), when it is required to be no higher than one half of an inch  
24 (1/2") with a bevel of up to 1:1 gradient. The dimensions of the shower stall are only thirty-five  
25 inches by thirty-five inches (35" x 35"), when it is required to be at least thirty inches by sixty  
26 inches (30" x 60"). The shower fails to have the required seat. The shower fails to have the  
27 required flexible handheld sprayer. The round mixing faucet valve in the shower is inaccessible, as  
28

1 it requires tight grasping and/or twisting of the wrist to operate. The lavatory faucet handles are  
2 inaccessible, as they require tight grasping and/or twisting of the wrist to operate. The bathroom  
3 inside guestroom 121 fails to have the required audible and visual alarm system.

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

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

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

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

26 **DEFENDANT**

27 19. OCEANSIDE INN & SUITES; DIPAK T. PATEL d.b.a. OCEANSIDE INN & SUITES;  
28

1 ANJALI D. PATEL d.b.a. OCEANSIDE INN & SUITES; DHIREN K. SUTARIA d.b.a.  
2 OCEANSIDE INN & SUITES; MAMATA D. SUTARIA d.b.a. OCEANSIDE INN & SUITES;  
3 DIPAK T. PATEL; ANJALI D. PATEL; DHIREN K. SUTARIA; MAMATA D. SUTARIA; and  
4 Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

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

6 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

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

10 21. Based on the facts plead at ¶¶ 6-18 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. Plaintiffs allege Defendants are a public accommodation owned,  
13 leased and/or operated by Defendants. Defendants' existing facilities and/or services failed to  
14 provide full and equal access to Defendants' facility as required by 42 U.S.C. § 12182(a). Thus,  
15 Plaintiff's Member was subjected to discrimination in violation of 42 United States Code  
16 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's Member was denied equal access to  
17 Defendants' existing facilities.

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

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

23. Based on the facts plead at ¶¶ 6-18 above and elsewhere in this complaint, Plaintiff's

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

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

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

20 26. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to discrimination in violation  
21 of 42 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because said Member  
22 Theodore A. Pinnock was denied equal access to Defendants' existing facilities.  
23

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

25 27. Based on the facts plead at ¶¶ 6-18 above and elsewhere in this complaint, Plaintiff's  
26 Member was denied full and equal access to Defendants' goods, services, facilities, privileges,  
27 advantages, or accommodations within a public accommodation owned, leased, and/or operated by  
28 Defendants. Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs

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

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

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

25 29. Based on the facts plead at ¶¶ 6-18 above, Claims I, II, and III of Plaintiffs' First Cause Of  
26 Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm  
27 unless Defendants are ordered to remove architectural, non-architectural, and communication  
28 barriers at Defendants' public accommodation. Plaintiffs allege that Defendants' discriminatory

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

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

9  
10 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**  
**CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

27 ///

28

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

33. Based on the facts plead at ¶¶ 6-18 above and elsewhere herein this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies, and procedures in that they failed to have a scheme, plan, or design to assist Plaintiff's Member and/or others similarly situated in entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus, said Member was subjected to discrimination in violation of Civil Code § 54.1.

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

34. Based on the facts plead at ¶¶ 6-18 above and elsewhere herein this complaint and because Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code § 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to discriminate against Plaintiff's Member and persons similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

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

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

37. Defendants, each of them respectively, at times prior to and including, the month of

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

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

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

1 financial worth of Defendants, or the amount of damages sufficient to accomplish the public  
2 purposes of section 52(a) of the California Civil Code and section 54.3 of the California Civil  
3 Code.

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

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

7 41. Based on the facts plead at ¶¶ 6-18 above and elsewhere in this complaint, Defendants owed  
8 Plaintiff Theodore A. Pinnock a statutory duty to make their facility accessible and owed Plaintiff  
9 Theodore A. Pinnock a duty to keep Plaintiff Theodore A. Pinnock reasonably safe from known  
10 dangers and risks of harm. This said duty arises by virtue of legal duties proscribed by various  
11 federal and state statutes including, but not limited to, ADA, ADAAG, Civil Code 51, 52, 54, 54.1,  
12 54.3, and Title 24 of the California Administrative Code and applicable 1982 Uniform Building  
13 Code standards as amended.

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

19 43. Therefore, Defendants engaged in discriminatory conduct in that they failed to comply with  
20 known duties under the ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24,  
21 and knew or should have known that their acts of nonfeasance would cause Plaintiff THEODORE  
22 A. PINNOCK emotional, bodily and personal injury. Plaintiff THEODORE A. PINNOCK alleges  
23 that there was bodily injury in this matter because when Plaintiff THEODORE A. PINNOCK  
24 attempted to enter, use, and exit Defendants' establishment, Plaintiff THEODORE A. PINNOCK  
25 experienced pain in his legs, back, arms, shoulders, and wrists. Plaintiffs further allege that such  
26 conduct was done in reckless disregard of the probability of said conduct causing Plaintiff  
27 THEODORE A. PINNOCK to suffer bodily or personal injury, anger, embarrassment, depression,  
28

1 anxiety, mortification, humiliation, distress, and fear of physical injury. Plaintiff THEODORE A.  
2 PINNOCK, An Individual, alleges that such conduct caused THEODORE A. PINNOCK, An  
3 Individual, to suffer the injuries of mental and emotional distress, including, but not limited to,  
4 anger, embarrassment, depression, anxiety, mortification, humiliation, distress, and fear of physical  
5 injury. Plaintiff THEODORE A. PINNOCK, An Individual, additionally alleges that such conduct  
6 caused THEODORE A. PINNOCK, An Individual, to suffer damages as a result of these injuries.

7 44. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.  
8

9 DEMAND FOR JUDGMENT FOR RELIEF:

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

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

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

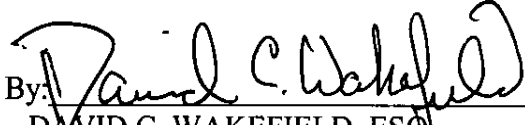
18 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs  
19 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities  
20 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding  
21 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
22 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking  
23 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,  
24 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable  
25 Warnings, Signage, and Telephones.  
26  
27  
28

- 1 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
- 2 § 55;
- 3 F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and 54.3(a);
- 4 G. A Jury Trial and;
- 5 H. For such other further relief as the court deems proper.
- 6
- 7
- 8
- 9

10 Respectfully submitted:

**PINNOCK & WAKEFIELD, A.P.C.**

11  
12 Dated: 3/21/05

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

CIVIL COVER SHEET

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of 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

OCEANSIDE INN & SUITES; DIPAK T. PATEL d.b.a. OCEANSIDE INN & SUITES; ANJALI D. PATEL d.b.a. OCEANSIDE INN & SUITES; DHIREN K. SUTARIA d.b.a. OCEANSIDE INN & SUITES; MAMATA D. SUTARIA d.b.a. OCEANSIDE INN & SUITES; DIPAK T. PATEL; ANJALI D. PATEL; DHIREN K. SUTARIA; MAMATA D. SUTARIA; And DOES 1 THROUGH 10, Inclusive

FILED 05 MAR 29 AM 8:43 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)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED DEPUTY

(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)

'05 CV 0617 JM (JFS)

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 Incorporated or Principal Place of Business in This State
2 Incorporated and Principal Place of Business in Another State
3 Foreign Nation
4
5
6

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

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

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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

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

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

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

JUDGE

Docket Number

DATE

3/21/05

SIGNATURE OF ATTORNEY OF RECORD

David C. Wakefield

#112302 \$250,000.00