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3:05-CV-00615 PINNOCK V. SAWANT
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SOUTHERN DISTRICT OF CALIFORNIA
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5 Attorneys for Plaintiffs

6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

13 SHRIKANT SAWANT d.b.a. OCEAN
14 BREEZE INN; SUNITA SAWANT
15 d.b.a. OCEAN BREEZE INN;
16 SHRIKANT SAWANT; SUNITA
SAWANT; And DOES 1 THROUGH
10, Inclusive

Defendants.

Case No.:

'05 CV 0615 JM

(JMA)

CIVIL COMPLAINT

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS

[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1;
HEALTH & SAFETY CODE 19995]

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]

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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 Defendants SHRIKANT SAWANT d.b.a. OCEAN BREEZE INN and SUNITA
2 SAWANT d.b.a. OCEAN BREEZE INN, hereafter "OCEAN BREEZE INN", are
3 located at 2020 Coast Highway, Oceanside, California, 92054.
4 Plaintiffs are informed and believe and thereon allege that
5 SHRIKANT SAWANT and SUNITA SAWANT are the owners, operators,
6 franchisers, licensors, and/or lessors of the property located at
7 2020 Coast Highway, Oceanside, California, 92054, Assessor Parcel
8 number: 155-032-20. Defendants SHRIKANT SAWANT d.b.a. OCEAN BREEZE
9 INN; SUNITA SAWANT d.b.a. OCEAN BREEZE INN; SHRIKANT SAWANT and
10 SUNITA SAWANT are located at 1559 Washington Street, San Diego,
11 California, 92103. The words "Plaintiffs" and "Plaintiff's Member"
12 as used herein specifically include the organization MANTIC
13 ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and
14 persons associated with its Members who accompanied Members to
15 Defendants' facilities, as well as THEODORE A. PINNOCK, An
16 Individual.

17 4. Defendants Does 1 through 10, were at all times relevant
18 herein subsidiaries, employers, employees, agents, of SHRIKANT
19 SAWANT d.b.a. OCEAN BREEZE INN; SUNITA SAWANT d.b.a. OCEAN BREEZE
20 INN; SHRIKANT SAWANT and/or SUNITA SAWANT. Plaintiffs are
21 ignorant of the true names and capacities of Defendants sued
22 herein as Does 1 through 10, inclusive, and therefore sues these
23 Defendants by such fictitious names. Plaintiffs will pray leave
24 of the court to amend this complaint to allege the true names and
25 capacities of the Does when ascertained.

26 5. Plaintiffs are informed and believe, and thereon allege, that
27 Defendants and each of them herein were, at all times relevant to
28

1 the action, the owner, lessor, lessee, franchiser, franchisee,
2 general partner, limited partner, agent, employee, representing
3 partner, or joint venturer of the remaining Defendants and were
4 acting within the course and scope of that relationship.

5 Plaintiffs are further informed and believe, and thereon allege,
6 that each of the Defendants herein gave consent to, ratified,
7 and/or authorized the acts alleged herein to each of the remaining
8 Defendants.

9
10 CONCISE SET OF FACTS

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

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

1 barriers within the public accommodations' disabled parking,
2 exterior path of travel, office entrance, guestrooms, lodging
3 accessibility, and guest laundry facilities of Defendants' OCEAN
4 BREEZE INN establishment.

5 8. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
6 personally experienced difficulty with said access barriers at
7 Defendants' OCEAN BREEZE INN facility. For example, the entryway
8 into the parking lot fails to have the required signage warning
9 motorists that anyone illegally parking in a disabled parking
10 space would be towed/fined or both. the parking lot fails have any
11 of the required disabled parking spaces or the required "Van
12 Accessible" parking spaces. The facility has fourteen (14) parking
13 spaces and is required to have at least one (1) "Van Accessible"
14 disabled parking space.

15 9. The exterior path of travel from the public sidewalk to the
16 preliminary accessible entrance fails to be have the required
17 marking and could cause disabled patrons to be in harms way when
18 they share a path of travel with automobiles or larger vehicles.

19 10. The height of the threshold at the office entrance door is a
20 half-inch (1/2"). Changes in levels between a quarter-inch (1/4")
21 to a half-inch (1/2") are required to have a bevel of up to two to
22 one (2/1). The doorknob of the office door fails to be compliant,
23 as it requires tight grasping and/or twisting of the wrist.

24 11. This motel fails to be compliant, as it fails to have any of
25 the required accessible guestrooms. This hotel has nine (9)
26 guestrooms. If the hotel has between one (1) to twenty-five (25)
27 guestrooms, the hotel shall provide one (1) accessible guestroom.
28

1 12. The guestroom entrance door fails to have the required
2 international symbol of accessibility. The small round key, which
3 is required to open the guestroom door, fails to be compliant, as
4 it requires tight grasping and/or twisting of the wrist. The
5 doorknob fails to be compliant, as it requires tight grasping
6 and/or twisting of the wrist. The height of the threshold at the
7 guestroom door fails to be compliant, as it is four-inches (4")
8 high.

9 13. In addition to the violations personally experienced by
10 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
11 violations of federal and state disability laws exist at
12 Defendants' OCEAN BREEZE INN establishment. For example, the
13 clear opening width of the guest laundry room doorway fails to
14 meet the required size, as it is only twenty-one inches (21")
15 wide, and is therefore inaccessible to members of the disabled
16 community utilizing a wheelchair for mobility. The guest laundry
17 room fails to have the required front load washer/dryer machines.

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

26 15. Plaintiffs believe and herein allege Defendants' facilities
27 have access violations not directly experienced by Plaintiff's
28

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

15
16 16. Based on these facts, Plaintiffs allege Plaintiff's Member
17 and Plaintiff Theodore A. Pinnock was discriminated against each
18 time he patronized Defendants' establishment. Plaintiff's Member
19 and Plaintiff Theodore A. Pinnock was extremely upset due to
20 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
21 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
22 shoulders and wrists when he attempted to enter, use, and exit
23 Defendants' establishment.

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

25 17. SHRIKANT SAWANT d.b.a. OCEAN BREEZE INN; SUNITA SAWANT d.b.a.
26 OCEAN BREEZE INN; SHRIKANT SAWANT; SUNITA SAWANT and Does 1
27 through 10 will be referred to collectively hereinafter as
28 "Defendants."

1 18. Plaintiffs aver that the Defendants are liable for the
2 following claims as alleged below:
3

4 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

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

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

10 19. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
11 this complaint, Plaintiff's Member was denied full and equal
12 access to Defendants' goods, services, facilities, privileges,
13 advantages, or accommodations. Plaintiffs allege Defendants are a
14 public accommodation owned, leased and/or operated by Defendants.
15 Defendants' existing facilities and/or services failed to provide
16 full and equal access to Defendants' facility as required by 42
17 U.S.C. § 12182(a). 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 Plaintiff's
20 Member was denied equal access to Defendants' existing facilities.
21

22 20. Plaintiff's member Theodore A. Pinnock has physical
23 impairments as alleged in ¶ 6 above because his conditions affect
24 one or more of the following body systems: neurological,
25 musculoskeletal, special sense organs, and/or cardiovascular.
26 Further, Plaintiff's member Theodore A. Pinnock's said physical
27 impairments substantially limits one or more of the following
28 major life activities: walking. In addition, Plaintiff's member

1 Theodore A. Pinnock cannot perform one or more of the said major
2 life activities in the manner, speed, and duration when compared
3 to the average person. Moreover, Plaintiff's member Theodore A.
4 Pinnock has a history of or has been classified as having a
5 physical impairment as required by 42 U.S.C. § 12102(2)(A).
6

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

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

23 22. Additionally, the Defendants undertook an alteration that
24 affects or could affect the usability of or access to an area of
25 the facility containing a primary function after January 26, 1992.
26 Defendants further failed to make the alterations in such a manner
27 that, to the maximum extent feasible, the path of travel to the
28 altered area and the bathrooms, telephones, and drinking fountains

1 serving the altered area, are readily accessible to and usable by
2 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

3 23. Pursuant to 42 U.S.C. §12183(a), this failure to make the
4 alterations in a manner that, to the maximum extent feasible, are
5 readily accessible to and usable by individuals with disabilities
6 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

7 Therefore, Defendants discriminated against Plaintiff's Member
8 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

9 24. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
10 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
11 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
12 Pinnock was denied equal access to Defendants' existing
13 facilities.

14
15 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove**
16 **Architectural Barriers**

17 25. 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 within a public accommodation owned,
21 leased, and/or operated by Defendants. Defendants failed to
22 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
23 are informed, believe, and thus allege that architectural barriers
24 which are structural in nature exist within the following physical
25 elements of Defendants' facilities: Space Allowance and Reach
26 Ranges, Accessible Route, Protruding Objects, Ground and Floor
27 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
28 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,

1 Doors, Entrances, Drinking Fountains and Water Coolers, Water
2 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
3 Storage, Handrails, Grab Bars, and Controls and Operating
4 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
5 Title III requires places of public accommodation to remove
6 architectural barriers that are structural in nature to existing
7 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
8 Failure to remove such barriers and disparate treatment against a
9 person who has a known association with a person with a disability
10 are forms of discrimination. [See 42 United States Code
11 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
12 discrimination in violation of 42 United States Code
13 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
14 denied equal access to Defendants' existing facilities.
15

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

18 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
19 this complaint, Defendants failed and refused to provide a
20 reasonable alternative by modifying its practices, policies and
21 procedures in that they failed to have a scheme, plan, or design
22 to assist Plaintiff's Member and/or others similarly situated in
23 entering and utilizing Defendants' services, as required by 42
24 U.S.C. § 12188(a). Thus, said 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 said Member was
27 denied equal access to Defendants' existing facilities.

28 27. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and

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

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

22 CLAIM I: Denial Of Full And Equal Access

23 29. 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 as required by Civil Code
28 Sections 54 and 54.1. Defendants' facility violated California's

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

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

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

17 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere
18 herein this complaint, Defendants failed and refused to provide a
19 reasonable alternative by modifying its practices, policies, and
20 procedures in that they failed to have a scheme, plan, or design
21 to assist Plaintiff's Member and/or others similarly situated in
22 entering and utilizing Defendants' services as required by Civil
23 Code § 54.1. Thus, said Member was subjected to discrimination in
24 violation of Civil Code § 54.1.

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

26 32. Based on the facts plead at ¶¶ 6-16 above and elsewhere
27 herein this complaint and because Defendants violated the Civil
28

1 Code § 51 by failing to comply with 42 United States Code §
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
3 continue to discriminate against Plaintiff's Member and persons
4 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.
5 33. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and
6 III of Plaintiffs' Second Cause Of Action above, and the facts
7 elsewhere herein this complaint, Plaintiffs will suffer
8 irreparable harm unless Defendants are ordered to remove
9 architectural, non-architectural, and communication barriers at
10 Defendants' public accommodation. Plaintiffs allege that
11 Defendants' discriminatory conduct is capable of repetition, and
12 this discriminatory repetition adversely impacts Plaintiffs and a
13 substantial segment of the disability community. Plaintiffs
14 allege there is a state and national public interest in requiring
15 accessibility in places of public accommodation. Plaintiffs have
16 no adequate remedy at law to redress the discriminatory conduct of
17 Defendants. Plaintiff's Member desires to return to Defendants'
18 places of business in the immediate future. Accordingly, the
19 Plaintiffs allege that a structural or mandatory injunction is
20 necessary to enjoin compliance with state civil rights laws
21 enacted for the benefit of individuals with disabilities.
22 34. Wherefore, Plaintiffs pray for damages and relief as
23 hereinafter stated.
24

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

27 35. Defendants, each of them respectively, at times prior to and
28 including, the month of November, 2004, and continuing to the

1 present time, knew that persons with physical disabilities were
2 denied their rights of equal access to all portions of this public
3 facility. Despite such knowledge, Defendants, and each of them,
4 failed and refused to take steps to comply with the applicable
5 access statutes; and despite knowledge of the resulting problems
6 and denial of civil rights thereby suffered by Plaintiff's Member
7 THEODORE A. PINNOCK and other similarly situated persons with
8 disabilities. Defendants, and each of them, have failed and
9 refused to take action to grant full and equal access to persons
10 with physical disabilities in the respects complained of
11 hereinabove. Defendants, and each of them, have carried out a
12 course of conduct of refusing to respond to, or correct complaints
13 about, denial of disabled access and have refused to comply with
14 their legal obligations to make Defendants' SHRIKANT SAWANT d.b.a.
15 OCEAN BREEZE INN and SUNITA SAWANT d.b.a. OCEAN BREEZE INN
16 facilities accessible pursuant to the Americans With Disability
17 Act Access Guidelines (ADAAG) and Title 24 of the California Code
18 of Regulations (also known as the California Building Code). Such
19 actions and continuing course of conduct by Defendants, and each
20 of them, evidence despicable conduct in conscious disregard of the
21 rights and/or safety of Plaintiff's Member and of other similarly
22 situated persons, justifying an award of treble damages pursuant
23 to sections 52(a) and 54.3(a) of the California Civil Code.
24 36. Defendants', and each of their, actions have also been
25 oppressive to persons with physical disabilities and of other
26 members of the public, and have evidenced actual or implied
27 malicious intent toward those members of the public, such as
28

1 Plaintiff's Member and other persons with physical disabilities
2 who have been denied the proper access to which they are entitled
3 by law. Further, Defendants', and each of their, refusals on a
4 day-to-day basis to correct these problems evidence despicable
5 conduct in conscious disregard for the rights of Plaintiff's
6 Member THEODORE A. PINNOCK and other members of the public with
7 physical disabilities.

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

18 38. Wherefore, Plaintiffs pray for damages and relief as
19 hereinafter stated.

20
21 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
22 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

23 39. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
24 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
25 statutory duty to make their facility accessible and owed
26 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
27 Pinnock reasonably safe from known dangers and risks of harm.
28 This said duty arises by virtue of legal duties proscribed by

1 various federal and state statutes including, but not limited to,
2 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the
3 California Administrative Code and applicable 1982 Uniform
4 Building Code standards as amended.

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

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

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

9 42. Wherefore, Plaintiffs pray for damages and relief as
10 hereinafter stated.
11

12 DEMAND FOR JUDGMENT FOR RELIEF:

13 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
14 3281, and 3333;

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

18 C. In the alternative to the damages pursuant to Cal. Civil
19 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
20 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
21 54.1, Title 24 of the California Building Code, ADA, and ADA
22 Accessibility Guidelines;

23 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
24 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
25 Defendants to remove all architectural barriers in, at, or on
26 their facilities related to the following: Space Allowance and
27
28

1 Reach Ranges, Accessible Route, Protruding Objects, Ground and
2 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
3 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
4 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
5 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
6 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
7 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

8
9 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
10 § 12205, and Cal. Civil Code § 55;

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


13 G. A Jury Trial and;

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

15
16 Respectfully submitted:
17

18
19 PINNOCK & WAKEFIELD, A.P.C

20 Dated: March 21, 2005

21 By: 
22 MICHELLE L. WAKEFIELD, Esq.
23 DAVID C. WAKEFIELD, Esq.
24 Attorneys for Plaintiffs
25
26
27
28

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
SHRIKANT SAWANT d.b.a. OCEAN BREEZE INN; SUNITA
SAWANT d.b.a. OCEAN BREEZE INN; SHRIKANT SAWANT;
SUNITA SAWANT; And DOES 1 THROUGH 10
FILED
MAR 29 AM 8:45

(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 **DEPUTY**

(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 0615 JM (JMA)**

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)
 1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in
Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX
(For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT
PT DEF PT DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business in This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business in Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 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	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commercial/CC Rates/etc.
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act / 720 Labor/Mgmt Relations	<input type="checkbox"/> 863 DIWCDIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)
 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND \$ To Be Determined At Trial Check YES only if demanded in complaint: JURY DEMAND: YES NO

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

DATE March 21, 2005

SIGNATURE OF ATTORNEY OF RECORD

#112303 \$250.00 *[Signature]*

Michelle L. Wakefield