

USDC SCAN INDEX SHEET



GEP 4/5/05 10:35

3:05-CV-00683 PINNOCK V. WU GENERAL TRADING

1

CMP.

1 PINNOCK & WAKEFIELD, A.P.C.
Michelle L. Wakefield, Esq.
2 David C. Wakefield, Esq.
3033 Fifth Avenue, Suite 410
3 San Diego, CA 92103-5973
Telephone: (619) 858-3671
4 Facsimile: (619) 858-3646

5 Attorneys for Plaintiffs

FILED
Bar #: 200404
Bar #: 05 APR 5 AM 8:10
05 APR 5 AM 8:35
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY DEPUTY

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

Case No.: '05 CV 0683 R (JMA)

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

12 Plaintiffs,

13 v.

14 WU GENERAL TRADING COMPANY
d.b.a. VISTA INN; WU GENERAL
TRADING COMPANY, INC.
15 And DOES 1 THROUGH 10,
Inclusive

16 Defendants.

17 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]

18 NEGLIGENCE
[CIVIL CODE 1714(a), 2338,
3333; EVIDENCE CODE 669(a)]

19 DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ca

1
2
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 WU GENERAL TRADING COMPANY d.b.a. VISTA INN is located
2 at 745 W. Vista Way, Vista, California, 92083-4415. Plaintiffs are
3 informed and believe and thereon allege that in addition to WU
4 GENERAL TRADING COMPANY doing business as VISTA INN, Defendant WU
5 GENERAL TRADING COMPANY, INC. is also the owner, operator,
6 franchiser, licensor, and/or lessor of the property located at 745
7 W. Vista Way, Vista, California, 92083, Assessor Parcel number:
8 164-342-17. Defendants WU GENERAL TRADING COMPANY and WU GENERAL
9 TRADING COMPANY, INC., are located at 1919 Glenridge Road,
10 Escondido, California, 92027. The words "Plaintiffs" and
11 "Plaintiff's Member" as used herein specifically include the
12 organization MANTIC ASHANTI'S CAUSE, its Members, its member
13 Theodore A. Pinnock and persons associated with its Members who
14 accompanied Members to Defendants' facilities, as well as THEODORE
15 A. PINNOCK, An Individual.

16 4. Defendants Does 1 through 10, were at all times relevant
17 herein subsidiaries, employers, employees, agents, of WU GENERAL
18 TRADING COMPANY, d.b.a. VISTA INN, and WU GENERAL TRADING COMPANY,
19 INC. Plaintiffs are ignorant of the true names and capacities of
20 Defendants sued herein as Does 1 through 10, inclusive, and
21 therefore sues these Defendants by such fictitious names.

22 Plaintiffs will pray leave of the court to amend this complaint to
23 allege the true names and capacities of 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' WU GENERAL TRADING COMPANY, d.b.a. VISTA INN
18 facilities to utilize their goods and/or services. When
19 Plaintiff's Member and Plaintiff THEODORE A, PINNOCK patronized
20 Defendants' WU GENERAL TRADING COMPANY, d.b.a. VISTA INN
21 facilities, he was unable to use and/or had difficulty using the
22 public accommodations' disabled parking, exterior path of travel,
23 guestroom, guestroom door, guestroom lamp, guestroom operable
24 control, guestroom shelving, and guestroom bathroom facilities at
25 Defendants' business establishments because they failed to comply
26 with ADA Access Guidelines For Buildings and Facilities (hereafter
27 referred to as "ADAAG") and/or California's Title 24 Building Code
28 Requirements. Defendants failed to remove access barriers within

1 the public accommodations' disabled parking, exterior path of
2 travel, office entrance, lodging accessibility, guestroom door,
3 guestroom path of travel, guestroom lamp, guestroom shelving,
4 guestroom operable control, guestroom bathroom, and cashier window
5 facilities of Defendants' WU GENERAL TRADING COMPANY, d.b.a. VISTA
6 INN establishment.

7 8. Plaintiff's Member and Plaintiff THEODORE A. PINNOCK
8 personally experienced difficulty with said access barriers at
9 Defendants' WU GENERAL TRADING COMPANY, d.b.a. VISTA INN facility.
10 For example, at one parking lot entryway, there fails to be
11 signage to warn motorists that anyone illegally parking in a
12 disabled parking space would be towed and fined. The parking lot
13 has thirty-six (36) parking spaces, one (1) of which is designated
14 as a disabled parking space. The parking facilities fail to have
15 the required "Van Accessible" disabled parking space. The existing
16 designated disabled parking space is only fifteen feet (15') long.
17 Also, the slope of this parking space is excessive, as it is up to
18 four percent (4%).

19 9. The path of travel from the sidewalk and parking lot to the
20 accessible entrance fails to be marked and could cause disabled
21 patrons to be in harms way when they share the path of travel with
22 automobiles and larger vehicles.

23 10. The pressure required to open the office door is excessive,
24 as the door requires twelve pounds (12 lbs.) of pressure to
25 operate. There should be no more than eight and a half pounds (8.5
26 lbs) of pressure to open an exterior door such as this office
27 door. The office door also fails to have a ten-inch (10") high
28

1 abrasion resistance plate affixed on the bottom portion of the
2 door that allows the door to be opened with a wheelchair footrest
3 without creating a hazard.

4 11. The path of travel from the office to the guestrooms fails to
5 be marked and could cause disabled patrons to be in harms way when
6 they share a path of travel with automobiles and larger vehicles.

7 12. There fails to be any of the required disability signage
8 directing guests/patrons to a safe path of travel from the parking
9 lot sidewalk to an accessible entrance.

10 13. This motel has a total of thirty-five (35) guestrooms without
11 any of the required accessible guestrooms. If a motel has between
12 twenty-six (26) and fifty (50) guestrooms, the motel shall provide
13 two (2) accessible guestrooms.

14 14. The guestroom in which Plaintiff's member and Plaintiff
15 Theodore A. Pinnock stayed, fails to have the required ten-inch
16 (10") high abrasion resistance plate affixed on the bottom portion
17 of the guestroom entrance door that allows the guestroom door to
18 be opened with a wheelchair footrest without creating a hazard.
19 There fails to be the required signage on the guestroom entrance
20 door of the guestroom showing the international symbol of
21 accessibility.

22 15. The small round key, which is required to open the guestroom
23 entrance door, fails to be compliant, as it requires tight
24 grasping and/or twisting of the wrist to operate. The doorknob to
25 the guestroom door fails to be compliant, as it requires tight
26 grasping and/or twisting of the wrist to operate. The height of
27 the threshold at the guestroom entrance door is a half-inch
28

1 (1/2"). Changes in levels between a quarter-inch (1/4") to a half-
2 inch (1/2") are required to have a bevel of up to two to one
3 (2/1). The peephole on the guestroom entrance door fails to meet
4 the required height, as it is fifty-nine inches (59") high, and is
5 therefore inaccessible for members of the disabled community
6 utilizing a wheelchair for mobility. The path of travel in the
7 guestroom is as narrow as twenty-nine inches (29"), when it is
8 required to be a minimum of thirty-six inches (36"). The small
9 round lamp switches fail to be compliant, as they require tight
10 grasping and/or twisting of the wrist. The control switch on the
11 air conditioning is not compliant, as it requires tight grasping
12 and/or twisting of the wrist to operate. The shelf in the closet
13 fails to meet the required height, as it is seventy-inches (70")
14 high, when it is required to be no more than forty-eight inches
15 (48") high. The height of the clothes hanger in the closet is
16 sixty-five inches (65") high, when it is required to be no more
17 than forty-eight inches (48") high. The guestroom fails to have
18 the required audible and visual alarm system.

19
20 16. The guestroom bathroom doorknob fails to be compliant, as it
21 requires tight grasping and/or twisting of the wrist. The hot
22 water and drainpipes under the lavatory fail to have the required
23 covering and insulation. The distance from the front edge of the
24 commode to the front wall is only twenty-five inches (25"), when
25 it is required to be a minimum of forty-eight inches (48"). The
26 commode fails to have the required grab bars. The height of the
27 commode is only fifteen-inches (15"), when it is required to be
28 between seventeen-inches (17") and nineteen-inches (19") high. The

1 distance from the side edge of the commode to the far wall is only
2 sixteen-inches (16"), when it is required to be minimum of thirty-
3 two inches (32"). The round mixing valve in the bathtub fails to
4 be compliant, as it requires tight grasping and/or twisting of the
5 wrist. The clear floor space inside the guestroom bathroom is only
6 twenty-inches (20") by thirty-five inches (35"), thereby
7 restricting wheelchair turnaround space. There fails to be any of
8 the required grab bars in the guestroom bathtub. There fails to be
9 sufficient clear floor space in the front of the guestroom bathtub
10 for perpendicular or parallel entry. The shower sprayer unit fails
11 to have the required sixty-inch (60") long hose that can be used
12 as a fixed head or handheld unit. The guestroom bathtub fails to
13 have a required seat. The lavatory faucet handles fail to be
14 compliant, as they require tight grasping and/or twisting of the
15 wrist. The guestroom bathroom fails to have the required audible
16 and visual alarm system.

17
18 17. In addition to the violations personally experienced by
19 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
20 violations of federal and state disability laws exist at
21 Defendants' WU GENERAL TRADING COMPANY, d.b.a. VISTA INN
22 establishment. For example, in Guestroom #100 additional
23 violations exist. Guestroom #100 fails to have the required ten-
24 inch (10") high abrasion resistance plate affixed on the bottom
25 portion of the door that allows the guestroom door to be opened
26 with a wheelchair footrest without creating a hazard. There fails
27 to be the required signage on the front entrance door of Guestroom
28 #100 showing the international symbol of accessibility.

1 18. The small round key, which is required to open Guestroom
2 #100, fails to be compliant, as it requires tight grasping and/or
3 twisting of the wrist to operate. The doorknob to the guestroom
4 door fails to be compliant, as it requires tight grasping and/or
5 twisting of the wrist to operate. The height of the threshold at
6 guestroom entrance door of Guestroom #100 is a half-inch (1/2").
7 Changes in levels between a quarter-inch (1/4") to a half-inch
8 (1/2") are required to have a bevel of up to two to one (2/1). The
9 peephole on the guestroom entrance door fails to meet the required
10 height, as it is fifty-nine inches (59") high, and is therefore
11 inaccessible for members of the disabled community utilizing a
12 wheelchair for mobility. The path of travel in Guestroom #100 is
13 as narrow as twenty-nine inches (29"), when it is required to be a
14 minimum of thirty-six inches (36"). The small round lamp switches
15 in Guestroom #100 fail to be compliant, as they require tight
16 grasping and/or twisting of the wrist. The control switch on the
17 air conditioning in Guestroom #100 is not compliant, as it
18 requires tight grasping and/or twisting of the wrist to operate.
19 The shelf in the closet, of Guestroom #100, fails to meet the
20 required height, as it is seventy-inches (70") high, when it is
21 required to be no more than forty-eight inches (48") high. The
22 height of the clothes hanger in the closet, of Guestroom #100, is
23 sixty-five inches (65") high, when it is required to be no more
24 than forty-eight inches (48") high. Guestroom #100 fails to have
25 the required audible and visual alarm system.

26
27 19. The guestroom bathroom doorknob, of Guestroom #100, fails to
28 be compliant, as it requires tight grasping and/or twisting of the

1 wrist. The hot water and drainpipes under the lavatory fail to
2 have the required covering and insulation. The distance from the
3 front edge of the commode to the front wall is only twenty-five
4 inches (25"), when it is required to be a minimum of forty-eight
5 inches (48"). The commode fails to have the required grab bars.
6 The height of the commode is only fifteen-inches (15"), when it is
7 required to be between seventeen-inches (17") and nineteen-inches
8 (19") high. The distance from the side edge of the commode to the
9 far wall is only sixteen-inches (16"), when it is required to be
10 minimum of thirty-two inches (32"). The round mixing valve in the
11 bathtub fails to be compliant, as it requires tight grasping
12 and/or twisting of the wrist. The clear floor space inside the
13 guestroom bathroom, of Guestroom #100, is only twenty-inches (20")
14 by thirty-five inches (35"), thereby restricting wheelchair
15 turnaround space. There fails to be any of the required grab bars
16 in the guestroom bathtub. There fails to be sufficient clear floor
17 space in the front of the guestroom bathtub, of Guestroom #100,
18 for perpendicular or parallel entry. The shower sprayer unit fails
19 to have the required sixty-inch (60") long hose that can be used
20 as a fixed head or handheld unit. The guestroom bathtub fails to
21 have a required seat. The lavatory faucet handles fail to be
22 compliant, as they require tight grasping and/or twisting of the
23 wrist. The guestroom bathroom, of Guestroom #100, fails to have
24 the required audible and visual alarm system.

25
26 20. The height of the cashier window is not compliant, as it is
27 only forty inches (40") high.

28 21. Pursuant to federal and state law, Defendants are required to

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

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

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

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

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

6
7 24. WU GENERAL TRADING COMPANY d.b.a. VISTA INN; WU GENERAL
8 TRADING COMPANY, INC.; and Does 1 through 10 will be referred to
9 collectively hereinafter as "Defendants."

10 25. Plaintiffs aver that the Defendants are liable for the
11 following claims as alleged below:

12
13 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

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

16
17 CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal**
18 **Access**

19 26. Based on the facts plead at ¶¶ 6-23 above and elsewhere in
20 this complaint, Plaintiff's Member was denied full and equal
21 access to Defendants' goods, services, facilities, privileges,
22 advantages, or accommodations. Plaintiffs allege Defendants are a
23 public accommodation owned, leased and/or operated by Defendants.
24 Defendants' existing facilities and/or services failed to provide
25 full and equal access to Defendants' facility as required by 42
26 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to
27 discrimination in violation of 42 United States Code
28 12182(b) (2) (A) (iv) and 42 U.S.C. § 12188 because Plaintiff's

1 Member was denied equal access to Defendants' existing facilities.

2 27. Plaintiff's member Theodore A. Pinnock has physical
3 impairments as alleged in ¶ 6 above because his conditions affect
4 one or more of the following body systems: neurological,
5 musculoskeletal, special sense organs, and/or cardiovascular.

6 Further, Plaintiff's member Theodore A. Pinnock's said physical
7 impairments substantially limits one or more of the following
8 major life activities: walking. In addition, Plaintiff's member
9 Theodore A. Pinnock cannot perform one or more of the said major
10 life activities in the manner, speed, and duration when compared
11 to the average person. Moreover, Plaintiff's member Theodore A.
12 Pinnock has a history of or has been classified as having a
13 physical impairment as required by 42 U.S.C. § 12102(2)(A).
14

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

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

1 disabilities, including individuals who use wheelchairs, in
2 violation of 42 U.S.C. §12183(a)(2).

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

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

17 31. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
18 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
19 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
20 Pinnock was denied equal access to Defendants' existing
21 facilities.
22

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
2 Architectural Barriers

3 32. Based on the facts plead at ¶¶ 6-23 above and elsewhere in
4 this complaint, Plaintiff's Member was denied full and equal
5 access to Defendants' goods, services, facilities, privileges,
6 advantages, or accommodations within a public accommodation owned,
7 leased, and/or operated by Defendants. Defendants failed to
8 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
9 are informed, believe, and thus allege that architectural barriers
10 which are structural in nature exist within the following physical
11 elements of Defendants' facilities: Space Allowance and Reach
12 Ranges, Accessible Route, Protruding Objects, Ground and Floor
13 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
14 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
15 Doors, Entrances, Drinking Fountains and Water Coolers, Water
16 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
17 Storage, Handrails, Grab Bars, and Controls and Operating
18 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
19 Title III requires places of public accommodation to remove
20 architectural barriers that are structural in nature to existing
21 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
22 Failure to remove such barriers and disparate treatment against a
23 person who has a known association with a person with a disability
24 are forms of discrimination. [See 42 United States Code
25 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
26 discrimination in violation of 42 United States Code
27 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
28 denied equal access to Defendants' existing facilities.

1 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
2 Policies And Procedures

3 33. Based on the facts plead at ¶¶ 6-23 above and elsewhere in
4 this complaint, Defendants failed and refused to provide a
5 reasonable alternative by modifying its practices, policies and
6 procedures in that they failed to have a scheme, plan, or design
7 to assist Plaintiff's Member and/or others similarly situated in
8 entering and utilizing Defendants' services, as required by 42
9 U.S.C. § 12188(a). Thus, said Member was subjected to
10 discrimination in violation of 42 United States Code
11 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
12 denied equal access to Defendants' existing facilities.

13 34. Based on the facts plead at ¶¶ 6-23 above, Claims I, II, and
14 III of Plaintiffs' First 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 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 necessary to enjoin compliance with federal civil rights laws

1 enacted for the benefit of individuals with disabilities.

2 35. WHEREFORE, Plaintiffs pray for judgment and relief as
3 hereinafter set forth.
4

5 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
6 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

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

2 38. Based on the facts plead at ¶¶ 6-23 above and elsewhere
3 herein this complaint, Defendants failed and refused to provide a
4 reasonable alternative by modifying its practices, policies, and
5 procedures in that they failed to have a scheme, plan, or design
6 to assist Plaintiff's Member and/or others similarly situated in
7 entering and utilizing Defendants' services as required by Civil
8 Code § 54.1. Thus, said Member was subjected to discrimination in
9 violation of Civil Code § 54.1.

10 CLAIM III: Violation Of The Unruh Act

11 39. Based on the facts plead at ¶¶ 6-23 above and elsewhere
12 herein this complaint and because Defendants violated the Civil
13 Code § 51 by failing to comply with 42 United States Code §
14 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
15 continue to discriminate against Plaintiff's Member and persons
16 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

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

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

7 41. Wherefore, Plaintiffs pray for damages and relief as
8 hereinafter stated.
9

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

12 42. Defendants, each of them respectively, at times prior to and
13 including, the month of November, 2004, and continuing to the
14 present time, knew that persons with physical disabilities were
15 denied their rights of equal access to all portions of this public
16 facility. Despite such knowledge, Defendants, and each of them,
17 failed and refused to take steps to comply with the applicable
18 access statutes; and despite knowledge of the resulting problems
19 and denial of civil rights thereby suffered by Plaintiff's Member
20 THEODORE A. PINNOCK and other similarly situated persons with
21 disabilities. Defendants, and each of them, have failed and
22 refused to take action to grant full and equal access to persons
23 with physical disabilities in the respects complained of
24 hereinabove. Defendants, and each of them, have carried out a
25 course of conduct of refusing to respond to, or correct complaints
26 about, denial of disabled access and have refused to comply with
27 their legal obligations to make Defendants' WU GENERAL TRADING
28 COMPANY d.b.a. VISTA INN facilities accessible pursuant to the

1 Americans With Disability Act Access Guidelines (ADAAG) and Title
2 24 of the California Code of Regulations (also known as the
3 California Building Code). Such actions and continuing course of
4 conduct by Defendants, and each of them, evidence despicable
5 conduct in conscious disregard of the rights and/or safety of
6 Plaintiff's Member and of other similarly situated persons,
7 justifying an award of treble damages pursuant to sections 52(a)
8 and 54.3(a) of the California Civil Code.

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

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

1 California Civil Code and section 54.3 of the California Civil
2 Code.

3 45. Wherefore, Plaintiffs pray for damages and relief as
4 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 46. Based on the facts plead at ¶¶ 6-23 above and elsewhere in
8 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
9 statutory duty to make their facility accessible and owed
10 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
11 Pinnock reasonably safe from known dangers and risks of harm.
12 This said duty arises by virtue of legal duties proscribed by
13 various federal and state statutes including, but not limited to,
14 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the
15 California Administrative Code and applicable 1982 Uniform
16 Building Code standards as amended.

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

25 48. Therefore, Defendants engaged in discriminatory conduct in
26 that they failed to comply with known duties under the ADA, ADAAG,
27 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
28

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

21
22 49. Wherefore, Plaintiffs pray for damages and relief as
23 hereinafter stated.

24 ///

25 ///

26 ///

27 ///

28

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.

4

5

Respectfully submitted:

6


7

8

PINNOCK & WAKEFIELD, A.P.C.

9

Dated: March 25, 2005

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

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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
WU GENERAL TRADING COMPANY d.b.a VISTA INN; WU GENERAL TRADING COMPANY, INC.; And DOES 1 THROUGH 10, Inclusive

FILED
05 APR -5 AM 8:35

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

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

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED BY

(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 0683 R (JMA)

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

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

- 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)

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

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

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

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

Table with 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 fr.c.p. 23 DEMAND \$ To Be Determined At Trial Check YES only if demanded in complaint: JURY DEMAND: YES NO

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

DATE March 21, 2005
#112505 \$250.00

SIGNATURE OF ATTORNEY OF RECORD
Michelle L. Wakefield