

USDC SCAN INDEX SHEET



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3:04-CV-02407 PINNOCK V. FOUR SEASONS RESORT

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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

04 CV 2407 W

(JMA)

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

Plaintiffs,

v.

14 FOUR SEASONS RESORT; AVIARA
15 LAND ASSOCIATES, L.P. d.b.a.
16 FOUR SEASONS RESORT; AVIARA
17 RESORT ASSOCIATES, L.P.
18 d.b.a. FOUR SEASONS RESORT;
19 AVIARA LAND ASSOCIATES, L.P.;
20 AVIARA LAND COMPANY, A
21 General Partner of AVIARA
22 LAND ASSOCIATES, L.P.; AVIARA
23 RESORT ASSOCIATES, L.P.; and
24 HEF IV, L.P., A General
25 Partner of AVIARA RESORT
26 ASSOCIATES, L.P.; And DOES 1
27 THROUGH 10, Inclusive

Defendants.

Case No.:

CIVIL COMPLAINT:

DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

NEGLIGENCE

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

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

INTRODUCTION

25 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
26 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
27 herein complain, by filing this Civil Complaint in accordance with
28 rule 8 of the Federal Rules of Civil Procedure in the Judicial

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

17
18 **JURISDICTION AND VENUE**

19 1. The federal jurisdiction of this action is based on the
20 Americans with Disabilities Act, 42 United States Code 12101-
21 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
22 District of the United States District Court of the Southern
23 District of California is in accordance with 28 U.S.C. § 1391(b)
24 because a substantial part of Plaintiffs' claims arose within the
25 Judicial District of the United States District Court of the
26 Southern District of California.

27 **SUPPLEMENTAL JURISDICTION**

28 2. The Judicial District of the United States District Court of

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

19
20 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

21 3. Defendants are, and, at all times mentioned herein, were, a
22 business or corporation or franchise organized and existing and/or
23 doing business under the laws of the State of California.
24 Defendant FOUR SEASONS RESORT is located at 7100 Four Seasons
25 Point, Carlsbad, California 92009, which Plaintiffs are informed
26 and believe and thereon allege is also known as 7100 Blue Heron
27 Place, Carlsbad, California 92009. Plaintiffs are informed and
28 believe and thereon allege that Defendant AVIARA LAND ASSOCIATES,

1 L.P. and/or AVIARA RESORT ASSOCIATES, L.P. is the owner, operator,
2 and/or doing business as FOUR SEASONS RESORT. Defendant AVIARA
3 LAND ASSOCIATES, L.P. is located at 1006 Wilmington Trust Center,
4 Rodney Square, Wilmington, Delaware 19801. Defendant AVIARA
5 RESORT ASSOCIATES, L.P. is located at 450 Newport Center Drive,
6 Suite 304, Newport Beach, California 92660. Plaintiffs are
7 informed and believe and thereon allege that Defendant AVIARA LAND
8 COMPANY is a general partner of AVIARA LAND ASSOCIATES, L.P.
9 Defendant AVIARA LAND COMPANY is located at 824 Market Street,
10 Suite 900, Wilmington, Delaware 19801. Plaintiffs are informed
11 and believe and thereon allege that Defendant HEF IV, L.P. is a
12 general partner of AVIARA RESORT ASSOCIATES, L.P. Defendant HEF
13 IV, L.P. is located at Department FM, 1375 North Highway Drive,
14 Fenton, Missouri 63099. Plaintiffs are informed and believe and
15 thereon allege that Defendant AVIARA RESORT ASSOCIATES, L.P. is
16 also the owner, operator, and/or lessor of the property located at
17 7100 Blue Heron Place, Carlsbad, California 92009, Assessor Parcel
18 number 215-750-01, which Plaintiffs are informed and believe and
19 thereon allege is also known as 7100 Four Seasons Point, Carlsbad,
20 California 92009. The words "Plaintiffs" and "Plaintiff's Member"
21 as used herein specifically include the organization MANTIC
22 ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and
23 persons associated with its Members who accompanied Members to
24 Defendants' facilities, as well as THEODORE A. PINNOCK, An
25 Individual.

26 4. Defendants Does 1 through 10, were at all times relevant
27 herein subsidiaries, employers, employees, agents, of FOUR SEASONS
28

1 RESORT; AVIARA LAND ASSOCIATES, L.P. d.b.a. FOUR SEASONS RESORT;
2 AVIARA RESORT ASSOCIATES, L.P. d.b.a. FOUR SEASONS RESORT; AVIARA
3 LAND ASSOCIATES, L.P.; AVIARA LAND COMPANY, A General Partner of
4 AVIARA LAND ASSOCIATES, L.P.; AVIARA RESORT ASSOCIATES, L.P.; and
5 HEF IV, L.P., A General Partner of AVIARA RESORT ASSOCIATES, L.P.

6 Plaintiffs are ignorant of the true names and capacities of
7 Defendants sued herein as Does 1 through 10, inclusive, and
8 therefore sues these Defendants by such fictitious names.

9 Plaintiffs will pray leave of the court to amend this complaint to
10 allege the true names and capacities of the Does when ascertained.

11 5. Plaintiffs are informed and believe, and thereon allege, that
12 Defendants and each of them herein were, at all times relevant to
13 the action, the owner, lessor, lessee, franchiser, franchisee,
14 general partner, limited partner, agent, employee, representing
15 partner, or joint venturer of the remaining Defendants and were
16 acting within the course and scope of that relationship.

17 Plaintiffs are further informed and believe, and thereon allege,
18 that each of the Defendants herein gave consent to, ratified,
19 and/or authorized the acts alleged herein to each of the remaining
20 Defendants.

21
22 CONCISE SET OF FACTS

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

1 wheelchair.

2 7. On August 6, 2004, Plaintiff's Member and Plaintiff THEODORE
3 A. PINNOCK went to Defendants' FOUR SEASONS RESORT facilities to
4 utilize their goods and/or services. When Plaintiff's Member and
5 Plaintiff THEODORE A. PINNOCK patronized Defendants' FOUR SEASONS
6 RESORT facilities, he was unable to use and/or had difficulty
7 using the public accommodations' valet parking, exterior path of
8 travel, entrance, front desk counter, Concierge counter, cashier
9 counter in gift shop, gift shop interior path of travel, pool,
10 Jacuzzi, guestroom, and guestroom bathroom facilities at
11 Defendants' business establishments because they failed to comply
12 with ADA Access Guidelines For Buildings and Facilities (hereafter
13 referred to as "ADAAG") and/or California's Title 24 Building Code
14 Requirements. Defendants failed to remove access barriers within
15 the public accommodations' valet parking, exterior path of travel,
16 entrance, front desk counter, Concierge counter, cashier counter
17 in gift shop, gift shop interior path of travel, cashier counter
18 at the hair salon, pool, Jacuzzi, public pay telephone, guestroom,
19 and guestroom bathroom facilities of Defendants' FOUR SEASONS
20 RESORT establishment.

21
22 8. Plaintiff's member personally experienced difficulty with
23 said access barriers at Defendants' FOUR SEASONS RESORT facility.
24 For example, the unloading zone for the valet parking is
25 inaccessible. There is no signage to indicate where disabled
26 patrons should park in order to have time to safely and
27 courteously unload without their vehicles impeding traffic flow.
28 Valet attendants did not offer verbal assistance or indicate where

1 disabled patrons should park.

2 9. The exterior path of travel is inaccessible. The path of
3 travel from the disabled parking spaces to the primary accessible
4 entrance fails to be accessible as it forces members of the
5 disability community to traverse through vehicular traffic without
6 the benefit of a marked path of travel.

7 10. The front entrance to the Defendants' establishment is
8 inaccessible, as it fails to have the required disability signage.

9 11. The front desk counter is inaccessible, as it is forty-two
10 inches (42") high, when it is required to be no higher than
11 thirty-four inches (34"). The Concierge counter is inaccessible,
12 as it is forty-two inches (42") high, when it is required to be no
13 higher than thirty-four inches (34"). The cashier counter at the
14 gift shop is inaccessible, as it is forty inches (40") high, when
15 it is required to be no higher than thirty-four inches (34").

16 12. The interior path of travel of the gift shop is as narrow as
17 thirty inches (30"), when it is required to be at least thirty-six
18 inches (36") if items are displayed on one side of the aisle and
19 at least forty-four inches (44") when items are displayed on both
20 sides of the aisle.

21 13. The Defendants' establishment has a total of three hundred
22 and seventy nine (379) guestrooms, four (4) of which are
23 designated as "accessible" guestrooms and are inaccessible. If a
24 hotel has between three hundred and one and four hundred (301 and
25 400) guestrooms, the hotel shall provide at least eight (8) fully
26 accessible rooms, plus an additional four (4) fully accessible
27 guestrooms with a roll-in shower. If a hotel has between three
28

1 hundred and one and four hundred (301 and 400) guestrooms, the
2 hotel shall provide eight (8) accessible guestrooms for members of
3 the disability community who are hearing impaired. The accessible
4 guestrooms must be dispersed among the various classes of sleeping
5 accommodations, providing a range of options applicable to room
6 sizes, costs, amenities provided, and the number of beds provided.
7 Defendants' hotel fails to have the required accessible
8 guestrooms.

9 14. Plaintiff's member and Plaintiff Theodore A. Pinnock
10 requested an "accessible" Guestroom, however Plaintiff's member
11 and Plaintiff Theodore A. Pinnock was given a guestroom that was
12 inaccessible. Upon request, Plaintiff's member and Plaintiff
13 Theodore A. Pinnock was transferred to, Guestroom 279 another
14 designated "accessible" Guestroom, which was also inaccessible.
15 The pressure that is required to open the entrance door is an
16 impermissible ten pounds (10 lbs.), when it is required to be no
17 more than five pounds (5 lbs.). The locking mechanism on the
18 entrance door is inaccessible, as it requires tight grasping
19 and/or twisting of the wrist to operate. The small lamp switches
20 are inaccessible, as they require tight grasping and/or twisting
21 of the wrist to operate.

22 15. The bathroom of Guestroom 279 is inaccessible, as the tub is
23 too high. The grab bars in the bathtub fail to meet the minimum
24 requirements. The round mixing valve in the bathtub is
25 inaccessible, as it requires tight grasping and/or twisting of the
26 wrist to operate. The pressure that is required to operate the
27 mixing valve in the bathtub is seven pounds (7 lbs.), when it is
28

1 required to be no more than five pounds (5 lbs.). The bathroom
2 fails to have the required audible and visual alarm system.

3 16. When Plaintiff Theodore A. Pinnock attempted to use the
4 bathtub in Guestroom 279 he severely twisted his back and leg.
5 After carefully maneuvering into the bathtub he realized that due
6 to the inaccessible round mixing valve, he was unable to turn on
7 the water to take a bath. In the process of getting out of the
8 bathtub Plaintiff Theodore A. Pinnock experienced shooting pain in
9 his back and leg as he twisted his body to get out of the bathtub,
10 due to the height and width of the bathtub lip.

11 17. The pool is inaccessible, as it fails to have the required
12 device to assist disabled patrons in and out of the water.

13 18. The Jacuzzi is inaccessible, as it fails to have the required
14 device to assist disabled patrons in and out of the water.

15 19. The exterior path of travel of the Defendants' Golf
16 Restaurant is inaccessible, as the path of travel from the public
17 sidewalk and the parking lot to the primary accessible entrance
18 fails to be accessible as it forces members of the disability
19 community to traverse through vehicular traffic without the
20 benefit of a marked path of travel.

21 20. The entrance to the Defendants' Golf Restaurant is
22 inaccessible. The pressure that is required to open the entrance
23 door is eleven pounds (11 lbs.), when it is required to be no more
24 than eight and one half pounds (8 ½ lbs.). The entrance fails to
25 have the required disability signage. The pressure that is
26 required to open the balcony door is twelve pounds (12 lbs.), when
27 it is required to be no more than eight and one half pounds (8 ½
28

1 lbs.).

2 21. The height of the cashier/bar counter within the Golf
3 Restaurant is forty-one inches (41"), when it is required to be no
4 higher than thirty-four inches (34") high.

5 22. The public seating located in the outside dining area of the
6 Golf Restaurant is inaccessible. There are a total of seventy-two
7 (72) seats located in the outside dining area, all of which have a
8 knee clearance depth of only five inches (5"). It is required
9 that five percent (5%) of all seating must have a knee clearance
10 depth of at least nineteen inches (19").

11 23. The men's restroom located inside the Defendants' Golf
12 Restaurant is inaccessible. The pressure that is required to open
13 the restroom door is an impermissible twenty pounds (20 lbs.),
14 when it is required to be no more than five pounds (5 lbs.) of
15 pressure. The strike clearance of the restroom door is only eight
16 inches (8"), when it is required to be at least eighteen inches
17 (18"). The height of the coat hook is sixty-four inches (64"),
18 when it is required to be no higher than forty-eight inches (48").
19 The locking mechanism on the stall door is inaccessible, as it
20 requires tight grasping and or twisting of the wrist to operate.
21 The toilet paper dispenser is mounted twenty-eight inches (28")
22 from the front edge of the commode, when it is required to be no
23 more than twelve inches (12") from the front edge of the commode.
24 The restroom fails to have the required audible and visual alarm
25 system.
26

27 24. In addition to the violations personally experienced by
28 Plaintiff's member and Plaintiff Theodore A. Pinnock, additional

1 violations of federal and state disability laws exist at
2 Defendants' FOUR SEASONS RESORT establishment. The women's
3 restroom in the Golf Restaurant is inaccessible, as the pressure
4 that is required to open the restroom door is an impermissible
5 twenty pounds (20 lbs.), when it is required to be no more than
6 five pounds (5 lbs.).

7 25. The Golf Restaurant is inaccessible. The parking facilities
8 at the Golf Restaurant are inaccessible. The parking facility
9 consists of a total of thirty-nine (39) parking spaces, including
10 four (4) spaces designated as disabled parking spaces, however
11 they are inaccessible. Two (2) of the four (4) existing disabled
12 parking spaces are "van accessible" disabled parking spaces that
13 are only seventeen feet (17') long and have an impermissible
14 encroachment into their access aisles. The remaining two (2)
15 existing disabled parking spaces are "regular" disabled parking
16 spaces that are only seventeen feet (17') long and have an
17 impermissible encroachment into their access aisles. The one (1)
18 entryway into the parking lot fails to have the required signage
19 warning motorists that anyone illegally parking in a disabled
20 parking space will be fined/towed or both.

21
22 26. The lobby men's restroom at the Defendants' FOUR SEASONS
23 RESORT establishment is inaccessible. The pressure that is
24 required to open the restroom door is an impermissible ten pounds
25 (10 lbs.), when it is required to be no more than five pounds (5
26 lbs.).

27 27. The lobby women's restroom FOUR SEASONS RESORT establishment
28 is inaccessible. The pressure that is required to open the

1 restroom door is an impermissible eighteen pounds (18 lbs.), when
2 it is required to be no more than five pounds (5 lbs.). The
3 pressure that is required to open the stall door is an
4 impermissible ten pounds (10 lbs.), when it is required to be no
5 more than five pounds (5 lbs.). The commode rear grab bar is only
6 thirty-three inches (33"), when it is required to be at least
7 thirty-six inches (36") long. The distance from the side edge of
8 the commode to the far wall is twenty-five inches (25"), when it
9 is required to be at least thirty-two inches (32"). The height of
10 the coat hook is eighty inches (80"), when it is required to be no
11 higher than forty-eight inches (48") from the floor surface. The
12 area beneath the lavatory is enclosed and fails to provide the
13 required knee clearance. The restroom fails to have the required
14 audible and visual alarm system.

15 28. Guestroom 438, a designated "accessible" guestroom, located
16 in the Defendants' hotel is inaccessible. The pressure that is
17 required to open the entrance door is an impermissible ten pounds
18 (10 lbs.), when it is required to be no more than five pounds (5
19 lbs.). The locking mechanism on the entrance door is
20 inaccessible, as it requires tight grasping and/or twisting of the
21 wrist to operate. The small lamp switches are inaccessible, as
22 they require tight grasping and/or twisting of the wrist to
23 operate. The height of the threshold at the balcony door is one
24 and one half inches (1 1/2") high and fails to have the required
25 ramp. Changes in level that are greater than one half of an inch
26 (1/2") are required to be ramped. The VCR is inaccessible, as it
27 is located on top of the television at sixty-five inches (65")
28

1 high, when it is required to be no higher than forty-eight inches
2 (48") high. The DVD player is inaccessible, as it is located on
3 top of the television at sixty-five inches (65") high, when it is
4 required to be no higher than forty-eight inches (48") high. The
5 remote controls are inaccessible, as they too are located on top
6 of the television at sixty-five inches (65") high, when they are
7 required to be no higher than forty-eight inches (48") high. The
8 iron located on the top of the clothing shelf inside the cabinet
9 is inaccessible, as it is mounted at sixty inches (60") high, when
10 it is required to be mounted no higher than forty-eight inches
11 (48") high.

12 29. The bathroom located inside Guestroom 438 is inaccessible.
13 The grab bars in the bathtub fail to meet the minimum
14 requirements. The round mixing valve in the bathtub is
15 inaccessible, as it requires tight grasping and/or twisting of the
16 wrist to operate. The pressure that is required to operate the
17 mixing valve in the bathtub is seven pounds (7 lbs.), when it is
18 required to be no more than five pounds (5 lbs.). The bathroom
19 fails to have the required audible and visual alarm system.

20 30. The public pay telephone is inaccessible, as it fails to have
21 the required volume control unit and disability signage.

22 31. The cashier counter in the hair salon is inaccessible, as it
23 is forty-one inches (41") high, when it is required to be no
24 higher than thirty-four inches (34") high.

25 32. Pursuant to federal and state law, Defendants are required to
26 remove barriers to their existing facilities. Further, Defendants
27 had actual knowledge of their barrier removal duties under the
28

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

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

22 34. Based on these facts, Plaintiffs allege Plaintiff's Member
23 and Plaintiff Theodore A. Pinnock was discriminated against each
24 time he patronized Defendants' establishment. Plaintiff's Member
25 and Plaintiff Theodore A. Pinnock was extremely upset due to
26 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
27 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
28

1 shoulders and wrists when he attempted to enter, use, and exit
2 Defendants' establishment.

3 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

4 35. FOUR SEASONS RESORT; AVIARA LAND ASSOCIATES, L.P. d.b.a. FOUR
5 SEASONS RESORT; AVIARA RESORT ASSOCIATES, L.P. d.b.a. FOUR SEASONS
6 RESORT; AVIARA LAND ASSOCIATES, L.P.; AVIARA LAND COMPANY, A
7 General Partner of AVIARA LAND ASSOCIATES, L.P.; AVIARA RESORT
8 ASSOCIATES, L.P.; HEF IV, L.P., A General Partner of AVIARA RESORT
9 ASSOCIATES, L.P.; HOTEL CAPITAL PARTNERS IV, L.P., A General
10 Partner of HEF IV, L.P.; and Does 1 through 10 will be referred to
11 collectively hereinafter as "Defendants."

12 36. Plaintiffs aver that the Defendants are liable for the
13 following claims as alleged below:

14 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

15 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The

16 Americans With Disabilities Act Of 1990

17 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal

18 Access

19 37. Based on the facts plead at ¶¶ 6-34 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

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
2 Member was denied equal access to Defendants' existing facilities.

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

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

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

17 39. Based on the facts plead at ¶¶ 6-34 above and elsewhere in
18 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
19 full and equal access to Defendants' goods, services, facilities,
20 privileges, advantages, or accommodations within a public
21 accommodation owned, leased, and/or operated by Defendants.
22 Defendants altered their facility in a manner that affects or
23 could affect the usability of the facility or a part of the
24 facility after January 26, 1992. In performing the alteration,
25 Defendants failed to make the alteration in such a manner that, to
26 the maximum extent feasible, the altered portions of the facility
27 are readily accessible to and usable by individuals with
28 disabilities, including individuals who use wheelchairs, in

1 violation of 42 U.S.C. §12183(a)(2).

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

10 41. Pursuant to 42 U.S.C. §12183(a), this failure to make the
11 alterations in a manner that, to the maximum extent feasible, are
12 readily accessible to and usable by individuals with disabilities
13 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

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

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

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

24 43. Based on the facts plead at ¶¶ 6-34 above and elsewhere in
25 this complaint, Plaintiff's Member was denied full and equal
26 access to Defendants' goods, services, facilities, privileges,
27 advantages, or accommodations within a public accommodation owned,
28 leased, and/or operated by Defendants. Defendants failed to

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

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

25 44. Based on the facts plead at ¶¶ 6-34 above and elsewhere in
26 this complaint, Defendants failed and refused to provide a
27 reasonable alternative by modifying its practices, policies and
28 procedures in that they failed to have a scheme, plan, or design

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

7 45. Based on the facts plead at ¶¶ 6-34 above, Claims I, II, and
8 III of Plaintiffs' First Cause Of Action above, and the facts
9 elsewhere herein this complaint, Plaintiffs will suffer
10 irreparable harm unless Defendants are ordered to remove
11 architectural, non-architectural, and communication barriers at
12 Defendants' public accommodation. Plaintiffs allege that
13 Defendants' discriminatory conduct is capable of repetition, and
14 this discriminatory repetition adversely impacts Plaintiffs and a
15 substantial segment of the disability community. Plaintiffs
16 allege there is a national public interest in requiring
17 accessibility in places of public accommodation. Plaintiffs have
18 no adequate remedy at law to redress the discriminatory conduct of
19 Defendants. Plaintiff's Member desires to return to Defendants'
20 places of business in the immediate future. Accordingly, the
21 Plaintiffs allege that a structural or mandatory injunction is
22 necessary to enjoin compliance with federal civil rights laws
23 enacted for the benefit of individuals with disabilities.

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

26
27 ///

28 ///

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

3 CLAIM I: Denial Of Full And Equal Access

4 47. Based on the facts plead at ¶¶ 6-34 above and elsewhere in
5 this complaint, Plaintiff's Member was denied full and equal
6 access to Defendants' goods, services, facilities, privileges,
7 advantages, or accommodations within a public accommodation owned,
8 leased, and/or operated by Defendants as required by Civil Code
9 Sections 54 and 54.1. Defendants' facility violated California's
10 Title 24 Accessible Building Code by failing to provide access to
11 Defendants' facilities due to violations pertaining to the Space
12 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
13 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
14 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
15 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
16 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
17 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
18 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
19 Telephones.

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

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

26 49. Based on the facts plead at ¶¶ 6-34 above and elsewhere
27 herein this complaint, Defendants failed and refused to provide a
28 reasonable alternative by modifying its practices, policies, and

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

6 CLAIM III: Violation Of The Unruh Act

7 50. Based on the facts plead at ¶¶ 6-34 above and elsewhere
8 herein this complaint and because Defendants violated the Civil
9 Code § 51 by failing to comply with 42 United States Code §
10 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
11 continue to discriminate against Plaintiff's Member and persons
12 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

13 51. Based on the facts plead at ¶¶ 6-34 above, Claims I, II, and
14 III of Plaintiffs' Second Cause Of Action above, and the facts
15 elsewhere herein this complaint, Plaintiffs will suffer
16 irreparable harm unless Defendants are ordered to remove
17 architectural, non-architectural, and communication barriers at
18 Defendants' public accommodation. Plaintiffs allege that
19 Defendants' discriminatory conduct is capable of repetition, and
20 this discriminatory repetition adversely impacts Plaintiffs and a
21 substantial segment of the disability community. Plaintiffs
22 allege there is a state and national public interest in requiring
23 accessibility in places of public accommodation. Plaintiffs have
24 no adequate remedy at law to redress the discriminatory conduct of
25 Defendants. Plaintiff's Member desires to return to Defendants'
26 places of business in the immediate future. Accordingly, the
27 Plaintiffs allege that a structural or mandatory injunction is
28

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

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

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

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

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

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

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

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

28 ///

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

3 57. Based on the facts plead at ¶¶ 6-34 above and elsewhere in
4 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
5 statutory duty to make their facility accessible and owed
6 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
7 Pinnock reasonably safe from known dangers and risks of harm.
8 This said duty arises by virtue of legal duties proscribed by
9 various federal and state statutes including, but not limited to,
10 ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, and Title 24 of the
11 California Administrative Code and applicable 1982 Uniform
12 Building Code standards as amended.

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

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

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

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

20 DEMAND FOR JUDGMENT FOR RELIEF:

21 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
22 3281, and 3333;

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

26 C. In the alternative to the damages pursuant to Cal. Civil
27 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
28

1 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
2 54.1, Title 24 of the California Building Code, ADA, and ADA
3 Accessibility Guidelines;

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

15 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
16 § 12205, and Cal. Civil Code § 55;

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

19 G. A Jury Trial and;

20 H. For such other further relief as the court deems proper.
21

22
23
24 Respectfully submitted:

25 PINNOCK & WAKEFIELD, A.P.C.

26 Dated: 11/30/04

27 By: Michelle L. Wakefield

MICHELLE L. WAKEFIELD, ESQ.

28 Attorneys for Plaintiffs

CIVIL COVER SHEET

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

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

DEFENDANTS FOUR SEASONS RESORT; AVIARA LAND ASSOCIATES, L.P.
d.b.a. FOUR SEASONS-RESORT; AVIARA RESORT ASSOCIATES, L.P. d.b.a.
FOUR SEASONS RESORT; AVIARA LAND ASSOCIATES, L.P.; AVIARA LAND
COMPANY; A General Partner of AVIARA LAND ASSOCIATES, L.P.;
AVIARA RESORT ASSOCIATES, L.P.; and HEF IV, L.P., A General
Partner of AVIARA RESORT ASSOCIATES, L.P.; And DOES 1 THROUGH 10,
Inclusive.

(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
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)

04 CV 2407 W (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 PLAINTIFF AND ONE BOX FOR DEFENDANT)

- (For Diversity Cases Only)
- | | | | | |
|-----------------------------------------|----------------------------|------------------------------------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

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

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DMC/DWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice. <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

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 11/30/04

SIGNATURE OF ATTORNEY OF RECORD

Michelle L. Wakefield

PLD \$150,000 12/2/04 #109136 1B