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3:04-CV-00689 PINNOCK V. HIGHWAY 395 RESORT

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CMP.

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

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

BY:

DEPUTY

5 Attorneys for Plaintiffs

6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

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

12
13 Plaintiffs,

14 v.

15 HIGHWAY 395 RESORT, LLC
16 d.b.a. PALA MESA RESORT;
17 HIGHWAY 395 RESORT, LLC; And
DOES 1 THROUGH 10, Inclusive

18 Defendants.

Case No. 04 CV 0689 DMS (JFS)

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

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

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

19
20
21 INTRODUCTION

22
23 Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
24 A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,
25 herein complain, by filing this Civil Complaint in accordance with
26 rule 8 of the Federal Rules of Civil Procedure in the Judicial
27 District of the United States District Court of the Southern
28 District of California, that Defendants have in the past, and

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

15
16 **JURISDICTION AND VENUE**

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

25 **SUPPLEMENTAL JURISDICTION**

26 2. The Judicial District of the United States District Court of
27 the Southern District of California has supplemental jurisdiction
28 over the state claims as alleged in this Complaint pursuant to 28

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

17
18 NAMED DEFENDANTS AND NAMED PLAINTIFFS

19 3. Defendants are, and, at all times mentioned herein, were, a
20 business or corporation or franchise organized and existing and/or
21 doing business under the laws of the State of California.
22 Defendant HIGHWAY 395 RESORT, LLC d.b.a. PALA MESA RESORT is
23 located at 2001 Old Highway 395, Fallbrook, California, 92028.
24 Plaintiffs are informed and believe and thereon allege that
25 Defendant HIGHWAY 395 RESORT, LLC is the owner, operator, and/or
26 doing business as PALA MESA RESORT. Plaintiffs are informed and
27 believe and thereon allege that Defendant HIGHWAY 395 RESORT, LLC
28 is also the owner, operator, and/or lessor of the property located

1 at 2001 Old Highway 395, Fallbrook, California, 92028, Assessor
2 Parcel Number 108-412-04. Defendant HIGHWAY 395 RESORT, LLC is
3 located at 39 Bay Drive, Annapolis, Maryland, 21403. The words
4 Plaintiffs" and "Plaintiff's Member" as used herein specifically
5 include the organization MANTIC ASHANTI'S CAUSE, its Members, its
6 member Theodore A. Pinnock and persons associated with its Members
7 who accompanied Members to Defendants' facilities, as well as
8 THEODORE A. PINNOCK, An Individual.

9 4. Defendants Does 1 through 10, were at all times relevant
10 herein subsidiaries, employers, employees, agents, of HIGHWAY 395
11 RESORT, LLC d.b.a. PALA MESA RESORT; and HIGHWAY 395 RESORT, LLC.
12 Plaintiffs are ignorant of the true names and capacities of
13 Defendants sued herein as Does 1 through 10, inclusive, and
14 therefore sues these Defendants by such fictitious names.

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

17 5. Plaintiffs are informed and believe, and thereon allege, that
18 Defendants and each of them herein were, at all times relevant to
19 the action, the owner, lessor, lessee, franchiser, franchisee,
20 general partner, limited partner, agent, employee, representing
21 partner, or joint venturer of the remaining Defendants and were
22 acting within the course and scope of that relationship.

23 Plaintiffs are further informed and believe, and thereon allege,
24 that each of the Defendants herein gave consent to, ratified,
25 and/or authorized the acts alleged herein to each of the remaining
26 Defendants.

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1
2 CONCISE SET OF FACTS

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

10 7. On January 27, 2004, Plaintiff's member THEODORE A. PINNOCK
11 went to Defendants' HIGHWAY 395 RESORT, LLC d.b.a. PALA MESA
12 RESORT facilities to utilize their goods and/or services. When
13 Plaintiff's member patronized Defendants' HIGHWAY 395 RESORT, LLC
14 d.b.a. PALA MESA RESORT facilities, he was unable to use and/or
15 had difficulty using the public accommodations' disabled parking,
16 office entrance, registration counter, exterior path of travel,
17 guestroom, guestroom entrance, guestroom lamps, and guestroom
18 bathroom facilities at Defendants' business establishment because
19 they failed to comply with ADA Access Guidelines For Buildings and
20 Facilities (hereafter referred to as "ADAAG") and/or California's
21 Title 24 Building Code Requirements. Defendants failed to remove
22 access barriers within the disabled parking, office entrance,
23 registration counter, exterior path of travel, stairs, path of
24 travel to pool entrance, ramp from rooms and parking lot to pool,
25 pool area entrance, pool, pool seating, spa, lobby area bar, lobby
26 area bar seating, interior path of travel in the gift shop, public
27 payphone, men's restroom in the lobby, men's restroom in the pool
28 area, guestroom, guestroom entrance, guestroom lamps, and

1 guestroom bathroom facilities of Defendants' HIGHWAY 395 RESORT,
2 LLC d.b.a. PALA MESA RESORT establishment.

3 8. Plaintiff's member personally experienced difficulty with
4 said access barriers at Defendants' HIGHWAY 395 RESORT, LLC d.b.a.
5 PALA MESA RESORT facilities. For example, the parking facility of
6 Defendants' establishment is inaccessible. The entryway into the
7 parking lot fails to have the required signage warning motorists
8 that anyone illegally parking in a disabled parking space would be
9 towed/fined or both. The parking facility has a total of two
10 hundred and ninety six (296) parking spaces including eight (8)
11 disabled parking spaces. Three (3) of the eight (8) disabled
12 spaces that are located by the office do not have the required
13 access aisles. Two (2) of the other five (5) disabled parking
14 spaces fail to have the proper signage. The parking facilities
15 fail to have the required "van accessible" disabled parking space.
16 It is required that there is at least one (1) compliant "van
17 accessible" disabled parking space, that is at least eighteen feet
18 (18') long, with an eight foot (8') wide access aisle without an
19 encroachment of a ramp into its access aisle. There also should
20 be at least six (6) compliant "regular" parking spaces, that are
21 at least eighteen feet (18') long, have access aisles that are not
22 encroached upon, and have the proper signage. The width of all
23 disabled parking spaces must be at least nine feet (9').

24 9. The front and side entrance doors to the office are
25 inaccessible, as they fail to have the required smooth and
26 uninterrupted surface on the bottom ten inches (10") of the door
27 that allows the door to be opened with a wheelchair footrest
28

1 without creating a hazard. The front entrance door fails to have
2 the required disability signage.

3 10. The registration counter is inaccessible because it is an
4 impermissible forty inches (40") high.

5 11. The width of the path of travel from the parking lot to
6 Guestroom 223 is only thirty-one to thirty-two inches (31"-32")
7 and is inaccessible because it does not meet the minimum
8 requirement of forty-eight inches (48").

9 13. The Defendants' establishment has one hundred and thirty-
10 three (133) guestrooms with four (4) designated "accessible rooms"
11 that are not compliant. If a hotel has between one hundred and
12 one and one hundred and fifty (101 and 150) guestrooms, the hotel
13 shall provide five (5) accessible guestrooms, plus two (2)
14 additional accessible guestrooms with a roll-in shower. If a
15 hotel has between one hundred and one and one hundred and fifty
16 (101 and 150) guestrooms, the hotel shall provide five (5)
17 accessible guestrooms for members of the disability community who
18 are hearing impaired. The accessible guestrooms must be dispersed
19 among the various classes of sleeping accommodations, providing a
20 range of options applicable to room sizes, costs, amenities
21 provided, and the number of beds provided. Defendants' hotel fails
22 to have the required accessible guestrooms.

23 14. The accessible guestroom given to Plaintiff's member Theodore
24 A. Pinnock, Guestroom 223, is inaccessible. The round locking
25 mechanism on the guestroom entrance door is inaccessible, as it
26 requires tight grasping and/or twisting of the wrist to operate.
27 The lamps located inside Guestroom 223 fail to be accessible, as
28

1 they require tight grasping or twisting by the wrist to operate.
2 Guestroom 223 fails to have the required audible and visual alarm
3 system. The width of the path of travel from the bathroom door to
4 the shower is only thirty-one to thirty-two inches (31"-32") and
5 is inaccessible because it is required to be at least thirty-six
6 inches (36") wide. The shower stall is only forty-eight by forty-
7 eight inches (48"X48") and fails to be inaccessible, as it is
8 required to be no less than thirty by sixty inches (30"X60"). The
9 round mixing valve in the bathtub fails to be accessible, as it
10 requires tight grasping and/or twisting of the wrist to operate.
11 The bathroom in Guestroom 223 fails to have the required audible
12 and visual alarm system.

13 15. In addition to the violations personally experienced by
14 Plaintiff's Member and Plaintiff THEODORE A. PINNOCK, additional
15 violations of federal and state disability laws exist at
16 Defendants' HIGHWAY 395 RESORT, LLC d.b.a. PALA MESA RESORT. For
17 example, the Men's Restroom located in the lobby of Defendants'
18 establishment is inaccessible. The height of the lavatory knee
19 clearance is a mere twenty-one inches (21") and is inaccessible.
20 The required audible visual alarm system is not installed.

21 16. The lobby area bar is inaccessible, as the height of the bar
22 is forty inches (40"), which exceeds the maximum requirement of
23 thirty-four inches (34").

24 17. The lobby area bar seating is inaccessible, as all of the
25 seats fail to meet the minimum required knee clearance depth.
26 There are twenty (20) seats with a knee clearance depth of a mere
27 five inches (5").
28

1 18. The gift shop is inaccessible as the interior path of travel
2 is as narrow as thirty inches (30") in some areas. The minimum
3 width requirement is thirty-six inches (36") if items are
4 displayed on one side of the aisle and forty-four inches (44") if
5 items are displayed on both side of the aisle.

6 19. The payphone is inaccessible, as it fails to have the
7 required volume control unit and the proper signage.

8 20. The path of travel from the guestrooms to the pool is
9 inaccessible, as members of the disability community are forced to
10 maneuver through vehicular traffic without the benefit of a marked
11 path of travel.

12 21. The slope of the ramp from the guestrooms and the parking lot
13 to the pool is excessive, as it is seven percent (7%) and fails to
14 have the required handrails.

15 22. The entrance to the pool is inaccessible, as the pool door
16 fails to have the required smooth and uninterrupted surface on the
17 bottom ten inches (10") of all doors that allows the door to be
18 opened by a wheelchair footrest without creating a hazard.

19 23. The pool is inaccessible, as it does not have the required
20 device for assisting disabled patrons in and out of the water.

21 24. The spa is inaccessible, as it does not have the required
22 device for assisting disabled patrons in and out of the water.

23 25. The public seating located in the pool area is inaccessible,
24 as all of the seats fail to meet the minimum required knee
25 clearance depth. There are fourteen (14) seats by the pool with a
26 knee clearance depth of a mere three inches (3").

27 26. The pool area men's restroom is inaccessible. There is a
28

1 six-inch (6") step at the restroom door, which makes the restroom
2 inaccessible. The clear opening width of the restroom doorway is
3 only twenty-four inches (24") wide and fails to meet the minimum
4 requirement of thirty-two inches (32") wide. The locking
5 mechanism on the restroom door fails to be accessible, as it
6 requires tight grasping and/or twisting of the wrist to operate.
7 The width of the path of travel from the entrance door of the
8 restroom door to the commode and the shower is a mere twenty
9 inches (20"), when it should be no less than thirty-six inches
10 (36"). The commode fails to have the required grab bars. The
11 commode seat cover dispenser is inaccessible as it is mounted
12 forty-three inches (43") high. The height of the commode is only
13 fifteen inches (15"), when it should be between seventeen and
14 nineteen inches (17"-19"). The distance from the front edge of
15 the commode to the front wall is only twenty-five inches (25"),
16 when it should be at least forty-eight inches (48"). The distance
17 from the side edge of the commode to the far wall is a mere
18 fifteen inches (15"), when it should be at least thirty-two inches
19 (32"). The distance from the centerline of the commode to the
20 near wall is only sixteen inches (16"), when it should be at least
21 eighteen inches (18"). The height of the urinal lip is twenty-
22 seven inches (27"), and fails to meet the maximum height
23 requirement of seventeen inches (17"). The soap dispenser is
24 mounted at forty-five inches (45"), when it is required to be
25 mounted no higher than forty inches (40"). The lavatory faucet
26 handles fail to be accessible, as they require tight grasping
27 and/or twisting of the wrist to operate. The hot water pipes and
28

1 drainpipes under the lavatory fail to have the required
2 insulation. The paper towel dispenser is inaccessible, as it is
3 mounted at an impermissible fifty-five inches (55") in height.
4 The shower is inaccessible, as the shower threshold is an
5 impermissible ten inches (10"). The shower stall is only forty-
6 eight inches by forty-eight inches (48"X48"), which fails to meet
7 the minimum required dimensions of thirty inches by sixty inches
8 (30"X60"). The shower fails to have the required seat. The round
9 mixing valve in the shower fails to be accessible, as it requires
10 tight grasping and/or twisting of the wrist to operate. The
11 bathroom fails to have the required audible and visual alarm
12 system.

13 12. The steps that lead patrons from Guestroom 223 to the lower
14 level do not have the required contrasting color strips.

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

23 28. Plaintiffs believe and herein allege Defendants' facilities
24 have access violations not directly experienced by Plaintiff's
25 member which preclude or limit access by others with disabilities,
26 including, but not limited to, Space Allowance and Reach Ranges,
27 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
28

1 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
2 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
3 Entrances, Drinking Fountains and Water Coolers, Water Closets,
4 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
5 Handrails, Grab Bars, and Controls and Operating Mechanisms,
6 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
7 Plaintiffs allege Defendants are required to remove all
8 architectural barriers, known or unknown. Also, Plaintiffs allege
9 Defendants are required to utilize the ADA checklist for Readily
10 Achievable Barrier Removal approved by the United States
11 Department of Justice and created by Adaptive Environments.

12 29. Based on these facts, Plaintiffs allege Plaintiff's Member
13 was discriminated against each time he patronized Defendants'
14 establishments. Plaintiff's Member Theodore A. Pinnock was
15 extremely upset due to Defendants' conduct. Further, Plaintiff's
16 Member THEODORE A. PINNOCK experienced pain in his legs, back,
17 arms, shoulders and wrists when he attempted to enter, use, and
18 exit Defendants' HIGHWAY 395 RESORT, LLC d.b.a. PALA MESA RESORT
19 establishment.
20

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

22 30. HIGHWAY 395 RESORT, LLC d.b.a. PALA MESA RESORT; HIGHWAY 395
23 RESORT, LLC; and Does 1 through 10 will be referred to
24 collectively hereinafter as "Defendants."

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

27 ///

28 ///

1 physical impairment as required by 42 U.S.C. § 12102(2)(A).

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

5 34. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
6 this complaint, Plaintiff's member was denied full and equal
7 access to Defendants' goods, services, facilities, privileges,
8 advantages, or accommodations within a public accommodation owned,
9 leased, and/or operated by Defendants. Defendants altered their
10 facility in a manner that affects or could affect the usability of
11 the facility or a part of the facility after January 26, 1992. In
12 performing the alteration, Defendants failed to make the
13 alteration in such a manner that, to the maximum extent feasible,
14 the altered portions of the facility are readily accessible to and
15 usable by individuals with disabilities, including individuals who
16 use wheelchairs, in violation of 42 U.S.C. §12183(a)(2).

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

25 36. Pursuant to 42 U.S.C. §12183(a), this failure to make the
26 alterations in a manner that, to the maximum extent feasible, are
27 readily accessible to and usable by individuals with disabilities
28 constitutes discrimination for purposes of 42 U.S.C. §12183(a).

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

3 37. Thus, Plaintiff's member was subjected to discrimination in
4 violation of 42 U.S.C. § 12183(a), 42 U.S.C. §12182(a) and 42
5 U.S.C. §12188 because said Member Theodore A. Pinnock was denied
6 equal access to Defendants' existing facilities.

7
8 **CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove**
9 **Architectural Barriers**

10 38. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
11 this complaint, Plaintiff's member was denied full and equal
12 access to Defendants' goods, services, facilities, privileges,
13 advantages, or accommodations within a public accommodation owned,
14 leased, and/or operated by Defendants. Defendants failed to
15 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
16 are informed, believe, and thus allege that architectural barriers
17 which are structural in nature exist within the following physical
18 elements of Defendants' facilities: Space Allowance and Reach
19 Ranges, Accessible Route, Protruding Objects, Ground and Floor
20 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
21 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
22 Doors, Entrances, Drinking Fountains and Water Coolers, Water
23 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
24 Storage, Handrails, Grab Bars, and Controls and Operating
25 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
26 Title III requires places of public accommodation to remove
27 architectural barriers that are structural in nature to existing
28 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]

1 Failure to remove such barriers and disparate treatment against a
2 person who has a known association with a person with a disability
3 are forms of discrimination. [See 42 United States Code
4 12182(b)(2)(A)(iv).] Thus, Plaintiff's member was subjected to
5 discrimination in violation of 42 United States Code
6 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
7 denied equal access to Defendants' existing facilities.
8

9 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
10 Policies And Procedures

11 39. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
12 this complaint, Defendants failed and refused to provide a
13 reasonable alternative by modifying its practices, policies and
14 procedures in that they failed to have a scheme, plan, or design
15 to assist Plaintiff's member and/or others similarly situated in
16 entering and utilizing Defendants' services, as required by 42
17 U.S.C. § 12188(a). Thus, said Member was subjected to
18 discrimination in violation of 42 United States Code
19 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
20 denied equal access to Defendants' existing facilities.

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

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

10 41. WHEREFORE, Plaintiffs pray for judgment and relief as
11 hereinafter set forth.

12 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
13 **CALIFORNIA ACCESSIBILITY LAWS**

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

15 42. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
16 this complaint, Plaintiff's member was denied full and equal
17 access to Defendants' goods, services, facilities, privileges,
18 advantages, or accommodations within a public accommodation owned,
19 leased, and/or operated by Defendants as required by Civil Code
20 Sections 54 and 54.1. Defendants' facility violated California's
21 Title 24 Accessible Building Code by failing to provide access to
22 Defendants' facilities due to violations pertaining to the Space
23 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
24 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
25 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
26 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
27 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
28

1 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
2 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
3 Telephones.

4 43. These violations denied Plaintiff's member full and equal
5 access to Defendants' facility. Thus, said Member was subjected
6 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
7 because Plaintiff's Member was denied full, equal and safe access
8 to Defendants' facility, causing severe emotional distress.

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

11 44. Based on the facts plead at ¶¶ 6-29 above and elsewhere
12 herein this complaint, Defendants failed and refused to provide a
13 reasonable alternative by modifying its practices, policies, and
14 procedures in that they failed to have a scheme, plan, or design
15 to assist Plaintiff's member and/or others similarly situated in
16 entering and utilizing Defendants' services as required by Civil
17 Code § 54.1. Thus, said Member was subjected to discrimination in
18 violation of Civil Code § 54.1.

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

20 45. Based on the facts plead at ¶¶ 6-29 above and elsewhere
21 herein this complaint and because Defendants violated the Civil
22 Code § 51 by failing to comply with 42 United States Code §
23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
24 continue to discriminate against Plaintiff's Member and persons
25 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

26 46. Based on the facts plead at ¶¶ 6-29 above, Claims I, II, and
27 III of Plaintiffs' Second Cause Of Action above, and the facts
28

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

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

21 48. Defendants, each of them respectively, at times prior to and
22 including, the month of January, 2004, and continuing to the
23 present time, knew that persons with physical disabilities were
24 denied their rights of equal access to all portions of this public
25 facility. Despite such knowledge, Defendants, and each of them,
26 failed and refused to take steps to comply with the applicable
27 access statutes; and despite knowledge of the resulting problems
28 and denial of civil rights thereby suffered by Plaintiff's Member

1 THEODORE A. PINNOCK and other similarly situated persons with
2 disabilities. Defendants, and each of them, have failed and
3 refused to take action to grant full and equal access to persons
4 with physical disabilities in the respects complained of
5 hereinabove. Defendants, and each of them, have carried out a
6 course of conduct of refusing to respond to, or correct complaints
7 about, denial of disabled access and have refused to comply with
8 their legal obligations to make Defendants' HIGHWAY 395 RESORT,
9 LLC d.b.a. PALA MESA RESORT facilities accessible pursuant to the
10 Americans With Disability Act Access Guidelines (ADAAG) and Title
11 24 of the California Code of Regulations (also known as the
12 California Building Code). Such actions and continuing course of
13 conduct by Defendants, and each of them, evidence despicable
14 conduct in conscious disregard of the rights and/or safety of
15 Plaintiff's Member and of other similarly situated persons,
16 justifying an award of treble damages pursuant to sections 52(a)
17 and 54.3(a) of the California Civil Code.

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

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

12 51. Wherefore, Plaintiffs pray for damages and relief as
13 hereinafter stated.

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

16 52. Based on the facts plead at ¶¶ 6-29 above and elsewhere in
17 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
18 statutory duty to make their facility accessible and owed
19 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
20 Pinnock reasonably safe from known dangers and risks of harm.
21 This said duty arises by virtue of legal duties proscribed by
22 various federal and state statutes including, but not limited to,
23 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
24 California Administrative Code and applicable 1982 Uniform
25 Building Code standards as amended.

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

7 54. Therefore, Defendants engaged in discriminatory conduct in
8 that they failed to comply with known duties under the ADA, ADAAG,
9 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or
10 should have known that their acts of nonfeasance would cause
11 Plaintiff Theodore A. Pinnock emotional, bodily and personal
12 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
13 bodily injury in this matter because when Plaintiff THEODORE A.
14 PINNOCK attempted to enter, use, and exit Defendants'
15 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
16 his legs, back, arms, shoulders, and wrists. Plaintiffs further
17 allege that such conduct was done in reckless disregard of the
18 probability of said conduct causing Plaintiff Theodore A. Pinnock
19 to suffer bodily or personal injury, anger, embarrassment,
20 depression, anxiety, mortification, humiliation, distress, and
21 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
22 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
23 An Individual, to suffer the injuries of mental and emotional
24 distress, including, but not limited to, anger, embarrassment,
25 depression, anxiety, mortification, humiliation, distress, and
26 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
27 Individual, additionally alleges that such conduct caused THEODORE
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1 A. PINNOCK, An Individual, to
2 suffer damages as a result of these injuries.

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

5 DEMAND FOR JUDGMENT FOR RELIEF:

6 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
7 3281, and 3333;

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

11 C. In the alternative to the damages pursuant to Cal. Civil
12 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
13 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
14 54.1, Title 24 of the California Building Code, ADA, and ADA
15 Accessibility Guidelines;

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

27 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
28 § 12205, and Cal. Civil Code § 55;


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- F. For treble damages pursuant to Cal. Civil Code §§ 52(a), and 54.3(a);
- G. A Jury Trial and;
- H. For such other further relief as the court deems proper.

Respectfully submitted:

PINNOCK & WAKEFIELD

Dated: April 2, 2004

By: 
MICHELLE L. WAKEFIELD, ESQ.
DAVID C. WAKEFIELD, ESQ.
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.)

FILED

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

DEFENDANTS
HIGHWAY 395 RESORT, LLC d/b/a PAPA MESA RESORT;
HIGHWAY 395 RESORT, LLC; 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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Michelle L. Wakefield, Esq. SBN: 200424
David C. Wakefield, Esq. SBN: 185736
Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'04 CV 0689 DMS (JFS)

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)
CITIZENSHIP OF PLAINTIFF: 1 Citizen of This State, 2 Citizen of Another State, 3 Citizen or Subject of a Foreign Country
CITIZENSHIP OF DEFENDANT: 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)

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"/> 660 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 (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 FSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/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"/> 960 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 f.r.c.p. 23 DEMAND \$ To Be Determined At Trial Check YES only if demanded in complaint: JURY DEMAND: YES NO

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

DATE April 2, 2004
#102464 150 - MS

SIGNATURE OF ATTORNEY OF RECORD
Michelle L. Wakefield