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3:05-CV-00616 PINNOCK V. LA COSTA RESORT

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SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

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

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

Plaintiffs,

v.

**LA COSTA RESORT AND SPA; KSL
LA COSTA RESORT CO., LLC d.b.a.
LA COSTA RESORT AND SPA; KSL
LA COSTA RESORT CO., LLC f.k.a.
LA COSTA RESORT
CORPORATION; And DOES 1
THROUGH 10, Inclusive**

Defendants.

Case No: **'05 CV 0616** JAH (NLS)

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

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

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

INTRODUCTION

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual, herein complain, by filing this Civil Complaint in accordance with rule 8 of the Federal Rules of Civil Procedure in the Judicial District of the United States District Court of the Southern District of California, that Defendants have in the past, and presently are, engaging in discriminatory practices against individuals with disabilities, specifically including minorities with disabilities. Plaintiffs allege this civil action and others substantial similar thereto are necessary to compel access compliance because empirical research on the effectiveness of Title III of the Americans with

1 Disabilities Act indicates this Title has failed to achieve full and equal access simply by the
2 executive branch of the Federal Government funding and promoting voluntary compliance efforts.
3 Further, empirical research shows when individuals with disabilities give actual notice of potential
4 access problems to places of public accommodation without a federal civil rights action, the public
5 accommodations do not remove the access barriers. Therefore, Plaintiffs make the following
6 allegations in this federal civil rights action:

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8 **JURISDICTION AND VENUE**

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

14 **SUPPLEMENTAL JURISDICTION**

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

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NAMED DEFENDANTS AND NAMED PLAINTIFFS

3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Defendant LA COSTA RESORT AND SPA is located at 2100 Costa Del Mar Road, Carlsbad, California 92009. Plaintiffs are informed and believe and thereon allege that Defendant KSL LA COSTA RESORT CO., LLC is the owner, operator, and/or doing business as LA COSTA RESORT AND SPA. Defendant KSL LA COSTA RESORT CO., LLC is located at 50-905 Avenida Bermudas, La Quinta, California, 92253. Plaintiffs are informed and believe and thereon allege that Defendant KSL LA COSTA RESORT CO., LLC f.k.a. LA COSTA RESORT CORPORATION is the owner, operator, and/or lessor of the property located at 2101 Costa Del Mar Road, Carlsbad, California 92009, Assessor Parcel number 216-123-07. Plaintiffs are informed and believe and thereon allege 2101 Costa Del Mar Road, Carlsbad, California 92009 is also known as 2100 Costa Del Mar Road, Carlsbad, California 92009. The words "Plaintiffs" and "Plaintiff's Member" as used herein specifically include the organization MANTIC ASHANTI'S CAUSE, its Members, its member Theodore A. Pinnock and persons associated with its Members who accompanied Members to Defendants' facilities, as well as THEODORE A. PINNOCK, An Individual.

4. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employees, employees, agents, of LA COSTA RESORT AND SPA; KSL LA COSTA RESORT CO., LLC d.b.a. LA COSTA RESORT AND SPA; and KSL LA COSTA RESORT CO., LLC f.k.a. LA COSTA RESORT CORPORATION. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs will pray leave of the court to amend this complaint to allege the true names and capacities of the Does when ascertained.

5. Plaintiffs are informed and believe, and thereon allege, that Defendants and each of them herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee, general partner, limited partner, agent, employee, representing partner, or joint venturer of the

1 remaining Defendants and were acting within the course and scope of that relationship. Plaintiffs
2 are further informed and believe, and thereon allege, that each of the Defendants herein gave
3 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

4 CONCISE SET OF FACTS

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

10 7. On August 10, 2004 and August 11, 2004, Plaintiff's Member and Plaintiff THEODORE A.
11 PINNOCK went to Defendants' LA COSTA RESORT AND SPA facilities to utilize their goods
12 and/or services. When Plaintiff's Member and Plaintiff THEODORE A. PINNOCK patronized
13 Defendants' LA COSTA RESORT AND SPA facilities, he was unable to use and/or had difficulty
14 using the public accommodations' disabled parking, exterior path of travel, entrance, registration
15 counters, men's lobby restroom, gift shops, lounge area, pool, spa area, spa, interior path of travel,
16 guestroom, guestroom entrance, guestroom interior path of travel, guestroom bed, guestroom reach
17 ranges, guestroom operable controls, and guestroom bathroom facilities at Defendants' business
18 establishments because they failed to comply with ADA Access Guidelines For Buildings and
19 Facilities (hereafter referred to as "ADAAG") and/or California's Title 24 Building Code
20 Requirements. Defendants failed to remove access barriers within the public accommodations'
21 disabled parking, exterior path of travel, entrance, registration counters, men's lobby restroom,
22 women's lobby restroom, gift shops, lounge area, pool, spa area, spa, interior path of travel,
23 guestroom, guestroom entrance, guestroom interior path of travel, guestroom bed, guestroom reach
24 ranges, guestroom operable controls, and guestroom bathroom facilities of Defendants' LA
25 COSTA RESORT AND SPA establishment.

26 8. Plaintiff's member personally experienced difficulty with said access barriers at
27 Defendants' LA COSTA RESORT AND SPA facility. For example, the parking facility is
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1 inaccessible, as it fails to have the required disabled parking spaces.

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

6 10. The front entrance to the Defendants' establishment is inaccessible. The front entrance
7 door of the lobby fails to have the required smooth and uninterrupted surface on the bottom ten
8 inches (10") of the door that allows the door to be opened with a wheelchair footrest without
9 creating a hazard. The front entrance door fails to have the required disability signage. There is a
10 loose doormat at the front entrance that fails to meet the requirement that all doormats are anchored
11 securely or recessed onto the door landing. The pressure required to open the lobby entrance door
12 is twelve pounds (12 lbs.), when it is required to be no more than eight and one half pounds (8 ½
13 lbs.).

14 11. The lobby cashier counter is inaccessible, as it is forty-three inches (43") high, when it is
15 required to be no higher than thirty-four inches (34"). The lounge area bar counter is inaccessible,
16 as it is forty-one inches (41") high, when it is required to be no higher than thirty-four inches (34").

17 12. The interior path of travel of the Defendants' establishment is inaccessible. The path of
18 travel leading up the lounge area towards the bar is inaccessible, as there are three (3) steps, each
19 step being six inches (6") high, with no access ramp. Changes in level greater than one half of an
20 inch (1/2") are required to be ramped. The entrance door to the hallway leading to "accessible"
21 Guestroom 113 fails to have the required level landing. It is required that there is a five foot by five
22 foot (5' x 5') level landing in front of every door. The slope of the ramp from the hallway door
23 leading to the designated "accessible" Guestroom 113 is an impermissible ten percent (10%), when
24 it is required to be no greater than 8.33%. The entrance door to the gift shops fail to have the
25 required smooth and uninterrupted surface on the bottom ten inches (10") of the door that allows
26 the door to be opened with a wheelchair footrest without creating a hazard. The path of travel
27 inside the gift shops is as narrow as thirty inches (30"), when it is required to be at least thirty-six
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1 inches (36") wide if items are displayed on one side of the aisle and at least forty-four inches (44")
2 if items are displayed on both sides of the aisle. The path of travel throughout the Defendants'
3 establishment is inaccessible, as it has impermissible abrupt changes in level. It is required that
4 continuous common surfaces are not interrupted by steps or abrupt changes in level. The path of
5 travel leading to Guestroom 803 is inaccessible, as there are impermissible abrupt changes in level.
6 The path of travel leading to Guestroom 943 is inaccessible, as there are impermissible abrupt
7 changes in level.

8 13. The men's restroom located in the lobby of the Defendants' establishment is inaccessible.
9 The restroom door fails to have the required disability signage. The pressure that is required to
10 open the restroom area door is an impermissible ten pounds (10 lbs.), when it is required to be no
11 greater than five pounds (5 lbs.). The pressure that is required to open the restroom door is an
12 impermissible ten pounds (10 lbs.), when it is required to be no greater than five pounds (5 lbs.).
13 The round locking mechanism on the "accessible" stall door is inaccessible, as it requires tight
14 grasping and/or twisting of the wrist to operate. The height of the coat hook is fifty-eight inches
15 (58"), when it is required to be no higher than forty-eight inches (48"). The height of the commode
16 seat cover dispenser is forty-three inches (43"), when it is required to be no higher than forty inches
17 (40"). The hot water and drainpipes underneath the lavatory, located inside the "accessible" stall,
18 fail to have the required covering.

19 14. The pool fails to have the required assistive device that helps disabled patrons into and out
20 of the water. The spa area is inaccessible, as there are steps leading to the spa area and there fails to
21 be any signage directing disabled patrons to an accessible entrance to the spa area. The spa fails to
22 have the required assistive device that helps disabled patrons into and out of the water.

23 15. The Defendants' establishment has a total of five hundred (500) Guestrooms, including five
24 (5) "accessible" Guestrooms, which fail to be accessible. If a hotel has between four hundred and
25 one and five hundred (401 and 500) guestrooms, the hotel shall provide at least nine (9) fully
26 accessible rooms, plus four (4) additional "accessible" guestrooms with roll-in showers. If a hotel
27 has between four hundred and one and five hundred (401 and 500) guestrooms, the hotel shall
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1 provide nine (9) accessible guestrooms for members of the disability community who are hearing
2 impaired. The accessible guestrooms must be dispersed among the various classes of sleeping
3 accommodations, providing a range of options applicable to room sizes, costs, amenities provided,
4 and the number of beds provided. Defendants' hotel fails to have the required accessible
5 guestrooms. Plaintiff's member and Plaintiff Theodore A. Pinnock originally requested an
6 accessible guest suite but was informed that the resort had suites but none of defendants' suites
7 were accessible.

8 16. Plaintiff's member and Plaintiff Theodore A. Pinnock was initially given Guestroom 803, a
9 designated accessible guestroom, which was not accessible. The bathroom located inside
10 Guestroom 803 was inaccessible. The path of travel inside the bathroom was inaccessible. The
11 shower located inside the bathroom was inaccessible, as the shower entrance was too narrow and
12 did not provide the minimum width requirement of thirty-six inches (36"). Due to the
13 inaccessibility of Guestroom 803, Plaintiff's member and Plaintiff Theodore A. Pinnock requested
14 another accessible Guestroom.

15 17. Plaintiff's member and Plaintiff Theodore A. Pinnock was then given Guestroom 943, a
16 designated accessible guestroom, which was also not accessible. The interior path of travel in the
17 guestroom is blocked by a table and is inaccessible. The table also blocks the path of travel to the
18 patio. The business desk located inside the guestroom is too high, and therefore inaccessible. The
19 bed is too high, and therefore inaccessible. The television stand is too high, and therefore
20 inaccessible. The patio entrance has a two inch (2") high threshold and is therefore inaccessible.
21 The patio has fixtures that make the patio inaccessible. The restroom located inside Guestroom
22 943 was inaccessible. The bathroom fails to have the minimum required wheelchair turn around
23 space. The counters in the bathroom are too high, and therefore inaccessible. There is an
24 impermissible five inch (5") high threshold at the shower/bathtub entrance. The bathtub is not
25 accessible. Plaintiff Theodore A. Pinnock fell while trying to enter defendants' shower/bathtub,
26 striking and physically causing bodily injury to his head, neck, back, and legs. At the time,
27 Plaintiff Pinnock was nude and therefore suffered further embarrassment, anxiety, mortification,
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1 humiliation, and distress trying to regain his wheelchair without summoning assistance. However,
2 Plaintiff Pinnock could not regain his wheelchair without the assistance of a female assistant
3 causing Pinnock to suffer embarrassment, anxiety, mortification, humiliation, anger, and distress.

4 18. In addition to the violations personally experienced by Plaintiff's member and Plaintiff
5 Theodore A. Pinnock, additional violations of federal and state disability laws exist at Defendants'
6 LA COSTA RESORT AND SPA establishment. For example, the entrance door to the women's
7 restroom located in the lobby is inaccessible, as it requires ten pounds (10 lbs.) of pressure to
8 operate, when it is required to be no more than five pounds (5 lbs.).

9 19. Guestroom 113 is inaccessible. The locking mechanism on the entrance door is
10 inaccessible, as it requires tight grasping and/or twisting of the wrist to operate. The height of the
11 peep hole is sixty inches (60"), when it is required to be between forty inches and forty-four inches
12 (40"- 44") high. The small round lamp switches are inaccessible, as they require tight grasping
13 and/or twisting of the wrist to operate. The path of travel from the entrance door to the closet is
14 only twenty-eight inches (28") wide due to a seat partially blocking the way, when it is required to
15 be at least thirty-six inches (36") wide. The pressure that is required to open the closet door is
16 seven pounds (7 lbs.), when it is required to be no more than five pounds (5 lbs.). The height of the
17 clothes hanger is fifty-nine inches (59"), when it is required to be no higher than forty-eight inches
18 (48"). The height of the shelf is sixty-four inches (64"), when it is required to be no higher than
19 forty-eight inches (48"). The locking mechanism on the patio door is inaccessible, as it requires
20 tight grasping and/or twisting of the wrist to operate. There fails to be sufficient space on the patio
21 due to seats placed very close to the door, preventing disabled patrons from accessing the patio.
22 There should be at least thirty-six inches (36") of space on the patio.

23 20. The bathroom located inside Guestroom 113 is inaccessible. The bathroom fails to have the
24 minimum required wheelchair turn around space of sixty inches (60") in diameter. The height of
25 the coat hook is sixty-five inches (65"), when it is required to be no higher than forty-eight inches
26 (48"). The flush handle on the commode tank is located on the narrow side of the tank, when it is
27 required to be on the wide side of the tank. The height of the hair dryer is fifty-nine inches (59"),
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1 when it is required to be no higher than forty-eight inches (48"). The shower fails to provided the
2 minimum width requirement of thirty inches by forty-eight inches (30" x 48"). The height of the
3 handheld shower sprayer is fifty-eight inches (58"), when it is required to be no higher than forty-
4 eight inches (48"). The height of the bottom of the mirror is fifty-three inches (53"), when it is
5 required to be no higher than forty inches (40"). The height of the towels is fifty-five inches (55"),
6 when they are required to be no higher than forty-eight inches (48").

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

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

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

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

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

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

27 34. Based on the facts plead at ¶¶ 6-23 above, Claims I, II, and III of Plaintiffs' First Cause Of
28 Action above, and the facts elsewhere herein this complaint, Plaintiffs will suffer irreparable harm

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

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

11
12 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
13 **CALIFORNIA ACCESSIBILITY LAWS**

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

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

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

1 severe emotional distress.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 48. Therefore, Defendants engaged in discriminatory conduct in that they failed to comply with
21 known duties under the ADA, ADAAG, Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24,
22 and knew or should have known that their acts of nonfeasance would cause Plaintiff THEODORE
23 A. PINNOCK emotional, bodily and personal injury. Plaintiff THEODORE A. PINNOCK alleges
24 that there was bodily injury in this matter because when Plaintiff THEODORE A. PINNOCK
25 attempted to enter, use, and exit Defendants' establishment, Plaintiff THEODORE A. PINNOCK
26 experienced pain in his head, neck, back, and legs. Plaintiff Theodore A. Pinnock fell while trying
27 to enter defendants' shower/bathtub, striking and physically causing bodily injury to his head, neck,
28

1 back, and legs. At the time, Plaintiff Pinnock was nude and therefore suffered further
2 embarrassment, anxiety, mortification, humiliation, and distress trying to regain his wheelchair
3 without summoning assistance. However, Plaintiff Pinnock could not regain his wheelchair
4 without the assistance of a female assistant causing Pinnock to suffer embarrassment, anxiety,
5 mortification, humiliation, anger, and distress. Plaintiffs further allege that such conduct was done
6 in reckless disregard of the probability of said conduct causing Plaintiff THEODORE A.
7 PINNOCK to suffer bodily or personal injury, anger, embarrassment, depression, anxiety,
8 mortification, humiliation, distress, and fear of physical injury. Plaintiff THEODORE A.
9 PINNOCK, An Individual, alleges that such conduct caused THEODORE A. PINNOCK, An
10 Individual, to suffer the injuries of physical, mental and emotional distress, including, but not
11 limited to, anger, embarrassment, depression, anxiety, mortification, humiliation, distress, and fear
12 of physical injury. Plaintiff THEODORE A. PINNOCK, An Individual, additionally alleges that
13 such conduct caused THEODORE A. PINNOCK, An Individual, to suffer damages as a result of
14 these injuries.

15 49. Wherefore, Plaintiffs pray for damages and relief as hereinafter stated.
16

17 DEMAND FOR JUDGMENT FOR RELIEF:

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

19 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of
20 Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility
21 Guidelines;
22

23 C. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph B above,
24 for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code
25 § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;

26 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and Cal. Civil Code § 55. Plaintiffs
27
28

1 request this Court enjoin Defendants to remove all architectural barriers in, at, or on their facilities
2 related to the following: Space Allowance and Reach Ranges, Accessible Route, Protruding
3 Objects, Ground and Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
4 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances, Drinking
5 Fountains and Water Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
6 Storage, Handrails, Grab Bars, and Controls and Operating Mechanisms, Alarms, Detectable
7 Warnings, Signage, and Telephones.
8

9 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code
10 § 55;
11

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

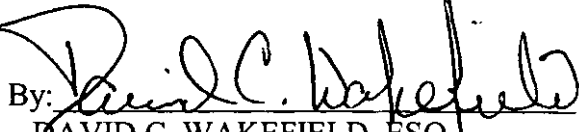
13 G. A Jury Trial and;

14 H. For such other further relief as the court deems proper.
15

16 Respectfully submitted:

17
18 Dated: 3/21/2005

PINNOCK & WAKEFIELD, A.P.C.

By: 
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.)

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

DEFENDANTS
LA COSTA RESORT AND SPA; KSL LA COSTA RESORT CO., LLC d.b.a. LA COSTA RESORT AND SPA; KSL LA COSTA RESORT CO., LLC f.k.a. LA COSTA RESORT CORPORATION; 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 (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)
David C. Wakefield, Esq. SBN: 185736
Michelle L. Wakefield, Esq. SBN: 200424
Pinnock & Wakefield, A.P.C.; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)
'05 CV 0616 JAH (NLS)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
PT/DEF
Citizen of This State [] 1 [] 1 Incorporated or Principal Place of Business in This State [] 4 [] 4
Citizen of Another State [] 2 [] 2 Incorporated and Principal Place of Business in Another State [] 5 [] 5
Citizen or Subject of a Foreign Country [] 3 [] 3 Foreign Nation [] 6 [] 6

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

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

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

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

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

[X] 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: [X] YES [] NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE DATE 3/21/05 #112301/\$250,000

SIGNATURE OF ATTORNEY OF RECORD: David C. Wakefield Doc# Number